



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 28 April 2011 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. Notices of Motion
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 line extending from the end of the signature.

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.

Table of Contents

1.	Australian National Anthem.....	1
2.	Acknowledgement of Country	1
3.	Apologies	1
4.	Confirmation of Minutes.....	1
5.	Declarations of Interest and Reportable Political Donations	1
6.	Deputations.....	1
7.	Mayoral Minutes	1
8.	Regulatory Services Group Reports	2
8.1	DA 2010/216 - Retail Development, West Ballina	2
8.2	DA 2010/1016 - Summerland House With No Steps	10
8.3	DA 2010/1061 - Residential Flat - Ross Street / Fripp Lane, Ballina	26
8.4	Asbestos Removal from the Built Environment	39
8.5	Building Code of Australia (BCA) - Cyclone Wind Ratings	44
8.6	Development Applications - Work in Progress - April 2011	51
8.7	Development Consent Statistics - March 2011	59
9.	Strategic & Community Services Group Reports.....	60
9.1	Youth Council - Update	60
9.2	Development Control Plan - Coastal Grove Lennox Head	63
9.3	Richmond River Estuary - Management Plan	69
10.	General Manager's Group Reports	78
10.1	Use of Council Seal	78
10.2	Investments Summary - March 2011	80
10.3	Councillor - Leave of Absence	84
10.4	Councillor Attendance	85
10.5	Community Donations	87
10.6	Policy (Final) - Financial Planning	89
10.7	Delivery Program and Operational Plan - 31 March 2011 Review	91
10.8	Capital Expenditure - Quarterly Update	94
11.	Civil Services Group Reports	98
11.1	Naming Proposal - Public Roads	98
11.2	Fishery Creek Watermain Underbore - Contractor Engagement	101
11.3	Policy (Revoke) - Access from Unsealed Rural Roads	105
11.4	Policy (Review) - Contributions for Dust Sealing of Roads	107
12.	Public Question Time	109
13.	Notices of Motion.....	110
13.1	Notice of Motion - Dredging	110
13.2	Notice of Motion - Surf Schools	112
13.3	Notice of Motion - Moratorium on Coal Seam Gas Mining	113
14.	Advisory Committee Minutes.....	114
14.1	Finance Committee Minutes - 7 April 2011	114

15.	Reports from Councillors on Attendance on Council's behalf	122
15.1	Mayoral Meetings	122
16.	Questions Without Notice	123
17.	Confidential Session.....	124
17.1	Land Acquisition - Water Reservoirs	124
17.2	Land Sale - Southern Cross Industrial Estate	125

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
-

1. Australian National Anthem

The National Anthem will be performed by the Sylvia Smith Singers.

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 24 March 2011 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 24 March 2011.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil items

8. Regulatory Services Group Reports

8.1 DA 2010/216 - Retail Development, West Ballina

File Reference	DA 2010/216
Applicant	Paul R Gray Architect Pty Ltd
Property	Lot 117 DP 857966 No. 501 River Street (Pacific Highway), West Ballina
Proposal	To erect a retail complex (shops) comprising 2453m ² of floor area incorporating bulky goods retailing, general retailing, takeaway food premises, site filling, associated car parking, advertising signage and civil works
Effect of Planning Instrument	The land is zoned 2(a) – Living Area Zone under the provisions of the Ballina LEP.
Locality Plan	The subject land is depicted on the locality plan attached.

Introduction

Council is in receipt of a development application seeking consent for the erection of a 2453m² retail complex on the former Suntori Motel site at West Ballina. The configuration of the proposed development is detailed in the submitted plans **attached**. The subject site is located within the 2(a) – Living Area Zone pursuant to the provisions of the Ballina Local Environmental Plan 1987. In undertaking the assessment of the proposed development, a conclusion has been reached that the proposed development is not consistent with the objectives of the 2(a) – Living Area Zone. Consequently, this application is being reported to the Council for determination with a recommendation for refusal based on the reasons outlined in this report.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The development proposal was placed on public exhibition in accordance with Council policy. One (1) submission was received, a copy of which is **attached**.

The submission does not specifically object to the proposed development but rather is opposed to development in the floodplain in general. Should the development be supported, it can be constructed in accordance with the requirements of Council's adopted development controls for flood prone land as contained in Policy Statement No. 11 of Chapter 1 of the Ballina Shire Combined Development Control Plan.

Applicable Planning Instruments

The application has been assessed against the heads of consideration under S.79C of the Environmental Planning & Assessment Act. The following are the key matters of relevance in Council's determination of the application.

Ballina Local Environmental Plan 1987

The proposed development involves the erection of a retail premises comprising a mix of bulky goods retailing, general retailing and a takeaway food premises. For the purposes of the BLEP, the land use definition is best identified as a "shop" which is defined as

a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause.

The subject land is within the 2(a) – Living Area Zone pursuant to the BLEP. The objectives of the 2(a) – Living Area Zone are:

A. The primary objectives are:

- (a) to regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area,*
- (b) to permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store), and*
- (c) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban and tourist facilities.*

B. The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.

C. The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.

As specified in the Table to Clause 9 of the BLEP, "shops" are permissible with consent as "advertised development".

Notwithstanding this permissibility, the proposed development must also demonstrate consistency with the zone objectives. Clause 9(7) of the Ballina Local Environmental Plan provides that the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Objective A(a) provides for the regulation of the use of land to permit housing and ancillary development. The nature of the proposed development, being a retail development containing bulky goods premises, general retail premises and takeaway food premises, is not considered as ancillary to housing.

The subject site enjoys frontage to the Pacific Highway and is in close proximity to existing commercial development (Keys West shopping centre on the southern side of the highway and zone No. 3 - Business).

The development is designed to maximise this exposure to the highway. To the west of the site is the former Big Prawn service station complex which is now closed and is approved for demolition. The former Big Prawn site is also located within the 2(a) – Living Area Zone and as at the date of assessment it is not known what the future use of this land will be.

The subject site is adjoined on two sides by existing residential uses. Low density single dwelling allotments exist north of the site (part of the Westlands estate) while a permanently occupied caravan park exists directly east of the site. In this regard, the proposed development cannot be considered compatible with the character and amenity of the adjoining residential land uses.

Objective A(b) allows for the development of “essential land uses” in the zone but “not including a shop (other than a general store)”. This has raised a question of conflict where “shops” are listed as permissible development but are, in effect, not permissible pursuant to the zone objectives.

It is difficult to see how the proposed development, being bulky goods premises, general retail premises and takeaway food shops can be considered “essential land uses” in a residential zone. The preferred location for these land uses is in the business zone. Council officers are of the opinion that the granting of consent to the proposed development for “shops” in the 2(a) – Living Area Zone is antipathetic to the zone objectives and not in the public interest. In this regard, the application is not supported. This matter is addressed further later in this report.

In addition to the above, Council has adopted the Ballina Retail Strategy to provide a planning and development framework in of support the BLEP land use zones that encourage commercial and retail development. This matter is addressed in more detail below.

State Environmental Planning Policy 55 – Remediation of Land

The application has been assessed with regard to land contamination and remediation. The applicant has provided sufficient information to enable technical officers to reasonably conclude that this issue can be resolved by conditions.

State Environmental Planning Policy 71 – Coastal Protection

The subject site is located within the coastal zone and is thus subject to the provisions of SEPP 71.

The proposed development has been assessed against the provisions of Clause 8 of this SEPP which contains matters for consideration for development proposals on land within the coastal zone. The proposed development is within an established urban area on land previously containing a motel. It is considered that the proposed development is generally in accordance with the aims of this Policy and the desired outcomes detailed in the Clause 8 matters for consideration.

The proposed development will have no direct effect on the coastline or estuary and will not impact on access to foreshore areas. The compatibility of the development with surrounding uses and its suitability for the site is addressed elsewhere in this assessment. If the development is approved, it will be subject to relevant and applicable land use and construction conditions to regulate the impacts of the use and construction works on the coastal environment.

State Environmental Planning Policy (Infrastructure) 2007

The proposed development, being for shops having an overall floor area exceeding 500m² and having access to a classified road (Pacific Highway), is identified as a “traffic generating development” under this SEPP. This type of development requires that the Roads and Traffic Authority (RTA) be notified of the proposal. A response was received from the RTA dated 22 February 2010 giving conditional support to the proposed development. The proposed development has also been assessed by Council’s Development Engineer who has advised that the proposed development can be supported subject to standard engineering conditions.

Draft Ballina Local Environmental Plan 2010

The Draft Ballina Local Environmental Plan 2010 (draft LEP) has been publicly exhibited and is applicable to the subject land. The subject land is within the B6 – Enterprise Corridor Zone as proposed in the draft LEP, as exhibited. However, it should be noted that the draft LEP has not been reported back to Council following the public exhibition and amendments to the proposed B6 zone provisions may be identified as options when the draft LEP is reported back to Council.

It should also be noted that following the exhibition of the draft LEP a number of amendments have been made to the Standard Instrument including the introduction of a revised definition for “bulky goods premises” and changes to the B5 – Business Development Zone to specifically identify bulky goods uses. Council’s Strategic Services Group are currently reviewing the implications of these changes for the draft LEP.

In assessing the proposed development against the exhibited draft LEP, it can be defined as a combination of “bulky goods premises” and “retail premises” which would be prohibited in the B6 Zone under the exhibited and certified draft LEP. The proposed “food and drink premises” component of the development would be a permissible use in the B6 Zone.

The objectives of the proposed B6 Zone are as follows:

- *to promote businesses along main roads and to encourage a mix of compatible uses*

- *to provide a range of employment uses (including business, office, retail and light industrial uses) and residential uses (but only as part of a mixed use development)*
- *to maintain the economic strength of centres by limiting retailing activity*
- *to encourage integrated mixed use development centred on business and office based activity*
- *to minimise conflict between land uses within the zone and within adjoining zones*
- *to encourage development that achieves the efficient use of resources such as energy and water*

It is considered that the proposed development is generally not consistent with these objectives given the “bulky goods” or large format retailing nature of the proposal as the certified draft LEP B6 Zone objectives above specifically seek to limit and restrict the retailing activity proposed in this application.

Ballina Shire Combined Development Control Plan

The subject site is located within the T1 – Tourist Accommodation control plan area in accordance with the provisions of DCP Chapter 1. The objective of this control plan area is to designate specific areas for tourist accommodation. The preferred land uses are motels, caravan parks and low density forms of tourist accommodation. The proposed development, being for a commercial retail premises, is inconsistent with the provisions of the T1 development control plan area.

In reviewing previous approvals for the subject site (DA 2003/1162 – 20 x unit residential flat development and DA 2009/90 – Motor showrooms and car repair station) it is acknowledged that Council has in the past recognised a weakness in planning for the traditional tourist oriented use of the locality. The history of the site and surrounding precinct suggests that the T1 designation is a remnant from when tourist oriented uses such as motels, caravan parks and service stations were the predominant land use based on the location of the area fronting the Pacific Highway. A transition from these types of uses has taken place in response to changes in socio-economic demands. In this regard, it is considered that, despite the T1 designation, the site and surrounding area is suitable for non-tourist oriented uses. It is anticipated that this will be recognised in the revision to the DCP in due course. Consequently, based on Council's previous approvals for the site and in consideration of the transitional use of the subject site, strict compliance with the T1 control areas in this instance cannot be supported.

Report

As evidenced in the consideration of the regulatory provisions above, there are several key issues of relevance in the assessment of the proposed development.

BLEP Zone Provisions

The issues relating to the consistency of the development with the zone objectives were raised with the applicant who responded with legal advice in support of the proposed development. A copy of the applicant's legal advice dated 19 November 2009 is **attached**. In addition, the applicant also submitted further information dated 6 April 2010 detailing the proposed development and its consistency with the zone objectives (see **attached**).

In assessing the potential issues relating to the consistency of the development with the zone objectives, Council obtained its own legal advice in this regard (see **attached**). This advice concurs with the position reached by Council staff that the proposed development comprises a land use that is defined as a "shop". The advice also confirms that the proposed use, being a "shop", is permissible in the 2(a) – Living Area Zone as "advertised development".

In relation to consistency with the zone objectives, the legal advice provided is that a "development proposal, when assessed against the zone objectives, must not result in a development that is opposed in nature to the zone objectives and is consistent with the 'essential context' which is set out by the objectives."

In assessing the objectives of the zone it is considered that by stating "but not a shop (other than a general store)" that unless the proposed development is for a "general store" (which it is not) then the proposed development cannot be considered an essential land use in the zone and is therefore antipathetic to the objectives of the zone. Therefore, having regard to clause 9(7) of the BLEP, the proposed development cannot be approved.

Ballina Retail Strategy

The Ballina Retail Strategy was adopted by Council in August 2003. The purpose of the strategy was to provide a planning and development framework in response to issues relating to the future direction and viability of retailing within the Shire.

The key premise of the Strategy is that the two large retail precincts of Ballina Island – namely the Ballina Town Centre and Kerr Street Retailing Precinct continue to be the major retail centres in Ballina Shire. All decisions relating to the future development of retail activity in the Shire should be based on the principle of protecting the position of these facilities at the top of the retail hierarchy. Integral to the above is the discouraging of the creation of additional major retailing outlets which are removed from the existing established centres.

The Retail Strategy does not envisage any substantial expansion of general and/or bulky goods retailing areas in West Ballina. In reference to the existing commercial and industrial zoned land on the southern side of the Pacific Highway at West Ballina, the strategy provides the following:

The Retail Strategy for West Ballina proposes that there be a consolidation of convenience retail facilities within, or immediately adjacent to, the existing Key West (West Ballina) Shopping Centre. Any proposal to significantly expand these facilities will require detailed assessment of the retail impacts of such developments on the existing commercial centre. Higher order retail activities to service the resident population should be provided by the major centres located on Ballina Island.

The strategy therefore does not support any significant expansion of retail facilities in West Ballina without a detailed assessment of the retail impacts of such development on the existing commercial centre. The information submitted with the development application does not contain an assessment of the impacts of the proposed development in this regard. In accordance with the provisions of the Retail Strategy and its desired outcomes for retailing at West Ballina, it is considered that the proposed development is inconsistent with these provisions and consequently the proposed development cannot be supported.

Draft LEP Zone Provisions

As detailed in the assessment above, the proposed development contains land uses defined as “bulky goods premises” and “retail premises” for the purposes of the Draft LEP. The subject land has been proposed for inclusion in the B6 – Enterprise Corridor Zone for the purposes of the Draft LEP, as exhibited. Both “bulky goods premises” and “retail premises” are proposed to be prohibited in the B6 Zone. Given Council’s resolution to publicly exhibit the Draft LEP with the B6 Zone provisions applicable to the land, it is considered that the objectives of the B6 zone effectively constitute Council’s preferred future land uses for the site. In this regard, the proposed development, being nominated as a prohibited use on the site in accordance with the Draft LEP, is an inappropriate use of the site and is inconsistent with Council’s desired future land uses for the area.

Notwithstanding the above, it is noted that the draft LEP has yet to be reported back to Council following its public exhibition and Council may resolve to amend the draft LEP at that time.

Conclusion

The proposed development seeks Council consent for the establishment of a commercial building on the site comprising a mix of bulky goods, general retail and food and drink premises. The assessment of the development against the regulatory provisions for the site has revealed that the proposed development is inconsistent with the applicable 2(a) – Living Area zone for the purposes of the BLEP. This position has been supported by legal advice. The development is also inconsistent with the Ballina Retail Strategy as adopted by Council and is inconsistent with the provisions of the Draft LEP. In this regard, the proposed development is not supported and is recommended for refusal.

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

Option 1

That Council REFUSE the development application, in consideration of the applicable zone objectives, the provisions of the Ballina Retail Strategy and the provisions of the Draft LEP, or

Option 2

That Council APPROVE the development application subject to standard conditions of consent for a commercial retail development. Should Council elect to proceed with this option it is with the knowledge that the approval will be inconsistent with the current BLEP zone provisions, will be inconsistent with the requirements and recommendations of the Ballina Retail Strategy and will be in contravention of the principles adopted in the Draft LEP.

Option one is the recommended approach for the reasons outlined in this report.

RECOMMENDATION

That DA 2010/216 be **REFUSED** in consideration of the applicable zone objectives, the provisions of the Ballina Retail Strategy and the provisions of the Draft LEP.

Attachment(s)

1. Locality Plan
2. Site Plan, Floor Plan & Elevations – Proposed Retail Development
3. Copy of submission received during public exhibition
4. Copy of applicant's legal advice
5. Copy of additional information from applicant regarding consistency with zoning provisions
6. Copy of Council's legal advice

8.2 DA 2010/1016 - Summerland House With No Steps

File Reference	DA 2010/1016
Applicant	Jason White – Jazz Construction (on behalf of Brett Lacey – Summerland House with No Steps)
Property	Lot 2 DP 554804, No. 253 Wardell Road, Lynwood (Summerland House with No Steps site)
Proposal	To undertake alterations and additions to an existing gift shop to enable the sale of fruit and vegetables.
Effect of Planning Instrument	The land is zoned part 1(a1) – Rural (Plateau Lands Agriculture) zone and Part 7(c) – Environmental Protection (Water Catchment) zone under the provisions of the Ballina LEP.
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council is in receipt of a development application for alterations and additions to an existing gift shop to enable the sale of fruit and vegetables at the Summerland House With No Steps site, being Lot 2 DP 552804, No. 253 Wardell Road, Lynwood.

Refer to the **attached** development plans that illustrate the application.

The alterations and additions are proposed to be located within an existing adjoining building on the site, currently utilised as a retail plant nursery. The area of the proposed additions to the gift shop is to be 10m x 10m. It is acknowledged that in establishing the proposed development, there will be a reduction in the size of the approved retail plant nursery to 105m².

The additions to the gift shop involve the following construction works:

- Removal of louvre windows from the rear wall and fill-in the wall frame.
- Re-sheet interior and exterior of the wall.
- Construct a new internal wall with a new door and sheet both sides.
- Remove 1 fixed panel from the front wall and install a new door.
- Install appropriate floor coverings.
- Install a hand wash basin.
- Install diffused lighting.

The applicant has also provided the following details in relation to the proposal:

- The hours of operation for the “expanded” gift shop will not change and will continue as 9am to 4pm, 7 days a week.
- The number of people employed will vary depending on seasonal demands and management control.
- Goods stored on the premises will be fresh fruit/vegetables as whole foods only and processed foods/condiments which have been processed/ packaged elsewhere. No foods are to be manufactured or processed on site and pose no risk of contamination.
- Quantities of products or goods will be dependent on seasonal and retail capacities.
- Any waste products will be recycled within other areas of the site as compost and will not depend on Council waste facilities.
- Internal access will be provided to the existing gift shop and existing retail plant nursery.

The subject site is located on Wardell Road, approximately 2kms south of the village of Alstonville and has area of 67.65ha.

The subject site contains a wide range of landuses, including agricultural, rural industry, tourist facility, retail plant nursery, gift shop, administration and remedial education facilities. Approximately 70% of the site (including the majority of buildings thereon) is zoned 7(c) – Environmental Protection (Water Catchment) Zone under the provisions of the Ballina Local Environmental Plan 1987 (BLEP).

Surrounding land is predominantly rural in nature and character, including smaller rural residential sized allotments (0.35ha to 4.6ha) and larger agricultural (macadamia cultivation and grazing) holdings (up to 32ha). It is noted that the Marshall Falls Reserve and the Duck Creek Water Supply Dam are located to the north west of the site (within 70m of the site).

Background

At the 22 July 2010 Ordinary Meeting, Council received a report in relation to the Food Links – Village Showcase project. Within this report it was revealed that the Summerland House With No Steps had applied for funding to establish a 7-day per week farmers market, restricted to local and seasonal produce only. The Summerland House With No Steps had sought funding from the Northern Rivers Food Links (NRFL) Project for the following:

- Renovation to existing buildings for food and internal displays and to meet food safety standards
- Educational panels on local producers, products & growing information
- Shelving and display equipment and materials
- Local Marketing campaign to include TV and local print media.

The report also stated:

The House With No Steps application assumes that the proposed project can occur under existing consents and that further Council approvals are not required. The Summerland House With No Steps land has had a number of development approvals granted over time including approvals for a retail plant nursery, rural industry (relating to produce sorting and packing sheds), tourist facility development and

gift shop. It is unclear, from the information submitted whether the proposal could occur within any of these existing consents or whether further development approval would be required.

If consent is required, it would appear from the information submitted that the proposal would be defined as a 'shop' for the purpose of the Ballina LEP 1987. It is noted that the land is located within the 7(c) Environmental Protection (Water Catchment) Zone in the Ballina LEP 1987, which has a fairly restrictive land use table. Development for the purpose of a 'shop' would not be permissible within the 7(c) zone (as it is "development for any other purpose" than those listed in the table and is therefore prohibited). The land is proposed to be zoned RU1 in the Exhibition Draft LEP 2010 (the Duck Creek Catchment being no longer required as part of the water supply catchments of the shire). Notwithstanding, development for the purpose of a 'shop' is not permissible within the proposed RU1 zone. It is noted that development for the purpose of a 'market' is permissible, however the definition of a market means:

"Retail premises comprising an open-air area or an existing building used for the purpose of selling, exposing or offering goods, merchandise or material for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis'."

The application seeks approval for a fresh produce market within an existing structure, displaying goods for sale to the public, however, it is proposed to occur on more than an 'intermittent or occasional basis' and the sale will not be by 'independent stall holders'. It does not, therefore, fit the definition of a 'market' under the exhibition draft plan.

On the basis of the above, additional information is required to determine whether the proposal can be undertaken within existing development consents, or whether development approval for a 'shop' is required. If development consent is required it would appear that the proposal would not be permissible under Council's existing and proposed Local Environmental Plans. Any changes to these plans that might be required and could be justified to enable the proposal to occur would likely disqualify it from funding under the NRFL project due to the NRFL project timeframe.

The Staff Review Panel to the Northern Rivers Food Links Project Steering Committee proposed that one month be provided for the applicant to resolve the status of the Food Links – Village Showcase application with respect to requiring development approvals. This was endorsed by the Council as part of the minutes to the 22 July 2010 Ordinary Meeting.

As a result of the abovementioned report and recommendations, staff from Council's Regulatory and Strategic Services Groups met with representatives (including Regional General Manager, Mr Brett Lacey) from the Summerland House With No Steps on 12 August 2010 to discuss their proposal.

The proposal was described as a farmers market/shop to be established within the eastern section of the existing retail plant nursery adjoining the existing gift shop. The market/shop was to sell fresh produce and pre-packaged food and would promote local producers. It was therefore determined that the proposed fresh produce market would not operate as a traditional market and was likened to a 'large fruit and vegetable shop', however appearing to only source produce locally, with a potential 7 days trading.

