Notice of Commercial Services Committee Meeting

Notice is hereby given that a Commercial Services Committee Meeting will be held in the **Ballina Shire Council Chambers**, Cnr Cherry & Tamar Streets, Ballina on **Tuesday 15 November 2011 commencing at 4.00 pm**

Business

1. Apologies
2. Declarations of Interest
3. Deputations
4. Committee Reports
5. Confidential Session

Paul Hickey
General Manager

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4.1 Policy (Review) - Property Investment & Development

File Reference	Council Policies
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To adopt the Property Investment & Development policy.

Background

Council at the 14 September 2011 Commercial Services Committee meeting resolved to place on public exhibition the Property Investment & Development policy.

The draft policy was placed on public exhibition with the closing date of 27 October 2011. One submission was received, a copy of which is attached to this report.

Key Issues

- Address submission

Information

The report to the 14 September 2011 provided a review of the existing policy, with the only changes recommended largely being related to formatting. The amended policy was then exhibited for a period of 28 days to allow for public comment. The exhibition was notified via Council's website and by way of advertisement in the local newspaper. Copies of the document were made available at Council's Community Access Points.

The policy was also exhibited through Council's new electronic newsletter Community Connect eNews, with a link to an online feedback form.

One submission was received and a copy of that submission is attached to this report. The submission is lengthy and it is not the intention of this report to address every point raised. However some of the comments included in the submission do require a response or clarification. The information that now follows is based on headings included in the submission.

Strategic Considerations

- The submission states that Council is in breach of the Ministerial Order for investments in respect to our property dealings. It is understood that the submitter has previously written to the Division of Local Government (DLG) in respect to this issue. It is also understood that the response provided by the DLG was along the lines that this type of expenditure was effectively a matter for the Council to determine.

- Previous written responses by Council to the submitter, on this question, have highlighted that Sections 8 (Charter), Sections 21-23A (Functions) Section 24 (Provision of Facilities) Section 186 (Land Acquisition) are sections of the Local Government Act that provide councils with the authority to undertake a broad range of activities and in fact there are very few activities that a council cannot undertake.

- The submission makes particular reference to Section 625 of the Local Government Act, which states as follows:

  Section 625 How may councils invest?
  (1) A council may invest money that is not, for the time being, required by the council for any other purpose.
  (2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.
  (3) An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.
  (4) The acquisition, in accordance with section 358, of a controlling interest in a corporation or an entity within the meaning of that section is not an investment for the purposes of this section.

  Item (1) is the critical wording as this refers to money, that is not for the time being, required for any other purpose. The approach taken by councils in respect to this clause is that it refers to money, or cash, that is currently not being used elsewhere. Therefore it must be held in a form of a liquid investment such as a term deposit. In the cash of property activities the money is required by the council for a purpose, being the property investment, therefore it is not captured by this clause.

- The Local Government Act also contains a number of reference notes for information purposes. In respect to chapter 15, which is the section that deals with how councils are financed, one of the notes included states as follows:

  The main sources of council finance are:

  - *rates, of which there are 2 kinds*
    - *ordinary rates*
    - *special rates*
  - *charges*
  - *fees*
  - *grants*
  - *borrowings*
  - *income from business activities*
  - *income from land*
  - *income from other investments*
  - *sales of assets.*

The reference to business activities acknowledges that councils will undertake entrepreneurial activities. No definition is provided in the Local Government Act as to what is defined as a business activity, and this is somewhat linked to the DLG's response, as mentioned earlier, in that ultimately it is a matter for each council to determine whether or not they wish to be involved in any particular activity.

- The DLG undertook a Promoting Better Practice Review of Ballina Council in 2008 and one of the items listed in the "What is Working Well" section was "Council's business and commercial activities". If the DLG had any concerns regarding Council's activities being in breach of the Local Government Act, this would have provided an opportune time to provide such a comment.

- The submission makes reference to two ratios recently included in the DLG's comparative performance report for 2009/10 being the Building and Infrastructure Renewal Ratio and the Community Service Expense Per Capita Ratio. It is accepted that Council's Building and Infrastructure Renewal Ratio needs to be improved and Council needs to be allocating additional funds to asset renewals.

  In response to this, and as was discussed with Council's External Auditor at the October Council meeting, we need to do more work on issues such as:

  - Ensuring that our assets are being accurately depreciated and that the useful life being recorded is reliable
  - Ensuring that our assets are being accurately assessed in respect to their current condition
  - Ensuring that our accounting is correctly dissecting asset renewals as distinct from upgrades
  - Ensuring that our asset management plans are up to date and identifying a reliable level of funding needed for each asset class, along with confirming the level of service Council wishes to provide
  - Reallocating funds from existing priorities to asset renewals
  - Examining options to increase revenues and / or decrease expenses.

  The issue of a backlog is often mentioned, however Council also needs to determine what it considers to be a reasonable level of asset renewal, as it may well wish to accept a certain level of backlog works. For instance, it would be very rare for any community to have public infrastructure in place where there is no backlog.

  Council's Civil Services Group is continuing to update our asset management plans and it is hoped to debate the issue of service levels with Council during 2011/12.

  In respect to the Community Service Expense Per Capital Ratio, from a staff perspective this is a pleasing figure, as it highlights that the amount of funds being diverted away from what could be called core infrastructure services such as roads, open spaces etc is minimal.

The model at Ballina Shire Council, for many years, has been to provide the infrastructure (i.e. land and / or buildings) for community service providers and then allow the private or not for profit sector to deliver those services.

Examples of this include the successful operation of the Ballina District Community Services Association, Fox Street Pre-school, Ballina Meals on Wheels, Rainbow Children's Centre etc.

Many councils are attempting to reduce areas of their community service expenditure as they are recognising that they do not have the recurrent funding to provide these services, which were often traditionally delivered by State Government, and still deliver core infrastructure.

A recent example of this is at Lismore City Council where they recently resolved to sell the Koala Long Day Care Centre.

- It is interesting to note that the submission has made no mention of other data in the DLG comparative performance report that highlights the efficiency of Council in delivering services with limited resources available. Other indicators of interest in the comparative report are as follows:

Indicator	Ballina Shire	Group Four Councils
Average Residential Rate	644	786
Average Farmland Rate	1,003	1,454
Average Business Rate	1,859	2,910
Total Continuing Income Per Capita	1,053	1,202
Employee Costs as a % of Expenditure	32	35
Total Continuing Expenses Per Capita	1,024	1,272
Equivalent Full Time Staff	255	312

Even though basic figures such as this only provide part of the picture, the constant message delivered through this type of information is that Ballina Council is operating at a reasonably lean level and delivering a reasonable level of services. This level of service satisfaction was confirmed by the Micromex community survey undertaken in 2008.

- The submission also makes a comparison to Sydney City Council's investment property percentage, which is a fairly crude comparison based on total assets. An appropriate evaluation of this type would need to examine all the assets listed and their risk profiles.

  Discussions were held with members of the Local Government Property Manager's forum, which is an active group of property professionals in local government, and other councils mentioned as being active in property investment and development include Liverpool, Blue Mountains, Blacktown, Parramatta, Campbelltown, Baulkham Hills, Wollongong, Newcastle, Port Stephens and Sutherland.

  One comment, from a metropolitan based council manager was that "nine out of every 10 councils have commercial land holdings".

It is probably fair to say that property development and investment is far more prevalent in the metropolitan based councils, as they are regularly involved in activities to rejuvenate town centres etc.

Ballina Council is in the lucky position to be one of the few regional or rural councils with significant commercial property holdings, due to the foresight of Councillors and staff from the 1970s, along the bequeathment of significant land holdings by Ms Florence Price (ie. Wigmore Arcade, Wigmore Park etc).

Governance Considerations

- In the first point there is a mixing of comments from the DLG's Ministerial Order, which is really reinforcing the message that councils should obtain independent advice in respect to complex financial derivatives, such as collaterised debt obligations (CDOs), as against independent advice on property developments. It is agreed that financial derivates is an area where independent advice is needed, as has been shown through the recent global financial crisis, and it remains a credit to Ballina Council that we did not purchase any CDOs.

  In respect to property investment, the same level of independent advice is not always needed as there are not the same complexities involved. Prior to employing the position of Manager - Commercial Services, with the incumbent having extensive property and valuation experience, independent or external advice was obtained for almost every project, however in recent times this advice has been provided by that Manager. There may still be times when further external advice is needed and typically the nature of the project will dictate the level of advice sought.

- The submitter has previously asked Council for legal advice on our property activities. Council staff are not aware of any legal advice being sought as there has never been any concerns that we need to seek advice on this issue.

- The Property Investment and Development Policy is a separate policy to our Investment Policy, which manages our cash investments. That policy has been reviewed due to changes in the Minister's Investment Order.

- In respect to the ARC project Council has previously received a report on the project's performance at the May 2011 Commercial Services Committee. A summary of the information provided in that report is as follows.

