



## Notice of Ordinary Meeting

Notice is hereby given that an Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, Cnr Cherry & Tamar Streets, Ballina on **Thursday 24 November 2011 commencing at 9.00 am**

### Business

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

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

Paul Hickey  
**General Manager**

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

## **Deputations to Council – Guidelines**

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

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

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

## **Public Question Time – Guidelines**

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

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

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

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

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

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

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

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

## **Disclaimer**

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

## **Confidential Session**

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

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  2. Acknowledgement of Country
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  6. Deputations
- 

**1. Australian National Anthem**

The National Anthem will be performed by St Francis Xavier School.

**2. Acknowledgement of Country**

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

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

**3. Apologies**

Nil

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 October 2011 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 October 2011.

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

**6. Deputations**

**7. Mayoral Minutes**

**7.1 Mayoral Minute - Richmond River Taskforce**

**File Reference** Mayoral/Water Quality - Rivers & Streams

**Councillor** Cr Phillip Silver

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**Background**

It is not uncommon for Council to become involved in issues outside its core business when there is a pressing need by the community. This has included issues such as the Alstonville and Ballina Bypasses, Richmond River Water Quality and the funding of Ballina District Hospital.

Richmond River

As the result of various Council resolutions in respect of water quality and fish kills, we have taken a number of steps including engagement with the Ministers for Primary Industry and North Coast. Also we are pursuing the merging of the three Richmond Valley County Councils (Rous Water, Richmond River County Council and Far North Coast Weeds) into one central Natural Resource Management Council for the Richmond with multiple agencies involved including Agriculture, Fisheries, EPA, CMA, SCU and the general purpose councils of the valley as well as fishermen and farmers. The issues are essentially of governance and funding.

Notwithstanding that the acid sulphate are cooking as we discuss, it is felt that we have in train all that we can whilst we await discussions with the relevant State and Federal Ministers.

Dredging

We have been approached by the Ballina Fishermens Co-operative that whilst the water quality issue is vital, it is long term, yet the dredging of the Ballina Bar, Ballina Boat Harbour and North Creek, is an immediate problem with a much shorter timeframe.

The issue remains environmental to satisfy legislation and funding and neither should be underestimated.

The issues of the current situation are well known:

- Lack of access and danger of Ballina Bar, fishing and pleasure boats have difficulty crossing. It is not uncommon for Tweed and Clarence fishermen to be fishing off Ballina whilst the Ballina fleet cannot get to sea.

- A limit on the number and size of boats able to be accommodated in the trawler harbour which is silted up with some very toxic material. When props are turned the silt is stirred up and released to the Richmond.
- Whilst North Creek has an excellent catchment, it is so silted as to prevent tidal flushes to the extent that oyster farming has had to cease.

#### Other Benefits

In relation to the dredged material:

- For Ballina Bar there is strong anecdotal information that the accumulated sand and subsequent loss from Shellys, Sharpes and Seven Mile Beaches has been caused by the interruption of the East Coast Long Shore Drift by the North Wall.

There is every likelihood that dredged material, released north of the North Wall would not return but rather replenish Shellys, Sharpes and Seven Mile beaches thus assisting with our coastal erosion issues.

- In relation to Ballina Island fill issues, if material won from North Creek could be used as fill on the Island and at Southern Cross, this would assist in our climate change issues.

My Mayoral minute is therefore to form a small group of the key parties to pursue this matter with the relevant government agencies and Ministers.

#### **RECOMMENDATION**

That Ballina Council approves the formation of Taskforce, consisting of one or two representatives from the Ballina Fishermens Co-operative and the Ballina Chamber of Commerce, plus the Mayor or alternate, to expedite the environmental and funding issues presently preventing the dredging of the Richmond River Bar, North Creek and the Ballina Boat Harbour.

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

Nil

**8. Regulatory Services Group Reports**

**8.1 DA 2003/413 - S96 Application Ballina Heights Estate (Stages 5 to 8)**

<b>File Reference</b>	DA 2003/413
<b>Applicant</b>	Ardill Payne & Partners (on behalf of Vixsun Pty Ltd and Catholic Church – St Francis Xavier’s Parish)
<b>Property</b>	Lot 330 DP 1166991, Chilcott Crescent and Lot 319 DP 1167397, Unara Parkway, Cumbalum
<b>Proposal</b>	To seek a modification to DA 2003/413 – 189 urban (residential) allotments, being Stages 5 to 8 of the Ballina Heights Estate (amend consent condition 1.3A – provision of Structured Open Space Area)
<b>Effect of Planning Instrument</b>	The land is zoned part 1(b) – Rural (Secondary Agricultural Land), part 1(d) – Rural (Urban Investigation), part 2(b) – Village Area and part 7(l) – Environmental Protection (Habitat) under the provisions of the Ballina LEP. The Structured Open Space Area is to be located entirely within the 2(b) – Village Area zone.
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

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**Introduction**

On 13 October 2011, Council received a Section 96 Application to Modify Development Consent 2003/413 [189 urban (residential) allotments, being Stages 5 to 8 of the Ballina Heights Estate] to amend condition 1.3A.

Condition 1.3A currently states:

*1.3A The proposed Structured Open Space Area (as defined in Policy Statement No. 14 – Ballina Heights Estate of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 399<sup>th</sup> residential lot or no later than 31 March 2012.*

The applicant has proposed modifications to condition 1.3A, such that condition 1.3A is to read as follows:



1.3A *The proposed Structured Open Space Area (as defined in Policy Statement No. 14 – Ballina Heights Estate of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 399<sup>th</sup> residential lot or no later than 31 March 2013.*

Refer to Attachment 2 – extract from Policy Statement No. 14 – Ballina Heights Estate (Ballina Heights Structure Plan, July 2010) which shows the location of the Structured Open Space area (sporting field cell).

### **Background**

On 16 December 2010, Council received a report to the December 2010 Ordinary Meeting in relation to extending the timeframe for the provision of the Structured Open Space Area. This report related to a Section 96 Application to Modify Development Consent 2003/413 that had been lodged by the applicant in July 2010. Refer to Attachment 3 – copy of Council report December 2010.

Council granted consent to the Section 96 Application to Modify Development Consent 2003/413 on 17 December 2010.

It should be noted that a number of other conditions reference and directly relate to Condition 1.3A, being:

- 1.62A The amenities building, car parking spaces, sports field lighting and the installation of playground equipment required for the proposed Structured Open Space area by the provisions of Policy Statement 14 – Ballina Heights of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan shall be constructed and completed in accordance with the provisions of Condition No. 1.3A, in accordance with the construction plans approved by Council prior to Council accepting dedication of the land.
- 1.63 An amenities building shall be required that provides a minimum of:
- Male and female ablution facilities (WC's and showers).
  - Two designated lockable storage rooms of nominal dimensions of 4m x 4m.
  - An awning/verandah for the perimeter of the building.
  - A canteen.
  - The building being constructed such that a second storey is capable of being erected thereon.
- 1.64 Suitable public all weather access shall be provided to the proposed Structured Open Space area as required by condition 1.3A.
- 1.67 The playing fields shall be constructed in accordance with the consent conditions such that:

- a. The size of the fields can accommodate a full sized turf pitch cricket oval in summer and two rectangular full sized fields for winter sports (i.e. rugby league, union, soccer).
- b. The orientation of the fields is to be between true north and 15 degrees east of north.
- c. The playing fields shall be graded with cross fall with an optimum surface slope of 1 in 70.
- d. The playing surface shall consist of a clean topsoil or nominal 150mm depth and within a pH range of 6.0-7.0, which is to be sourced, if possible, from another area of the development. The clean topsoil shall be laid upon a further 150mm of free draining sand medium. The mixing of topsoil with sand will depend on the quality of the soil (subsequent to an inspection between Council staff and the developers).
- e. Sports field lighting shall be installed in accordance with the relevant Australian Standards to the main cricket/2 football fields.
- f. The playing fields, curtilage and site on which facilities are to be located, shall be developed and filled to a level of 1 in 10 year ARI for stormwater (as per Council's resolution dated March 2004), with the only filling to occur above this level, being for field design and drainage purposes (i.e. shaping of the fields).

The developer shall actively maintain, mow, water and further embellish the playing field surface in the period between commencement of construction and dedication. A bond shall be lodged with Council at the time of dedication, which may be used to maintain, repair or rectify works that are failing. The bond will be refunded after a 12 month period, should no rectification works be required.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Report**

#### General comments on modification

In summary, the applicant has provided the following points in support of the proposed modification:

- Delays had been experienced in the spreading and seeding of the topsoil due to inclement weather and the award of the tender, design and installation of sub-surface irrigation (Spreading of top soil was undertaken in September 2010, irrigation was installed by March 2011 and seeding was completed in March-April 2011).
- The uptake/strike of the seeding was slower than originally expected due to the less than favourable seasonable planting time (during winter). However, the grass coverage is now well advanced due to the on-set of spring/summer.

- The grass surface will not have been established for two growing seasons (as is required by Council's Open Spaces and Reserves Section) in order for dedication to be accepted by Council by the date contained within the existing Condition 1.3A (31 March 2012).
- A development application for the construction of a public road to service the playing fields and school site (to be known as "Power Drive") has been lodged with Council (on 31 August 2011).
- The sub-surface irrigation has been installed and is operational.
- The playing fields have been and will be subject of on-going works and maintenance (to ensure appropriate playing field surface) including weed control, top-dressing, fertilising and mowing.
- Construction Certificate approval has been granted for the Stage 1 landscaping of the western periphery of the playing fields and drainage swales.
- The final design of the built improvements associated with the playing fields (i.e. car parking areas, amenities and club-house) and Stage 2 landscaping has been held in abeyance pending Council making a decision in respect of the ultimate location of the Ballina Regional Indoor Sports Facility.
- Should the Structured Open Space Area be completed prior to the 31 March 2013, then the developers undertake to dedicate such as soon as possible after completion.

Council's Technical Officers have undertaken an assessment of the proposal, with consideration given to the current status of the development of the Structured Open Space Area.

It is evident from the information submitted to Council and from inspection of the subject site that the construction and development of the ovals has advanced since the determination of the previous Section 96 application (December 2010). As stated by the applicant, two growing seasons are typically required to establish the ovals to a suitable standard, prior to use by the general public, which will result in an extended delivery date, beyond that stated within the existing condition 1.3A. The extension of the delivery date for a further 12 months, will ensure the ovals are presented in an acceptable standard for Council to accept their dedication. Council's Supervisor for Sports Fields Maintenance has inspected the subject ovals and has advised that the grass is not sufficiently established to enable dedication by 31 March 2012. If the grass cover is suitably managed and maintained, there is potential for the ovals to be dedicated to Council earlier than the proposed 31 March 2013 timeframe, possibly for use during the 2012/2013 summer cricket season. Negotiations could be entered into with the developer to enable this to occur, given the current demand for cricket facilities within the Shire.

In relation to the remainder of works to be undertaken as part of the Structured Open Space Area, Council's Civil Services Group have advised that the 12 month extension to the current timeframe within Condition 1.3A would provide sufficient time for the works required via Condition 1.62A (construction of the access road, amenities building car parking spaces, sports field lighting and playground equipment) to be completed, if the applicant dedicates suitable resources to the project.

In relation to the comments made by the applicant regarding the Regional Sports Facility, it is unknown at this stage whether this facility is to be located within the Ballina Heights Estate. In this regard, it is considered appropriate to deal with the current Section 96 without consideration for this possibility. Should this change in the future, reconsideration can be made at that time.

The applicant's comments regarding the lodgement of a development application for the construction of a public road (Power Drive) to service the playing fields and school site are noted. DA 2011/383 was lodged on 31 August 2011 and is currently being assessed by Council's Technical Officers. At the time of the preparation of this report, further information had been requested from the developers in relation to noise impacts of the proposed road upon nearby proposed and existing landuses (via letter dated 5 October 2011). This information is yet to be received, however it is considered that the proposed road is reasonably able to be constructed within the additional 12 month timeframe for the completion of the sports fields (by 31 March 2013).

*Current status of lot/land release in the Ballina Heights Estate*

At the time of preparation of this report, a total of 322 residential allotments have been registered as part of DA 2001/128 (Stages 1 to 4) and DA 2003/413 (Stages 5 to 8) for the Ballina Heights Estate. It is noted that one additional stage, comprising 14 residential allotments (Stage 6a-2), has been registered and is able to be released for sale.

It is noted that Construction Certificates have been issued by Council for subdivision works associated with Stages 7a and 8b-1 (total of 58 lots). However, construction works for these stages have not yet commenced. Construction Certificates are yet to be lodged with Council for subdivision works associated with Stages 8a and 8b-2 (remainder of 19 lots).

*Matters for consideration – Section 96 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*

Under the provisions of Section 96(3) of the EP&A Act, the following points are made in relation to the assessment of the application:

- The proposed modification is permitted with development consent and is consistent with the provisions of the Ballina Local Environmental Plan 1987 (BLEP) and the Environmental Planning and Assessment Model Provisions 1980 (as adopted by Clause 6 the BLEP).
- The proposed modification is considered to be consistent with the provisions of the draft Ballina Local Environmental Plan 2011.
- The proposed modification is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988 (deemed State Environmental Planning Policy).
- The proposed modification is considered to be consistent with the provisions of the Ballina Shire Combined Development Control Plan (DCP).

In terms of Policy Statement No. 14 – Ballina Heights Estate, the proposed modifications are not contrary to the provisions contained therein. Section 3.2.2 xiii states:

“The developer shall provide a minimum of 8.6 hectares of embellished active open space within precinct SF. The construction and embellishment of the active open space is to be in accordance with the conditions of consent documented in DA No. 2003/413 and 2001/128. These are reproduced in Appendix D”.

Note - the proposed modifications will not result in the requirement for a formal amendment to PS 14. Should the proposed modification be granted approval, Appendix D will need to be updated.