Staff from Council's Regulatory Services Group reviewed the potential for a fresh produce market/shop to be established at the Summerland House With No Steps site. Written advice was subsequently provided to Mr Lacey (via emails dated 26 and 30 August 2010), which stated:

"Our researching of Council's records of your property's development history and examining the relevant planning legislation would appear to indicate that your proposal to establish a food market (shop) is allowable under 'existing use rights'. This would mean that you are able to lodge a DA with Council to seek approval to expand the existing shop (gift shop) into the adjoining building which is currently used as part of your retail plant nursery for its use as a food market/shop. This is good news for your proposal because as I explained to you on site the other week, the zoning of your land under the current LEP and the draft zoning under the possible future LEP is very restrictive and essentially the only way for this type of use to be allowable would be if you were eligible for 'existing use rights'.

It is recommended that a pre-DA lodgement meeting (Thursdays or Fridays are preferable) to be convened with yourself and your consultants to discuss Council's requirements in relation to information to be provided with the DA.

If you wish to proceed to the preparation of a DA, the project would become a merits matter for Council's assessment. Just because something is permissible, it doesn't automatically follow that any particular proposal would be approved. Like any development application, yours will need to be designed having regard for all the circumstances and will need to be able to meet the reasonably applicable development control criteria established under the EP&A Act 1979 and town planning principles".

Note: DA 2010/1016 was lodged on 25 November 2010 for "the division of an existing indoor retail nursery building into 2 equal sections to create a new fruit and vegetable store". The application stated that the "fruit and vegetable store" was to sell fresh fruit and vegetables to the public which have been primarily produced from the House with No Steps and potentially neighbouring farms in the area.

Information submitted by Brett Lacey (via letter dated 7 February 2011) amended the proposal to that which is described in the introduction of this report, being "alterations and additions to an existing gift shop to enable the sale of fruit and vegetables". Refer to the **attached** letter.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Report

The following assessments are made in relation to the corresponding heads of consideration contained in Section 79C of the Environmental Planning and Assessment Act 1979 (as amended). The following matters are considered to be pertinent to Council's determination of the application.

Applicable Planning Instruments

Ballina Local Environmental Plan 1987 (BLEP)

The subject land is zoned part 1(a1) – Rural (Plateau Lands Agriculture) Zone and part 7(c) – Environmental Protection (Water Catchment) Zone. It is noted that the existing gift shop and retail plant nursery buildings are located entirely within the 7(c) zone.

Prior to the assessment of the proposal against the objectives of the 7(c) zone, it is imperative to discuss the permissibility of the proposal in accordance with the BLEP.

Under the EP&A Model Provisions 1980, as adopted via Clause 6 of the BLEP, the proposal may be described as additions to a “shop”.

“Shop” means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause.

It is noted that shops are not listed as a permissible development within Zone No. 7(c), and therefore are prohibited development. [Note: Amendment No. 49 to the BLEP was gazetted on 8 September 2006. This amendment included revisions to the zoning table for the 7(c) zone, restricting the range of uses permissible within the zone. Amendment No. 49 had the effect of prohibiting shops within the zone. Prior to Amendment No. 49, shops (other than general stores) were listed as “advertised development – only with development consent” in the 7(c) zone.]

DA 2002/27 was approved on 13 September 2001 for additions to the existing retail plant nursery for the purposes of a gift shop. DA 2010/146 was approved on 19 October 2010 for additions to the gift shop (41.3m²).

In this regard, the existing gift shop has become an “existing use” via Section 106 of the Environmental Planning & Assessment Act (EP&A Act) 1979.

Section 106 states:

In this Division, existing use means:

- a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*
- b) *the use of a building, work or land:*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Section 107 of the EP&A Act 1979 provides for the continuation and limitations of existing use.

- 1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- 2) *Nothing in subsection (1) authorises:*
 - a) *any alteration or extension to or rebuilding of a building or work, or*
 - b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or*
 - e) *the continuance of the use therein mentioned where that use is abandoned.*
- 3) *Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

In view of the provisions of Section 107, the existing gift shop may continue to be utilised.

Section 108 of the EP&A Act 1979 states:

- 1) *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:*
 - a) *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*

- b) *the change of an existing use to another use, and*
 - c) *the enlargement or expansion or intensification of an existing use.*
 - d) *(Repealed)*
- 2) *The provisions (in this section referred to as the incorporated provisions) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.*
- 3) *An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.*
- 4) *Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 89 to a development application for consent to carry out prohibited development.*

In accordance with Section 108, the Environmental Planning & Assessment Regulations (EP&A Regs) 2000 contain the following provisions with respect to extensions to “existing uses”.

Clause 41 of the EP&A Regs 2000 states:

- 1) *An existing use may, subject to this Division:*
 - a) *be enlarged, expanded or intensified, or*
 - b) *be altered or extended, or*
 - c) *be rebuilt, or*
 - d) *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
 - e) *if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
 - f) *if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*
- 2) *However, an existing use must not be changed under subclause (1) (e) or (f) unless that change:*
 - a) *involves only alterations or additions that are minor in nature, and*
 - b) *does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and*
 - c) *does not involve the rebuilding of the premises associated with the existing use, and*
 - d) *does not involve a significant intensification of that existing use, and*

e) relates only to premises that have a floor space of less than 1,000 square metres.

3) In this clause:

commercial use means the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the [Standard Instrument \(Local Environmental Plans\) Order 2006](#)).

light industrial use means the use of a building, work or land for the purpose of light industry (within the meaning of the [Standard Instrument \(Local Environmental Plans\) Order 2006](#)).

NB: under the Standard Instrument (Local Environmental Plans) Order 2006:

retail premises means “a building or place used for the purpose of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).”

shop means “retail premises that sell groceries, personal care products, clothing, music, homewares, stationery, electrical goods or other items of general merchandise, and may include a neighbourhood shop, but does not include food and drink premises or restricted premises.”

food and drink premises means “retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.”

Landscape and garden supplies means “a building or place where trees, shrubs, plants, bulbs, seeds and propagating material are offered for sale (whether by retail or wholesale), and may include the sale of landscape supplies (including earth products or other landscape and horticulture products) and the carrying out of horticulture.”

Clause 42 of the EP&A Regs 2000 states:

- 1) Development consent is required for any enlargement, expansion or intensification of an existing use.
- 2) The enlargement, expansion or intensification:
 - a) must be for the existing use and for no other use, and
 - b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

Clause 43 of the EP&A Regs 2000 states:

- 1) Development consent is required for any alteration or extension of a building or work used for an existing use.
- 2) The alteration or extension:

- a) *must be for the existing use of the building or work and for no other use, and*
- b) *must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

In view of the abovementioned clauses of the Regulations, the approved “shop” (gift shop approved via DA 2002/27) may be expanded and there are no limitations as such, in relation to the size of the proposed expansion.

From the “existing use rights” provisions within the EP&A Act 2979 and the EP&A Regs 2000 and the provisions of the BLEP, it has been determined that:

- the proposal would be defined as a “shop” (there is no food preparation or immediate consumption involved).
- There does not appear to be a mechanism whereby a DA could be lodged for a change of use of part of the retail plant nursery to a shop.
- The only mechanism, by which a shop (retail sales of fruit and vegetables) may be considered, is via an expansion of the existing shop (gift shop) into the proposed area (currently utilised as part of the existing retail plant nursery).
- In considering Clause 41 of the EP&A Regs 2000, the proposal has been determined to be a commercial use (retail premises). However it is not considered that the proposal would incorporate a change of use from one commercial use to another. The premises will remain a retail premises (shop).

However, it is implicit within the requirements and provisions of the EP&A Act 1979 and EP&A Regs 2000, that a critical merit assessment be undertaken of “existing use rights” developments.

The above requirements and provisions would appear to have been contemplated for land uses within an urban environment, rather than a rural environment. In an urban area, landuses that enjoy “existing use rights” would be constrained/restricted due to the size of an urban lot and its context in the locality. In the circumstance of a rural allotment with a considerable land area (such as the subject site) there does not appear to be these restrictions and there may be a perception for the “existing use” to expand in a manner out of character with the site and surrounding locality.

The objectives of the 7(c) – Environmental Protection (Water Catchment) Zone are:

- A. *The primary objective is to prevent development which would adversely affect the quantity or quality of the urban water supply.*
- B. *The secondary objective is to regulate the use of land within the zone:*
 - (a) *to encourage the productive use of land for agricultural purposes and to permit development which is ancillary to agricultural land uses, except for development which would conflict with the primary objective of the zone, and*
 - (b) *to ensure development of the land maintains the rural character of the locality, and*

(c) to ensure development of the land does not create unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.

C. The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on water quality and quantity being minimised as much as is reasonably practical.

It is considered that the proposed development is unlikely to have a detrimental impact on the quantity or quality of the urban water supply. The proposal, as submitted, is unlikely to increase or change any demands on current water supplies upon the site or the existing On-site Sewage Management Systems servicing the existing buildings.

It is considered that the productive use of the land (agriculture and rural industry) for agricultural purposes will not be directly compromised as a result of the proposed development. The expansion of the gift shop involves modifications to an existing building, with no new structures to be erected. Council's Civil Services Group have advised that no additional car parking will be required as a result of the proposal. As a result there is not expected to be an impact (i.e. reduction) on the existing farming areas of the subject site.

The proposed additions to the gift shop would have an association with the current agricultural landuses undertaken on the land, in that produce grown on the land is to be sold in the shop. However, it is noted that no retail type uses are permitted within the 7(c) zone and that the retail use is not ancillary to the agricultural use of the land.

In terms of the rural character of the land, the site and existing buildings will not appear any differently to what currently exists. However, it is considered that the existing, relatively minor but prohibited, use on the site (retail shop), will be strengthened through the approval of the proposed development.

The existing gift shop has an area of 95.4m², with 41.3m² additions approved via DA 2010/146. The proposed development will result in the gift shop having a total area of 236.7m² (DA 2010/1016 proposes an additional 100m²). It is acknowledged that this a relatively small area in the overall palette of landuses supported by the site (agricultural, rural industry, administration, remedial education facilities and tourist facilities etc.). Council will need to consider whether it is appropriate, in terms of the rural character of the locality, for the existing retail use to be further expanded to include fresh produce and packaged produce to be sold from the site. It is acknowledged that the existing use rights provisions of the EP&A Act 1979 and EP&A Regs 2000 do not restrict the expansion of a prohibited use and as such should this proposal be granted development consent, a precedent may set to further expand upon the retail use of the site.

The Regional General Manager for the Summerland House With No Steps has stated that *"the proposed product items remain consistent with Gift Shop expectations. This includes 'value add' items such as roasted nuts, packaged coffee, jams, pickles, chutneys etc. As a working farm, there is an existing public expectation that some fresh produce is available for purchase. This proposal would support this 'Farm Gate' experience in a safe and controlled*

way. As information would also be provided on the source of the produce, the product will also be educational and of interest to visitors, and not undermine existing Shire zoning."

On the basis of the information provided as part of the development application, Council's Civil Services Group have advised that:

- The existing external road network is constructed to a suitable standard to service the proposed development.
- The existing internal road is a 6m wide bitumen sealed road that is constructed to a suitable standard to service the proposed development.
- There is adequate car parking on site to service the proposed development.

Based on the comments from the Regional General Manager and the information provided as part of the development application, it is unknown as to whether the retail sales of fruit and vegetables from the site will remain an adjunct to the existing gift shop sales or whether the "fruit and vegetable" component of the shop will become the dominant retail use from the site. Given the proposed size of the additions to the gift shop, which are to accommodate the fruit and vegetable retail sales component, there is potential for this to occur. The suitability of a "fruit and vegetable" retail outlet within a rural area, which is not appropriately or adequately serviced for such a use, needs to be carefully considered in the determination of this application.

Clause 24A of the BLEP is relevant in the assessment of the proposal.

- (1) *This clause applies to land within Zone No. 7(c).*
- (2) *In determining an application for consent to carry out development on land to which this clause applies, the council must take into consideration the following matters:*
 - (a) *Any potential adverse impact, including any incremental adverse impact, on the water quality within the catchment that may result from the development,*
 - (b) *Whether adequate safeguards and other measures have been proposed to protect the water quality,*
 - (c) *Whether the proposed development would be more suitably undertaken on an alternative site,*
 - (d) *Any comments that have been provided in relation to the proposed development following consultation with the relevant water supply authority.*

It is considered that the proposal will not have an adverse impact on the water quality of the Duck Creek Catchment. The proposed development will be solely contained within an existing building and as such no external physical works are to occur as part of the development. In this regard, minimal safeguards will be required to protect water quality.

In the context of water quality of the Duck Creek Catchment, there are no real issues regarding the carrying out of the proposed development on the subject site.

As the proposal is not considered to result in water quality issues, the proposal was not referred to Rous Water for comment.

Operation of the gift shop additions (fruit and vegetable component) and suitability within a rural area

Information provided with the development application indicates that the “fruit and vegetable component” of the gift shop is to have an area of 100m², will have the same hours of operation as the existing gift shop (9am to 4pm, 7 days a week) and the number of people employed will vary depending on seasonal demands and management control. This is not unlike any typical fruit and vegetable retail shop within the Ballina Shire.

However, the main differences with the proposed development and a typical ‘fruit and vegetable’ shop within a business zoned area are:

- Fresh produce is to be sourced directly from the site (for the most part), rather than local markets or other sources.
- There is potential for fewer business related expenses (set up costs, rent, access to products and their costs, access to employment and training etc.).
- There is no access to reticulated water and sewer (water - tank and bore & on-site sewage management system).
- The standard of the road network, site access and car parking on the site are typical of those within a rural locality (however - works have been previously undertaken as part of previous approvals related to the landuses on the site), as opposed to that which exists within urban (business and village zoned) areas.

In this regard, there are obvious advantages for the proposed development, in being established at the Summerland House With No Steps site. It is considered that the addition of the “fruit and vegetable” retail component to the gift shop would somewhat undermine the existing business/village zoned areas of the Shire, where fruit and vegetable shops are permissible and currently located.

It is also noted that the proposed development does not have the same access to services (water, sewer, roads etc.) that a typical “fruit and vegetable” shop in a business/village zoned would have. In this regard, the proposed development does have a locational and servicing disadvantage.

As previously discussed within this report, shops are not listed as a permissible development within Zone No. 7(c), and therefore are prohibited development. The only avenue available for the Summerland House With No Steps to proceed with the proposed development is for a reliance on the “existing use rights” provisions of the EP&A Act 1979 and the EP&A Regs 2000.

However, in other rural areas of the Shire, if a landholder seeks to sell their own primary produce from their site, the only available option for such is via a “Roadside Stall”.

“Roadside Stall”, as defined in the Environmental Planning and Assessment Model Provisions 1980 (as adopted via Clause 6 of the BLEP), means *a building or place not exceeding 20 square meters in floor space or area respectively where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.*

The zones where road side stalls are permissible development (with the prior development consent of Council) are Zone No.'s 1(a1) – Rural (Plateau Lands Agriculture), 1(a2) – Rural (Coastal Lands Agriculture), 1(b) – Rural (Secondary Agricultural Land), 1(d) – Rural (Urban Investigation), 7(d) – Environmental Protection (Scenic/Escarpment), 7(d1) – Environmental Protection (Newrybar Scenic/Escarpment) and 7(i) – Environmental Protection (Urban Buffer). A landholder within these zones would need to comply with the 20m² area requirement and the provisions listed within Chapter 18 – Rural Land of the Ballina Shire Combined DCP, being:

- The roadside stall must be erected within the property boundary – no part of stall is to be located on the road/road reserve;
- A sufficient access and parking area is to be provided so as to not disrupt traffic flow;
- Food products are to be stored and displayed in a hygienic manner; and
- Only produce grown on the property is to be sold at the roadside stall.

It is noted that “Roadside Stalls” are prohibited development within the 7(c) – Environmental Protection (Water Catchment) Zone. In this regard, no opportunity exists for the Summerland House With No Steps to retail fruit and vegetables from the site, other than that proposed within DA 2010/1016, and that the proposed development is not subject to the same controls and requirements for roadside stalls. It is considered that the proposed development provides the Summerland House With No Steps, as a primary producer, advantages/benefits in that a larger, formalised “retail outlet” can be provided and additional packaged food items are able to be sourced off site and sold from the premises.

The Regional General Manager of the Summerland House With No Steps has provided the following information in support of the proposal:

1. *House With No Steps (HWNS) has an approved DA with Council to operate a Gift Shop (Cawleys Gift Shop). This DA proposal is to expand this existing shop into the adjoining building which is currently used as part of our retail plant nursery. This expanded section would then be used as a food shop. This proposal should therefore be eligible as per ‘existing rights use’.*

This proposal does not undermine the existing business/village zoned areas of the Shire as the proposed product items remain consistent with Gift Shop expectations. This includes ‘value add’ items such as roasted nuts, packaged coffee, jams, pickles, chutneys etc. As a working farm, there is an existing public expectation that some fresh produce is available for purchase. This proposal would support this ‘Farm Gate’ experience in a safe and controlled way. As information would also be provided on the source of the produce, the product will also be educational and of interest to visitors, and not undermine existing Shire zoning.

2. *HWNS has Council consent to operate the Gift Shop. This proposal of a ‘food shop’ (selling value add products and fresh produce) is consistent with the existing use rights consent of the Gift Shop. There are a number of Gift Shops that sell fresh produce and value add products – particularly those that identify with a local area, or*

are part of a themed tourist attraction. Fresh ginger, macadamias; tea/coffee; and assorted fruit & vegetable lines are examples of produce often stocked in Gift Shops.

3. *The proposed expanded shop will be part funded by Northern Rivers Food Links, with the balance by HWNS. Two of the primary objectives of NRFL are to:*

- Reduce the reliance on highly centralised food supply chains &*
- Creating a local food economy built on strong links between the regions food producers, distributors, retailers and consumers.*

We believe that this proposal supports these two objectives. This successful funding application can be provided if required.

4. *HWNS is requesting the expansion of the existing shop at 253 Wardell Road for a number of reasons. These include:*

- Consistent with current uses of the site*
- Fits with overall theme of the site*
- Supporting infrastructure and amenities already in place at the site*
- Cost – most cost effective use of public funds and HWNS funds*
- Viability – business case is strengthened in combination with existing attractions at the site*
- Site already processes/handles fruit/vegetable volumes, so environmental impacts are reduced by retaining on site.*

Conclusion

The proposed development, being alterations and additions to a gift shop, is not listed as a permissible development in accordance with the provisions of the Ballina Local Environmental Plan 1987 (BLEP) and therefore is prohibited development. As discussed in this report, the only avenue whereby the proposal is able to be considered by Council is via the “existing use rights” provisions of the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000.

However, it is implicit within the requirements and provisions of the EP&A Act 1979 and EP&A Regs 2000, that a critical merit assessment be undertaken of “existing use rights” developments.

It is acknowledged that the proposed additions to the gift shop would have an association with the current agricultural landuses undertaken on the land, in that produce grown on the land is to be sold in the shop. However, it is noted that no retail type uses are permitted within the 7(c) zone and that the retail use is not ancillary to the agricultural use of the land. It is considered that the retail sale of fruit and vegetables is not an essential or vital landuse within the 7(c) – Environmental Protection (Water Catchment) Zone.

An important consideration in the determination of this application is whether it is appropriate, in terms of the rural character of the locality, for the existing retail use to be further expanded to include fresh produce and packaged produce to be sold from the site. Consideration should also be given to the issue of the suitability the development (a “fruit and vegetable” retail outlet) within a rural area, which is not appropriately or adequately serviced for such a use.

The existing use rights provisions of the EP&A Act 1979 and EP&A Regs 2000 do not restrict the expansion of a prohibited use, and as such, should this proposal be granted development consent, a precedent may set to further expand upon the retail use of the site. It is considered that the subject site would not have the same constraints to future development under “existing use rights” as a typical urban allotment. In this regard, there is potential for the “existing use”/shop within the site to expand in a manner out of character with the site and surrounding locality.

It is unknown as to whether the retail sales of fruit and vegetables from the site will remain an adjunct to the existing gift shop sales or whether the “fruit and vegetable” component of the shop will become the dominant retail use from the site. Given the proposed size of the additions to the gift shop, which are to accommodate the fruit and vegetable retail sales component, there is potential for this to occur.

The operation of the proposed “fruit and vegetable” component of the gift shop will be similar to a typical fruit and vegetable shop located within business/village zoned areas of the Shire. There are obvious advantages for the proposed development, in being established at the Summerland House With No Steps site. It is considered that the addition of the “fruit and vegetable” retail component to the gift shop would somewhat undermine the existing business/village zoned areas of the Shire, where fruit and vegetable shops are permissible and currently located.

It is also noted that the proposed development does not have the same access to services (water, sewer, roads etc.) that a typical “fruit and vegetable” shop in a business/village zoned would have. In this regard, the proposed development does have a locational and servicing disadvantage.

On the basis of the proposal before Council, it is considered that the merits of the application are such that they are not worthy of Council’s support. In this regard, the application is recommended for refusal.

RECOMMENDATIONS

That DA 2010/1016 to undertake alterations and additions to an existing gift shop to enable the sale of fruit and vegetables at Lot 2 DP 554804, No. 253 Wardell Road, Lynwood be **REFUSED** on the following grounds:

1. The proposed development is inconsistent with the objectives of the 7(c) – Environmental Protection (Water Catchment) Zone.
2. The proposed development is incompatible with the rural character of the locality.
3. The grant of consent would be contrary to the best public interest.

Attachment(s)

1. Locality Plan
2. Site Plan
3. Floor Plan
4. Elevation Plan
5. Detailed Floor Plan
6. Summerland House With No Steps letter – amendment to application

8.3 DA 2010/1061 - Residential Flat - Ross Street / Fripp Lane, Ballina

File Reference	DA 2010/1061
Applicant	A E Colledge
Property	Lot 1 DP 367035, No. 27 Ross Street, Ballina
Proposal	To Undertake the Staged Erection and Strata Title Subdivision of a Residential Flat Building comprising four (4) x Two Storey three (3) Bedroom Dwellings and the Demolition of the Existing Dwelling House.
Effect of Planning Instrument	The land is zoned 2(a) – Living Area under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council is in receipt of a development application for the staged erection of a residential flat building containing 4 dwelling units.

The proposed development comprises the following:

STAGE 1:

- Erection of Units 3 & 4 – 2 x 3 bedroom dwelling units (accessed via Fripp Lane); and
- Strata Title Subdivision of Units 3 & 4.