Item		Feasibility	Actual
a)	Lease Term	Five plus five years	As per feasibility
b)	Commencement Rental	310,000pa + GST	As per feasibility
c)	Property Outgoings - Tenant to pay	Council rates, land tax (if applicable), insurances, cleaning and gardening	As per feasibility
d)	Rent Reviews	Annual CPI rent reviews but capped @ 3.00%. Review to market upon exercise of option to renew lease	As per feasibility
e)	Site Area (approx.)	4,000m^2	4,076m^2
f)	Building area (approx.)	1,884m^2	1,826m^2
g)	Total development costs - Cost plan for the project prepared by quantity surveyors Turner & Townsend.	$2,640,000	$2,381,927
h)	Commencement Net Rental	$310,000 pa	As per feasibility
i)	Annual net rental return on total development costs or funds invested	$310,000pa $2,640,000 = 11.74%	$310,000pa $2,381,927 = 13.01%
j)	Annual net rental return on total development costs (funds invested) plus estimated land value ($950,000)	$310,000pa $3,590,000 = 8.63%	$310,000pa $3,331,927 = 9.30%
k)	Estimated market value of property based upon an initial yield or capitalisation rate of 6.75%	$4,600,000	As per feasibility
l)	Estimated land value (equates to $233/m^2 which is considered to be in line with market)	$950,000	As per feasibility
m)	Estimated development profit (before selling expenses)	$1,010,000	$1,268,000
n)	Estimated net cash return to Council if the Project is sold on completion; i.e. land value + development profit (before selling expenses)	$1,960,000	$2,218,000

The major difference between the figures in this table and the submission are:

- The submission has chosen to select a return on capitalisation rate of 8% as compared to the 6.75% in the Council report. The 6.75% was based on comparable sales in the region, whereas the 8% is a benchmark figure. The two sales used for comparison purposes, were 23 De Havilland Crescent, sold for $941,000 reflecting a yield of 6.6% and Bunnings Murwillumbah, which sold for $5.4 million at a yield of 7.3%.

- The submission includes stamp duty, however Council does not pay stamp duty on this type of activity

- The submission has included financing costs for the land, however as this land was purchased over 30 years ago, there is no financing cost applicable. It could be argued that there is an opportunity cost for the land, however as there was no other purchaser at the time it is inappropriate to include a financing cost

- It is also debatable whether such a property would be sold through an agent or directly by Council, and this would result in savings in those costs.

  It appears that the submission has tried to provide a worst case scenario. The information provided by both staff and within the submission is based on assumptions that may or may not eventuate and the only proven test of the performance of this investment will be on sale. As previously advised to Council there are at least one or two parties interested in this property, both of whom would provide a more than satisfactory profit, if Council's preference was to sell.

- The comment that Councillors are personally exposed in respect to the ARC development can only be seen as some form of scare mongering to achieve the submitter's preferred outcome. Councillors have acted on professional advice from staff and there is no reason why any Councillor would be legally exposed. If anything, it would be the staff that have personal exposure as they have prepared the professional advice for Council.

- In respect to the recommendations within the submission they are not supported as Council regularly receives reports on financing strategies and infrastructure delivery options. These reports are delivered in an open forum and as has happened in this case, members of the community are entitled to make their submissions which are then considered by the elected representatives. If Council was to hold a community workshop it would be important to ensure that attendees were independent to ensure that any discussion was evenly balanced.

- In respect to personal liability it is the opinion of staff that the Property Investment Policy complies with any relevant provisions of the Local Government Act.

Sustainability Considerations

- **Environment**
  Not Applicable

- **Social**
  Not Applicable

- **Economic**
  Council's property investment activities are designed to provide a range of benefits including community infrastructure, revenue generation and economic development.

Legal / Resource / Financial Implications

There are no legal or financial implications from the adoption of this policy.

Consultation

The draft policy was placed on public exhibition with the closing date of 27 October 2011.

Options

Council can adopt the policy as exhibited, amend and adopt the policy or to not adopt the policy. This policy has been in existence for a number of years and there is no reason for Council not to proceed to again adopt the policy as exhibited.

RECOMMENDATIONS

That Council adopt the Property Investment & Development Policy, as exhibited and as attached to this report.

Attachment(s)

1. Submission - Property Investment & Development Policy.
2. Draft Policy - As exhibited

From: Vince Kelly [kellgroup@bigpond.com]
Sent: Wednesday, 26 October 2011 11:58:23 AM
To: Sandra Bailey
Subject: Public Submission - Property Investment and Development Policy Review

The General Manager
Ballina Shire Council

26 October 2011

Dear Sir

Public Submission - Property Investment and Development Policy Review

This email represents a submission in respect to the Property Investment and Development Policy (PIDP) review. In terms of the Department of Local Government (DLG) Code of Accounting Practice and Financial Reporting councils are required to undertake an annual review of their Investment Policy and Investment Strategy.

In terms the DLG Investment Policy Guidelines (copy attached) a council's investment policy should communicate the council's investment philosophy, the overall risk philosophy and the investment objectives and expectations. Council officers (i.e. Management and Councillors) who are involved in selecting, reviewing and/or monitoring investment are required to use these guidelines to ensure that they understand the parameters, risks and expectations that councils are required to take into account when creating an investment policy.

The PIDP needs to address both strategic and governance issues.

1.0 Strategic Considerations

Since the 1970's Ballina Shire Council has undertaken commercial property investments and developments. Council has assumed that it can improve its core business, which is the provision and maintenance of community infrastructure and services, by investing capital which is otherwise available for infrastructure and services, in commercial projects. Council has not obtained professional independent advice regarding this strategy, has not articulated a compelling case to support the strategy nor provided a public strategy document for review and analysis by the community. Additionally there is no academic or professional support of Council's strategy. There was no support by IPART in its 2009 review of the Revenue Framework for Local Government and none of the many professional contributors to the IPART review supported Council's strategy.

While Council's property investment and development strategy was not formally listed for consideration it was discussed by Councillors at the September 2011 Commercial Services Committee meeting. Unfortunately time did not permit for a full and detailed consideration of the subject and consensus on the issue was not reached.

Historically Council has focused on the financial returns on its property projects which can be quantified in numeric terms using money as the unit of measurement. However the value of the social return on capital invested in infrastructure needs to be introduced to the debate. While public infrastructure generally does not provide a financial return it does provide community benefits and therefore a social return on capital. The question is how to quantify the social return for the purpose of investment decisions.

A lot of work has been done all around the world on this issue by both public and private sector institutions. Various models are used but generally involve the determination of a financial proxy. The World Bank has used cost benefit analysis and in some of its road projects has assessed the value of the social return on capital as high as 29% pa.

There is also the view that in areas where there is an infrastructure backlog and/or high growth there is a greater social return on infrastructure than in more stable and established areas. As Ballina Shire has both an infrastructure backlog and high growth it follows from this view, that the value of the social return on Ballina infrastructure should be high.

While commercial facilities also provide a social return on capital, historically there has been no shortage of private capital to meet the reasonable demands of the Ballina community for commercial facilities. Consequently from a social benefit perspective there is no need for Ballina Council to be involved in commercial developments. These are best left to the private sector with the Council using its capital for infrastructure. This way social benefits to the community are maximised through public capital allocations to infrastructure and private capital allocations to commercial facilities.

Regardless of the asset class in which Council may invest i.e. property, bonds, interest bearing deposits etc; Council is expected to achieve returns at least commensurate with market rates for these asset classes. The issue is what value should Ballina Council place on the social return on capital for the purpose of investment decisions? My view is that this should be approached, initially at least, from a philosophical perspective rather than a quantitative one involving the development of financial proxies.

Ballina Council's philosophy is that it can improve the social return on infrastructure through the development of a wealth portfolio of predominately commercial property. This involves an ongoing allocation of capital whether it is to new projects or accrual of capital within existing investments. Over time Council is endeavouring to reallocate some of the capital in the form of property rentals and sale proceeds to infrastructure funding.

If Council did not have an infrastructure funding requirement then there would be no need to raise capital for this purpose. It follows that there would be no need to invest in commercial property. Since the purpose of commercial investment returns is to provide a social return on capital invested in infrastructure then, from a philosophical perspective, the proxy financial value of the social return on infrastructure should never be any less than that achieved on commercial investments.

Effectively the two rates of return on capital should be regarded as at least equal. If this is the case then investment in commercial property could not improve the investment rate of return on infrastructure. It could however reduce the return by delaying the funding of infrastructure. An example of this is the 89 Tamar St building. Since its completion its rental has been servicing loans (in the form of interest and principal repayments) where the capital value of these loans has been substantially less than the capital value of the property. The same will apply to the recently completed ARC building. Consequently Council has a capital mismatch which manifests itself in an underfunding of infrastructure.

Council has endeavoured to rationalise its strategy with comments such as by investing in property Council is generating additional revenue streams and that these revenues will be foregone if properties are sold. These comments are not consistent with investment analysis. Firstly council is not 'generating' an income stream when it purchases or develops a commercial property. Instead it is using capital, which would otherwise be available for infrastructure funding, to acquire (purchase) a deferred income stream at a market value. The market value represents the net present value of all the future cash flows which can be expected to be received from the investment asset, including the end value in the event that it is sold. As the investment involves market speculation there is no certainty that Council will recoup the capital value in real terms, through the future cash flows.

Secondly as the capital value of a property represents the net present value of all the future cash flows no revenues are forgone if a property is sold; they are simply brought forward. They can then be used to fund infrastructure at current day values rather than defering infrstrucuture projects, waiting years to recoup the capital value of the investment in real terms and then undertaking the deferred infrastrucuture projects which will cost substantially more than current day costs.

Much has been said about what other councils do but in reality many do not pursue real estate investments. In the September 2011 Commercial Services Committee business paper Ballina Council was compared to the City of Sydney Council which has a property portfolio with a reproduction value of $2.38 billion. It includes properties that support the city's business operations and community services as well as commercial properties. Sydney Council is unique in that on average it has one million visitors to the Sydney CBD every day. Sydney Council's 2009/10 Statutory Return, Condition of Public Works (Section 428 (2) (d)) shows that the property portfolio is in a poor condition and poses significant financial challenges for the City of Sydney Council.

