



Notice of Ordinary Meeting

Notice is hereby given that an Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, Cnr Cherry & Tamar Streets, Ballina on **Thursday 27 October 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 stroke extending to the right.

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 2010/628 - Pharmacy Warehouse at Unit 4, Harvey Norman Complex	2
8.2	Development Applications - Works in Progress as at October 2011	31
8.3	Development Consent Statistics - September 2011	38
9.	Strategic & Community Services Group Reports.....	39
9.1	A-Frame Signage - Private Land	39
9.2	Section 94 - Heavy Haulage Contributions Plan	45
9.3	Flat Rock Tent Park - Land Classification	48
9.4	Climate Action Strategy	52
9.5	Lennox Head Cultural and Community Centre - Playgroup	57
9.6	Northern Rivers Community Gallery - Update	60
10.	General Manager's Group Reports	64
10.1	Use of Council Seal	64
10.2	Investments Summary - September 2011	65
10.3	Disclosure of Interest Returns	70
10.4	Councillor Attendance	72
10.5	Ballina Cup - Half Day Holiday 2012	74
10.6	Community Donations	76
10.7	Policy (Review) - Untaken Sick Leave	81
10.8	Policy (Review) - Councillor Facilities & Expenses	84
10.9	Community Building Partnership Grant - Men's Shed	91
10.10	Local Government Election - 2012	94
10.11	Annual Financial Reports - 2010/2011	99
10.12	Capital Expenditure - Quarterly Update	104
10.13	Delivery Program and Operational Plan - 30 September Review	109
11.	Civil Services Group Reports	113
11.1	Local Traffic Committee - October 2011	113
11.2	Waste and Recycling Bins - Provision and Maintenance	119
11.3	Commercial Properties - Organics, Green Waste and Recycling Service	123
11.4	Bulk Waste Services - Community and Sporting Groups	126
11.5	Waste Water Treatment Plants Upgrade - Update	131
11.6	Land for Road Widening - Barlows Road, West Ballina	136
11.7	Tender - Removal of Biosolids from Wastewater Treatment Plants	139
11.8	Tender - Mowing of Various Sporting Fields	142

11.9	Tender - Construction of Ballina Heights Drive	146
12.	Public Question Time	153
13.	Notices of Motion.....	154
13.1	Notice of Motion - Coast to Country Music Festival	154
13.2	Notice of Motion - Domestic Electrical Power Bills	155
13.3	Notice of Motion - Lennox Head Consultative Committee	157
13.4	Notice of Motion - Public Place Recycling	159
14.	Advisory Committee Minutes.....	161
15.	Reports from Councillors on Attendance on Council's behalf	162
15.1	Mayoral Meetings	162
15.2	Australian Airports Assoc - NSW Divisional Quarterly Meeting	163
16.	Questions Without Notice.....	165
17.	Confidential Session.....	166
17.1	Lennox Head Cultural and Community Centre - Insurance Claim	166

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 2. Acknowledgement of Country
 3. Apologies
 4. Confirmation of Minutes
 5. Declarations of Interest and Reportable Political Donations
 6. Deputations
 7. Mayoral Minutes
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1. Australian National Anthem

The National Anthem will be performed by the Headliners.

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

An apology has been received from Cr David Wright.

4. Confirmation of Minutes

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 22 September 2011 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 22 September 2011.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

Graham Eggins - spoke in relation to Item 10.9 - Community Building Partnership Grants - Men's Shed.

7. Mayoral Minutes

Nil items.

8. Regulatory Services Group Reports

8.1 DA 2010/628 - Pharmacy Warehouse at Unit 4, Harvey Norman Complex

File Reference	DA 2010/628
Applicant	Ardill Payne & Partners
Property	Unit 4 of the Harvey Norman Complex on the corner of Boeing Avenue and Stinson Street Southern Cross Industrial Estate, Lot 951 DP 1165266.
Proposal	To undertake the establishment of a Bulky Goods Retail Outlet, being a Wholesale Showroom and Warehouse for Good Price Pharmacy Warehouse.
Effect of Planning Instrument	The land is zoned 4 Industrial under the provisions of the Ballina LEP 1987
Locality Plan	The subject land is depicted on the locality plan attached.

Introduction

Council has received a development application for the use of unit 4 in the Harvey Norman Complex as a Bulky Goods Retail Outlet, Wholesale Showroom and Warehouse for Good Price Pharmacy Warehouse. The matter is submitted to Council as it is considered that the application does not comply with the definition of “**Bulky Goods**” as contained in Clause 27 of Ballina Local Environmental Plan 1987, nor is it a “**Medical and surgical supplies and equipment outlet**” as mentioned in Schedule 3 of Ballina Local Environmental Plan 1987.

This opinion has been supported by legal advice from Council’s solicitor and a Senior Counsel on behalf of a submitter but contested by legal advice submitted on behalf of the applicant. These initial advices have been made available publically.

Reportable Political Donations

Nil

Public Exhibition

This application was not placed on public exhibition, however, eight submissions have been received from individuals and groups in relation to the proposed development and copies of these submissions are attached.

One of the submissions includes the following:

- Advice of Mr T Robinson SC dated 27 July 2010
- Planning Report by Trevor R Howse & Associates re Good Price Pharmacy McGraths Hill

- Planning report by Peterson Consulting Group re Good Price Pharmacy Coffs Harbour Pharmacy
- Planning report by Wakefield Planning re Good Price Pharmacy Armidale.

History

The subject site is situated within an area identified in the Southern Cross Precinct Master Plan as a “bulky goods retail precinct”

Council at its Ordinary Meeting of 26 November 2009 granted consent to DA 2009/435 for the construction of a Bulky Goods Retail Complex Comprising 2 Buildings Containing 13 Units/Tenancies, 1 Warehouse, Associated Car Parking and Landscaping.

This application is for the use of Unit 4 in the above mentioned complex.

The applicant approached Council prior to the submission of this application seeking confirmation that the proposed development was suitable for the subject site.

Council responded in the following manner. *“You are advised that Council officers have assessed the information submitted with your letter dated 8 December 2009 and are of the opinion that the nature of the proposed “large format retail chemist “ does not constitute bulky goods retailing in accordance with the provisions of Clause 27 of the Ballina Local Environmental Plan 1987”.*

Proposal

The application seeks to use Unit 4 of the Harvey Norman Complex for the purpose of Bulky Goods Retail Outlet, Wholesale Showroom and Warehouse (Good Price Pharmacy Warehouse).

The applicant advises that the proposed development will offer the following services and products:

- Display and sale by retail and wholesale of bulky goods consisting of home health care and sports equipment, medical and invalid aids, home care equipment and ancillary health care products
- Provision for the trialling of equipment in the store under the supervision of trained staff
- Warehousing of pharmaceutical and cosmetic products
- Dispensing of Pharmaceutical Benefits Scheme prescriptions and ancillary products
- Sale of traditional pharmaceutical and related products
- On-line ordering (internet, facsimile and telephone) of all of the above products and picking and distribution of such to customers (public and trade)

Unit 4 has an area of 790 square metres, which it is proposed to use in the following manner:

- Bulky Goods Health Care Equipment - 258m² (33%)
- Warehouse, Distribution, Office, Prescriptions, Medications, Amenities On Line Orders - 238m² (31%)
- Wholesale/Retail Mixed Products - 249m² (32%)
- Secure entry/exit point of sale - 35m² (4%)

This is outlined on the coloured floor plan attached.

Applicable Planning Instruments

Ballina Local Environmental Plan 1987

The Ballina Local Environmental Plan 1987 (BLEP) zones the land 4 – Industrial Zone.

A The primary objectives are:

- (a) to regulate the subdivision and use of land to permit its use for industrial purposes and other uses specified in Clause 27 and Schedule 3,
- (b) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for different industry types and intensities of development, and
- (c) to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilization and service distribution.

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

The zoning table for Zone 4 BLEP provides that shops other than those referred to in Clause 27 or Schedule 3 are listed as advertised development permissible with development consent.

Clause 27 of BLEP provides as follows:

- (1) This Clause applies to land within Zone No 4 and land referred to in Schedule 4.
- (2) In this Clause, **bulky goods** means large goods which are, **in the opinion of the council**, of such a size and shape as to require:
 - (a) a large area for handling, storage or display, and
 - (b) easy and direct vehicular access to enable the goods to be collected by customers after sale.
- (3) Subject to subclauses (4) and (5), nothing in this plan shall prevent a person, with the consent of the council, from carrying out development for the purposes of the retail sale of bulky goods on land to which this Clause applies.
- (4) The council shall not consent to an application to carry out development referred to in subclause (3) unless it is satisfied that:
 - (a) suitable land for the development is not available in any nearby business centre,

- (b) to grant consent would not, by reason of the number of retail outlets which exist or are proposed on land within Zone No 4, alter the predominantly industrial nature of the zone, and
 - (c) the proposed development will not detrimentally affect the viability of any business centre.
- (5) This Clause does not apply to development for the purposes of shops selling food or clothing or development for the purposes of produce stores.

Schedule 3 of BLEP contains the following uses:

Newsagency.

Shops used for the sale of:

Hardware,

Medical and surgical supplies and equipment,

Smallgoods and sandwiches.

Other premises used for:

Banking facilities,

Brothels,

Accounting and computing facilities,

Refreshment rooms.

Any other use which closely resembles a use identified above.

There is no definition for a **Medical and surgical supplies and equipment**, in the LEP or the Model provisions.

Draft Ballina Local Environmental Plan 2010

The subject site is zoned IN1 – General Industrial.

The objectives of the zone are:

- To provide a wide range of industrial and warehouse land uses;
- To encourage employment opportunities;
- To minimize any adverse effect of industry on other land uses;
- To enable non – industrial land uses that are compatible with the industrial nature of the locality;
- To provide for the efficient use of industrial land;
- To encourage development that achieves the efficient use of resources such as energy and water;
- To ensure that development does not expose adjoining uses to hazard risks;

Warehousing or Distribution centre and Wholesale supplies, are permissible uses within zone IN1.

Retail premises (shops) and Bulky goods premises are listed in the planning table as prohibited development within zone IN1.

There is no definition for Medical and surgical supplies and equipment in the draft local environmental plan which means that the use is a particular type of retail premises which is prohibited within zone IN1.

State Environmental Planning Policy No 71 – Coastal Protection.

The subject site is located within the area designated as coastal zone, and as such State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71) applies to the site.

Clause 8 provides matters for consideration by a consent authority when it determines a development application to carry out development to which SEPP 71 applies.

These matters were considered as part of the assessment for the building of the complex, and as such are not directly relevant to the occupation of the building.

North Coast Regional Environmental Plan (NCREP)

The objective of the plan as it relates to commercial and industrial development is to “encourage an adequate supply of zoned land located where there are planned growth areas foreshadowed and where essential services can be provided with minimal environmental damage.

The requirements of the NCREP were considered as part of the assessment for the building of the complex and as such are not required to be considered as part of this application.

Ballina Shire Combined Development Control Plan

Ballina Shire Combined Development Control Plan (BDCP) defines the land as I2 General Industry.

Preferred Land Uses of the I2 classification are.

Light industry, general industry, showrooms and other business which require relatively large indoor or outdoor display and sales area

The objectives of the I2 classification are:

To encourage the establishment and expansion of general industries, service trades and selected retail and commercial activities in accessible locations reasonably separated from existing and proposed living areas;

To provide a range of allotment sizes within Industrial Estates to accommodate different industrial needs.

Summary of correspondence received in this matter.

To assist Council the following extracts of correspondence from the applicant and other correspondents are reproduced below.

Applicant's submission dated 11 May 2010 in part states:

The use is described as bulky goods retail and wholesale showroom/warehouse. These types of outlets are often referred to as "large format retail chemist premises"

The proposed outlet will offer the following services and products:

- *Display and sale by retail and wholesale of bulky goods consisting of home health care and sports equipment, medical and invalid aids, home care equipment and ancillary health care products – due to the provision of a large amount of floor stock, customers are also able to trial such equipment in the store under the supervision of trained staff.*
- *Warehousing of pharmaceutical and cosmetic products.*
- *Dispensing of Pharmaceutical Benefits Scheme prescriptions and ancillary products.*
- *Sale of traditional pharmaceutical and related products*
- *On-line ordering (internet, facsimile and telephone) of all of the above products and picking, packing and distribution of such to customers (public and trade)*

A large proportion of the health, sports, invalid and medical aids and home care equipment that are kept and displayed in the tenancy (being kept on the floor) comprise large and bulky items such as: wheel chairs, walking frames, commodes, exercise bikes, walking machines, gophers, easy lift chairs and tread mills etc. all of which are large and bulky items.

Due to the significant proportion of elderly persons in Ballina and the broader region, the proposed outlet is to contain an extensive display of this type of product/equipment.

Similar type operations exist in bulky goods centres in – Gympie Qld, Maroochydore Qld, Rothwell Qld, Castle Hill NSW, McGraths Hill NSW, Tamworth NSW, Cambridge TAS, Wodonga VIC and Kingaroy Qld.

Applicant's submission dated 31 May 2010 in part states:

Mixed categories of smaller non-prescription stock, including that which is ancillary to Bulky Goods, Health Care Equipment, is stored on warehouse shelving in the blue zone and is shared by both On-Line and On-Site sales (wholesale and retail)

In summary, virtually all Use Zones within the premises excluding the Secure Entry/Exit (yellow zone) are utilised to varying degrees for warehouse purposes.

Note

The reference to the blue zone is a reference to the area marked blue on the submitted plan, which is to be used for the purpose of shared warehouse shelving for wholesale/retail mixed products.

The reference to the yellow zone is a reference to the area marked yellow on the submitted plan, which is to be used for the purpose of secure entry/exit area.

It should also be noted that on-line sales to the general public is a retail sale and not a wholesale sale; only on-line sales to trade are wholesale sales.

Objector's submission dated 26 June 2010 in part states:

Our biggest concern is that the proposal is just a front for another pharmacy and that their main business will be by retailing through their public retail access

We would like to bring to your attention some facts relating to the wholesaling aspect of their proposal. Over 30 pharmacies in the Northern Rivers belong to the Dovire buying group in Alstonville which is supplied by API, GPPW's parent company in Brisbane. I believe that there is only one other GPPW store in the near vicinity at Grafton. We cannot see any of the 30 pharmacies trading with the Ballina outlet, when all Pharmacists own shares in the Alstonville operations. This would severely limit any wholesaling opportunities...

Objector's submission 28 July 2010 in part states:

The submission included reports from consulting town planners into the Armidale, Coffs Harbour, and Mc Graths Hills Good Price Pharmacies, who made the following comments into some of the stores mentioned in the original application.

Armidale – *There are no goods that could be described as “bulky goods” in the display areas.*

Coffs Harbour – *Virtually the entire range of goods might be described as small portable goods. It is prudent to note that small handheld shopping baskets are available for use by customers and that no shopping trolleys or the like are available for use by customers. I think this is reflective of the small portable nature of almost all of the goods retailed from the premises.*

McGraths Hill – *Whilst the author of this report is aware that some pharmacy stores offer wheelchairs, scooters and other mobility aids, the Good Price Pharmacy does not, the pharmacy does not sell any items that could be characterised as “bulky goods”.*

Note

In addition to these comments Albury Council was contacted in relation to the Wodonga Store, which had been mooted as a one stop shop, similar to the one to be established in Ballina. Albury Council's comment was that the amount of Bulky Goods sold in the Wodonga Store was "extremely minuscule",

The submission also included an advice from Mr T Robertson SC which in part states:

It is uncontroversial that the proposed use includes the display and sale of large items, such as wheelchairs, walkers and other equipment for adaptive living by persons with post-operative conditions or disabilities. These are obviously a category of goods the sale of which is a separate use to the kind of general pharmaceuticals, hair care products, toothpastes, deodorants, food supplements and other health and beauty products which are sold by the proponent. These small consumer items could not conceivably fall within the description "medical and surgical supplies and equipment" or any like description. While prescription medicines or bandages might arguably be medical supplies (although I think that they are confined to the class of goods which would be required for the replenishment of "supplies" in the sense of a stock of goods which doctors, hospitals and nursing homes must have on hand for medical and surgical purposes). There is a whole range of other goods which have nothing in common with medication, but are sold by the proponent. What is proposed does not, in my opinion, fall within a Schedule 3 shop.

There is no doubt that a substantial part of the use to which these premises are proposed to be put will involve the retail sale of non-bulky items, which could not be described as medical and surgical supplies and equipment, nor as ancillary to them. I defy anyone to construct an argument that this week's specials at the Good Price Pharmacy Warehouse are ancillary to wheelchairs, walkers and treadmills. The proposition invites derision.

The Statement of Environmental Effects (SEE) argues that the development is permissible as the use of the warehouse format (the storage and sale of goods in bulk) is bulky goods retailing, or else the display of a few bulk items (wheelchairs, treadmills etc) using a large floor area subsumes the use of the premises as a pharmacy and for the sale of thousands of small consumer items. Each argument deployed by the SEE has been rejected by the Courts or is predicated upon facts that are contrary to the description of the use in the SEE.

The sale of bulky goods is a separate use. It could not be argued that the sale of a treadmill or a walking frame reflected a dominant use to which the sale of hairspray, toilet roll and toothpaste was ancillary and hence subsumed within the bulky goods use. That is simply nonsensical. However, the Courts have rejected in terms the floor space argument in a succession of cases because they have recognised that it is not the area of the shop floor but rather the intensity of the use which matters

Conclusion

In my opinion, the proposed development is unlawful. Warehouse-style retailing where a wide range of consumer products are sold amidst a few bulky items in bulky goods zones is the equivalent of fitting a square peg into a round hole. In this case, it is evident that the "warehouse" is simply a pharmacy which also sells the kind of goods sold by discount department stores, supermarkets and convenience stores. The SEE invites an examination of the other centres by the proponent with which this proposal is said to be comparable. In every respect, including permissibility, those operations are shops. They do not sell bulky goods and they were not authorised by the relevant consent authorities because they sold bulky goods. In my opinion, the Council cannot grant consent to this development application. If it did it is likely that its decision would be successfully challenged.

Applicant's submission dated 13 September 2010 in part states:

The term "Bulky Goods" is meant to include products ancillary to the use of those Bulky Goods by the category of person (market) targeted by the business.

The dominant activity of the business is targeted towards the special needs of persons coming under the following description:-

The aged, disabled, trauma victims, recuperating surgery patients, home physiotherapy treatment, home orthopaedic patients and in general terms, those requiring specialised equipment for home treatment and health care.

The business concept is new in that it targets specialised needs of customers rather than the general needs of the community at large which are usually associated with smaller "traditional pharmacies" the concept may be described as "total Health Care under one roof" for the targeted market.

The bulky goods and their ancillary products component of the business is the dominant use of floor space in the premises being a combined 65% of total floor space.

The initial Statement of Environmental effects lists and makes reference to similar type of operations in Bulky Goods centres in various locations. This reference has been misinterpreted and has been taken out of context. Those listed GPPW establishments are in fact shops (as opposed to Bulky Goods Retail and Wholesale Showroom/Warehouse) and are located in Bulky Goods centres and permitted under the relevant Town Planning Schemes.

The proposed Ballina operation is a totally different concept to "large format chemist/pharmacies".

The listed shops were described as "similar type operations" by the Applicant but this term was meant to refer to the visual amenity, size, layout etc of GPPW "large format chemist/pharmacies". These shops do not stock large ranges of Bulky Goods nor do they provide on-line ordering and delivery services as is also the case with the existing "Community Pharmacies". There is a vast difference between "community pharmacies" (shops), "large format

chemist/pharmacies” (shops) and the specialised target market and concept proposed at and from the subject premises.

Applicant’s submission dated 28 March 2011 including the Remus Report dated 25 March 2011 in part states:

The proposed Ballina GPPW is not a traditional pharmacy, is not a large format retail chemist premises and is not the same as the Wodonga GPPW. The proposed use is such that involves the display and sale of medical and surgical supplies and equipment, including bulky goods home health care equipment, aids and accessories, ancillary personal health care items and ancillary pharmacy.

It has been clearly expressed that the proposed use is a new under one roof concept totally dedicated to the supply of personal health care products with emphasis on a target market consisting of a “disadvantaged sector” of the public in the form of “the aged, disabled, trauma victims, recuperating surgery patients, home physiotherapy treatment, home orthopaedic patients and in general terms, those with limited mobility and requiring specialised equipment for home treatment and health care. In addition there is a broad range of home health and fitness equipment available”. As required under Federal Legislation the general public must also have access to the premises although the primary marketing strategy for the proposed business is directed towards the “disadvantaged sector”

The products include bulky goods health care equipment, accessories and aids, Medical and Surgical Supplies including supply of PBS items from the ancillary Dispensary and to complete the “under one roof concept”, ancillary personal care products used by persons in the “disadvantaged” target market.

It is appropriate to consider that the proposed use of the premises is fully embraced by the category “medical and surgical supplies and equipment” as permitted in Zone 4 and is consistent with Clause 27 and Schedule 3 of the BLEP.

All products sold fall comfortably under the “medical and surgical supplies and equipment” category including personal care products the likes of shampoos, soaps, toothpastes, deodorants, skin creams, vitamins, tissues, toilet paper, sanitary pads and without going into details, disposable baby nappies for use by persons with needs for “special protection”. These types of items are an integral part of the “under one roof” concept and are supplied to eliminate the need for persons with mobility restrictions to shop for their needs in several locations. These products are ancillary and directly related to the all embracing “medical and surgical supplies and equipment” products used by the “disadvantaged” category of persons.

The one stop concept cannot be compared with the existing pharmacies in Ballina. The defining differences are location (outside the protected zone/precinct and does not rely on proximity to medical centres/practices); size (provides larger stock range capability including bulky goods display and testing); pricing (provides heavily discounted prices); on line ordering and delivery (optional for those persons with mobility problems); parking (ample and convenient parking to enable collection of goods by customers).

A pilot ‘one stop’ concept business for GPPW commenced trading in Wodonga Vic. This business was established as the ‘test model’ for future ‘one stop’ concepts in other locations (with higher population demographics than Wodonga) in the eastern states of Australia. The first target location for a larger upgraded model is Ballina.

We strongly suggest that a comparison of the Wodonga business with the proposed Ballina business is grossly premature and would produce a number of anomalies and distortions brought about mainly by the difference in population demographics and climate conditions between the two regions.

Consistently throughout previous DA Submissions to Council on behalf of the applicant, it has been emphatically stated that the Ballina proposal is a new ‘One Stop’ concept not to be confused with or likened to small ‘community pharmacies’ or ‘large format retail chemist premises’ Furthermore, it was indicated that the first pilot ‘One Stop’ concept was established at Wodonga and Ballina was to be the second such business (expanded and upgraded to fit the regional demographics and ‘target market’)

Council obtained an initial opinion in this matter from Maddocks dated 19 April 2011 which in part states:

Summary of Advice

- The development application proposes a warehouse with a number of uses, which are independent uses that need to be individually assessed against the relevant zone objectives.*
- The proposal consists of a bulky goods use, a medical supply and equipment use, as well as another use which consists of the sale of personal goods and household goods.*
- The bulky goods use and medical supply and equipment use can be assessed as being compatible with objective A(a) of the Zone 4 – Industrial Zone. The additional use for the sale of personal goods and household goods is not a use which is envisaged by either Clause 27 or Schedule 3 and is not for a planning purpose consistent with objective A(a) of the Zone 4 – Industrial Zone.*
- On the basis that the use for the sale of personal goods and household goods is not a use that permits use for industrial purposes and other uses specified in Clause 27 and Schedule 3, the proposal is not consistent with objective A(a) of the Zone 4 – Industrial Zone and as such Council cannot be satisfied, as required by Clause 9(7) of the BLEP, that the proposal is consistent with the objectives of the Zone, and so consent should not be granted on that basis.*

A correct characterisation of the use is necessary to assess whether the development application’s proposed use is consistent to the objectives of the zone, and is in fact a ‘bulky goods’ use as specified in Clause 27 of the BLEP.

There are a number of principles that are relevant when undertaking the task of ‘characterising a use’ Relevant principles include:

Where the whole of the premises is used for two or more purposes none of which subserves the others, there is no need to examine which of the purposes is dominant. If any one purpose is operating in a way which is independent and not merely incidental to other purposes it is prohibited, it is immaterial that it may be overshadowed by the others whether in terms of income generated, space occupied or ratio of staff engaged.

If a use is an ancillary use, it is not precluded from being a use independent to one of the other uses or a "dominant" use.

The description of the types of goods to be sold in the development application and an analysis of the types of products sold commonly at "Good Price Pharmacy" warehouses reveals the goods are not limited to "medical and surgical supplies and equipment" or goods that are closely similar. Whilst the development application describes further items to be sold as 'ancillary personal health care items and ancillary Pharmacy', a review of the types of goods available commonly in pharmacies and the "Good Price Pharmacy" stores and website make it clear the sale of these "personal care items" constitutes a separate and independent use which must also be considered against the objectives of the zone.

Applicant's submission dated 29 June 2011 which in part states:

The proposed new "One Stop Concept" cannot realistically be compared with traditional "Community Pharmacies" or "Large Format Chemist/Pharmacies" notwithstanding the misleading efforts of the Objectors "Varney & Ors" to do so.

To remove any doubts we suggest that an appropriate wording for a Consent Use for the proposed premises may be:-

The display and sale of Medical and Surgical Supplies and Equipment including bulky goods Home Health Care Equipment, Aids, Accessories, Ancillary Personal Health Care Items and Ancillary Pharmacy (as Defined in Section 90 (3AB) of the National Health Act 1953).

Any perception or fear that the establishment of the proposed use in unit 4 will severely impact on existing pharmacies in Ballina Business Centre is misguided and purely competition based.

The existing pharmacies are afforded protection under the Rules set out in the National Health (Australian Community Pharmacy Authority) determination 2006 made under Subsection 99L of the National Health Act 1953.

The submission also included an advice from Amanda Johnstone Senior Associate of Thomsons Lawyers which in part states:

In our view, the predominant use is the sale of bulky goods and the sale of medical and surgical supplies and equipment. The sale of personal health care items and the dispensing of pharmaceutical products, prescriptions and medicines are ancillary to the primary bulky goods and medical and surgical supplies and equipment uses.

It is clear that a significant proportion of the products offered for sale will comprise medical supplies and equipment and other products that closely resemble such products. This use is consistent with Schedule 3 and the objectives of Zone 4 in the Ballina LEP and is permissible with consent.

Both Mr Robertson SC and Maddocks have concluded that the proposed use also includes an independent and distinct use being the sale of “personal care” products and household goods. This opinion is largely based upon a review of the Good Price Pharmacy Warehouse website and planning reports regarding other Good Price Pharmacy Warehouse sites.

However the documents supporting the DA make it clear that there are no comparable Good Price Pharmacy Warehouse sites operating within Australia with the same model as that proposed in the DA. The DA proposes a Bulky Goods/Warehouse operation. The Applicant clearly distinguishes itself from traditional community pharmacies and “large format retail chemist/pharmacy premises” According to the SEE, the proposed operation will offer a unique range of products and services not ordinarily available in traditional pharmacies and is designated and tailored for an aging and disabled population. The target market also includes hospitals and aged care facilities, for which traditional pharmacies do not usually cater. The Remus Report dated 25 March 2011 states the defining differences between traditional pharmacies and the proposed Bulky Goods/Warehouse operation are:

- a) Location - (outside the protected zone/precinct and does not rely on proximity to medical centres/practices);*
- b) Size - (provides larger stock range capability including bulky goods display and testing);*
- c) Pricing - (provides heavily discounted prices);*
- d) On line ordering and delivery (optional for those persons with mobility problems);*
- e) Parking - (ample and convenient parking to enable collection of goods by customers).*

According to the Remus Report, the proposed operation will not directly compete with the community pharmacies in Ballina. The dispensing of pharmaceutical products, prescriptions and medicines and the sale of personal health care products is ancillary to the sale of bulky goods and medical supplies and equipment.

Shops are not prohibited in Zone 4 Industrial Zone. In fact “shops used for the sale of medical and surgical supplies and equipment” and “any other use which closely resembles” such use are specifically permitted with consent in accordance with Schedule 3 of the Ballina LEP. In addition “shops (other than those referred to in Clause 27 or Schedule 3)” are advertised development and are permitted with consent in accordance with the development control table.

Accordingly, even if we are wrong and the predominant use cannot be characterised as bulky goods retailing, the ancillary sale of pharmaceutical products, prescriptions and medicines and personal health care products is permissible as a “shop” and is therefore consistent with the objectives of Zone 4.

Conclusion

The proposed use for the sale of bulky goods and medical and surgical supplies and equipment, with the ancillary sale of personal health care items and the dispensing of pharmaceutical products, prescriptions and medicines is consistent with the objectives of Zone 4 – Industrial Zone and is permissible under Clause 27 and Schedule 3 of the Ballina LEP.

A submission was received from David Scurr Senior Development Manager Harvey Norman dated 2 August 2011 which in part states:

Unfortunately this legal opinion has been based on the Company web site information and a recent catalogue relative to their normal retail activity, their opinion was further reinforced by physical inspections of some of the Company's existing stores. None of the mediums viewed or the stores visited, anywhere near represent the content or concept of this application. It is acknowledged that the review of existing operations would clearly show a traditional retail chemist shop, however this is not what this application represents as the footprint is up to 4 times the area of normal outlets with a significantly increased range and stocking of goods.

We also believe that the conditions of clause 27 are consistent in that (2)(a) a large area is required for display and handling of bulky items, and clause (2)(b) applies in that there is a dedicated dock area to enable receiving and delivery of goods and customer pick up. In relation to clause 27(4) there is no other land available for this size and type of operation in a nearby centre.

The proposed tenant will sell pharmaceutical items in bulk as well as physically bulkier items not stocked by the traditional "main street" pharmacy. Additionally, they will also undertake wholesaling and distribution from the premises for members for online, phone fax or postal orders.