STAGE 2:

- Demolition of existing dwelling;
- Erection of Units 1 & 2 – 2 X 3 bedroom dwelling units (accessed via Ross Street); and
- Strata Title Subdivision of Units 1 & 2.

Each dwelling unit will contain 3 bedrooms, laundry, 2 living areas, a kitchen, and a bathroom and ensuite. Each unit is also provided with a minimum of 50m² of private open space, and a covered alfresco area on the ground floor. Each unit is also provided with a double garage. One (1) visitor car parking space has also been provided for units fronting Fripp Lane.

Refer to the **attached** plans that detail the proposed development.

During the assessment process a number of objections to the proposed development were received by Council. Consequently this application is being reported to the Council for determination.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The proposed development was placed on exhibition in accordance with Council's policy. Due to the timing of the application being received and exhibited during the Christmas/New Year holiday period, the exhibition period was doubled in length. The proposal was therefore on exhibition from 22 December 2010 to 21 January 2011. During this exhibition period, four (4) submissions were received from surrounding landowners and residents.

Following the receipt of additional information, Council advised the original four (4) submitters that new information was available. Council then received a further submission from each original submitter and an additional five (5) submissions from nearby residents.

A total of 13 submissions were received from surrounding residents/landowners. A copy of each submission is attached.

The main grounds of objections can be summarised as follows:

- Inconsistencies within the Statement of Environmental Effects
- Density & Suitability of the site
- Car Parking and Access
- Stormwater Management
- Building Height and Overshadowing
- Privacy
- Building Setbacks
- Private Open Space & Landscaping
- Number of Occupants in Dwelling
- Building Design
- Concerns that Building will be on-sold to Social Housing Provider
- Timing of Application Lodgement
- Consistency with the BLEP 1987
- Tree Removal

These will be discussed in further detail below.

Applicable Planning Instruments

The proposed development has been assessed under the heads of consideration in Section 79(C) of the Environmental Planning and Assessment Act 1979, with the following being particularly relevant in Council's determination of the application.

Ballina Local Environmental Plan 1987

The subject property is located within the 2(a) – Living Area Zone.

The objectives of the 2(a) – Living Area Zone are:

- A. *The primary objectives are –*
- a) *To regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area;*
 - b) *To permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store); and*
 - c) *To allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban tourist facilities.*
- B. *The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.*
- C. *The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.*

The proposed development involves the erection of a 4 unit residential flat development, being a permissible development in the 2(a) zone.

The proposal is expressly consistent with Objective A (a) in that the development proposes the erection of additional housing which is set at a density that is consistent with the density permitted by the development control plan that was adopted by Council and referenced in Objective A(c).

Clause 17 of the BLEP is also applicable in the assessment of the proposal.

17. Limitation on building height

- (1) *In this clause “height”, in relation to a building the topmost floor of which has a ceiling, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.*
- (2) *Except as provided by subclauses 2(A) and (4), a person shall not, on any land to which this plan applies, erect a building taller than 6.4 metres in height unless the council is satisfied that the building will not –*
 - a) *Adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy;*
 - b) *Significantly obstruct views from adjacent buildings and public places;*
 - c) *Have an adverse impact on the scenic or landscape quality of the locality; or*
 - d) *Exceed 2 storeys.*

Submitted plans indicate the proposed building height from finished ground level to top plate of ceiling is 5.8.

The proposal complies with the 6.4m height limit.

State Environmental Planning Policy 71 – Coastal Protection

The subject site is located within the coastal zone and is thus subject to the provisions of SEPP 71.

The proposed development has been assessed against the provisions of Clause 8 of this SEPP which contains matters for consideration for development proposals on land within the coastal zone.

The proposed development is within an established urban area on land currently containing a residential dwelling. It is considered that the proposed development is generally in accordance with the aims of the Policy and the desired outcomes detailed in the Clause 8 matters for consideration.

The proposed development will have no direct effect on the coastline or estuary and will not impact on access to foreshore areas. The compatibility of the development with surrounding uses and its suitability for the site is addressed elsewhere in this assessment. If the development is approved, it will be subject to relevant and applicable land use and construction conditions to regulate the impacts of the construction on the surrounding residential precinct located within the coastal zone.

North Coast Regional Environmental Plan (State Environmental Planning Policy – North Coast Regional Environmental Plan)

Clause 32B of this plan regulates development on coastal lands. The proposed development, while located on land within the coastal zone, will not impact on the visual quality of the coastal environment and will have no direct impacts on coastal foreshores. The site is not affected by coastal processes. The proposed development can be sufficiently regulated to minimise any impacts on coastal water quality from stormwater discharge.

Clause 43(1)(A) is also applicable to the proposed development.

43(1) The Council shall not grant consent to development for residential purposes unless:

- a) It is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.*

The proposed development is expressly consistent with this clause, as it is consistent with the Medium Density designation of the site and surrounding locality as identified within the Combined Development Control Plan. The proposed development is compliant with the development standards applying to the site as outlined in Council's adopted DCP.

Draft Ballina Local Environmental Plan 2010

The subject land is proposed to be zoned R3 – Medium Density Residential under the certified and exhibited Draft BLEP 2010.

The proposal would be defined as “multi dwelling housing” which means *3 or more dwellings (whether attached or detached) on one lot of land (not being an individual lot in a strata plan or community title scheme) each with access at ground level, but does not include a residential flat building.*

The proposal would be permissible with development consent under the Draft Ballina Local Environmental Plan 2010.

The proposed objectives of the R3 zone are:

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

The proposal is considered to be consistent with these objectives.

Ballina Shire Combined Development Control Plan

The subject land is designated M1 – Medium Density under the provisions of Chapter No. 1 – Urban Land.

Preferred land uses within the M1 control plan area include Residential Flat Buildings and duplex developments. The proposed development is consistent with the preferred land uses.

The objectives of the M1 area are:

- To encourage the introduction and infill of medium density development into residential areas whilst minimising the impact on the residential amenity of neighbourhoods.
- To enable the development of non-residential activities which would complement the amenity of the residential neighbourhood.
- To encourage the amalgamation of small allotments where medium density development is proposed.

The proposed development is considered to be consistent with the objectives of the M1 area, particularly as the proposed development is compliant with the long established development standards that apply to residential flat developments and as outlined in Council's DCP.

The applicable development standards guiding residential flat development as contained in the Ballina Shire Combined Development Control Plan are set out below.

Policy Statement No. 1 – Multiple Dwellings

Development Standards	DCP Requirements	Proposed	Comments
Maximum Density	Ballina Island 200m ² /unit	Size of lot is 996.6m ² 4 units proposed at 1 unit per 249m ²	Complies
Landscaped Open Space	500m ² for 4 units	491.7m ²	Considered Satisfactory. See comments below
Private Open Space	Minimum of 50m ² /unit – may be provided in more than 1 part having a minimum area of 40m ² and a minimum dimension of 4m and be contiguous with living area.	Unit 1 – 58.88m ² Unit 2 – 62.28m ² Unit 3 – 56.23m ² Unit 4 – 75.45m ² All units have in excess of the required 50m ² of private open space including the patios on ground floor with a minimum dimension of 4.0m. Private open space is accessed via living areas on the ground floor.	Complies
Building Height	Maximum of 2 storeys	All buildings 2 storeys in height	Complies
	Maximum 6.4m in height	5.794m to top plate. Site required to be filled to 2.1m AHD and floor level 2.6m AHD.	Complies
	No part of residential building below top-most ceiling to encroach building height plane	All areas below the top-most ceiling are enclosed within the building height plane.	Complies

<p>Setbacks</p>	<p>Side and rear setbacks to be an average of 4m with a maximum encroachment of 1.3m (subject to off-set area equal to encroached area)</p> <p>Encroachment from side boundaries by 1.3m provided length of encroached wall face will be a maximum of 20% of total wall length which faces encroached boundary, and encroached area is equally off-set by an unbuilt area directly inside the setback</p>	<p>Average side setbacks achieved. Bedroom 3 of all units encroach the side setback by the allowable limit of 1.3 metres.</p> <p>The total length of the encroachment is approximately 3m for each unit. This is offset by a building length of approximately 4m to allow for private open space for each unit.</p> <p>The encroaching section of wall for each unit is approximately 3.2m in length. The total length of wall facing the encroached boundary on each unit is approximately 18m in length. This is within the permissible 20% maximum and therefore considered satisfactory.</p>	<p>Complies</p>
<p>Building Line</p>	<p>Front building line per Policy Statement No. 3 – 4.6m setback required. Rear lane setback = 5.5m</p> <p>Cantilevered Balconies may encroach up to 1.8m but be set back 2.7m from side and rear boundaries.</p>	<p>Ross Street Setback = 4.6m</p> <p>Fripp Lane Setback = 5.5m</p> <p>All units are provided with cantilevered balconies which extend over the building line, encroaching by less than 1.8m each.</p> <p>All balconies are setback 4m from side boundaries.</p>	<p>Complies</p>

On site car parking	<p>1.5 spaces/3 bedroom unit</p> <p>1 visitor space/5 units</p> <p>No. of car parking spaces required $4 \times 1.5 + 1 = 7$</p>	<p>All units have been provided with a double garage.</p> <p>One (1) space has also been provided for the use of the resident and visitors. This is to be accessed by Fripp Lane.</p> <p>Number of car parking spaces provided = 9.</p>	Complies
Access	<p>Communal driveways and pedestrian thoroughfares not to be within 3.5m of a ground floor bedroom window unless screened by 1.8m high masonry wall</p>	<p>No driveways are located within 3.5m of a ground floor bedroom window.</p>	Complies
	<p>Pedestrian access to be provide from each unit to the street (for access to mail/garbage services and public footpath system)</p>	<p>Pedestrian access to Ross Street will be available to Units 3 & 4 via a 1.2m wide pathway on the northern boundary of the site for Unit 3 and the southern boundary of the site for Unit 4.</p>	Complies
Continuous Walls and Ridgelines	<p>External walls and ridgelines shall not extend to a greater length than 25m without a maximum horizontal shift of 1.5m.</p>	<p>The maximum continuous external wall length being the first floor of the proposed development is approximately 16m on both buildings.</p>	Complies

Landscaped Open Space

Council's calculations of the identified landscaped open space areas on the site plan (not including driveways or pathways) show that 491.7m² of landscaped open space is proposed to be provided.

It is considered that the small area of non-compliance in landscaped open space is not considered to be detrimental to the proposal. The proposed development has provided a significant private open space area for each unit. In this regard, the departure from the landscaped open space guideline is considered satisfactory in this circumstance.

Report

As outlined above, the proposed development is consistent with the relevant statutory controls and particularly the provisions of the Ballina Local Environmental Plan and the Ballina Shire Combined Development Control Plan.

During the exhibition, a number of objections were received from surrounding landowners. Discussions on the issues are provided below:

Inconsistencies within the Statement of Environmental Effects (prepared by BASIX Services)

A number of inconsistencies were contained within the Statement of Environmental Effects (SEE). Following a request by Council, these have since been corrected and a revised SEE was submitted to Council on 21 February 2011.

Density & Suitability of the Site

Objectors have raised concerns regarding the suitability of the proposed development on the site and that the erection of 4 x 2-storey units on the site is overdevelopment for the site, and no other developments are similar in the area.

The subject site is designated M1 – Medium Density under the provisions of the DCP. The allowable maximum density within the M1 area is 1 unit per 200m². As the site has an area of 996.6m², the proposed 4 unit development is well within the allowable maximum density.

The Ross Street locality which is all within the M1 – Medium Density designation is characterised by a predominance of older-style dwellings but there are a number of medium density developments established in the street. The proposed development complies with the density provisions of the DCP and is development that could reasonably be anticipated in this M1 area.

Car Parking & Access

Concerns have been raised by the submitters regarding traffic and access to Fripp Lane. Fripp Lane is essentially of single-lane width but allows for two-way traffic. A dish drain also runs partly along either side of the lane, which prevents the opportunity for vehicles to park in the lane. The proposed development will provide access to Units 3 & 4 from Fripp Lane. A visitor's car parking space is also provided on-site accessed from Fripp Lane.

A number of properties that front Ross Street and Norton Street also have direct access from Fripp Lane. Council's Development Engineer has advised that Fripp Lane is capable of handling the additional traffic flows but will require upgrading for the width of the subject property.

Stormwater Management

Objectors have raised concerns regarding the additional stormwater run-off that will be created by the proposed development, and the evidence of poor drainage in Fripp Lane. The site is required to be filled to 2.1m AHD prior to development commencing, for flood mitigation purposes. Council's Development Engineer has conditioned that a stormwater management plan be submitted to and approved by Council prior to the issue of a construction certificate to ensure that appropriate stormwater management controls are provided on site, to meet the objectives of Council's Stormwater Management provisions of Chapter 16 of the DCP. Upgrading of drainage along the property's Fripp Lane frontage will also be a condition of any consent granted.

Building Height and Overshadowing

Concerns were raised in submissions regarding the suitability of a two-storey development on the site, and overshadowing impacts on adjoining properties.

The building is of two-storey construction. In accordance with Council's flood policy, the site is to be filled to 2.1m AHD. The height of the proposed building measured from this filled ground level is 5.8m. This is well below the 6.4m height reference within the BLEP.

The proposed development is within the building height plane and complies with the requirements of Policy Statement No. 3 – Building Lines and Setbacks of the DCP. It is not considered that its height and overall footprint will detrimentally affect the surrounding area. It can be reasonably anticipated that a two-storey residential flat building that complies with the DCP would be development that is approved within the long established M1 – Medium Density area of Ballina Island.

In regards to overshadowing, adjoining properties adjacent to the southern boundary of the proposed development have highlighted concerns. Shadow diagrams have been requested from the applicant to demonstrate the extent of overshadowing of the proposed development onto adjoining properties.

The shadow diagrams reveal that at 9am during the winter solstice, a significant shadow is placed over the adjoining property on the southern boundary (25 Ross Street). However, from 11am this shadow is significantly reduced allowing continuous sunlight across the majority of the adjoining site.

The provisions of Chapter 16 – Lennox Head of the Combined DCP, whilst not applicable to this site, do provide a reference in relation to overshadowing considerations. Chapter 16 - Lennox Head requires that 4 hours of continuous sunlight is available to the adjoining southern properties between the hours of 9am – 3pm during winter (22 June). The proposed development generally complies with this requirement.

It should also be noted that, under the provisions of State Environmental Planning Policy – Exempt and Complying Development (Codes SEPP), a two-storey dwelling up to 8.4m in height with a closer setback to the boundary than a residential flat building may be constructed on the site, without notifying neighbouring properties. As the dwelling would be closer to the boundaries, it is considered that there may be a more significant overshadowing impact in this situation.

Privacy

Due to the height and orientation of the proposed development, objections have raised privacy concerns with the design of the dwellings and the location of living areas within the proposed dwellings, particularly Units 3 & 4 whose balconies overlook Fripp Lane. Privacy concerns were originally raised with the applicant following the submission of the application as Council was concerned that inadequate screening was proposed for the balconies of Units 3 & 4. Following a request for additional information, revised plans were received from the applicant, showing additional screening on the sides of the balconies. The configuration of the double-hung windows in the living room reduces opportunity for overlooking onto adjoining properties.

The balconies of Units 3 & 4 are accessed from the main living area of the units, and directly overlook Fripp Lane. All balconies comply with the required building line setbacks, as detailed above.

Properties in Fripp Lane are unlikely to be adversely impacted in regards to privacy. The configuration of properties within the lane is such that living areas are not visible due to distance, landscaping and structures such as garages fronting the lane.

Number of Occupants in Dwellings

One submission raised concerns regarding the potential number of occupants in the dwellings and the impact it may have on the surrounding amenity in regards to noise. The proposed development contains 4 x 3 bedroom dwellings. Council does not impose restrictions on the number of persons occupying a dwelling, nor can council speculate on the number of persons who may occupy each dwelling.

In regards to noise from the dwelling, it is expected that appropriate domestic noise will be contained within the dwellings. Living areas on the ground floor of the dwellings are located approximately 5m from the adjoining boundaries. Dining and Living areas located on the first floor of the dwellings are also located approximately 4m from the adjoining boundary. The balconies of all units comply with the building setbacks, being a minimum of 4m from the adjoining boundaries.

Building Design

The design of the proposed development has also been raised as an issue. The proposed development is of a modern contemporary design, constructed of rendered masonry and a colourbond metal roof. Concerns have been raised that the proposed development is not in keeping with the existing style of developments in the Ross and Norton Streets area. One submitter has identified that Norton Street, which adjoins the proposed development to the east, is a heritage area, and opposes the design of the building. Norton Street contains a number of older buildings, and 3 heritage items listed within Schedule 1 of the BLEP 1987 are located in Norton Street (Ballina Manor, Anglican Church and Brundah Guest House). The closest of these items is approximately 300m south-east of the subject site.

Concerns that Building will be on-sold to Social Housing Provider

The applicant has not conveyed to Council that they wish to on-sell the dwellings to a social housing provider. In any event it is considered that this is not a relevant consideration.

Timing of Lodgement of Application

Various submitters raised concerns regarding the timing of lodgement of the application, and that as it was lodged close to Christmas, that not all surrounding residents had an opportunity to provide a submission.

The application was received by Council on 16 December 2010, and placed on exhibition from 22 December 2010 to 21 January 2011. The exhibition period was extended to 4 weeks, instead of the usual 2 weeks, given the Christmas and New Year Holiday period. During the initial exhibition period, Council received 4 submissions to the proposed development. Following the receipt of additional information, the original submitters were advised of the new information and the opportunity to view the changes was provided. Council then received a further 9 submissions, bringing the total number of submissions to 13.

The timing of lodgement of an application is not something that Council has control of, and the extension of the exhibition period by two weeks is considered to be reasonable and adequate.

Conclusion

The proposed development seeks Council consent for the erection of a residential flat building on the site. The assessment of the development against the regulatory provisions for the site has revealed that the proposed development is consistent with the applicable provisions of the BLEP 1987 and the DCP. Despite the objections received, it should reasonably be expected that such a development in the M1 area that complies with Council's DCP provisions would be approved.

RECOMMENDATIONS

That Council **APPROVE** DA 2010/1030 for the Staged Erection and Strata Title Subdivision of a Residential Flat Building comprising four (4) x Two Storey Three (3) Bedroom Dwellings and the Demolition of the Existing Dwelling House subject to the normal conditions for such a development in this locality.

Attachment(s)

1. Locality Plan
2. Site Plan, Floor Plan and Elevations
3. Copies of Submissions received during public exhibition (note one submission is confidential and has been distributed to Councillors under separate cover)

8.4 Asbestos Removal from the Built Environment

File Reference	Asbestos Management
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Environmental & Public Health
Objective	To consider opportunities for removal of asbestos from the Built Environment

Background

Council at its Ordinary meeting dated 24 February 2011 requested a report on the removal of asbestos from buildings. The following resolution was adopted:

That Council receive a report outlining the opportunities for removing asbestos from the built environment.

The following report addresses this resolution.

Key Issues

- Council's role and powers to require/enforce any resolution in this regard. Environmental and or public health issues.

Information

In this region asbestos bonded with cement was commonly used as a building material in the form of fibro-cement sheeting in a range of profiles. Prior to its phasing out in the mid 1980s it was extensively used in the building industry including interior (wet area) and exterior wall sheeting, soffit (under eave) linings, roof sheeting, fencing material, pipes and fittings, rainwater products such as guttering and downpipes, flooring (under bathrooms), and even as backing to some floor coverings.

It was particularly popular in coastal areas due to its durability in saline coastal environments.

It is likely to be present in most buildings erected or altered since the 1940s up until the mid 1980s when it was phased out, even in brick buildings where it was used for soffit linings and as an internal wet area board.

It is therefore likely to be present in a high percentage of the building stock of the Ballina Shire, particularly those buildings erected during the post war building boom.

Asbestos in the fibrous form is comparatively rare in this district but can be found as insulation around hot water and steam pipes. It has been used as roofing insulation in colder climates.

The public health implications of asbestos are now well publicised. Council itself has occupational health and safety precautions for its own staff working with the product.

There is now legislation controlling the handling of asbestos materials with NSW Work-Cover the lead NSW Government Agency. Since 2008 it has been required that where work involves the handling of bonded asbestos a licensed operative is required where the area to be dealt with exceeds 10 square metres (down from 200 sq metres just a few years ago). A higher level licence is required to handle the fibrous form which presents a much greater danger and should only ever be handled by licensed operatives.

For the public, Ballina Council has attempted to educate people about the risks of asbestos by distributing material published by Work-Cover and other authorities, applying conditions to development consents where the work involves demolition or modifying buildings likely to contain asbestos material, answering specific inquiries from the public, and providing current material on its web site. We also deal with complaints when received about alleged mismanagement and enforce consent conditions where necessary.

Asbestos that has been involved in fire can cause significant land contamination and where this has occurred, the subject land is flagged as having been contaminated and action is taken to have the sites cleaned up by licensed operatives. Council also enforces orders on building owners where the buildings are in sufficient states of disrepair that they require demolition or repair.

NSW Health and the other Authorities dealing with the subject have advised that bonded asbestos material in good condition, painted or otherwise sealed, presents minimal hazard to building occupants or to the public. The risk lies with its disturbance, particularly in a confined space.

Council has formulated its own asbestos management plan, which not surprisingly identified a significant number of Council's owned assets as potentially containing asbestos due to their age. Many of our staff have received specific training on asbestos management in the workplace.

Since formulation of this plan several buildings containing bonded asbestos have been demolished. Some buildings have been removed from the register when tests revealed asbestos was not present.

It is not planned to remove bonded asbestos from structures where the material is undamaged and serviceable, nor in the absence of Government policy or legislation would it be recommended that others remove serviceable material in good condition.

To do so opens up the small level of risk that is attendant with its disturbance at the time of the removal, and the environmental costs associated with its transport and disposal.

Whilst the material remains serviceable it performs a useful purpose. People should be aware of the attendant danger associated with mishandling asbestos containing material and it would be recommended that the most practical way to address this is to ensure people understand where the risks lie and how to ensure they or their family are not exposed to risk.

To remove asbestos material exceeding 10 square metres requires engaging the services of a specialised contractor. Because of the special requirements imposed on waste facilities licensed to receive the material for disposal, asbestos attracts higher charges than for standard wastes.

At Lismore the charge is \$220 per tonne, and it must arrive triple wrapped. The material is bulky and cannot be compressed in a waste baler hence it occupies considerable space in landfill. Ballina Council's waste facility is not licensed to receive asbestos waste, hence all asbestos from Ballina Shire is currently being exported to other waste facilities with the cost borne by the person disposing of it. In many situations it would not be practical to remove asbestos containing material from a building, for instance a tiled bathroom floor where the substrate is compressed fibro sheet.