Sydney Council's investment properties comprise $133.4 million which represents 3% of total assets of $4.49 billion (which excludes water and sewerage). Ballina Council's 2009/10 financial statements show that it has $16 million in investment properties which represented 2.5% of total assets of $638.3 million (excluding water and sewerage). However allowance needs to be made for other commercial property projects including the ARC building, which is now to be classified as an investment property, and the land banks and work in progress relative to subdivision projects. These represent around another $14 million making a total of $30 million or 4.7% of assets (excluding water and sewerage). On a percentage basis Ballina Council has a greater exposure to commercial property investment than the City of Sydney Council. This is not a healthy situation given the inherent higher risk and reduced liquidity of the Ballina property market compared to Sydney.

The State Government has recently released the comparative council information for 2009/10. There are two issues which are particularly concerning in respect to Ballina Council. The first is the Building and Infrastructure Renewal Ratio and the second is the Community Service Expense Percapita Ratio.

The Building and Infrastructure Renewal Ratio assesses a council's rate at which buildings and infrastructure are being renewed against the rate at which they are depreciating. It does not cover new/additional infrastructure which can be viewed as an separate requirement. A ratio of 1:1 (or 100%) indicates that the renewal of assets equals the amount of depreciation, amortisation and impairment. For NSW in 2009/10 the mean was 84.4%, the high 563.7.4%, the low 7.4% and the median 80.5%. In 2009/10 the ratio for Ballina Council was a very low 17.71% and down from 56.19% in 2008/9.

The Community Service Expense Percapita Ratio measures the amount spent on community services per head of population. For NSW in 2009/10 the mean was $67, the high $1,584, the low $0 and the median $54. In 2009/10 the Ballina Council's spend was $15.58 percapita, a reduction of 31% on the 2008/9 spend. This places Ballina Council in the lowest 17% of councils in the State with a spend of less than $20 percapita.

These two ratios indicate a failing of Ballina Council's infrastructure and services funding strategy. This is particularly so considering that over the past five years Council has allocated $11 million (land values $3million and cash $8 million) to two investment properties i.e. the 89 Tamar St (DOCS) building and the ARC warehouse. In addition there are many more millions of dollars which have been allocated to industrial land subdivisions in the Russelton and Southern Cross Estates.

A further indicator of Ballina Council's excessive investment in commercial property is

Council's Financial Asset Ratio. The calculation of the ratio is Current Assets plus Non Current Investments plus Investment Properties minus Externally Restricted Cash/Investments. While the ratio includes investment properties it does not include the value of subdivision land banks and work in progress relative to Council's subdivision activities. If they were included the ratio would be worse. The benchmark for a council is 2.5% to 5% of total assets. Based on Ballina Council's 2010 financial statements 2.5% of total assets is $20.6 million and 5% is $41.3 million. Council's actual Financial Assets were $58.7 million which represents 7.11% of total assets, a surplus of $17.4 million to $38.1 million. These funds would be more effectively employed in infrastructure funding.

The Fiscal Star group whose work on local government financial sustainability was acknowledged by IPART in its review of the Review Framework for Local Government has addressed the issue of councils holding excess financial assets. Fiscal Star has said:

- *from a ratepayers perspective, surplus holdings of financial assets at worst are evidence of rates and charges being too high, at best represent a management distraction and risk;'* and,

- *'the most appropriate use by councils of capital – whether raised through borrowings or in the form of ratepayer provided equity – is investment in non financial assets such as infrastructure.'*

There is also the issue of Council's creation of a quasi public wealth fund through its property portfolio. This is not a valid strategy where there is an infrastructure backlog and growth driven demand for infrastructure. The Federal government has acknowledged this and ruled out adding more money to the Australian Future Fund or establishing a separate sovereign wealth fund.

The current balance of the Australian Future Fund is approximately $75 billion which has been set aside to cover public sector superannuation entitlements. The money is not to be used for the funding of infrastructure. Since Australia has a huge infrastructure backlog and a growing economy, at this point in time it is more financially prudent to invest available capital directly in infrastructure and restore intergenerational equity. The government is also very conscious of the risks associated with public wealth funds. The Federal Treasurer Wayne Swan has said 'we are not going to build a national punting fund.'

At a local level the Treasurer's comments are also relevant to Ballina Council. There is no merit in allocating capital to a public wealth fund when Council has inadequate capital to fund community infrastructure requirements. There is also the risk of loss and/or poor returns in respect to the investments and the community concerns as to what will ultimately be the fate of the capital invested in commercial projects. In the event of a merger with other councils the commercial property portfolio may be liquidated and the capital allocated in a way which will not directly benefit the Ballina Shire community which has contributed the funds. I note that this concern was also raised by the Mayor Cr Silver at the September 2011 Commercial Service Committee meeting. Infrastructure is a safer investment as once funds are invested in infrastructure projects they cannot be taken away from the community.

A public wealth fund may also work against the Ballina Community in respect to obtaining of government funding. Firstly it prevents the leveraging of capital in respect to grants. At times grant criteria require the Council making a capital contribution to the projects to be funded by the grant. If Council has excessive capital tied up in commercial investments it has less capital available on which to seek matching grant funding.

Secondly the government departments which provide the grants examine the financial position of councils when considering grants. If they see excessive investment in financial assets, which is the case with Ballina Council, they may limit the grant funding on the basis that Ballina Council has surplus capital and can contribute more money to the project itself.

On a global perspective it can be seen with the European and subprime debt contagions that it can take the cumulative effect for poor strategies and policies over several decades to manifest a financial crisis. Similarly Ballina Council's property investment and development strategy has taken decades to manifest a chronic infrastructure crisis. The social consequences of this include community intergenerational inequity which will only get worse unless the Council changes its strategy and policy settings.

There is also the issue of Council's lack of a mandate to undertake property investment development activities. This issue has not been addressed through a formal community consultation/engagement process. In 2008 Council engaged the Micromex Group to conduct a community attitudes and satisfaction survey of residents. The purpose was to provide Council with a better understanding of resident expectations, their perceptions of Council services, the importance attached to specific Council services and their satisfaction level with those services.

The survey contained a prompted question in which it was proposed that Council's entrepreneurial activities increases Council revenue. The question cannot be regarded as valid for mandate purposes because of its leading nature. If respondents had been told that the capital cost of entering into the entrepreneurial activities directed funding away from infrastructure and services their responses may well have been very different.

In a follow up survey question, those respondents that were not supportive were asked why they felt that way. Included amongst the most significant reasons was that Council does not have the expertise for this type of development. These concerns have proved to be well founded when considering Council's recent performances which are addressed below under Governance Considerations.

2.0 Governance Considerations

The PDIP is a public document and therefore should be drafted in an unambiguous and transparent manner which can be readily interpreted by the public.

2.1 Legislative Issues

2.1.1 Independent professional Advice

Section 1 'Introduction' of the DLG Investments Guidelines (copy attached) states:

'Investments are not considered to be a principal activity for councils but the knowledge and skill required to manage investments can be quite specialised. Councils are encouraged to seek independent financial advice where necessary in preparing an investment policy.'

Council in a response to a request for information pursuant to the Government Information Public Access Act 2009 (GIPA) revealed in April 2011 that notwithstanding previous representations Council does not hold independent legal or professional advice as to Council's legislative authority to acquire and/or develop land and property for investment purposes. The GIPA response from Ballina Council stated:

'there is no written advice or documentation that I can provide to you.'

The PDIP is based on Council's interpretation of various legislation. Council Management is neither qualified nor is it in a position to provide independent legal and investment advice. Management does not have professional indemnity insurance cover and consequently cannot indemnify Council against investment losses arising from Management's legal and investment advice. From a governance perspective, inluding risk mamanement, the role of

Council Management should be that of the reviewer and the primary advice should be sought from independent and qualified professionals who hold adequate professional indemnity insurance cover.

<u>*2.1.2 Legislative Framework*</u>

The Legislative Framework section of the PDIP states:

'Council's property related activities will be managed within the legislative parameters provided by (i.e. including, but not necessarily limited to):

- *Local Government Act*
- *Minister for Local Government's Investment Order*
- *Valuation of Land Act*
- *Residential Tenancy Act*
- *Retail Leases Act*
- *Environmental Planning and Assessment Act*
- *Crown Lands Act'*

The statement, *'Council's property related activities will be managed within the legislative parameters)'* is extremely vague and does not stipulate compliance. The statement should be similar to that contained in Council's Investment Policy (reference 101) which states, *'All investments are to comply with the following:'* It then list the legislation. This is also a requirement of section 3.2 'Legislation' of the DLG Investment Guidelines which state:

'The investment policy should include references to the specific parts of the Act, LGGR, Ministerial Order, Local Government Code of Accounting Practice and Financial Reporting (the Code), Australian Accounting Standards, DLG Circulars and any other legislation that influences how a council manages its investments.'

Also as the whole of the legislation listed does not apply to Council's property related activities it is appropriate that the relative sections be stated for transparency requirements, public information, ease of reference and compliance.

If the legislative framework is not limited to the legislation stated in the PIDP then the framework is not complete. From governance perspective the additional legislation under which the property related activities are to be managed should be listed and the qualification *'(i.e. including, but not necessarily limited to)'* should be removed from the policy document.

<u>*2.1.3 Legislative Changes*</u>

The Management report has stated that the PIDP review has identified only minor changes since the policy was adopted, and the policy is still considered to be contemporary and reflects current legislation. This is not correct as there have been major changes through the issue of revised Ministerial Investment Orders, numerous DLG Circulars and comprehensive sets of Capital Expenditure and Investment Policy Guidelines. These guidelines were issued pursuant to Section 23A of the *Local Government Act 1993* (LGA). In terms of Section 23A (2):

'A council must take any relevant guidelines issued under this section into consideration before exercising any of its functions.'