- The proposed modification should not impact on any feature, process, quality etc of the natural coastal environment. The proposal is consistent with the provisions of the NSW Coastal Policy.
- It is considered that the proposed modification will have minimal impact, upon both the natural and built environments.
- The proposed modification is considered suitable for the subject site.

### **Conclusion**

The proposed modification to consent condition 1.3A is considered to be consistent with the provisions of the Ballina Local Environmental Plan 1987, draft Ballina Local Environmental Plan 2011 and the Ballina Shire Combined Development Control Plan.

The construction and development of the ovals has advanced since the determination of the previous Section 96 application (December 2010). Two growing seasons are typically required to establish the ovals to a suitable standard, prior to use by the general public, which will result in an extended delivery date, beyond that stated within the existing condition 1.3A. The extension of the delivery date for a further 12 months, will ensure the ovals are presented in an acceptable standard for Council to accept their dedication. Council’s Supervisor for Sports Fields Maintenance has inspected the subject ovals and has advised that if the grass cover is suitably managed and maintained, there is potential for the ovals to be dedicated to Council earlier than the proposed 31 March 2013 timeframe, possibly for use during the 2012/2013 summer cricket season. Negotiations could be entered into with the developer to enable this to occur, given the current demand for cricket facilities within the Shire.

In relation to the remainder of works to be undertaken as part of the Structured Open Space Area, Council’s Civil Services Group have advised that the 12 month extension to the current timeframe within Condition 1.3A would provide sufficient time for the works required via Condition 1.62A (construction of the access road, amenities building car parking spaces, sports field lighting and playground equipment) to be completed, if the applicant dedicates suitable resources to the project.

If Council is mindful to grant consent to the proposed modification, it is considered appropriate that the developers be reminded and encouraged to adhere to the 31 March 2013 timeframe, as the continued delay of the provision of these facilities will further disadvantage the Shire and is considered to be contrary to the original Master Plan approval for the Ballina Heights Estate (as issued via DA 2001/128).

In view of the matters discussed above, it is recommended that the proposed modifications to consent condition 1.3A be granted consent.

### **RECOMMENDATIONS**

1. That Council grant consent to the proposed modification to consent condition 1.3A of Development Consent 2003/413 (To Undertake a Torrens Title Subdivision to Create 189 Urban (Residential) Allotments, Being Stages 5-8 of the Ballina Heights Estate) at Lot 330 DP 1166991, Chilcott Crescent and Lot 319 DP 1167397, Unara Parkway, Cumbalum:
2. The amended consent condition 1.3A is to read as follows:

*The proposed Structured Open Space Area (as defined in Policy Statement No. 14 – Ballina Heights Estate of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 399<sup>th</sup> residential lot or no later than 31 March 2013.*

### **Attachment(s)**

1. Locality Plan
2. Structure Plan – Policy Statement No. 14 – Ballina Heights Estate
3. Report to Council's Ordinary December 2010 Meeting

**8.2 DA 1995/292 - S96AA Boral Quarry, North Teven Road**

<b>File Reference</b>	DA 1995/292
<b>Applicant</b>	Boral Resources (Country) Pty Limited C/- Mr John Worden Operations Manager
<b>Property</b>	Lot 105 DP 1038360, No. 348 North Teven Road, Teven
<b>Proposal</b>	Section 96AA application to amend consent No. 1995/292 issued by the Court
<b>Effect of Planning Instrument</b>	The land is zoned part 1(e) Rural (Extractive and Mineral Resources) and 1(b) Rural (Secondary Agricultural Land) under the provisions of the Ballina LEP 1987.
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

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**Introduction**

In November 2010 Council received a request to bring forward the re-examination or review process for the determination of the date for the termination of the development consent for an existing quarry (i.e. the “life” of the quarry).

The relevant consent was issued by the Chief Judge of the NSW Land and Environment Court on the 27 June 1996 to:

“...carry out an extractive industry being the operation of a hard rock quarry with a maximum production of 500,000 tonnes per annum; subdivision of land for the purposes of boundary adjustment, relocation of two dwellings and re-alignment of Beacon Road...”

The consent did not impose a condition limiting the life of the quarry other than Condition No. 24 which states:

“These conditions shall be re-examined by Council and a final date for the termination of the consent determined within but no earlier than one year prior to 20 years after the date of commencement of this consent.”

As the consent commenced on the 27 June 1996, the earliest the re-examination of the conditions and determination of a date for termination of the consent could occur is currently between the 27 June 2015 and 27 June 2016.

This Section 96 modification requests to bring forward the re-examination date and subsequently reword Condition No. 24 to:

“These conditions shall be re-examined by Council and a final date for the termination of the consent determined within but no earlier than **6** years prior to 20 years after the date of commencement of this consent, **such date for determination not being any earlier than 20 years after the commencement of this consent.**”

A previous report was presented to Council at its Ordinary Meeting 24 March 2011 recommending that the Section 96AA modification seeking to amend DA 1995/292 by bringing forward and increasing the time permitted to carry out the subsequent re-examination process for the termination date of the quarry be approved.

Despite the recommendation, Council resolved:

*That this item be deferred until full assessment of compliance with the conditions of the existing consent has been determined.*

Although the resolution was not particularly clear as to who was to carry out the assessment of compliance with the conditions of the existing consent, it was considered prudent that the applicant (Boral) initiate and carry out an audit in relation to current compliance with development consent conditions attached to DA 1995/292.

Once completed, this would be submitted to Council where a further review of all available information will be undertaken by Council Officer(s), with a further report presented to Council advising on the outcome of the compliance audit of the quarry operations.

This report has been prepared to outline the findings of the audits recently completed by the applicant (Boral) and Council's Regulatory Services Group.

This will then assist Council to determine if the review/re-examination period as proposed by the current modification of consent can be reasonably brought forward.

Councillors should familiarise themselves with the previous report presented to Council in March, as the current report will only focus on the findings of the audits.

### **Findings of the Previous Compliance Audit**

As Councillors may be aware, following the creation of the Compliance Unit within Council, a proactive investigation was conducted into all operational quarries within the Ballina Shire.

As part of this process, the Boral North Teven Road quarry was inspected on 20 November 2008 where two main areas of non-compliance were identified at this time. These areas were:

1. *Potential Pollution Event (Condition 9).*



The first area of non compliance identified related to a potential pollution event, adjacent to the front entry gate to the quarry itself, where it was observed that at the time of the inspection there was evidence of sediment leaving the quarry and entering the roadside gutter. The Quarry Operator was requested to install appropriate erosion and sediment control measures to prevent soil and sediment leaving the site and entering the roadside gutter.

The inspection also revealed the area where fuel dispensing is carried out was unsealed. Although sealing of this area is not required as part of the Development Application, it was recommended to the quarry operator that regular monitoring be carried out to ensure stormwater run-off does not flow through the dispensing area. This would reduce the likelihood of fuel spills leaving the site and potentially entering nearby waterways. The Quarry Operator was also advised that dispensing of fuel in an unsealed area could lead to land contamination and remediation of the contaminated area will need to be conducted prior to any change in the use of the land.

#### *2. Heavy Vehicle Haulage Levy (Condition 10a)*

The second area of non compliance identified related to the payment of the heavy vehicle haulage levy. The Quarry Operator was required to submit quarterly returns advising the amount of material extracted together with the payment. The levy is and has been subject to an annual increase in accord with the consumer price index (CPI).

The audit of Council records indicated that whilst regular returns and payments had been received, the rate at which payments have been calculated has not increased since 1996. Boral were deficient in Section 94 payments to the value of \$169,915,32.00. Arrangements were subsequently made to pay the balance due over the course of twelve months, commencing in May 2009. All outstanding monies have been paid to date.

The findings of the previous audit have assisted both Council and the applicant in the recent and subsequent audit process.

#### **Current Section 96AA Audit Process – Applicant's Findings**

On the 23 September 2011, Council received the findings of the applicant's audit of compliance against the conditions of consent to Development Application 1995/292. A table summarising the applicant's findings in regards to compliance with the Twenty Six conditions of Development Consent 1995/292 is attached and can be summarized as follows:

Teven Quarry is compliant with 20 of the 26 conditions, with 2 conditions that it is assumed to be compliant with (Condition's No. 7 and 26) and 1 condition has not been triggered at the time of the audit (Condition No. 24). Partial compliance has been assessed for 1 condition (Condition No. 9).

The audit of the Conditions of Consent found that Teven Quarry is currently non-compliant with 2 conditions (Condition's No. 4 and 25). The conditions that are deemed to be technically non-compliant both relate to the Community Consultative Committee (CCC). Boral advises that the CCC did form and operate originally at the quarry; however after a period of time the CCC ceased meeting due to adjoining landowners leaving the locality and not being suitably replaced.

Boral has recently finalised the reformation of the CCC, with members from the Ballina Environment Society and the local community and also Boral Representatives. The first meeting was held on the 29 September 2011.

### **Current Section 96AA Audit Process – Council's Findings**

On the 11 October 2011 Council Officers undertook an inspection of the site, which included an inspection of all quarry operations within the operational area of the quarry.

A table summarising Council's findings in regards to compliance with the Twenty Six conditions of Development Consent 1995/292 is also attached and can be summarized as follows:

There are some issues that remain outstanding, particularly Conditions No.'s 3 and 9.

Although there is no new Plan of Management (PoM), an updated Environmental Management Plan (EMP) was submitted in September 2011 and requires review and support of the CCC (Condition No. 3). Any subsequent amendments will be incorporated into the PoM.

Additionally, Condition No. 9 - (material spillages) also remains outstanding as previously identified with the requirement for a hard stand fuel dispensing area. This is upstream from the settlement pond and a potential spill could pollute the waters. There have been steps taken to address the runoff from the site near the site office (installation of hay bales and bunding), but there are still areas of potential pollution, which have been identified to Boral and who have advised will be rectified.

Further, there is also a waste storage area within the quarry where spare tyres are stored. This is not protected from the weather and could create a haven for mosquitoes and will need to be addressed.

All of these issues have been advised to Boral and can be readily rectified. It should be noted, however, that the issues outlined within Condition No. 9 are matters for the Office of Environment and Heritage who license the Quarry.

### **Conclusion**

As can be seen from the audit process, the findings of the applicant and Council Officers generally correlate.

Council Officers can confirm that the operation of the Quarry is generally being carried out in accordance with the conditions of consent.

As previously outlined, this modification simply seeks to increase the time permitted to undertake the re-examination process sought by the Court. As outlined from the findings of the audits, this is still considered reasonable as it will allow additional time for the applicant to address any outcomes and potentially plan for the future of the quarry.

The current amendment does not seek to change and will not impact on the quarry operations under the terms and conditions of the existing consent.

The quarry will continue to be licensed by the Office of Environment and Heritage, who has advised that the quarry is operating within the limits of their license and can continue to operate under the terms and conditions of the current consent until 2016.

Matters of contention previously raised in the submissions relate to the subsequent re-examination process.

The applicant and residents have shown a considerable degree of goodwill in this matter. The applicant has undertaken communication between themselves and surrounding residents/previous submitters and also some Councillors.

It is clearly in the interest of the applicant to improve operational mechanisms and procedures to assist in the subsequent re-examination process that will determine the termination date of the quarry. This will be of direct benefit to surrounding residents in the immediate future.

### **RECOMMENDATION**

That the Section 96AA modification seeking to amend DA 1995/292 at Lot 105 DP 1038360, No. 348 North Teven Road, Teven by bringing forward and increasing the time permitted to carry out the subsequent re-examination process for the termination date of the quarry be **APPROVED**.

### **Attachment(s)**

1. Locality Plan
2. Summary/Table of Audit Advice from Applicant
3. Summary/Table of Audit Advice from Council Officers

**8.3 Development Applications - Works in Progress as at November 2011**

The following schedule sets out current development applications that have not yet been dealt with for the reasons cited:

Please note that duplex and dual occupancy applications are not included in this report.

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2006/242	20/10/2005	Ardill Payne & Partners	Site Filling - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2008/578	6/2/2008	A Koellner	Erection of a Shed for Steel Fabrication - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2010/278	6/11/2009	Ardill Payne & Partners	To Establish a dwelling/house site – No. 263 Sneebys Lane, East Wardell	Awaiting Additional Information
2010/453	04/02/2010	Riordans Consulting Surveyors Pty Ltd	83 Lot Staged Residential Subdivision, 2 Public Reserve Lots, Construction of Roads, Associated Subdivision Works & Services – No. 57-59 Rifle Range Road, Wollongbar	Being Assessed
2010/892	05/10/2010	Ardill Payne & Partners	Residential subdivision comprising 73 lots and 2 residual lots, construction of roads and associated infrastructure works - Unara Parkway & Pacific Highway, Cumbalum	Awaiting Additional Information
2010/1056	14/12/2010	D Loosemore & N McGarry, C/- sj Connelly CPP Pty Ltd	To construct a 3 x bedroom dwelling (ancillary to use of existing conference centre) - Shelley Beach Road, East Ballina	Determination Pending

8.3 Development Applications - Works in Progress as at November 2011

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2010/1067	17/12/2010	Geolink	6 x Lot Community Title Subdivision Ranging in size from 1200m to 1600m and associated Infrastructure - No. 56 Greenfield Road, Lennox Head	Determination Pending
2011/48	04/02/2011	J & H Hughes	Extension to Existing Industrial Building, No. 3/176-178 Southern Cross Drive, Ballina	Being Assessed
2011/166	15/04/2011	SJ Connelly CPP Pty Ltd	Construction of a residential flat development comprising 30 x two storey dwellings and associated works, Condon Drive, East Ballina (North Angels Beach)	Awaiting Additional Information
2011/186	27/04/2011	Ardill Payne & Partners	Two Lot Boundary Adjustment Subdivision - No. 9 Martin Street, Ballina	Awaiting Additional Information
2011/188	28/04/2011	P & A Isaac	Two Lot Torrens Title Subdivision, No. 110 North Creek Road, Lennox Head	Awaiting Additional Information
2011/233	01/06/2011	Victor Holmes Town Planning	Environmental Restoration Works, No. 69 Sartories Road, Pimlico and No. 120 Coolgardie Road, Coolgardie	Awaiting Additional Information
2011/264	20/06/2011	Ardill Payne & Partners	To Construct the NSW Rural Fire Services Depot/Shed with ancillary car parking and building identification signage - Ross Lane, Lennox Head	Awaiting Additional Information