There is no State Legislation or policy made that would support any action by the Council to encourage or require removal of asbestos from buildings other than when in disrepair.

An alternate proposal that would be more practical would be for Council to encourage building owners to establish whether or not the building they own does contain asbestos, and if it does to develop a management plan for the building so that in the event any work is required, or the building is damaged, appropriate steps will have been considered to ensure potential public health implications are minimised. Such a move would involve the development of resources to assist people who may wish to embark on such a proposal and resourcing would have to be provided to enable this to occur.

Sustainability Considerations

- **Environment**

The action of encouraging the removal of serviceable asbestos from buildings has a direct consequence on the environment through transportation and disposal impacts, and an indirect consequence through manufacture, transport and installation of new materials to replace the asbestos.

- **Social**

As asbestos is not likely to be present in the newest building stock, the encouragement to remove the material is likely to fall on the sector of the public that own the older buildings. Some of the media items on this subject have alarmed many people leading to pressure being placed on landlords from tenants who in some cases have misinterpreted the risks. Any action by Council to encourage removal of sound material may increase unnecessarily people's fear that the buildings they occupy are unsafe when generally this is not the case.

- **Economic**

Provided that people understand the risks associated with working with bonded asbestos materials, there is very low risk with its presence in buildings. There would be considerable cost and a slightly heightened risk involved in the disturbing and removal of asbestos simply for the sake of not having it present. Considering the very high proportion of the building stock in Ballina Shire containing the material, the economic impact of encouraging its removal could be considerable.

Legal / Resource / Financial Implications

Any new program to be implemented by Council will require application of resources. Even a moderate education program will incur some cost to implement, requiring a vote of funds. There is no legal basis for a program to require removal of sound asbestos containing materials from buildings.

Consultation

In preparation of this report discussions were held with Work-Cover Ballina, NSW Department of Environment Climate Change and Water, NSW Health and Lismore City Council.

Options

1. Maintain the current arrangements that include distribution of material published by Work-Cover and other authorities to educate people about the risks of asbestos, applying conditions to development consents where the work involves demolition or modifying buildings likely to contain asbestos material, answering specific inquiries from the public, and providing current material or links to same via Council's web-site. Appropriately deal with complaints about alleged mismanagement of asbestos and enforce consent conditions where necessary.
2. Withdraw from providing assistance and guidance on the subject of asbestos instead referring all inquiries regarding asbestos materials to the State authorities to address.
3. In addition to option 1, Encourage the owners of all buildings erected prior to 1985 to establish whether or not the building contains some form of asbestos, and if it does, encourage the building owner to develop an asbestos management plan for the building so that in the event any work is required, or the building is damaged, appropriate steps will have been considered to ensure potential public health implications are minimised.

Based on the level of resources available it is considered that option one remains a reasonable approach.

RECOMMENDATIONS

1. That Council notes the contents of this report in respect to the removal of asbestos from the built environment.
2. That in respect to asbestos management Council endorses the maintenance of the current arrangements, that include:
 - a) distribution of material published by Work-Cover and other authorities to educate people about the risks of asbestos
 - b) applying conditions to development consents where the work involves demolition or modifying buildings likely to contain asbestos material
 - c) answering specific enquiries from the public, and providing material or links to authoritative information sources from Council's web-site
 - d) dealing with complaints about alleged mismanagement of asbestos and enforce development conditions where necessary.

Attachment(s)

Nil.

8.5 Building Code of Australia (BCA) - Cyclone Wind Ratings

File Reference	Building Construction Standards
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Building Services
Objective	To provide an overview of the effectiveness of the Building Code of Australia (BCA) with particular reference to cyclone wind ratings

Background

Council at its Ordinary meeting dated 24 February 2011 requested a report on the effectiveness of the Building Code of Australia (BCA) with particular reference to cyclone wind ratings. The following resolution was adopted:

“That Council receive a report in respect of the suitability of the current Building Code of Australia for the Ballina climate with particular reference to cyclone/wind ratings”.

The following report will provide an overview of the existing approval process and typical construction standards applied in Ballina Shire. Clarification will also be provided on the existing governing Australian legislation that applies to the Ballina Shire area and any proposed amendments to that legislation. Comments are also provided on the general performance of buildings in cyclone and other high wind event affected areas.

Key Issues

- Inform Councillors of the current building construction standards applied to the Ballina Shire area including NSW Government legislation
- Provide an overview of the current approval process in the Ballina Shire area regarding wind rating designs
- Provide a general limited overview of examples of past high wind events on buildings and their effects
- Provide comments from the Australian Building Codes Board (ABCB) on current reviews regarding construction methods in cyclone affected areas.

Information

Existing Legislation and Overview of Current Process at Ballina Shire

The Building Code of Australia (BCA) is the national document that dictates the minimum construction standards for buildings in Australia, providing a uniform set of technical provisions on building design and construction methods. The BCA is given legal effect by building regulatory legislation in each State and Territory, consisting of an Act of Parliament and supporting

subordinate legislation. Any provision of the BCA may be overridden by, or subject to, other State or Territory legislation.

One of the major goals of the BCA is to achieve a nationally consistent approach to the various identified building construction matters, however the BCA allows for variations in response to climate, geological or geographical conditions.

The Australian Building Codes Board (ABCB) is a co-operative arrangement between each State and Territory established by agreement with the Australian Government. The ABCB addresses issues contained within the BCA, including health, safety, design and efficiency.

Regarding wind loadings and design, the BCA is supported by adopted Australian Standards including AS/NZS 1170.2 Wind Actions, AS 1684 Residential Timber- Framed Construction, AS 2047 Windows in Buildings- Selection and Installation and AS 4055 Wind Loads for Housing.

AS 4055 provides design wind speeds and wind loadings based on AS/NZS 1170.2 which are used in the design of typical housing. AS 1684 addresses the specific requirements of residential timber framed construction including uplift, bracing and tie down requirements. This criterion includes roof batten to rafter/ truss connections, rafter/ truss to top plate connections and wall stud/ to bottom plate connections.

The wind classification of a particular site is dependent on a number of factors including the wind region, being non cyclonic (Regions A and B) or cyclonic (Regions C and D), where Ballina Shire is currently identified as being within Region B. Region C commences at Bundaberg in QLD. Other site factors considered include its terrain, topography and shielding.

Within Ballina Shire, wind speed classifications are either applied by the consultant engineer or accredited certifier for the development (or a combination), taking into account the region, terrain, topography and existing shielding. Structural engineering details for the method of wall bracing and tie down requirements are addressed through the submission of engineering plans designed in accordance with the relevant Australian Standards.

A typical dwelling of slab on ground construction in Ballina Shire often involves complete tie down from bottom plate to top plate level with 10-16mm steel tie rods or similar. Cyclone strapping or two Trip-L- Grip connector plates are used for the fixing of rafters/ trusses to top plates. The fixing of roofing battens to rafters/ trusses is either through bugle screws for lightweight sheet roofing or mechanical nailing for tiled roofs. Tie down variations can exist for tiled roofs where the weight of the roof is taken into account.

Similar tie down applies to timber floor construction where floor bearers and joists are connected to the footings and piers through the use of steel tie rods and cyclone strapping or similar.

Generally, improvements in tie down methods have been incorporated since the mid to late 1980s, where simple skew nailing or one connector plate type fixing was once prevalent.

For Ballina Shire (Region B) the design wind speeds generally vary from 33 m/s to 60 m/s, being N1-N4 Wind Classification, depending on the site location. There are instances where highly exposed sites on hillsides may have a greater classification requiring specialist engineering design.

Recent Past High Wind Events and Building Performance

Lennox Head tornado event

The Lennox Head Village area suffered the tornado event on the 3 June 2010, crossing over the coastline north of the Lennox Point Hotel, heading in a north westerly direction. The tornado was very concentrated, with the rotating funnel of air perhaps 40-60 metres in diameter at its base, as it moved over dwellings creating huge uplift centrifugal forces. Approximately 25 homes were significantly damaged and many others suffered other damage as a result of the uplift forces and airborne debris which was strewn over a large area. This event, not likened to a cyclone, was very concentrated and intense at the eye of the tornado, where the uplift forces may well have exceeded that expected in general uplift and wind loading calculations under the current codes for cyclone events.

Both contemporary and older dwellings suffered significant damage where they were directly in the path of the tornado. The damage included first floors being totally lifted off lower floor isolated pier footings, total roofs being removed with smaller ancillary garages and sheds being totally demolished. In older dwellings and ancillary structures, there were instances where roofs that had been skew nailed to top plates were easily removed.

There were also instances in newer buildings approximately 6 years old, where roof trusses had been destroyed at gang nail plate junction connections, leaving behind the cyclone strapped truss tails connected to the perimeter wall top plate. To indicate the severity of the uplift forces, there was an instance where a recently constructed garage had its full roof removed and six courses of concrete block work walling which had been lifted over existing perimeter 10mm steel tie rods provided at two metre centres.

The severity of this isolated event would be difficult to design for on a regional basis having regard to current standards and codes. It is considered designing and constructing to account for such a severe event, would place significant costs and design limitations on owners and the building industry in general.

The more recent tie down and uplift requirements may assist some premises in the event of another tornado, however the effectiveness of such measures would be questionable when located directly beneath the eye of such a tornado experienced.

Cyclone Larry

In September 2006, the ABCB through the School of Engineering James Cook University Queensland, commissioned a paper regarding the damage done to buildings as a result of Cyclone Larry. A summary of the findings are provided as follows.

Cyclone Larry occurred on the 20 March 2006 within the region of Innisfail, Northern Queensland, crossing the coast between 6.20am - 7.20am AEST. The cyclone, estimated at having an eye diameter of 25 km, peaked as a Category 5 (>78 m/s) off the coast before landfall and was identified as being Category 4 (63-78 m/s) at landfall, although the cyclone was measured at having a general wind speed of 50-65 m/s at a height of 10 metres above flat country.

The study acknowledged that the wind speed can be 50% greater on hillside slopes.

The study examined a number of different classes of damaged buildings, including dwellings and ancillary structures, commercial, industrial and steel prefabricated shed structures. Under cyclonic conditions, buildings were found to suffer significant pressures, being a combination of suction wind pressure on the roof from the wind action and internal pressures caused by broken windows and roller doors on the windward face. The combination of these sudden internal and external pressures placed significant forces on the cladding structure.

The study found that many dwellings and ancillary structures constructed before the 1950s were significantly damaged due to lack of adequate fixings to roof battens/ rafter connections and rafter/ wall top plate connections. Often, simple two skew nail fixing methods were adopted where nails had corroded and timber members had deteriorated.

Similarly, those buildings constructed mid 1960s to mid 1980s suffered damage due to poor roof batten to rafter connections and some truss roofed buildings were also damaged where the truss fixings to the top plates were inadequate, particularly on larger roof spans.

Some older conventional pitched roofs involving centrally located underpurlins and struts were also damaged due to inadequate tie down at those points, resulting in the initial failure of roofs centrally. Where roofing battens had been cyclone strapped rather than skew nailing, there was little evidence of failure, however there were instances where total roofs had lifted due to inadequate tie down of the rafters to the wall top plate at the roof perimeter.

Those buildings constructed post 1980s generally suffered the least amount of damage and the cases mainly involved impact damage or roof tiles missing due to insufficient fastening. Some highly exposed hillside dwellings suffered significant damage due to the increased wind velocities on those sites and recommendations were made that these types of locations need to be individually engineer assessed at design stage as the expected wind loadings were outside of the codes.

Significant structural deficiencies were found with large cold form steel sheds where the buildings appeared to be "too light" in engineer design. These buildings suffered roller door failure, had inadequate bracing and fixings resulting in increases in internal pressures and subsequent building failure.

Overall, the study found that the more contemporary buildings generally performed satisfactorily, largely due to improvements in bracing, tie down and methods of fixing. The corrosion of fixings was seen to be an issue of concern, considering the location of the site to the coast and high rainfall. Part 3 of the BCA addresses corrosion issues with steel framing, wall ties and structural steel lintels.

Due to significant water entry problems, the study noted the inconsistencies with the fixing of roof tiles and recommended all roof tiles be individually fixed which is currently not required under legislation. Improvements were also recommended in the fixings to eaves and associated linings.

In many instances, domestic and commercial roller doors were seen to be potential points of weakness, often deflecting where anchoring mechanisms had failed and tracks had pulled from walls. Deficiencies were also evidenced with the fixing of windows to the building fabric, where windows had blown inwards or outwards under pressure, permitting water entry into the building. Flying debris also broke many windows.

The study canvassed the need for the installation of debris screens to windows although acknowledges that the effectiveness of such screens is limited where significant internal pressures exist.

The study stressed the need for building designers/ engineers to have a sound knowledge of AS 4055 with the maintenance of any tie down/ bracing system being important. Issues were found where poorly constructed additions to buildings had compromised the effectiveness of existing tie down/ bracing systems. It was also stressed that any minor ancillary additions such as gazebos, attached awnings, pergolas and the like should be treated with the same construction rigors as the main building as they had largely failed and contributed to airborne debris impact damage.

Australian Building Codes Board (ABCB) comments

The particular request of Councillors regarding the effectiveness of the current BCA has been taken up with the ABCB's Ron De Veer who has advised that the ABCB has been investigating the adequacy of the BCA in cyclone affected regions, including coastal northern NSW. The ABCB produced a Consultation Regulation Impact Statement in July 2010 covering a number of options in cyclone affected areas, including modifications to the cyclone region boundaries. The ABCB has not concluded its findings and recommendations to date.

The ABCB has also commissioned a report on cyclone Yasi which is yet to be finalised.

A copy of the comments provided from the ABCB is as follows:

"In regard to your request for information regarding wind design requirements, particularly after the recent Cyclone Yasi which affected northern Queensland, I wish to advise as follows.

The national Building Code of Australia (BCA) covers the design and construction of buildings and other structures to resist wind loads both in cyclonic and non-cyclonic regions. The BCA specifies that houses in non-cyclonic and cyclonic regions must be able to resist a wind event with an annual probability of exceedance of 1:500. For buildings designed to contain a large number of people this increases to 1:1000, and for buildings essential to post-disaster recovery, the value is 1:2000. The BCA also references the Australian Standard AS/NZS 1170.2 - Wind Actions, which identifies the wind regions and specifies the various criteria to allow the determination of design wind speeds for individual sites.

In regard to recent high wind events, a common finding is that most buildings designed and constructed to the BCA performed very well. The main exceptions being industrial steel sheds and garage roller and similar doors. Most damage to housing occurred in regard to pre 1980 houses, as more stringent building code requirements were introduced in various States and Territories about that time. For example, Queensland introduced its more stringent requirements in 1982.

For further information about the performance of buildings please note the James Cook University Cyclone Testing Station report on Cyclone Larry (copy attached) which affected the Innisfail region in March 2006. A similar investigation is currently underway in response to Cyclone Yasi. Preliminary findings indicate a similar outcome compared to Cyclone Larry. That is, the actual wind speeds are likely to be slightly less than the BCA specified design wind speeds, and BCA compliant buildings generally fared very well, while older housing fared less well. The Cyclone Yasi report is expected to be available on the ABCB website www.abcb.gov.au in around 4 weeks time.

The ABCB has also been investigating the adequacy of BCA requirements in cyclone affected regions. This includes consideration of areas in northern coastal NSW. The ABCB produced a Consultation Regulation Impact Statement in July 2010 for public comment, identifying a number of options, such as changing the cyclone region boundaries, together with their costs and benefits. The document can be found at <http://www.abcb.gov.au/index.cfm?objectID=4D4FF138-9B83-11DF-A133001143D4D594> Comments closed on 10 September 2010 and the ABCB is in the process of developing a Final RIS for consideration by the ABCB Board."

Sustainability Considerations

- **Environment**
To assess the effectiveness of the current construction methods for the built environment having regard to high wind cyclone events.
- **Social**
To provide adequate building construction methods having regard to issues of health, safety, design and efficiency.
- **Economic**
Building construction methods in areas of high wind events are being reviewed by the ABCB including a cost benefit analysis.

Legal / Resource / Financial Implications

There are no budgetary financial or resource implications for Council. The legal implications relate to the implementation and enforcement of compliance relating to the current building design and construction process and any future changes made to the BCA.

Consultation

The ABCB will be the body liaising with councils regarding any future amendments to the BCA.

Options

This report has been provided primarily to advise on the range of actions being taken in respect to issues such as cyclones / tornadoes by the building industry.

It is clear that on completion of the current report by the ABCB that there may be findings, recommendations and modifications to the BCA. These may include a review of the cyclone region boundaries and the associated building construction methods such as window connections to the building fabric, roof tile and eaves fixing and roller door construction. It is acknowledged however, based on past limited studies by the ABCB, contemporary buildings built to the BCA and current code requirements generally performed satisfactorily during cyclonic wind events.

It is considered that legislatively, Ballina Shire Council is rightly restricted to the requirements of the national BCA regarding the minimum building construction requirements, unless in particular circumstances Council has an overwhelming case for more stringent specifications and can prove its case.

The ABCB is the peak governing body that has direct involvement with the BCA, including its implementation and maintenance. Part of this process includes the engagement of various experts in many fields including the preparation of detailed technical scientific and engineering reports.

Through the completion of studies being undertaken by the ABCB, it is recommended the issue be further monitored by Council staff and Councillors be further advised of any future recommendations or amendments made to the BCA regarding construction requirements in cyclone wind affected areas.

RECOMMENDATIONS

The Council notes the contents of this report on the Building Code of Australia, with particular relevance to cyclone wind ratings.

Attachment(s)

Nil

8.6 Development Applications - Work in Progress - April 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.

DA No.	Date Rec'd	Applicant	Proposal	Status
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
2010/182	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	Being Assessed
2010/278	6/11/2009	Ardill Payne & Partners	To Establish a dwelling/house site – No. 263 Sneesbys Lane, East Wardell	Referred to Govt Departments
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	Being Assessed
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	Being Assessed

8.6 Development Applications - Work in Progress - April 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Wholesale Showroom/Warehouse - Stinson Avenue, Ballina	
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	Awaiting Additional Information
2010/728	12/07/2010	Victor Holmes Town Planning	Boundary Adjustment Subdivision and Consolidation of Ten Existing Lots to Create Six Proposed Lots comprising 1 x 38.7ha, 1 x 41 ha and 4 x 40ha allotments - No. 165 Pimlico & Emigrant Point Roads, Pimlico	Being Assessed
2010/777	02/08/2010	Newton Denny Chapelle	Two Lot Rural Boundary Adjustment Subdivision - No. 93 Weis Lane, Rous	Being Assessed
2010/839	06/09/2010	Chris Lonergan, Town Planner	To erect eight x 2 bedroom holiday cabins and associated works - No. 202 Midgen Flat Road, Newrybar	Awaiting Additional Information
2010/880	27/09/2010	The Wheelchair & Disabled Association	Recreational Hall - No. 253 Wardell Road, Lynwood	Awaiting Additional Information
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	On Exhibition

DA No.	Date Rec'd	Applicant	Proposal	Status
			Parkway & Pacific Highway, Cumbalum	
2010/923	14/10/2010	Ardill Payne & Partners	Two Lot Torrens Title Subdivision - Unara Parkway, Cumbalum	Being Assessed
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	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	Being Assessed & awaiting Response from RTA
2010/990	18/11/2010	J Cornu	Strata Title Subdivision of an existing Duplex Development – No. 15 Alison Avenue, Lennox Head	Being Assessed
2010/1013T	25/11/2010	S Radburn	Lennox Head	Awaiting

8.6 Development Applications - Work in Progress - April 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			VMO _ Remove 10 x Trees – No. 250 North Creek Road, Skennars Head	Additional Information
2010/1014T	25/11/2010	S Radburn	Lennox Head VMO _ Remove 31 x Trees – No. 9 McLeans Street, Skennars Head	Awaiting Additional Information
2010/1045	10/12/2010	Ballina Shire Council	Subdivision for the purpose of creating a Road Reserve and Construct a Public Road - Unara Parkway & Pacific Highway, Cumbalum	Awaiting 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, Ballina	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) - Shelley Beach Road, East 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	Being Assessed
2010/1074	23/12/2010	Enviro Link Consulting	4 Lot Boundary Adjustment Subdivision and Consolidation to Create 2 x Lots - Teven Road, Teven	Awaiting Additional Information
2010/1076	24/12/2010	Newton Denny Chapelle	Strata Title Subdivision of 1	Awaiting Additional

8.6 Development Applications - Work in Progress - April 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Lot into 11 Lots - No. 20 Byron Street, Lennox Head	Information
2011/31	27/01/2011	T Prendergast	Two Lot Boundary Adjustment Subdivision and Cut & Fill - No. 5 Banjo Place & No. 1336 Teven Road, Alstonville	Awaiting Government Referrals
2011/33	28/01/2011	RC Matthews C/- LandPartners	Two Lot Torrens Title Subdivision - No. 211 Ballina Road, Alstonville	Being Assessed
2011/48	04/02/2011	J & H Hughes	Extension to Existing Industrial Building, No. 3/176-178 Southern Cross Drive, Ballina	Awaiting Additional Information
2011/54	09/02/2011	Newton Denny Chapelle	Commercial Office Building, Carparking, Civil Works & Landscaping, No. 75 Tamar Street, Ballina	Being Assessed
2011/60	15/02/2011	Victor Holmes Town Planning	Consolidation and Subdivision of three existing Lots to create 1 x 18.4ha and 1 x 2.2ha allotments, Rifle Range Road, Wollongbar	Being Assessed
2011/61	18/02/2011	Alpine Nurseries Sales P/L	Potting shed for wholesale nursery (Alpine Nurseries), No. 615 Ellis Road, Rous	Determination Pending
2011/63	21/02/2011	Tintenbar Hall	Two Advertising Signs for the Tintenbar Hall, George Street, Tintenbar	Being Assessed
2011/67	23/02/2011	Riordans Consulting Surveyors P/L	Two (2) Lot Boundary Adjustment Subdivision, No. 400 & 410 Houghlahans Creek Road, Teven	Referred to Govt Agencies
2011/73	24/02/2011	Mondarth Pty	To Erect 4 x	Being

8.6 Development Applications - Work in Progress - April 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
		Ltd	Advertising Signs, No. 20-22 De-Havilland Crescent, Ballina	Assessed
2011/83	03/03/2011	Ardill Payne & Partners	To erect advertising and directional signs to the Harvey Norman Complex - No. 80 North Creek Road, Ballina	Being Assessed
2011/87	07/03/2011	McDonald's Australia Pty Ltd	To erect a McDonald's Family Restaurant - No. 54 Bangalow Road, Ballina	Referred to Government Departments
2011/95	10/03/2011	Ardill Payne & Partners	Change of Use to Pet Stock Store (Tenancy No. 2, Harvey Norman Complex) - Nos. 80 & 54 North Creek Road, Ballina	Being Assessed
2011/98	14/03/2011	A Brown	To remove 3 x Trees - No. 274 River Street, Ballina	Being Assessed
2011/105	15/03/2011	Newton Denny Chapelle	To Establish a Bulk Store for a Scaffold Business involving the construction of a shed and vehicular access - No. 1188 Teven Road, Alstonville	On Exhibition
2011/106	15/03/2011	Ardill Payne & Partners	Change of Use to Bulky Goods Retail, Spotlight (Tenancies No. 7-9, Harvey Norman Complex) - Nos. 80 & 54 North Creek Road, Ballina	Being Assessed
2011/124T	23/03/2011	J Burnett	Lennox Head VMO, To Undertake the Pruning of 2 x Tuckeroos & 1 x Goia Tree - No. 13 Beryl Place, Lennox Head	Being Assessed

DA No.	Date Rec'd	Applicant	Proposal	Status
2011/125	24/03/2011	Chris Abbott Surveying	Two Lot Strata Title Subdivision of an Existing Duplex Development - No. 25 Hayman Street, West Ballina	Being Assessed

Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
2011/72	24/02/2011	Greenwood Grove Estate P/L	To Undertake an Affordable Rental Housing Development in accordance with State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising the erection of 74 x single storey and two storey dwellings and associated infrastructure, Tallow Wood Place & 56 Greenfield Road, Lennox Head	Awaiting Additional Information

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 April 2011.