DLG Circular 06-70 dated 27 November 2006 states:

'while section 625 of the Act describes how councils may invest.
Councils must consider the following when considering an investment:
- *the purpose of the investment*

- *the desirability of investment diversification*
- *the nature and risks associated with the investments*
- *the likely income return and timing of any income return*
- *the length of the proposed investment*
- *the costs involved in making the investment*
- *other matters as appropriate.'*

The DLG Investment Policy Guidelines state:

'As councils are acting as custodians when investing public assets they should take into account the matters detailed above when investing.'

The above requirements are also consistent with the 'prudent person' principle set out in Section 14 of the NSW Trustee Act 1925 which applies to Councillors as Councils are the custodians and trustees of public assets. Section 3.10 of the DLG Investment Guidelines states:

'Council officers should act with the duty of care, skill, prudence and diligence that a prudent person would exercise when investing and managing their own funds. The "prudent person" principle is set out in section 14 of the Trustee Act.'

A reference to section14 of the NSW Trustee Act 1925 should also be included in the Legislation Framework of the PDIP.

In DLG Circular No 07-38 dated 17 August 2007 Councils were 'reminded of their responsibility to ensure that investments comply with the forms of investment made by order of the Minister under section 625(2) of the *Local Government Act 1993.*' The prevailing Ministerial Order at that time was issued under DLG Circular 05-53 on 23 September 2005. This order enabled the purchase of land for investment purposes but did not allow the development of land or property for investment purposes.

DLG Circular No 08-48 dated 18 August 2008 referred to a revised Ministerial Investment Order issued on 31 July 2008. It removed item (g) in the previous Order which identified the purchase of land as a form of investment. This investment reform did not require the removal of the development of land or property for investment purposes because it was never permitted under the previous Investment Order.

The removal of item (g) did not preclude a council from acquiring land for the purpose of exercising any of its functions (Section 186 (1) LGA). Council's Charter is set out in Section 8 of LGA which is contained in Chapter 3. The Charter comprises a set of principles that are to guide a council in the carrying out of its functions.

A Council's functions are set out in Chapter 5, Sections 21, 22, 23 and 23A of the LGA and include the function of the acquisition and development of land and property. However the note to Chapter 5 points out that all functions of a council come from statute, either from the LGA or some other act. Consequently Sections 21, 22, 23 and 23A of the LGA do not in themselves give councils legislative authority to undertake the acquisition and/or development of land and property for any purpose.

Where a council proposes to undertake the function of the acquisition and/or development of land and property for investment purposes the relevant statute applicable to this function is Section 625 of the LGA which states:

(1) A council may invest money that is not, for the time being, required by the council for any other purpose.

(2) Money may be invested only in a form of investment notified by order of the Minister published in the Gazette.

The implications of Section 625 (2) are that if the investments are not specified in the Ministerial Investment Order then a council can not invest in the unspecified investments. The development of land and property has never been specified in any Ministerial Investment Order and the purchase of land of was deleted in by virtue of the issue of the revised Ministerial Investment Order dated 31 July 2008. It removed item (g) in the previous Order which identified the purchase of land as a form of investment. Where the purchase of land also covers the improvements such as buildings on the land the removal of item (g) also removed the purchases of property (land and buildings) for investment purposes. Consequently a Council has no legal authority to purchase and/or develop an Investment Property as defined by Australian Accounting Standard (AASB 140) - refer 2.1.4 below.

The DLG continued its reform agenda in respect to council real-estate related investments and in DLG Circular No 11-01 dated 17 February 2011, which referred to the amended Ministerial Investment Order dated 12 January 2011, the DLG removed the ability of councils to invest in the mortgage of land (part (c) of the Investment Order dated 31 July 2008).

There is no doubt that a council needs to be able to purchase and develop land and property as this is integral to its purpose of providing community infrastructure such as sporting fields and community centres etc. While commercial property developments such as land subdivisions, office and warehouse buildings may also provide social benefits the prime purpose Council undertakes these activities is as an investment and they are therefore subject to Section 625 of the LGA. The investment and financial industry has acknowledged and adopted the professional industry analysis which for a very long time has classified the purchase and/or development of commercial land and property as high risk. This is the reason why it is not permitted as an investment pursuant to Section 625 of the LGA and the current Ministerial Investment Order.

2.1.4 Australia Accounting Standard (AASB140)

An investment property is defined by Accounting Standard (AASB 140) as a 'property held to earn rentals or for capital appreciation or both.' Investment properties are listed separately in Council's audited financial statements. There should be a reference to AASB 140 under the Legislative Framework of the PIDP as this is a requirement of the DLG Investment Policy Guidelines.

2.2 Lack of Approval Authority

The PIDP does not stipulate where or how Council obtains authority to undertake property/land acquisitions and developments for investment purposes. Instead the legislative framework identifies that Council is specifically excluded from the acquisition and development of land and property for investment purposes.

While Council may wish to argue that Council's property/land investment activities have other purposes, the PIDP clearly identifies that the primary purpose of this activity is for investment. This primary purpose and lack of authority must be acknowledged by Councillors when formulating policy.

2.3 Data Analysis

The PIDP review does not contain any data analysis demonstrating how the policy has performed since implementation. Issues that need to be considered and commented on are as follows:

1. How many proposals have been considered under the policy?
2. What was the nature of the proposals?
3. What were the number and nature of the proposals approved and declined pursuant to the policy?
4. Did those proposals which were approved comply with the policy?
5. If they did not comply with the PIDP what were the reasons for approval?
6. How have the approved investments/developments performed since approval/implementation?

2.4 Non Complying Investment – ARC Project

In 2009 Council formulated the development of an industrial warehouse in the Southern Cross Industrial Estate. Council approval to proceed with the project was given in July 2009. The project was not commercially viable from the outset and Council's decision was based on a flawed feasibility analysis. A copy of the feasibility analysis is attached. This document has been obtained pursuant to a GIPA Act request for informarion.

The ARC project involved the design and construct of a special purpose warehouse for the Australian Reinforcing Company Pty Ltd (ARC) on the basis that Council would secure a leasing pre-commitment from ARC and sales pre-commitment from a property investor before committing to the project. During 2010/11 there were numerous Council reports showing estimated net sales proceeds of approximately $2,000,000 flowing to Council. The feasibility analysis on which Council based its approval of the ARC project also referred to the sale of the property. Clearly the intention was to sell the ARC property and not retain it as an investment. Pursuant to the legislation existing at the time of approval Council had no authority to acquire and/or develop property for investment purposes.

While Council was able to secure a leasing pre-commitment from ARC for a net rental of $310,000 per annum it was not able to secure a sales pre-commitment. Nevertheless Council resolved to proceed with the construction based on the misconception that the property could be sold for the Management valuation of $4,590,000 upon completion. Council failed to identify that the reason that it could not secure a sales pre-commitment was that the property never was, and is still not, worth the Management valuation of $4,590,000.

Councillors as part of their due diligence responsibilities in July 2009 should have insisted that an 'as if complete' valuation of the property be undertaken by an independent licenced valuer with appropriate professional indemnity insurance cover. Instead Councillors relied on a Management valuation. Notwithstanding their qualifications Management are not in a position to provide independent valuations or feasibility advice for the purpose of investment decisions.

Management used an incorrect capitalisation rate to value the ARC property. Similar to interest rates capitalisation rates are market driven and vary over the business/property cycle. There is an inverse relationship between capitalisation rates and property values; the higher the capitalisation rate the lower the property value and the lower the cpitalisation rate the higher the property value. There is numerous market data showing capitalisation rates (yields) for industrial property market. In the current cycle capitalsation rates for industrial property peaked at between 9.25% to 10.5% percent in 1999 and bottom out at between 7% to 7.5% in 2007. Following the impact of the Global Financial Crisis capitalisation rates again increased to between 8.5% to 10% from 2008 .This is demonstrated by the red and blue lines on the chart on page 8 of the attached ANZ Property Outlook September 2009.

Consequently when Council approve the ARC project in July 2009 the capitalisation rate applied to the 'as if complete' valuation should have been around 8.5% to 9%.Based on the net rental of $310,000 pa the value of the ARC building would have been $3,450,000 to $3,647,000 and not the $4,590,000 stated in the Management feasibility analysis which was based on an incorrect capitalisation rate of 6.75%.

Council should have been further aware that the appropriate capitalisation rate for the ARC property in July 2009 was 8.5%% to 9% as in June 2009 it had obtained independent valuations of its investment properties for its 30 June 2009 financial statements. The capitalisation rates and valuations for the June 2009 financial statements were as follows:

1. 18 Fawcett St – capitalisation rate 8.5% - valuation $1,000,000
2. 133- 155 River St – capitalisation rate 8.5% - valuation $5,750,000.
3. 89 Tamar St – capitalisation rate 8.35% - valuation $7,000,000.

The capitalisation rate applied to the June 2009 valuation of the 89 Tamar St office building was 8.35%. Capitalisation rates for industrial property such as the ARC building generally have a higher risk premium to commercial office space such as the 89 Tamar St property. This is further evidence that the capitalisation rate applying to the ARC property in 2009 was 8.5% to 9%.

It is noted that the 2009 independent valuation of the 89 Tamar St property is $1,500,000 less than the Management valuation of this property in 2006.The June 2011 valuation was only $7,830,000 ($670,000 less than the 2006 Management valuation) reflecting a capitalisation rate of 8%. This further demonstrates that Councillors should not be relying on Management feasibility analysis for investment decisions.