Accordingly, the premises would constitute a "hybrid" chemist showroom that retails directly to the public but which is also used for storage and distribution.

The wholesaling and on-line sales component is quite reliant on quick turnover (i.e. low shelf life) and hygienic standards, so the warehousing is predominantly conducted front of house rather than the traditional back of house. In this situation, the staff will act as "pickers" filling bulk orders received via e-mail or post, direct from the showroom floor.

Acknowledging this peculiarity, the approximate break of floor space occupied by the proposed functions to occur within the premises is anticipated to be generally as follows:

- *Back of house stock receipt and storage space - 15%*
- *Dispensary – 20%*
- *Service, packing and administrative purposes – 10%*
- *Bulky goods display (including home health care devices such as treadmills, walkers, supports and braces, motorised mobility aids and palletised bulk paper goods and bulk powders) – 20-25%*
- *Other product display and storage including pharmaceuticals, vitamins, fragrances and cosmetics, vitamins, and baby care – 25-30%*
- *Surgical and medicals supplies – 5-10%*

The proportion of surgical and medical supplies and bulky items is expected to increase as the operation matures. Many of these lines will be now able to be supplied locally rather than being sourced from capital city based distributors.

To be able to effectively market this extended product range requires a generous display area to allow customers to test drive and sample product from an operational aspect. Many of these items are delivered to the store in "flat pack" form and a back of house area has to be set aside for assembly, adjustment and storage. It is anticipated that local deliveries will form a substantial part of the operation both in respect to servicing retirement facilities, nursing homes and medical service providers, as well as home deliveries of bulk items and supplies. In addition to this "back of house" provision has to be made for assembly of products and collating of orders.

The daily needs of the aged, disabled and severely disabled in relation to sanitary and general personal care products can be substantial. Not only is it difficult to accommodate the volume of products within a main street or Shopping Centre but provide the ability for convenient collection of products.

The total projected catchment for Ballina as at 2011 is 74,460 with a primary catchment of 36,192 being within a 20 minute drive from the town centre, with the over 55's representing 32% of the population compared to the State average of 23% which well and truly justifies this type of operation.

This operation has a multiplicity of uses which are consistent with the aims of the LEP.

Given the size of the catchment it is expected that a large patronage will be attracted from beyond the primary catchment which would currently be drifting to other areas. The fact that the Homemaker centre has a limited products range and does not compete with Ballina Main Street and will result in an overall benefit through customers seeking other goods and services whilst in the area.

Report

The application has been assessed in accordance with the relevant matters for consideration enumerated in Section 79C of the EP & A Act 1979 with the following matters being most relevant in Council's assessment and determination of the application.

The development application is for the occupation of an existing unit (unit 4) within an approved bulky goods retail complex. All matters relating to the development of the site were assessed as part of DA 2010/435 and will not be addressed as part of this application.

The only matters to be addressed in this report are matters relating to the occupation of the existing unit.

The main point of contention in this application is the categorisation of the use of the proposed development, and whether or not, **Council is of the opinion** that the proposed development constitutes a bulky goods development as defined in Clause 27.

Whilst it is acknowledged that shops as such are permissible within Zone 4 - Industrial Zone, the objectives of the zone (to regulate the use of land to permit its use for industrial purposes and other uses specified in Clause 27 and Schedule 3) make it clear that only shops specified in accordance with Clause 27 or Schedule 3 are considered to meet the objectives of the zone, all other shops therefore, are prohibited within the zone.

It is necessary therefore, for Council to be of the opinion that the application as submitted complies with the requirements of Clause 27 or Schedule 3.

The development application proposes a number of individual uses within the one business, which need to be assessed independently.

The independent uses are:

- Sale of bulky goods
- Sale of medical supply and equipment
- Sale of personal goods and household goods
- Warehousing and distribution
- Pharmaceutical dispensing

It is accepted that the following uses can be approved in accordance with the provisions of Clause 27 and Schedule 3 and the objectives of the zone:

- Sale of bulky goods
- Sale of medical supply and equipment
- Warehousing and distribution

The sale of personal goods and household goods however, is a use which is not anticipated by either Clause 27 or Schedule 3 of BLEP, nor is it considered that the sale of these products is consistent with Objective (A)(a) of Zone 4 – Industrial Zone.

It should be noted that in all the information provided by the applicant they have not stated that the products currently sold in other GPPW outlets will not be sold at this outlet or in lesser proportions. This is exemplified by the fact that the area dedicated to general merchandise is 249 square metres, an area approximate to the size of an ordinary chemist shop.

The assertion made by the applicant that *“all products sold fall comfortably under the “medical and surgical supplies and equipment category”* and by the applicant’s supporting legal advice that *“the predominant use is the sale of bulky goods and the sale of medical and surgical supplies and equipment”* is very hard to justify. How the sale of personal and household goods such as hair care products, toothpastes, toilet paper, sanitary pads, deodorants, food supplements and other health and beauty products in any form can be considered as medical and surgical supplies and equipment, or bulky goods or even ancillary to medical and surgical supplies and equipment or bulky goods is equally hard to justify.

An examination of the sale information contained on the Good Price Pharmacy Warehouse website makes no reference to any bulky items at all, whilst attained knowledge of the type of goods commonly sold in these premises, indicates that a very large proportion of what will be sold will be “personal goods” and “household goods”, a use not in accordance with Clause 27 or Schedule 3 or the objectives of the zone. The applicant has advised that

material displayed on the web and comparisons to other stores should not be used, as this shop is a new concept. This is acknowledged, however, the applicant has at no time advised that the materials shown on the web and sold in other shops will **not** be sold in this shop.

The applicant describes the *majority of goods to be sold as being "medical and surgical supplies and equipment"*. Whereas, Mr T Robinson SC states in his submission "While prescription medicines or bandages might arguably be medical supplies (although I think that they are confined to a class of goods which would be required for the replenishment of supplies in the sense of a stock of goods which doctors, hospitals and nursing homes must have on hand for medical and surgical purposes.)"

It is considered that the opinion expressed by Mr T Robinson SC is more appropriate.

Characterisation of Uses

The proposed development comprises the following uses;

- Display and sale by retail and wholesale of bulky goods consisting of home health care and sports equipment, medical and invalid aids, home care equipment and ancillary health care products;
- Provision for the trialling of equipment in the store under the supervision of trained staff;
- Warehousing of pharmaceutical and cosmetic products;
- Dispensing of Pharmaceutical Benefits Scheme prescriptions and ancillary products;
- Sale of traditional pharmaceutical and related products;
- On-line ordering (internet, facsimile and telephone) of all of the above products and picking and distribution of such to customers (public and trade)

Legal advice has stated that where there are a number of independent uses operating from the one premises, the uses should be considered independently, and the fact that if one use is consistent with the objectives of the zone and complies with the planning table, does not override the fact that the other independent uses are inconsistent with the objectives of the zone or do not comply with the planning tables.

In this instance we have the opposite situation. We have a use which is not consistent with the objectives of the zone (display and sale of general household and personal products), appearing to be the dominant use of the shop over the lesser use of bulky goods sale and the sale of medical and surgical supplies and equipment, which are in accordance with the objectives of the zone.

Floor area

The applicant claims that the whole use should be considered as "Bulky Goods" because the floor space dedicated to the approvable uses, that being Bulky Goods (33%), Warehouse, Distribution, Office, Prescriptions, Medications (31%), totals 64%. It must be realised however, that the area shown as Warehouse, Distribution, Office, Prescriptions, Medications would

also be used for non bulky goods. This fact is clearly illustrated by looking at the colour scheme floor plan, where it can be seen that the area to be used for accessing the outside retail display racks is marked as bulky goods area.

One stop shop

The applicant claims that the proposal is designed as a one stop shop specifically directed at persons with special needs, on the basis that when the persons with special needs come to make their purchase of bulky goods including health care equipment, accessories and aids and medical and surgical supplies including supply of PBS items from the ancillary dispensary, they can also buy their household and personal supplies under the one roof.

Whilst the one stop shop concept is a good concept it is no different from a person shopping at a shopping centre where they can do all of their every day shopping, as well as purchase all or if not all most of the products offered by this development. Whilst a shopping centre is not one shop it is one location, which saves people from having to travel to out of the way locations.

The one stop shop concept suggests that a person (in particular an aged or disabled person) can have all their health and personal care needs met in the one location indicating that, a wide range of products is required to be available, most of which would be non bulky goods.

Targeting people with special needs

The applicant has stated that the proposed development is designed to target people having special needs, those being the aged, disabled, trauma victims, recuperating surgery patients, home physiotherapy treatment, home orthopaedic and in general those requiring specialised equipment.

The applicant claims that whilst they are targeting this special group Federal Legislation dictates that the general public must also have access to the premises.

It is acknowledged that the Ballina demographic mix contains a high proportion of aged persons, but to say that special needs people will be the only customers targeted and that the general public will only be served because of Federal Legislation is also hard to justify.

On-line sales

On-line sales must not be considered as a wholesale use. Wholesaling requires products to be sold only to a business that has an Australian Business Number, whereas on-line sales are another form of retail sale where products are sold to members of the public, who have opted to order on line rather than physically visit the shop. It should also be pointed out that a number of chemists in the Ballina area currently offer an on-line and home delivery service, similar to that proposed by the applicant.

Clause 27 Ballina Local Environmental Plan 1987

Subclause 27(2) provides that in this clause, bulky goods means large goods which are, **in the opinion of the Council**, of such a size and shape as to require:

- (a) a large area for handling, storage or display, and
- (b) easy and direct vehicular access to enable the goods to be collected by customers after sale.

The important wording in this clause is **in the opinion of Council**. Council must therefore determine if in their opinion the application is a bulky goods shop or not as described above.

There is no doubt that part of the proposed operation is bulky goods however, this is only one part of the operation, and as has been shown above all the different parts of the shop must comply with the requirements of the LEP not just one.

Subclause 27(4) provides that Council shall not consent to an application to carry out bulky goods development unless it is satisfied that:

- a) suitable land for the development is not available in any nearby business centre,
- b) to grant consent would not, by reason of the number of retail outlets which exist or are proposed on land within Zone No 4 alter the predominantly industrial; nature of the zone, and
- c) the proposed development will not detrimentally affect the viability of any business centre.

Subclause 27(4)(a)

It is considered that there are four suitable sites available in nearby business centres.

The first site is the old Joyce Mayne building, the floor space of the building is almost identical to that proposed, and there are good facilities available for picking up purchases. The site is also ideally located with good main road exposure and is being advertised for lease.

The second site is the parcel of land zoned 3 Business Zone adjacent to the Good Guys at West Ballina. The site is vacant has good main road frontage and is being advertised for sale.

The third site is the vacant parcel of land made up of two allotments in the same ownership at 279/281 River Street Ballina. This site is just to the west of the River and Kerr Street intersection. The site has good main road frontage, however, it is not known if this site is currently available for purchase.

The fourth site is the vacant parcel of land at 319 River Street Ballina. This site is on the corner of River and Brunswick Streets. The site has good main road frontage, however, it is not known if this site is currently available for purchase.

The applicant claims that they are unable to occupy any site within an existing business centre as the provisions of the National Health Act 1953 (Rule 106) prevent a new pharmacy from being established within a radius of 1.5 kilometres or 2 kilometres by the shortest lawful access route from an existing pharmacy. This rule prohibits the establishment of any new pharmacies within any Business Zone of Ballina.

All of these sites are within 1.5 kilometres of existing pharmacies.

Councillors have been presented with information relating to recent changes to the National Health Act 1953, from both the applicant and objectors. Matters relating to the National Health Act 1953 are not a specific Head of Consideration contained in Section 79C of the EP & A Act for consideration when assessing a development application. Whilst it could be argued that there is a public interest aspect to maintaining national legislation, it isn't thought that this is a significant matter in this instance. Councillors should therefore, put little or no weight in the conflicting information provided and the provisions of the National Health Act 1953 should not colour the determination of this application.

Subclause 27(4)(b)

The impact on the predominantly industrial nature of the zone, was considered as part of the original development application relating to the development of the complex.

Subclause 27(4)(c)

In accordance with the requirements of Subclause 27(4)(c) an economic assessment of the impact the proposed development will have on the viability of any business centre has been provided.

The economic assessment concludes that each of the business centres are insulated from the proposed development due to the very low forecast impacts on each of the centres, with none exceeding a one-off impact of more than - 0.5%.

The economic assessment states that the product range offered by the proposed shop will be significantly different to the existing pharmacies located with the business centres and so the impacts will be distributed across a range of retail formats including Discount Departments Stores and supermarkets

Zone No. 4 – Industrial Zone Objectives

Clause 9(7) requires that:

"(7) Except as otherwise provided by this plan, 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."

Therefore, Council must be satisfied that the proposal is consistent with the objectives of the Zone No. 4 – Industrial Zone. The objectives of Zone No. 4 are:

1 Objectives of zone

A The primary objectives are:

- (a) to regulate the subdivision and use of land to permit its use for industrial purposes and other uses specified in clause 27 and Schedule 3,
- (b) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for different industry types and intensities of development, and
- (c) to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilization and service distribution.

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

Council must be satisfied that all of the objectives of the zone are met.

The use of the land must be for "industrial purposes" and other purposes specified in clause 27 and Schedule 3. Part of this proposal is not consistent with objective A(a) above because a significant component of the proposed use is dedicated to "personal care items" which are not bulky goods (clause 27) or "medical supplied and equipment" (Schedule 3). The remaining subclauses are not relevant to this application.

Subclause 1(b) of Section 79C of the EP & A Act 1979

Subclause 1(b) of Section 79C of the EP & A Act 1979 provides that Council must consider the provision of the likely impact of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

The likely impact of the development, including environmental impacts on both the natural and built environments were considered as part of the original development application and will not be discussed further here. However, the matter of the social and economic impacts in the locality will be addressed.

The social and economic impacts are that, the general population of Ballina will have access to discounted pharmaceuticals, home health care and sporting equipment, medical and invalid aids, home care equipment and ancillary health care products, which they currently do not have access to, without having to travel to destinations outside the Ballina area. However, it is considered that such uses are likely to have a detrimental impact on existing pharmacies in the Ballina area. This conclusion is supported by the submissions of local pharmacies who have advised that they estimate that the negative impact on Pharmacies on the island will be up to 20%. The economic assessment provided by the applicant does not provide a quantitative impact other than to state that individual pharmacies will be impacted (see above).

If permission were granted for the establishment of a non bulky goods shop in a bulky goods area, this could have serious consequences for the future of the commercial centres in the Shire, as it could encourage other shops to establish in a bulky goods area, where the rents are generally cheaper, rather than in an established commercial zone. If such a trend was established, it could eventually lead to the demise of the existing commercial zones.

The following figures give an indication of the advantage that can be achieved by shops operating from an industrial area as opposed to those operating from a commercial centre. Currently properties can be leased in a commercial area for between \$400 to \$500 per square metre for shops up to around 200 square metres, whereas in an industrial area properties can be leased at around \$150 to \$200 per square metres for sites up to around 500 square metres. It is imperative therefore that measures be undertaken to maintain the viability of the commercial centres and one of those ways is to prevent industrial land from being used for the purpose of a shop.

Comments on submissions

The applicant has suggested that the application be approved subject to the following condition.

“The display and sale of Medical and Surgical Supplies and Equipment including bulky goods Home Health Care Equipment, Aids, Accessories, Ancillary Personal Health Care Items and Ancillary Pharmacy(as Defined in Section 90 (3AB) of the National Health Act 1953)”.

It is considered that Council could grant such an approval, however the suggested condition would have to be amended to remove all reference to any items which are not bulky goods or medical and surgical supplies and equipment or are genuine ancillary items. Such a condition would be very difficult to word due to the number and complexities of the items to be sold, and would then become a difficult compliance issue, to ensure that only those items approved for sale were being sold. It is also considered that such a condition may eliminate a significant proportion of stock to be sold and that this would be unacceptable to the applicant. This proposition has been put to the applicant however at the time of writing no definitive response has been received.

Harvey Norman has made the following comments:

- *The sale of pharmaceutical items in bulk,*
Comment
it is important to note that small items sold in bulk do not constitute bulky goods, but, depending on customer may be part of wholesale trade.
- *They will also undertake wholesaling and distribution from the premises for members for online, phone, fax or postal orders.*
Comment
The servicing of members orders received online, phone, fax or postal orders, does not constitute wholesale distribution, but is a form of retail sale.

- *The proposed functions to occur within the premises are anticipated to be generally as follows:-*
- *Back of house stock receipt and storage space - 15%*
- *Dispensary – 20%*
- *Service, packing and administrative purposes – 10%*
- *Bulky goods display (including home health care devices such as treadmills, walkers, supports and braces, motorised mobility aids and palletised bulk paper goods and bulk powders) – 20-25%*
- *Other product display and storage including pharmaceuticals, vitamins, fragrances and cosmetics, vitamins, and baby care – 25-30%*
- *Surgical and medicals supplies – 5-10%*

Comment

It will be noted that this break down of floor area is different to that proposed by the applicant, with the main difference being a reduction in the bulky goods display area which has been reduced from 31% to 20-25%. This indicates the vagaries in the area to be used for bulky goods, it also indicates how easily floor area can be changed from one use to another use.

Late Submissions

The following submissions were received from the following Ballina Pharmacies and S J Connelly on behalf of Vanarey and others during the month of September 2011:

- Ballina Health and Beauty Pharmacy
- Richmond River Pharmacy
- Priceline
- Lennox head Pharmacy
- Ballina Soul Paterson
- Adrian Serafin

The submissions in part state;

The Development Application for GPPW legally should not be approved. If the Ballina Council decides to LEGALLY change the LEP the ramifications to the Retail areas of Ballina will be many.

By granting approval to this development Ballina Council will shift the retail focus from the CBD and shopping centres to the industrial area.

A precedent will be set and more retailers will move their business to the industrial zones, so as to pay Lower Rent.

Ballina Shire is already well serviced with eight established pharmacies in Ballina retail shopping areas. If the Council approves this Development

Application it will disadvantage long established businesses who have always serviced, offered free advice and shown great support for Ballina Shires Communities. There will be a net job loss to the region as warehouse type organisations offer no service and minimal staff.

Essential services will be lost and ultimately these services will no longer be easy and accessible for the public. The elderly and infirm will be disadvantaged as the retail focus will be the industrial zones and will be less accessible.

In a Queensland Court Case it was successfully argued that the Healthy Pharmacy was a retail operation and that should they be granted a DA in a "Bulky Goods" zone it should stipulate the exclusion of the sale of prescription medicines, scheduled medicines and any item that could not be sold in a supermarket. A list of excluded items was established. The pharmacy did not proceed.

The suggestion to be a distribution point for 'all the other' Good Price outlets in the northern rivers area is a sham. There is only one and that is in Grafton, all the others (and there aren't many) are hundreds of kilometres away. The way the pharmacy wholesalers are working these days is much more sophisticated than this DA would suggest. All pharmacies order electronically and the goods arrive overnight having been computer picked and packaged at huge distribution centres. Overnight freight companies then do the rest. The notion that this outlet in Ballina will be warehousing and shipping boxes of tissues, toilet paper etc to Grafton or Tamworth is so improbable to be not worth considering.

The reality here is that this marketing group called "Good Price Pharmacy" is just that. It is no different to Souls, or Priceline or Blooms or Chemist Warehouse etc. The way these groups are structured is exactly the same. It is more of the same and belongs in commercial retail premises competing on the same basis.

GPPW who describe themselves as "one of Australia's leading retailers in health, beauty and medicinal products" is attempting to represent themselves as a bulky goods outlet. If this retailer is to be allowed into a bulky goods area, I would find it hard to believe that they would dedicate the required 33% of their floor space to a category that is likely to represent less than 2.3% of sales (home health care items are included in a category representing only 2.3% of total pharmacy sales nationally; the Pharmacy Guild of Australia).

Ballina already has 2 scooter sales outlets and 3 surgical supplies stores. None of the pharmacies in Ballina specialises in bulky home health care items as the area is well serviced by these existing businesses.

The DEEP report purports to address Clause 27(4)(c) by comparing an estimate of the first year of turnover figure for the GPPW establishment against the retail turnover in the other business centres of Ballina. I submit that this is the wrong approach. The analysis should be carried out on the Basis of the comparison of the likely normal turnover of the new shop (not it's first year estimate) against the turnover of chemist facilities in each of the business centres. Only by completing such an analysis, will it be possible to opine about whether or not the integrity of the business centre will be adversely affected. I calculate that proposed GPPW premises will diminish the turnover of certain existing retail chemists by almost 20%. Such an impact will adversely affect those business and is at odds with the considerations relevant to Council pursuant to Clause 27(4)(c).

Comment

Referring to the comments that retailing will move from the CBD to the industrial area. It is impetrative that Council consider the words of Clause 27 of the BLEP prior to making a decision in this matter, *bulky goods are large goods which are, **in the opinion of the Council** of such a size as to require special consideration.* This clause is designed to prevent any such shift.

It should be noted that subclause 27(4)(c) of the BLEP only refers to ensuring the viability of any business centre and not the viability of individual businesses. Whilst subclause 79(C)(1)(b) requires Council to take into consideration the social and economic impacts in the locality, once again not on individual businesses. Council must therefore consider the impact of this development on business centres within the locality and not on individual businesses.

The comments refer to the method whereby items are distributed between distribution centres and pharmacies and questions the degree of warehousing and distribution to be undertaken at the site. Once again this is not a concern in this application as Distribution Centres and warehousing are permissible within the zone.

It is noted that reference is made to the Pharmacy Guild of Australia statistic that sales of home health care, mobility aids items constitute 2.3% of all Pharmaceutical sales. It is considered that this figure should not be referenced in relation to this development, as the figure is derived for the sales from all existing Pharmacies in Australia, most of whom do not sell these products, or only offer them in a token fashion, whereas the proposed development is making a concerted effort to sell this range of product, and should therefore sell a greater proportion than that stated.

The submissions have questioned the fact that the figures used in the Economic Assessment are for first year of sales and therefore do not represent a true indication of the potential impact of the proposed development long term.

An Economic Assessment for Ballina Good Price Pharmacy Warehouse, prepared for Harvey Norman dated 14 September 2011 was received on 15 September 2011

The main points contained in the economic assessment are:

First year of sales for GPPW are estimated by the business owners at \$3 million. Assuming 25% of sales are wholesale (i.e. \$0.75 million), then the balance of \$2.25 million would be redirected from the five business centres in Ballina as well as other retailers both within Ballina and beyond the town.

The proposed GPPW will offer a vastly different product range and will not rely on business generated by nearby medical centres.

The product offer for the proposed GPPW will also be significantly different to the existing pharmacies located within the business centres and so the impacts will be distributed across a range of retail formats including DDS's and supermarkets.

Each of the business centres would withstand the incoming GPPW due to the very low forecast impacts, with none exceeding a one-off impact of more than -0.5%. It is therefore anticipated that the viability of the business centres would not be detrimentally affected by the proposed GPPW.

Indeed, the viability of any individual business, let alone an entire business centre, should be in no way threatened by the planned opening of GPPW at the Harvey Norman Centre at Ballina.

Comment

It has been previously stated that the proposed development would not impact on the viability of any existing shopping centre, by more than (-0.5%). However, the assessment gives no anticipated numerical impact on individual businesses other than to state that no individual businesses will have their viability threatened.

It is interesting to note that the assessment states that due to the differing product range offered by GPPW will not only impact upon existing pharmacies but that *the impact will be distributed across a range of retail formats including Discount Department Stores as well as supermarkets*. This statement is considered to confirm the opinion that the main use of the premises is that of a retail shop.

It is also interesting to note that nowhere in this report is there any differentiation between "Bulky Goods" sales and general retail sales.

Conclusion

It is important for Council to take note of the wording of Clause 27(2) in this clause, Bulky goods means large goods which are, **in the opinion of the Council**, of such a size and shape as to require:

- (a) a large area for handling, storage or display, and .
- (b) easy and direct vehicular access to enable the goods to be collected by customers after sale.

The important wording here is "in the opinion of Council". Council must therefore determine if it is of the opinion or not that the application is for a Bulky Goods Retail outlet. That is, is Council of the opinion that the majority of the items to be sold comply with the definition of Bulky Goods.

There is no doubt that bulky goods will be sold from the shop, whilst there is also no doubt that a lot of non bulky goods items will be sold.

The applicant has repeatedly advised that this is a different concept and should not be compared to existing developments. This is accepted, but at no time has the applicant advised that they will not be offering for sale all the items currently sold from their outlets, and an examination of the floor plan provided indicates some 249m² or the area of a large chemist shop will be used for the sale of mixed products, which is equivalent to the area.

The applicant claims that the shop is a bulky goods shop because it will sell a number of bulky good items which the “targeted” customers will purchase maybe a few times in a lifetime, whereas household products which are non bulky items will be purchased on a frequent and regular basis.

The shop will also sell medical and surgical supplies and equipment, and whilst there is no definition of this use, it is considered that the opinion supplied by Mr T Robertson SC that “*medical and surgical supplies and equipment refers to as a stock of goods which doctors, hospitals and nursing homes must have on hand for medical and surgical purposes*” is an appropriate description. Using this description, the range of medical and surgical supplies and equipment sold would be limited.

The applicant claims that the application should be approved on the basis that the shop is one stop shop, where customers when buying their bulky goods item, or their medical and surgical supplies and equipment, will also buy ancillary items such as hair care products, toothpastes, deodorants, toilet paper, sanitary pads, food supplements and other health and beauty products, it would seem that these will form the bulk of the items for sale and are neither bulky goods nor medical and surgical supplies and equipment.

The applicant submits that the shop is being primarily marketed at a target market, but that its services cannot be restricted to this market as Federal Legislation dictates that the general public must also have access to the premises.

The proposed shop relies on its low prices to attract customers to the shop, irrespective of whether they are people with special needs or not, or whether they require bulky goods or medical and surgical supplies and equipment or not.

The applicant’s classification that the shop is a one stop shop where customers can buy their bulky goods and their regular pharmaceuticals, hair care products, toothpastes, toilet paper, sanitary pads, deodorants, food supplements and other health and beauty products is accepted on face value. However, customers achieve one stop shopping at most shopping centres, where they can buy all or most of the range offered by this shop whilst doing their regular shopping without having to travel out to the industrial centre.

The majority of the items for sale can be characterised as “personal and household goods”, a use not in accordance with Clause 27 or Schedule 3 or the objectives of the zone.

The applicant has suggested that the application be approved subject to a nominated condition. It is considered that Council could grant such an approval, if the reference to any items which are not bulky goods or medical and surgical supplies and equipment or genuine ancillary products were removed from the application. This has been one of the options put to the applicants by Council staff. It is however, considered that to attempt to draft a condition of consent that effectively covers the diversity of products would be difficult and would be equally difficult to enforce.

The Economic Assessment submitted by the applicant states that *the impact will be distributed across a range of retail formats including Discount Department Stores as well as supermarkets*. This statement is considered to confirm the opinion that the main use of the premises is that of a retail shop selling much more than Bulky Goods and Medical and surgical supplies and equipment.

OPTIONS

The options available to Council are:

Option 1

To refuse the application as a substantial component of the use does not comply with the requirements of:

- Clause 27 of Ballina Local Environmental Plan 1987;
- Schedule 3 of Ballina Local Environmental Plan 1987;
- The Objectives of Zone 4 – Industrial zone of Ballina Local Environmental Plan 1987.

Option 2

The applicant be requested to amend their application to only reflect those aspects of the business which are consistent with the objectives of the zone.

Option 3

Should Council be of a different opinion and be satisfied that the application forms a bulky goods outlet and will not adversely impact on the existing commercial centres. The application should be approved subject to conditions to be determined.

Option 4

Should Council be of a mind to support such a proposal and is of the opinion that the shop cannot be approved under the existing Planning provisions. Council may resolve to put procedures in place to amend the current Planning provisions to allow such a proposal.

It should be noted that the Draft Ballina Local Environmental Plan prohibits the establishment of Bulky Goods at this location.

For the reasons outlined in this report it is considered that Options 1 and 2 are the only ones reasonable open to the Council. However, as the applicants have declined the opportunity to amend their application Option 1 is recommended.

RECOMMENDATIONS

That the development application seeking to undertake the establishment of a Bulky Goods Retail Outlet, Wholesale Showroom and Warehouse for the Good Price Pharmacy Warehouse in unit 4 of the Harvey Complex at the corner of Boeing Avenue and Stinson Street Southern Cross Industrial Estate, being Lot 951 in DP 1165266 be **refused** for the following reasons.

- 1 The application does not comply with the requirements of Clause 27 of Ballina Local Environmental Plan 1987, in that a substantial component of the proposed development does not constitute a “Bulky Goods” outlet and no economic assessment has been provided in accordance with Clause 27(4)(c) to enable an assessment of the likely impact of the proposal on the viability of any business centre.
- 2 The application does not comply with the requirements of Schedule 3 of Ballina Local Environmental Plan 1987, in that a substantial component of the proposed development is a shop and does not constitute a Medical and surgical supplies and equipment outlet, or any other use specified in Schedule 3.
- 3 The application is not consistent with Objective A(a) of Zone No 4 – Industrial zone, in that the proposed development is not a use for an industrial purpose or another use specified in Clause 27 or Schedule 3.