8.3 Development Applications - Works in Progress as at November 2011

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

8.3 Development Applications - Works in Progress as at November 2011

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

8.3 Development Applications - Works in Progress as at November 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Range Road and Frank Street, Wollongbar	
2011/380	30/08/2011	SJ Connelly CPP Pty Ltd	Four (4) Lot Residential Subdivision, Skennars Head Road, Lennox Head	Awaiting Additional Information
2011/383	01/09/2011	Ardill Payne & Partners	To Dedicate a Road Reserve and Construct a Public Road, Chilcott Circuit and Deadmans Creek Road, Ballina Heights Estate	Awaiting Additional Information
2011/388	02/09/2011	The University of Newcastle	Environmental Education Facility, Teven Road, West Ballina	Being Assessed
2011/389T	02/09/2011	R & A Cornwill	Lennox Head VMO - To Remove 9 x Trees, No. 9 Nixon Place, Lennox Head	Awaiting Additional Information
2011/391	02/09/2011	Newton Denny Chapelle	Erection and Strata Title Subdivision of a Residential Flat Development comprising Two (2) x Two Storey Dwellings (being the final stage of a five unit development, No. 4/15 Gibbon Street, Lennox Head	Awaiting Additional Information
2011/392	02/09/2011	Croft Building	Erection and Subsequent Strata Title Subdivision of an Industrial Building, No. 33 Cessna Crescent, Ballina	Determination Pending
2011/414	22/09/2011	Newton Denny Chapelle	Consolidation (2 Lots to create 1 Lot) Demolition, Vegetation Removal, Dedication of	Being Assessed



8.3 Development Applications - Works in Progress as at November 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Foreshore Land, No. 274 River Street, Ballina	
2011/416	26/09/2011	Newton Denny Chapelle	Change of Use from a Macadamia Processing Facility to an Educational Establishment (Universal Medicine College) involving alterations to the existing building and carparking area, No. 37 Converys Lane, Wollongbar	Being Assessed
2011/419	26/09/2011	Ardill Payne & Partners	Two Lot Boundary Adjustment Subdivision, No. 8 William Place & No. 76 Hutley Drive, Lennox Head	Being Assessed
2011/425	30/09/2011	Shell Aviation Limited	To Construct a Canopy Over Truck Parking Area, Southern Cross Drive, Ballina	Being Assessed
2011/426	30/09/2011	Ardill Payne & Partners	To Undertake a Torrens Title Boundary Adjustment Subdivision of 2 Lots, No. 198 Ballina Road, Alstonville	Awaiting Additional Information
2011/437T	11/10/2011	John McGregor	Removal of Two Trees, No. 8 Andrew Place, Lennox Head	Being Assessed
2011/438	12/10/2011	G & M Couch	Fencing and Water Supply for Livestock, Goat Island, Wardell.	Awaiting Additional Information
2011/444	18/10/2011	Joanne Young	Change of Use - funeral director to hairdressing salon, No. 2/9 Moon Street, Ballina	Being Assessed
2011/451	20/10/2011	Neil Hargreaves	Retail Nursery, No. 30 De	Being Assessed

8.3 Development Applications - Works in Progress as at November 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Havilland Crescent, Ballina	
2011/453	21/10/2011	Amrak Holdings Pty Ltd	Change of use from retail bulky goods to light industry (vehicle repair station), No. 46 De Havilland Crescent, Ballina	Being Assessed
2011/458	26/10/2011	Bunnings Group Ltd	Establishment of a "Bunnings" Hardware/ Warehouse Store, No. 507 River Street, West Ballina	On Exhibition
2011/465	02/11/2011	Stephen See	Change of Use from a Gym to a Church, No. 58-62 Simpson Avenue, Wollongbar	Being Assessed
2011/466	02/11/2011	Newton Denny Chapelle	Erection and Strata Title Subdivision of a Residential Flat Development comprising Four (4) Single Storey Attached Units, No. 20 Gibbon Street, Lennox Head	Being Assessed

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

DA No.	Date Rec'd	Applicant	Proposal	Status
NIL				

**Major Development (Determined by Minister)**

<b>Major Project No./DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2004/1150	18/05/2011	North Angels Beach Development (Chris Condon)	Modification No. 4 to North Angels Beach Subdivision Consent - To delete condition requiring a pedestrian 'Pelican' crossing of Angels Beach Drive and replace it with a pedestrian refuge. (Original consent required a pedestrian underpass).	Modification Application Approved by the Planning Assessment Commission on 3 November 2011

The above approval is inconsistent with Council's preference for an underpass.

**RECOMMENDATION**

That Council notes the contents of the report on the status of development applications under assessment as at November 2011.

**Attachment(s)**

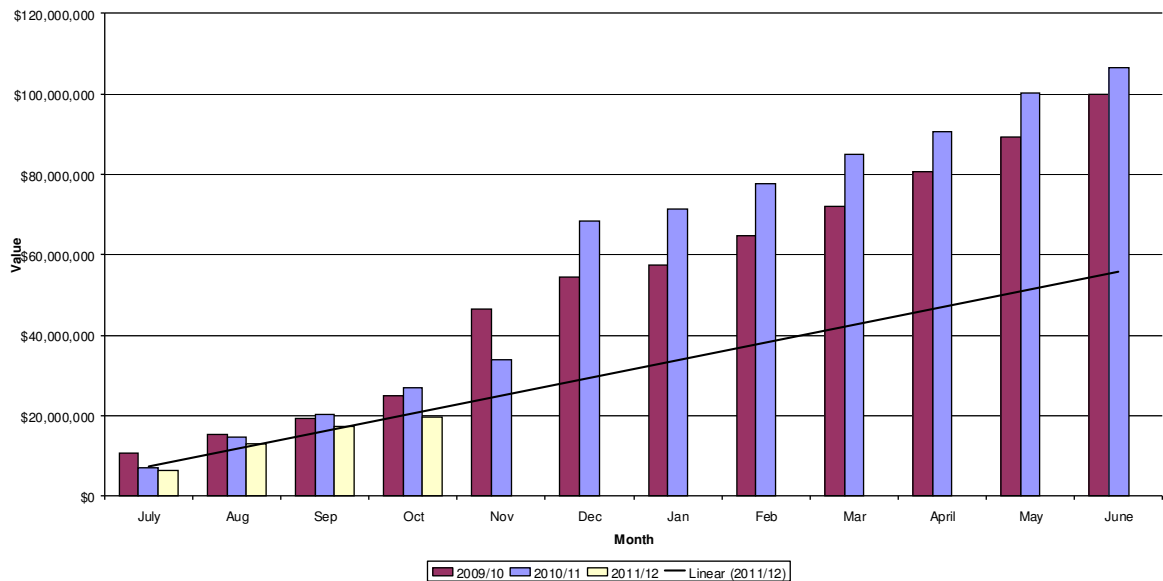
Nil

**8.4 Development Consent Statistics - October 2011**

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

<b>Number of Applications</b>	<b>Value of Work</b>
27 Other Building Related	\$ 1,361,400
3 Dwelling/Duplexes/Residential Flat Buildings	\$ 782,000
4 General Developments	\$ 3,000
<b>Total Value</b>	<b>\$ 2,146,400</b>

The following chart details the cumulative consent figures for 2011/12 as compared to 2010/11 and 2009/10. A trend line has also been provided for 2011/12 to assist in the comparison. The trend line continues to highlight the major slow down in applications for this financial year.



**RECOMMENDATION**

That Council notes the contents of the report on development consent statistics for 1 October 2011 to 31 October 2011.

**Attachment(s)**

Nil

**9. Strategic & Community Services Group Reports**

**9.1 Cumbalum Precinct A Planning Proposal**

<b>File Reference</b>	Cumbalum Precinct A Planning Proposal
<b>CSP Linkage</b>	Diverse and balanced land use
<b>Delivery Program</b>	Strategic Planning
<b>Objective</b>	<p>To present Council with a draft Local Environmental Study and draft Planning Proposal in relation to Cumbalum Precinct A.</p> <p>To invite the Council to consider options for progressing the proposed rezoning of the land.</p>

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**Background**

The land known as 'Cumbalum Precinct A' in the Cumbalum Structure Plan is identified as an urban investigation area in the local and regional (State Government) planning strategies that apply to Ballina Shire, including the Ballina Shire Urban Land Release Strategy and the Far North Coast Regional Strategy.

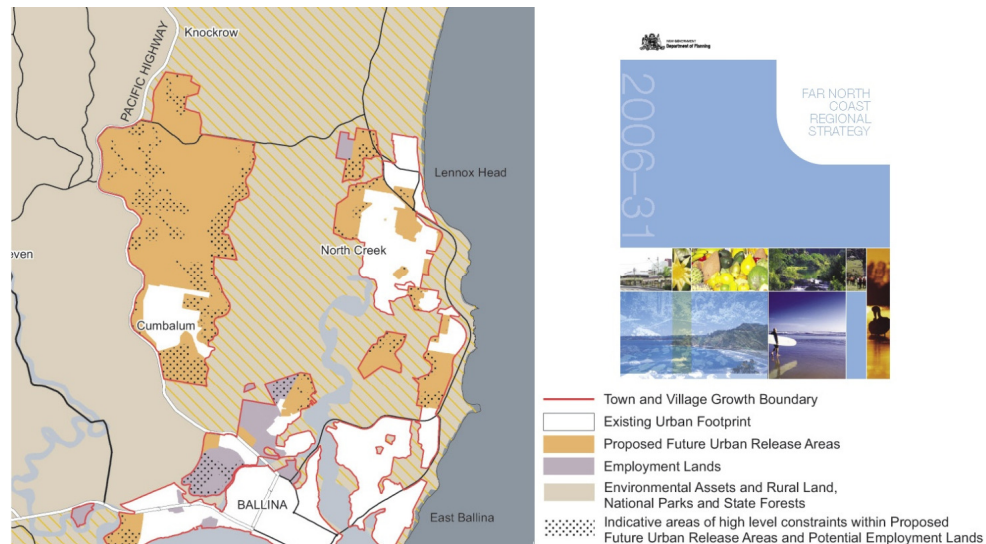
Council commenced the rezoning process for the precinct in 2007 via initiation of draft Ballina Local Environmental Plan 1987 Amendment No.105.

This report addresses the context and status of the proposed rezoning and invites Council to consider the progress of the matter.

*Planning Context*

*Far North Coast Regional Strategy (FNCRS-2006)*

The Far North Coast Regional Strategy (FNCRS) provides the regional framework for the consideration of rezoning land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as a 'Proposed Future Urban Release Area' within the 'Town & Village Growth Boundary' for Ballina Shire (refer Town and Village Growth Boundary Map - Sheet 3, excerpt as follows).



Of these areas the Strategy states:

*'Not all land identified within the Town and Village Growth Boundary can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazard and/or environmental constraints will be excluded from development'.*

The investigation of the subject land for future urban development through the statutory rezoning (planning proposal) process is consistent with the regional planning framework.

Ballina LEP 1987

The subject land is currently zoned 1(d) Rural (Urban Investigation) under the terms of the *Ballina Local Environmental Plan 1987*. The primary zone objectives are:

- a to identify land which may be needed in the future and will be thoroughly investigated with respect to its suitability or otherwise for urban land uses and the environmental consequences associated with the land's release for urban purposes;
- b to regulate the subdivision and use of land so as to prohibit development which could prejudice the possible future release of land within this zone for urban purposes; and
- c to ensure that the release of land for urban purposes, by rezoning, shall not take place unless –
  - (i) urban structure planning has been completed by Council;
  - (ii) the Council reviews urban suitability investigations for individual planning units, and detailed land use allocations for each planning unit have been determined by the Council;
  - (iii) sufficient demand exists for the release of urban land; and
  - (iv) appropriate urban infrastructure and facilities are available to the land or can be provided to the land in a manner which does not create an unreasonable or uneconomic demand, or both, for the provision or extension of such services.

With respect to the matters described in subclause c, the following is noted:

- i. Urban structure planning was undertaken by Council via the preparation and adoption (in 2006) of the Cumbalum Structure Plan;
- ii. The review of urban suitability investigations is the purpose of the Local Environmental Study prepared for the area and is the subject of this report;
- iii. Council seeks to ensure that there is an adequate "buffer" of zoned land available for development to facilitate housing choice, provide competition in the land development market and potentially improve housing affordability. It is noted that much of the zoned area of the Ballina Heights Estate remains undeveloped at present.

The proponents are seeking the rezoning of Cumbalum Precinct A due to staging and servicing considerations. It is noted that while Ballina Shire is currently reasonably well supplied with undeveloped residential zoned land (having in the order of 300 hectares of vacant residential zoned land), recent land development rates have been modest due to a number of factors. These factors include delays in obtaining development approvals, infrastructure bottlenecks and the financial failure of a number of land development companies.

From this perspective, there appears sufficient residential demand in the short to medium term, relative to the real supply of development-ready sites, to support the rezoning of additional land in Cumbalum Precinct A.

- iv. The subject of the adequacy of infrastructure and facilities is addressed elsewhere in this report.

*Ballina Urban Land Release Strategy 2000 (ULRS-2000)*

The Ballina Urban Land Release Strategy 2000 (ULRS) provides the Department of Planning and Infrastructure endorsed urban land release strategy for the Ballina local government area. It has been prepared in accordance with the provisions of clause 38 of the North Coast Regional Environmental Plan 1988 (the REP). The land release program contained within the Strategy has been agreed with the former Department of Infrastructure Planning and Natural Resources as required by subclause 38(3) of the REP.