Attachment(s)

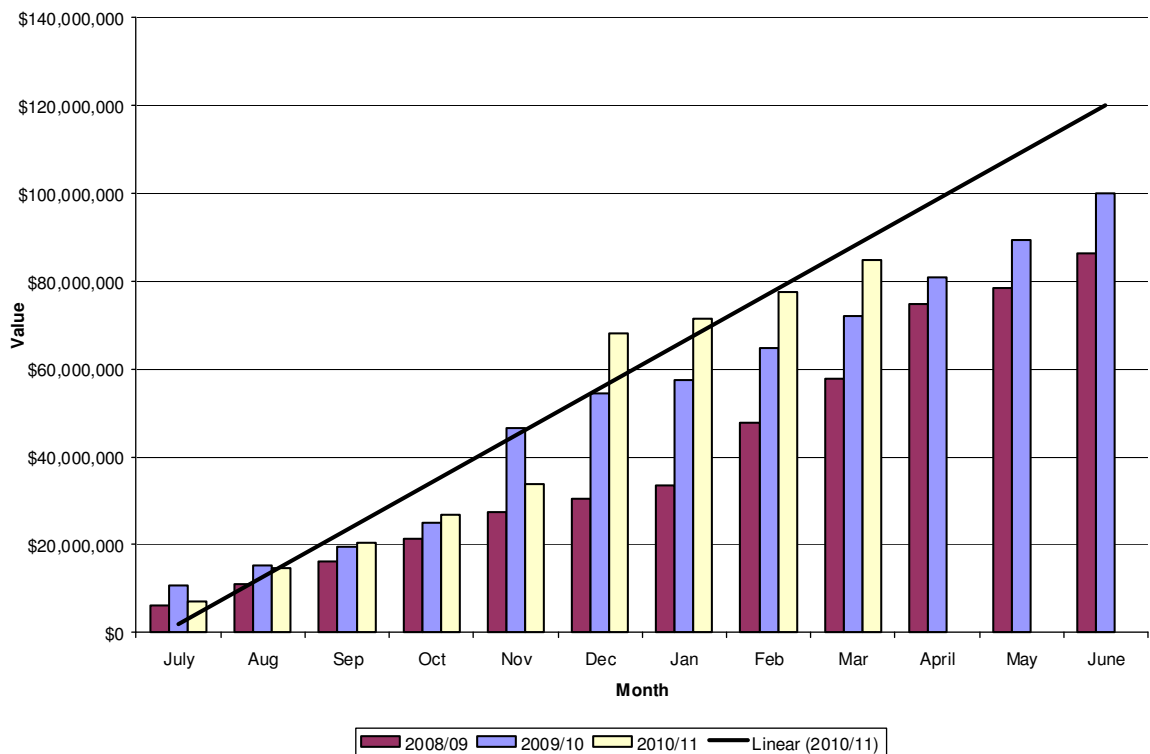
Nil

8.7 Development Consent Statistics - March 2011

The Council is advised that during the period of 1 March 2011 to 31 March 2011 the Regulatory Services Group issued Development Consents comprising of:

Number of Applications	Value of Work
32 Other Building Related	\$ 1,710,600
11 Dwelling/Duplexes/Residential Flat Buildings	\$ 5,693,000
2 General Developments	\$ 0
Total Value	\$ 7,403,600

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 March 2011 to 31 March 2011.

9. Strategic & Community Services Group Reports

9.1 Youth Council - Update

File Reference	Youth Services
CSP Linkage	Transparent and accountable governance
Delivery Program	Community Planning
Objective	To provide Council with a further update concerning the establishment of the Ballina Shire Youth Council.

Background

Council has made a commitment to re-establish a Youth Council to operate within the shire. This follows the initial decision to take such action and is supported by subsequent steps to convene a Councillor Workshop to discuss the matter; engage with schools and youth service providers to examine 'delivery models'; recruit for membership and, very recently, to hold a candidates evening where prospective Youth Council members and their parents/carers could discuss the proposal. The following report outlines the response to the recruitment process.

Key Issues

- Confirmation of membership of the Youth Council.

Information

At the time of preparing this report Council has received four applications for membership of the Youth Council as follows:

- Ms Amanda Brooker
- Ms Lauren Magri
- Mr Hayden Smith
- Mr John Yu

The only prerequisites for membership were that the candidates be residents of Ballina Shire and that they be aged between 12 and 24 years.

Applications for membership were invited through notices in Council's e-news, newspaper advertorials, Council's website and letters to each of the high schools and TAFE campuses operating in the shire.

Whilst the limited number of responses to date is disappointing, it is hoped that numbers will be boosted once promotion of the Youth Council's initial activities occurs. In the meantime, members will be encouraged to actively seek out additional interest through their own contacts and groups.

Those who attended the 'information evening' held on 29 March conveyed a genuine enthusiasm for involvement on the Youth Council.

Reasons included a desire for youth to be better represented in decision making processes; that youth-related issues and perspectives should be more prominent in the thinking of those that are making decisions; and that there is an interest by young people in broader governance, civic affairs and leadership at the local government level.

Sustainability Considerations

- **Environment**
Not Applicable

- **Social**
Establishment and operation of the Youth Council will provide mutual benefits to those participating and to Council. Young people will gain an improved understanding of Council's decision making responsibilities, whilst Councillors will have improved access to the views of young people in exercising those responsibilities.

- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The administration of the Youth Council will be undertaken within the allocated budgets of Council.

Consultation

As previously reported, Council staff have consulted with representatives of the local high schools and youth support services. A number of different 'operational models' for the Youth Council have also been examined by the Council and feedback was sought from those who attended the recent information evening for candidates and parents/carers.

Options

Options relating to this matter are not canvassed on the basis of Council's prior commitment to the Youth Council.

RECOMMENDATIONS

1. That Council notes the contents of this report concerning the establishment of the Ballina Shire Youth Council and its imminent commencement.
2. That Council endorses the following nominations for membership arising from recent recruitment:
 - Ms Amanda Brooker
 - Ms Lauren Magri
 - Mr Hayden Smith
 - Mr John Yu
3. That Council's General Manager is delegated the authority to offer additional placements on the Youth Council as further expressions of interest are received.

Attachment(s)

Nil

9.2 Development Control Plan - Coastal Grove Lennox Head

File Reference	Ballina Shire Combined Development Control Plan
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from Council with respect to the public exhibition of a proposed amendment to the Ballina Shire Combined Development Control Plan relating to Coastal Grove at Lennox Head.

Background

The NSW Minister for Planning issued approval for the Coastal Grove subdivision in August 2007 under Part 3A of the Environmental Planning and Assessment Act. The Coastal Grove subdivision (commonly known as Survey Street or the Dossor site) is located adjacent to Survey Street and Blue Seas Parade at Lennox Head (Attachment 1). The 2007 Ministerial approval provided for a 42 lot subdivision on the site, comprising of 39 residential lots, one lot for open space and two lots for vegetation conservation.

In 2009, the Minister approved an amendment to the 2007 consent. The amended approval reflected amendments to subdivision plans and arrangements associated with a planning agreement and cycleway and sewer infrastructure matters. The amended consent provides for a 42 lot subdivision on the site, comprising of 39 residential lots, one lot for open space and two lots for vegetation conservation.

The approval for the subdivision considered the matter of a development control plan for the site and in this regard, included the following condition of consent:

E11 Site Specific DCP

Prior to the release of the subdivision certificate, Council is to approve and adopt the Coastal Grove Lennox Head DCP. This may require additional consultation by the proponent.

In the event that the DCP hasn't been adopted by the time the subdivision certificate is issued, all controls in the draft DCP are adopted as conditions of this approval. The draft DCP appears at Schedule 4 of this approval.

SAKE Development (on behalf of the landholder) has requested that Council prepare a Development Control Plan (DCP) for the land. Whilst Council is not necessarily required to prepare a DCP for the site, it is considered both beneficial to Council and the landholder as the draft DCP referred to in the condition above is essentially unfinished, has not been formally considered by Council, does not correlate with the final subdivision layout for the site and it is not consistent with the contemporary land use planning framework for Lennox

Head (e.g. DCP Chapter 16 Lennox Head and the NSW Housing Code have been introduced since the initial subdivision approval in 2007).

This report outlines the issues and process associated with the incorporation of development controls specific to Coastal Grove within Council's Combined Development Control Plan framework.

Key Issues

- Provision of site specific development controls for Coastal Grove within Council's Combined DCP framework
- Contents of proposed document

Information

Council introduced Chapter 16 - Lennox Head into its Combined DCP in November 2007. The purpose of the DCP Chapter is to establish a set of design guidelines and requirements for development that reflect the characteristics of Lennox Head. The introduction of the Chapter was an outcome of the Lennox Head Community Aspirations Strategic Plan process completed in 2002.

Given the operation of Chapter 16, Council has an existing planning framework applicable to the land that is suitable for the regulation and management of proposed residential development within the approved subdivision. However, there are several matters where it is considered appropriate to establish specific requirements for the Coastal Grove area. It is suggested that these elements be contained within a specific policy statement under the DCP, being Policy Statement 20 - Coastal Grove Lennox Head (Attachment 2). Importantly, it is considered that this approach will address the Ministerial condition of consent relating to a DCP for the land. The rationale for each of the suggested provisions is outlined below:

Site Objectives

The landholder has sought the inclusion of objectives for the development within the DCP framework. It is considered to be both good practice and reasonable to require development to have regard for these objectives.

Building Lines and Setbacks

There is a variety of building lines applicable throughout the shire. Chapter 16 establishes a general building line of 4m subject to a building height plane. The landowner has requested a front building line of 6m for the site. Given the sloping characteristics of the site, it is considered appropriate that a 6m building line be applied. The building height plane set out in Chapter 16 of the DCP would continue to apply.

A front building line of 6m in conjunction with a requirement for a single storey frontage for Lots 26, 27, 28, 29, 30, 31, and 32 (which are on the downslope side of road no.1) is identified in the draft policy statement primarily to provide for both a uniform building line and minimise the potential for dwellings to be visible beyond the ridgeline immediately east of the subdivision site.

Building Height

As indicated above, Lots 26-32 are located such that a two storey dwelling house on the land may be visible from public viewing areas to the east of the site. The DCP reinforces the general requirement for dwelling houses to be comprised of no more than two storeys except in the cases of Lots 26-32. For these lots, the DCP requires that dwelling houses appear as single storey when viewed from the road frontage. This is in response to the visual sensitivity of the land when viewed from both the east and west.

Slope Sensitive Design

The subject land incorporates a number of lots on steep land. Given this, it is considered reasonable to provide for a greater degree of flexibility with respect to excavation (cut and fill) works on steep allotments in comparison to the existing requirements contained in Chapter 16. Chapter 16 currently applies a requirement for no more than 1m cut or fill on site boundaries and no more than 1.5m cut or fill elsewhere on the site. Draft Policy Statement 20 proposes to allow up to 1.2m cut or fill on property boundaries and allows various levels of cut and fill elsewhere on the site having regard for geotechnical conditions (based on material provided by the proponent). Cut and fill allowances are more generous for a number of lots where the earthworks are contained wholly within the building envelope.

The above approach is supported by specific requirements for driveway access gradients and the provision of suitable engineering and geotechnical assessment as part of applications for development.

It is proposed that the above requirements would apply to lots with a slope of greater than 15%, with lots of a lesser slope to be subject to the cut and fill requirements of Chapter 16.

Screening Underfloor Space of Buildings

Given the sloping nature of the subject land, some dwelling houses may be constructed with substantial underfloor areas between external walls and ground level. To provide for built form outcomes that are sympathetic to visual amenity considerations in the locality, the draft policy statement requires the screening of these areas with either landscaping or screening panels.

Duplex Development

To confirm the location of future duplex development opportunities on the land, a provision is proposed to identify the specific lots nominated for this purpose and require dwellings on such lots to provide entrances that address a street frontage. This would be supported by an amendment to the Control Plan Area map for Lennox Head which nominates preferred land uses for residential allotments.

This approach is consistent with Ministerial approval condition of consent A10 which addresses duplex development on the land.

Consequential Amendments

In addition to the introduction of Policy Statement 20, a number of consequential amendments to the Combined DCP would also be required. These amendments include:

- adjustment to the Lennox Head Control Plan Area map in Chapter 1 of the DCP to incorporate the proposed residential subdivision and reference to Policy Statement 20,
- adjustment to Chapter 16 to identify that Policy Statement 20 applies and prevails in the event of an inconsistency with Chapter 16, and
- several minor changes to introductory material in Chapter 1 of the DCP to appropriately reference Policy Statement 20.

By way of summary, under the proposed DCP planning framework for Coastal Grove, development will primarily be required to address the provisions of DCP Chapters 1 and 16, with special site requirements being set out in DCP Policy Statement 20. The requirements in Policy Statement 20 will prevail in the event of an inconsistency with other elements of the DCP. The proposed framework is generally consistent with the Draft Ballina Local Environmental Plan (as exhibited).

With respect to the key design elements of the draft policy statement, these requirements could be further strengthened via their identification on s88B instruments associated with the land title for each lot. The land owner's representative has indicated informally that such an approach is under consideration.

Sustainability Considerations

- **Environment**
The proposed DCP provisions are designed to have regard for the characteristics of the site and its surrounds, including visual amenity and topography. The provisions aim to balance consideration of site characteristics with the opportunity for residential development on the land as approved.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

The procedure for the preparation of a draft DCP is set out in the *Environmental Planning and Assessment Act* and associated Regulation. The DCP requires minimal Council resources for preparation.

Consultation

In accordance with the requirements of the *Environmental Planning and Assessment Act* and associated Regulation, Council is required to exhibit the draft policy statement as an amendment to the Combined DCP for a period of at least 28 days. It is recommended that the draft policy statement is exhibited for a 28 day period given that it is based on an approved residential subdivision. A 28 day exhibition period is also advantageous given that, in the absence of a Council adopted DCP before the issue of a subdivision certificate for the land, a draft DCP that is not considered to adequately reflect the site characteristics or contemporary planning provisions applying to the land will set the requirements for future development of the site.

Options

In order to progress to the implementation of Policy Statement 20 - Coastal Grove Lennox Head, Council is required to undertake the public exhibition of the draft policy statement and associated consequential amendments as an amendment to the Combined DCP. This approach would provide an opportunity for community consideration of the draft amendments and enable Council to move towards its implementation.

In the event that Council proceeds to public exhibition of the draft policy statement, it is considered appropriate that the exhibition period be for approximately 4 weeks (ensuring conformity with the requirements of the *Environmental Planning and Assessment Act* and associated Regulation).

This approach is recommended as it provides for the implementation of a contemporary set of DCP planning provisions for the land, addressing both the request from the landholder for Council to prepare a DCP for the land and the condition of approval relating to preparation of a DCP outlined above.

Alternatively, Council could seek further information or defer the preparation of the draft policy statement. This approach could enable provision of additional analysis or consideration of issues. However, delay in the exhibition of the draft policy statement may result in the issue of a subdivision certificate for the land prior to adoption of a DCP. Under this scenario, a draft DCP that was drafted in 2006 without specific consideration by Council and that has not had regard for the final subdivision layout or a variety of more recently introduced local and State based planning provisions will establish requirements for development of the land. On this basis, this approach is not recommended.

RECOMMENDATIONS

1. That Council endorses the exhibition of Draft Ballina Shire Combined Development Control Plan Policy Statement 20 - Coastal Grove Lennox Head and associated consequential amendments in accordance with the terms of the *Environmental Planning and Assessment Act* and associated Regulation, as attached to this report.
2. That this matter be reported back to Council for final determination following the conclusion of the public exhibition period.

Attachment(s)

1. Approved Subdivision Layout - Coastal Grove.
2. Draft Policy Statement 20 - Coastal Grove Lennox Head.

9.3 Richmond River Estuary - Management Plan

File Reference	Richmond River Estuary Management Committee
CSP Linkage	A healthy natural environment
Delivery Program	Strategic Planning
Objective	To provide Council with an opportunity to make a submission to the Richmond River County Council concerning the draft Coastal Zone Management Plan for the Richmond River Estuary.

Background

As Council is aware, the long-term management of the Richmond River Estuary is currently being addressed through the preparation of a Coastal Zone Management Plan for the Richmond River Estuary (CZMP). The development of a CZMP has been a staged process and follows guidelines set out in the NSW Government Estuary Management Manual (1992).

The CZMP is synonymous with an Estuary Management Plan as described in the Estuary Management Manual, however the CZMP terminology has been adopted to provide consistency with amendments to the Coastal Protection Act 1979. The CZMP is the culmination of the Estuary Management process and has been developed from the outcomes reported in the Estuary Management Study (EMS) (Volume 1) and supported by the scientific knowledge derived from the Estuary Processes Study. The finalisation of this CZMP will achieve Step 5 of the estuary management process for the Richmond River.

The area covered by the estuary extends across three local government areas and includes the tidal waters of the Richmond River to Casino, Wilsons River to Boatharbour, Bungawalbin and North Creek and incorporates foreshore and adjacent lands. The draft CZMP provides a ten year strategic plan for the implementation of key actions to address identified estuary issues. The primary goal is to achieve integrated, balanced, responsible methods to restore and maintain the ecological sustainability of the estuary as well as the recreational and commercial activities associated with it.

The preparation of the draft CZMP has been coordinated by Richmond River County Council (RRCC) and undertaken by consultants (Hydrosphere) on behalf of constituent councils, Ballina Shire (BSC), Lismore City (LCC), Richmond Valley (RVC) and Richmond River County Council (RRCC).

The Richmond River Estuary Management Committee (EMC) was formed in 2002 to oversee the process from data compilation study, estuary processes study and development of the Estuary Management Study and CZMP. The Richmond River Estuary Technical Team made up of local council staff and

State agencies has been involved in the development of the CZMP and a review of the draft plan.

The plan has been funded through the Estuary Management Program. This program is now understood to be administered through the Department of Premier and Cabinet (DPC). This program was previously administered by the Department of Climate Change and Water (DECCW) before the recent State election. To provide consistency with the draft CZMP this report will still make reference to DECCW as it is not yet understood how the various divisions of the previous DECCW fit into the new arrangement.

Councillors will recall attending a workshop on the Estuary Management Process held on 15 February this year, facilitated by RRCC, informing Council of the upcoming public exhibition of the draft documents. Since then Council has been provided a Summary Document of the draft EMS and CZMP and notified about the commencement of the public exhibition dates, locations and draft documents through the Councillor Bulletin.

RRCC is now coordinating the public exhibition of the draft EMS and CZMP on behalf of constituent councils. The purpose of this report is to provide Council with a summary of staff comment on the draft documents and provide Council with the opportunity to make a formal submission to RRCC during the exhibition period.

The exhibition material can be accessed on Council's web site www.ballina.nsw.gov.au (*Richmond River Estuary - have your say!*)

As this exhibition material is extensive it has not been included as an attachment to this report. Hard copies can be provided to Councillors by contacting Council staff.

Key Issues

- Staff comment on the draft study and plan
- Opportunity to provide a submission on the draft documents to RRCC

Information

The Richmond River Estuary is one of the largest on the NSW coast and the process for preparing an overarching blueprint for the long-term sustainable management of the estuary has been challenging. As Council is aware, the process to develop this plan has been extensive, running over a number of years. As a result, the draft CZMP for the Richmond River is one of the last in the state to be finalized.

The draft CZMP is a positive move by RRCC, in partnership with constituent councils and the State Government to address the long-term sustainable management of the estuary. This plan provides a coordinated and consistent approach to improving the health of the estuary for the numerous stakeholders that are currently responsible for various aspects of its management. For example, the ownership and control of estuarine waterfront and submerged lands is spread across a spectrum of private landholders, local councils, trustees, Crown land and other NSW Government authorities.

The finalization of this draft CZMP also potentially unlocks State Government funding through the Estuary Management Program for the implementation of actions listed in the plan.

The draft plan and study are now on public exhibition until 6 May 2011. A multi-disciplinary team of Council staff has now had the opportunity to review the draft documents and provide comment. A range of specific matters have been raised but the content of this report groups these under more general themes. These comments have been outlined below for Council's consideration.

Plan Development

As a generalization Council staff are very supportive of the draft EMS and CZMP. It presents for the first time, a coordinated and holistic approach that clearly articulates strategies aimed at increasing the resilience of the estuary. It is evident that the EMS and CZMP development has followed a structured approach to assess management options and is based on current scientific understanding of the estuary, the estuary's values and the overall management objectives.

Options have been assessed in terms of their capacity to address the identified issues, taking into consideration social, environmental and economic factors in assigning an overall benefit/cost score. The resulting prioritised options have been grouped into thirteen clearly identified strategies that assign responsibilities for on-ground implementation to the various stakeholders.

The draft CZMP is comprehensive, in that it outlines strategies that target both point and non-point sources of potential pollutants across urban and rural environments. It is also encouraging to see that the draft plan outlines a number of recommended actions to support the agricultural sector in working towards better estuarine health.

Although there is general support by staff for the draft EMS and CZMP, a number of comments have been put forward particularly on the draft CZMP that staff feel could strengthen the document.