Attachment(s)

1. Locality Plan
2. Floor Plan
3. Economic Assessment
4. Submissions in support of the application
5. Submission opposed to the application

8.2 Development Applications - Works in Progress as at October 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
2010/278	6/11/2009	Ardill Payne & Partners	To Establish a dwelling/house site – No. 263 Sneebys Lane, East Wardell	Awaiting Additional Information
2010/453	04/02/2010	Riordans Consulting Surveyors Pty Ltd	83 Lot Staged Residential Subdivision, 2 Public Reserve Lots, Construction of Roads, Associated Subdivision Works & Services – No. 57-59 Rifle Range Road, Wollongbar	Being Assessed
2010/880	27/09/2010	The Wheelchair & Disabled Association	Recreational Hall - No. 253 Wardell Road, Lynwood	Being Assessed
2010/892	05/10/2010	Ardill Payne & Partners	Residential subdivision comprising 73 lots and 2 residual lots, construction of roads and associated infrastructure works - Unara Parkway & Pacific Highway, Cumbalum	Awaiting Additional Information
2010/1056	14/12/2010	D Loosemore & N McGarry, C/-sj Connelly CPP Pty Ltd	To construct a 3 x bedroom dwelling (ancillary to use of existing conference centre) - Shelley	Awaiting Additional Information

8.2 Development Applications - Works in Progress as at October 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Beach Road, East Ballina	
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
2011/48	04/02/2011	J & H Hughes	Extension to Existing Industrial Building, No. 3/176-178 Southern Cross Drive, Ballina	Being Assessed
2011/166	15/04/2011	SJ Connelly CPP Pty Ltd	Construction of a residential flat development comprising 30 x two storey dwellings and associated works, Condon Drive, East Ballina (North Angels Beach)	Awaiting Additional Information
2011/186	27/04/2011	Ardill Payne & Partners	Two Lot Boundary Adjustment Subdivision - No. 9 Martin Street, Ballina	Being Assessed
2011/188	28/04/2011	P & A Isaac	Two Lot Torrens Title Subdivision, No. 110 North Creek Road, Lennox Head	Awaiting Additional Information
2011/233	01/06/2011	Victor Holmes Town Planning	Environmental Restoration Works, No. 69 Sartories Road, Pimlico and No. 120 Coolgardie Road, Coolgardie	Awaiting Additional Information
2011/264	20/06/2011	Ardill Payne & Partners	To Construct the NSW Rural Fire Services Depot/Shed with ancillary car parking and building identification signage - Ross Lane, Lennox	Awaiting Additional Information

8.2 Development Applications - Works in Progress as at October 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Head	
2011/320	22/07/2011	Ballina Shire Council c/- LandPartners Ltd	To change the method of extraction of an existing Extractive Industry "Ballina Airport Sandpit" from dry (excavation) to wet (dredging) and to change the end use of the pit from a landfill for dry/inert waste to the retention as a flooded pit as part of the rehabilitation works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	Awaiting Additional Information
2011/321	22/07/2011	Chris Longergan - Town Planner	To construct toilet amenities and erect an awning to an existing shed and use part of existing shed for recreational No. 440 South Ballina Beach Road, South Ballina	Referred to Government Departments
2011/335	01/08/2011	Namitjira Haven Ltd	To Undertake the Erection of 3 Cabins and 2 Amenities Buildings, No. 108 Whites Lane, Alstonville	Awaiting Additional Information
2011/336	01/08/2011	Stanton Dahl Architects	Extension and Room Additions to a Residential Aged Care Facility, No. 15 The Avenue, Alstonville	Awaiting Additional Information
2011/341	04/08/2011	Ardill Payne & Partners	To Utilise the existing Premises for the purpose of holding wedding functions, No. 104 Victoria Park Road, Dalwood	Being Assessed
2011/343T	05/08/2011	Anne Maria Wenham	Tree Removal (Fig Tree), No.	Being Assessed

8.2 Development Applications - Works in Progress as at October 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			19b Karalauren Court, Lennox Head	
2011/345	08/08/2011	R Brady	Staged Development - 1. Alterations to Existing Flats and 2. Replacement of Shed and Landscaping, No. 26 Moon Street, Ballina	Awaiting Additional Information
2011/355	11/08/2011	Newton Denny Chapelle	Two Lot Boundary Adjustment Subdivision to create 1 x 1.9ha and 1 x 24 ha allotments, Nos 423 & 427 Friday Hut Road, Brooklet	Being Assessed
2011/359	16/08/2011	Department of Human Services	Establishment of an Aboriginal Child and Family Centre, Porter Park, Daydream Avenue, West Ballina.	On Exhibition
2011/363	19/08/2011	S Abicht	To Establish a Camping Ground to be used in association with the Ballina and District Equestrian Club and to undertake filling of land, No. 70 Gallan's Road, Ballina	Awaiting Additional Information
2011/373	29/08/2011	Newton Denny Chapelle	Staged construction of sporting fields and facilities including public road access, car parking, creation of sports field/court lighting, earthworks, provision of utility services, vegetation removal and other associated works, Rifle Range Road and	Referred to Government Departments

8.2 Development Applications - Works in Progress as at October 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Frank Street, Wollongbar	
2011/378	30/08/2011	Fighting Fit Super Centre P/L	Change of Use - Martial Arts & Conditioning Club, No. 14 Endeavour Close, Ballina	Determination Pending
2011/380	30/08/2011	SJ Connelly CPP Pty Ltd	Four (4) Lot Residential Subdivision, Skennars Head Road, Lennox Head	Awaiting Additional Information
2011/383	01/09/2011	Ardill Payne & Partners	To Dedicate a Road Reserve and Construct a Public Road, Chilcott Circuit and Deadmans Creek Road, Ballina Heights Estate	Awaiting Additional Information
2011/387	02/09/2011	Major Media	The Addition of 1 Double Sided Lightbox to Existing Pylon (Dick Smith Electrical), 44 Bangalow Road, Ballina	Determination Pending
2011/388	02/09/2011	The University of Newcastle	Environmental Education Facility, Teven Road, West Ballina	Being Assessed
2011/389T	02/09/2011	R & A Cornwill	Lennox Head VMO - To Remove 9 x Trees, No. 9 Nixon Place, Lennox Head	Being Assessed
2011/391	02/09/2011	Newton Denny Chapelle	Erection and Strata Title Subdivision of a Residential Flat Development comprising Two (2) x Two Storey Dwellings (being the final stage of a five unit development, No. 4/15 Gibbon Street, Lennox Head	Awaiting Additional Information
2011/392	02/09/2011	Croft Building	Erection and Subsequent	Determination Pending

8.2 Development Applications - Works in Progress as at October 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Strata Title Subdivision of an Industrial Building, No. 33 Cessna Crescent, Ballina	
2011/414	22/09/2011	Newton Denny Chapelle	Consolidation (2 Lots to create 1 Lot) Demolition, Vegetation Removal, Dedication of Foreshore Land, No. 274 River Street, Ballina	Being Assessed
2011/416	26/09/2011	Newton Denny Chapelle	Change of Use from a Macadamia Processing Facility to an Educational Establishment (Universal Medicine College) involving alterations to the existing building and carparking area, No. 37 Converys Lane, Wollongbar	Being Assessed
2011/419	26/09/2011	Ardill Payne & Partners	Two Lot Boundary Adjustment Subdivision, No. 8 William Place & No. 76 Hutley Drive, Lennox Head	Being Assessed
2011/425	30/09/2011	Shell Aviation Limited	To Construct a Canopy Over Truck Parking Area, Southern Cross Drive, Ballina	Being Assessed
2011/426	30/09/2011	Ardill Payne & Partners	To Undertake a Torrens Title Boundary Adjustment Subdivision of 2 Lots, No. 198 Ballina Road, Alstonville	Awaiting Additional Information

Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
NIL				

Major Development (Determined by Minister)

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
2004/1150	18/05/2011	North Angels Beach Development (Chris Condon)	Modification No. 4 to North Angels Beach Subdivision Consent - To delete condition requiring a pedestrian 'Pelican' crossing of Angels Beach Drive and replace it with a pedestrian refuge. (Original consent required a pedestrian underpass).	Awaiting DoP determination (Council advised DoP that it does not support the application).

RECOMMENDATION

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

Attachment(s)

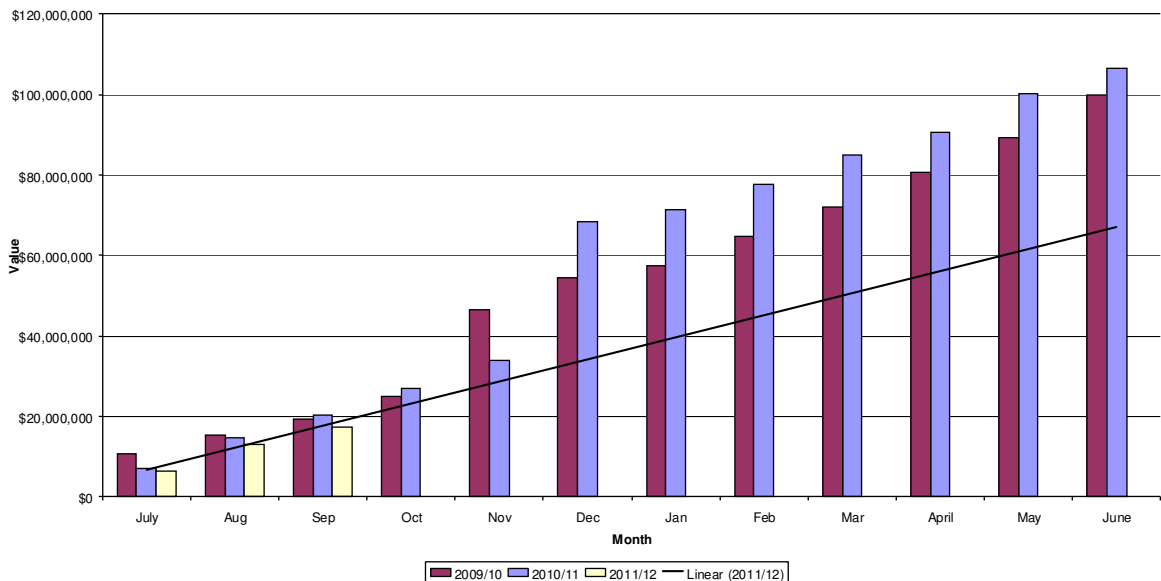
Nil

8.3 Development Consent Statistics - September 2011

The Council is advised that during the period of 1 September 2011 to 30 September 2011 the Regulatory Services Group issued Development Consent comprising of:

Number of Applications	Value of Work
7 Other Building Related	\$ 2,000
9 Dwelling/Duplexes/Residential Flat Buildings	\$ 2,691,000
7 General Developments	\$ 1,775,600
Total Value	\$ 4,468,600

The following chart details the cumulative consent figures for 2011/12 as compared to 2010/11 and 2009/10. A trend line has also been provided for 2010/11 to assist in the comparison. The trend line highlights that for the first quarter of 2011/12 development values are trending well below recent years.



RECOMMENDATION

That Council notes the contents of the report on development consent statistics for 1 September 2011 to 30 September 2011.

Attachment(s)

Nil

9. Strategic & Community Services Group Reports

9.1 A-Frame Signage - Private Land

File Reference	Advertising Signage
CSP Linkage	Diverse and balanced land use
Delivery Program	Economic Development
Objective	To invite Council to consider options relating to the regulation of A-frame signs on private land.

Background

Council's Combined Development Control Plan (DCP) Chapter 14 Advertising Signage (adopted by the Council on 24 February 2005) provides development controls for various forms of advertising structures within Ballina Shire.

Included in the suite of advertising development controls, the DCP prohibits "freestanding sandwich boards / A frame signs" (refer to Attachment 1). This prohibition originated from Council's concerns regarding:

- the visual proliferation of poorly maintained A-frame signs
- the cluttering of footpaths
- the obstruction of pedestrian movement
- safety concerns associated with tripping hazards and
- the potential for such signs to be knocked or fall over in high winds causing injury and/or damage to property.

Whilst originally envisaged to apply to Council's road reserves, the wording of the DCP is that these signs are prohibited on "all land in Ballina Shire", without specific reference to public or private land. In considering the DCP, it should be noted that the prohibition on public land is also empowered by Section 68 of the Local Government Act in relation to the regulation of activities on public roads.

At the time the DCP was prepared, the focus of the policy was on A-frame signs located on public land (footpaths and road reserves). Footpaths were considered to be the most likely location for such advertising devices and where these signs were most prolific at the time of the introduction of the policy.

With recent changes to Council's Commercial Use of Footpaths Policy, which now allows permits to be obtained with the need for a formal development application, Council's compliance have been more pro-actively ensuring that A frames are not located on the public land, and also as an aside, on private land.

Subsequently, Council has received a number of objections from business owners with respect to the comprehensive prohibition of A-frame signs, arguing that such signage could be accommodated on private land under the following situations:

- land adjacent to road reserves (alcoves/entrance-ways to commercial buildings)
- common areas within out-of-centre shopping centres, and
- land within the shire's industrial estates and residential areas.

As the prohibition of such advertising devices was originally only envisaged to apply to public land (footpaths and road reserves) Council is invited to consider whether a change in the provisions relating to A-frame signs on private land is warranted. Where a change is supported, there are several potential approaches and associated options for implementation.

Key Issues

- Public safety
- Proliferation of signage
- Economic development

Information

Circumstances for which Council might consider providing a development approval pathway for A-frame signage may include the following:

- alcoves/entry ways to commercial buildings and within the building envelope of commercial properties
- on private footpath-like structures within out-of-CBD shopping centres (eg West Ballina, East Ballina, Ballina Central, Ballina Fair, etc)
- on private land within industrial estates and/or residential areas; and
- on private land within residential areas associated with home-based businesses and corner shops.

With respect to A-frame signs within residential areas, it is noted that State Environmental Planning Policy No.64 Advertising Signage (SEPP No.64) stipulates that only the following forms of advertising signage can be permitted in residential areas:

- Business Identification signs
- Building identification signs and
- Signs that comprise 'exempt development'.

With respect to A-frame signage in industrial areas in the shire, it is noted that Council is aware of a number of instances of A-frame signs being erected on private and public land. Council's compliance program has intended to address this issue in due course. However, Council is invited to provide guidance as to whether A-frame signs on private land within industrial estates should be permitted.

Provided there are appropriate development standards applied with adequate protections for public safety, and that business proprietors accept the liabilities associated with having such signage, there is an argument that such advertising structures could occur having limited public safety risks and limited legal liabilities for Council.

Consequently, if Council supports permitting A-frame signage on private land, Council could take the following approaches:

- require that a development application be lodged; and/or
- exempt A-frame signs on private land provided they meet a set of exempt development criteria (set out further below).

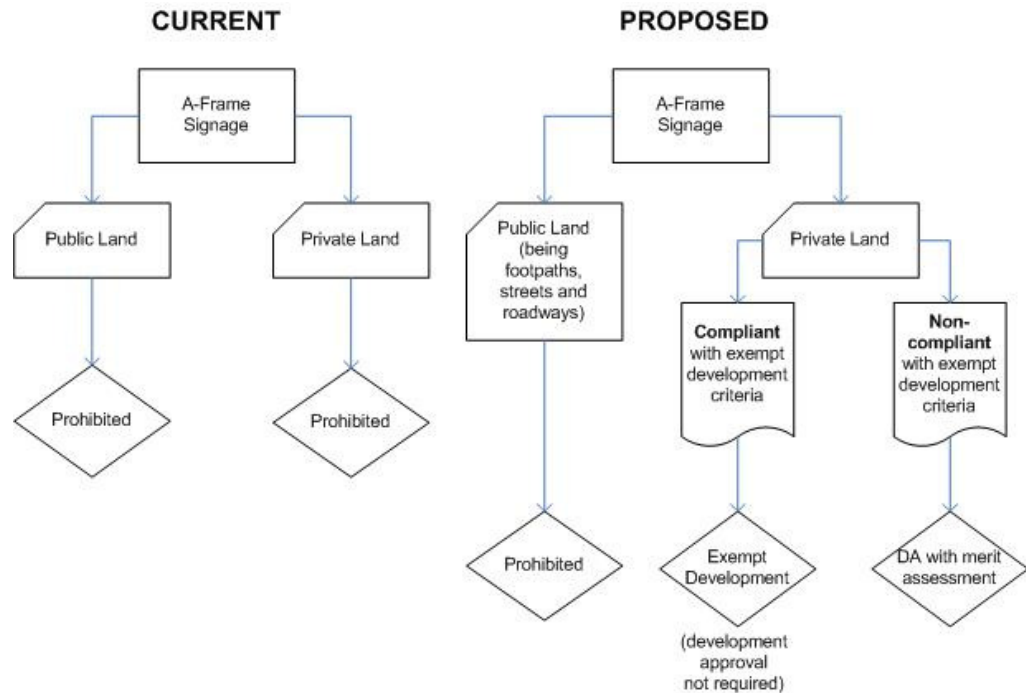
If Council wishes to subject A-frame signage on private land to the development assessment process, a set of development controls would need to be incorporated into the Ballina Combined Development Control Plan (DCP). This would also involve an amendment to the DCP.

Allowing A-frame signs as exempt development on private land would involve incorporating criteria into Council's exempt development controls to exempt A-frame signs provided such signage meets criteria relating to:

- location criteria (such as being located wholly on private land)
- size limitations (such as having an advertising area no greater than a nominated area)
- content restrictions (relating signage content only to business activities carried out on the land the sign is located upon) and
- limitations on the number of signs per business (one per business).

Should such signage fall outside these criteria, then a development application could be lodged with an assessment undertaken on its merits. A set of development standards would need to be prepared and incorporated into the development control plan to assist this merit assessment. This is the recommended approach.

A diagram summarising the assessment pathways under the current situation and that recommended above is provided below.



Immediate action to progress the framework proposed would require amendment of the Ballina LEP 1987, amendment of the Exempt Development DCP and amendment to Chapter 14 of the Ballina Combined DCP.

Due to the resource requirements, likely timeline for completion (at least six months) and progress of the Draft Ballina Local Environmental Plan 2011, this course of action is not recommended. Rather, it is recommended that any amendments be undertaken only in relation to the finalisation of the Draft Ballina Local Environmental Plan 2011 via the incorporation of suitable exempt development criteria into the new plan following the conclusion of its re-exhibition.

Further, to address those circumstances where signage is proposed beyond that consistent with the exempt development criteria, it is proposed that supporting provisions for A-frame signs be established during the review of the Ballina Shire Development Control Plan (to occur following the finalisation of the Draft Ballina LEP 2011).

In considering the use of the new LEP to address the matter of A-frame signage, it should be noted that new provisions are subject to the agreement of the Department of Planning and Infrastructure and if agreed, would not likely have effect for at least 12 months.

Having regard for the above, it is noted that until the finalisation of the suggested amendments, A-frame signs would remain prohibited on private land for the time being. Council could, however, establish a moratorium on enforcement/compliance action until the new provisions begin to operate.

Sustainability Considerations

- **Environment**
Providing a framework for the regulation of advertising signage has benefits to the visual environment of the shire.
- **Social**
The regulatory framework for managing signage should ensure that public safety is maintained.
- **Economic**
Providing opportunities for business promotion and marketing has economic development benefits.

Legal / Resource / Financial Implications

Providing pathways for the erection of A-frame signage on private land does present some residual liability risks for Council. However, provisions could be identified in Council's planning instruments to minimise this risk if Council supports the permissibility of A-frame signs on private land. If Council supports adjustment to the current framework, it should be noted that the necessary statutory amendments (to the Ballina Local Environmental Plan and subsequent review of the Development Control Plan) may take some time to finalise. Under this course of action, Council could establish a moratorium on enforcement/compliance action until the new provisions begin to operate.

Consultation

No community engagement has occurred in relation to the content of this report, except to say there has been a number of objections to recent correspondence from Council asking for A-frame signs to be removed from private property.

The provisions contained within Council's current DCP (i.e. that A-frame signs on any land are prohibited) were exhibited for public comment prior to its adoption by Council.

Options

1. That Council affirm its existing policy position that A-frame signage not be permissible on any land within Ballina Shire, public or private.
2. That Council resolve that exempt development standards for A-frame signage on private land, generally in accordance with those outlined in this report, be incorporated into the Draft Ballina Local Environmental Plan 2011. Further, that development standards relating to A-frame signage on private land be considered further in relation to the comprehensive review of the development control plan, in due course. This is the recommended approach.

3. That Council resolve to establish exempt development standards under the Ballina Local Environmental Plan 1987. Due to the resource and timing issues discussed in the body of this report, this course of action is not recommended.

In summary if Council is going to have policies in place it is essential that they be practical and effective. Any casual observation of commercial and industrial premises in the shire would see that there are a large number of A-frame signs located on private land and it would be difficult to ensure full compliance for this activity.

There is not considered to be any major risk or planning negative with respect to A-frame signs on private land and on that basis option two is the recommended course of action.

RECOMMENDATIONS

1. That Council approves the incorporation of exempt development standards for A-frame signage on private land, into the Draft Ballina Local Environmental Plan 2011, prior to its finalisation.
2. That development standards relating to A-frame signage on private land, that are not identified as exempt development be considered further in relation to the comprehensive review of Council's development control plan framework.
3. That Council refrain from taking action to remove A-frame signs from private property pending the introduction of the new provisions outlined in points one and two.

Attachment(s)

1. Extracts relating to A-frame signs - DCP Chapter 14

9.2 Section 94 - Heavy Haulage Contributions Plan

File Reference	Section 94 Contributions Plans - Heavy Vehicle
CSP Linkage	Transparent and accountable governance
Delivery Program	Financial Management
Objective	To invite Council to reaffirm its adoption of the draft Heavy Haulage Section 94 Contributions Plan 2011.

Background

A draft Section 94 Contributions Plan pertaining to heavy haulage was adopted by Council at its Ordinary Meeting held on 25 August 2011. Unfortunately, due to an oversight, and following the departure of the planner responsible for the management of Council's Section 94 Plans, the notice of Council's decision was not published within 28 days of the decision as required in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000 (EP & A Regulation).

The purpose of this report is to reaffirm Council's previous decision to adopt the Ballina Shire Heavy Haulage Contributions Plan 2011 to ensure that the procedural requirements for making this Section 94 Contributions Plan are satisfied.

Key Issues

- Cost apportionment for reinstatement of public infrastructure.
- Improved governance arrangements.
- Provisions of the EP & A Regulation.

Information

Council has prepared an updated Heavy Haulage Contributions Plan to replace the existing plan that has been in place since 1996. The purpose of the plan is to enable Council to recoup a reasonable proportion of the costs incurred in reinstating the condition of roads that have deteriorated due to the activities of heavy haulage vehicles. Council resolved to exhibit its draft 2011 plan at its June 2011 Ordinary Meeting [Minute No. 250811/14].

The draft Ballina Shire Heavy Haulage Contributions Plan 2011 (draft plan) and associated documentation was publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Act 1979 (EP & A Act). The exhibition period commenced on 7 July 2011 and concluded on 8 August 2011. No submissions were received in response to the exhibition.

Council resolved to adopt the plan at its Ordinary Meeting held on 25 August 2011 [Minute No. 250811/14]. As noted above, the notice of Council's decision was not published in a local newspaper within 28 days from the date of adoption, as required in accordance with the provisions of Clause 31 of the EP & A Regulation.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The additional funds raised through the new plan will assist Council to fund the maintenance of some sections of the public road network which is impacted by the regular use of heavy haulage vehicles. This maintenance will improve safety for other motorists.
- **Economic**
The new plan more accurately identifies the cost of heavy haulage traffic on the life of local roads and therefore reduces the subsidy that would otherwise be provided by ratepayers to repair roads or address the decline in levels of road service experienced by local motorists. It is acknowledged that the plan imposes an additional cost on heavy haulage operators and this is passed on through their product pricing structures.

Legal / Resource / Financial Implications

The draft plan has been prepared and exhibited for public comment in accordance with the relevant provisions of the EP & A Act. It establishes an equitable basis for requesting contributions for road maintenance from new developments which give rise to early deterioration of sections of the network.

Once adopted, the new plan will apply to some new developments for which consent is granted. The existing plan will continue to apply to those developments which are currently required to make contributions under its provisions.

As noted above, notice of Council's decision to adopt the plan was not published within 28 days of the decision, as required by the EP & A Regulation. In the event that this is not rectified via a further resolution from Council to adopt the plan, the plan could be challenged on procedural grounds and subsequently determined to be invalid.

Consultation

As mentioned above, the draft plan has been exhibited for public comment as required. Council did not receive any submissions in response to the exhibition.

Options

Council may decide to adopt the new plan, defer its consideration, modify its provisions or decline its implementation. The recommendation is to adopt the plan in the public interest, as Council has previously done.

RECOMMENDATIONS

That Council adopt the draft Ballina Shire Heavy Haulage Contributions Plan 2011, as exhibited.

Attachment(s)

Nil

9.3 Flat Rock Tent Park - Land Classification

File Reference	Flat Rock Tent Park
CSP Linkage	Transparent and accountable governance
Delivery Program	Strategic Planning
Objective	To present information to the Council relating to the classification of Council-owned property in East Ballina.

Background

Council, at its Ordinary Meeting held on 23 September 2010, received and considered a Mayoral Minute relating to the Coastal Cycleway/Shared Path. As part of its deliberations concerning this project Council resolved as follows:

"That Council receive a further report in respect to the reclassification of the Council Operational land described as Lot 59 DP 197904 to Community Land. This report is to clarify which parts of this land should be retained as Operational Land to ensure that the Flat Rock Tent Park can operate effectively as a Council business."

The following information is provided to assist the Council in coming to a view about whether reclassification of part or all of this land is appropriate or warranted.

Key Issues

- Adequacy of existing planning and land use controls applying to the land.

Information

At the outset, and to avoid confusion, it should be pointed out that the property description referred to in the abovementioned Minute of the Council Meeting held on 23 September last year is incorrect. The correct property description of Council's land holding in the vicinity of the northern part of Angels Beach and Flat Rock, including the Flat Rock Tent Park, is Lot 59 DP 827785. An aerial photograph illustrating the approximate boundaries of Lot 59, is provided as an attachment to this report. The approximate boundaries of the tent park, sitting within Lot 59, are also highlighted within the aerial photograph.

As can be seen in the photo, most of Lot 59 is located on the eastern side of The Coast Road, though a small area (approximately 6537m²) sits on the western side of that road.

A lesser area of Lot 59, comprising approximately 1072m², is located immediately adjacent to the roundabout which has recently been constructed on Angels Beach Drive to provide access to the Angels Beach North residential estate. This part of Lot 59 is separated from the remainder by a closed road (Lot 4 DP 821993). The total area of Lot 59 DP 827785 is 34.5 hectares.

The aerial photograph illustrates the extent to which Lot 59 is vegetated, with native coastal species predominating. Some areas of the site contain endangered ecological communities, with threatened plant species having previously been identified. As a generalization, Lot 59 is held to have high ecological values. It is also understood to have high cultural heritage values for members of our local Aboriginal community.

The Flat Rock Tent Park has operated since the 1970s. It is located centrally and adjacent to the eastern boundary of Lot 59 and contains an operational area of approximately 2 hectares. The park is presently approved to conduct 87 unpowered camp sites and it contains an office, residence and kiosk as well as amenities for park guests. The financial performance of the park has recently been reported to the Council through a meeting of the Commercial Services Committee held on 14 September.

Zoning provisions

Under the Ballina Local Environmental Plan 1987, Lot 59 is zoned 7(f) - Environmental Protection (Coastal Lands) Zone, within which a limited range of land uses are permissible with Council's consent.

The E2 - Environmental Conservation zone has been applied to the land under the recently exhibited Draft Ballina Local Environmental Plan. Once again, a relatively limited range of uses are permissible within this zone, subject to Council's consent.

It is noted that neither the existing nor the draft planning instruments prevent the continued lawful operation of the Flat Rock Tent Park.

Local Government Act Provisions

Under the Local Government Act 1993 Council is obliged to classify all its land holdings as either Operational or Community Land. Lot 59 is classified as Operational Land which provides Council with the discretion to manage or dispose of the land in much the same way as any other property owner has the right to deal with his/her freehold property, subject of course to compliance with the various rules and regulations applying to property in NSW.

On the other hand, land owned by Council which is classified as Community Land is more restricted in terms of the way in which it is managed. For example, Council cannot dispose of Community Land, and the leasing or licensing of such land may only be undertaken in conformity with the requirements of the Local Government Act.

A plan of management must be prepared for Community Land, and its use must be consistent with this plan. Under this arrangement, the Community Land must be further categorized as a natural area, sportsground, park, area of cultural significance or for general community use, depending on its characteristics.

Where Council wishes to reclassify land from Operational Land to Community Land, this process is quite simple and straightforward, involving a Council resolution in accordance with the provisions of Section 33 of the Local Government Act.

Where it is proposed to change the classification of Community Land to Operational Land, the procedures involved are tantamount to a 'rezoning' process involving consultation, a public hearing and ultimately, Ministerial determination.

In essence, it is suggested that the current classification of Lot 59 provides the Council with maximum flexibility in terms of the future management and use of the property. This obviously does not mean that Council has an unfettered right to do as it pleases with the land, particularly having regard for its acknowledged environmental and cultural values.

Another matter which is worth noting is that the Flat Rock Road which provides the linkage between the Coast Road, the Flat Rock Tent Park and the beach/carparking area is not a public road. It is a private road which traverses Lot 59. If Council was to contemplate changing the classification of all or part of Lot 59, it would be preferable for a road reserve to be opened prior to that change, as the procedures for road dedication over Community land are more onerous.

Sustainability Considerations

- **Environment**

A change of classification of all or part of the land is not likely to have any environmental consequences, given that the existing and anticipated zonings of the land under Council's local planning instruments are directed toward recognition and protection of the land's environmental attributes.

- **Social**

Retention of the existing land classification would provide Council with the best opportunity to manage its assets in the public interest.

- **Economic**

A change in classification from Operational to Community Land would have the potential to diminish the land's value and restrict management options in the future. The long-term viability of the Flat Rock Tent Park may also be compromised.

Legal / Resource / Financial Implications

Currently, Lot 59 is managed within Council's available resources. It is also important to acknowledge the ongoing work done in this locality by Ballina Coastcare Inc. in terms of its environmental restoration projects.

If all or part of the land is reclassified, resources will need to be committed toward the road dedication of Flat Rock Road, as discussed above, as well as for the preparation of a plan of management over the Community Land.