The strategic approach adopted in the ULRS relates to the following:

- Ongoing commitment to Council's existing zoning strategy;
- Providing an adequate land supply for various market segments;
- Achieving and maintaining reasonable developer competition in the marketplace;
- Ensuring the timely and economic provision of services;

- Masterplanned rezoning followed by staged subdivision release; and
- Planning over a 5-20 year timeframe.

The ULRS identified rezoning of the subject land to commence in the medium term (ie within 5-10 years of the year 2000). Work undertaken by Council to date is consistent with this timeframe.

#### Cumbalum Structure Plan (2006)

The objectives of the 1(d) zone under Council's LEP include a requirement that Council prepare an urban structure plan prior to the consideration of the land for rezoning to permit urban development.

Accordingly, Council prepared the Cumbalum Structure Plan (CSP), which involved a broad assessment of the environmental capabilities of the land and consultation with landholders, agencies and the broader community.

The preparation of the CSP, by Council, took into consideration the presence of environmental constraints, natural and cultural values and urban design.

A key feature of the CSP is the identification of a number of development principles, encapsulating best practice guidelines for urban development in the region. Rezoning and development proposals should demonstrate consistency with these development principles.

The CSP was adopted by Council in July 2006. A key element of the CSP, which arose from the broad land use suitability investigations undertaken, is that future development of the Cumbalum Ridge should occur as two (possibly three) distinct 'development nodes' or villages.

In the planning context, these villages are represented as Cumbalum Precinct A and Precinct B of the Structure Plan (with the possibility of Precinct C in the longer-term).

This approach is also consistent with the 'Region of Villages' settlement hierarchy outlined in the FNCRS.

It is noted that Council received strong endorsement from the then Department of Planning and other State Government agencies for the approach and framework delivered by the CSP, particularly in relation to the use of precincts/villages as the basis for the plan, for the consideration of visual and social amenity and the relationship of the plan with the regional planning context.

The consideration of the subject land for rezoning to permit urban development is consistent with the Cumbalum Structure Plan.

#### *Landholdings*

There are a number of landholders within the study area, as outlined in the following table. A number of landholders within Cumbalum Precinct A declined to provide information necessary to support urban capability assessments.



Consequently, these areas were excluded from the Local Environmental Study.

Landholding	Lots	Area (Hectares)	%
Vixsun Pty. Ltd.	Lot 1 DP1077982 & Lot 284 DP1141745	23.0	6.1
Sheather	Lot 79 DP755684, Lot 85 DP755684, Part 18 DP1022777 & Part 190 DP1063589	58.8	15.7
Intrapac	Lot 20 DP1022777	35.5	9.5
Barlow	Lot 150 DP755684, Lot 333 DP755684, Lot 3 DP517149 & Lot 3 DP82662	87.8	23.5
Catholic Church	Lot 1 DP1077982	4.9	1.3
Road reserve		11.1	3.0
<b>Total area that is the subject of LES</b>		<b>221.0</b>	<b>59.1</b>
Potter	Lot 1 DP880178	34.4	9.2
Johnstone	Lot 2 DP880178	15.7	4.2
Brown	Lot 21 DP1022777	16.5	4.4
Beddoes	Lot 1 DP771794	31.7	8.5
Thomson	Lot 2 DP771794	16.7	4.5
Road reserve		6.2	1.7
<b>Total area excluded from LES</b>		<b>152.8</b>	<b>40.9</b>
<b>Total Area</b>		<b>373.8</b>	<b>100.0</b>

Council commenced the rezoning process for Cumbalum Precinct A (and Precinct B) at its Ordinary Meeting held on 23 August 2007. The Director General of the (then) Department of Planning endorsed the Council's decision and provided specifications for the preparation of a Local Environmental Study (LES) to inform the rezoning process.

A copy of the Director General's specifications is provided in Appendix A of the LES.

Subsequently, the NSW Government introduced amendments to the *Environmental Planning and Assessment Act 1979* provisions relating to the preparation of Local Environmental Plans. The consequence of these amendments is that the rezoning process now comprises a draft Planning Proposal under the terms of the Act. A draft Planning Proposal for Precinct A was submitted to the Department of Planning and Infrastructure (DP&I) in October 2010 and endorsed by the DP&I in November 2010.

The DP&I established a timeframe for the finalisation of the planning proposal of nine months to August 2011. Council received an extension from the DP&I in August 2011 of an additional six months, to February 2012. It is noted, however, that the Act is silent with respect to the status of planning proposals should the timeframe set by the DP&I not be achieved.

The former requirements (including the Director General's specifications for the Local Environmental Study) were set aside by the transition to the new planning proposal arrangements. Notwithstanding, Council proceeded with the preparation of the LES to inform the delineation of land use zones.

This was done to ensure that the rezoning recommendations reflect an objective and thorough assessment of the land's suitability for urban development.

Council engaged (at the proponent's cost) consultancy GHD Pty. Ltd. to peer review submitted rezoning documentation and prepare a Local Environmental Study, in consultation with Council staff. Further information relating to the urban suitability investigations outlined in the LES is provided elsewhere in this report.

To determine the capacity of the locality (Cumbalum Precinct A and B) to be serviced by urban infrastructure Council engaged GHD Pty. Ltd. to prepare an Infrastructure Delivery Plan (IDP) which sets out the physical arrangements for the provision of infrastructure. The IDP concluded that the land can be physically serviced by urban infrastructure. It is noted, however, that the funding mechanisms for the delivery of that infrastructure have not been resolved to date. Further information regarding this matter is provided elsewhere in this report.

#### *Developer representations*

The proponents for Cumbalum Precinct A have made representations to Council seeking the prompt rezoning of the subject land for reasons including:

- providing of certainty for the developers, and their financiers, with respect to the potential development footprint; and
- to assist in development staging, urban design and infrastructure planning associated with ongoing development in the locality (including Ballina Heights).

#### **Key Issues**

- Urban suitability investigations
- Provision of urban infrastructure
- Zoning recommendations
- Progress of draft LEP Amendment No.105 in relation to Cumbalum Precinct A.

#### **Information**

##### *Local Environmental Study*

The Cumbalum Precinct A draft Planning Proposal that was endorsed by the then NSW Department of Planning Gateway has been amended in accordance with the Local Environmental Study (LES) prepared for the area. A copy of the amended draft Cumbalum Precinct A Planning Proposal has been circulated to Councillors under separate cover.

The purpose of the LES is to provide a robust summation of urban suitability investigations undertaken into the land and surroundings and make recommendations, for Council's consideration, with respect to the Local Environmental Plan. Council's re-exhibited comprehensive draft Ballina LEP 2011 forms the basis for the LES recommendations. An equivalent zone map has been produced however, under the terms of the Ballina LEP 1987 and included in the Cumbalum Precinct A LES, for information purposes.

The LES was prepared on the basis of independent peer reviews undertaken of technical documentation submitted by the proponents. This process has taken a number of years to conclude. The process for reviewing urban suitability investigations for the land has been an involved and complex task. However, it is noted that the majority of this period has been consumed in the proponent's preparation of technical documentation in support of the rezoning. The following key dates in this process are provided for the information of the Council:

- August 2007 - Council resolved to commence the rezoning process, pursuant to s54 of the Environmental Planning and Assessment Act 1979. At that time any technical documentation that had been prepared by the proponents had not been submitted to Council.
- May 2008 - Proponents (represented by consultancy Ardill Payne & Partners) submitted technical documents supporting their rezoning request;
- December 2008 - GHD (on Council's behalf) completed first round peer review of technical documents;
- February 2010 - Proponents lodged revised technical documents in response to Council's/GHD's peer review;
- April 2010 - GHD (on Council's behalf) completed second round peer review of technical documents. A number of matters were identified as requiring further consideration.
- July 2010 - Proponents lodged additional information relating to slope stability, acid sulfate soils, stormwater and road traffic noise.
- Information relating to the proposed stormwater strategy was the subject of further discussion between the proponents, Council and the (then) NSW Department of Environment and Climate Change. The outcome of these discussions was that further information was prepared by the proponent relating to the potential impacts of increased stormwater flows on adjacent downstream private landholdings and on the Ballina Nature Reserve and adjacent SEPP14 wetlands. This information went through several rounds of review and revision. Further information regarding this issue is provided below. These revised reports, along with additional information relating to road noise impacts, were finalised and submitted to Council in August 2011.

- October 2011 - finalisation of Local Environmental Study by GHD (on Council's behalf). The LES has been distributed to Councillors digitally under separate cover.

*Representations by the NSW Department of Planning and Infrastructure*

As outlined in the draft Precinct B Planning Proposal report also included in this Business Paper, the proponents of Cumbalum Precinct B have lobbied the State Government and local Member of Parliament, to press Council to expedite the rezoning of the land.

Consequently, the DP&I made robust representations to Council, on a number of occasions, regarding the progress of the Cumbalum planning proposal process, in particular that of Precinct B.

In relation to the resolution of infrastructure delivery / development contributions matters, the DP&I (Mr Tom Gellibrand, Deputy Director General, Plan Making and Urban Renewal) advised, in its letter dated, 18 October 2010 as follows:

*'I do not believe that the s 94 plan needs to be in place prior to the exhibition of the draft LEP as this matter can be dealt with at any stage during the LEP process'*

Notwithstanding the DP&I's comments, the financial implications of Council accepting infrastructure delivery obligations in association with future development is a relevant consideration for Council in determining whether the subject rezoning (Cumbalum Precinct A and Precinct B) should proceed. Further information on this issue is provided below.

*Technical studies and key findings*

The technical studies that accompany the Local Environmental Study include the following:

- Geotechnical capability (including foundation hazards)
- Ecological impacts (flora and fauna)
- Mosquito hazards
- Bush fire hazards
- Contaminated land
- Agricultural land values
- Aboriginal heritage
- Non-Aboriginal heritage
- On-site stormwater issues
- Off-site stormwater issues
- Road noise impacts
- Visual impact and scenic protection and
- Flooding.

The key implications of the LES include the following:

- Parts of Cumbalum Precinct A have the capacity to accommodate urban development. These areas are predominantly elevated, relatively flat grasslands with minimal tree cover (other than isolated trees and vegetated fence lines)
- Parts of Cumbalum Precinct A have steep slopes that may be subject to potential instability. These areas (having slopes generally greater than 18 degrees or having localised instability) have been excluded from proposed residential zoning
- Western parts of Cumbalum Precinct A, adjacent to the Pacific Highway, are impacted by road noise. These areas are recommended to retain a rural zoning. It is anticipated that these areas may accommodate ancillary non-residential land uses such as community and sporting facilities. Further, these areas are identified as having potential for further investigation in relation to urban uses at a later stage. Further information regarding this issue is provided below.
- Substantial discussion was had with the proponents during the preparation of the LES with respect to the proposal to place stormwater infrastructure in areas affected by Endangered Ecological Communities (EECs) and land identified as having potential archaeological value. The LES recommends that stormwater infrastructure be located outside of these areas, in adjacent non-urban zones (RU2 Rural Landscape and E3 Environmental Management under the terms of the draft Ballina LEP 2011). Further information regarding this issue is provided below
- Areas that have significant habitat values are recommended for environmental protection zoning
- Indigenous and European heritage items are proposed for heritage listing in the LEP. A potential indigenous archaeological site is recommended for inclusion in an environmental protection zone
- The application of the E3 Environmental Management Zone has been recommended for parts of the site that are otherwise constrained for urban development (such as due to flooding or steep slopes) and otherwise have scenic value and/or value as an urban buffer between Cumbalum Precinct A and Precinct B. In this respect the application of the E3 zone is consistent with its application between Alstonville and Wollongbar under the draft Ballina LEP 2011. These areas also align with potential wildlife corridor areas, particularly in the location of the Sandy Flat floodway
- The implications of buffering to ecological areas, bushfire hazard and access issues have also played a part in the delineation of recommended land use zones.

Further details regarding the urban capability assessments and infrastructure are provided in the amended Cumbalum Precinct A Planning Proposal and accompanying Local Environmental Study. Additional information relating to road noise impacts, stormwater impacts and infrastructure delivery issues are further outlined below.

*Road noise impacts*

Parts of the study area are affected by road noise generated from vehicles on the adjacent Pacific Highway. The road noise assessments, included in the LES, indicate that individual building treatments would be required in this area to meet acceptable acoustic standards (Environmental Criteria for Road Traffic Noise, NSW EPA 1999), including requiring closure of all doors and windows and the use of double-glazing and mechanical ventilation (air conditioning).

The LES argues that these ameliorative measures would not represent a sustainable development outcome. Consequently, these areas have not been identified for residential zoning and are recommended to have a rural zone applied, but retain the opportunity for future investigation for urban development.

Given the above, these areas are recommended to be identified in the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. Should future investigations provide an appropriate resolution of this issue, the residential envelope may be expanded accordingly.

Further, it is anticipated that parts of the noise affected area may be appropriate for the location of community facilities and sporting facilities, although only "small footprint" uses can be accommodated due to moderate slopes in that area.

*Stormwater impacts*

As outlined, the location and design of stormwater infrastructure was the subject of protracted deliberations during the preparation of the LES. These deliberations, involving the proponents, Council staff and the (then) NSW Department of Environment and Climate Change, were not able to provide full resolution of stormwater issues associated with future development. It is noted that detailed design of the proposed subdivision and associated stormwater infrastructure will be required to comprehensively conclude this matter. However, the detailed design of stormwater infrastructure is beyond the scope of the rezoning process.

Notwithstanding, the LES process has identified that technical solutions to stormwater treatment and retention are available, subject to confirmation through detailed design at the development assessment stage. Consequently, the LES has sought to ensure that sufficient area is set aside to accommodate stormwater infrastructure in non-urban zones adjacent to proposed development areas. Should detailed investigations identify that additional land is required to accommodate stormwater treatment, this would need to be provided within the areas nominated for residential development.