Governance

As outlined in the draft CZMP, management strategies have been prioritised and assigned responsibilities (see Table 1 attached). A number of actions have Council listed as the lead organisation along with RVC and LCC. For others, Council is listed as a support organisation along with other councils, Industry and Investment NSW (I&I NSW), DECCW, the Estuary Management Committee (ECM) and others.

As indicated in the draft CZMP, a fundamental and prerequisite action is to review the administration and governance model for the management of Richmond River Estuary. This is anticipated to include defining the range of responsibilities related to estuary management and future tasks; reviewing estuary management funding requirements and potential sources; determining

a preferred model; and identifying key management and reporting requirements.

Reference to EMC in the draft plan is intended to apply to the new entity that could be established as an outcome of the governance review process. The draft plan assigns this entity as the overriding body responsible for the actions that relate to the whole or the majority of the estuary.

This fundamental action of the draft plan is expected to review a number of models to identify one that can both deliver on the plan and suit the unique governance context of the Richmond River Estuary. This review is seen as especially important by staff, and as a matter of urgency, as good governance is essential to ensure effective collaboration between stakeholders and enable efficient implementation of the plan across all jurisdictions.

Funding and resourcing

The plan provides indicative costs over the implementation period amounting to \$16.4 million over ten years. It is a general concern that this amount does not go far enough in sufficiently meeting the objectives of the plan. Having said this, it is understood that this 10 year plan is a starting point with an opportunity for review after five years to determine each action's overall effectiveness.

A number of actions have Ballina Shire Council listed as the lead organisation along with RVC and LCC. These, together with the estimated ten year cost for implementation are:

- Riparian buffer establishment (planning) (\$30 000)
- Retain, rehabilitate and conserve existing native floodplain vegetation (\$930 000)
- On-going on-site sewage management inspections and improvements (not estimated) and
- Stormwater management (not estimated).

Council is also listed as the lead organisation for the action relating to a cost/benefit analysis of dredging operations in the lower estuary. The action includes an estimated cost of \$50,000 (this figure has not yet been updated in the summary tables).

It is expected that these strategies will be funded through State and Council contributions as well as grants and in-kind contributions, however the plan does not specify how these will be allocated. Assuming the draft Coastal Zone Management Plan is ultimately adopted, careful consideration will need to be given to the allocation of direct financial and other resources (i.e., staff across organizational groups) by Council, especially to those actions listed above to adequately respond to the endorsed actions.

This will be particularly relevant to the Environmental Health Section of Council which will be potentially required to take on additional commitments to meet the KPIs outlined under a number of actions relating to eco-health monitoring, on-site sewage management, stormwater management and community education.

Further resource commitments could also be expected from Council for those actions listing EMC as the lead organisation, as Ballina Shire Council will be one of the agencies involved at this level. As part of the governance and administration review process the EMC will also need to consider a financial model that can sustain the substantial costs associated with priority estuary-wide actions over the duration of the management plan.

Monitoring and evaluation

Staff have been encouraged to see water quality monitoring and evaluation as a major focus of the draft plan. An integrated environmental monitoring and reporting model for water quality in the Richmond River Estuary is a crucial component in determining the ongoing success of actions aimed at improving the overall estuarine health.

Involving relevant Council staff in the development of such a program will help ensure that it provides both sound scientific data and can be adequately resourced within human and financial limitations of the individual agencies responsible.

Responsibility for individual actions

As Council is aware, all councils within NSW are required to prepare new LEPs using the framework established by the Standard Instrument LEP (SILEP). Clause 5.9 of the SILEP effectively removes Council from having any significant role in the regulation and policing of the removal of native vegetation in areas where the Native Vegetation Act 2003 (NVA) applies.

In this regard, the CMA and DECCW will be primarily responsible for the administration of the framework. As a result these agencies should be included as lead organisations under Action 7.1 of the draft CZMP that incorporates such activities.

The draft CZMP and the associated actions do not distinguish between the different regulatory and land manager branches of the DECCW. To increase clarity the draft CZMP needs to list the DECCW's National Parks and Wildlife (NPWS) as a separate organisation, given that NPWS manages significant tracts of land within and adjacent to the Richmond River Estuary.

Given the above, it is considered essential that NPWS as a land manager be identified as either a lead and/or support organisation for a range of the management actions. This is seen as especially important in light of recent changes to DECCW.

Vegetation management

Staff have suggested that whilst Action 7.1 proposes to protect existing floodplain native vegetation, no reference is made to the importance of feral animal eradication programs in contributing towards this goal. It is suggested that an acknowledgement of the importance of feral animal control programs in any rehabilitation programs on the floodplain would contribute to the overall success of this strategy.

Although vegetation management is considered in Strategy 6 and Strategy 7 of the draft CZMP, there is no direct reference to the issue of riparian weeds and their impact on estuary health. Particular riparian weeds are posing significant issues to the quality of riparian vegetation all along the estuary and not just in what may be classed as funded priority riparian areas.

These riparian weeds need to be targeted specifically, as an individual weed species that spreads along the riparian zone continues to infest other riparian zones.

Controlling these riparian weeds at their source and as a species strategically along the whole estuary will assist in managing priority riparian areas.

Staff have indicated that including a reference to riparian weed programs targeting weed species, such as Coral Trees, Bitou Bush and Cats Claw Creeper under Action 6.1 would go some way to addressing this identified gap in the draft CZMP.

On-site sewage management (OSSM)

Strategy 10 of the draft CZMP deals with waste water management including the inspection and improvement of OSSM systems. Based on current resourcing, Council will not be able to meet the action's target to review all un-sewered areas by 2015. Even with the target extended to 2020, a proper review, which includes rectification of faulty systems of the estimated 3500 or more systems present in the shire will require considerably more resources if it is to be achieved.

Council staff suggest that the target for Action 10.2 regarding the review of all un-sewered areas be extended from 2015 to 2020 in the draft CZMP. Staff would welcome the opportunity for extra funding through the Estuary Management Program to progress this work in areas potentially impacting the water quality in the estuary.

Education

Currently there is no direct recognition of the importance of the estuary to migratory birds in the draft CZMP. Although it is recognized by staff that a 'shorebird action' would be too specific for the scale of the draft CZMP it is pleasing to note that this importance is highlighted in the estuary values in the draft study, and that links are made to the specific work being currently undertaken by DECCW on this issue.

Staff have indicated that this importance could be further emphasized in the CZMP by including migratory shorebird issues as a focus for future education programs under Strategy 8: Education.

Sustainability Considerations

- **Environment**

The CZMP outlines strategies aimed at increasing the resilience of the estuary as well as protecting and enhancing the ecological values of the Richmond River Estuary (such as healthy water quality and habitat and species diversity).

- **Social**

The CZMP outlines strategies aimed at protecting and enhancing the social values of the Richmond River Estuary (such as cultural heritage, recreational activities and scenic amenity).

- **Economic**

The CZMP outlines strategies aimed at protecting and enhancing the economic values of the Richmond River Estuary (local and regional economic activities such as agriculture, commercial fishing and tourism).

Legal / Resource / Financial Implications

The significant costs associated with implementation of various strategies outlined in the plan will have implications for future budgets.

It is anticipated that the scope and allocation of the funds associated with the plan will be further refined through the review of the administration and governance model for the plan.

Council's recurrent budget provides essentially no funding for the types of works identified in the CZMP, besides our annual contribution to RRCC. This contribution is estimated to increase substantially from 2010/11 to 2011/12 (\$170,000 to \$220,000) and it is hoped that these additional funds will be applied to works identified in the CZMP.

Future Council budgets may well need continuing significant increases in this contribution to allow the CZMP to be implemented in a timely manner.

One other option that was suggested was the possibility of all three constituent councils (Ballina, Lismore, Richmond Valley) applying jointly to the Minister for Local Government for a special rate that would be implemented for the term of the plan (i.e. 10 years). This rate could be shown as a separate item on the rate notice and linked directly to the works in the plan. There may be some level of community support for such a proposal due to the importance of the Richmond River to all three constituent councils.

The key issue is that to allow the CZMP to be implemented additional revenue contributions from the three constituent councils is needed.

Consultation

Consultation has been undertaken with various stakeholders during the process through the involvement of the Estuary Management Committee (EMC). The EMC is a multi-stakeholder group and the preparation of the EMS and CZMP has been overseen by this committee. Further community consultation was undertaken through the development of the EMS with various stakeholders and community groups.

A technical team comprising of local council staff and relevant State agencies has been involved in reviewing the CZMP finalisation. A number of Council technical staff have also been involved reviewing earlier drafts of both the EMS and the CZMP.

A public meeting, facilitated by the consultants on the draft study and plan, was held on 28 March in Ballina to provide interested community members an opportunity to find out more about the draft plan and ask questions. Around 25 people attended the meeting. The general response from those at the meeting was that the projected funding was insufficient in achieving substantial improvement in the estuary.

Options

This report provides an overview of the staff feedback on the draft EMS and CZMP. This is also an opportunity to provide a submission conveying this information to RRCC during the public exhibition period.

It is anticipated that once the public submission period has concluded, a detailed assessment of the submissions received will be undertaken by the consultants and the technical team. Once the draft is finalised a report will be presented to each constituent Council for review and adoption of the final document.

Once all councils have provided their endorsement of the plan it will be forwarded to the relevant Minister for approval.

The options now available to Council include:

1. That Council note the content of the report and decline to make a formal submission to Richmond River County Council (RRCC) on the draft Estuary Management Study (EMS) and Coastal Zone Estuary Management Plan for the Richmond River (CZMP).
2. Provide a formal submission on the draft exhibition documents to RRCC expressing support of the draft EMS and CZMP.
3. Provide a formal submission on the draft exhibition documents to RRCC, expressing general support for the draft EMS and CZMP but request that the additional matters outlined in this report be considered for inclusion in the final EMS and CZMP.

Option three is the preferred approach as it is considered that the issues outlined in this report could result in further improvements to the draft CZMP.

RECOMMENDATION

That Council provide a formal submission to the Richmond River County Council concerning the Estuary Management Study and draft Coastal Zone Estuary Management Plan for the Richmond River Estuary expressing general support for the draft documents and include the staff comments generally as follows:

- a) The governance and administration for management of the Richmond River Estuary is determined as a matter of priority to ensure effective implementation of the plan
- b) The need for the Estuary Management Committee to consider a financial/ funding model that can sustain the substantial costs associated with priority estuary-wide actions over the duration of the management plan
- c) The need for a monitoring program for the Richmond River Estuary that provides robust scientific data whilst considering the limited human and financial resources of those responsible for its implementation
- d) The review of responsibilities assigned to individual actions in light of ongoing planning reforms, particularly in regard to new planning instruments
- e) The identification of National Parks and Wildlife Service as a lead or support organisation for relevant management actions listed in the plan
- f) A reference to the importance of feral animal eradication programs in contributing to the protection and conservation of existing native floodplain vegetation
- g) A reference to the strategically targeting of riparian weed species as assisting in the rehabilitation of riparian areas
- h) A revision of the target regarding the review of all un-sewered areas from 2015 to 2020
- i) The reiteration of the importance of the estuary as a migratory bird roosting area by including this as a focus for future community education programs.

Attachment(s)

1. Table 1: Overview of CZMP Implementation Schedule

10. General Manager's Group Reports

10.1 Use of Council Seal

File Reference Use of Seal

RECOMMENDATIONS

That Council affix the Common Seal to the following document.

US11/10	<p>Council to Julie Bartlett - Retail Lease Agreement for Shop 1 Wigmore Arcade.</p> <p>Explanation: Shop 1 within the Wigmore Arcade has been vacant since 1 January 2008, and despite a number of viewings has been a difficult shopspace to lease, largely due to it's small area of 31 sq mtrs. Following discussions and negotiations, staff have now received a direct approach from Ms Bartlett to lease the premises which means that there is no agents 'finders fee' to pay. Ms Bartlett is proposing to open a women's fashion and accessories shop and is hoping to have the business operating from 1 May, 2011.</p>
US11/11	<p>Use of Seal: Deed of Consent & Assignment of Lease, A G McPhie to L Griffiths – Assignment of Retail Lease Agreement for Wigmore Arcade premises located at Shop 5 'Cafe Serafino'.</p> <p>Explanation: Council has received solicitor's advice that Mrs McPhie, as lessee of Wigmore Arcade premises at Shop 5, is in the process of selling her business to Ms Griffiths. Ms Griffiths was a former joint tenant, and joint owner of the 'Cafe Serafino' business for the period 29/10/03 to 17/11/05, before assigning her Retail Lease Agreement to former tenants L & A Bijl. Ms Griffiths was the originator of the current trading name, was well regarded and a satisfactory tenant. Councillors may recall that the proposed assignor, Mrs McPhie, recently purchased the Wigmore Arcade shopping complex business 'Frangipani Lifestyle' that is located at 135 River Street. Council as landlord cannot unreasonably refuse a request to assign the lease.</p>
US11/12	<p>Deed of Rescission and Release, Arogen Pty Ltd– RFT535 Fishery Creek Water Main Underbore</p> <p>In November 2010 quotations were sought for the design and construction of a replacement of the part of the Fishery Creek watermain with a new underbored main adjacent to the northern side of Fishery Creek Bridge. Council awarded the Contract to Arogen Pty Ltd for a lump sum of \$132,000 (inclusive of GST). The commencement of the work was initially delayed by Arogen in December 2010 and January 2011 due to scheduled work conflicts. Subsequently, the design portion of the engagement was delayed pending Council's review and approval by the RTA. Additionally, Arogen submitted a variation for \$70,808.66 (incl. GST) due to design changes. Arogen were advised in a meeting with Council staff that the variation would not be approved.</p>

10.1 Use of Council Seal

	<p>Arogen subsequently informed Council that the underbore could not be completed until August 2011, which was an unacceptable timeframe and Council issued a Contractual Notice to Show Cause against Arogen. A letter showing Cause was submitted by Arogen defending their execution of the contract and reviewed starting date, however, they offered harmless release from the Contract.</p> <p>Council staff have determined that there is a contractual case against Arogen on this matter to claim site expenses incurred. However, undertaking a legal case to pursue these claims is not considered justified due to the time, effort and costs involved. Council staff and our solicitor have prepared a Deed of Release to dissolve the contract with Arogen.</p>
US11/13	<p>Use of Seal: Deed of Variation - Licence Agreement between Ballina Shire Council and H & A Aristou - Increase in the licence area of 'Cafe Horizon' located at Ballina Byron Gateway Airport</p> <p>Explanation: The Airport Manager has increased the cafe footprint from 96.9sqm up to 127sqm, thus significantly improving the general amenity of the cafe area for the licensee and Airport patrons. The licence fee for the Agreement is currently being reviewed to market by a registered valuer, with the increased cafe floor area being taken into consideration.</p>

Attachment(s)

Nil

10.2 Investments Summary - March 2011

File Reference	Investments / General Banking
CSP Linkage	Responsible and efficient use of resources
Delivery Program	Financial Management
Objective	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 March 2011.

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 March 2011 was \$58,859,000,000. This represents a decrease from February of \$1,092,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 March 2011, was \$2,611,107.

Council's investments as at 31 March are at an average (weighted) rate of 5.85%, which is 0.75% above the 90 Day Bank Bill Index of 4.92%.

The majority of the approximately \$60 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

Reserve Name	Internal/External Restriction	Approx % of Portfolio*
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
Total		100%

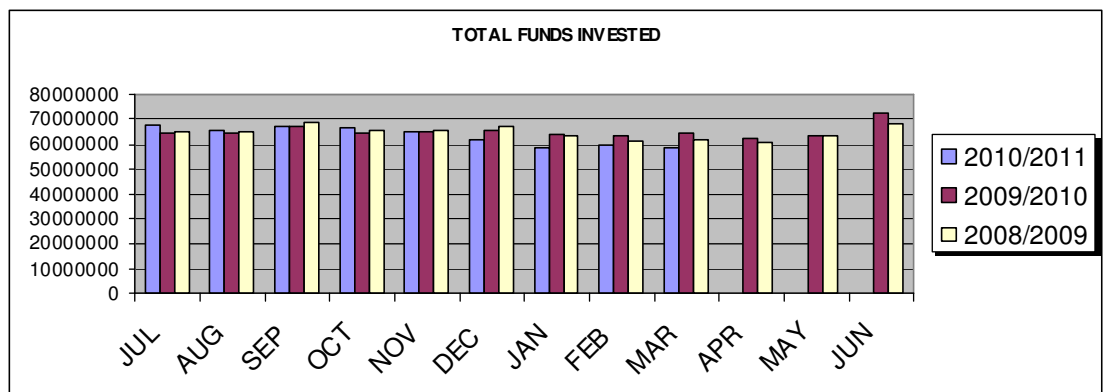
* Based on reserves held as at 30 June 2010

Information

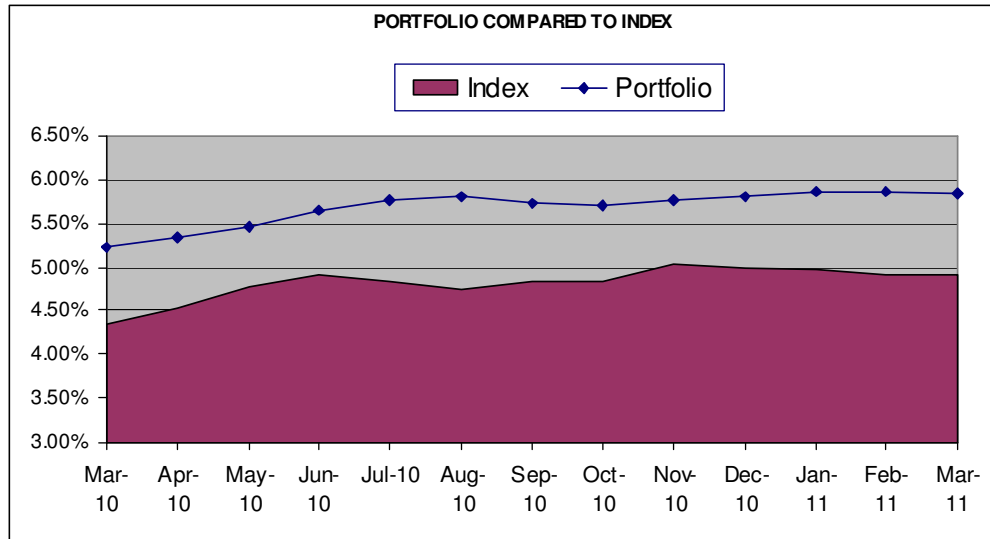
A. Summary of Investments by Institution

Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	% of	Total
Grandfathered Investments						
ANZ Bank	AA-	No	2,000	2,000	3.4	
Bank of Queensland	BBB	No	1,000	1,000	1.7	
Bendigo Bank Ltd	BBB	No	1,000	1,000	1.7	
Deutsche Bank	A+	No	4,000	4,000	6.8	
Goldman Sachs	AA-	No	1,000	1,000	1.7	
Heritage Building Society	BBB	No	3,000	3,000	5.0	
HSBC Australia	AA-	No	1,000	1,000	1.7	
Local Govt Fin Service	A	No	5,000	5,000	8.5	
Longreach Capital Markets 23	AA-	No	1,000	1,000	1.7	
Longreach Capital Markets 28	AA+	No	1,000	1,000	1.7	
Morgan Stanley	A	No	2,000	2,000	3.4	
National Australia Bank	AA	No	1,788	1,788	3.0	
National Wealth M'ment Holding	A	No	2,000	2,000	3.4	44%
Rated Institutions						
Bank of Queensland	BBB+	Y-\$1m	3,000	4,000	6.8	
Bank of Western Australia	AA	Y-\$m	2,677	2,666	4.5	
Commonwealth Bank of Australia	AA	Y-\$2m	7,693	6,006	10.2	
Credit Union Australia	BBB+	Yes	1,000	1,000	1.7	
Illawarra Mutual Bld Society	BBB	Y-\$1m	4,000	3,000	5.1	
National Australia Bank	AA	No	3,000	1,000	5.1	
Members Equity Bank	BBB	Y-\$1m	0	1,000	1.7	
Newcastle Permanent Bld Soc	BBB+	Y-\$1m	1,000	2,000	3.4	
Suncorp Metway Bank	A	Y-\$1m	3,485	3,485	5.9	
Westpac Banking Corp	AA	Y-\$1m	7,308	6,914	11.7	53%
Unrated ADI's						
Community CPS Credit Union		Yes	1,000	1,000	1.7	
QLD Country Credit Union		Yes	0	1,000		3%
Total			59,951	58,859	100%	

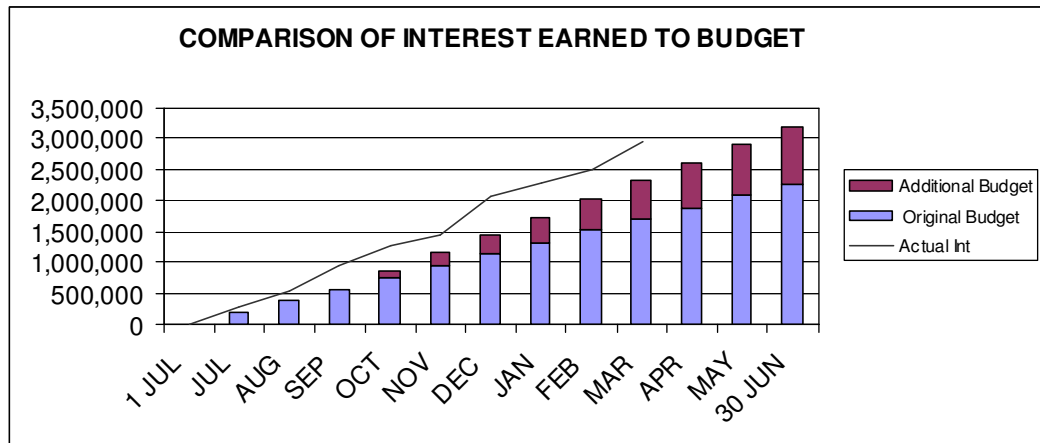
B. Monthly Comparison of Total Funds Invested



C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



Comment

The Australian dollar remains strong in comparison to other currencies. It has been over \$1.04 in comparison to the US dollar.

The Reserve Bank met 5 April 2011 and the Board decided to leave the cash rate unchanged at 4.75 per cent where it has been since November last year.

The Reserve Bank comments were as follows:

Growth in employment has moderated over recent months and the unemployment rate has held steady at 5 per cent. Most leading indicators suggest further growth in employment, thought most likely at a slower pace than in 2010. Reports of skills shortages remain confined, at this point, to the resources and related sectors.