Consultation

It is a matter for Council to decide the extent to which it wishes to consult with the community if reclassification is contemplated. Reclassification of Operational Land to Community Land does not 'trigger' any mandatory community consultation procedures under the Local Government Act.

Options

1. Council could decide to change the classification of all or part of Lot 59, as it sees fit. As stated above, this course of action is relatively straightforward, but it is suggested that it should be preceded by the opening of a public road about the Flat Rock Road.

This course of action is not recommended for the reasons cited in the above report.

Council is also aware that route selection, approval, detailed design and construction of the Coastal Shared Path within Lot 59 are yet to be finalized. It is suggested that this project needs to be much more substantially advanced before Council makes any decision concerning the land's classification.

2. The second, and recommended option, is for Council to receive and note the report and take no action in relation to the reclassification of the land. This would preserve the status quo and enable the Flat Rock Tent Park to continue to operate effectively.

RECOMMENDATIONS

That Council notes the contents of this report in respect to the current classification of the land described as Lot 59 DP 827785.

Attachment(s)

1. Lot 59 DP 827785 Locality Plan

9.4 Climate Action Strategy

File Reference	Climate Action Strategy
CSP Linkage	Resilient and adaptable communities
Delivery Program	Governance
Objective	Provide an update on the progress of the Climate Action Strategy.

Background

Council has been engaged in the preparation of a climate change adaptation and mitigation strategy supported by grant funding from the NSW Office of Environment and Heritage. The preparation of the strategy, known as the Ballina Shire Council Climate Action Strategy 2012-2020 (draft strategy), has been underpinned by several activities and previous resolutions of Council including:

1. The preparation of a report entitled "Climate Change Strategic Planning Taskforce: Report on Findings" presented to Council in December 2009 (Minute Number 171209/ 1),
2. Response to the January 2010 resolution of the Council to utilise the Climate Action Strategy process to articulate its corporate position and desired future for the shire with respect to climate change issues (Minute Number 280110/ 2),
3. The completion of a risk assessment in collaboration with Council's insurer in March 2010, and
4. A substantial community consultation process (based on deliberative democracy) endorsed by Council in May 2010 (Minute Number 270510/37) and undertaken mid 2010.

Council's community engagement process included the Climate Ballina Citizens' Forum which developed a range of recommendations to be considered by Council in relation to climate change. These recommendations were presented to Council in November 2010 (Minute Number 251110/ 3). The endorsed recommendations have been used to inform the strategies and opportunities in the drafting of a Climate Action Strategy for Ballina Shire Council. The engagement process also included the Climate Ballina Conversation Café where over 100 community members attended a workshop to deliberate on the implications of climate change for Ballina Shire and potential responses to the associated challenges.

The draft strategy (a copy of which has been distributed to Councillors under separate cover), documents Council's proposed approach to climate change considerations. Importantly, the document focuses on Council's operations, roles and responsibilities and as such does not focus on initiatives of community or other government agencies. It also seeks to outline Council's current effort in the address and management of climate change.

Key Issues

- Progress of Council's Climate Action Strategy

Information

The draft Ballina Shire Council Climate Action Strategy (draft strategy) identifies Council's climate change response strategies together with a series of key opportunities for action in relation to Council's activities. In this way Council is seeking to play its part in addressing climate change, whilst recognising that other levels of government, business, organisations and individuals each have significant roles in relation responding to climate change issues.

The document provides the strategic framework in which Council's own initiatives, relating to both the mitigation of greenhouse gases and adaptation to the potential impacts of climate change can be articulated. The draft strategy is a strategic level document designed to integrate with a variety of Council's function areas in order to both inform policy and decision making and be informed by the activities of Council. Therefore, it is intended that the strategy will become part of Council's corporate strategic direction and decision making rather than be a stand alone document.

This draft strategy seeks to achieve a number of objectives. These include:

- Responding to the potential climate change impacts identified through the risk assessment process;
- Addressing the outstanding mitigation actions of the now concluded Cities for Climate Protection Program;
- Encapsulating current Council activities relating to climate action; and
- When practicable, responding to the expectations of the community as presented by the recommendations of the Citizens' Forum.

The strategy also serves as an educational resource for the community with respect to Council's current and planned initiatives in response to climate change. The strategy is formed around Council's roles and responsibilities, government direction, scientific knowledge and the community's expectations. Each of these factors can, and are, likely to change over time as are the development of mechanisms to support adaptation. As a result, the strategy has been designed to be a flexible 'work in progress' document that can be easily reviewed to reflect changes in circumstances. To this end, it is anticipated that the strategy will be reviewed on a regular and on-going basis to ensure that it remains contemporary and continues to reflect scientific

information, government legislation and community expectations. The initial review of the strategy is envisaged approximately 18 months after its adoption.

As outlined above, the development of the strategy has been informed by targeted and innovative community engagement. As a means of formally concluding the community engagement process that has formed a crucial part of the draft strategy's preparation, it is proposed that Council invite the participants of the Citizens' Forum to an event to formally thank them for their valued input. It is also anticipated that the attendees of the World Café event will be sent a copy of the strategy and thanked for their involvement. This approach could also provide Council with the opportunity to ascertain the willingness of these participants to engage with Council through similar processes again in relation to other projects.

Sustainability Considerations

- **Environment**
Managing the risks of climate change is considered to be a significant issue for the Council. The Climate Action Strategy presents an opportunity to outline Council's intended response at this particular point in time to the potential environmental, social and economic impacts associated with climate change.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

There are no specific legislative requirements associated with the preparation of the Climate Action Strategy. A key purpose of the Climate Action Strategy is to enable the Council to assess the importance of climate change and align strategies and programs to the level of funding and resourcing that Council considers appropriate in response to identified risks and community expectations.

Key opportunities identified in the strategy that are nominated for action will be integrated into Council's delivery and operational plans over time and could be supported by relevant indicators through quarterly reporting. Funding and resource provision in relation to these activities would therefore be considered in the context of the broader budgetary process.

Significantly, the preparation of the strategy has been supported by a \$40,000 grant from the NSW Office of Environment and Heritage.

Consultation

As indicated, community engagement has been a key feature in the drafting of the Climate Action Strategy. In particular, this project represents the first use of deliberative democracy processes by Council. These processes have included the Climate Change Conversation Café, where in excess of 100 randomly chosen people attended a 3 hour workshop, and the 2½ day Citizens' Forum attended by 20 community members. Both events focused on the implications of climate change for Ballina Shire and potential responses to the associated challenges.

Options

1. Adopt the Climate Action Strategy

Council can endorse the Climate Action Strategy and proceed to finalise the document. Due to the extent of community engagement that has occurred in the development of this strategy, further community consultation through a public exhibition process is not considered necessary.

The randomly selected Citizens' Forum participants have provided substantial input to date, by way of their now endorsed recommendations to Council. These adopted recommendations have informed the strategies and opportunities outlined in the draft Climate Action Strategy. These recommendations have also informed other relevant Council documents, such as Council's Environmental Action Plan.

In adopting the Climate Action Strategy, Council may make amendments where considered appropriate. Finalisation of the strategy will include the preparation of a suitable message from the Mayor for inclusion in the document, and typographical edits and formatting where required prior to publication. When complete, it is anticipated that the strategy will be launched to the members of the Citizens' Forum. It is also envisaged that the principles of the strategy will be integrated into Council's work program over time.

This option is the recommended approach, as it supports the implementation of Council's climate change responses and is consistent with the deliberative democracy approach that has been applied to the community engagement component of the Climate Action Strategy project to date.

2. Exhibit the Climate Action Strategy

Council may elect to publicly exhibit the document to seek comment from the wider community. Under this approach, the Climate Action Strategy and submissions to the exhibition would be the subject of a further report to Council. This is not a preferred option as there has already been a substantial amount of community engagement involved in the development of the draft strategy. Furthermore, this approach is not consistent with a key principle of deliberative democracy process where consultation is based on a random selection of the community.

3. Defer the Climate Action Strategy

Council can choose to defer the finalisation of the strategy to obtain further information. Additional information could be obtained through a Councillor workshop or by conducting a targeted engagement with the participants of the Citizens' Forum and/or the Climate Ballina Conversation Café to obtain feedback on the draft strategy. This option is not preferred as substantial time and resources have been dedicated to the community engagement component of this project and the draft strategy is based on the outcomes of the community engagement processes undertaken.

4. Cease further progress on the Climate Action Strategy

Council may elect to discontinue the progress of the Climate Action Strategy. This option is not recommended as the discontinuation of the strategy will mean an absence of a coordinated formal Council policy in relation to the increasingly significant issues associated with climate change. Discontinuation may also place Council's receipt of \$40,000 in State Government funding for preparation of the strategy at risk.

RECOMMENDATIONS

1. That Council endorses the Climate Action Strategy, as included as a separate attachment to this report.
2. That Council invite the members of the Climate Ballina Citizens' Forum to participate in a launch of the Strategy.

Attachment(s)

1. Draft Ballina Shire Council Climate Action Strategy (separate attachment)

9.5 Lennox Head Cultural and Community Centre - Playgroup

File Reference	Lennox Head Cultural and Community Centre
CSP Linkage	People attaining health and wellbeing
Delivery Program	Community Planning
Objective	To advise the Council of a request to modify the Children's Area at the Lennox Head Cultural and Community Centre

Background

The Lennox Head Playgroup provides children's services at the Lennox Head Cultural and Community Centre. Presently, services are provided two mornings each week, but with increasing numbers of children, the group is looking to extend its services to three mornings weekly.

The portion of the Centre occupied by the Playgroup is within the dedicated children's area overlooking Williams Reserve, located between the main building and the CWA Hall.

The President of the Playgroup, Ms Debbie Watts, has recently written to Council expressing concern that the fenced outdoor area on the southern side of the building is inadequate to cater for the group's needs. The letter requests that Council give consideration to extending the external fence, thereby enlarging the outdoor play area for the children.

A copy of Ms Watts' letter is attached to the report for the information of Councillors.

Key Issues

- The allocation of additional funds to improve children's services at the Centre.

Information

The Playgroup has not provided information to describe the additional area it would seek to have enclosed, or the level of improvement that would be desirable (eg provision of softfall materials, shade covering etc). As a consequence, no costing for the expansion area has been prepared at this time, although this can be arranged by the staff if Council indicates its support for the project.

An inspection of the premises would suggest that the expanded play area could be provided along the southern wall of the adjoining CWA building without encroaching into the active sporting area within Williams Reserve. This would provide a fenced/secured area of approximately 70m² in addition to the existing outdoor area. It would be important for the Playgroup to liaise with the CWA to ensure that the children's activities in the enlarged area did not unreasonably disturb the CWA or the activities of others that use that building.

Another benefit to be derived from an expansion of the outdoor area may be the provision of additional storage for the Playgroup's equipment. A building for this purpose would need to be carefully designed and sited, and be secure in its construction, but options would appear to be available which could be canvassed with the Playgroup.

Council does not have funds available in its current Operational Plan to pay for the enlargement of, and improvements to, the outdoor area. Implementation of the project would be contingent upon a successful 'budget bid' during the preparation of the 2012/13 draft Operational Plan. Alternative funding for the project could be sourced through grants and these will be pursued by staff if Council indicates its support for the project.

Council will note from reading the Playgroup's letter that it may be in a position to contribute toward the cost of enlarging the outdoor space. Whilst this is appreciated, staff consider it will be preferable not to accept that offer. The situation is that the Playgroup does not have an exclusive right to use the children's area. Its contribution of funds toward capital improvement of the facility could be interpreted in the future as conferring an exclusive right and this could be to the detriment of other potential users.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The modification of the children's area by way of enlargement of the secured outdoor space will provide operational benefits to the Playgroup and other users.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

There appear to be no legal impediments or consequences to the carrying out of the proposed outdoor area expansion. Council's current budget does not provide for this work, therefore its funding will need to be weighed up against other competing projects during the next budget round. Alternatively, grant funding would be pursued if Council supports the project.

Council will note from the Playgroup's letter that it has also asked for a variation to the charges currently imposed for the use of the space. The Playgroup is being charged \$12.00 per hour. This is a 'flat rate' and not tied to the number of children in attendance. Council staff consider the charge to be appropriate and that it should be retained, subject to annual review in the preparation of the 2012/13 Operational Plan.

Consultation

No consultation with the broader community has taken place in relation to this matter.

Options

Council is asked to indicate whether it wishes to support or not support the enlargement of the outdoor area. No other commitment is required at this time. If the project is supported, staff will prepare an estimate of cost in liaison within the Playgroup and use that as a basis for seeking out grant funding and/or for a budget bid to Council in preparing the 2012/13 draft Operational Plan.

The recommendation which follows is that Council supports the project.

In relation to the Playgroup's request for Council to vary the current charge for its use of the facility, Council may approve or decline this request.

The recommendation which follows is that Council declines the variation (reduction/waiving) to the charge.

RECOMMENDATIONS

1. That Council advise the Lennox Head Playgroup of its support for the proposed enlargement of the existing outdoor space of the Children's Area at the Lennox Head Cultural and Community Centre. Further, that funding for such work will be considered as part of Council's preparation of the 2012/13 draft Operational Plan and that grant funding will also be sought as opportunities become available.
2. That Council advise the Lennox Head Playgroup that it wishes to adhere to the current charge for the use of the Children's Area at the Lennox Head Cultural and Community Centre for the time being, as Council is of the view that such charge is reasonable in the circumstances.

Attachment(s)

1. Letter from Lennox Head Playgroup

9.6 Northern Rivers Community Gallery - Update

File Reference	Northern Rivers Community Gallery
CSP Linkage	People attaining health and wellbeing
Delivery Program	Community Planning
Objective	To provide an update on the operations, exhibitions and public programs at the Northern Rivers Community Gallery.

Background

The purpose of this report is to provide an update to the Council on the exhibitions, public programs and operations of the Northern Rivers Community Gallery. It is now approximately 12 months since the management of the Gallery was transferred to Council's Strategic and Community Services Group.

Key Issues

- Operations of the Gallery
- Exhibitions Program
- Public Programs
- Cultural Development Programs

Information

In September 2010 the Strategic and Community Services Group commenced the administration of the Northern Rivers Community Gallery – coinciding with the commencement of the Gallery's first full-time co-ordinator.

During this initial period the management focus has been on:

1. *Formalizing Gallery operations such as:*
 - the development of a Handbook for Gallery Volunteers including a position description and policies and procedures relevant to the position
 - the commencement of interviews (with Human Resources staff) for the recruitment of new Gallery Volunteers (in 2011 twenty new Gallery Volunteers have been recruited and trained)
 - the introduction of a Gallery e-news communication method (similar to the electronic Community Connect) and

- the introduction of 2 exhibition scheduling rounds per annum (exhibition applications are accepted all year round) allowing a more strategic approach to exhibition programming and audience development opportunities.
2. *Increasing customer services by:*
- extending the Gallery hours on weekends by 1 extra hour on both Saturday and Sunday
3. *Undertaking audience development, cultural development, community engagement and education via the:*
- successful introduction of artist-run art making workshops for children every school holidays
 - 3 month internship placement of a Southern Cross University student at the Gallery
 - inaugural NAIDOC Week exhibition
 - inaugural BACCI exhibition
 - presentation of Youth Week exhibition and
 - hosting of the Artfelt Art Prize (fundraiser for Heartfelt House, Alstonville)

Future aims of the Gallery include:

1. Facilities:
- to redesign the Gallery's front gardens to create spaces that can be used for additional Gallery programming (ie outdoor workshops, live music etc)
 - to redesign the Gallery's wash-up room in order to allow storage and access to the wash-up sink for workshops
 - to purchase chairs for the Gallery so that we are able to host and present lectures and workshops
 - to purchase a small etching press for the Gallery in order to present printmaking workshops for children, school students and adults
 - to cover the two windows in Gallery 4 in order to maximise wall space for exhibitions and to control the light in the exhibition space and
 - to redesign the Gallery's reception desk to address ergonomics, functionality (including shop display space and foyer exhibition space) and aesthetics.

2. Programs:

- to establish strong links with local primary and secondary schools by presenting art education programs for students and professional development opportunities for teachers; and
- to establish a Friends of the Gallery program to assist with fundraising and audience development

3. Promotion/ Website:

- to continue to enhance the promotion and development of the Gallery's profile via the development of a dedicated website.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Gallery provides:
 - creative, cultural and heritage education and enjoyment for the local community - contributing to the well being of our residents and visitors.
 - professional development opportunities for artists.
- **Economic**

The Gallery assists in providing a diversified economy within Ballina Shire.

Legal / Resource / Financial Implications

This report has been prepared for information purposes only. It has no legal, financial or other resource implications.

Consultation

No consultation has occurred in relation to the preparation of this report. Of course, the Gallery Advisory Committee, comprising Councillors and community representatives, provides an ongoing monitoring role for the facility.

Options

Council is simply invited to receive and note the report. No further action is requested.

RECOMMENDATIONS

That Council notes the contents of this report in respect to the on-going operation of the Northern Rivers Community Gallery.

Attachment(s)

Nil

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.

US11/23	<p>Ballina Shire Council as Reserve Trust Manager of the Ballina Coastal Reserve Trust, to Elizabeth Anne Keemink - lease of part Crown Reserve No. 1010068 for a 15 year period from 1 July 2010 to 30 June 2025.</p> <p>Explanation: Ms Keemink is the proprietor of Shellys on the Beach café that is situated partly on Council operational land (Lot 1 DP 1095427) and partly on the adjoining Crown Reserve 1010068. On 21 August 2008 Council resolved to approve a then new temporary licence over the 81.7m² portion of (Crown) land to Ms Keemink to cover the time to prepare, execute and gain Ministerial consent for the licence agreement. Following an extended period of negotiation with the lessee and with the Crown, the licence agreement is now ready for execution. The licence agreement is to run concurrent with the lease agreement that terminates on 30 June 2025.</p>
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Attachment(s)

Nil

10.2 Investments Summary - September 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 September 2011.

Council's investments are all in accordance with the Local Government Act, the Regulations and Council's Investment Policy.

The balance of investments as at 30 September 2011 was \$68,391,000. This represents an increase from August of \$4,624,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 September 2011, was \$639,913.

Council's investments as at 30 September are at an average (weighted) rate of 5.78%, which is 0.95% above the 90 Day Bank Bill Index of 4.83%.

The majority of the approximately \$68 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	19
Sewer Fund (incl developer contributions)	External	23
Section 94 Developer Contributions	External	11
Bonds and Deposits	External	4
Domestic Waste Mgmt / Stormwater Charges	External	2
Other External Restrictions	External	6
Land Development	Internal	8
Employee Leave Entitlements	Internal	3
Carry Forward Works	Internal	12
Miscellaneous Internal Reserves	Internal	11
Unrestricted		1
Total		100%

* Based on reserves held as at 30 June 2011

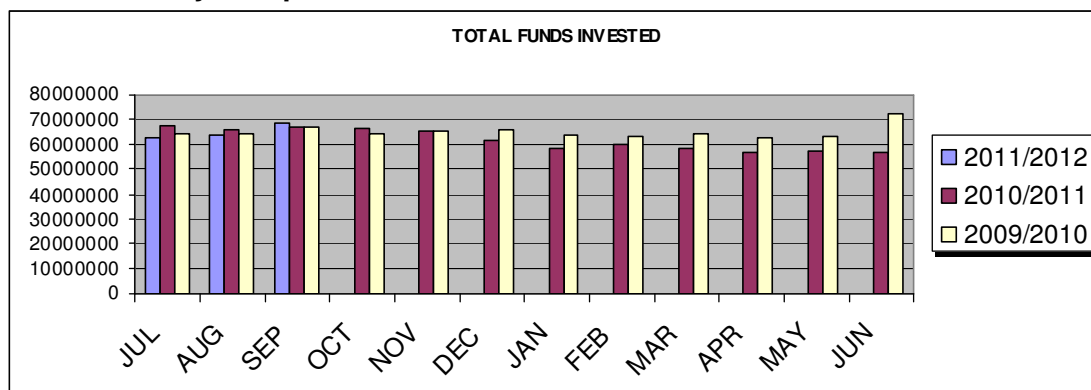
Information

A. Summary of Investments by Institution

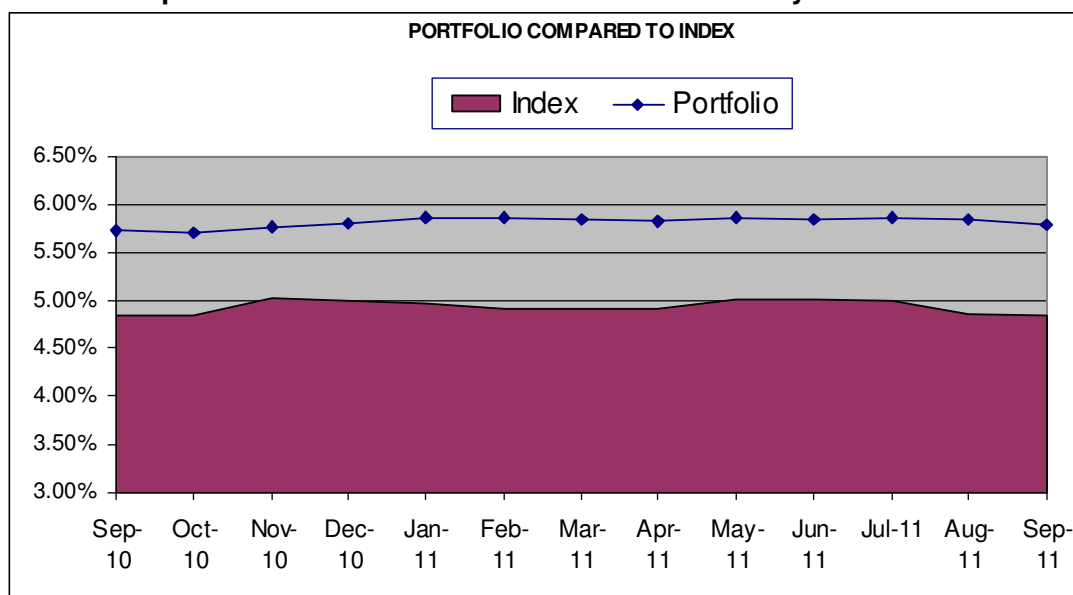
* Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	% of	Total
Grandfathered Investments						
ANZ Bank	AA-	No	2,000	2,000	2.9	
Bendigo Bank Ltd	BBB	No	1,000	1,000	1.5	
Deutsche Bank	A+	No	4,000	4,000	5.8	
Goldman Sachs	AA-	No	1,000	1,000	1.5	
Heritage Building Society	BBB	No	3,000	3,000	4.4	
HSBC Australia	AA-	No	1,000	1,000	1.5	
Local Govt Fin Service	A	No	5,000	5,000	7.3	
Longreach Capital Markets 23	AA-	No	1,000	1,000	1.5	
Longreach Capital Markets 28	AA+	No	1,000	1,000	1.5	
Morgan Stanley	A	No	2,000	2,000	2.9	
National Australia Bank	AA	No	1,788	1,788	2.6	
National Wealth M'ment Holding	A	No	2,000	2,000	2.9	36%
Rated Institutions						
ANZ Bank	AA-	No	4,005	105	0.2	
Bank of Queensland	BBB+	Y-\$1m	5,000	7,000	10.2	
Bank of Western Australia	AA	Y-\$m	2,958	4,958	7.2	
Commonwealth Bank of Australia	AA	Y-\$2m	5,905	8,429	12.3	
Credit Union Australia	BBB+	Yes	2,000	2,000	2.9	
Illawarra Mutual Bld Society	BBB	Y-\$1m	4,000	4,000	5.8	
Members Equity Bank	BBB	Y-\$1m	1,000	1,000	1.5	
National Australia Bank	AA	Y-\$1m	1,000	1,000	1.5	
Newcastle Permanent Bld Soc	BBB+	Y-\$1m	4,000	4,000	5.8	
Suncorp Metway Bank	A	Y-\$1m	8,111	10,111	14.8	62%
Unrated ADI's						
QLD Country Credit Union		Yes	1,000	1,000	1.5	2%
Total			63,767	68,391	100%	

BS AG, London (Ser 23) & Citigroup Pty Ltd (Ser 28)

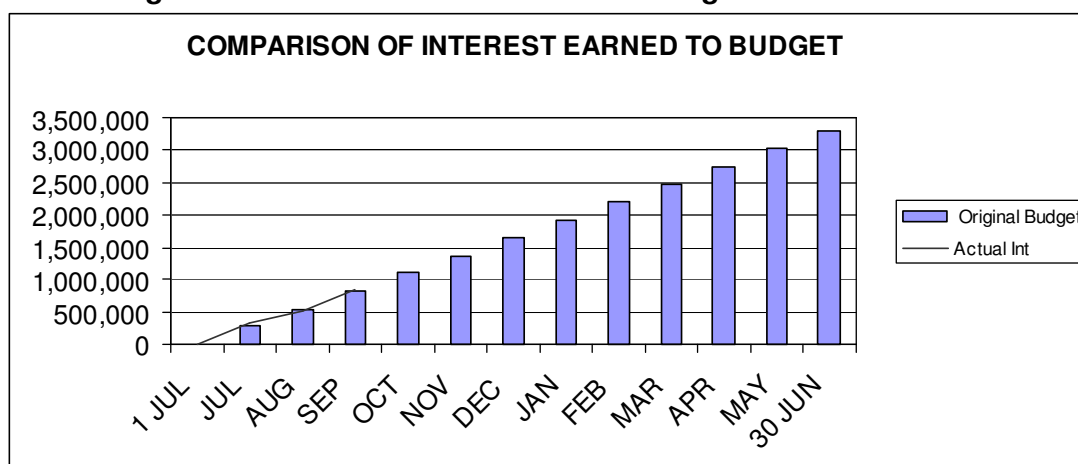
B. Monthly Comparison of Total Funds Invested



C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



Comment

The RBA Board left interest rates unchanged at its October meeting leaving the cash rate at 4.75% for the eleventh straight month.

The Federal Government made some important announcements regarding the Financial Claims Scheme (Guarantees on Bank Deposits) on 11 September 2011.

- The existing guarantee on Banks, Building Societies and Credit Union deposits up to \$1m has been extended until 1 February 2012
- A permanent guarantee cap will be introduced from 1 February 2012, subject to the continued advice of financial regulators that this remains appropriate
- From 1 February 2012 the permanent guarantee cap will be revised to \$250,000 per account holder per institution.

Council's current Investment Policy was written in the knowledge that the guarantee scheme was due to expire at this time. The permanent guarantee from February only applies on investments up to \$250,000. Council very rarely has investments below \$1million so this is of no benefit to Council.

Council's current policy provides flexibility and safety through use of ratings and limits on the amounts held with any one institution and no changes are proposed at this time.

E. Investments Held as at 30 September 2011

Purchase Date	Issuer	Type	Rate %	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	5.96	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	5.96	23/04/14	2,000
20/09/04	National Australia Bank	FRN	6.15	Perpetual	1,788
08/08/05	Morgan Stanley	FRN	5.33	08/08/12	2,000
12/04/06	Goldman Sachs	FRN	5.48	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	5.41	16/06/16	2,000
04/12/06	Heritage Building Society	FRN	3.5	04/12/11	2,000
28/02/07	Longreach Series 23	IRLN	8.66	10/02/12	1,000
25/01/07	Local Govt Fin Service	CRI	5.51	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	5.95	21/09/12	1,000
18/10/07	Heritage Building Society	FRN	6.14	18/10/12	1,000
18/10/07	ANZ Bank	FRN	5.59	18/10/12	2,000
14/03/08	HSBC Australia Ltd	FRN	7.07	14/03/13	1,000
16/12/08	Commonwealth Bank of Australia	CRI	6.38	16/12/11	1,000
17/12/08	Commonwealth Bank of Australia	CRI	5.95	17/12/13	1,000
17/12/08	Commonwealth Bank of Australia	TD	5.93	17/12/13	996
17/04/09	Commonwealth Bank of Australia	FRN	6.14	17/04/12	1,000
03/02/10	Commonwealth Bank of Australia	FND	4.70	At Call	1,909
28/04/11	Credit Union Australia	TD	6.19	28/10/11	1,000
05/05/11	Bank of Queensland	TD	6.23	01/11/11	1,000
21/06/11	Illawarra Mutual Bld Society	TD	6.05	19/10/11	2,000
22/06/11	Suncorp-Metway Bank	TD	6.15	20/10/11	3,111
30/06/11	Members Equity Bank	TD	6.15	28/10/11	1,000
05/07/11	Queensland Country Credit Union	TD	6.05	02/11/11	1,000
05/07/11	Bank of Queensland	TD	6.10	02/11/11	2,000
05/07/11	Newcastle Permanent Bld Society	TD	6.02	04/10/11	2,000
11/07/11	Illawarra Mutual Bld Society	TD	5.95	10/10/11	1,000
11/07/11	Suncorp-Metway Bank	TD	6.22	09/01/12	1,000
12/07/11	Illawarra Mutual Bld Society	TD	6.00	10/10/11	1,000
14/07/11	Credit Union Australia	TD	6.08	11/11/11	1,000
19/07/11	BankWest	TD	5.85	16/11/11	1,958
20/07/11	ANZ Bank	FND	3.70	At call	4,005
02/08/11	Suncorp-Metway Bank	TD	6.16	31/10/11	1,000
10/08/11	Suncorp-Metway Bank	TD	6.05	10/11/11	1,000
15/08/11	National Australia Bank	TD	5.89	14/11/11	1,000
15/08/11	Bank of Queensland	TD	6.05	14/11/11	1,000
29/08/11	Newcastle Permanent Bld Society	TD	5.91	28/11/11	1,000
01/09/11	Bank of Queensland	TD	5.85	30/11/11	1,000
01/09/11	Suncorp-Metway Bank	TD	5.90	30/11/11	1,000
21/09/11	Newcastle Permanent Bld Society	TD	5.75	20/12/11	1,000
27/09/11	BankWest	TD	5.80	27/03/12	3,000
27/09/11	Bank of Queensland	TD	6.00	05/01/12	2,000
27/09/11	Suncorp-Metway Bank	TD	5.90	05/01/12	1,000
28/09/11	Suncorp-Metway Bank	TD	5.90	04/01/12	2,000
Totals:					68,391
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 September 2011.