Conversely, it is noted that if parts of the proposed RU2 zone on the eastern portion of Cumbalum Precinct A are identified, through the DA process, to be surplus to requirements for stormwater infrastructure, this area may be appropriate for additional residential development, subject to a future and separate planning proposal process. Consequently, this area, being the proposed RU2 zoned area on the eastern portion of Cumbalum Precinct A, is recommended to be identified in the Strategic Urban Growth Area Map (under the terms of the draft Ballina LEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. Should future investigations provide an appropriate resolution of this issue, the residential envelope may be expanded accordingly.

Further, the LES is not able to definitely conclude that future development will not have adverse impacts on downstream properties, including private properties and the Ballina Nature Reserve. Notwithstanding, it is noted that detailed investigations at development assessment stage is the appropriate time to provide the necessary level of detail to resolve this issue. Council's Engineers anticipate that an adequate technical solution can be provided. Monitoring of surface and ground water is now being undertaken by the proponent to provide additional baseline information for future assessments at development application stage.

Additional to the above, it is noted that a number of issues, relevant to the approval of stormwater infrastructure in non-urban zones, remain with respect to the NSW Government's Standards Instrument LEP. These issues are further discussed elsewhere in this report.

#### *Infrastructure Delivery*

Following the Council's adoption of the Cumbalum Structure Plan (2006) Council prepared an Infrastructure Delivery Plan (IDP) which was finalised in June 2011. The IDP includes consideration of roads, water and sewerage infrastructure as well as open space and community facilities for the Cumbalum Urban Release Area (CURA) as a whole. The future management of passive open space areas that might be dedicated to Council is also discussed.

The purpose of the IDP is to:

- Outline the broader (infrastructure) planning context for future urban growth, with respect to infrastructure provision including existing Development Servicing Plans (DSPs), infrastructure works programs and Development Contributions Plans. The IDP references these plans which establish the:
  - commitment of infrastructure delivery by Council at key stages; and
  - requirements/expectations for infrastructure delivery by developers at key stages.
- Identify infrastructure contingencies and bottlenecks where these exist;
- Outline the assumed sequence and timing for future development; and

- Outline funding options available outside of Development Servicing and Contributions Plans.

The IDP was prepared to inform the rezoning process with respect to the capacity of the area to be serviced, as well as form the basis for the consideration of the mechanisms by which such infrastructure will be provided. Delivery mechanisms could include development contributions plans for roads and open space & community facilities (prepared pursuant to s.94 of the Environmental Planning and Assessment Act 1979), development servicing plans for water and sewer (prepared pursuant to s.64 of the Local Government Act 1993) and/or voluntary planning agreements. The latter mechanism must be proposed by the development and accepted by the Council.

Council's Civil Services Group has advised that infrastructure internal to the Cumbalum Urban Release Area (CURA) should be provided in association with future development, rather than being incorporated into Council's statutory infrastructure plans.

This is consistent with Council's existing development contributions plans as well as Council's present review of the water and sewer development servicing plans that have been the subject of recent separate engagement, by Council's Civil Services Group, with the elected Council.

The alternative to securing such infrastructure via Council development contributions plans & servicing plans is for the developer/s to offer to provide this infrastructure via a voluntary planning agreement or agreements.

Given that such agreements can be made to be binding on future landowners, this approach would enable Council to be satisfied that adequate arrangements are in place for the provision of public infrastructure.

In considering this approach it should be noted that the development areas include a number of smaller development interests.

The provision of a binding agreement on all development parties is also critical to ensuring that infrastructure sizing reflects the ultimate needs of the development area as a whole, and that servicing is undertaken in an economical, equitable and efficient manner.

The proponents of Cumbalum Precinct A (and Precinct B) have previously advised Council that they are not in a position to offer a voluntary planning agreement and as such they have requested that Council incorporate the CURA into Council's development contributions and servicing plans.

It is noted, however, that for Council to consider the incorporation of CURA infrastructure into development servicing plans and development contribution plans further work is required by Council's Civil Services Group on this matter.

Further, the elected Council will need to be satisfied that the risks to Council / ratepayers associated with this approach are acceptable and that the balance of costs to benefits is in the public interest.



This further work includes undertaking preliminary costing of the infrastructure items identified in the IDP, followed by the consideration of cost apportionment (between developers) and funding and recoupment matters, having regard for the NSW Government's current cap on development contributions (S.94).

Council has recently engaged consultancy GHD Pty. Ltd. to undertake the preliminary costing of infrastructure items, however, this information is not available at the time of writing to inform this report.

The resolution of infrastructure delivery options, involving the consideration of the above issues, requires further engagement with the elected Council by Council's Civil Services Group. Ideally, a voluntary planning agreement and/or draft development contributions plans (for roads and open space) and development services plans (for water and sewer) would form part of the exhibition material to accompany the public exhibition of the draft LEP (Planning Proposal).

This would enable the community and agencies to appreciate the implications of future development on the environmental values of the shire and the potential financial impost for the Council.

Despite the preference of staff for this information to be available beforehand, it is suggested that the matter progress to public exhibition given the completion of the LES for the precinct and the expressed demands of the DP&I.

It is further noted that the IDP identifies that some significant infrastructure items are required to service future development, particularly in relation to Cumbalum Precinct B which is the subject of a separate report included in this Business Paper.

Of particular note, this infrastructure includes the duplication of the highway overpass at the Ross Lane interchange with the recently constructed Pacific Highway and a number of additional intersection upgrades.

It is noted that proceeding with the exhibition of the draft LEP in the absence of the funding arrangements could give the impression that Council has accepted the inclusion of infrastructure into Council's development contributions plans, when this position has not yet been determined by the Council.

It is noted that Council's current strategic urban development policy framework provided by the Ballina Urban Land Release Strategy 2000 comprises the progressive roll-out of development within the CURA from south to north. In this respect the staging of residential development of Precinct A is consistent with this strategy.

*Areas within Precinct A not included in the LES*

As outline above, several landholders within Cumbalum Precinct A declined to provide information required to inform the LES/LEP process. Consequently, these areas were not included in the LES.

Whilst it would be desirable to have all the land within Cumbalum Precinct A assessed and considered as a part of the Planning Proposal, it is not critical in these circumstances as these properties are all located on the periphery of the precinct.

It will be recommended that these areas be identified in the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy.

Should future investigations provide an appropriate resolution of technical issues, the residential envelope for Precinct A may be expanded accordingly.

#### *Zoning Recommendations*

The LES recommends that the site be zoned for a combination of residential, open space purposes and environmental protection purposes, as outlined in the following table.

It is expected that the rezoning (should it proceed) will be implemented as an amendment to Council's comprehensive LEP which is nearing completion. As such, the recommendations that follow are set out in terms of the comprehensive LEP framework.

A map showing the proposed zones under the terms of the draft Ballina LEP 2011 is provided as an attachment to this report.

<b>Equivalent zone as per draft Ballina LEP 2011</b>	<b>Recommended zone as per BLEP 1987</b>	<b>Area (Hectares)</b>	<b>Area (% of LES area)</b>
R2 Low density residential	2(b) Village Area Zone	18.3	8.3%
R3 Medium density residential	2(b) Village Area Zone	56.5	25.6%
E2 Environmental protection	7(a) Environmental Protection (Wetlands) Zone 7(l) Environmental Protection (Habitat) Zone	52.4	23.7%
E3 Environmental management	7(i) Environmental Protection (Urban Buffer) Zone	63.4	28.7%
RU2 Rural landscape	1(b) Rural (Secondary Agriculture) Zone	30.4	13.7%
<b>Total</b>		<b>221</b>	<b>100%</b>

On the basis of the anticipated urban densities (which are relatively conservative), the area is expected to yield in the order of 850 dwelling units (additional to those in Ballina Heights Estate) accommodating a estimated population in the order of 2,300 additional persons. The total anticipated combined population for Ballina Heights and Precinct A is approximately 4,200 people.

*Consequential LEP map amendments*

Additional to the Land Zoning Map (LZN) in the comprehensive standard LEP, the draft planning proposal proposes the amendment of a number of the other maps that support the Council's new instrument. The implications of the Cumbalum Precinct A draft planning proposal with respect to the other supporting maps of the comprehensive LEP are outlined in the following table.

<b>LEP Map</b>	<b>Purpose</b>	<b>Comment</b>
Lot Size Map (LSZ)	Establishes minimum lot size for subdivision of land.	<i>Amendment proposed</i> - minimum lot size overlay will need to reflect the minimum lot sizes outlined in Section 10.2 of the LES.
Height of Buildings (HOB)	Establishes maximum height of buildings.	<i>Amendment proposed</i> - 8.5m standard proposed, consistent with other residential areas in Ballina Shire.
Building Height Allowance Map (BHA)	Provides variation allowance to building height standard in areas subject to flood filling.	No minimum fill level nominated as no residential development areas are proposed in flood affected areas.
Floor Space Ratio Map (FSR)	Establishes floor space ratio standards for certain land parcels.	No FSR nominated (consistent with draft LEP 2011)
Land Reserved for Acquisition (LRA)	Identifies land for acquisition	No land reservations nominated.
Heritage Map (HER)	Identifies items of environmental heritage subject to the LEP.	<i>Amendment proposed</i> - Handmade stone wall in south east corner of Precinct A nominated as a heritage item (Wall 1).
Acid Sulfate Soils Planning Map (ASS)	Identifies different classes of acid sulfate soils risk for reference with respect to acid sulfate soils consent requirements.	Adopt ASS risk classes as per draft LEP 2011.
Drinking Water Catchments Map (WCM)	Identifies drinking water catchments subject to specific assessment considerations.	Not applicable as the study area is not within an urban drinking water catchment.
Flood Planning Map (FPM)	Identifies land on the floodplain that is subject to specific considerations in development assessment.	Maintain the flood planning map as per draft LEP 2011.
Strategic Urban Growth Area Map (SGA)	Identifies land considered to have urban development potential to enable review of potential use as part of development assessment process.	<i>Amendment proposed</i> - An amended SGA map outlining areas outside the LES study area for future investigation will be included in the draft planning proposal.
Urban Release Area Map (URA) - New Map	Identifies new release areas subject to cl.6.3 of the draft LEP 2011.	<i>New map proposed</i> - Identify land proposed for residential zoning as an urban release area.

*Special provisions*

There are no special LEP provisions proposed as a part of the draft Cumbalum Precinct A draft Planning Proposal at this time. It is noted, however, that a special provision may be required to address stormwater issues discussed elsewhere in this report, subject to further consultation with the DP&I regarding the Standard Instrument LEP. It is noted that a special provision of this kind would require the approval of the DP&I and possibly other agencies.

*Standards Instrument issues*

It is noted that a number of issues remain with respect to the application of the Standard Instrument to future development areas. These issues include:

- the capacity to excise residual rural allotments as part of future urban subdivision where the residual lot would be less than the minimum lot size nominated on the minimum lot size map. The Standard Instrument LEP is inflexible in this regard. Council staff continue to liaise with the DP&I in relation to the comprehensive Ballina LEP 2011 process, seeking resolution to this issue.
- Stormwater infrastructure is not a defined land use in the Standard Instrument. Drainage, although defined, is not a land use for the purpose of the land use tables. Consequently, stormwater infrastructure may be defined as 'any other purpose' or as an ancillary use for the purpose of the land use zones. This has the implication of making stormwater treatment a prohibited land use in the non-urban zones of the shire. It is argued that it is more appropriate to identify, in the first instance, locations for stormwater infrastructure in non-urban zones to manage development expectations in relation to future subdivision applications (i.e. separation of areas for stormwater management from residential zones provides clear direction in relation to its location and scope). Should Council resolve to proceed to public exhibition and consultation with Government agencies, this matter will be pursued with the DP&I
- The minimum lot size map in the comprehensive Ballina LEP 2011 may need to be amended following subdivision works to clarify the intended development entitlements associated with future lots. It is noted, however, that the DP&I advises that this type of LEP amendment/planning proposal process should be more procedurally routine under the new plan making provisions of the Act. The DP&I has also been requested by Council, as part of the comprehensive LEP renewal process, to amend the standard instrument LEP to enable such subdivision to occur within the provisions of the LEP, without the need for a further planning proposal. Should Council resolve to proceed to public exhibition and consultation with government agencies, this matter would taken up further with the DP&I.

### *Development Control Plan*

Staff believe it is desirable to have information available with the public exhibition material that describes the intended development controls to apply to future subdivision and building works. Councillors will be aware that the introduction of the new comprehensive LEP has major implications for the content and structure of Council's Development Control Plan. Effectively, it must be re-written. Consequently, following the resolution of the comprehensive LEP process, Council's Strategic and Community Services Group will be proceeding to review the Development Control Plan in detail to ensure it conforms to the structure provided by the Standard Instrument LEP and the Housing Code SEPP. It is intended that this review will seek to simplify the structure and range of development controls that apply and, where appropriate, achieve consistency across the shire, with respect to the range of residential development controls.

Regrettably, a draft development control plan has not been prepared to inform public exhibition of the subject draft Planning Proposal. However, in the case of Cumbalum Precinct A, it is noted that the development controls to apply would likely be generally consistent with those provided in The Ballina Combined Development Control Plan Policy Statement 14 - Ballina Heights.