Inflation is consistent with the medium-term objective of monetary policy, having declined significantly from its peak in 2008. These moderate outcomes are being assisted by the high level of the exchange rate, the earlier decline in wages growth and strong competition in some key markets, which have worked to offset large rises in utilities prices. Production losses due to weather are temporarily raising prices for some agricultural produce, which will boost the March quarter CPI, but these prices should fall back later in the year.

E. Investments Held as at 31 March 2011

Purchase Date	Issuer	Type	Rate %	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	5.92	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	5.92	23/04/14	2,000
20/09/04	National Australia Bank	FRN	6.16	Perpetual	1,788
08/08/05	Morgan Stanley	FRN	5.36	08/08/12	2,000
12/04/06	Goldman Sachs	FRN	5.45	12/04/16	1,000
16/06/06	National Wealth M'tment Holdings	FRN	5.48	16/06/16	2,000
15/09/06	Bank of Queensland	FRN	5.32	11/05/11	1,000
04/12/06	Heritage Building Society	FRN	5.53	04/12/11	2,000
28/02/07	Longreach Series 23	IRLN	8.90	10/12/12	1,000
25/01/07	Local Govt Fin Service	CRI	5.64	20/03/12	5,000
28/06/07	Longreach Series 28	ELN	0.00	27/06/14	1,000
21/09/07	Bendigo Bank	FRN	6.04	21/09/12	1,000
18/10/07	Heritage Building Society	FRN	6.25	18/10/12	1,000
18/10/07	ANZ Bank	FRN	5.70	18/10/12	2,000
14/03/08	HSBC Australia Ltd	FRN	7.14	14/03/13	1,000
16/12/08	Commonwealth Bank of Australia	CRI	6.45	16/12/11	1,000
17/12/08	Commonwealth Bank of Australia	CRI	6.04	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	7.32	30/05/11	1,485
17/04/09	Commonwealth Bank of Australia	FRN	6.27	17/04/12	1,000
03/02/10	Commonwealth Bank of Australia	FND	4.70	At Call	2,011
06/12/10	Bank of Queensland	TD	6.00	05/04/11	1,000
15/12/10	National Australia Bank	TD	6.18	14/04/11	1,000
05/01/11	Bank of Queensland	TD	6.00	05/05/11	1,000
25/01/11	Suncorp-Metway Bank	TD	6.07	27/04/11	1,000
28/01/11	Credit Union Australia	TD	6.01	28/04/11	1,000
02/02/11	Suncorp-Metway Bank	TD	6.03	03/05/11	1,000
15/02/11	Bank of Queensland	TD	6.30	15/08/11	1,000
21/02/11	Illawarra Mutual Bld Society	TD	6.06	11/07/11	2,000
28/02/11	Community CPS Credit Union	TD	6.05	30/05/11	1,000
01/03/11	Bank of Queensland	TD	6.35	01/09/11	1,000
01/03/11	Newcastle Permanent Bld Society	TD	6.00	30/05/11	1,000
02/03/11	Members Equity Bank	TD	6.15	30/06/11	1,000
07/03/11	Queensland Country Credit Union	TD	6.15	05/07/11	1,000
14/03/11	Illawarra Mutual Bld Society	TD	6.03	12/07/11	1,000
21/03/11	Newcastle Permanent Bld Society	TD	5.84	21/06/11	1,000
21/03/11	Westpac Bank	TD	5.69	20/06/11	6,914
21/03/11	BankWest	TD	5.85	19/07/11	2,666
Total:					58,859
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 March 2011.

10.3 Councillor - Leave of Absence

File Reference	Councillor Development
Sustainability Plan	Transparent and accountable governance
Management Plan	Administration
Objective	To obtain Council approval for a leave of absence.

Background

Cr Robyn Hordern has requested leave of absence for the July 2011 Ordinary meeting.

RECOMMENDATION

That Cr Hordern be granted leave of absence for the July 2011 Ordinary meeting.

Attachment(s)

Nil

10.4 Councillor Attendance

File Reference	Shires Association/Councillor Development
Sustainability Plan	Transparent and accountable governance
Management Plan	Administration
Objective	To provide Councillors with professional development

Background

The Councillor Expenses and Facilities Policy requires Council approval for attendance by councillors, excluding the Mayor, at conferences outside the region (Richmond, Tweed, Clarence).

The purpose of this report is to seek Councillor interest in attending the 2011 Shires Association Conference at the Sofitel Wentworth Hotel, Sydney, scheduled for 30 May - 1 June 2011 and the 2011 Australian Local Government Womens Association (ALGWA) Conference in Blacktown from 26 - 28 May 2011. (Cr Cadwallader has expressed an interest in attending the ALGWA).

Council's motion submitted to the "A" Division Conference in February on Working with Children Checks for Elected Representatives will be submitted to the Shires Association Conference by the Division.

Key Issues

- Benefit of the conferences and cost
- Any additional notices of motion

Information

The theme of the 2011 Shires Association conference is "Modernisation - It's Our Time". The registration fee is \$682 and airfares, accommodation, cab fares and some meals would be in addition to this cost. Council is entitled to one voting delegate (normally the Mayor). A copy of the draft conference program is attached.

The ALGWA Diamond Jubilee State Conference is being hosted by Blacktown City council at the Novatel, Rooty Hill. The registration fee is \$540 (before 30 April) \$580 (after 30 April), and airfares, accommodation, cab fares and some meals would be in addition to this cost. A copy of the conference program is attached.

Sustainability Considerations

- **Environment**
Environmental, social and economic issues are likely to be considered at both conference.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

Funds are available within the Council's professional development budget to finance this expense.

Consultation

Provided for public information.

Options

Approve or not approve the travel. Typically Council sends delegates to the Shires conference.

RECOMMENDATIONS

1. That Council approves the attendance of its nominated delegates to the Shires Association Annual Conference to be held in Sydney from 30 May - 1 June 2011.
2. That Council authorises the attendance of Cr Cadwallader at the ALGWA Conference to be held in Sydney from 26 - 28 May 2011.

Attachment(s)

1. Draft 2011 Shires Association Program as at 8 April
2. ALGWA Conference Program

10.5 Community Donations

File Reference	2010/2011 Delivery Program/Donations Program
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To determine whether Council wishes to approve a community donation request.

Background

Council approved a number of general and capital assistance donations at the June 2010 meeting for the 2010/11 financial year. Since that time requests have continued to be received and generally Council staff advise the applicants to reapply next financial year. However there are certain requests that are considered meritorious for the current year and on that basis, as per the Council policies, they are submitted to Council for consideration.

One such request is now considered in this report. A copy of the request is attached.

Key Issues

- Nature of request
- Funding available

Information

Details of the request are as follows;

Quota International Alstonville-Wollongbar Inc

The Quota Club International Alstonville-Wollongbar recently applied through the Festivals and Events - Council Support program for financial assistance towards the 24th District Quota Conference 2011.

They were advised that the majority of the funds for this program had been allocated and have now reapplied under the Community Donations program.

This conference is being held in June therefore an answer from Council is required prior to that date.

Sustainability Considerations

- **Environment**
Not Applicable

- **Social**
Donations such as that requested provide valuable support to community groups.
- **Economic**
Stimulus to local community groups and operational expense in Council's budget.

Legal / Resource / Financial Implications

Assuming that Council approves the funding for the Newrybar Hall in the Finance Committee Minutes, as included elsewhere in this report, the current status of the donations budgets for 2010/2011 is as follows:

Items	Budget	Expended	Balance
Donations (General)	52,000	54,577	(2,577)
Donations (Halls)	33,000	33,000	0
Donations (DA Fees)	2,000	2,000	0

Consultation

The annual donations program is subject to formal public exhibition and generally Council attempts to ensure that all donations are considered at the same time to ensure there is equity in the allocation process.

Options

The options are to approve, or not approve, the donation.

As Council has exhausted its entire donations budget it is recommended that the request be declined.

RECOMMENDATIONS

That Council not approve the request from Quota International Alstonville-Wollongbar for their 24th District Quota Conference 2011 as Council's donations budget for 2010/11 is fully expended.

Attachment(s)

1. Letter from Quota International Alstonville-Wollongbar Inc.

10.6 Policy (Final) - Financial Planning

File Reference	Council Policies / Financial Planning
CSP Linkage	Responsible and efficient use of resources
Delivery Program	Financial Management
Objective	To present to Council following the exhibition period the final draft Financial Planning Policy.

Background

Council at its Finance Committee meeting held 17 February 2011 resolved to place the Financial Planning Policy on public exhibition for a period of 28 days, these minutes were subsequently confirmed at the Ordinary Council meeting 24 March 2011.

The purpose of this report is to provide Council with the results of the public exhibition, which occurred during March 2011. No submissions were received in relation to the exhibited policy.

The previous report to Council provided the basis of the need for this policy.

Key Issues

- To assess the response to the public exhibition and consider any submissions

Information

The draft policy document was exhibited for a period of 28 days to allow for public comment. The exhibition was notified via Council's website and by way of advertisement in the local newspaper. Copies of the document were made available at Council's Community Access Points. The policy was also exhibited through Council's new electronic newsletter Community Connect eNews, with a link to an online feedback form.

No submissions were received in relation to the exhibited policy.

Sustainability Considerations

- **Environment**
Not applicable
- **Social**
Not applicable

- **Economic**

The policy looks to create benchmarks that assist Council to being financially sustainable in the short, medium and long term. A financially sustainable Council is positive for the environmental, social and economic outcomes.

Legal / Resource / Financial Implications

The policy does look to influence financial decision making.

Consultation

The draft policy has been placed on public exhibition for a period of 28 days. No submissions were received in relation to the exhibited policy.

Options

Council can adopt the policy as exhibited, amend it, or determine to not adopt the policy. The recommendation is to adopt the policy as per the reasons outlined in the original report to Council.

RECOMMENDATIONS

1. That Council adopts the draft Financial Planning Policy, as amended, and as attached to this report.

Attachment(s)

1. Final Draft Financial Planning Policy.

10.7 Delivery Program and Operational Plan - 31 March 2011 Review

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

Background

Under the 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 third 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 March 2011.

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 87 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	26	7	16	8	57
Amber	1	1	3	4	9
Red	1	0	12	5	18
To be removed	1	1	0	1	3
Total Tasks	29	9	31	18	87

Program Actions Overview - By Percentage

Group / Status	GM	Reg	Civil	Strategic	Total
Green	90	78	52	44	66
Amber	3	11	10	22	10
Red	4	0	38	28	21
To be removed	3	11	0	6	3
Percentage Total	100	100	100	100	100

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	19	20	13	3	55
Amber	4	1	5	0	10
Red	3	1	9	0	13
Total Tasks	26	22	27	3	78

Service Delivery Targets Overview - By Percentage

Group / Status	GM	Reg	Civil	Strategic	Total
Green	73	91	48	100	71
Amber	15	5	19	0	13
Red	12	4	33	0	16
Percentage Total	100	100	100	100	100

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.

The recommendations that follow also recommend the removal of any program actions that are not able to be commenced this year (ie the items marked as "not proceeding" as per attachment one.

RECOMMENDATIONS

1. Council notes the contents of the 31 March 2011 review of the Delivery Program and Operational Plan.
2. Council approves the removal, from the 2010/11 Operational Plan, of the actions marked as "not proceeding" as per Attachment one.

Attachment(s)

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

10.8 Capital Expenditure - Quarterly Update

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

Background

Council has expressed a desire for an improved completion rate for the capital expenditure included in the annual Operational Plan. To assist in ensuring the Council and therefore the community are more informed on the planning and completion rates for capital expenditure a comprehensive quarterly status report on all the works included in the Operational Plan is being presented to Council.

The report that follows provides the quarterly update to March 2011.

Key Issues

- Status of works
- Planned time frames

Information

Completing capital expenditure is not just a matter of providing the budget as many major projects require significant lead times to finalise the design, 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, that may arise.

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
- Latest estimate - represents the sum of the original budget plus approved 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

As a ready reckoner completed works have been highlighted in green, and works deferred or cancelled for 2010/11 have been highlighted in yellow.

In reviewing the works program it is important to acknowledge that it has been an extremely wet year and this has made it difficult to finish projects on time and on budget.

Certain projects have been completed in excess of budget (and some under budget) and the March Quarterly Financial Review, which will be presented to the May meeting of Council, will provide recommendations as to how these variances can be managed.

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

Property - Commercial

Southern Cross Industrial Estate - The major site development works that have been undertaken in this estate during the past 12 to 18 months are virtually complete. The focus will now be on sale of land to recoup this investment.

Property - Community

Lennox Head Community Centre - This project is now due for completion during May and the facility should be operational towards the end of May.

Ballina Airport

The focus has been on terminal improvement works for the first nine months of this financial year.

Urban Stormwater

The majority of these works will commence late 2010/11 or be held over until 2011/12. Typically the stormwater works are undertaken by Council staff once the road construction projects are completed for the year. The wet weather has delayed some of the road projects which in turn means that these stormwater works have also been delayed.

Urban Roads

The two major projects in this program are the Wollongbar Link Road and Cumbalum Way. A tender has been let for the Link Road whereas tenders will be called shortly for Cumbalum Way. Whether or not Cumbalum Way proceeds will depend on the tender price and the ability of the landowners to contribute to that price.

It is also important to acknowledge that if the Wollongbar Link Road and Cumbalum Way projects are removed from the program, as they are to some extent outside the control of staff, the total value of works completed for urban roads increases from 24% to 70% of the budget, which is an excellent result.

Sporting Fields

Kingsford Smith - Hockey Fields - The funding contributed to this by Council and the Ballina Hockey Club will be approximately \$50,000 short of what is required. The March quarterly review will consider funding options for this shortfall and as these works are in the Council's Section 94 Plan the shortfall may be able to be funded from developer contributions. The in-kind works and fund raising by the Hockey Club should not be understated as the community now has a facility valued well in excess of \$1 million, with Council only contributing approximately \$400,000 to \$450,000 of that funding.

Water and Sewer Operations

The works programs reflect the most recent variations approved by Council. With Council having recently let the \$45 million sewer upgrade contract expenditure on both water and sewer operations is expected to increase substantially during the final quarter.

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.

Legal / Resource / Financial Implications

The report reflects current budget allocations in the majority of cases.

Consultation

This report is presented for public information.

Options

The purpose of this report is to provide a timely update on capital expenditure. Even though a number of projects are still to be completed it is important to acknowledge that a total of \$26.55 million worth of works has been undertaken to date out of a total budget of \$57.7 million (46%). Certainly this result could be improved but it is also important to acknowledge that a significant amount of work has been completed to date to improve the infrastructure within our shire.

The recommendation that follows is for Council to note the contents of this report.

RECOMMENDATION

That Council notes the contents of the Capital Expenditure - Quarterly Update report for the period ending 31 March 2011.

Attachment(s)

1. Capital Expenditure - General Fund (four pages - separate A3 attachment)
2. Capital Expenditure - Water Fund (one page - separate A3 attachment)
3. Capital Expenditure - Sewer Fund (two pages - separate A3 attachment)

11. Civil Services Group Reports

11.1 Naming Proposal - Public Roads

File Reference	Naming - Roads & Streets
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Asset Management
Objective	To determine road names for a new subdivision - Coastal Grove Estate at Lennox Head.

Background

This 'Coastal Grove' development is located adjacent to Blue Seas Parade and Survey Street, Lennox Head. As construction works near completion the allocation of street names is required.

The application for this development (DA 2006/864) was approved by the Department of Planning (MP 06-0002) on 23 August 2007. The approval did not include road names. This report is presented to enable the road naming to be completed in accordance with Council's policy.

Key Issues

- Suitability of road names at 'Coastal Grove Estate', Lennox Head.

Information

The applicant has consulted with council staff and subsequently submitted proposed names for their subdivision.

The attached plan shows the road layout for the roads described below.

Road One

This road is an extension of Blue Seas Parade. It is proposed that **Blue Seas Parade** be the name for road one.

Road Two

This road is a new road heading south from Blue Seas Parade past Survey Street. All properties that had Survey Street numbers are not affected even though Survey Street now intersects road two.

The applicant has suggested the following names:

- Matilda Street – this name has an iconic Australian link and also was the name of a vessel arriving with the third fleet in 1791
- Dossor Street – this name is presented in memory of a past Dossor family member, James Dossor. This would reflect the family's connection with this land. James Dossor was an architect and Lord Mayor of Hull, York UK during the 1930s.

It is recommended that **Matilda Street** be the name for road two.

Road Three

This road is a new cul-de-sac off road two. The applicant has proposed Brolga Place. It is proposed that **Brolga Place** be the name for road three.

These suggestions for the abovementioned roads are considered to be in accordance with the guidelines contained within Council's policy.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The Council has adopted a policy in respect of road naming and this was developed to be consistent with the Geographical Names Board guidelines.

Consultation

There has been discussion with the applicants as to the suitability of suggested names.

Options

It is open for Council to approve, reject or propose alternatives for any of the proposals outlined in the above report.

It is recommended that these names be advertised.

It is also recommended that if no submissions are received that the proposed names be adopted.

RECOMMENDATIONS

That Council place on exhibition the following proposed names for the Coastal Grove subdivision. If no submissions are received, these names will be adopted for use.

- Road One - Blue Seas Parade
- Road Two - Matilda Street
- Road Three - Brolga Place

Attachment(s)

1. Plan - Coastal Grove Estate

11.2 Fishery Creek Watermain Underbore - Contractor Engagement

File Reference	Fishery Creek Bridge Water Main Replacement, Tenders & Quotations
CSP Linkage	Transparent and accountable governance
Delivery Program	Water Services
Objective	To consider options for the engagement of a preferred contractor

Background

In December 2009 the single water main serving West Ballina failed at Fishery Creek Bridge and a temporary repair was undertaken. To establish permanent repairs, it has been determined that the best strategy is to replace the water main by completing an under bore under Fishery Creek.

Based on the estimate to complete the project, quotations were sought and a contractor engaged. The site was prepared and materials supplied by Council. However during the contractor's mobilisation phase, a range of contractual issues arose. These issues were not able to be satisfactorily resolved and as a result the Council and the contractor have agreed to terms in respect of terminating the contract.

Following this contract termination, a further round of quotations was sought. After amending the design and specification, it was expected that the estimate would now exceed the statutory tendering limit of \$150,000. To reduce the procurement time, quotations were preferred to a tender process. Reducing the procurement time is important as Council is incurring costs associated with the ongoing maintenance of the established work site and there is a risk of damage to the pipe waiting for installation.

Outside of meeting the statutory requirements, quotations were considered equal to the tender process in terms of establishing a reliable market response for the services required.

The purpose of this report is to seek Council's approval to award a contract in response to the assessment of the quotations received.

Key Issues

- To award a contract in accordance with Local Government Regulations taking into consideration the exceptional circumstances of the works.

Information

Quotations were sought from the following contractors. The key selection criteria were price, commencement availability, and capacity and experience in this type of work.

There is a limited pool of suitable contractors for this type of work, and availability can further reduce the market response.

- | | |
|--|----------------------|
| • Directhit Trenchless Pty Ltd | \$311,650.00 |
| • Field Directional Drilling Pty Ltd/
Coffs Coast Under Road Drilling Pty Ltd | Did not submit quote |
| • Rock Drilling Australia | \$233,112.00 |

The specification is a schedule of rates and the sum listed above for Rock Drilling Australia includes a 20% contingency for potential difficult ground conditions.

As indicated above, it was considered necessary to advance to a new contract as quickly as possible. On this basis, quotations were called instead of tenders. The recommendations to this report request Council to enter the contract by declaring, in accordance with the Local Government Act, that extenuating circumstances prevented Council calling tenders for this project.

It is the assessment of the appropriate Council officers that the quotation of Rock Drilling Australia is preferred as the quotation offering the best value of money for Council. Council has received professional technical advice in respect of the specification and the advisor has been able to assist in terms of the value for money and contractor capability assessment.

If the authority to enter the contract is provided by Council, agreement has been reached with Rock Drilling Australia for project mobilisation to commence as early as 16 May 2011.

Sustainability Considerations

- **Environment**

The proposed contractor will be required to manage risks associated with sediment and erosion control, impacts on Fishery Creek Canal and adjacent mangrove areas. Council staff will supervise the construction of the under bore and monitor environmental compliance.

- **Social**

The contract will ensure a safe and sustainable supply of drinking water to the residents of West Ballina. This will ensure against possible failures of the current bridge crossing that has previously failed and is in need of replacement.

- **Economic**

The work is essential in maintaining the water supply service to West Ballina.

Legal / Resource / Financial Implications

Council's solicitor has reviewed and made recommendations on the terms and conditions of the proposed contract.

The recommendations to this report seek to ensure Council complies with the statutory provision related to tendering. On this occasion it is recommended that Council recognise the extenuating circumstances associated with the procurement.

The available budget for this work is \$124,000. The contract value is \$233,122. It is proposed to fund the short fall by reallocating \$45,000 from the Mains Operations Budget (currently trending below budget and can accommodate the transfer) and by reallocating the \$55,000 allocated for the Marom Creek PAC Plant. This work will not be undertaken in the current financial year as it is proposed to incorporate the facility into the fluoride dosing plant.

Consultation

No formal consultation program is required for this project.

Options

1. Accept the recommended quotation.

This will require the Council to declare that extenuating circumstances meant that tenders were not the most appropriate direction for Council in the circumstances.

2. Call for Tenders

This option is not expected to provide any procurement advantages to Council and will incur additional costs to maintain the site.

Option One is preferred as Council can still meet its statutory obligations, avoid the costs of delay and be confident of receiving value for money.

Subject to the Council recording the reasons for doing so, Section 55 (3) of the Local Government Act, 1993 allows the Council to enter a contract without calling tenders and this process is recommended below.

RECOMMENDATIONS

1. That Council accept the quotation from Rock Drilling Australia Pty Ltd to complete RFQ558 Fishery Creek Water main Under Bore for an amount of \$233,112 including GST.
2. That Council record, in accordance with Section 55(3) of the Local Government Act 1993, that in the extenuating circumstances of incurring ongoing site maintenance costs, the calling of tenders for the contract referred to in point one, would not have provided a satisfactory result or financial benefit to Council.
3. That Council authorises the General Manager to sign the contracts and attach the Council seal to the documents.

Attachment(s)

Nil

11.3 Policy (Revoke) - Access from Unsealed Rural Roads

File Reference	Council Policies
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To revoke the Development Applications Relying on Vehicular Access from Unsealed Rural Roads policy.

Background

Policies within Council's policy register are systematically being reviewed to ensure that they reflect contemporary practices and legislative requirements.

The purpose of this report is to revoke the Development Applications Relying on Vehicular Access from Unsealed Rural Roads policy as it is no longer required.