Attachment(s)

Nil

10.3 Disclosure of Interest Returns

File Reference	Disclosure of Interest
CSP Linkage	Transparent and accountable governance
Delivery Program	Administration
Objective	To comply with the provisions of the Local Government Act relating to the tabling of disclosure of interest returns.

Background

Section 449 (3) of the Local Government Act requires Councillors and designated persons to complete a pecuniary interests return within three months of the end of the financial year.

Section 450A (2) (b) then requires the General Manager to table those returns at the first available Council meeting following the completion of the three month period.

This report complies with the above sections of the Local Government Act for the period 1 July 2010 to 30 June 2011.

Key Issues

- Ensuring compliance with the Local Government Act.

Information

Returns are to be tabled by Councillors and designated persons. Section 441 of the Local Government Act defines designated persons as the General Manager, Senior Staff and other positions or members of committees that exercise functions that could give rise to a conflict of interest.

To manage the determination of designated positions an internal procedure has been adopted by staff that ensures that:

- all senior staff
- all staff involved in the determination of development applications
- all staff exercising delegations in respect to rezoning requests
- all staff with a purchasing authority above \$55,000
- all staff who have secondary employment approvals excluding those that relate to one off events that are for a relatively short term. Examples include elections, festivals etc.

complete the returns.

No committee members, other than Councillors, are required to complete returns, as all Council's committees, other than those consisting entirely of Councillors, have no delegated authority.

The completed returns and the register are now tabled for the information of the public.

Sustainability Considerations

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

Legal / Resource / Financial Implications

Council is legally obliged to comply with the Local Government Act.

Consultation

Provided for the information of the public.

Options

Not applicable

RECOMMENDATIONS

That Council notes the contents of the report on the disclosure of interest returns for the period 1 July 2010 to 30 June 2011.

Attachment(s)

The register of returns will be tabled at the meeting.

10.4 **Councillor Attendance**

File Reference	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).

Councillor Brown seeks approval to attend the Australian Airports Association Convention in Brisbane from 14 - 17 November 2011.

Council at the July Ordinary meeting approved the removal of the exemption for the Chairperson of Council's Airport Committee to attend quarterly meetings of the Australian Airports Association, including the National Conference, from the Councillors Expenses and Facilities Policy. This was removed to ensure consistency within the Policy and the onus was then on the Airport Chairperson to submit separate reports to Council for approval to be reimbursed for travel costs.

Key Issues

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

Information

The registration fee is \$965 plus \$150 dinner fee. Three nights accommodation, vehicle/travelling expenses and some meals would be in addition to this cost. A copy of the draft 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

The options are to approve or not approve the travel, with approval recommended due to Cr Brown's role as Chair of the Airport Committee.

RECOMMENDATIONS

1. That Council approves the attendance of Cr Brown at the Australian Airports Association Convention to be held in Brisbane from 14 - 17 November 2011.

Attachment(s)

1. Draft Conference program

10.5 Ballina Cup - Half Day Holiday 2012

File Reference	Industrial - Awards
Sustainability Plan	Transparent and accountable governance
Management Plan	Administration
Objective	To determine whether Council wishes to apply for a public half-day holiday or a local event day for the 2012 Ballina Cup.

Background

To meet the requirements of the process for declaring public holidays, the NSW Department of Finance & Services - Industrial Relations Office requires Council to indicate its support for an application for a half-day public holiday or a local event day throughout the Shire for the 2012 Ballina Cup. The designated date for the 2012 Ballina Cup is Thursday 6 September, 2012

In previous years the proposal was for the afternoon of that day to be declared a public holiday, however there is now an option to consider a local event day.

A copy of the letter received from NSW Finance & Services is attached which outlines the difference between the half-day public holiday and a local event day.

Key Issues

- Difference in options available

Information

It has been a standard process followed every year by Council to apply for a half-day public holiday. The Ballina Jockey Club has confirmed that Thursday 6 September 2012 is the scheduled date for the 2012 Ballina Cup.

The local event option means that employers have a choice as to whether or not they close their businesses for the afternoon.

Council has written to all the local Chambers of Commerce to determine which option they support. The correspondence to them advised that if no response was received then it would be assumed that they support the half-day public holiday. No responses had been received as at the time of writing this report.

It is assumed the preference for the Jockey Club would be to retain the public holiday as this helps to maximise attendance at the event.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Ballina Cup is a major part of the social calendar for the Ballina Shire.
- **Economic**
There are significant economic benefits gained from the staging of an event such as the Ballina Cup through promotional activities, however there is also a significant cost to businesses in closing for the afternoon.

Legal / Resource / Financial Implications

The NSW Industrial Relations Office ask Council to provide approval for the half-day holiday to meet their legislative responsibilities.

Consultation

Correspondence has been forwarded to the Chambers of Commerce and the Ballina jockey Club.

As outlined in the information section of this report. Council received one objection to the declaration as a public holiday for the 2011 Cup.

Options

The options are to approve a half-day public holiday or a local event day for 2012

As the half-day public holiday is a long standing tradition, and as there has been no objections from the local Chambers of Commerce, the recommendation is to continue with the public holiday.

RECOMMENDATIONS

That Council supports the declaration of a half-day public holiday throughout the Ballina Shire for Thursday 6 September, 2012 in respect to the 2012 Ballina Cup.

Attachment(s)

1. Letter from NSW Finance & Services

10.6 Community Donations

File Reference	Community Donations Northern Rivers Food Links Project
CSP Linkage	Resilient and adaptable communities
Delivery Program	Community Planning
Objective	To invite Council to consider three donation requests.

Background

Council approved a number of general and capital assistance donations at the July 2011 meeting for the 2011/2012 financial year. Since that time additional requests have been received. 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 allowed by the Council policies, they are submitted to Council for consideration.

Three such requests are considered in this report.

Key Issues

- Community development
- Sustainability

Information

Ballina Community Gardens Inc.

The Ballina Community Garden is a project involving cooperation between Council and Ballina Community Gardens Inc., with funding support from the Northern Rivers Food Links Project (of which Council is a constituent council with representation on the Steering Committee).

Ballina Community Gardens Inc, recently received \$40,370 in funding support as part of the discretionary budget of the Northern Rivers Food Links Project for the establishment of the community garden in Ballina.

The Food Links project funding arrangements are such that the final payment of \$2,200 (inclusive of GST) will not be received until the project is completed and audited. Given the funding arrangement and the planned works for the garden in the coming months, it has been identified that the Community Garden has a funding gap until it receives the final payment, expected in mid to late December 2011. Consequently, the committee has made a request to Council for a short-term loan of \$2,200 from the Community Donation's budget.

A copy of that request is attached.

Ballina Community Gardens Inc. is a not-for-profit incorporated association that has the following objectives:

- To promote, encourage and assist in cultivating, growing and cooking of fruit and vegetables
- To educate the members of the BCGI and the community in sustainable living practices and how to adapt them into their living situations
- To support schools in teaching the growing of plants and sustainability
- To provide a life-long learning and leisure centre for all members of the community
- To provide an accessible environment for all members of our community to learn and interact within the garden and
- To provide a space for all members of the community to enjoy and participate in community gardening.

A member of Council staff, Mr Simon Scott, is the secretary of the committee.

The Ballina Community Garden is being constructed by members of Ballina Community Gardens Inc on a site nominated for this purpose by Council's Civil Services Group. The site, located on the corner of Swift Street and Clarence Street, Ballina, is a residual portion of land surplus to requirements that is the subject of the land swap between Council and the NSW Department of Lands / Department of Education for the expansion of Saunders Oval.

The following works have been completed to date:

- twelve large garden beds (being approximately 2.6m x 9.6m of besser block construction)
- eight raised beds (being approximately 1.2m x 2.6m of timber construction)
- clubhouse, comprising a double garage with double awning;
- internal spine road and materials delivery area; and
- perimeter fence with two access gates.

Further information, including photos of the site and development activities, can be viewed at the community garden's website at <http://ballinacommunitygardens.com/gallery.htm>

The Food Links project will be the subject of an independent audit at the completion of the project. Final reporting is to occur mid November with the final payment (\$2,200 inclusive of GST) expected mid to late December 2011.

Due to the final payment being received after the completion of the project there is a funding gap for the project, for which the Ballina Community Gardens Inc. has requested Council assistance via a short-term interest-free loan from the Community Donations budget.

The advancement of the loan funds would provide cash to enable completion of the project, with the loan amount to be repaid in full immediately upon receipt of the Food Links funding in December.

Lennox Head Residents Association Inc.

Since the death of Mr Brian Smith the Association's Coast Care Group have been experiencing difficulties in relocating their equipment and materials, as storage at Mr Smith's property will no longer be available.

After consultation with Council's Open Spaces Section a site has been identified where they can keep a shipping container.

Mr Goodman has sourced the purchase of a shipping container, fully repainted inside and out and delivered to the site for \$2,950, of which the Association is able to pay \$1,500. The Association is asking Council for \$1,450 to make up the shortfall. A copy of the request is attached.

Lennox Head Emergency Services

The Mayor has received an email from the Emergency Services Liaison (Volunteer) Officer asking for Council to waive the hire fees for a volunteer team meeting held on 22 October 2011 at the Lennox Head Community Centre.

As this meeting was held prior to the Council meeting an account has been raised for the hire fee, with the organiser being advised that they can pay the account (\$50) off, if the charge is not waived.

A copy of the email to the Mayor is included as an attachment to this report.

Council staff have researched this group and confirmed that:

- The correspondent is a volunteer for the Red Cross in the emergency services section
- The Red Cross are a support agency under the emergency management committee system and provide support to the Police and / or Community Services when required to assist in evacuations - i.e. process evacuees, assist people looking for accommodation, welfare etc
- This group of volunteers were active in the Lennox tornado at the operations centre
- They are required to train new members, along with maintaining the existing volunteer base

Sustainability Considerations

- **Environment**
The three groups identified all play a part in providing environmental, social or economic benefits to the shire.
- **Social**
As above

- **Economic**
As above

Legal / Resource / Financial Implications

The current status of the donations budgets for 2011/2012 is as follows:

Items	Budget	Expended	Balance
Donations (General)	65,000	59,246	5,754
Donations (Halls)	40,000	37,500	2,500
Donations (DA Fees)	2,000	2,349	(349)

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. However there has been no specific consultation in respect of these applications.

Options

The options are to approve or decline each of the requests.

In respect to the community gardens project Council should not be in the business of providing bridging finance to community groups, as this can place public monies at risk. However on the positive side the specific project is directly funded by the Food Links Project and Council is a member of the project team. Therefore Council can have confidence that the funds are available and will be paid, subject to final audit. The infrastructure being provided is also on Council controlled land.

With the final payment of \$2,200 expected to be paid by December 2011 the timeframe is relatively short and one option could be for Council to approve the \$2,200 loan, subject to the final payment being received directly by Council from the Foodlinks Project. This would ensure there is minimal risk of Council not receiving the payment, with the only potential concern being that Ballina Community Gardens Inc. does not fulfil their obligations.

Unfortunately the Foodlinks Project Team has advised that the conditions of the grant do not allow this type of payment to occur.

This being the case, from a staff perspective, it is difficult to recommend a bridging loan, as there are concerns that it may set a precedent for other community groups, who may be relying on future funding. The advice from the members of the committee is that if this funding is not provided then the loan will need to be paid for from the members own monies.

The recommendation is not to approve the loan, however it is accepted that there are many reasons why a loan could be supported due to the nature of the project (i.e. funds virtually assured, significant infrastructure provided on Council land, project that is supported by Council policy and we are attempting to encourage across the shire).

In respect to the Lennox Head Residents Association, there have been exceptional circumstances that have resulted in this request. As they are a long term local committee, and are contributing to the purchase, the preferred option is to approve the donation.

Finally, even though the SES volunteer's donation is only minor it is important that Council not continually waive fees for the use of Lennox Head Community Centre as the facility needs to generate as much income as possible to assist in mitigating its operating cost. By recognising this request as a donation, the funds will be internally transferred from the donations budget to Community Centre income.

As the service is an essential emergency service, and it is always difficult to attract and retain volunteers, it does appear unreasonable to expect these volunteers to pay for the hire of the room.

If the donation is approved it is recommended that it be funded from Council's SES Sundry Expenses budget, which has \$1,607 remaining for this type of sundry expense.

RECOMMENDATIONS

1. That Council advise the Ballina Community Gardens Inc that it cannot support a bridging loan of \$2,200 as there are no guarantees (personal or otherwise) attached to the loan.
2. That Council approves a donation of \$1,450 from the Community Donations budget to the Lennox Head Residents Association for the purchase of a container for the storage of their equipment and materials. This approval is provided due to the untimely death of Mr Brian Smith which has resulted, or will result in, the loss of their current storage space.
3. That Council approves the waiver of the \$50 hire fee for the Lennox Head Community Centre, payable by the Lennox Head Emergency Services Volunteers, with this waiver to be recognised by a transfer from the SES Sundry Expenses budget to the Lennox Head Community Centre income budget.

Attachment(s)

1. Request from Ballina Community Gardens Inc
2. Request from Lennox Head Residents Association
3. Request from Lennox Head Emergency Services

10.7 Policy (Review) - Untaken Sick Leave

File Reference	Council Policies
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To review the Untaken Sick Leave policy.

Background

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

This policy sets out the guidelines for the payment of untaken sick leave on the cessation of employment for employees engaged by Council prior to 24 January 2002.

The policy provides for payment of 50% of untaken sick leave to a maximum of 52 weeks, subject to various conditions, including a minimum of 10 years continuous Local Government service.

Council last reviewed this policy in 24 January 2002.

Key Issues

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

Information

The last review of this policy in 2002 resulted in the termination of a long standing sick leave agreement within Council, which rewarded staff who did not take their sick leave entitlements. These types of agreements used to exist in many organisations and progressively they have been phased out due to the cost of the benefit paid on resignation of the employee.

The logic behind these agreements was that by minimising sick leave taken, productivity was increased, which arguably offset the cost of the benefit paid on resignation.

There are still a number of employees within Council who are beneficiaries to this policy, as it was a condition of their employment, however the number eligible is gradually reducing as time passes.

In respect to the actual review of the policy, only minor changes have been identified, as follows:

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Staff closely examined Clause 3 of the policy which provides an entitlement of 50% of untaken sick leave to a maximum of 52 weeks. It was considered that this provision is worded correctly, therefore no change is recommended.

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

Additions to the policy are marked in yellow, with deletions lined through.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
The original policy was designed to provide financial benefits to Council and also encourage the retention of staff.

Legal / Resource / Financial Implications

There are no direct financial implications of this report. For the purposes of this report a comparison was also made between the level of sick leave taken between employees still in this policy and those who aren't. These figures did not reveal any benefit from the scheme and in actual fact there was a lower level of sick leave taken, for the period the figures were taken from, for staff that aren't in the scheme.

Consultation

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

Options

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

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

RECOMMENDATIONS

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

Attachment(s)

1. Review – Untaken Sick Leave Policy

10.8 Policy (Review) - Councillor Facilities & Expenses

File Reference	Council Policies
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To adopt the Councillor Facilities and Expenses policy.

Background

Council at the 28 July 2011 Ordinary Meeting resolved to make changes to the Councillors Expenses and Facilities Policy, with regard to Councillors meeting attendance for the Australian Local Government Women's Association (NSW) and the Australian Airports Association, as follows:

- 1. That Council does not support an inclusion in the Councillor's Facilities and Expenses Policy to allow automatic Councillor travel to the Executive meetings of the Australian Local Government Women's Association (NSW Branch) as this type of clause results in further precedents for exemptions under the policy, can create inequities and reduces the overall transparency in the approval process for travel.*
- 2. That Council approves the removal of the exemption for the Chairperson of Council's Airport Committee to attend quarterly meetings of the Australian Airports Association, including the National Conference, from the Councillors Expenses and Facilities Policy, for the reasons outlined in point one, and authorises the exhibition of this amendment.*

The draft policy was placed on public exhibition until 28 September 2011. No submissions were received.

The Division of Local Government (DLG) has also released findings of its review of 47 councillor and facilities policies from around NSW. The review assessed compliance with the Local Government Act 1993 and the Division's Guidelines of October 2009.

Ballina Shire Council's policy was not assessed by the Division and following a review by staff of the findings from the DLG there are four areas where our existing policy can be improved or updated:

- Accommodation and meal limits
- Travel reimbursement rates
- Approval Arrangements
- Motor Vehicle - Mayoral

Key Issues

- Review the policy so that it remains consistent with current guidelines

Information

Following the 28 July 2011 Council resolution, the policy was exhibited for a period of 28 days to allow for public comment. The exhibition was notified via Council's website, advertisement in the local newspaper, and eNews with a link to an online feedback form. Copies of the document were made available at Council's Community Access Points. Nil submissions were received.

In addition to the previous exhibition of the amended policy from the July 2011 Council resolution, the following key components have been reviewed for amendment:

- Accommodation and meal limits
- Travel reimbursement rates
- Approval Arrangements
- Mayoral Motor Vehicle

Additions to the attached policy are highlighted yellow, with deletions lined through.

Accommodation and Meals

The maximum payable for accommodation and meals will be the maximum reasonable travel and meal expense amounts determined by the Australian Taxation Office (ATO) (refer Taxation Determination TD 2011/17). The current rates are:

<i>Place</i>	<i>Accommodation</i> \$	<i>Food and Drink</i> ⁽¹⁾ \$	<i>Incidentals</i> \$	<i>Total</i> \$
Adelaide	209.00	133.45	24.70	367.15
Brisbane	236.00	133.45	24.70	394.15
Canberra	230.00	133.45	24.70	388.15
Darwin	278.00	133.45	24.70	436.15
Hobart	195.00	133.45	24.70	353.15
Melbourne	265.00	133.45	24.70	423.15
Perth	275.00	133.45	24.70	433.15
Sydney	265.00	133.45	24.70	423.15
Country	190.00	133.45	24.70	348.15

(1) This figure is dissected between - breakfast \$30.30, lunch \$42.95, dinner \$60.20. Over-expenditure for one meal can be offset by under-expenditure for another.

Travel

The reimbursement rate for use of a Councillors' vehicle shall be in accordance with the rates issued by the ATO each year using the cents per kilometre method. The current rates are:

63 cents per km	vehicle capacity up to 1600cc
74 cents per km	vehicle capacity 1601 – 2600 cc
75 cents per km	vehicle capacity over 2601 cc

Approval Arrangements (page 2)

One recommendation from the DLG is to ensure there is a second person approving the Mayor's expenses. This can be addressed with the addition of the following sentence:

In the case of the Mayor's expenses, authorisation shall be provided by the General Manager and one other Councillor.

Mayoral Motor Vehicle (section 3.3.2)

Currently Council does not require a private contribution from the Mayor for travel, excluding private travel outside the region, wherein the Mayor is required to personally fuel the vehicle

As almost any local function / activity attended by the Mayor, can be related to the position held, Council has, to date, not considered there to be a need for a private contribution for any local travel. However the DLG has made it clear any Councillor private use, of Council equipment and facilities, must be paid for, excluding "incidental use", which is not defined.

A review of numerous council expenses policy was conducted to find wording that may be suitable for Ballina in respect to the Mayoral vehicle. Unfortunately good examples were hard to find, as outlined below:

Armidale

A 4 or 6-cylinder vehicle shall be provided by the Council and shall be fully maintained for use by the Mayor for Council related business. The vehicle may be used for private purposes by the Mayor. The cost of petrol used for private purposes shall be the responsibility of the Mayor.

Comment: Calculation of private use not defined

Cessnock

The Mayor will be provided a suitable and appropriate Mayoral vehicle (including fuel card) for civic and private use. The Mayor's vehicle will be maintained and replaced in accordance with the Motor Vehicle Policy.

Comment: The Motor Vehicle Policy is typically for staff only, with the fees recognizing a much higher level of private use than what could be expected of the Mayoral position.

Lismore

Council, in addition to facilities provided for all Councillors, will provide the Mayor with the following additional facilities - A motor vehicle with full private use rights.

Comment: No private use contribution

Tweed

A motor vehicle bearing no markings or identification will be provided for the sole use of the Mayor. The motor vehicle is and shall remain the property of Council and shall be surrendered to Council by the Mayor in the event that the person is no longer the Mayor. The Mayor is to be given unrestricted use of such vehicle including private use, with the Council servicing and maintaining such vehicle, paying registration and insurance (including full comprehensive cover) and providing fuel. Private use means that the Mayor and his/her spouse or other licensed driver (provided the Mayor or Mayor's spouse is in the car) or any other Council employee are allowed to drive the vehicle.

Comment: No private use contribution

Broken Hill

Council will provide at its cost to the Mayor an appropriate fully registered, insured, maintained and fuelled vehicle for use by the Mayor on official duties and functions of the Office of Mayor. The vehicle will be available to the Mayor for full private use in accordance with Council's motor vehicle usage policy and for the weekly leaseback amount of fifty dollars per week, invoiced monthly in arrears.

Comment: The idea of a standard averaging fee has merit. The Broken Hill local government area is quite large, with significant distances between towns, therefore a contribution for Ballina could be a figure lower than the \$50 mentioned.

In summary the difficulty with the Mayoral position is the point made earlier, in that there is a very fine line between private and Mayoral activities, due to the prominence of the role. Therefore to track private and personal use could be cumbersome, and even the use of log books for a set period, may result in anomalies in the result.

A number of council policies reference the Council private use policy for motor vehicles, and Ballina Council has an internal agreement that clearly defines the responsibilities for staff with private use of vehicles. The conditions outlined in that agreement provide good parameters for private use that could be applied to the Mayoral position.

In respect to fees the current weekly fees in that internal procedure are as follows:

Classification	Amount (\$)
Small	72.00
Medium Sedan	82.50
Large Sedan	98.00
Large Wagon	103.00
AWD Wagon	103.00

These fees are reviewed annually. Also staff are not allowed to refuel the Council vehicle for private use outside a 200 km radius.

One option, that would ensure that the Mayoral position also has some relativity to staff, would be to charge a standard fee, based on a pre-determined percentage of the applicable staff fee.

For example the current Mayoral vehicle would be comparable to the AWD wagon classification and a possible contribution could be 25% of the staff fee.

This results in a weekly fee of \$25.75.

The recommended wording that would be included in the expenses policy based on this is as follows:

Council will provide a motor vehicle for use by the Mayor on official duties and functions of the Office of Mayor. The vehicle will also be available to the Mayor for full private use in accordance with the terms and conditions outlined in the staff private use of motor vehicle's agreement. The type of vehicle selected and use of the vehicle is to be consistent with the terms of that agreement.

In recognition of the private use likely to be incurred, a weekly fee equivalent to 25% of the fee applicable for the class of vehicle, as per the staff motor vehicle agreement will be deducted from the Mayor's monthly allowance payment. Alternatively the Mayor can complete a log book for a minimum period of three months to determine whether or not a lower weekly fee should be paid based on actual private use.

A fuel card is provided for refuelling from Council authorised facilities, however, during periods of private use any refuelling occurring outside a 200km radius from the Council administrative centre, must be paid for by the Mayor.

The maximum standard of the motor vehicle will be that of a Holden Statesman, Ford Fairlane, or equivalent.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The provision of adequate resources to Councillors is considered important in ensuring that we encourage residents to become Councillors and to ensure that elected Councillors can undertake their role effectively.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Section 253 (1) of the LGA also requires councils to publicly exhibit any changes to the policy for a minimum period of 28 days. Submissions received during that period must be considered before the amended policy is adopted.

The DLG has also made it quite clear that councils must re-exhibit a document if changes are proposed following the exhibition period, except for relatively minor changes. The accommodation and travel expense rates, along with the change in the approval process for the Mayor's expenses are considered minor however the proposal for the Mayoral motor vehicle weekly fee is significant and should be re-exhibited.

Consultation

Council must ensure that any consideration of the draft policy or any proposed amendment to it is conducted in an open council meeting (LGA s.254).

Options

1. Council can adopt the policy as previously exhibited, and re-exhibit with changes recommended in this report.
2. Council can amend and adopt the policy as attached to this report
3. Council can determine to not adopt the policy.

The recommendation is to adopt the amended Councillor Expenses & Facilities Policy as previously exhibited, inclusive of the updated accommodation and travel expenses and approval process. It is also recommended that the adjustment to the Mayoral vehicle fee be exhibited for public comment.

RECOMMENDATIONS

1. That Council adopt the amended Councillor Expenses & Facilities Policy as previously exhibited; inclusive of the following changes, which are considered to be relatively minor:

Accommodation and Meals

The maximum payable for accommodation and meals will be the maximum reasonable travel and meal expense amounts determined by the ATO (refer Taxation Determination TD 2011/17). The current rates are:

<i>Place</i>	<i>Accommodation</i> \$	<i>Food and Drink</i> ⁽¹⁾ \$	<i>Incidentals</i> \$	<i>Total</i> \$
Adelaide	209.00	133.45	24.70	367.15
Brisbane	236.00	133.45	24.70	394.15
Canberra	230.00	133.45	24.70	388.15
Darwin	278.00	133.45	24.70	436.15
Hobart	195.00	133.45	24.70	353.15
Melbourne	265.00	133.45	24.70	423.15
Perth	275.00	133.45	24.70	433.15
Sydney	265.00	133.45	24.70	423.15
Country	190.00	133.45	24.70	348.15

(1) This figure is dissected between - breakfast \$30.30, lunch \$42.95, dinner \$60.20. Over-expenditure for one meal can be offset by under-expenditure for another.

Travel

The reimbursement rate for use of a Councillors' vehicle shall be in accordance with the rates issued by the ATO each year using the cents per kilometre method. The current rates are:

63 cents per km	vehicle capacity up to 1600cc
74 cents per km	vehicle capacity 1601 – 2600 cc
75 cents per km	vehicle capacity over 2601 cc

This reimbursement will be considered to cover all costs associated with the vehicle use, including tyres, insurance, repairs, petrol, oil and associated incidental costs.

Approval Arrangements (page 2)

The approval arrangements will be amended with the addition of the following sentence:

In the case of the Mayor's expenses, authorisation shall be provided by the General Manager and one other Councillor.

2. That Council place this adopted policy on exhibition for further public comment, inclusive of the following change for the provision of the Mayoral vehicle as per clause 3.3.2:

Council will provide the Mayor a motor vehicle for use by the Mayor on official duties and functions of the Office of Mayor. The vehicle will also be available to the Mayor for full private use in accordance with the terms and conditions outlined in the staff private use of motor vehicle's agreement. The type of vehicle selected and use of the vehicle is to be consistent with the terms of that agreement.

In recognition of the private use likely to be incurred by the vehicle, a weekly fee equivalent to 25% of the fee applicable for the class of vehicle as per the staff motor vehicle agreement will be deducted from the Mayor's monthly allowance payment. Alternatively the Mayor can complete a log book for a minimum of three months to determine whether or not a lower weekly fee should be paid based on actual private use.

A fuel card is provided for refuelling from Council authorised facilities, however, during periods of private use any refuelling occurring outside a 200km radius from the Council administrative centre, must be paid for by the Mayor.

The maximum standard of the motor vehicle will be that of a Holden Statesman, Ford Fairlane, or equivalent.

Attachment(s)

1. Policy Review - Councillor Expenses and Facilities Policy

10.9 Community Building Partnership Grant - Men's Shed

File Reference	Land Development
CSP Linkage	Diverse and balanced land use
Delivery Program	Commercial Services
Objective	To determine whether Council wishes to support an application for a community building partnership grant for a men's shed proposal at North Creek Road, Ballina

Background

Council has received an application from the Ballina Community Men's Shed auspiced by the Ballina Salt and Light Incorporated - a community project of the Ballina Baptist Church for a partnership in providing land for the organisation to establish a "Men's Shed" in the Southern Cross Industrial Estate.

Following discussions with Council staff the only land identified as suitable is 54 North Creek Road, Ballina upon which Council currently has a residential building and is part of the residue area for the Southern Cross Industrial Estate (locality map attached).

This report considers the merits of this proposal.

Key Issues

- Providing land for community organisation
- Assisting in grant application for project

Information

Council has been approached by the Ballina Community Men's Shed co-ordinators to assist in providing a facility for the expansion of the program within Ballina Shire. Currently the organisation operates from Southern Cross K-12 School at East Ballina and also assists with the Ballina Community Garden program in Swift Street. They have now outgrown their current premises and are looking to expand the programs on offer and as such have approached Council for assistance. A parcel of land was identified at 54 North Creek Road, Ballina as being a possible site upon which to construct a purpose built shed for the organisation to expand their programs.

NSW Government Community Building Partnership 2011 funding opportunities are currently available and it is understood this project meets the criteria for the funding and that an application could be lodged. The intention was to apply for a grant of up to \$200,000, with a total of \$400,000 being available across the State.

Legal / Resource / Financial Implications

The key issue with this proposal is that the Council contribution to the project is operational land that has a value in excess of \$200,000. Therefore by supporting this proposal the Council contribution is significant. The house on the property is currently earning a rental of \$320 per week with the current lease expiring on 26 September 2012. There may be an option to only use part of the land parcel, however that would still significantly reduce the value of the land.

Consultation

Preliminary discussions have been held with the Men's Shed co-ordinators.

Options

The options are to support or not support the project.

In support of the proposal is the benefit provided by this service to the local community and the opportunity to provide a permanent base. There may also be an opportunity to use only part of the land, which would then mitigate some of the impact on the value of the property.