It is noted that the draft Ballina LEP 2011 includes (by virtue of the Standard Instrument LEP) clause 6.3 which seeks to ensure that a development control plan is in place prior to the granting of development consent for development within an urban release area. Clause 6.3 states:

#### **6.3 Development control plan [local]**

- (1) *The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.*
- (2) *Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.*
- (3) *The development control plan must provide for all of the following:*
  - (a) *a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing,*
  - (b) *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
  - (c) *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
  - (d) *a network of passive and active recreational areas,*
  - (e) *stormwater and water quality management controls,*
  - (f) *amelioration of natural and environmental hazards, including bushfire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*

- (g) *detailed urban design controls for significant development sites,*
- (h) *measures to encourage higher density living around transport, open space and service nodes,*
- (i) *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
- (j) *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*

As outlined above, the development control plan is required to address a range of matters including development staging, infrastructure provision, stormwater management, environmental hazards and building design controls. On face, the above clause provides Council with further security that development consents will not be granted until appropriate arrangements are in place in relation to these matters. It is noted, however, that section 74D of *The Environmental Planning and Assessment Act 1979* states:

***74D Development control plans required or authorised by environmental planning instruments***

- (1) *An environmental planning instrument may require or permit a development control plan to be prepared before any particular development or kind of development may be carried out (and make provision with respect to the preparation and content of any such plan).*
- (2) *Any such development control plan may outline the development of all the land to which it applies.*
- (3) *Any such development control plan may be prepared (and submitted to the relevant planning authority) by the owners of the land to which it applies or by such percentage of those owners as the environmental planning instrument concerned allows. A person authorised by those owners may act on their behalf for the purposes of this subsection.*
- (4) *The relevant planning authority may make a development control plan submitted to it under this section, including with such changes as it thinks fit.*
- (5) *If the relevant planning authority refuses to make a development control plan submitted to it under this section (or delays by more than 60 days to make a decision on whether to make the plan):*
  - (a) *the owners may make a development application despite the requirement of the environmental planning instrument concerned for the preparation of a development control plan, or*
  - (b) *the Minister may act in the place of the relevant planning authority to make the plan (with or without modification), but only if the environmental planning instrument concerned authorises the Minister to do so.*
- (6) *The regulations may extend the period of 60 days referred to in subsection (5) in connection with any failure by the owners to provide further information required by the relevant planning authority for the purposes of making the plan.*

This means that, whilst a DCP must be prepared in accordance with clause 6.3 of the draft Ballina LEP 2011 prior to the granting of development consent, section 74D of the Act provides for such a DCP to be drafted by the development proponents with Council having only 60 days to make a decision on the adoption of the plan before a development application can be lodged.

It remains unclear whether the interrelationship between clause 6.3 of the LEP and section 74D of the Act would allow for any such application for development consent to be granted.

It will be recommended, therefore, that a DCP compliant with clause 6.3 of the draft LEP be prepared prior to the finalisation of the subject draft planning proposal.

*Options to progress the subject planning proposal*

Council has a number of options with respect to this matter. As outlined above, those parts of Cumbalum Precinct A that are embodied within the LES have been the subject of detailed urban suitability investigations. However, the remaining development matters remain to be resolved in a manner that would enable the draft planning proposal to be satisfactorily concluded. These include:

- Resolving the mechanism for the delivery of urban infrastructure to service future development by way of development contributions plan/s (and development servicing plans), voluntary planning agreements (VPAs) or some other appropriate mechanism; and
- The preparation, on Council's terms, of a development control plan compliant with clause 6.3 of the draft Ballina Local Environmental Plan 2011.

With respect to infrastructure delivery mechanisms, it is noted that Council is in the process of obtaining preliminary cost estimates for the s.94 infrastructure items identified in the Cumbalum IDP. Further, Council is in the process of revising Council's Development Servicing Plans (DSPs) for water and sewer prepared in accordance with s.64 of the *Local Government Act 1993*. It is anticipated that Council's Civil Services Group will be engaging further with Council with respect to infrastructure delivery options for the Cumbalum Urban Release Area.

Council is invited to consider whether the matter of the infrastructure delivery mechanism, should be resolved prior to the public exhibition of the draft planning proposal. If this is the case then Council may defer the public exhibition process until this matter is resolved noting however that such action would contravene the instructions issued by the DP&I to expedite the planning proposals. Alternatively, Council may proceed to public exhibition without this material. It is noted that a development contribution plan or plans, and development servicing plans may need to be prepared and publicly exhibited prior to the finalisation of the draft planning proposal. It is noted, however, that a voluntary planning agreement or other appropriate mechanism may also be a means of progressing this matter in the short-term.

With respect to the preparation of a development control plan, compliant with clause 6.3 of the draft Balling LEP 2011, although ideally it is staff's preference that the DCP would be included with the exhibition material to accompany the draft planning proposal, the DCP could be progressed, and separately exhibited, prior to the finalisation of the draft planning proposal.

### **Sustainability Considerations**

- **Environment**

Future development of the subject land would have implications for the natural environment of the site and the locality. The Local Environmental Study and draft planning proposal provide for the mitigation and amelioration of potential environmental impacts of future development.

- **Social**

The provision of additional residential development would contribute to the changing social environment of Ballina Shire and provide existing and future residents with greater housing choice. Development may also place additional demands on Council and other government and non-government organisations for the provision of social services and urban infrastructure. However, it is noted that development of this land will be consistent with Council's endorsed and established urban land release strategy.

- **Economic**

The increase in population arising from the future development of the subject land may contribute to the economic development of the locality and the shire, via the additional aggregate demand in the economy and the provision of labour resources to businesses.

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

The rezoning of land for residential and commercial purposes will enable land owners to lodge development applications for residential subdivision and development of the land.

It is noted that the funding mechanisms for the delivery of urban infrastructure has not been resolved to date. The reliance on conditions of consent for the provision of urban infrastructure, in the absence of voluntary planning agreements and/or statutory contributions plans, could expose Council to legal and financial risks.

Publicly exhibiting the planning proposal would have (minor but manageable) resource implications for Council's Strategic and Community Services Group.

### **Consultation**

Council should note that the new plan making provisions of the Act give the Director General for the DP&I the power to determine the circumstances around public exhibition procedures for planning proposals. In the case of the Cumbalum Precinct A Planning Proposal Gateway Determination of 12 November 2010, the DP&I has specified that the exhibition period will be 28 days. It is noted, due to the impending Christmas period, that Council may be concerned to ensure that adequate opportunity is provided for the community to consider and respond to public exhibition procedures should Council resolve to publicly exhibit the draft planning proposal. Consequently, the advice of the DP&I has been sought with regard to whether the public exhibition period can be extended over the Christmas period. However, at the time of report preparation Council has not received a response from the Department on this matter.



### Options

1. That Council resolve to place the Cumbalum Precinct A draft Planning Proposal on public exhibition for a period of 28 days, commencing in early 2012. Following the conclusion of the exhibition period, Council is to receive a further report regarding submissions and outcomes associated with the public exhibition period.

Under this option the draft Planning Proposal, Local Environmental Study and Infrastructure Delivery Plan will be placed on public exhibition. It is recommended, should Council pursue this option, that the exhibition period to avoid the Christmas period. Further, under this option, Council's Civil Services Group would consult further with the development proponents and the elected Council to resolve infrastructure servicing issues during the public exhibition period.

Following the exhibition a further report, analysing the submissions received during the exhibition, will be prepared and presented to Council. Council will then be invited to consider the submissions, along with any recommended amendments identified during this process. Council may then proceed to recommend the planning proposal to the Minister for Planning for the amending LEP to be made, or alternatively, the Council may resolve to discontinue or defer the planning proposal.

It is noted that under this option, should the outcome of further consideration of infrastructure delivery options conclude that the precinct be incorporated into Council's statutory infrastructure plans (s.94 & s.64) consideration will need to be given as to whether the planning proposal can proceed prior to the finalisation of these plans, possibly involving an additional period of public exhibition.

Option one is preferred and forms the basis of the following recommendation.

2. That Council await the resolution of its preferred mechanism for infrastructure funding to service future development of Cumbalum Precinct A, prior to exhibiting the draft Planning Proposal. Under this option Council's Civil Services Group would consult further with the development proponents and the elected Council to resolve infrastructure servicing issues. Following resolution of this issue a further report would be presented to Council with regard to public exhibition of the draft Planning Proposal.

The views of the DP&I regarding the adequacy of information available to publicly exhibit the draft plan are noted. Further, the development proponents have argued that these issues can be adequately resolved prior the finalisation of the draft Planning Proposal. Having regard for these views, this option is not recommended.

3. That Council discontinue the planning proposal process for Cumbalum Precinct A. This option is available to Council, however due to the information available through the LES process and Council's strategic land use planning framework, this option is not recommended. Importantly, it should be noted that if Council resolves to cease further processing of the LEP amendment, the Minister for Planning & Infrastructure may elect to progress the matter separate from Council.

As mentioned the recommendation is for option one.

#### **RECOMMENDATIONS**

1. That Council place the Cumbalum Precinct A draft Planning Proposal on public exhibition for a period of 28 days, commencing in early 2012.
2. Following the conclusion of the exhibition period, Council is to receive a further report regarding submissions and outcomes associated with the public exhibition period and information concerning the preferred means of infrastructure delivery to service new development within the precinct.

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

1. Cumbalum Precinct A proposed zoning under the terms of the Draft Ballina Local Environmental Plan 2011 (separate attachment)

**9.2 Cumbalum Precinct B Planning Proposal**

<b>File Reference</b>	Cumbalum Precinct B Planning Proposal
<b>CSP Linkage</b>	Diverse and balanced land use
<b>Delivery Program</b>	Strategic Planning
<b>Objective</b>	To present Council with a draft Local Environmental Study and draft Planning Proposal in relation to Cumbalum Precinct B.  To invite the Council to consider options for progressing the proposed rezoning of the land.

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**Background**

The land known as 'Cumbalum Precinct B' in the Cumbalum Structure Plan is identified as an urban investigation area in the local and regional (State Government) planning strategies that apply to Ballina Shire, including the Ballina Shire Urban Land Release Strategy and the Far North Coast Regional Strategy.

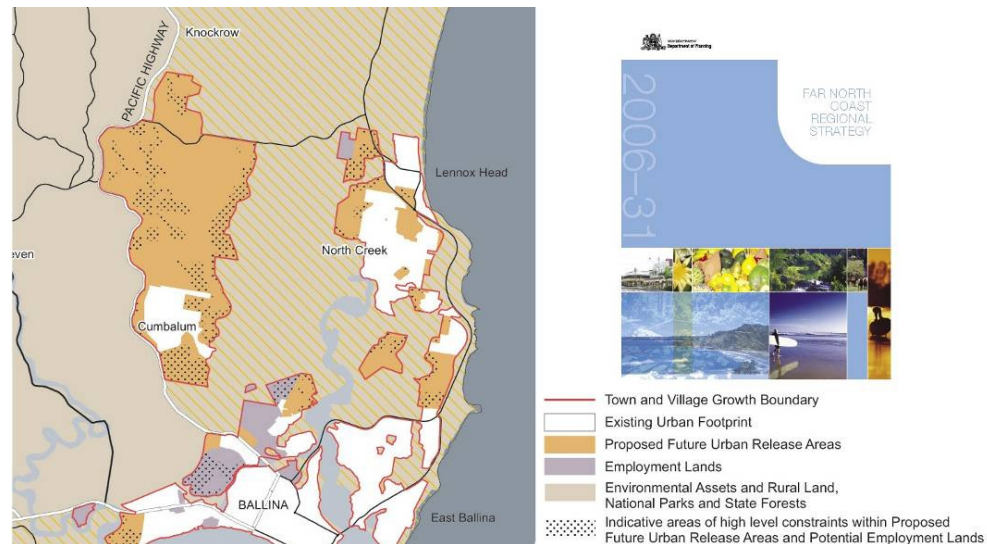
Council commenced the rezoning process for the precinct in 2007 via initiation of draft Ballina Local Environmental Plan 1987 Amendment No.105.

This report addresses the context and status of the proposed rezoning and invites Council to consider the progress of the matter.

*Planning Context*

*Far North Coast Regional Strategy (FNCRS-2006)*

The Far North Coast Regional Strategy (FNCRS) provides the regional framework for the consideration of rezoning land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as a 'Proposed Future Urban Release Area' within the 'Town & Village Growth Boundary' for Ballina Shire (refer Town and Village Growth Boundary Map - Sheet 3, excerpt as follows).



Of these areas the Strategy states:

*'Not all land identified within the Town and Village Growth Boundary can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazard and/or environmental constraints will be excluded from development'.*

The investigation of the subject land for future urban development through the statutory rezoning (planning proposal) process is consistent with the regional planning framework.

Ballina LEP 1987

The subject land is currently zoned 1(d) Rural (Urban Investigation) under the terms of the *Ballina Local Environmental Plan 1987*. The primary zone objectives are:

- a to identify land which may be needed in the future and will be thoroughly investigated with respect to its suitability or otherwise for urban land uses and the environmental consequences associated with the land's release for urban purposes;
- b to regulate the subdivision and use of land so as to prohibit development which could prejudice the possible future release of land within this zone for urban purposes; and
- c to ensure that the release of land for urban purposes, by rezoning, shall not take place unless –
  - (i) urban structure planning has been completed by Council;
  - (ii) the Council reviews urban suitability investigations for individual planning units, and detailed land use allocations for each planning unit have been determined by the Council;
  - (iii) sufficient demand exists for the release of urban land; and
  - (iv) appropriate urban infrastructure and facilities are available to the land or can be provided to the land in a manner which does not create an unreasonable or uneconomic demand, or both, for the provision or extension of such services.

With respect to the matters described in subclause c, the following is noted:

- i. Urban structure planning was undertaken by Council via the preparation and adoption (in 2006) of the Cumbalum Structure Plan;
- ii. The review of urban suitability investigations is the purpose of the Local Environmental Study prepared for the area and is the subject of this report;
- iii. Council seeks to ensure that there is an adequate "buffer" of zoned land available for development to facilitate housing choice, provide competition in the land development market and potentially improve housing affordability. It is noted that while Ballina Shire is currently reasonably well supplied with undeveloped residential zoned land (having in the order of 300 hectares of vacant residential zoned land), recent land development rates have been modest due to a number of factors. These factors include delays in obtaining development approvals, infrastructure bottlenecks and the financial failure of a number of land development companies. From this perspective, there appears sufficient residential demand in the short to medium term, relative to the real supply of development-ready sites, to support the rezoning of additional land in Cumbalum Precinct B.
- iv. The subject of the adequacy of infrastructure and facilities is addressed elsewhere in this report.

*Ballina Urban Land Release Strategy 2000 (ULRS-2000)*

The Ballina Urban Land Release Strategy 2000 (ULRS) provides the Department of Planning and Infrastructure endorsed urban land release strategy for the Ballina local government area. It has been prepared in accordance with the provisions of clause 38 of the North Coast Regional Environmental Plan 1988 (the REP).