The capitalisation rate of 6.75% used by Council Management to value the ARC property in July 2009 at $4,590,000 was based primarily on the sale of the APN building in December 2007 for $4,925,000 on a capitalisation rate (yield) of 6.88%. While this may have been an appropriate capitalisation rate in December 2007 it was not appropriate in July 2009. Clearly Council Management got the July 2009 valuation wrong with disastrous consequences for ratepayers.

Council obtained an independent valuation of the ARC property in June 2011 for Council's 30 June 2011 financial statements. The valuer used a capitlisation rate of 8% reflecting some improvement in property yields since 2009 and valued the property at $3,875,000,000 which was still $715,000 less than the July 2009 Management valuation of $4,590,000. The independent valuer did not use any of the comparative properties that Management used for their 2009 valuation to determine the capitalisation rate for the obvious reason that these properties were not relevant in 2009 or 2011. The ARC property real 'as if complete' value in 2009 was never any more than the 2011 'on completion' valuation of $3,875,000. Clearly the Management valuation used in the 2009 feasibility was wrong and lead to a very poor investment decision by Ballina Councillors, in addition to the fact that they had no legal authority to make such an investment.

The attached ARC feasibility is adjusted below using the 2011 independent valuation and demonstrates that the project was not commercially viable in 2009 and did not comply with the PIDP investment return parameters. However the real situation is even worse than that shown below as the 2011 valuation reflects an improvement in market conditions since 2009.

Revised Feasibility Analysis

1 Net rental of $310,000 pa capitalized at 8.0% = Gross sale value
Based on June 2011 independent valuation
$3,875,000

2 Less: Selling Expenses:
Agents commission on sale 2% 77,500
Legals 0.5%
19,375 96,875

$3,778,125

3 Less: GST on Sale Nil; Assumes building would be sold on a going concern basis or GST plus basis 0

3,778,125

4 Less: Actual Development Costs (net of GST):	
Construction	$2,291,291
Professional Fees	162,092
Construction Financing Costs	45,091
Project leasing commissions & marketing; nil as tenant introduced themselves	0
Legal fees on preparation of agreement for lease, lease, registration of plan & lease, etc.	21,715
Council DA fees	5,008
Council CC fees	21,182
Council S.64 & S.94 Contributions- water, sewer & roads as per DA	75,344
Land Contribution (at vacant land market value)	950,000
Legals and stamp duty 5%	47,500
Land financing cost – 1,000,000 @ 7% for 9 months	52,500

5 Total Development Cost
3,671,723

6 Development Profit $106,402

The feasibility made no allowance for Council's project management costs to cover the expense of the time and effort put into the administration of the project by Councillors and council staff. Once an allowance is made for Council project management expenses there would be no development profit on the project.

Nevertheless the development profit of $106,402 represents only 3% of the total development cost of $3,671,723. On this basis alone the project did not comply with the return requirements of the PIDP. As there was no sales precommitment the Council was speculating on market conditions in order to sell the ARC property on completion. The PIDP return requirements for the project were greater than 10% above the 90 day BBSW applying at the time and this equates to a development profit of approximately 13%; which should have been at least $477,324. The 3% ($106,402) return fell well short of Council's profits expectations of 20% ($745,875) of the development cost for the ARC project. In terms of the PIDP Council is required to state in the resolution the reasons for accepting a return less the benchmark required. However no reasons have been provided.

The management feasibility endeavours to assess a residual land value of the ARC project.

This is a pointless exercise as the economic working life of the ARC building should be at least 30 years and therefore the residual land value is of no relevance for an investyment analysis and/or decisions. This is evidenced by the market approach of determining the value of investment properties using the capitalisation method of valuation which is a factor of a market driven yield and the annual net passing cash flows.

While the Management feasibility analysis placed residual value of $1,000,000 on the land it failed to make an allowance for the removal of the buildings. A residual land value involves including a cost allowance for restoring the site to vacant land as this is a cost which would be incurred in a redevelopment of the site. The ARC building comprises hundreds of tons of reinforced concrete in its walls and floors and the cost of demolishing and removing this would be in the order of $300,000. Consequently the theoretical residual land value would be only $700,000 which is less than the market value of the site before the construction of the ARC building.

The reality is that rather than adding value to the site by undertaking the ARC development Ballina Council actually destroyed site value.The stated market value of the land in the management feasibility was $950,000 when it was contributed to the ARC project. Management's residual land value in the feasibility is $1,000,000. However when the $300,000 in cost to remove the buildings is deducted the residual value is only $700,000 which is $250,000 less than the initial market value of $950,000.

2.5 Review of ARC Project

At the Commercial Services Committee meeting held in May 2011 an analysis of the possible sale versus rent options for the ARC project was sought. A report was submitted to the September 2011 Commercial Services Committee meeting. Once again no independent professional advice was provided and the report failed to advise that the current position of Council was that the property was to be sold on competition and any decision to retain it as an investment would require the property be treated as an investment property pursuant to Accounting Standard AASB 140. It would also require Councilors to consider the changes to the legislative framework and the DLG investment guidelines, which excluded councils from investing in property.

The report gave no clear recommendation as to whether the property should be retained or sold. Management's recommendation was:

'That Council notes the contents of this report in respect to the possible sale or continuing lease of the Australian Reinforcing Company property holding.'

Council resolved:

'That Council notes the contents of this report in respect to the possible sale or continuing lease of the Australian Reinforcing Company property holding.'

The resolution did not formally change Council's position that the property is to be sold on completion. However Management is not proceeding with the sale which means that ARC project is to be classified as an investment property pursuant to Accounting Standard AASB 140. Consequently Councillors have exceeded their legal authority to acquire/develop property for investment purposes.

Clearly the governances surrounding Council's property investment/development activities are questionable. In this regard Councillors need to be very mindful of the risk of personal liability particularly as their Management advisors do not have professional indemnity insurance cover. The new 2011 update of the DLG brochure 'Becoming a Councillor (copy attached) states:

'Is a councillor protected from legal action taken against them?

*The Local Government Act provides councillors with a level of protection from civil liability action for undertaking council-related and council-endorsed activities as a councillor. However, this protection is only provided where a councillor's actions are undertaken in the manner referred to in the relevant sections of the Act, including in good faith and for **purposes** related to the council activities. Councillors must read and understand the sections in the Local Government Act that provide protection. In the event that a councillor does not understand an issue, it is the obligation of that councillor to seek and be guided by their own legal advice.'*

I believe that from a personal liability perspective Councillors should very carefully consider the distinction between ***purposes*** relating to Council activities and the ***functions*** of a Council. As outlined in '2.1.3 Legislative Changes' above the note to Chapter 5 of the LGA points out that all functions of a council come from statute, either from the LGA or some other act. Consequently Sections 21, 22, 23 and 23A of the LGA relating to functions do not in themselves give councils legislative authority to undertake the acquisition and/or development of land and property for any purpose. The statue relative to a council's function of the acquisition and/or development of land and property for investment purposes is section 625 of the LGA. Clearly when considering purpose relative to section 625 Council does not have authority to undertake land and property acquisition and/or development for investment purposes.

I further believe that those Councillors who vote to approve a non complying PIDP will also be exposing themselves to the risk of personal liability.

2.6 Risk Determination Matrix

The PIDP Risk Determination Matrix specifies benchmark returns on a simple percentage basis. However the DLG Investment Guidelines requires Councils to consider the time frames of investments. Therefore it is not appropriate to use a simple percentage to specify the benchmark return. As a minimum the rates of return should be benchmarked on a per annum basis.

3.0 Community Workshop

In September 2011 I sent an email to the Mayor Cr Silver suggesting that Council consider arranging a one day workshop on the issue of the most equitable way to finance the Shires' infrastructure requirements where written submissions could be invited from various stakeholders.

Stakeholders could include business and community groups and individuals. Any relevant State government departments and Council staff could also be asked for their views. The workshop could allow for stakeholders to talk to their submissions with the workshop outcomes summarised into a report for further consideration by Council and the community. I also suggested that the proposed workshop cover a review of the PIDP, both strategy and governance issues.

In responding to my request Cr Silver advised that to workshop or debate the PDIP would require a Council resolution. As I have identified in this submission there are many issues that need to be addressed and it is essential that the community be engaged in the process. Now would be the appropriate time to do this as part of the PIDP review

4.0 Recommendation

The following is recommended:

1. That Council arranges a one day community workshop on the issue of the most equitable way to finance the Ballina Shires' infrastructure requirements.
2. The workshop include a review of the PIDP, both strategic and governance issues.
3. Written submissions be invited from various stakeholders.
4. The workshop outcomes be summarised in a report for further consideration by Council and the community.
5. All Councillors review their position in regard to their personal liability in terms of the DLG guidelines and LGA in respect to:
   - property investment and development decisions made by Ballina Council pursuant to the current PIDP; and,
   - Ballina Council approval of a non complying PIDP which may lead to future non complying property investment and development decisions by the current Council, or a future Council, of which existing Councillors may not be members.

Yours faithfully

Vince Kelly

5 Easter Parade
Ballina
NSW 2478

DRAFT REVIEW

POLICY NAME: PROPERTY INVESTMENT & DEVELOPMENT

POLICY REF: P07

MEETING ADOPTED: 28 June 2007
Resolution No. 280607/42

POLICY HISTORY:

TABLE OF CONTENTS

OBJECTIVES

The objectives of this policy are to:

- Facilitate the effective management of Council's property assets so as to complement the existing financial investment policy in providing an alternate income source, thereby reducing the call on rate revenue and other statutory income producing activities of council
- Establish the principles of equity and transparency in Council's property related activities
- Ensure that all Council property related activities occur within legislative frameworks
- Support the objective of generating alternate/additional forms of income via property development and investment activities
- Facilitate local business where able
- To invest in, and maintain a strong property portfolio as a strategy for providing capital growth and a recurrent income source.
- To acquire and maintain an optimum balance of short, medium and long term property investments ensuring exponential growth and the financial capacity to further invest and develop.