Against this proposal is the value of the contribution of the property. Council has a huge list of key infrastructure projects in the pipeline (Surf Clubs, Main Streets, Coastguard Tower etc) and this land could be sold or developed to provide a financial return to Council. The land is strategically well located close to the new Harvey Norman Centre and with Council's future plans to enhance this entire precinct the land may have an even higher value into the future.

Council is not in a position to resolve every land issue that arises and despite our willingness to help community groups, the preferred option is not to support this request due to the value of the property in question. There are many worthy community groups in our shire, who would like to be provided with a permanent base, therefore the allocation of this land to a group, based on the possible receipt of grant funding, is not considered fair or equitable.

Finally this does raise the issue of Council staff engaging with community groups on matters of this nature. Council staff will assist groups where possible in finding suitable land, however often that land has no tangible monetary value, as it is community land, typically used for some form of open space.

The land identified in this report is operational land and has a tangible value. It may well be that Council needs to consider a policy whereby the consideration of operational land is excluded from site selection discussions for community groups. This then ensures that expectations are not falsely raised and also assists with promoting a clearer distinction between community and operational land.

RECOMMENDATIONS

That Council not support the selection of 54 North Creek Road Ballina as a suitable site for the Men's Shed grant application, due to the value of the site and the many other major infrastructure priorities that Council has planned, that would benefit from the proceeds of the sale or re-development of this site.

Attachment(s)

1. Locality Map

10.10 Local Government Election - 2012

File Reference	2012 Local Government Election/Ward Boundaries
CSP Linkage	Transparent and accountable governance
Delivery Program	Administration
Objective	To determine a range of matters in respect to the conduct of the 2012 Local Government quadrennial elections.

Background

The Local Government elections are scheduled to be held September 2012. Matters that need to be considered by Council in respect to this election include the following items:

- Management of the election
- Ward boundaries
- Reduction in the number of councillors
- Constitutional referendums and Polls

This report canvasses each of these matters.

Key Issues

- How Council wishes to manage the election
- Whether Council wishes to review its ward boundaries.
- Whether Council wishes to hold a constitutional referendum or poll

Information

The NSW State Government has recently passed the Local Government (Amendment) Elections Act 2011. Section 296 of the Act now provides that council elections (and, by operation of section 18 of the Act, constitutional referendums and polls) are to be administered by the general manager of the council concerned.

This means that councils now have the option of:

- a) contracting the NSW Electoral Commission
- b) contracting another service provider.
- c) running the election themselves

With the change to the Elections Act, the NSW Electoral Commission has been writing to and visiting all councils in NSW highlighting that if they are not contracted to do the election for a council, then they will not be in a position to provide any electoral support for that council area as part of the election process.

The Electoral Commission has also provided councils with a comprehensive checklist of the specialised and complex tasks involved to ensure elections are conducted appropriately and in compliance with standards and legislation.

The underlying message from the meetings and the information provided by the Electoral Commission is that there is a major risk in not having the election conducted by them, and they will not be in a position to provide any support to councils.

In response to concerns that the Electoral Commission was being unreasonable in their dealings with councils on this issue, and to provide some form of competition for the service, the Local Government and Shires Association arranged for the Australian Election Company (AEC), which is an alternative provider for election services, to provide a presentation / briefing to members on 29 August 2011 in Sydney. No staff from Ballina attended, however NOROC took the opportunity to arrange a presentation by the AEC for Northern Rivers councils on 23 September 2011.

The general consensus from that meeting, although not recorded, was that there were concerns about the ability of AEC to deliver a local election, as they had not had any experience in conducting a complete election for a NSW local government authority in many years, if at all. AEC are largely a Queensland based company and in recent years their work has focused on more specific industry based elections.

Richmond Valley Council obtained a quote from AEC for their election and that quote was approximately \$170,000 to \$190,000. The NSW Electoral Commission estimate for Richmond Valley was \$115,000 to \$130,000 and Richmond Valley has now resolved to proceed with the Electoral Commission.

The NSW Electoral Commission has advised that councils must accept their services prior to 30 November, 2011 to allow them to plan for the conduct of the elections. Their correspondence has also provided an estimate of costs, which based on the 2008 payment by Council to the Electoral Commission of \$171,000, Council can expect the 2012 election to cost around \$200,000.

This excludes other incidental costs that will be incurred such as local advertising. The Commission has also advised they only work on a cost recovery basis and there is no profit margin included in their billing.

As part of the 2008 election Ballina Council shared a returning officer with Byron Shire and a similar proposal could occur again.

Reduction in the number of Councillors

A constitutional referendum was conducted at the September 2008 election where the following question was asked:

1. *Currently, Ballina Shire Council has ten Councillors (three from each of three wards, plus the Mayor).*

Do you favour the reduction of Councillors to seven (two from each of three wards, plus the Mayor)?

The votes recorded are set out below:-

Yes 10,401

No 11,811

The referendum was not passed.

Recent changes in legislation now allow councils to apply for a reduction without the need for a formal referendum. However as the 2008 referendum was not supported there is no intention to reconsider this issue again. Any proposal for a reduction must be with the Minister for Local Government by 28 November 2011.

Ward Boundaries

Section 210(7) of the Local Government Act states that the division of a council's area into wards, or a change to the boundaries of a ward, must not result in a variation of more than 10 per cent between the number of electors in each ward in the area.

The latest available elector numbers for the Ballina Council wards are as follows:

A ward - 9,663

B ward - 10,065

C ward - 9,254

The maximum variation is 881 electors which is 8.8%.

Prior to the 2008 election adjustments were made between A and B ward, with the boundary between the wards being shifted further north to include parts of East Ballina and Shaws Bay.

The current numbers are within the 10% limit and no change is needed for this election, although that situation may well change by the time of the 2016 election.

This point is interesting in that the three major future growth areas are Cumbalum (A Ward), Lennox Head (B Ward) and Wollongbar (C Ward). Therefore future growth may be evenly spread across the wards which would then minimise the need for further changes.

Any proposal for ward boundaries needs to be submitted to the Electoral Commission by 31 December 2011.

Constitutional Referendums and Polls

Constitutional referendums are binding and can be held on matters such as the popularly elected Mayor or changes in the number of wards, or removal of wards. It is considered that Ballina Council's current governance structure (popularly elected mayor, three wards) works reasonably well and no change is recommended.

In respect to polls the outcomes are not binding and it is a matter for each Council to determine whether they wish to poll the community on any particular issue.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The democratic process is a major factor in the social cohesion of our community and government.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Council has budgeted in our forward financial plans for the 2012 election based on the cost of the 2008 election.

Consultation

Consultation has occurred with the NSW Electoral Commission, AEC, and other councils.

Options

In respect to the conduct of the election Council has the option of managing the election ourselves, appointing the NSW Electoral Commission or another service provider.

It has been made extremely clear that the Electoral Commission will not provide support for any alternate provider, including Council itself, and on that basis the recommendation is to appoint the Commission as our provider. The estimated cost is based on cost recovery only and to ensure that the election is conducted in accordance with all the relevant legislation it does seem logical that Council appoint the Commission.

In respect to the other matters detailed in this report there are no issues identified that need to be addressed.

RECOMMENDATIONS

That Council authorises the General Manager to appoint the NSW Electoral Commission to manage the 2012 Local Government election for Ballina Shire.

Attachment(s)

Nil

10.11 Annual Financial Reports - 2010/2011

File Reference	Financial Reports 2011
CSP Linkage	Transparent and accountable governance
Delivery Program	Financial Management
Objective	To obtain Council approval to exhibit the 2010/11 Financial Reports for public comment and to sign the certified statements for both the General Purpose and Special Purpose Statements.

Background

Council must prepare financial reports for each financial year that are in accord with:

- The Local Government Act 1993 (as amended) and the Regulations made thereunder
- The Australian Accounting Standards and professional pronouncements
- The Local Government Code of Accounting Practice and Financial Reporting
- The Local Government Asset Accounting Manual.
- NSW Government Policy Statement *“Application of National Competition Policy to Local Government”*
- Department of Local Government guidelines *“Pricing & Costing for Council Businesses: A Guide to Competitive Neutrality”*.
- The Department of Energy, Utilities and Sustainability *“Best Practice Management of Water Supply and Sewerage”* guidelines.

Once completed and audited Council must resolve to exhibit the statements for public comment. Council must then consider the statements again (typically at the November ordinary meeting of council), together with submissions, and formally resolve to adopt the reports.

This report seeks Council approval to exhibit the annual financial reports.

Key Issues

- Financial results
- Council must be satisfied that the reports present a true and fair picture of the Council's financial position as at 30 June 2011.

Information

The Annual Financial Reports for the year ended 30 June 2011 have been completed and audited. A copy of the reports, together with the Auditor's Reports, are enclosed with this business paper for all Councillors. A copy of the reports is available for the public at the Customer Service Centre and Council's website.

The purpose of this report is to obtain Council's approval for the exhibition of the financial reports and to provide Councillors with an opportunity to discuss the information contained within the documents.

Council must also provide approval for the Mayor, one other Councillor, the General Manager and the Responsible Accounting Officer to sign the statements confirming that, in the opinion of Council, the financial reports are fair and accurate. Copies of the two statements to be signed are attached to the end of this report.

Once the financial reports are approved the reports must be advertised for public comment. The reports must then be adopted at a meeting of Council not more than five weeks after the meeting where approval was provided to advertise.

Subject to Council approval to advertise at this meeting, the reports will be advertised and then presented, with any public comments received, to the meeting scheduled for Thursday 24 November 2011.

Council's auditor, Mr Kevin Franey, of Thomas Noble and Russell, will be present at the October meeting to provide an overview of the audit report and to answer questions regarding the Annual Financial Reports. The presentation is scheduled for noon.

The documents enclosed with the business paper can be broken down into five main sections:

Part A	Auditor's Reports
Part B	General Purpose Financial Reports
Part C	Special Purpose Financial Reports
Part D	Special Schedules
Part E	Financial Analysis

Brief explanations for each of these items are as follows:

Part A – Auditor's Reports

This includes the auditor's report on the general purpose financial reports and the special purpose financial reports. The auditors have listed the reports as drafts as the reports are considered draft until Council confirms its approval of the financial reports.

The Auditor has issued an 'unqualified report', which means that they are of the opinion that the financial reports represent a fair and accurate assessment of Council's financial position.

Part B – General Purpose Financial Reports

These reports provide the consolidated operating result for 2010/2011 and the consolidated financial position of Council as at 30 June 2011. The notes included with the reports provide details on income and expenditure, assets and liabilities. The notes also highlight the cash position of Council and identify which funds are externally restricted.

Part C – Special Purpose Financial Reports

These reports are prepared as a result of National Competition Policy and relate to those aspects of Council's operations that are considered to be business activities.

Part D – Special Schedules

These schedules are prepared primarily for the Australian Bureau of Statistics and are used to gather information for comparative purposes.

Part E – Financial Analysis

While this is not required under any regulations and is not subject to audit, it is included as a means of providing Councillors and the community with additional information on the performance of Council for the 2010/11 financial year. This part enables "non-financial" persons to have a better understanding of the document as a whole.

It should also be noted that the final valuation figures for Council's investment properties are as follows:

Description	30 June (\$'000)
Wigmore Arcade, Ballina	6,050
89 Tamar Street, Ballina	7,830
Fawcett Street Café, Ballina	1,100
67 Piper Drive (Norfolk Homes), Ballina	2,240
6 Cessna Crescent (ARC), Ballina	3,875
Total	21,095

These figures are different to those reported to the Commercial Services Committee meeting held 14 September 2011, which were as follows:

Description	30 June (\$'000)
Wigmore Arcade, Ballina	6,530
89 Tamar Street, Ballina	7,830
Fawcett Street Café, Ballina	1,050
67 Piper Drive (Norfolk Homes), Ballina	2,400
6 Cessna Crescent (ARC), Ballina	4,430
Total	22,240

The reason for this difference is that the valuations reported to the Commercial Services Committee meeting were provided for that report by Council's Manager - Commercial Services and the figures were indicative only, subject to the production of detailed valuation reports. However due to his workload the manager did not have time to provide those detailed reports, as required by Council's auditors.

Due to this the valuations now applied are provided by Scott Fullarton Valuations. This firm typically provides valuations every three years for insurance purposes for Council's operational land and other structures (i.e. playgrounds etc). These values are then used to update the valuations for these assets in the financial statements every three years, with 2010/11 being a year where new valuations were provided. This provided an opportune time to use the Scott Fullarton Valuations for the investment properties.

Importantly there has still been a substantial increase in the valuation figures for the investment properties as compared to the 2009/10 financial year, as per the next table, which details movements since 2007/08.

Property Valuations - 30 June 2007/08 to 2010/11

Property	07/08	08/09	Change	09/10	Change	10/11	Change
Wigmore Arc	6,250	5,750	(500)	5,750	0	6,050	300
89 Tamar	6,898	7,000	102	7,000	0	7,830	830
Fawcett Street	965	1,000	35	1,000	0	1,100	100
67 Piper	1,270	1,345	75	1,345	0	2,240	895
6 Cessna (1)	0	0	0	N/A (1)	0	3,875	493
Total	15,383	15,095	(288)	15,095	0	21,095	2,618

(1) This "change" figure represents the estimated movement during the year as the building was only constructed during 2010/11 assuming an initial valuation of \$3,382

Despite these positive movements, the figures only represent book values, and ultimately any sale is dependent on finding a buyer who is prepared to pay the price required by the seller.

Sustainability Considerations

- **Environment**
This report encompasses Council's finances in total and as such has implications for environmental, social and economic outcomes.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

Council is legally obliged to adopt the financial reports.

Options

Council may approve to exhibit or not exhibit the documents. As Council's auditor has approved the reports it is recommended that Council authorise approval.

RECOMMENDATIONS

1. That Council approves the signing of the statements that confirm the Annual Financial Reports are fair and accurate, by the Mayor, one Councillor, the General Manager and the Responsible Accounting Officer.
2. That Council authorises the exhibition of the Annual Financial Reports and Auditor's Reports for the year ended 30 June 2011, as attached to this report, for public comment.

Attachment(s)

1. General Purpose & Special Purpose Financial Reports - Statement by Councillors and Management
2. Annual Financial Reports (separate attachment)

10.12 Capital Expenditure - Quarterly Update

File Reference	Integrated Planning and Reporting - 2011/12
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 2011/12 Operational Plan.

Background

Council continues to have a major capital expenditure program included in the annual Operational Plan and due to the scale and magnitude of this program it is important that updates are provided on a regular basis. The current practice being followed is that at the first meeting following the end of each quarter a comprehensive quarterly status report on all the major capital works included in the Operational Plan is presented for review. The status report provides details on major milestone dates, along with a comparison between budget and actual expenditure.

Key Issues

- Status of works

Information

To assist in understanding the likely delivery timeframes for the capital works the attachments to this report provide information on the following items:

- Original Budget - represents the budget as per Council's adopted Operational Plan
- Carry Forward - represents budgets carried forward from the previous financial year that were approved by Council at the August 2011 Ordinary meeting
- Variations - anticipated changes to budget
- Latest estimate - sum of the original budget plus budget changes
- Expenditure to date - expenditure to date of report
- % Expended - Percentage of budget expended to date
- Milestone Dates - Represents target dates for completion of the major milestones.
- Status - Allows additional comments to be provided, where necessary

The attachments are also split into the main functional sections within the Council undertaking the works: i.e. Open Spaces, Engineering Works, Operations Support, Commercial Services, Water and Sewer.

Points of note in respect to the information outlined in the attachments are as follows.

Open Spaces

Alstonville Niche Wall - This includes an estimate of \$100,000 which was actually in the 2010/11 budget but was not carried forward from the previous financial year. The expenditure is fully funded by reserves.

Skennars Head Lights - The cost of installing lights is far greater than anticipated and the budget for the Kingsford Smith lights has been transferred to Skennars Head to allow that project to be completed.

Engineering Works

Urban and Rural Roads and Ancillary Transport - Funds are to be transferred from the contingency and Park Lane in the Urban Roads program with offsetting adjustments in the rural roads area, plus an additional \$22,500 being transferred to the Ballina Town Centre works. These transfers represent priorities based on engineering assessments of the current forward works plan.

Street Lighting - Energy Reduction - Essential Energy has now commenced the program to replace Council's street lighting with more energy efficient lighting. The actual cost of this work is \$13,000 more than anticipated and this expenditure will need to be funded from the Commercial Opportunities Reserve. The initial \$167,000 has been funded from this Reserve with the monies to be repaid from future savings in electricity charges,

Ballina Town Centre - The original budget for this work was \$5.3 million, with \$3.3 sourced from reserves plus a loan of \$2 million. The latest works program for this work, as presented to the September 2011 Commercial Services Committee, is as follows:

Segments	Current Estimate (with 5% contingency)	2011/12 Works	2012/13 Works (plus 3% CPI)	2013/14 Works (plus 3% CPI)
River / Moon Sts Roundabout	1,313,000	1,313,000		
River / Cherry Sts Roundabout	1,486,000	1,486,000		
River / Martin Sts Roundabout	473,000		487,000	
River / Grant Sts Roundabout	536,000		582,000	
Martin / Cherry Segment	1,607,000		1,655,000	
Grant / Moon Segment	1,607,000			1,705,000
Total	7,022,000	2,799,000	2,694,000	1,705,000

As Council will not be expending the \$5,3 million this year the \$2 million in loan funding can be removed from the budget. This will still leave a budget of \$3.3m funded from reserves, which represents the current budget plus a reasonable contingency.

The net adjustment of \$1,977,500 shown in the attachment for this item, represents \$22,500 transferred from urban roads as mentioned earlier, less the \$2 million reduction in loan funding.

Urban Roads - River and Cherry Street Roundabouts - This project is actually included in the Ballina Town Centre works program and can be deleted. This line refers to the fact that this project is included in the Section 94 Roads Plan and what will happen over time is that Council will reimburse our property reserves, which are funding the Town Centre works, as future Section 94 contributions are collected.

Footpaths and Cycleways - Land Acquisition - This adjustment of \$25,000 has already been approved by Council to allow the purchase of land from Dr and Mrs Stewart to allow the shared path to be constructed on the western side of the Coast Road. This contract has now been signed and transfer to Council will occur once all the necessary planning and land title registration issues are finalised.

Operations Support

Administration Centre - Power and Fire - This work was funded from a rebate provided by Council's insurer with the rebate required to be expended on risk reduction activities.

Commercial Services

Southern Cross - A condition of the consent for the Harvey Norman land required an asphalt seal to Cessna, De Havilland and Stinson streets to be completed. These works were not undertaken during 2010/2011 as the construction of the Harvey Norman building was not completed. The works have now been finalised and a transfer of \$102,000 is needed from the Industrial Land Development Reserves to finance this work.

Water and Sewer

The variations in the attachments are designed to provide an accurate estimate of the actual expenditure that will be incurred this financial year. Many of these projects carry over two or more years and the focus of this report is only on the expenditure anticipated for 2011/12.

The major changes in the Ballina and Lennox Head upgrade works reflect the fact that the contract commenced approximately two months later than anticipated and this does have a significant impact on cash flows for 2011/12.

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 provides financial information on the capital works program.

Consultation

This report is presented for public information.

In preparing this report Cr Wright has also asked for consideration to be given to the section of Rifle Range Road between the new Wollongbar Link Road and Ramses Street. Cr Wright has correctly highlighted that this section of road is in a relatively poor condition particularly due to all the construction works currently occurring. The comment has also been made that now would be a good time to undertake reconstruction works, which are estimated at \$100,000, due to the current works being undertaken.

Council staff support this, however this section of road will ultimately be upgraded as a consent condition of Council's development of the former drive-in site, however this is not likely to occur in the near future.

Council's Commercial Services Unit is reluctant to fund the works now, due to their reserves being largely committed, and the Civil Services Group are of the opinion, and rightly so, that this is not work they should finance, due to their many other priorities in the shire.

If Council did wish to bring the works forward it would need to be funded from reserves.

Options

The purpose of this report is to provide a timely update on capital expenditure and to identify any known variances. The recommendation does not include approval for the adjustment of the budgets, as the September Quarter Financial Review will be presented to the November meeting, which will then confirm any budget variations.

Even with the changes to budgets outlined in this report there is still a significant capital works program planned for the remainder of this current financial year.

RECOMMENDATIONS

That Council notes the contents of the Capital Expenditure - Quarterly Update report.

Attachment(s)

1. Capital Expenditure - General Fund - Open Spaces (one page - separate A3 attachment)
2. Capital Expenditure - General Fund - Engineering Works (two pages - separate A3 attachment)
3. Capital Expenditure - General Fund - Operations Support (one page - separate A3 attachment)
4. Capital Expenditure - General Fund - Commercial Services (one page - separate A3 attachment)
5. Capital Expenditure - Water Operations (one page - separate A3 attachment)
6. Capital Expenditure - Sewer Operations (two pages - separate A3 attachment)

10.13 Delivery Program and Operational Plan - 30 September Review

File Reference	Integrated Planning and Reporting - 2011/12
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	The purpose of this report is to provide an update on the implementation of the Delivery Program and the 2011/12 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".

Even though Council is now only required to receive six monthly progress reports the preferred practice has been to receive more timely quarterly reports. This report represents the first review of the 2011/12 - 2014/15 Delivery Program and the 2011/13 Operational Plan, with reviews being conducted on a quarterly basis. The information contained in the report is based on work undertaken up to 30 September 2011.

The review information is included as a separate attachment to this report and the attachment 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.

In respect to the Operational Plan there are a total of 63 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	21	2	10	12	45
Amber	0	1	6	1	8
Red	2	0	7	0	9
Not Proceeding	0	0	0	1	1
Total	23	3	23	14	63

Program Actions Overview - By Percentage

Group / Status	GM	Reg	Civil	Strategic	Total
Green	91	67	43	86	71
Amber	0	33	26	7	13
Red	9	0	30	0	14
Not Proceeding	0	0	0	7	2
Total	100	100	100	100	100

There are already areas where time frames for actions have slipped, particularly in the open spaces and water and sewer section. These actions will need an extra commitment for the remainder of the year to ensure they are completed by year end.

In respect to the Service Delivery Targets there are a total of 80 targets identified in the Operational Plan and the following two tables provide an overview of how Council is performing against those targets, again on a number and percentage basis.

Service Delivery Targets Overview - By Number of Activities

Group / Status	GM	Reg	Civil	Strategic	Total
Green	15	16	16	5	52
Amber	10	2	2	0	14
Red	2	3	9	0	14
Total Tasks	27	21	27	5	80

Service Delivery Targets Overview - By Percentage

Group / Status	GM	Reg	Civil	Strategic	Total
Green	56	76	59	100	65
Amber	37	10	7	0	18
Red	7	14	33	0	18
Percentage Total	100	100	100	100	100

This is only a brief summary of Council's performance and it is early in the year and therefore subject to further change.

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

This report provides an overview of the performance of Council. It is still early in the financial year and no major issues have been identified to date, albeit that one project has not been able to proceed due to grant funding not being obtained. The recommendation that follows reflects this information.

RECOMMENDATIONS

1. That Council notes the contents of the 30 September 2011 review of the Delivery Program and Operational Plan.
2. That Council approves the removal of the following action from the Operational Plan for the reason listed:
 - Prepare new web based economic development data set - Grant application unsuccessful

Attachment(s)

1. Delivery Program Report as at 30 September 2011 (separate attachment)

11. Civil Services Group Reports

11.1 Local Traffic Committee - October 2011

File Reference	Local Traffic Committee
CSP Linkage	Transparent and accountable governance
Delivery Program	Asset Management
Objective	This report is presented to Council for its consideration of items referred to the Local Traffic Committee meetings held in October 2011.

Background

The Local Traffic Committee (LTC) met on 12 October 2011. A copy of the agenda for those meetings was circulated to all Councillors. This report provides the recommendations of the Committee to Council.

Key Issues

- Consideration of recommendations from the LTC

Information

The agenda contained twenty one business items (one item for referral to Council, seven items for referral to the General Manager's delegate, three items for Traffic Engineering Advice, four items for the information of the committee and three late items, two to be referred to Council and one a Regulatory matter on classified roads).

Items Referred to Council

The following items are referred to Council for its determination. Further background details are available in the LTC agenda previously circulated to Council.

a) **Modification to Regulatory Control - Boeing Avenue, Ballina**

The Committee reviewed a request seeking the alterations to regulatory control for roads intersecting Boeing Avenue, Ballina.

Council has received advice from NSW Police regarding issues with sight distance and vehicle parking. Council staff have also received complaints regarding driver behaviour at these intersections.

The Committee was unanimous in its position to support erecting No Stopping signage at the intersections along Boeing Avenue in accordance with Australian Standards and that warrants for Stop signs for these intersections are to be checked and reported back to the Committee.

b) Late Item - Application to Hold 2010 Fila - Byron Bay Triathlon

The Committee reviewed an application for road closures and traffic modification for the 2012 Fila - Byron Bay Triathlon to be held on 12 May 2012 between 1.00 and 5.00pm.

The proposed route for the triathlon is the same as last year and the application seeks full closure of part of MR545 (The Coast Road/Byron Bay Road) from Ross Land to Midgen Flat for the duration of the event. A copy of the Traffic Control Plan is attached for information.

The Committee was unanimous in its position to support that the Road Closure of MR545 (Byron Bay Road/Coast Road) be approved subject to the Traffic Control Plan being amended to include the new interchange with the Pacific Highway.

c) Late Item Russellton Industrial Estate Race Criterium

The committee reviewed an application for road closures and a traffic control plan for the Northern Rivers Cycle Club to conduct their criterium cycle races at the Russellton Industrial Estate, Wollongbar, from 1 October 2011 to 31 March 2012 (Sunday mornings only).

A copy of the Traffic Control Plan is attached for information.

It is noted for Council that these arrangements have been in place previously and they have operated satisfactorily.

The Committee was unanimous in its support for the approval of the Road Closures in accordance with the submitted traffic management plan.

d) Daley Street Traffic Calming - Adjoining Main Street Roundabout

The Committee reviewed a request seeking alterations to the threshold treatment adjoining the Main Street roundabout opposite Freeborn Park/ Elizabeth Brown Park.

The Committee was unanimous in its position to support the referral to the RTA for approval of the extension of the 40km/h High Pedestrian zone in Daley Street closer to the intersection of Daley Street - Wardell Road and that the General Manager's delegate be advised that the erection of ancillary pedestrian signage (Beware, Pedestrians Give Way to Vehicles) on bollards fronting Daley Street is supported.

Items for Referral to the General Manager's Delegate

For the information of Council, the following seven matters were considered by the LTC and recommendations or concurrence advice provided to the General Manager's delegate.

(a) Triathlon Race Series Application

The Committee reviewed an application for a Triathlon Race series of events in Ballina. A Triathlon consists of three events, a swim component a Bicycle component and a run component. The Triathlon will be held on the following Sundays, 23 October 2011, 27 November 2011, 11 December 2011, 22 January 2012, 12 February 2012, 22 April 2012, 26 February 2012 (Reserve date), 22 July 2012. The Triathlon will take place in the areas of Prospect lake, Links Avenue and Angels Beach Drive. No road closures are proposed.

The Committee was unanimous in its position to recommend to the General Manager's delegate approval for the event.

(b) Speed Review Pimlico Road.

The Committee recommended to the General Manager's delegate that a request be made to the RTA for a Speed Zone Review of Pimlico Road.

(c) School Drop Off - Pick Up Zone - Ballina Public School

The Committee was unanimous in its position to recommend to the General Manager's delegate to establish a No Parking Zone on Crane Street at the Eastern Campus of Ballina Public School which comprises the following:

- a. Shortening the bus zone by 25m from east to west.
- b. Erecting signage for a No Parking Timed 8.00-9.30am & 2.30-4.00pm Zone in the above area.
- c. Provision of 40m parallel parking adjacent to the Eastern Campus on Crane Street.
- d. Provision of No Stopping signs in Crane Street, for 20m on the eastern approach side of the pedestrian crossing.

The Committee also recommended to the General Manager's delegate it's concurrence to establish a No Parking Zone using Timed No Parking signage on Crane Street at the Western Campus of Ballina Public School which comprises the following:

- a. Establishment of a Timed No Parking zone from Martin Street to the car park westernmost access on Crane Street.

(d) Pedestrian Crossing - Isabella Drive, Skennars Head

The Committee advised the General Manager's delegate of its support for the removal of both speed humps and installation of pedestrian fencing and Watch For Traffic signage on the northern crossing point adjoining Isabella Drive.

(e) Traffic Control - Cawley Close, Alstonville

The Committee advise the General Manager's delegate that the pedestrian refuge facility is considered appropriate and the issue is best addressed by education and it is noted that the RTA have provided this information to the School.

(f) On Street Parking Extension - River Street, Ballina

The Committee agreed to advise the General Manager's delegate of its support for the extension of 45 degree rear to kerb parking for a distance of 20m eastwards of the swimming pool on River Street.

(g) Parking Controls - Holden Lane/Cherry Street

The Committee agreed to inform the General Managers Delegate of its support to relocate the existing angle parking signage to allow provision for sightlines on the approach side of Holden Lane on Cherry Street.

Items for Regulatory Matters on Classified Roads

For the information of Council, the following matter was considered by the LTC is referred to Council for its determination.

(a) Late Item - North Coast Children's Toy Run 2011

The Committee reviewed an application from the Ulysses Motorcycle Club seeking approval to conduct the Children's Toy run on 4 December 2011

The Committee was unanimous in its position to support the recommendation for Council to approve the event to hold the Toy Run in accordance with the submitted Traffic Control Plan (Attached).

Traffic Engineering Advice

a) Speed Review Coast Road - Angels Beach to Pat Morton Lookout

The RTA has undertaken an assessment of the section of road from Angels Beach Drive to Pat Morton Lookout. The initial findings of the review are to reduce the speed limit in this length of road from 100km/h to 80km/h. The RTA has investigated available sight lines at both Headlands Drive and Skennars Head Road and has reviewed the accident statistics of the area (taking into account recent black spot roadworks).