The land release program contained within the Strategy has been agreed with the former Department of Infrastructure Planning and Natural Resources as required by subclause 38(3) of the REP.

The strategic approach adopted in the ULRS relates to the following:

- Ongoing commitment to Council's existing zoning strategy;
- Providing an adequate land supply for various market segments;
- Achieving and maintaining reasonable developer competition in the marketplace;
- Ensuring the timely and economic provision of services;
- Masterplanned rezoning followed by staged subdivision release; and
- Planning over a 5-20 year timeframe.

The ULRS identified rezoning and development of the subject land to occur over the medium to long term (ie 10+ years of the year 2000). Work undertaken by Council to date is consistent with this timeframe.

The ULRS also identifies the development strategy for the area to involve the progressive roll-out from south to north. In this respect Precinct B is 'out of sequence' with respect to the development staging anticipated in Council's strategic planning framework for the area. This matter is discussed further elsewhere in this report.

*Cumbalum Structure Plan (2006)*

The objectives of the 1(d) zone under Council's LEP include a requirement that Council prepare an urban structure plan prior to the consideration of the land for rezoning to permit urban development.

Accordingly, Council prepared the Cumbalum Structure Plan (CSP), which involved a broad assessment of the environmental capabilities of the land and consultation with landholders, agencies and the broader community. The preparation of the CSP, by Council, took into consideration the presence of environmental constraints, natural and cultural values and urban design.

A key feature of the CSP is the identification of a number of development principles, encapsulating best practice guidelines for urban development in the region. Rezoning and development proposals should demonstrate consistency with these development principles.

The CSP was adopted by Council in July 2006. A key element of the CSP, which arose from the broad land use suitability investigations undertaken, is that future development of the Cumbalum Ridge should occur as two (possibly three) distinct 'development nodes' or villages. In the planning context, these villages are represented as Cumbalum Precinct A and Precinct B of the Structure Plan (with the possibility of Precinct C in the longer-term).

This approach is also consistent with the 'Region of Villages' settlement hierarchy outlined in the FNCRS.

It is noted that Council received strong endorsement from the then Department of Planning and other State Government agencies for the approach and framework delivered by the CSP, particularly in relation to the use of precincts/villages as the basis for the plan, for the consideration of visual and social amenity and the relationship of the plan with the regional planning context.

The consideration of the subject land for rezoning to permit urban development is consistent with the Cumbalum Structure Plan.

### *Landholdings*

There is a large number of landholdings within the study area, with three major landholders (with a larger number of company structures) representing approximately 62% (212 Hectares) of the Cumbalum Precinct B Planning Proposal Area. The remaining 38% of the study area is represented by at least 36 separate landholder interests. The major landholders have funded the LES for the entirety of Cumbalum Precinct B, except in a limited number of circumstances (for some technical reports) where some landholders declined to allow property access to the proponent's consultants. Notwithstanding, sufficient information is available for the purpose of the LES to make zoning recommendations for all land within Cumbalum Precinct B.

Council commenced the rezoning process for Cumbalum Precinct B (and Precinct A) at its Ordinary Meeting held on 23 August 2007. The Director General of the (then) Department of Planning endorsed the Council's decision and provided specifications for the preparation of a Local Environmental Study (LES) to inform the rezoning process. A copy of the Director General's specifications is provided in Appendix A of the LES.

Subsequently, the NSW Government introduced amendments to the Environmental Planning and Assessment Act 1979 provisions relating to the preparation of Local Environmental Plans. The consequence of these amendments is that the rezoning process now comprises a draft Planning Proposal under the terms of the Act. A draft Planning Proposal for Precinct B was submitted to the Department of Planning and Infrastructure (DP&I) in October 2010 and endorsed by the DP&I in November 2010.

The DP&I established a timeframe for the finalisation of the planning proposal of nine months to August 2011. Council received an extension from the DP&I in August 2011 of an additional six months, to February 2012. It is noted, however, that the Act is silent with respect to the status of planning proposals should the timeframe set by the DP&I not be achieved.

The former requirements (including the Director General's specifications for the Local Environmental Study) were set aside by the transition to the new planning proposal arrangements. Notwithstanding, Council proceeded with the preparation of the LES to inform the delineation of land use zones. This was done to ensure that the rezoning recommendations reflect an objective and thorough assessment of the land's suitability for urban development.

Council engaged (at the proponent's cost) consultancy GHD Pty. Ltd. to peer review submitted rezoning documentation and prepare a Local Environmental Study, in consultation with Council staff. Further information relating to the urban suitability investigations outlined in the LES is provided elsewhere in this report.

To determine the capacity of the locality (Cumbalum Precinct A and B) to be serviced by urban infrastructure, Council engaged GHD Pty. Ltd. to prepare an Infrastructure Delivery Plan (IDP) which sets out the physical arrangements for the provision of infrastructure. The IDP concluded that the land can be physically serviced by urban infrastructure. It is noted, however, that the funding mechanisms for the delivery of that infrastructure have not been resolved to date. Further information regarding this matter is provided elsewhere in this report.

#### *Developer representations*

The proponents for Cumbalum Precinct B have made strong representations to General Manager seeking the prompt rezoning of the subject land to provide certainty for the developers, and their financiers, with respect to the potential development footprint. Council understands that the onset of the Global Financial Crisis has placed a number of landholders in the area under significant financial pressure, with the public exhibition process being viewed as a key step in the advancement of the rezoning.

Further, Council received a letter from one of the major landholders in Cumbalum Precinct B, dated 1 September 2011, raising concerns with Council's processing of the Cumbalum Precinct B Planning Proposal. Council's response, dated 2 September 2011, noted that much of the timeframe of the Cumbalum Precinct B Planning Proposal process has been consumed by delays in the development proponents providing technical information to support the rezoning.

Copies of this correspondence are provided as attachments one and two. The key milestones in the Cumbalum Precinct B Planning Proposal process are provided elsewhere in this report.

It is also noted that key landholders have made strong representations to senior officials within DP&I through the local State Member, Mr Page. These representations have been less than complementary regarding staff's handling of the Cumbalum Precinct B rezoning to date.

#### **Key Issues**

- Urban suitability investigations
- Provision of urban infrastructure
- Zoning recommendations
- Progress of draft LEP Amendment No.105 in relation to Cumbalum Precinct B.



## Information

### *Local Environmental Study*

The Cumbalum Precinct B draft Planning Proposal that was endorsed by the then NSW Department of Planning Gateway has been amended in accordance with the Local Environmental Study (LES) prepared for the area. A copy of the amended draft Cumbalum Precinct B Planning Proposal has been circulated to Councillors under separate cover.

The purpose of the LES is to provide a robust summation of urban suitability investigations undertaken into the land and surroundings and make recommendations, for Council's consideration, with respect to the Local Environmental Plan. Council's re-exhibited comprehensive draft Ballina LEP 2011 forms the basis for the LES recommendations. An equivalent zone map has been produced however, under the terms of the Ballina LEP 1987 and included in the Cumbalum Precinct B LES, for information purposes.

The LES was prepared on the basis of independent peer reviews undertaken of technical documentation submitted by the proponents. This process has taken a number of years to conclude. The process for reviewing urban suitability investigations for the land has been an involved and complex task. However, it is noted that the majority of this period has been consumed in the proponent's preparation of technical documentation in support of the rezoning. The following key dates in this process are provided for the information of the Council:

- August 2007 - Council resolved to commence the rezoning process, pursuant to s54 of the Environmental Planning and Assessment Act 1979. At that time any technical documentation that had been prepared by the proponents had not been submitted to Council.
- April 2009 - Proponents (represented by consultancy Landpartners Pty. Ltd.) submitted technical documents supporting their rezoning request;
- November 2009 - GHD (on Council's behalf) completed first round peer review of technical documents;
- September 2010 - Proponents lodged revised technical documents in response to Council's/GHD's peer review;
- December 2010 - GHD (on Council's behalf) completed second round peer review of technical documents. A number of matters were identified as requiring further consideration.
- Information relating to the proposed stormwater strategy was the subject of further discussion between the proponents, Council and the (then) NSW Department of Environment and Climate Change. The outcome of these discussions was that further information was prepared by the proponent relating to the potential impacts of increased stormwater flows on adjacent downstream private landholdings and on the Ballina Nature Reserve and adjacent SEPP14 wetlands. This information went through several rounds

of review and revision. Further information regarding this issue is provided below. These revised reports, along with additional information relating to Aboriginal cultural heritage matters, bushfire management, flooding and road noise impacts were finalised and submitted to Council in August 2011.

- November 2011 - finalisation of Local Environmental Study by GHD (on Council's behalf). The LES has been distributed to Councillors digitally under separate cover.

*Representations by the NSW Department of Planning and Infrastructure*

As stated, the proponents of Cumbalum Precinct B have lobbied the State Government and local Member of Parliament, to press Council to expedite the rezoning of the land. Consequently, the DP&I and the Local Member made robust representations to Council, on a number of occasions, regarding the progress of the Cumbalum planning proposal process, in particular that of Precinct B. It is noted the latest letter received by Council from the DP&I in relation to this matter, dated 5 October 2011 (Neil McGaffin, Acting Deputy Director General, Plan Making and urban Renewal) requests that Council immediately place the Cumbalum Precinct A and Precinct B planning proposals on public exhibition stating:

*'In relation to concerns raised regarding the time taken to progress these proposals, it is clear that Council has adequate information concerning the Planning Proposals to proceed to public exhibition. In this regard I request that the Planning Proposals be placed on exhibition within six weeks of the date of this letter.'*

A copy of the DP&I's letter is provided in Attachment 3 of this report for Councillors' perusal. It is noted that Council has not provided the DP&I with a copy of the Precinct B proponents' response to Council's second peer review report (received by Council 1 August 2011). Consequently, it is unclear on what basis the Department has been able to form this view. Further, it is noted that a resolution of the Council is required to publicly exhibit the draft Planning Proposals and the information required to report this matter to the Council, including the LES, is only now available.

In relation to the resolution of infrastructure delivery / development contributions matters, the DP&I (Mr Tom Gellibrand, Deputy Director General, Plan Making and Urban Renewal) advised, in its letter dated, 18 October 2010 as follows:

*'I do not believe that the s 94 plan needs to be in place prior to the exhibition of the draft LEP as this matter can be dealt with at any stage during the LEP process'*

Notwithstanding the DP&I's comments, the financial implications of Council accepting infrastructure delivery obligations in association with future development is a relevant consideration for Council in determining whether the subject rezoning (Cumbalum Precinct A and Precinct B) should proceed. Further information on this issue is provided below.

*Technical studies and key findings*

The technical studies that accompany the Local Environmental Study include the following:

- Geotechnical capability (including foundation hazards);
- Ecological impacts (flora and fauna);
- Mosquito hazards;
- Bush fire hazards;
- Contaminated land;
- Agricultural land values;
- Aboriginal heritage;
- Non-Aboriginal heritage;
- Acid Sulfate Soils;
- On-site stormwater issues;
- Off-site stormwater issues;
- Road noise impacts;
- Visual impact and scenic protection; and
- Flooding.

The key implications of the LES include the following:

- Parts of Cumbalum Precinct B have the capacity to accommodate urban development. These parts of the site include land on the hilltops and side-slopes in elevated parts of the site, and flat land on lower parts of the site that will require filling to provide drainage and/or protect from flood inundation at the 1 in 100 year flood event. Flood modelling undertaken by Council's flood consultants, in the context of the review of the Ballina Floodplain Management Study, indicates that the proposed filling of flood affected areas is within acceptable levels of floodplain impact. The areas proposed for development are generally grasslands with minimal tree cover (other than isolated trees and vegetated fence lines);
- Approximately 3 hectares of land is identified as being appropriate as a future local commercial centre, to provide for the daily needs of future residents. This recommendation is consistent with the Cumbalum Structure Plan and Council's Retail Strategy;
- Parts of Cumbalum Precinct B have steep slopes that may be subject to potential instability. These areas (having slopes generally greater than 18 degrees or having localised instability) have been excluded from proposed residential zoning;
- Parts of Cumbalum Precinct B, adjacent to Ross Lane and the Pacific Highway, are impacted by road noise. These areas are recommended to retain a rural zoning. It is anticipated that these areas may accommodate ancillary non-residential land uses such as community and sporting facilities. Further, these areas are identified as having potential for further investigation in relation to urban uses at a later stage. Further information regarding this issue is provided below.

- Substantial discussion was had with the proponents during the preparation of the LES with respect to the proposal to place stormwater infrastructure in areas of the site that may have limitations for stormwater infiltration due to elevated groundwater levels and being located adjacent to an Endangered Ecological Community (EEC). The LES recommends that stormwater infrastructure be located outside of these areas, in adjacent non-urban zones (RU2 Rural Landscape and E3 Environmental Management under the terms of the draft Ballina LEP 2011). Further information regarding this issue is provided below.
- Areas that have significant habitat values are recommended for environmental protection zoning;
- Indigenous and European heritage items are proposed for heritage listing in the LEP. A potential indigenous archaeological site is recommended for inclusion in an environmental protection zone. Further, it is proposed that two dry stone walls be listed as heritage items in the LEP;
- The application of the E3 Environmental Management Zone has been recommended for parts of the site that are otherwise constrained for urban development (such as due to flooding or steep slopes) and otherwise have scenic value and/or value as an urban buffer between Cumbalum Precinct A and Precinct B. In this respect the application of the E3 zone is consistent with its application between Alstonville and Wollongbar under the draft Ballina LEP 2011. These areas also align with potential wildlife corridor areas, particularly in the location of the Sandy Flat floodway;
- The implications of buffering to ecological areas, bushfire hazard and access issues have also played a part in the delineation of recommended land use zones;
- An area of land, adjacent to Ross Lane in the north eastern portion of the site proposed by the development proponents for light industrial purposes, is not supported by the LES, due to a number of factors. These include:
  - Site constraints, including flooding;
  - Proximity to (existing rural) residential properties; and
  - Limited capacity for outward expansion.