The Ballina Shire Combined Development Control Plan (DCP) - Chapter 18 - Rural Lands, embodies the requirements of the policy. Chapter 18 provides for all weather (sealed) access for certain types of development in rural areas and does not rely on the cross reference to the policy for the applicable controls.

The Chapter 18 provision is more contemporary than the policy, with the policy adopted in July 2006 and the DCP coming into effect in June 2009. The provision was subject to Council debate and therefore articulates Council's most current position.

Key Issues

- Ensure Council's policy register is systemically reviewed and current.

Information

Due to the provisions The Ballina Shire Combined Development Control Plan (DCP) - Chapter 18 - Rural Lands, the Development Applications Relying on Vehicular Access from Unsealed Rural Roads policy is no longer required.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable

- **Economic**
Not Applicable

Legal / Resource / Financial Implications

There are no legal or financial implications in rescinding this policy.

Consultation

Not applicable.

Options

The Ballina Shire Combined Development Control Plan (DCP) - Chapter 18 - Rural Lands, is not reliant on the policy and would not be adversely impacted if the policy was revoked.

RECOMMENDATIONS

That Policy D08 Development Applications Relying on Vehicular Access from Unsealed Rural Roads policy be revoked and removed from the policy register as Council no longer requires it as provisions are adequately covered in the Ballina Shire Combined Development Control Plan (DCP) - Chapter 18 - Rural Lands.

Attachment(s)

1. D08 - Development Applications Relying on Vehicular Access from Unsealed Rural Roads policy.

11.4 Policy (Review) - Contributions for Dust Sealing of Roads

File Reference	Policies
CSP Linkage	Transparent and accountable governance
Delivery Program	Engineering Works
Objective	To consider a review of the Contributions for Dust Sealing of Roads Policy.

Background

All of Council's policies are progressively being reviewed to ensure they reflect contemporary practices. The purpose of this report is to review the Contributions for Dust Sealing of Roads Policy.

Key Issues

- Review of the policy.

Information

Council adopted this policy in January 2008 to establish a procedure which provides the opportunity for rural residents to voluntarily fund the dust sealing of gravel roads adjacent to their properties.

As outlined in the original report in October 2007, the policy was not intended to address broader road management issues by seeking new revenue sources for projects. Rather the purpose of the policy was to provide direction to staff when responding to enquiries and to provide a framework to support any potential agreements.

Since the adoption of the policy, only one project has been undertaken using its provisions. Dust sealing of Tuckombil Lane, Alstonville, was completed in 2008. The residents who contributed were very happy with the outcome and from Council's perspective the result was also positive. There have been several other enquiries however the works have not proceeded on those occasions.

Whilst only one agreement has been established, the policy is still considered to be useful to Council. One of the advantages is that on the occasions residents seek to upgrade their own road, the policy sets out the conditions that this can be considered. Previous to the policy, Council was receiving ambit requests which were difficult to manage and would lead to potentially inconsistent outcomes.

The draft revised policy is unchanged other than a transfer to the new policy template. The operation of the policy has not identified any reasons for further changes.

Sustainability Considerations

- **Environment**
Road improvements provide enhanced environmental outcomes for issues such as dust, erosion effects etc.
- **Social**
Road improvements assist with transport and provide amenity that contributes to social development.
- **Economic**
Improved road user conditions and possible road safety improvements contribute to economic development.

Legal / Resource / Financial Implications

The policy is unchanged other than the transfer to the new policy template.

Consultation

A public exhibition was conducted at the time the original policy was proposed. No consultation has been undertaken in preparing the revised policy.

Options

Council can either accept or reject the proposed policy. Council may also amend or make additions to the policy's terms.

It is recommended that the revised policy be placed on exhibition for public comment.

It is also recommended that, if no submissions are received, the exhibited policy be adopted with no further action required.

RECOMMENDATIONS

That Council place the revised Contributions for Dust Sealing of Roads Policy, as attached to this report, on exhibition for public comment with any submissions received to be resubmitted to Council. If no submissions are received then no further action is required.

Attachment(s)

1. Policy - Contributions for Dust Sealing of Roads Policy.

12. Public Question Time

12. Public Question Time

13. Notices of Motion

13.1 Notice of Motion - Dredging

File Reference Notices of Motion

Councillor Cr Susan Meehan

I move

That the draft Operational Plan be amended to include an action for Council to seek funding from the State and Federal Governments to assess the opportunities and constraints associated with dredging the entrance to the Richmond River and North Creek having regard to environmental, social and economic outcomes.

Councillor Comment

Our community often comments on the sand build up at the entrance to the Richmond River on Ballina bar. The many advantages of dredging are discussed with possible environmental, social and economic improvements.

Examples include, dredging the shallow bar would make boating and fishing for both professionals and amateurs far safer. Ballina Marine Rescue and Ballina Fisherman's Co-op have long identified the danger of the bar and are supportive of further investigation.

Development of a Ballina Marina with all its resultant economic, employment and social benefits is viewed favourably by the LPMA.

The North wall of the bar has been shown to impede sand movement to the North, appropriate sand deposition could improve this situation, and of course sand is a valuable resource itself.

In 2009 Council withdrew an EOI with NSW Waterways Program which required us to spend \$80,000 on a dollar for dollar basis to fund a 'Feasibility Study for Dredging at Ballina' however the Minister for Lands at that time Tony Kelly requested Lands do a hydrographic survey of the Richmond River which would compliment out Ballina Foreshore Masterplan. He stated, **"under the River Entrances Program, the Dept. of Lands is responsible for maintaining navigable river entrances along the NSW coastline"**

With the Federal Government committed to Regional Development and a new State Government with a regional view, the next twelve months could be critical in gaining support for this important project.

COUNCILLOR RECOMMENDATION

That the draft Operational Plan be amended to include an action for Council to seek funding from the State and Federal Governments to assess the opportunities and constraints associated with dredging the entrance to the Richmond River and North Creek having regard to environmental, social and economic outcomes.

Attachment(s)

Nil

13.2 Notice of Motion - Surf Schools

File Reference Notices of Motion

Councillor Cr Jeff Johnson

I move

1. That the number of "Surf School" (typically for beginners) licences in Council's Commercial Activities on Public Land Policy be increased from three to five, under the same terms and conditions as the initial three.
2. That the number of "Stand Up Paddle Board" licences in the same policy be decreased from three to two, as Council has only issued two licences.
3. That the two new licences, as per point one, be offered to the two applicants who were unsuccessful during the recent tender process.
4. That the Commercial Activities on Public Land Policy be reviewed prior to the expiry of the current three year licence period.

Councillor Comment

Council resolved in 2010 to issue 10 surf school licences, three for beginners (larger surf schools), three for stand up surfing and four for elite surf coaching.

The prime reason for restricting the number of licences was to prevent over crowding of schools on beaches. However, of the three stand up surf schools only two have been taken up. The two that have been accepted, as well as the four elite surf schools are being under utilised, such that the over crowding is not an issue and there is evidence of more demand for beginner classes.

COUNCILLOR RECOMMENDATION

1. That the number of "Surf School" (typically for beginners) licences in Council's Commercial Activities on Public Land Policy be increased from three to five, under the same terms and conditions as the initial three.
2. That the number of "Stand Up Paddle Board" licences in the same policy be decreased from three to two, as Council has only issued two licences.
3. That the two new licences, as per point one, be offered to the two applicants who were unsuccessful during the recent tender process.
4. That the Commercial Activities on Public Land Policy be reviewed prior to the expiry of the current three year licence period.

13.3 Notice of Motion - Moratorium on Coal Seam Gas Mining

File Reference Notices of Motion

Councillor Cr Jeff Johnson

I move that

1. That Ballina Council unreservedly support the request of the NSW Farmers Association for a moratorium on all Coal Seam Gas (CSG) mining in NSW.
2. That Council write to the NSW Premier, NSW Opposition Leader, The Federal Environment Minister and our Local Member to strongly urge a moratorium on CSG exploration and mining in NSW until an independent environmental impact statement has been concluded.

Councillor Comment

The NSW State Government has approved exploration leases and test drilling licenses throughout NSW, including the Northern Rivers area.

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. 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 new approvals are given. Furthermore, there should be an immediate halting of any new test well before an independent assessment has been completed.

COUNCILLOR RECOMMENDATION

1. That Ballina Council unreservedly supports the request of the NSW Farmers Association for a moratorium on all Coal Seam Gas (CSG) mining in NSW.
2. The Council write to the NSW Premier, NSW Opposition Leader, The Federal Environment Minister and our Local Member to strongly urge a moratorium on CSG exploration and mining in NSW until an independent environmental impact statement has been concluded.

Attachment(s)

Nil

14. Advisory Committee Minutes

14.1 Finance Committee Minutes - 7 April 2011

File Reference Finance Committee

Attendance

Cr P W Silver (Mayor - in the chair), S L Cadwallader, B C Smith, K H Johnson, R A Hordern, D E Wright, J L Johnson, A J Brown and S M Meehan.

Paul Hickey (General Manager), John Truman (Civil Services Group Manager), Rod Willis (Regulatory Services Group Manager), Steve Barnier (Strategic Services Group Manager), Peter Morgan (Manager Finance & Governance) and Sandra Bailey (Secretary) were in attendance.

There were 16 people in the gallery at this time.

1. Apologies

Nil

2. Declarations of Interest

Cr Silver – declared an interest in Item 4.8 – Swimming Pools – Strategic Plan. (Nature of Interest – non pecuniary - he is a Patron of the Alstonville Swimming Club and has family involvement in water polo). He will be remaining in the meeting while the matter is discussed.

Cr Silver – declared an interest in Item 4.1 – Commercial Use of Footpath Fes – 2011/12. (Nature of Interest: non-pecuniary – he is the owner of a commercial property which could be impacted at some stage in the future). He will be remaining in the meeting while the matter is discussed.

3. Deputations

- **Anne Marchment** – spoke in favour of Item 4.8 – Swimming Pools – Strategic Plan.
- **Clem MacMahon, Ballina Naval & Maritime Museum** – spoke in relation to Item 4.5 – Budget and Fees and Charges – Updates and in particular in relation to wooden vessels located at the Museum.
- **Ian Duncan** – spoke in relation to Item 4.7 – Newrybar Community Hall – Public Toilet and On-site Sewage System.

4. Committee Reports

4.8 Swimming Pools - Strategic Plan

RECOMMENDATION

(Cr Susan Meehan/Cr Robyn Hordern)

That Council seek community feedback in response to the attached Ballina Shire Council Aquatic Facilities Strategic Financial Plan Discussion Paper through a public consultation process.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

4.5 Budget and Fees and Charges - Updates

RECOMMENDATION

(Cr Sharon Cadwallader /Cr Jeff Johnson)

1. That Council approves amendments to the draft budget, as outlined within this report and as per the following table.

Description	Budget as per March Report \$000's	Increase / (Decrease) \$000's	Working Capital Deficit \$000's
Deficit as per March report			198
Regional Library	1,155	11	
Richmond River County Council	210	10	
Tourism Salaries	398	(78)	
Street Cleaning	156	38	
Various Civil Services Budgets	N/A	(19)	
Tree Planting Program	0	15	
Various Operational Budgets	N/A	(15)	
Revised Deficit as per April report			160

2. That the draft fees and charges be amended to include the revised bus shelter advertising fees as follows.

<i>Item</i>	<i>2010/11</i>	<i>2011/12</i>
J Poles (per pole) - Six Months	260	350
J Poles (per pole) - Annual	520	630
Shelters (per shelter) - Six Months	620	840
Shelters (per shelter) - Annual	1,240	1,500

3. That the draft fees and charges be amended to include the new fees for maps as follows.

Non standard aerial photo map

A0 \$86

A1 \$68

A2 \$56

A3 \$35

A4 \$26

4. That Council receive a report regarding the ongoing need for preservation and expansion of the Ballina Naval Museum and associated timber vessels.
5. That Council make a submission to the Richmond River County Council Management Plan requesting clarification as to what the 30% increase is funding and whether it can be spread over two financial years.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

RECOMMENDATION

(Cr Sharon Cadwallader /Cr Jeff Johnson)

That Council receive a report on conducting a free ferry day.

FOR VOTE - Cr Silver, Cr Cadwallader, Cr K Johnson, Cr Smith, Cr Wright, Cr J Johnson, Cr Brown, Cr Meehan

AGAINST VOTE - Cr Hordern

ABSENT. DID NOT VOTE - Cr Moore

4.7 Newrybar Community Hall - Public Toilet and On-site Sewage System

RECOMMENDATION

(Cr David Wright/Cr Keith Johnson)

1. That Council approves an adjustment to the 2010/11 budget of \$20,000 for the installation of a new on-site sewage management system at the Newrybar Hall, with this work to be funded through the remaining community halls donations budget (\$8,259) and the balance to be funded by increasing the current deficit.
2. That Council commence the process to amalgamate the two lots of Community Land that are referenced within this report.
3. That Council authorises the use of existing budgets of approximately \$1,500 per annum to be provided to the Newrybar Hall Committee to assist in cleaning public toilet.
4. That Council defer the allocation of any funding for the installation of new public toilet facilities to allow a further assessment to be made of the locality after the relocation of the Rural Fire Service Shed.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

4.1 Commercial Use of Footpath Fees - 2011/12

RECOMMENDATION

(Cr David Wright/Cr Robyn Hordern)

That Council notes the contents of this report in respect to the pricing methodology for the commercial use of Council owned footpaths.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

4.2 Waste Charges - Recycling - 2011/12

RECOMMENDATION

(Cr Sharon Cadwallader /Cr Jeff Johnson)

That Council charge \$74/tonne for self hauled recyclables to the waste management centre.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

4.3 Environmental Action Plan - Priority Actions

RECOMMENDATIONS

(Cr David Wright/Cr Sharon Cadwallader)

1. That Council notes the contents of this report regarding the review of the Environmental Action Plan.
2. That Council allocate the estimated income generated by the solar PV systems in the first year to improvements in the lighting efficiency at the Council's Works Depot; as follows
 - a) Refitting external security lighting with energy efficient automatically controlled lighting.
 - b) Installing purpose specific energy efficient lighting and automatic control in the depot work sheds and amenity buildings.
3. That Council receive a report listing actions which Council can take to reduce water, energy and other costs with a payback period of five years or less.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

4.4 Policy (Review) - Land Development Reserve - Management

RECOMMENDATION

(Cr David Wright/Cr Sharon Cadwallader)

That Council place the draft Property Activities Reserve Policy, as per the second attachment to this report, on exhibition public comment with any submissions received to be resubmitted back to Council. If no submissions are received then the Policy is considered to be adopted and no further action is required.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

RECOMMENDATION

(Cr Keith Johnson/Cr David Wright)

That the Commercial Services Committee receive a report on a review of the financial performance measures used for Council's commercial/entrepreneurial activities.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

4.6 Wardell Community Centre

A **Motion** was moved by Cr Sharon Cadwallader

That Council consult with the existing users of the Centre in regard to the discontinuation of the operation of the Wardell Community Centre effective from the end of July 2011, due to its on-going low level of use and net cost to the community and report back to Council.

The **Motion LAPSED.**

RECOMMENDATION

(Cr Keith Johnson/Cr David Wright)

1. That Council approves in-principle, the discontinuation of the operation of the Wardell Community Centre unless patronage/costs can be increased/decreased enough to warrant continuing operation.
2. That the Wardell community over the next 12 months be requested to provide a small working party to examine patronage, and cause it to increase, and also find ways to reduce operating costs.
3. That Council assist the Trustees of the Wardell Memorial Hall in preparing an action plan for how to optimise its use.

FOR VOTE - Cr K Johnson, Cr Smith, Cr Wright, Cr J Johnson, Cr Brown

AGAINST VOTE - Cr Silver, Cr Cadwallader, Cr Hordern, Cr Meehan

ABSENT. DID NOT VOTE - Cr Moore

Cr Wright left the meeting at 7.07 pm

4.9 Fleet Acquisition and Replacement Program

RECOMMENDATIONS

(Cr Ben Smith/Cr Sharon Cadwallader)

1. That Council include in the 2011/12 budget a variation to the plant replacement program to include the purchase of the following additional plant items:
 - a) 1 x Backhoe (expansion)
 - b) 1 x Roller (expansion)
 - c) 2 x Tipping Trucks and Dog Trailers (expansion)
 - d) 1 x Water Truck (expansion)
 - e) 1 x Mini Excavator (expansion)
 - f) 2 x Light Tipping Trucks (expanded fleet to be operated by current staff)
 - g) 1 Crew Cab Utility (change in existing fleet to be operated by current staff)
2. That Council approves the financing of items 1 a) to f) from loan funds.
3. That Council endorses the employment of a maximum of six additional staff to ensure the maximum utilisation of the expanded plant fleet, as per items 1 a) to e), with recruitment to take place in line with the timing of the plant purchases.
4. That Council endorses the update of the Ten Year Plant Replacement Program for the purposes of guiding annual budget and long term financial plan preparations, as attached to this report. Subject to points one and two being approved, this program is also to be updated to include the expansion of the plant fleet.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Moore, Cr Wright

4.10 Works Depot - Draft Masterplan

RECOMMENDATIONS

(Cr Sharon Cadwallader /Cr Ben Smith)

1. That Council endorses the "Works Depot - Southern Cross Drive, Ballina - Draft Development Masterplan", as attached, subject to the funding for the works being examined in further detail through an additional report to Council, as per point two.
2. That Council receive a further report examining the impacts of financing the works outlined in point one through the use of an increased oncost rate, with that report also giving consideration to an extension of the works timeframe from five to up to ten years.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Moore, Cr Wright

4.11 Roads - Capital Works and Operating Projects

A **Motion** was moved by Cr Susan Meehan and seconded by Cr Alan Brown.

1. That Council endorses the approach outlined in this report that Council's engineering staff continue to monitor Smith Drive segments 20, 30 and 40 as part of the roads maintenance program, with maintenance works to be undertaken from within existing budgets, when determined necessary (estimate \$75,000).
2. That Council endorses the approach outlined in this report to take no further action on reconstruction work on Smith Drive segment 10 (estimate \$29,000) until intersection works with the Ballina Bypass Alliance project are complete (Segment 10).
3. That Council endorses the approach outlined in this report to not bring forward reconstruction work on Smith Drive segment 20 (estimate \$213,000) as it has been assessed as having a lower priority than other reconstruction works outlined in Council's forward financial plan.
4. That Council commit to improved Ballina Town Entry maintenance within existing budgets until Council road segments become Council responsibility and additional grant funding will likely be received.

Cr J Johnson left the meeting at 07:17 PM.

Cr K Johnson left the meeting at 07:31 PM.

The **Motion** was **LOST**.

FOR VOTE - Cr Brown, Cr Meehan
AGAINST VOTE - Cr Silver, Cr Cadwallader, Cr Smith, Cr Hordern
ABSENT. DID NOT VOTE - Cr K Johnson, Cr Moore, Cr Wright, Cr J Johnson

RECOMMENDATION

(Cr Sharon Cadwallader /Cr Robyn Hordern)

1. That Council endorses the approach outlined in this report that Council's engineering staff continue to monitor Smith Drive segments 20, 30 and 40 as part of the roads maintenance program, with maintenance works to be undertaken from within existing budgets, when determined necessary (estimate \$75,000).
2. That Council endorses the approach outlined in this report to take no further action on reconstruction work on Smith Drive segment 10 (estimate \$29,000) until intersection works with the Ballina Bypass Alliance project are complete (Segment 10).

3. That Council endorses the approach outlined in this report to not bring forward reconstruction work on Smith Drive segment 20 (estimate \$213,000) as it has been assessed as having a lower priority than other reconstruction works outlined in Council's forward financial plan.
4. That Council endorses the approach to maintain current roadside maintenance practices within existing budgets and the scope of town entry maintenance works be reconsidered when the road segments become Council responsibility after bypass opening. Additional grant funding (which is yet to be determined) will likely be received.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr K Johnson, Cr Moore, Cr Wright, Cr J Johnson

4.12 Delivery Program and Operational Plan - 2011/12 to 2014/15

RECOMMENDATION

(Cr Sharon Cadwallader /Cr Ben Smith)

1. That Council approves the exhibition of the Draft Delivery Program and Draft Operational Plan, as attached, inclusive of any amendments arising from this meeting.
2. That Council consider the provision of a bus shelter on the Pacific Highway in the Deadman's Creek locality as part of the Operational Plan.

Cr K Johnson returned at 07:31 PM

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore, Cr Wright, Cr J Johnson

MEETING CLOSURE

7.38 pm

RECOMMENDATIONS

That Council confirms the minutes of the Finance Committee meeting held Thursday 7 April 2011 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

15. Reports from Councillors on Attendance on Council's behalf

15.1 Mayoral Meetings

File Reference	Mayoral
Councillor	Cr Phillip Silver

Activities since the March 2010 Ordinary meeting:

<u>Date</u>	<u>Function</u>
28/3/11	Ballina Visitor Guide launch at Knockrow
29/3/11	Cumbalum delegation meeting with staff in Ballina
29/3/11	Youth Council meeting with staff in Ballina
30/3/11	RSL Lifecare Centenary in Ballina
30/3/11	Tourism Australia function in Byron Bay
1/4/11	Bulky goods delegation meeting with staff in Ballina
4/4/11	Optus briefing with staff in Ballina
4/4/11	Real Estate Agents forum re developer contributions meeting with staff in Ballina
5/4/11	Catchment Management Association meeting in Ballina
5/4/11	Access Reference Group meeting in Ballina
6/4/11	Southern Cross School Library opening in Ballina
7/4/11	Essential Energy briefing in Ballina
8/4/11	Arts Northern Rivers AGM in Alstonville
8/4/11	K Mart Trolley presentation with staff in Ballina
12/4/11	ABC Radio re swimming pools
13/4/11	Aviation Access Working Group meeting in Sydney
14/4/11	Ballina Fishermen Co-op meeting with staff in Ballina
16/4/11	Paddy Bugden Book launch in Alstonville
19/4/11	Envite Green Corp awards in Ballina
25/4/11	Anzac Day in Ballina
27/4/11	Applicant delegation re DA 2010/216 meeting with staff in Ballina

RECOMMENDATION

That Council notes the contents of the report on Mayoral meetings.

Attachment(s)

Nil

16. Questions Without Notice

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 - Land Acquisition - Water Reservoirs

This report contains information relating to confidential negotiations with a landowner and if released to the public could prejudice those negotiations.

Item 17.2 - Land Sale - Southern Cross Industrial Estate

This report contains information relating to confidential negotiations with a prospective purchaser 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 Land Acquisition - Water Reservoirs

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 with the owner of the property and any publication of this information could prejudice those negotiations.

17.2 Land Sale - Southern Cross Industrial Estate

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 and any publication of this information could prejudice those negotiations.