The RTA has also considered the speed environment and the current speed zone postings.

The Committee also supports the proposal to reduce the speed zone at this location.

Sustainability Considerations

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

Legal / Resource / Financial Implications

Council has statutory requirements in terms of the management of its delegations from the RTA, including the management of the LTC. There is no resource or financial implications directly associated with the recommendations to this report.

Consultation

Public participation in LTC processes is determined by the RTA's Guidelines for the Management of Local Traffic Committees. Council has determined to use its meeting code arrangements for public access wherever it is consistent with the guidelines.

Options

The Council can either accept or reject the recommendations. Council's acceptance or rejection of the recommendations is reported to the next meeting of the TLC.

In rejecting a recommendation it is the preferred practice to advise the LTC of the Council's reason for the rejection and invite the Committee to reconsider the matter having regard to the comments of Council, Following that process, if that matter remains unresolved, Council can elect to refer the matter to the Regional Traffic Committee.

RECOMMENDATIONS

1. That Council approve the erection of No Stopping signage at the intersections along Boeing Avenue in accordance with the Australian Standards
2. That Council approve that warrants for Stop Signs are to be checked at these intersections and reported back to the Committee.
3. That Council approves the application by the Northern Rivers Cycle Club to conduct criterium cycle races at the Russellton Industrial Estate, Wollongbar, from 1 October 2011 to 31 March 2012 (Sunday mornings only) subject to the submitted Traffic Control Plan.
4. That Council recommend the referral to the RTA for approval of the extension of the 40km/h High Pedestrian zone in Daley Street closer to the intersection of Daley Street - Wardell Road
5. That Council approves the event to hold the Children's Toy Run on 4 December 2011 in accordance with the submitted Traffic Control Plan.

Attachment(s)

1. Plan - Intersections of Boeing Avenue, Ballina
2. Traffic Control Plan 2011 Fila-Byron Bay Triathlon
3. Traffic Control Plan - Russellton Industrial; Estate Race Criterium
4. Traffic Control Plan - Children's Toy Run

11.2 Waste and Recycling Bins - Provision and Maintenance

File Reference	Waste Management – Ballina Shire Integrated Waste Minimisation and Management
CSP Linkage	Responsible and efficient use of resources
Delivery Program	Waste Services
Objective	Review the provision and maintenance of waste and recycling bins for residents.

Background

One of the objectives of the introduction of the new organics/garden waste collection service was to assist residents to use the bin combination to increase recycling and reduce waste. This was achieved by collecting the residual waste component on a fortnightly basis rather than a weekly collection.

Council's current practice in relation to the supply and maintenance of waste and recycling bins is that they are the responsibility of the resident. That is, if Council is not responsible for the damage and the bins are damaged, lost or stolen, the resident is responsible to replace or repair the waste and recycling bin.

The reason supporting this approach was to encourage residents to look after the bin to reduce the maintenance demands, risk of theft and stop residents making multiple requests for bins and using them for other purposes.

It became apparent from the roll out of the new service that a number of residents weren't using the recycling bin and in response to this Council received many requests for the provision of a new recycling bin. Therefore the downside of the above practice was that some residents weren't replacing or repairing a recycling bin when it was their responsibility to do so.

To assist in the effective introduction of the new service and to support the Council's waste diversion objectives, a three month amnesty was provided whereby recycling bins were provided for free. Councillors were advised of this decision by a bulletin item.

The purpose of this report is to determine what the Council's preferred way forward is now that the amnesty has operated for a period. Prior to the amnesty Council charged \$79 for a replacement bin.

Key Issues

- Assess the merits of providing bins to residents

Information

The new organic/garden waste contract includes the supply and maintenance of the bins as part of the service.

As discussed, there are disadvantages and advantages with this approach. For the introduction of a new service, this allows the opportunity to make a consistent application of policy and on balance the benefits of Council maintaining the bin supply were preferred as one means of ensuring the service met its full potential. This approach does mean additional costs to the Council.

Council has now completed the three month amnesty on the free supply of recycling bins to residents following the introduction of the organics / garden waste collection service. The following table outlines the number of bins that were distributed during the amnesty.

Month	Bins Distributed
July	33
August	114
September	72
October	30 (2 weeks only)

It is assumed that this demand for new bins will decline in the coming months. The cost to provide ongoing maintenance and support for the recycling bins is expected to increase over time.

The cost to provide fifty bins per month would be approximately \$27,000 per annum. Replacement pins, axles, wheels and lids would probably add another \$3,000 to this. Similar expenses would be expected to occur if Council chose to include the general waste bins as well, all though there is no data to indicate what the demand for the provision of these bins would be.

Sustainability Considerations

- **Environment**
The supply of waste and recycling bins will ensure resident's bins are maintained and less waste is likely to escape into the environment.
- **Social**
The provision of council supplied maintenance and replacement of waste bins supports the amenity of residents.
- **Economic**
There is a cost to Council in providing free bins.

Legal / Resource / Financial Implications

As indicated, if the Council was to supply recycling bins **and** general waste bins it is possible that the cost could be around \$60,000 per annum. This would represent an additional \$5 per annum on the domestic waste charge if other savings aren't identified in the budget review process.

An option for the Council to pursue for the initial period is to seek funding from the Waste and Sustainability Improvement Payment (WASIP). This is the program that returns to Council, subject to suitable works programs by Council, a proportion of the waste levy paid to the State Government.

Consultation

This report has been generated in response to customer inquiries to Council staff.

Options

1. Maintain the status quo. For this option residents would be responsible for the maintenance and replacement of recycling and residual waste bins for damage or loss outside those that were from the actions of Council.
2. Provide replacement and maintenance for recycling bins.
3. Provide replacement and maintenance for recycling and general waste bins.

As indicated in the report, whilst there are additional costs to the Council, on balance the provision and maintenance of bins can add value to the Council's overall strategy to divert waste from landfill. The contract for the new organics and green waste service includes bin provision and maintenance as part of the service.

There are benefits to be gained by providing bins and the real key issue for this report is whether option two or option three is the most effective.

With option two, residents are obtaining the recycling bin (and the organics bin) at no direct cost and we are achieving our aim of encouraging residents to recycle and sort their waste.

With option three, residents are obtaining all three bins at no cost. The only concern with this is that there is no real direct incentive with the free provision of the general waste bin, as it does not directly form part of our recycling and waste sorting initiatives. The reason for the need for this report in the first place was that residents were not using the recycling bins, however there was no incentive for them to use the bin, as they could still use their existing general waste bin.

However there will always be an incentive to have a general waste bin, as this is the bin of last resort. This then means there is not the same need for Council to have this bin provided free of charge, as residents will have their own incentive to have that bin available. This raises the question as to whether the expenditure of approximately \$30,000 per annum for the on-going replacement of general waste bins is justified.

There was internal debate on this and ultimately it was considered that provision of the complete service by Council was justified. Ultimately the users of the service are paying for the service through the annual domestic waste management charge therefore the costs are passed onto the users and do not impact on Council's overall financial viability.

RECOMMENDATIONS

1. That Council approves an amendment to its current waste service, by now supplying and maintaining, at no cost, replacement general waste and recycling bins.
2. That Council seek approval from the NSW State Government to include the additional cost of providing and maintaining the current recycling and waste bins to the Waste and Sustainability Improvement Program for 2011/12.
3. That the next quarterly budget review make the appropriate adjustments to the expense allocations within the Domestic Waste budget to facilitate the implementation of recommendation one.

Attachment(s)

Nil

11.3 Commercial Properties - Organics, Green Waste and Recycling Service

File Reference	Waste Management – Ballina Shire Integrated Waste Minimisation and Management
CSP Linkage	Responsible and efficient use of resources
Delivery Program	Waste Services
Objective	To consider the provision of Green Waste/Organics and Recycling Services to commercial properties.

Background

Earlier this year Council made a decision to dispose of its commercial operation to provide bulk bin waste services. Besides Council itself, the majority of the customers were business operators. The service is still available to businesses from alternative commercial providers.

When Council made this decision, there were concerns by some that Council's withdrawal from this service would reduce competition. Recycling services are not directly related to bulk bins, however it was suggested that the Council could consider the introduction of a recycling service to assist businesses achieve their sustainability goals and contribute to the Council's waste diversion strategies.

Subsequent to that resolution, the Council has introduced the green waste and organics collection service and there is also merit in looking at how businesses can participate in that service.

Key Issues

- Provision of waste collection services to businesses that will support Council's waste minimisation strategies
- Benefit and cost

Information

For residential properties it is possible to design a uniform collection service that generally satisfies the demands for the service. As the amount and type of waste generated by businesses varies significantly it is much more difficult to design a service configuration that is effective and a charging structure that is equitable and will be accepted. In addition to this, some businesses may find bin storage to be an issue.

For example restaurants and cafes would generate higher volumes of organic waste compared to other businesses.

Given this situation it is considered too big a step at this time to introduce the concept of a collection service with a compulsory charge to all businesses similar to the arrangements for residents.

However, there is merit in pursuing initiatives with businesses that will encourage diversion from landfill through the use of collection services.

In response to requests from businesses, staff have made arrangements to provide a voluntary service (and charge consistent fees to the residential fees within the Council's fees and charges schedule) for the organics collection. This type of service is only suitable to a limited number of businesses. The fees and charges schedule does include a non domestic recycling charge of \$132 per annum which provides one recycling wheelie bin collection per fortnight. Again this configuration of service is not of interest to all businesses.

To advance this activity further it is suggested to Council that an education and awareness campaign be developed that encourages businesses to think about the options for each individual business to participate in the organics or recycling collection service or both. For example staff could target a campaign towards food premises to take up an organics collection service.

With the likely variability of service needs, some flexibility is required to allow staff to establish a charge for each individual service. The Local Government Act contains provisions to ensure equity and probity in the setting of fees and charges. Obtaining the appropriate balance between these provisions and allowing sufficient flexibility to achieve the program outcomes will require further consideration.

Sustainability Considerations

- **Environment**

Commercial recycling and organics service has the ability to reduce waste to landfill.

- **Social**

This proposal supports the social benefits associated with Council's reuse and recycling strategies.

- **Economic**

The provision of this service will assist the Council manage landfill operating costs and assist businesses meet contemporary expectations in terms of the management of their waste.

Legal / Resource / Financial Implications

As indicated above, a key consideration is establishing a charge that will provide the flexibility needed to address the variability in service needs from different businesses.

Existing staff resources would be suitable for the development and implementation of the suggested education program.

Consultation

If the Council was to pursue the introduction of a compulsory service, then a significant consultation program would be required. The recommendation to this report only seeks voluntary participation and this is to be achieved through an education program.

Options

1. The Council develop a strategy for the delivery of compulsory waste collection services for businesses.
2. The Council develop a program that provides education to businesses in regards to options for their voluntary participation in either or both the collection services for organics/green waste and recycling.

Based on the information in this report, option one is not supported at this stage. The development of option two may allow a compulsory form of service to be implemented at a suitable future time.

To advance option two it is recommended that Council receive further information in respect of the suggested program, in particular the arrangements for the setting of fees.

RECOMMENDATIONS

1. Council endorses the principle of providing voluntary organics/green waste and recycling services to businesses and that an education program be developed to increase participation.
2. Council receive information in the next quarterly budget review in respect of options to set fees for the services to be provided from the implementation of recommendation one to this report.

Attachment(s)

Nil

11.4 Bulk Waste Services - Community and Sporting Groups

File Reference	Community Donations
CSP Linkage	Transparent and accountable governance
Delivery Program	Open Space and Reserves
Objective	To seek direction on the provision of bulk waste services to sporting and community groups.

Background

Like many of the Council budget allocations, given the funds available, it is difficult to meet all the community expectations for the services provided by Council's open spaces and reserves section. The growth in service requirements for new developments and community infrastructure has added further demands to this budget.

Staff are continuously looking at our expenditure to identify opportunities for efficiency gains, to prioritise the allocation of operational resources, or to eliminate any inequities.

A recent review has identified that the aggregated expenditure by Council on the provision of bulk waste services to community groups is significant, yet inconsistently applied, and the purpose of this report is draw this information to the attention of Council and seek a direction in response.

Key Issues

- Level of donation of bulk waste services to sporting and community groups.

Information

Council provides bins on reserves that are serviced as part of the Council's standard collection service. These bins are in response to the needs of the general public. These bins are different to the ones that are the subject of this report which is reviewing the provision of bulk waste bins to clubs or groups in response to the demands from their own activities.

The review has identified that it is costing Council approximately \$20,000 to provide these services. The cost for each club would vary dependant on the service requirements. Currently this cost is a charge against the Open Spaces & Reserves - Sporting Fields budget.

Therefore this represents funding which could be diverted to funding works such as upgrading sports field surfaces and infrastructure.

The following groups have been identified as receiving the service.

- Ballina Markets – East Ballina Lions Club
- Lennox Surf Life Saving Club
- Geoff Watt Oval – Alstonville Football Club
- Crawford Park - Alstonville Football Club
- Chickiba Sports Field – East Ballina Tintenbar Soccer and Cricket Clubs
- Ballina Tennis Club
- Ballina Netball Club
- Saunders Oval – Ballina Soccer Club and Touch Football Club

None of these groups pay for the service and the concern is that there are numerous other groups who could potentially benefit from a similar service. Examples include:

- Skennars Head Fields - Lennox Head Soccer Club
- Wollongbar Rugby Union club
- Ballina Rugby Union Cllb
- Fripp Oval - AFL and Cricket
- Gap Road - Hockey
- Skennars Head - Soccer
- Lennox Head Combined Sports Association - Williams Reserve and Meagan Crescent
- Ballina Surf Life Saving Club

The purpose of this report is seek some discussion regarding whether there are inequities in providing this service to some community groups and not others. A further question is whether the subsidy by Council is a priority having regard to the pressures on this budget area for core maintenance and operational services. Council has also found that in some circumstances the free provision of services does not represent the efficient allocation of resources as the recipient has no price incentive to manage their demand for the service.

It should be noted that the Council's Waste section traditionally provided this service through its former commercial waste enterprise. This means that there was an internal transfer of funds as the Council paid itself for the collection. Nevertheless the questions raised remain relevant irrespective of the source of the service provision as the cost is borne by the open spaces budget.

The Council has no formal policy in respect to management of open space areas, however the general practice has been that Council has provided the maintenance and management of the reserves and the community groups or clubs have managed the cost of their activities on the public land.

Some councils require a fee from community groups for the use of sporting fields and reserves and typically there is a wide variety of service levels provided when comparing different councils.

There is an argument that the provision of this service represents a donation by Council and as such should be subject to consideration by Councillors for approval.

Sustainability Considerations

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

Legal / Resource / Financial Implications

This report seeks the Council's review of a current expenditure item. The report is asking the Council to determine if it wishes to continue the current practice, and if so, what is the appropriate source of funds to meet the costs.

Consultation

No consultation has taken place in the preparation of this report. Therefore the impact of a decision to withdraw support is uncertain. The options section of this report discusses seeking feedback from potentially affected groups.

Options

1. Maintain the status quo

The advantage of this option is that there is no impact on any community group. The disadvantage of this option is that the funds currently spent on the provision of the service would not be available for diversion to general maintenance and operations. There is also the risk that the costs will increase with further requests from other clubs or the existing clubs wanting additional services. It also means that inequities remain in Council's current service provision.

2. Cease providing the service

The Council could provide a notice period (say to the end of this financial year) and withdraw from providing the service. As outlined the extent of hardship for the clubs that would result from this decision is unknown. One disadvantage of this option is that Council may find an increase in the use of the public bins in the adjacent areas to the club activities. The organisations may also ask for the skip bins to be removed, which could result in litter concerns.

3. Provide the service as an extension of the donations budget allocation.

This option is essentially the status quo, except that it transfers the budget pressure issue from the open space budget to the total budget meaning the Council may need to find savings elsewhere to accommodate additional expenditure in the donations allocation. The extension to this option is that the groups could be asked to apply for a donation each year, which means they would be treated the same as other organisations in respect to the donation program.

4. Phase out the subsidy over a longer period of time

Under this option, Council could write to community groups advising of its intention to phase out the subsidy and invite submissions in response that will allow Council to gauge the impact. From this response Council could determine the amount of notice that would allow the community groups to adjust their activities or budgets and invite submissions to the donations programs and deal with these consistent with other requests. Dependant on those outcomes, the donations could be funded from the open spaces budget until the demand had reduced or the donations budget was in a position to absorb the costs.

As a public organisation it is important that Council applies the allocation of its resources fairly and equally. As the current services are not being provided equally across the shire, the first priority should be to address this inequity. This can be addressed by applying the free service across the shire, or terminating the free service.

The preferred option is to terminate the free service, as the open spaces section budget is already under financial pressure, and extending the service to all organisations would at least double the existing cost of \$20,000. Extending the service would also only create further inequities with people asking, justly, why this service is provided at no cost, when other community organisations could also benefit from the offer of free services by Council.

In agreeing to terminate the service, it is recommended that this not occur until 30 June 2012. This will allow time for the organisations to plan for this change, and it will also allow them to apply for an allocation through Council's community donations program, if they so wish.

In conclusion it may appear unreasonable for Council to cancel a long standing free service, however equity is important, and clearly the current service is not being provided equally across the shire and there is no real accountability or record of the free service being provided. Any of the organisations currently receiving the service can apply for a donation each year and this then ensures those organisations are considered in conjunction with all the other applications for financial support from Council.

RECOMMENDATIONS

1. That Council notes the contents of this report in respect to the current inequities that exist in respect to the provision of bulk waste bin services to community and sporting groups across the shire.
2. That Council supports the principle that services should be applied equally and fairly across the shire and in recognition of the inequity that currently exists, authorises the General Manager to write to all organisations currently receiving the free bulk waste service, advising that the service will cancel as at 30 June 2012. In writing to these organisations the General Manager is to confirm that funding may be available for this service through Council's annual community donations program and encourage the organisations to apply for that funding.

Attachment(s)

Nil

11.5 Waste Water Treatment Plants Upgrade - Update

File Reference	Ballina & Lennox Head Waster Water Treatment Plants
CSP Linkage	Responsible and efficient use of resources
Delivery Program	Sewer Services
Objective	To provide and update on the progress on the upgrade of the Ballina and Lennox Head Waste Water Treatment Plants

Background

At the February 2011 meeting Council considered a report detailing the tender assessment for a contract for the upgrade of the Ballina and Lennox Head Treatment Plants.

At that meeting, Council resolved to accept the tender of Haslin Constructions Pty Ltd for RFT/Contract Number 0902774 being for the Design and construction of an MBR Waste Water Treatment Plant (WWTP) at Ballina, and a Recycled Water Plant at Lennox Head WWTP for an amount of \$45,437,315 including GST.

Given the size of this contract, it is proposed to report on progress quarterly to ensure Council is able to monitor the project. The following information is the second progress report for this contract.

Key Issues

- To inform Council of the progress of the works within the Contract.

Information

Work Completed for Reporting Period

Detailed design of the structures, mechanical and electrical equipment is well advanced, with the inlet works and membrane bioreactor (MBR) civil designs completed.

The contractor has also established on the Ballina site, with the following site works completed:

- All site sheds installed
- Civil Works on the inlet works and MBR tanks
- All piling requirements for the MBR tanks
- Concrete for the construction of the MBR tank floors have been completed, with the formwork for the walls commenced. It is expected that a number of walls will be constructed by the date of this meeting

- One of the existing sludge lagoons has been decommissioned and civil works commenced to convert it to an aerobic digester for the new plant.

Cost of Work Completed

\$5,488,129 inclusive of GST

Approved Variations

	Details	Cost
1	Modifications to inlet works to divert all flows through the manual bar screen to the storm detention pond.	\$17,532.90
2	Supply and Install an Isolating Valve to the existing bund in the Chemical Delivery area.	\$677.60
3	Supply Biofilter in lieu of Deodorising Bed	- \$51,615.00
4	Deletion of additional Amenities Building at the Lennox Head RWP location	- \$24,603.48
5	Concept Design for revised Effluent Streams due to requirement of NOW	\$33,250.80
6	Currency Fluctuation (as per Contract Conditions)	- \$39,311.00
	Total	- \$64,068.18

Progress to Schedule

Progress is on schedule.

Extraordinary Issues

1. The construction of a recycled water scheme and the distribution of recycled water will require Council to make application for and be given an approval to operate the system by NSW Office of Water (NOW). To achieve approval, the treatment process requires validation that it will produce recycled water to the required quality, and NOW stipulates the testing regime required to achieve approval.

The specification that forms part of this contract was completed based on a Risk Assessment project completed in 2008, the Concept Designs developed in 2009, the approved EIS and subsequent consultation with NOW. The specification was based on the Interim NSW Guidelines for Management of Private Recycled Water Schemes published in May 2008 by DECCW and the Australian Guidelines for Water Recycling Managing Health and Environmental Risks (phase 1) 2006.

An addendum was issued during the tender phase to ensure the tenderers were aware of the validation requirements, however it was unknown at the time exactly how NOW would assess the process, and what affect this would have on the final detailed design.

A further risk analysis workshop for this contract was conducted on 10 and 11 August 2011, with representatives from Council, NOW, Department of Health, Haslin Constructions, and NSW Public Works. At this workshop NOW outlined its position on how it assesses the validation and verification process of these schemes. The workshop

then reviewed the current design, and identified a number of modifications that they felt needed to be made that would:

- Ensure the validation and verification process of the Ballina WWTP and Lennox Head RWP can be completed onsite at each plant,
- Reduce risks of producing “out of specification” recycled water,
- Improve the operation of the schemes by providing suitable redundancy and contingencies to address the inherent risk.

The re-design of this component of the works is currently being completed to meet these requirements. It is expected that these requirements will result in a significant variation to the contract. The value of this is currently being assessed as the concept design is finalised.

The change which will cause the largest cost is the requirement to provide separate reservoirs for the ebb-tide discharge and the recycled water, in lieu of the planned single reservoir.

2. Whilst the scheme has achieved Part V Approval, the buildings to be constructed on the sites are required to be approved under Part IV of the EP&A Act, and are therefore subject to further Development Consent by Council. A DA pre-lodgement meeting has been completed with Council to minimise the risk of this process delaying the Contractor. The buildings need to be construction in accordance with the Building Code of Australia (BCA).

It is noted that this code has changed since the contract was awarded, to include the requirements under the Disability Discrimination Act (DDA), which has required the contract to be varied to allow disabled access to the first floor of the amenities building. This will require an enclosed chairlift to be supplied and constructed on the side of the building. A variation to this affect has been advised to the contractors and the cost of these works is being sought at present.

Salinity Reduction Program Issues

As part of the overall Recycled Water Master Plan, it is intended to reduce salinity in the sewer network (150 mm to 450 mm lines) to less than 600 milligrams per litre (0.6 parts per thousand) to ensure the recycled water is fit for the purpose for Urban Open Space and Dual Reticulation.

A component of this project has been to rectify leaks in the sewer network by patching and re-lining the pipes as required. A contract was in place since March 2009 with Underground Asset Services Pty Ltd to complete a program of works. During the course of this contract there have been a number of issues with the contractor and the lining material that has been installed.

A great deal of time has been taken by the contractor to rectify defects, and repay Council for works carried out by Council on the contractor’s behalf. Less than half of the original program of works completed.

With the known defective liners now removed, and repayments for works executed by Council on the contractors behalf now made, the contract with Underground Asset Services was terminated on 22 September 2011. Retention bonds, repayments and negotiation has meant a satisfactory commercial outcome for Council.

A revised contract for the remaining works is currently being prepared and will be let in the coming months.

Sustainability Considerations

- **Environment**

Timely construction of the contract works will ensure the WWTP's in Ballina and Lennox Head have adequate capacity and the environment is protected from the risk of overflows. The upgrade of the facilities and reuse of effluent will assist in improving discharge qualities and the water quality in the estuaries.

- **Social**

The upgrade of the WWTP's will accommodate growth and provide an alternative source of high grade recycled water which will limit the need to upgrade alternative means of water supply thus putting back the costly upgrades such as dams and desalination.

- **Economic**

The construction of the WWTPs will allow capacity in the network to further develop the Ballina and Lennox Head areas in a timely manner.

Legal / Resource / Financial Implications

There have been six approved variations to date that have resulted in a saving to Council on the overall contract sum of \$64,068.18. It is noted however that it is anticipated that there will be two significant variations required in the near future. It is anticipated that they will be within the contingency for this contract and no variation would currently be required to the budget.

Consultation

Provided for public information.

Options

This report is for information only.

RECOMMENDATIONS

1. That Council notes the contents of this report on the progress of the contract for the upgrade of the Ballina and Lennox Head Waste Water Treatment Plants.
2. That Council notes the contents of this report in respect to the termination of the contract to provide sewer relining and leak rectification services.

Attachment(s)

Nil

11.6 Land for Road Widening - Barlows Road, West Ballina

File Reference	Land Acquisition, Barlows Road
CSP Linkage	Diverse and balanced land use
Delivery Program	Asset Management
Objective	To obtain Council approval to authorise acquisition by compulsory process and make application for the compulsory acquisition of land to the Minister for Local Government and/or the Governor for land being Lot 5 DP 115336, Barlows Road, West Ballina.

Background

The purpose of this report is to seek a Council resolution to make an application to the Department of Local Government for their concurrence to the compulsory acquisition of Lot 5 DP 115336 (the 'land') at Barlows Road, West Ballina (a copy of the land is included as an attachment to this report).

The purpose of the acquisition is to ensure that the existing formed road is aligned within a road reserve. Further details of the history of this matter are set out in the information section of this report.

Key Issues

- Legal options
- Costs

Information

Barlows Road was last upgraded in the mid 1990s in conjunction with the Westlands Estate development at West Ballina. The constructed road deviates from the road reserve between the concrete batching plant and Horizon Drive and passes over Lot 5 DP 115336. This is a lot of freehold land which was granted to Frederick Alexander Strong in 1927. The land is still in Mr Strong's name even though he has been deceased for many years.

To address this issue it is proposed for the land to be acquired by Council for the purposes of a public road.

The Council has previously dealt with this matter and the previous resolutions are reproduced below. The process was not concluded at the time and therefore to advance the administration again, it is considered appropriate that a contemporary resolution of the Council be established.

Council resolved to commence this compulsory acquisition process at the Ordinary Meeting of 24 March 2005 as follows.

"That Council resolves to commence the Compulsory Acquisition of Lot 5 DP 115336 over freehold land at Barlows Road, West Ballina."

Following this the Council resolution from the Ordinary meeting of 26 May 2005 was;

"That Council resolves to submit the compulsory acquisition application to the Minister for Local Government and/or the Governor for the Compulsory Acquisition of Lot 5 DP 115336, being freehold land, at Barlows Road, West Ballina."

The documentation required to make the application to the Division of Local Government has now been obtained and is ready to be forwarded for their assessment.

If this land is acquired and dedicated as road, the old road reserve is available to remain as road reserve with no formation upon it, or it could be closed and disposed of. There is no intention to consider disposing of the redundant road reserve until the 'land' is dedicated as road.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
Not applicable.

Legal / Resource / Financial Implications

The Council is following a statutory process. To date no person or party has come forward as the legal owner of the land.

An existing road asset is best managed when physically located on Council road reserve.

Other than any administrative costs associated with the application, there is no financial implication for the Council as the diligent inquiry has not found a person with a claim for ownership of the land.

Consultation

There has been a 'diligent enquiry' process commenced (under provisions of the Local Government (General) Regulation 2005) to seek contact with any person/party having an interest in the land. This process took some 12 months to undertake and one relative of the late owner contacted Council. However recent advice from the Department of Local Government is that as the land to be acquired is not for resale, there is no requirement to undertake the diligent enquiry process again.

There have also been discussions with a land owner adjoining the unformed road reserve who has an interest in purchasing part of the old existing road reserve should it be closed and disposed of following the gazettal of a new road over the 'land'.

Options

1. Proceed with the compulsory acquisition process as presented.
2. Deny the compulsory acquisition process as presented

The recommendation is to proceed to finalise this matter.

RECOMMENDATIONS

1. That Council authorises acquisition by compulsory process of the land being Lot 5 DP 115336, Barlows Road, West Ballina.
2. That Council authorises the General Manager to make an application to the Minister for Local Government and/or the Governor for the compulsory acquisition of land for road being Lot 5 DP 115336, Barlows Road, West Ballina.
3. That Council authorises the Council seal to be attached to any documents, where necessary, relating to this acquisition.

Attachment(s)

1. Plan showing the land being Lot 5 DP 115336

11.7 Tender - Removal of Biosolids from Wastewater Treatment Plants

File Reference	Ballina Shire Waste Water Treatment Plants
CSP Linkage	CSP Land Use
Delivery Program	Sewer
Objective	To obtain Council approval to award the contract for dewatering and removal of biosolids from the wastewater treatment plants.

Background

A request for tender was advertised on 17 September 2011 for a schedule of rates on dewatering and removing biosolids from various Ballina Shire Waste Water Treatment Plants (WWTP). Biosolids are to be dewatered and transported from four WWTPs for beneficial land application on agricultural sites. At the close of tender, on 11 October 2011, two submissions were received.

This report details the outcome of the tender evaluation process.

Key Issues

- Award the tender in accordance with the Local Government (General) Regulations 2005.
- Engage a suitably qualified and conforming contractor.

Information

The following criteria were advertised as the means by which the tenders would be assessed:

- | | |
|--|-----------|
| • Identified & assessed sites for beneficial use | Mandatory |
| • Attend pre-tender meeting | Mandatory |
| • Total Price | 80% |
| • Management Systems | 20% |

The schedule of rates provided in the tenders was used to estimate the cost for biosolids removal over the two year contract period for all sites. The submissions received were estimated at:

- | | |
|-------------------------------------|--------------|
| • Arkwood Organic Recycling * | \$559,193.50 |
| • Transpacific Industrial Solutions | \$604,847.80 |

* Arkwood provided two rates for the transportation line item and the higher rate was used here as a worst case scenario to compare and evaluate. Using the lower rate could result in a saving of up to \$160,000 over the contract period.