BACKGROUND

This policy provides guidelines for consideration in the acquisition, development and disposal of investment properties. Investment and development properties can be cited as those properties that provide a financial return and/or provide for future income generation.

The principles of this policy provide a basis to ensure optimum financial return is achieved via appropriate identification, selection and management of Council's investment portfolio, including acquisition and disposal of assets. The principles also support the basis for recommendation upon which Council may determine to pursue acquisition or disposal of its investment properties.

This policy pertains only to land classified pursuant to Section 31 of the Local Government Act 1993 as 'operational'.

Council's investment and property portfolio has, over the years, helped to achieve our sound financial position, a position that can be enhanced by realising further property investment and development opportunities.

The bulk of revenue derived to finance Council activities comes from:

- Annual property rates
- Annual property service charges
- Other fees and charges (DA fees, inspection and licence fees etc)
- Borrowings
- Government grant monies
- Interest on financial investments

Ancillary, but of no less importance to the foregoing, are the income streams derived from:
- Property development and sale

- Property development and lease
- Rents derived from commercial and residential properties.

Council must provide effective and efficient management of property related activities to fulfil legislative and community obligations.

Council is well placed to have greater involvement in property and entrepreneurial activities to supplement its traditional income base. This has been emphasised in recent years with the continuation of rate pegging, decreased levels of government funding, limitations on borrowing and increased community's expectations on Council's roles and responsibilities.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Councillors
- Council owned businesses

RELATED DOCUMENTATION

Legislative Framework

Council's property related activities will be managed within the legislative parameters provided by (i.e. including, but not necessarily limited to):

- Local Government Act
- Minister for Local Government's Investment Order
- Valuation of Land Act
- Residential Tenancies Act
- Retail Leases Act
- Real Property Act
- Environmental Planning and Assessment Act
- Crown Lands Act

Related Council Policies

- Land Development Reserve - Management
- Investment Policy

POLICY

1. Principles

- To ensure optimum financial return is realised through appropriate identification, selection and management of Council's investment portfolio including acquisition and disposal of assets.
- To utilise effective property management techniques and investment practices in the management of Council's assets to ensure maximum long term advantage.

- To satisfy the real estate needs of Council by meeting the requirements and corporate objectives outlined within the existing financial investment policy.

2. Policy Statement

The overall mix and nature of investment properties will provide a balanced source of income that complement existing financial holdings.

All future investment and development activities will provide a return on investment greater than achievable cash rates at any given time. If a decision is made to accept a return less than achievable cash rates then the reasons for that decision must be outlined in the resolution relating to that investment and development activity.

In respect to investment return decisions, Council will apply the following matrix in determining the appropriateness of investment and development activities.

Risk Determination Matrix

Level of Risk	Benchmark Above 90 Day BBSW
Low	< 2%
Medium	2% to 5%
High	5% to 10%
Speculative	> 10%

In determining the level of risk Council is to consider the following, as a minimum,

- Council experience in the proposed type of development
- Nature of tenancies
- Funding sources
- Term asset is to be held
- Recent precedence.

Council will systematically assess and review the performance of its investment portfolio and use the information derived to determine when and how to preserve or increase each property's value and usefulness, or otherwise dispose of individual properties. Decisions in this regard will be based on analysis of cost information for individual properties and will reflect the viability of Council's commitment of financial resources to specific projects.

Priority will be given to projects with a positive effect on investment returns without imposing on short term cash availability.

All property investment activities will be undertaken in accordance with Council's operational plan and will reflect Council's ongoing commitment to sustainability. Community identified needs within the operational plan will also provide guidelines for the sustainability of property investment decisions in relation to the vision of Council and Council's corporate goals. Investment activities will reflect both financial and strategic objectives.

Borrowings, if required, may be considered in accordance with relevant policy, the operational plan and targeted debt ratios.

3. Sustainability Implications

3.1 Social

- Increased employment opportunities via the development and sale of industrial land
- Improved social amenity
- Community facilities
- Enhancement of open space including environmental protection areas.

3.2 Economic

- The efficient management of the acquisition, development and disposal of investment and development properties will provide an ongoing income stream which reduces the call on rate revenue and provides funds for further investment.
- Public land must be managed so as to maximise its usefulness (eg development potential) whilst at the same time minimising costs (eg maintenance).
- Council's property activities can be seen as an agent to promote economic growth

3.3 Environmental

- The impact on the environment will be assessed as part of any property development decision

4. Political Implications

- Council has two separate and distinct roles in its property activities, one as developer; the other as consent authority. Particular care must be exercised to ensure the two roles are clearly separated.
- The desire of Council to generate alternative forms of income stemming from increasing demands on the budget by the community and increasing financial constraints imposed by government must be balanced with council's other obligations.
- In asset managing both public land and funds in its property role, Council is likely to be subject to increased public scrutiny.
- Change in political focus and direction can influence past and present decision making.

REVIEW DATE

This policy is to be reviewed every four years.

4.2 Directional Signage - Southern Cross Industrial Estate

File Reference	Directional Signage – Southern Cross Industrial Estate
CSP Linkage	Transparent and accountable governance
Delivery Program	Commercial Services
Objective	To consider an amendment to Ballina Development Control Plan – Chapter 14

Background

Since the opening in July 2011 of the Harvey Norman Bulky Goods Centre on Boeing Avenue in the Southern Cross Industrial Estate, Council staff have received feedback from tenants in the Centre and their customers about the lack of "directional signage" to the new bulky goods/shopping precinct. Requests have also been made directly to a number of Councillors who have relayed those requests to staff.

Requests have also come from Harvey Norman who own and manage the bulky goods centre, the general public and parties who have expressed interest in purchasing the remaining two large lots on Boeing Avenue (see **attached** letter).

The requests have been for general "directional signage" to the bulky goods precinct and not advertising signage for any specific business.

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. The ability for Council and/or developers to provide signage requires clarification and possibly amendment with regards to the DCP.

There is a provision in the DCP for "directional and advanced warning signs" however the interpretation of what is "directional" and what is "advertising" is not entirely clear in the DCP.

Key Issues

- Provision of adequate "directional signage" to inform the public and tourists to the location of bulky goods precincts or homemaker centres
- Assistance to business, residents, tourists and the local economy

Information

DCP Chapter 14 was formulated to regulate the size, style and proliferation of "advertising signs" within the shire. However as Ballina Shire continues to develop and areas such as the Southern Cross Industrial Estate evolve into bulky goods or homemaker precincts, the need to provide appropriate directional signage arises.

Currently there is no signage on the Pacific Highway (Tamarind Drive) or Southern Cross Drive as to the presence and location of the bulky goods precinct or "Home Makers Centre" on Boeing Avenue. Directional signage is important for businesses to attract shoppers and encourage economic growth.

Approaches to Council's Regulatory Services Group made by Harvey Norman and Commercial Services staff for the erection of directional signage have been unsuccessful.

Harvey Norman has not requested specific signage advertising the location of the "Harvey Norman Centre", but rather has proposed signage such as "Home Makers Precinct" or "Home Makers Centre" be located on both the Pacific Highway (Tamarind Drive) and Southern Cross Drive.

As mentioned, potential purchasers have commented that any offer they may make on land in Boeing Avenue would be conditional upon the appropriate directional signage being erected to assist in directing shoppers.

These requests are not considered unreasonable in regard to the contribution such businesses can make to the local economy and generation of employment.

The lack of provisions within the DCP for appropriate directional signage for the bulky goods precinct or "Homemakers Centre" on Boeing Avenue fails to recognise the investment and potential in the area of these facilities.

The current restrictive provisions of the DCP in regards to signage will continue to encourage developers and businesses to develop along arterial roads so they "can be seen". This simply results in more ribbon type development and congestion.

The section of the Pacific Highway (or Tamarind Drive as it has recently been renamed) in North Ballina proposed for direction signage is a "Classified Road" and as such the RTA has a concurrence role in determining signage. However with the commissioning of the Ballina By-Pass due to occur within the next few months, control of Tamarind Drive will fall to Council.

It is proposed that Council amend or clarify DCP - Chapter 14 to enable the erection of appropriate directional signage as required to direct shoppers to the Boeing Avenue Homemakers Centre.

Sustainability Considerations

- **Environment**
  Not Applicable

- **Social**
  The lack of directional signage will encourage shopping outside of the Shire to other known shopping precincts.

- **Economic**
  Lack of appropriate directional signage will limit the continued development of the Boeing Avenue bulky goods precinct and have an adverse effect on businesses that have recently set up in the area.

Legal / Resource / Financial Implications

Council would fund the installation of "directional signage" as developers of the estate to encourage future growth in this area.

Consultation

Council staff have consulted with Harvey Norman and received feedback from tenants within the Harvey Norman Homemakers Centre, potential purchasers and other sections within Council.

Options

1. Clarify or amend Development Control Plan – Chapter 14 - Advertising Signage, to enable the erection of directional signage with appropriate wording such as “Home Makers Centre”. Signage to be erected at the intersections of:
   - Tamarind Drive and North Creek Road
   - Southern Cross Drive and North Creek Road; and
   - Southern Cross Drive and Boeing Avenue.

2. Council can do nothing and maintain the “status quo”.

Option one is recommended as this will improve the “directional signage” to advise the general public and tourists as to the location of the new bulky goods shopping precinct or Homemakers Centre within the Southern Cross Industrial Estate.

Finally as this report has been presented from a land development or property owner perspective it is important that there be a clear separation between Council's property activities and our regulatory role.

Therefore, the recommendation that follows, asks for a report to be presented to Council on the merits of amending or clarifying the Development Control Plan - Chapter 14 to achieve the outcomes outlined in this report. It is anticipated that such a report would be prepared by either the Strategic and Community Services Group or the Regulatory Services Group to ensure transparency in the process.

RECOMMENDATION

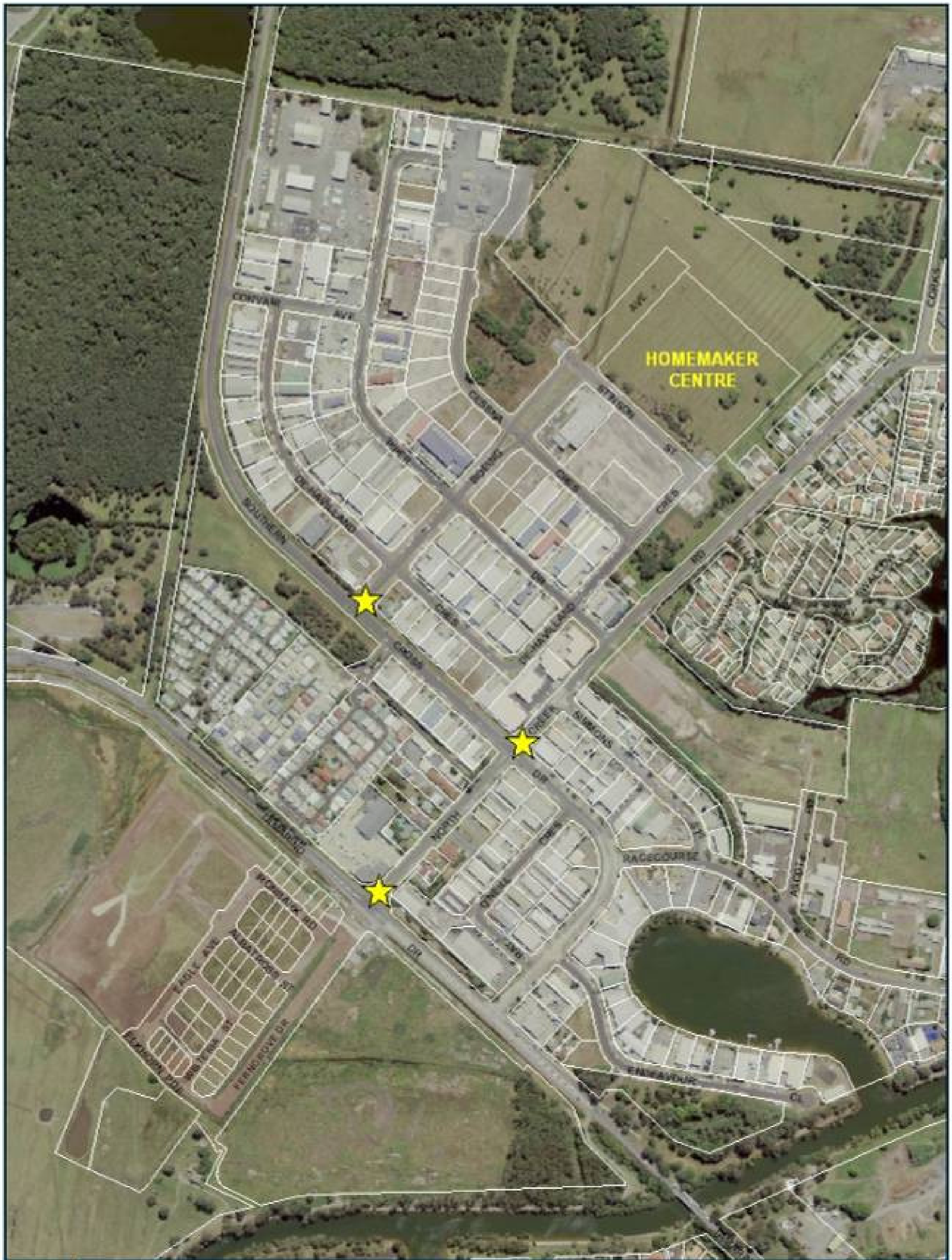
That Council receive a report on the advantages and disadvantages of clarifying or amending the Ballina Shire Combined Development Control Plan – Chapter 14 - Advertising Signage, to enable the erection of directional signage with appropriate wording such as “Home Makers Centre”, with signage to be erected at the intersections of:

- Tamarind Drive and North Creek Road
- Southern Cross Drive and North Creek Road; and
- Southern Cross Drive and Boeing Avenue.

Attachment(s)

1. Locality plan of proposed signage areas
2. Letter from Ardill Payne & Partners

4.2 Directional Signage - Southern Cross Industrial Estate



Directional Signage to Homemaker Centre
Southern Cross Industrial Estate, Ballina

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ARDILL PAYNE & PARTNERS
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6814 2011_08_02 Directional Signage Letter

2 August 2011

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attn: Civil Services Group

Dear Sir/Madam

re: Request for erection of directional and advanced warning street signage Harvey Norman Homemaker's Centre - cnr Boeing Ave and Stinson St, Ballina

Ardill Payne & Partners (APP) has been requested by Harvey Norman to write to Council to obtain approval to erect directional and advanced warning signage for a "Homemaker's Centre" at the following intersections:

- Southern Cross Drive and Pacific Highway
- North Creek Road and Pacific Highway
- North Creek Road and Southern Cross Drive
- North Creek Road and Piper Drive

As Council would be aware, consent was granted to the subject development under the terms and conditions of DA 2009/435 (as amended). Council has also granted consent to a number of uses within the complex under the terms and conditions of DA 2011/183 (integrated signage), DA 2011/106 (Spotlight), DA 2011/95 (Pet Stock) and DA 2011/179 (Pillow Talk). A number of tenancies within the complex have recently opened to the public.

The signs are to be erected under the provisions of *Section 1.9 – Directional and Advanced Warning Signs* of *Chapter 14 – Advertising Signage* of the *Combined DCP 2006* which provides that:

"Directional and advanced warning signs provide direction to important activities or facilities, which may also be located in isolated or obscure locations that would not otherwise be easily located by residents and/or tourists. The function of such signage is only directional/informative and is not for promotion or general advertising."

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It is submitted that the complex is situated in an area that is relatively obscure and confusing/difficult to access due to the local road network. The provision of such signage will remove confusion for motorists and will ensure that the safety and efficiency of the local road network is maintained.

Harvey Norman acknowledges that the costs for the provision of such signage will be at their cost.

The provision of such signage will also improve the identification of the Southern Cross Industrial Estate and will assist in identifying the Shire's only "bulky goods precinct" that is identified in the Southern Cross Master Plan. This will have positive impacts on the use and demands for land within the estate.

I trust that Council will arrange for the erection of such signage as soon as practicable as the complex has opened and is being frequented by the community.

Yours faithfully

PS

Paul Snellgrove
Ardill Payne & Partners

4.3 Building Better Regional Cities - Grant Program

File Reference	Council Policies
CSP Linkage	Resilient and adaptable communities
Delivery Program	Commercial Services
Objective	To provide details in the Federal Government's Building Better Regional Cities Program (BBRC)

Background

The purpose of this report is to provide an update on how Council staff are responding to an opportunity to obtain grant funding for infrastructure through the Federal Government's Building Better Regional Cities (BBRC) program. The information on this program, as per the Federal Government's web site; i.e.

http://www.environment.gov.au/housing/bbrc/funding/index.html

is as follows.

The Federal Government, through the Department of Sustainability, Environment, Water, Population and Communities is responsible for the management of the Building Better Regional Cities Program. The Building Better Regional Cities (BBRC) Program is a $100 million funding commitment by the Australian Government to invest in local infrastructure projects that support new housing developments in regional cities. The awarding of funding under the Building Better Regional Cities Program is based on a competitive selection process.

The objectives of the BBRC Program are to invest in local infrastructure projects that support an increase in the number of homes for sale and rent that are affordable for working families on ordinary incomes, in communities that are experiencing positive jobs and population growth that need more homes to be built. This investment in regional centres may also help to relieve the pressure on major capital cities, so that Australia can grow sustainably.

Two main groups are set to benefit as a result of the Australian Government's contribution under the BBRC Program:

- *working families on ordinary incomes (low to moderate income earners) living in regional centres who are suffering from cost of living pressures; and*
- *new residents who want to move into the area for jobs, who need homes.*

Up to $15 million (GST Excl) will be provided for infrastructure in each successful regional city, for projects that support new infill or greenfield housing developments located within Eligible Regional Cities. This could be for one development or spread across several, depending on local demographic patterns and community preferences.

Applicants can submit up to three separate project proposals each, however, each project proposal must be submitted on a separate Application Form. Applicants can apply for funding of up to $15 million (GST Excl) (in total across all Applications).

The types of infrastructure that can be funded under the BBRC Program include:

- *Connecting or trunk infrastructure such as water and sewerage headworks, upgrades or extensions to drains and sewers (including the augmentation or replacement of existing infrastructure, where this is needed to support infill or greenfield housing developments), and connecting roads and bridges; and*
- *Community infrastructure such as parklands and open space; pedestrian and cycle paths; community centres, and recreation facilities.*

Applicants should ensure they do not seek funding for projects of the kind listed under the heading "What will not be Funded" in the Application Guidelines.