A tender evaluation panel was established and each of the tenderers was assessed against the above criteria. A summary of the rankings are as follows for both the weighted price and non-price scores.

Evaluation Criteria	Arkwood	Transpacific
Land use sites identified	Compliant	Marginal
Pre-tender meeting	Compliant	Compliant
Total Price	80	74
Management Systems	17	12
Total	97	86

Based on the assessment criteria, Arkwood Organic Recycling was ranked the highest scoring tenderer, with the lowest total cost whilst conforming to all the mandatory requirements. Council have used Arkwood in the past and staff were satisfied with the previous experiences with this service provider and that they continue to have the expertise and capacity to meet the requirements of this contract.

Sustainability Considerations

- **Environment**
The provision of this dewatering and removal of biosolids service will reduce the likelihood of environmental incidents occurring due to large volumes of biosolids being produced and stored at treatment plants.
- **Social**
The provision of this dewatering and removal of biosolids service will ensure the ongoing safety of the plant operators and the community as a whole.
- **Economic**
Use of beneficial reuse in this way will reduce disposal costs whilst capitalising on the resource value in biosolids.

Legal / Resource / Financial Implications

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

This work will be performed when required, based on the schedule of rates provided by the tenderer. The yearly budget for Biosolids Management will be used for all plants, and funds allocated for Ballina treatment plant upgrade for the sludge lagoon will be used for managing the Ballina biosolids. There is provision in both the capital works and operationing budget to meet these commitments.

Consultation

A public tender process has been conducted.

Options

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

Accordingly:

1. Council may determine not to accept any of the tenders received and invite fresh tenders or alternatively negotiate for the works with any or all of the tenderers; or
2. Council may award the contract to Arkwood Organic Recycling to undertake the dewatering and removal of biosolids from the wastewater treatment plants.

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

RECOMMENDATIONS

1. That Council accepts the schedule of rates tender from Arkwood Organic Recycling for dewatering of biosolids from the Council's Waste Water Treatment Plants and the beneficial reuse of the product as required over the two year contract period.
2. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

Nil

11.8 Tender - Mowing of Various Sporting Fields

File Reference	Provision for Mowing Services
CSP Linkage	A healthy natural environment
Delivery Program	Open Space and Reserves
Objective	To obtain Council approval to award contracts for the mowing of various cricket ovals and sportsgrounds surrounds

Background

In recent years the mowing of the various cricket ovals and sportsgrounds, particularly in the fast growing periods, has been undertaken for Council by casual labour and / or contractors. The reason for this is that the staff employed in this section of Council (Open Spaces and Reserves) are committed to their standard runs and duties and over time, and due to increased workloads, there has been an increasing need for contractors in the peak times.

Preliminary investigations were undertaken in respect to staffing this function, however there were capital costs of approximately \$66,000 required to purchase an extra utility, trailer and mower. Also, as this service is required in the peak times, it does lend itself more to a contract arrangement, rather than having a permanent employee(s).

In order to formalise the existing arrangements, and to test the market for this service, tenders were advertised on 31 August 2011 for the mowing of various cricket ovals and sportsgrounds surrounds for a three year period.

At the close of the tender period on 22 September 2011, seven submissions were received.

The report that follows provides the outcomes from this tender process.

Key Issues

- Award the tender in accordance with the Local Government (General) Regulations 2005.
- Engage suitably experienced contractor(s) who meets the statutory tendering requirements

Information

At the close of the tender period on 22 September 2011, tenders were received from the following contractors:

11.8 Tender - Mowing of Various Sporting Fields

- Elfco Contracting
- G.V.M. Rail Pty Ltd
- Marsupial Landscape Management
- Murray Cornelius
- North Coast Mowing Services
- Optimum Weed Solutions
- Steven Van Der Mere

The tender provided for a schedule of rates contract and although it has been determined the number of “cuts per year” required to maintain the sporting fields to a high standard, it is recognised that the works are weather dependant.

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

- Total Price 50%
- Capability and Past Experience 30%
- Quality and Safety 15%
- Management & Financial 5%

The initial review of the tenders indicated that Elfco Contracting only tendered for part of the works and was not considered further in the evaluation.

Due to budget being a major consideration, the remaining tenderers were then assessed against price with the tenders from G.V.M. Rail Pty Ltd, North Coast Mowing Services and Optimum Weed Solutions all tendering in excess of the current budget to undertake these works and they were then excluded from the final evaluation.

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

Evaluation Criteria	Total Price	Capability and Past Exper	Quality & Safety	Mgmt & Financial	Total
Marsupial Landscape Management	27.9%	23.5%	13.3%	4.0%	68.7%
Murray Cornelius	36.4%	27.0%	12.4%	4.0%	79.8%
Steven Van Der Mere	50.0%	27.0%	12.4%	4.0%	93.4%

The tender documentation identified two separate zones of 9 and 8 sporting fields respectively and made provision to allow Council to award contracts in separable parts. Based on the level of works required to be undertaken during the growing period, it was determined that a single contractor may be unable to complete the required works and therefore the preferred option for Council was to awarded separate contracts to the two highest ranked tenderers, Murray Cornelius and Steven Van Der Mere.

Sustainability Considerations

- **Environment**
Council is required to undertake maintenance of the various sporting facilities in the Ballina Shire.
- **Social**
Maintenance of the sporting fields to a high standard encourages the public to participate in organised sports.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

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

This tender does not result in any change in existing staffing levels. This contract will also provide a reasonable benchmark to compare contract rates and performance against Council labour rates. The actual tender rates supplied are competitive with the Council internal hire rates and on that basis the tender provides value for money for Council.

The mowing of sporting fields was considered to be an ideal service to be provided by contract, as the service is relatively easy to define, it is seasonal, and there is little variability, which should then minimise any contract variations.

The expected value of the contract is estimated to be approximately \$80,000 to \$100,000 per annum.

Consultation

A public tender process was conducted.

Options

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

1. Council may determine not to accept any of the tenders received and invite fresh tenders.
2. Council may award separate contracts to Murray Cornelius and Steven Van Der Mere to undertake the mowing of various cricket ovals and sportsgrounds surrounds for a three year period.

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

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

The preferred tenderers are experienced contractors and have completed mowing works for Ballina Shire Council over a number of years. Both contractors have a very good understanding of the local conditions.

RECOMMENDATIONS

1. That Council accepts the tenders for the mowing of various cricket ovals and sportsgrounds surrounds for a three year period from Murray Cornelius and Steven Van Der Mere.
2. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

Nil

11.9 Tender - Construction of Ballina Heights Drive

File Reference	Ballina Heights Entry Road From Cumbalum Interchange
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Right Click to Select Delivery Program Link
Objective	To advise Council of the outcomes from the tender process for the construction of Ballina Heights Drive.

Background

A major project within Council's current capital works program is the construction of Ballina Heights Drive. Previous reports have dealt with the financial arrangements for this project. From those previous reports Council made a decision to proceed to tender and this report advises the Council of the outcomes of that process.

Key Issues

- Award the tender in accordance with the Local Government (General) Regulations 2005.
- Engage a suitably qualified and conforming contractor.

Information

The original estimate for this work, prepared in February 2011 by Ardill Payne and Partners was \$4,000,000 with eight addenda issued during the tender period. The first six addenda increased the pre tender estimate by \$500,000 to \$4,500,000.

Council decided to call tenders using the open tendering method, in accordance with clause 167 of the *Regulation*. A Tender Evaluation Plan (TEP) consistent with the *Regulation* and the Conditions of Tendering in the RFT documents was prepared and endorsed by the Tender Evaluation Committee (TEC) prior to close of tenders.

The evaluation method included weighted price and non-price criteria with a price to non-price ratio of 80:20. Price information was held by an independent officer and not provided to the Tender Evaluation Committee until the evaluation of non-price criteria was completed in accordance with the TEP.

Tenders were called on 2 July 2011 and closed at 9.30 am on 31 August 2011. Six tenders were received as follows (plus one alternative from Roads and Traffic Authority, NSW):

11.9 Tender - Construction of Ballina Heights Drive

Tenderer	A.B.N.	Tender Amount	Assessed Tender Amount ¹	Total Score ²
Hazell Bros (QLD) Pty Ltd	46 145 228 986	\$8,113,646	Culled after non price evaluation	
Roads and Traffic Authority, NSW	64 480 155 255	\$8,394,586	\$8,394,586	100
Roads and Traffic Authority, NSW (Alternative)	64 480 155 255	\$8,321,218	\$8,321,218	100
Haslin Constructions Pty Ltd	85 051 102124	\$8,548,831.74	Culled after non price evaluation	
SEE Civil Pty Ltd	88115963427	\$8,787,726.72	\$8,787,726.72*	96.32
Davbridge Properties Pty Ltd T/As Davbridge Constructions	23 065 240 002	\$9,644,443.94	\$9,644,443.94*	86.59
Civilteam Engineering Pty Ltd	34 118 683 186	\$10,433,706.65	\$10,433,706.65*	82.24

Notes:

1. The 'Assessed Tender Amount' is the Tender Amount plus (or minus) the Assessed Values of qualifications and departures (anomalies) in the tender and any loadings that apply.
2. The 'Total Score' includes the scores for price and non-price criteria.
3. * Minimum assessed tender amount (also refer to section 4.2)

Non Price Evaluation

All tenders were received prior to closing time and all tenders acknowledged the eight addenda that were issued. All tenderers included the tender schedules required to be submitted with the tender except that Civilteam and Davbridge did not submit revised schedule 3 issued in addendum eight.

The tender evaluation plan and conditions of tendering called for the short listing of up to four tenderers. The information submitted by the tenderers was evaluated against the specified non-price criteria, in accordance with the TEP. The TEC shortlisted four tenderers through assessing the non price criteria. The non price scores of the four shortlisted tenderers were weighted, totalled and normalised as shown in the table below.

Tenderer	non-price score	Rank	Total normalised non-price score	Rank
Hazell Bros (QLD) Pty Ltd	12	5	N/A	N/A
Roads and Traffic Authority, NSW	16.5	1	20	1
Haslin Constructions Pty Ltd	10.5	6	N/A	N/A
SEE Civil Pty Ltd	16	2	19.39	2
Davbridge Properties Pty Ltd T/As Davbridge Constructions	13.5	4	16.36	4
Civilteam Engineering Pty Ltd	15	3	18.18	3

Price Evaluation

The tenders were lump sum tenders and assessed on the basis of the tendered price submitted on Schedule 1 – Tender Form.

All the tendered amounts were well above the tender estimate, It is noted that the sum of the schedule of prices for tenderers Davbridge, Civilteam and SEE Civil did not equal their tender price. In all cases the sum of their schedule of prices was greater than their tender price.

A schedule of prices for variations was included in the tender document and an analysis of the rates tendered in the Schedule of Rates for Variations confirmed that the relativity of tenders would not be effected by changes in the scheduled quantities, within the expected range. The tendered price not the sum of the Schedule of Prices was therefore used in the evaluation.

Assessment of Qualifications and Departures

The tender of Roads and Traffic Authority, NSW contained no qualifications and departures.

Each of the other tenders (Davbridge, Civilteam and SEE Civil) contained qualifications and departures (anomalies) and did not fully meet the requirements in the RFT Documents. Clause 178 of the *Regulation* requires Council to accept the most advantageous tender.

In order to identify which tender was 'most advantageous' for the specified work, the qualifications and departures were reviewed, however the TEC determined that there was no reason to fully assess the financial value of these qualifications and departures (including Davbridge, Civilteam and SEE Civil errors in their Schedule of Prices) as this would only increase the lump sum of their assessed tender amount, and would not change the relativity of the tenderers.

The qualifications and departures did not raise issues that would affect the other tenders. The TEC determined to continue the assessment based on a Minimum Assessed Tender Amount for the tenders of Davbridge, Civilteam and SEE Civil.

The tenders were compared on the basis of the Assessed Tender Amounts, calculated by adding the minimum assessed values of qualifications and departures to the original Tender Amounts.

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

Tenderer	Weighted price score	Ranking
Roads and Traffic Authority, NSW	80	1
SEE Civil Pty Ltd	76.93	2
Civilteam Engineering Pty Ltd	64.06	4
Davbridge Properties Pty Ltd T/As Davbridge Constructions	70.23	3

Selection of the most advantageous Tender

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

Tenderer	Total normalized non-price score	Weighted price score	Total score	Ranking
Roads and Traffic Authority, NSW	20	80	100	1
SEE Civil Pty Ltd	19.39	76.93	96.32	2
Civilteam Engineering Pty Ltd	18.18	64.06	82.24	4
Davbridge Properties Pty Ltd T/As Davbridge Constructions	16.36	70.23	86.59	3

The tenderer with the highest total score was Roads and Traffic Authority, NSW, and was therefore identified as the most advantageous.

The most advantageous Tender Amount is \$8,394,586 (Roads and Traffic Authority, NSW) which is 90% above the amended tender estimate. All other tender prices were also well above the estimate with the lowest five tenderers being within 7% of the most advantageous tender. This would indicate that Roads and Traffic Authority, NSW tender reflects current market values.

Referee reports indicate satisfactory past performance by Roads and Traffic Authority on recent contracts. The Tender Evaluation Committee contacted a number of the referees and obtained additional information that supported the reports provided with the tender. A financial assessment of Roads and Traffic Authority, NSW was not undertaken as it is a Crown authority. The resources proposed for the work have been reviewed and the Tender Evaluation

Committee considers Roads and Traffic Authority, NSW capable of completing the contract satisfactorily.

Having established a preferred contractor from this process, the Council needs to consider whether the tender represents value for money. This issue is examined in the options section of this report.

Sustainability Considerations

- **Environment**
The construction of these works will be managed by a construction environmental management plan.
- **Social**
This project will provide a transport link for residents and therefore support their social needs.
- **Economic**
This project is critical for the future orderly development of a major planned land release area and therefore is important for economic development.

Legal / Resource / Financial Implications

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

As discussed in the above information, the tendered amount is significantly higher than the budget allocated for this project.

The Section 94 Roads Plan has this project in the plan, at a cost of \$4m, funded 70% from developer contributions.

The Council budget for this project is as follows:

- Section 94 contributions collected - \$2 million
- Loan Funds - \$1.2 million
- Section 94 contributions shortfall - \$800,000

Council has previously resolved that the project would only proceed if the developers agree to finance the shortfall in Section 94 contributions, with repayment to occur as those contributions are collected.

The figures from this tender process now mean that there is a significant shortfall in funding.

Consultation

An open tender process was conducted.

The options section of this report considers changing the scope of the project and this is a matter should be undertaken in consultation with the development interests for the release area.

Options

It is recommended that due to the tendered amounts being ninety-percent or more above the estimated amount that Council decline to accept any of the tenders in accordance with clause 178 (1) (b) of the *Local Government (General) Regulation 2005* (the *Regulation*).

Under the regulations, if Council rejects all tenders the following options are available.

- (a) postpone or cancel the proposal for the contract
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract
- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender
- (f) carry out the requirements of the proposed contract itself.

As a competitive market was established, postponing the tender or inviting fresh tenders is unlikely to provide a better outcome. Council is not currently resourced to carry out the requirements of the contract itself.

Option (e), to enter into negotiations, in this instance with the preferred tenderer is considered an option that should be pursued before a further decision is made. Under this option, staff would seek to identify savings through risk transfer, deferred works, contractor innovation and changing the scope of the works.

To ensure best practice probity measures are in place, a direct Negotiation Plan has been prepared to assist the process, subject to Council accepting the recommendation below.

It is noted that the pricing above the estimate was generally across all items in the schedule. This suggests that civil construction works are experiencing price pressure in terms of labour, plant and materials such as quarry and concrete material. This general nature of the increase and the consistent market result would indicate that it may be difficult to gain substantial savings without deferring components of the works. Deferral of works will assist with the issue of the funds currently available for the project, but may in fact result in a total increased cost if the current pricing increases continue for the period of the deferred works.

The next report to Council on this matter will also need to clarify funding arrangements, due to the major variation to budget. Council may well not to proceed with the project at this point in time.

RECOMMENDATIONS

1. That in accordance with clause 178 (1) (b) of the *Local Government (General) Regulation 2005* (the *Regulation*). Council rejects all of the tenders received for the construction of Ballina Heights Drive on the basis that no tender represents value for money at this time.
2. That Council authorise the General Manager, in accordance with the regulation, to enter direct negotiations with the preferred tenderer, the NSW Roads and Transport Authority, and that the outcomes of those negotiations be reported to Council for determination.

Attachment(s)

Nil

12. Public Question Time

12. Public Question Time

13. Notices of Motion

13.1 Notice of Motion - Coast to Country Music Festival

File Reference Notices of Motion/Festivals & Event Support Program

Councillor Cr Robyn Hordern

I move -

That Council approves funding of \$25,000 for the Coast to Country music festival from the 2012/13 festivals and events program.

This funding commitment will allow the co-ordinators to market and promote the Ballina festival at the January 2012 country music festival in Tamworth, which is the biggest Country music festival in Australia.

Councillor Comment

As has been discussed previously it is important that festival organizers have adequate time to plan and promote their events. The current plan for the 2012/13 festival's funding allocation is to call for expressions of interest during December 2011 to February 2012 with the preferred options reported to the March 2012 meeting.

The Coast to Country festival has the potential to become a signature event for Ballina and the event co-ordinators have confirmed that the Tamworth event provides a great opportunity to promote the Ballina festival, along with attracting artists.

As Tamworth occurs in January adequate time is needed to prepare promotional material / collateral prior to January.

It is also intended to support an increase in the overall festival's funding program for 2012/13 as this funding is helping to build the social fabric of our community through the in-kind contributions of the numerous people involved.

COUNCILLOR RECOMMENDATION

1. That Council approves funding of \$25,000 for the Coast to Country music festival from the 2012/13 festivals and events program.
2. This funding commitment will allow the co-ordinators to market and promote the Ballina festival at the January 2012 country music festival in Tamworth, which is the biggest Country music festival in Australia

Attachment(s)

Nil

13.2 Notice of Motion - Domestic Electrical Power Bills

File Reference Notices of Motion

Councillor Cr Keith Johnson

I move that

The General Manager be authorised to establish a small working party to:-

- A. Investigate and document methods of reducing domestic electrical power bills; and,
- B. Develop a program outline on how to educate the Ballina community on the ways to reduce their bills; and,
- C. Report to Council on the results of A and B with recommendations on how to implement the findings.

Councillor Comment

In recent times the cost of domestic electricity bills has grown and there is strong expectation that these bills will grow a further 50% in the next 3 to 5 years. As a result there is now more focus by domestic users on reducing their bills, but the information available to assist making cost reducing decisions is complex, poorly structured and not easily available. The electricity retailers all have websites that make cost reducing offers and provide other detail, but the full effects of the offers are, for a variety of reasons, not readily understood by domestic consumers.

Attachment 1 is a 3 page extract from Country Energy's Regulated Retail Price List giving the basic information one would need to select a suitable retail tariff. It is available from the Country Energy web site. To understand and apply it effectively a consumer requires a measure of sophistication not widely found in the consuming public.

A month ago I set out to review the situation; produce a fairly simple guide for consumers and then make it publicly available. It is now evident the combination of complexities and subtleties just does not permit of a simple guide. It will take more data collection, analysis and lateral thinking to produce an approach that will assist domestic consumers than at first thought. Importantly however, the approach set out in the Notice of Motion can be shown to be a worthwhile exercise. In the short time of my review most bills examined have shown the potential to be reduced by amounts from \$10 to \$100 per quarter. The number of bills with little or no potential for reduction appears to be about 20%. On the basis of this limited data there is probably potential to achieve shire wide savings approaching \$1M per year. That \$1M savings retained in our shire can lead to a shire GDP increase of about \$2.5M/ year with most spent within the shire.

If only a fraction of this potential is achieved the \$\$ benefits for the community will still be worthwhile. Though it is difficult to estimate there are also gains to be made in reducing the carbon footprint for the shire as part of the Cities for Climate Protection (CCP) program.

Finally, if Ballina Council can develop and document this program successfully its benefits can be spread to other LGA areas. The long term collective potential can be very significant.

COUNCILLOR RECOMMENDATION

The General Manager be authorised to establish a small working party to:-

- A. Investigate and document methods of reducing domestic electrical power bills and
- B. Develop a program outline on how to educate the Ballina community on the ways to reduce their bills and
- C. Report to Council on the results of A and B with recommendations on how to implement the findings.

Attachment(s)

1. Extract from Country Energy's Regulated Retail Price List

13.3 Notice of Motion - Lennox Head Consultative Committee

File Reference Notices of Motion

Councillor Cr Jeff Johnson

I move

1. Council approves the establishment of a Lennox Head Consultative Committee and seeks expressions of interest from Lennox Head based not-for-profit community groups, including those currently involved with the B Ward Committee.
2. The purpose of this Committee is to identify areas where Council's strategic planning for Lennox Head needs to be updated and infrastructure and service delivery could be improved.
3. The information provided from this Committee is to assist Council in the allocation of resources as part of the preparation of the annual operational plan and budget.

Councillor Comment

Currently the only community consultation committees in our Shire are the Ward Committees

The B Ward Committee has 13 members with six from Lennox Head based groups. The B Ward committees are well attended but have a lot of items/issues to deal with. Often these meetings spend close to two hours just going through the previous minutes and actions/reports related to those minutes. This generally results in the community representatives only getting a few minutes each at the end to raise new items/issues.

There is growing frustration within the Lennox community about the slow progress of the various management plans, including Lennox Head Management Plan, traffic management, Lake Ainsworth Management Plan, Lennox Head Strategic Plan, etc.

Lennox has experienced significant growth over the last decade, and is expected to almost double again over the coming 10-20 years. This is having an impact on the local environment (Lake Ainsworth in particular), the road network, open space, sports fields, a lack of community services, etc.

I have spoken to various community/not-for-profit groups in Lennox and they have all confirmed an interest in being involved with a Lennox focused committee, feel that there is a need to reform a Lennox focused committee, and feel that the community and Council would benefit from it.

COUNCILLOR RECOMMENDATION

1. Council approves the establishment of a Lennox Head Consultative Committee and seeks expressions of interest from Lennox Head based not-for-profit community groups, including those currently involved with the B Ward Committee.
2. The purpose of this Committee is to identify areas where Council's strategic planning for Lennox Head needs to be updated and infrastructure and service delivery could be improved.
3. The information provided from this Committee is to assist Council in the allocation of resources as part of the preparation of the annual operational plan and budget.

Attachment(s)

Nil

13.4 Notice of Motion - Public Place Recycling

File Reference Notice of Motion

Councillor Cr Jeff Johnson

I move

1. That Council provides in principle support for 'trailing' public place recycling along side existing garbage bins. That Council receives a report on the preferred locations for the trial, costs/benefits to Council and design options that will encourage proper use.
2. That Council approach local shopping centres to encourage them to consider public place recycling within there shopping precincts.

Councillor Comment

Ballina Council has been very active in its efforts to reduce the amount of landfill in our Shire. Staff are implementing various diversion programs that include, construction material and the recently introduced kerb side organics collection.

Public Place Recycling (PPR) is another important step in this area. It links in with Council's aim to become more sustainable through increased recycling and diversion percentages.

PPR would also send a positive message to the community and have educational benefits that would complement existing recycling services.

Many other council areas in NSW, including in the Northern Rivers have introduced PPR and have found that it has been successful in terms of minimal contamination rates and the educational opportunities that it offers. A copy of information produced by Clarence Valley Council is attached.

Ballina has one of the most expensive land fill operations in the country so it's important that we investigate a range of programs and initiatives that will increase the amount of material that can be diverted from land fill. It's also important that Council is seen by the community to be providing leadership in this important area of our operations.

COUNCILLOR RECOMMENDATION

1. That Council provides in principle support for 'trailing' public place recycling along side existing garbage bins.
2. That Council receives a report on the preferred locations for the trial, costs/benefits to Council and design options that will encourage proper use.
3. That Council approach local shopping centres to encourage them to consider public place recycling within their shopping precincts.

Attachment(s)

1. Information from Clarence Valley Council

14. Advisory Committee Minutes

14. Advisory Committee Minutes

Nil items.

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

15.1 Mayoral Meetings

File Reference	Mayoral
Councillor	Cr Phillip Silver

Activities since the September 2011 Ordinary meeting:

<u>Date</u>	<u>Function</u>
22/9/11	Ballina Medicos meeting at Council
23/9/11	Australian Election Authority presentation in Ballina
26/9/11	Paradise FM Radio re September meeting
26/9/11	Ball State University students, discussion at Council
28/9/11	Shire tour
28/9/11	Cumbalum precinct B meeting with staff and Acting Minister for Planning at Council
29/9/11	NSW E P & A Review in Ballina
29/9/11	UPA AGM in Alstonville
1/10 - 3/10/11	Country to Coast Music Festival in Ballina and Lennox Head
4/10/11	ABC, NBN, Prime, 2LM re Coast Road closure
5/10/11	Flood Study presentation with staff and Councillors at Council
8/10/11	National Advocacy Conference opening at Lennox Head
10/10/11	Breast Cancer Awareness Display in Ballina
10/10/11	Country to Coast Festival Committee meeting in Ballina
18/10/11	Richmond River Water quality deputation with staff at Council
18/10/11	Deputations with staff and Councillors at Council - Aspen Group and Lennox Developments Pty Ltd
18/10/11	TAFE meeting with staff at Ballina
19/10/11	Rous Water October meeting in Lismore
20/10/11	Carers Morning Tea with Councillors in Ballina
22/10/11	Lennox Head Wastewater Treatment Plant Open Day
25/10/11	Lord Taveners' function in Lismore
26/10/11	NSW Hospital Auxiliary Conference opening in Lismore

RECOMMENDATION

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

Attachment(s)

Nil

15.2 Australian Airports Assoc - NSW Divisional Quarterly Meeting

File Reference Councillor Development

Councillor Cr Alan Brown

As Delegate for the Ballina Byron Gateway Airport together with Neil Weatherson, Airport Manager and Graeme Gordon, the Airports Operation Manager, I attended NSW Divisional Meeting held at the Kingsford Smith Room Terminal 1, on Wednesday 14 September, 2011. This meeting takes place in Sydney on a quarterly basis, updating the many changing issues within the aviation industry affecting aviation generally and in particular regional and rural airports throughout New South Wales.

This meeting was well attended by 36 delegates from within this state as well as corporate representatives of members and was chaired by Mr. Michael Dubois, of Tamworth Regional Airport. Others attending was the president of AAA Mr. John McArdle and Caroline Wilkie, Executive Director of AAA

Michael Dubois opened the meeting (AGM) and he officially announced his retirement from the AAA position of the Branch after ten years of service to the AAA and also informed those present that he would be standing down as a Director of Board AAA Ltd at the Annual General Meeting to be held in November this year. Steven Prowse of Wagga Wagga Airport was then duly elected Chair of the NSW Division with Kel Gardiner of Orange Airport elected as Secretary and also Alternate Director for the board of the AAA.

It was indicated by the Executive Director Caroline, that the Board of the Australian Airports Association has for some time been concerned that the current Constitution of Australian Airports Association Limited needs a constitutional review and while the Board considers that there is a need to make some changes to the present structure of the AAA, as was raised at the State Division AGM's, following member feedback it considers that these changes would best be considered in 2012 after the present Constitution is converted into a more modern and easy-to-read format that remedies current errors and deficiencies.

Other issues discussed included a presentation by Jardine Lloyd Thompson Pty Limited pointing out some major deficiencies in regard to insurance cover of airports generally dealing with airside operations. These were duly noted and will be addressed by our manager should any action be required.

Again there was some concern given to Environmental Impact Statements regarding airports which may interfere with the operation at airports particularly in regional areas and it was suggested that members pay particular attention to this as approvals by councils could occur without consideration to the operations at airports.

The issues with 30 mtr wide runways is still under discussion and not likely to be resolved in the short term in the meantime the AAA is constantly on the alert and will advise its members of any closure on the issue and this will be immediately relayed to those members affected by any decision made. At this staged it does appear that CASA is taking a conciliatory attitude in view of the obvious expense to be incurred to widen the runways concerned.

It was announced that by the 31 December 2012 the second target date for compliance to the Disability Standards for Accessible Public Transport 2002 milestone 2 will need to have been met. In prescribing how public transport is to be made accessible, these Standards acknowledge certain rights of passengers, operators and providers, as well as imposing some responsibilities. These Standards apply to all operators and the conveyances they use to provide public transport services. They also apply to providers and supporting premises and infrastructure. These Standards do not apply to airports that do not accept regular public transport services.

Key compliance items for the 31st December 2012 for terminals and infrastructure include;

Full Compliance Surfaces, Gateways, Handrails and grab-rails, Vending machines.55% Compliance Access paths, manoeuvring areas. Passing areas, resting points, doorways and doors, lifts, stairs, toilets, ramps, boarding, allocated space, tactile ground surface indicators, controls and street furniture.

I am reliably informed that our airport is compliant and will meet the requirements on the date nominated.

The meeting was well conducted with considerable input from those attending and there were other technical details discussed dealing with the operation of airports generally and it is considered this information was of particular importance to our management staff as was indicated by them following the meeting.

Any aspects of this report I would be willing to expand upon if required.

RECOMMENDATION

That Council notes the contents of the report from Cr Brown on his attendance at the Australian Airports Association NSW Divisional Quarterly meeting.

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 - Lennox Head Cultural and Community Centre - Insurance Claim

This report contains information relating to litigation and if released could prejudice the outcome of the action.

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 Lennox Head Cultural and Community Centre - Insurance Claim

Reason for Confidentiality

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

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

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is currently involved in a contractual dispute with the original architect and the release of information in this report may impact negatively for Council in respect to that dispute.