Funding for the BBRC Program became available in the 2011-2012 Financial Year and ceases on 30 June 2014. Only one funding round is proposed to be delivered.

1. Eligibility

Forty-seven regional cities (listed below) are eligible to apply for funding under the BBRC Program. Only the 47 local governments listed at Attachment A of the Application Guidelines are eligible to submit an Application for funding under the BBRC Program. These 47 local governments directly correspond to the Eligible Regional Cities listed below. Cities not listed below are not eligible for and cannot apply for funding.

Eligible Regional Cities

Newcastle (NSW)	*Wyong (NSW)*	*Toowoomba (QLD)*	*Warrnambool (VIC)*
Tweed Heads (NSW)	*Maitland (NSW)*	*Mackay (QLD)*	*Traralgon (VIC)*
Wagga Wagga (NSW)	*Gosford (NSW)*	*Rockhampton (QLD)*	*Mandurah (WA)*
Albury (NSW)	*Lismore (NSW)*	*Bundaberg (QLD)*	*Bunbury (WA)*
Coffs Harbour (NSW)	*Lake Macquarie (NSW)*	*Hervey Bay (QLD)*	*Kalgoorlie/Boulder (WA)*
Queanbeyan (NSW)	*Cessnock (NSW)*	*Gladstone (QLD)*	*Geraldton (WA)*
Tamworth (NSW)	*Bathurst (NSW)*	*Geelong (VIC)*	*Mount Gambier (SA)*
Port Macquarie (NSW)	*Ballina (NSW)*	*Ballarat (VIC)*	*Devonport (TAS)*
Orange (NSW)	*Gold Coast (QLD)*	*Bendigo (VIC)*	*Burnie (TAS)*
Dubbo (NSW)	*Sunshine Coast (QLD)*	*Wodonga (VIC)*	*Launceston (TAS)*
Wollongong (NSW)	*Townsville (QLD)*	*Mildura (VIC)*	*Palmerston (NT)*
Nowra (NSW)	*Cairns (QLD)*	*Shepparton (VIC)*	

Applications close on Friday 18 November 2011.

Key Issues

- Infrastructure opportunities to meet the grant criteria

Information

In reviewing the guidelines for the BBRC program there were three items of infrastructure relating to future development that were identified as potential opportunities for funding.

Those items were:

- Ballina Heights - Cumbalum - Ballina Heights Drive
- Wollongbar Urban Expansion Area - Wollongbar Sports Fields
- Lennox Head (Pacific Pines / Petrac Land) - Hutley Drive

The current status of Ballina Heights Drive is that Council has called tenders for the construction, however the responses were well above the budget (i.e. $8 million to $4 million) and financing is largely dependent on future section 94 contributions being collected. The majority of approvals are in place and the work should be able to proceed in the near future if funding is confirmed.

In respect to the Wollongbar sporting fields, Council has acquired the land and a development application has been lodged to obtain approval for the embellishment work. The cost of this work could vary from $2 to $4 million, dependent upon the level of infrastructure provided.

Finally the approval process for Hutley Drive is still underway with SMEC Pty. Ltd. having been engaged to prepare the planning information required to allow the necessary documentation to be lodged with Council's planning staff. The estimated cost of this work, for the entire length of the road, is in excess of $10 million.

Each of these three projects is in identified growth areas and Council has some detailed knowledge of the likely infrastructure costs and estimated program for delivery.

Due to the level of detail required for the applications it has been necessary to outsource a large part of the work, with Ardill Payne and Partners being contracted to complete the Hutley Drive and Ballina Heights applications, whereas Newton, Denny and Chapelle have been completing the Wollongbar sports field application.

The reason these firms were selected was due to the fact that Ardill Payne have been working for the property owners, and at certain times Council, in respect to Hutley Drive and Ballina Heights Drive, and similarly Newton Denny Chapelle has been managing the planning applications for the Wollongbar sports field. Therefore they both have detailed in-house knowledge of the projects.

In preparing the application for Hutley Drive what became apparent early is that there are too many unknowns regarding this infrastructure to meet the rigid conditions of the grant applications. There remains uncertainty over whether consent for this road will even be obtained, particularly due to the environmentally sensitive nature of the land, and the majority of the land benefiting from the road remains in the hands of receivers. It was therefore decided to focus our resources only on Ballina Heights Drive and the Wollongbar sports fields

Besides all the technical information required in the applications, such as jobs growth, demand for housing, infrastructure components, costs, approval milestones and dates, there must be a strong linkage between the provision of the BBRC funds and affordability. This then creates the problem of demonstrating how the infrastructure being delivered will assist in ensuring land prices are affordable.

The difficulty with this is that the land is typically owned privately and ultimately the owner will price the land at what the market is prepared to pay. Whether or not this is affordable will ultimately be a matter for the market to determine.

With this in mind the approach being included in our applications is to offer either a waiver or deferral of the Section 94 contributions relating to that infrastructure, to the property owner, if the land is sold prior to a set date and / or at below what is considered to be the median price for the locality.

This condition is designed to encourage the owner to bring the land onto the market, which meets one of the key criteria of encouraging land to be available earlier, while at the same time it also assists in ensuring prices are relatively affordable.

For example at Wollongbar the following package of ideas is being considered:

1) removing, in perpetuity, the requirement for developers within the Wollongbar Urban Expansion Area (WUEA) to pay Section 94 Developer Contributions for the provision of playing field infrastructure - This could be available to all allotments released within the WUEA.

2) the waiver of Council Section 94 and 64 contributions for “house and land packages” where the packages are:

   - developed and sold before 31 March 2014; and
   - where the price of the package does not exceed the median house price for the Alstonville / Wollongbar area *(in 2007 this was about $370,000)*

3) the deferment of Sections 94 and 64 contributions for a period of three years for vacant lots which are:

   - developed and sold before 31 March 2014 and
   - under $170,000 (cheapest block in stage 1 of Avalon was $190,000)

4) Items 1) and 2) could be limited to a total of 100 lots within the WUEA.

5) the waiver of Council Section 94 and 64 contributions for land which is:

   - developed and sold before 31 March 2014; and
   - sold to a recognized not-for-profit affordable housing provider.

6) Item 5) could be limited to a total of 20 allotments released within the WUEA

These mechanisms are designed to provide incentives to developers to proceed to release allotments in the short term which will then provide for increased land supply.

As there are multiple landholders within the WUEA this will in turn provide for competition and promote the release of additional allotments onto the market.

A similar approach is being considered for Ballina Heights with Section 94 contributions being waived or deferred dependent upon the availability of land.

Council may have concerns that we are waiving Section 94 contributions however those contributions are going to be offset by the grant funds. The benefit of this is that the availability of the grant will allow the infrastructure to be provided earlier than normal. Some of these monies will also reimburse Council for funds we are currently expending.

The current rate of Section 94 contributions is extremely slow and this means that either major projects will need to be deferred or else Council will need to finance those projects up front and then be reimbursed as the contributions are collected.

Sustainability Considerations

- **Environment**
  Any development will need to meet current environmental standards.

- **Social**
  The provision of relatively affordable housing is a key drive in ensuring we have a diverse community.

- **Economic**
  This program is aimed to encouraging economic growth through the provision of housing.

Legal / Resource / Financial Implications

There are financial implications in that if the grants are successful they assist Council in greatly reducing future infrastructure liabilities.

Consultation

The works identified have been the subject of significant consultation and form part of Council's key infrastructure delivery projects for the shire. As part of the grant applications it is also important to demonstrate support from other parties, such as the land owners. It is understood that some councils are entering formal agreements with landowners, however this increases the complexity of the project and there are risks that could arise from possible land sales resulting in changes in owners. Council's applications will contain letters of support from owners, essentially confirming that the proposals would provide an incentive which should in turn result in greater supply and increased affordability.

Options

This report has been written to update Council on the BBRC program. No action is needed at this point, although if the applications are successful further reports will be submitted to Council to clarify how our contribution to any projects will be funded, along with timelines. Also arrangements in respect to Section 94 contributions will also form a major component of the future reports.

RECOMMENDATIONS

That Council notes the contents of this report in respect to the Building Better Regional Cities Program.

Attachment(s)

Nil

5. 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:

<u>Item 5.1 - Land Sale - Russellton Industrial Estate</u>

This report contains information of a commercial nature regarding negotiations for possible sale of land. If released to the public, this information could prejudice those negotiations.

<u>Item 5.2 - Lennox Head Surf Club - Redevelopment</u>

This report contains information relating to possible land sale negotiations and if released to the public could prejudice any negotiations.

<u>Item 5.3 - Land Sale - Southern Cross Industrial Estate</u>

This report contains information of a commercial nature regarding negotiations for possible sale of land. If released to the public, this information could prejudice those negotiations.

RECOMMENDATION

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

5.1 <u>Land Sale - Russellton Industrial Estate</u>

Reason for Confidentiality

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

(d) commercial information of a confidential nature that would if disclosed:
  (i) prejudice the commercial position of the person who supplied it
  (ii) confer a commercial advantage on a competitor of the council
  (iii) reveal a trade secret

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is currently involved in commercial negotiations in respect to the contents of the report.

5.2 Lennox Head Surf Club - Redevelopment

Reason for Confidentiality

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

(d) commercial information of a confidential nature that would if disclosed:
- (i) prejudice the commercial position of the person who supplied it
- (ii) confer a commercial advantage on a competitor of the council
- (iii) reveal a trade secret

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 may wish to dispose of surplus operational land and obtain the best price for the community.

5.3 Land Sale - Southern Cross Industrial Estate

Reason for Confidentiality

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

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is involved in commercial negotiations for the sale of land and the release of any confidential information may result in the termination of those negotiations.