The opportunities for light industrial development, and other 'employment lands' in the locality will be considered further in the context of the Council's Local Growth Management Strategy.

Further details regarding the urban capability assessments and infrastructure are provided in the amended Cumbalum Precinct B Planning Proposal and accompanying Local Environmental Study. Additional information relating to road noise impacts, stormwater impacts and infrastructure delivery issues are further outlined below.

*Road noise impacts*

Parts of the study area are affected by road noise generated from vehicles on Ross Lane and Pacific Highway (Ballina Bypass) located adjacent to Cumbalum Precinct B. The road noise assessments, included in the LES, indicate that individual building treatments would be required in this area to meet acceptable acoustic standards (Environmental Criteria for Road Traffic Noise, NSW EPA 1999), including requiring closure of all doors and windows and the use of double-glazing and mechanical ventilation (air conditioning). The LES argues that these ameliorative measures would not represent a sustainable development outcome. Consequently, these areas have not been identified for residential zoning and are recommended to have a rural zone applied, but retain the opportunity for future investigation for urban development.

Given the above, these areas are recommended to be identified in the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. Should future investigations provide an appropriate resolution of this issue, the residential envelope may be expanded accordingly.

Further, it is anticipated that parts of the noise affected area may be appropriate for the location of alternative uses such as stormwater treatment, community facilities and/or sporting facilities.

*Stormwater impacts*

As outlined above, the location and design of stormwater infrastructure has been the subject of protracted deliberations during the preparation of the LES. These deliberations, involving the proponents, Council staff and the (then) NSW Department of Environment and Climate Change, have not able to provide full resolution of stormwater issues associated with future development. It is noted that detailed design of the proposed subdivision and associated stormwater infrastructure would be required to comprehensively conclude this matter.

Council's Civil Services Group advises that significant reservations remain regarding the proposed stormwater strategy proposed by the Precinct B proponents. The proposal put forward by the proponents relies in large part on the infiltration of stormwater into the ground. Council's Engineers are concerned that the proposed stormwater devices will not function as proposed due to high groundwater levels in the area proposed for stormwater infiltration. Council's Engineers note a number of recent examples of stormwater devices on land with similar groundwater conditions that are not functioning as originally proposed. Whilst the Precinct B proposal assumes that the stormwater infiltration areas will drain within 24 hours, the concern of Council's Engineers is that due to elevated groundwater levels the structures will remain permanently inundated and will therefore not provide the level of stormwater detention, infiltration and treatment required.

Groundwater monitoring has not been undertaken by the proponent, despite Council requesting this information on a number of occasions. Observations made by Council staff during rainfall events (noting the slow rate of drainage) and observations of surface water levels in drains on the site suggest elevated groundwater levels vary from the existing natural surface to within half a metre below ground surface. It is noted that although the design proposes to import 600mm of filter media to the site, the design by nature is still reliant on infiltration occurring through the existing ground. Council Engineers note, on the basis of other similar cases elsewhere in the shire, it appears that the importation of fill material to such sites can cause a localized increase in the height of the groundwater table resulting in very slow rates of infiltration.

Due to limitations of the site, with respect to infiltration and at source harvesting of stormwater, the proponents have proposed the planting of wetland vegetation (predominantly *Melaleuca spp.*) to facilitate the evapotranspiration of excess stormwater. Whilst the applicant has provided some information regarding this process, the submissions to date have not quantified the extent of land required to evapotranspire the projected stormwater run-off from the Precinct B area.

It is noted that there is a number of complicating factors in relation to this matter including:

- Naturally elevated groundwater levels in the locality, emanating from the Ballina Nature Reserve and adjoining wetlands;
- Groundwater levels in and around the Nature Reserve have been rising, and are expected to continue to rise over time, due in part to the lack of maintenance of the man-made drainage network within the Nature Reserve; and
- The potential for sea-level rise to increase groundwater levels in the area over time, particularly during high tide events. This may have implications for the design levels of stormwater outlets.

As a consequence, to conclude this matter, Council's Engineers request that additional information be provided, with respect to sub-catchments B and D, prior to being reported back to Council, confirming the following:

- existing surface levels;
- design levels of the proposed infiltration areas;
- groundwater levels based on monitoring data;
- hydraulic capacity of in-situ soils; and
- evapotranspiration parameters.

Notwithstanding the above, the recommended zoning regime put forward by Council's LES consultants has sought to set aside sufficient area to accommodate stormwater infrastructure in non-urban zones adjacent to proposed development areas, on the basis of conventional stormwater design with the following qualifications:

- that groundwater levels are sufficient to provide for infiltration of stormwater as proposed; and
- that evapotranspiration is a viable option for the removal of excess stormwater.

This gives the proponent an additional opportunity to furnish Council with this information, as previously requested, prior to Council concluding the matter. The additional information referred to above is, in the view of Council's Engineers, required to confirm the viability of this stormwater strategy. In the absence of this, it is the recommendation of Council's Engineers that the development areas serviced by the stormwater infrastructure in question be deferred from the rezoning.

Given the uncertainty outlined above, it is recommended for the purposes of Council's consideration, and possible public exhibition, that the area proposed for stormwater treatment in the south eastern portion of Cumbalum Precinct B also be identified in the Strategic Urban Growth Area Map (under the terms of the draft Ballina LEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This would provide further flexibility should further information regarding stormwater design solutions justify further amendment to the zone boundaries in this locality.

Additional to the above, it is noted that a number of issues, relevant to the approval of stormwater infrastructure in non-urban zones, remain with respect to the NSW Government's Standards Instrument LEP. These issues are further discussed elsewhere in this report.

#### *Infrastructure Delivery*

Following the Council's adoption of the Cumbalum Structure Plan (2006) Council prepared an Infrastructure Delivery Plan (IDP) which was finalised in June 2011. The IDP includes consideration of roads, water and sewerage infrastructure as well as open space and community facilities for the Cumbalum Urban Release Area (CURA) as a whole. The future management of passive open space areas that might be dedicated to Council is also discussed.

The purpose of the IDP is to:

- Outline the broader (infrastructure) planning context for future urban growth, with respect to infrastructure provision including existing Development Servicing Plans (DSPs), infrastructure works programs and Development Contributions Plans. The IDP references these plans which establish the:
  - commitment of infrastructure delivery by Council at key stages; and
  - requirements/expectations for infrastructure delivery by developers at key stages.
- Identify infrastructure contingencies and bottlenecks where these exist;
- Outline the assumed sequence and timing for future development; and
- Outline funding options available outside of Development Servicing and Contributions Plans.

The IDP was prepared to inform the rezoning process with respect to the capacity of the area to be serviced, as well as form the basis for the consideration of the mechanisms by which such infrastructure will be provided. Delivery mechanisms could include development contributions plans for roads and open space & community facilities (prepared pursuant to s.94 of the Environmental Planning and Assessment Act 1979), development servicing plans for water and sewer (prepared pursuant to s.64 of the Local Government Act 1993) and/or voluntary planning agreements. The latter mechanism must be proposed by the development and accepted by the Council.

Council's Civil Services Group has advised that infrastructure internal to the Cumbalum Urban Release Area (CURA) should be provided in association with future development, rather than being incorporated into Council's statutory infrastructure plans. This is consistent with Council's existing development contributions plans as well as Council's present review of the water and sewer development servicing plans that have been the subject of recent separate engagement, by Council's Civil Services Group, with the elected Council.

The alternative to securing such infrastructure via Council development contributions plans & servicing plans is for the developer/s to offer to provide this infrastructure via a voluntary planning agreement or agreements. Given that such agreements can be made to be binding on future landowners, this approach would enable Council to be satisfied that adequate arrangements are in place for the provision of public infrastructure. In considering this approach it should be noted that the development areas include a number of smaller development interests. The provision of a binding agreement on all development parties is also critical to ensuring that infrastructure sizing reflects the ultimate needs of the development area as a whole, and that servicing is undertaken in an economical, equitable and efficient manner.

The proponents of Cumbalum Precinct B (and Precinct A) have previously advised Council that they are not in a position to offer a voluntary planning agreement and as such they have requested that Council incorporate the CURA into Council's development contributions and servicing plans. It is noted, however, that for Council to consider the incorporation of CURA infrastructure into development servicing plans and development contribution plans further work is required by Council's Civil Services Group on this matter.

Further, the elected Council will need to be satisfied that the risks to Council / ratepayers associated with this approach are acceptable and that the balance of costs to benefits is in the public interest. This further work includes undertaking preliminary costing of the infrastructure items identified in the IDP, followed by the consideration of cost apportionment (between developers) and funding and recoupment matters, having regard for the NSW Government's current cap on development contributions (S.94).

Council has recently engaged consultancy GHD Pty. Ltd. to undertake the preliminary costing of infrastructure items, however, this information is not available at the time of writing to inform this report.



The resolution of infrastructure delivery options, involving the consideration of the above issues, requires further engagement with the elected Council by Council's Civil Services Group. Ideally, a voluntary planning agreement and/or draft development contributions plans (for roads and open space) and development services plans (for water and sewer) would form part of the exhibition material to accompany the public exhibition of the draft LEP (Planning Proposal). This would enable the community and agencies to appreciate the implications of future development on the environmental values of the shire and the potential financial impost for the Council. Despite the preference of staff for this information to be available beforehand, it is suggested that the matter progress to public exhibition given the completion of the LES for the precinct and the expressed demands of the DP&I.

It is further noted that the IDP identifies that some significant infrastructure items are required to service future development, particularly in relation to Cumbalum Precinct B. Of particular note, this infrastructure includes the duplication of the highway overpass at the Ross Lane interchange with the recently constructed Pacific Highway (Ballina Bypass) and a number of additional intersection upgrades. It is noted that proceeding with the exhibition of the draft LEP in the absence of the funding arrangements could give the impression that Council has accepted the inclusion of infrastructure into Council's development contributions plans, when this position has not yet been determined by the Council.

It is noted that Council's current strategic urban development policy framework provided by the Ballina Urban Land Release Strategy 2000 comprises the progressive roll-out of development within the CURA from south to north. Council's infrastructure servicing plans (for water and sewer) and development contributions plans have been prepared on the basis of this south to north roll-out. In this respect the staging of residential development of Precinct B is inconsistent with this strategy. Notwithstanding, it can be argued that subject to infrastructure being available, the development of land within Precinct B concurrent with continued development of Precinct A may have benefits with respect to increased competition in the marketplace, land availability and housing affordability.

Despite it having previously agreed to this sequencing arrangement by endorsing Council's Urban Land Release Strategy, the DP&I has requested that Council expedite the rezoning of both precincts, as noted in the above report.

*Areas within Precinct B not included in the LES*

Land located directly to the north of Ross Lane that is identified as a 'deferred area' in the Cumbalum Structure Plan is not the subject of the Cumbalum Precinct B Planning Proposal (and was not originally included in Council's s.54 decision) and has thus not been included in the LES. This area will, however, be identified in the Strategic Urban Growth Area Map (under the terms of the draft Ballina LEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This enables for the area to be the subject of a separate Planning Proposal process at some time in the future.

Further, it is noted that the area identified as Precinct C of the Cumbalum Structure Plan will be the subject of future investigations through a separate planning proposal process in due course.

#### *Zoning Recommendations*

The LES recommends that the site be zoned for a combination of commercial, residential, open space purposes and environmental protection purposes, as outlined in the following table. It is expected that the rezoning (should it proceed) will be implemented as an amendment to Council's comprehensive LEP which is nearing completion. As such, the recommendations that follow are set out in terms of the comprehensive LEP framework. A map showing the proposed zones under the terms of the draft Ballina LEP 2011 is provided as Attachment 4 to this report.

<b>Equivalent zone as per draft Ballina LEP 2011</b>	<b>Recommended zone as per BLEP 1987</b>	<b>Area (Hectares)</b>	<b>Area (% of LES area)</b>
B3 Local centre	2(b) Village Area Zone	3	0.6%
R2 Low density residential	2(b) Village Area Zone	8.5	1.8%
R3 Medium density residential	2(b) Village Area Zone	134	28.3%
E2 Environmental protection	7(a) Environmental Protection (Wetlands) Zone 7(l) Environmental Protection (Habitat) Zone	86.8	18.3%
E3 Environmental management	7(i) Environmental Protection (Urban Buffer) Zone	143	30.2%
RU2 Rural landscape	1(b) Rural (Secondary Agriculture) Zone	97.8	20.7%
Total		473.1	100.0%

On the basis of the anticipated urban densities (which are relatively conservative), the area is expected to yield in the order of 2,500 dwelling units accommodating a estimated population in the order of 6,700 additional persons.

#### *Consequential LEP map amendments*

Additional to the Land Zoning Map (LZN) in the comprehensive standard LEP, the draft planning proposal proposes the amendment of a number of the other maps that support the Council's new instrument. The implications of the Cumbalum Precinct B draft planning proposal with respect to the other supporting maps of the comprehensive LEP are outlined in the following table.

LEP Map	Purpose	Comment
Lot Size Map (LSZ)	Establishes minimum lot size for subdivision of land.	<i>Amendment proposed</i> - minimum lot size overlay will need to reflect the minimum lot sizes outlined in Section 10.2 of the LES.
Height of Buildings (HOB)	Establishes maximum height of buildings.	<i>Amendment proposed</i> - 8.5m standard proposed, consistent with other residential areas in Ballina Shire.
Building Height Allowance Map (BHA)	Provides variation allowance to building height standard in areas subject to flood filling.	No change required from exhibited BHA map.
Floor Space Ratio Map (FSR)	Establishes floor space ratio standards for certain land parcels.	No FSR nominated (consistent with draft LEP 2011)
Land Reserved for Acquisition (LRA)	Identifies land for acquisition	No land reservations nominated.
Heritage Map (HER)	Identifies items of environmental heritage subject to the LEP.	<i>Amendment proposed</i> - Two handmade stone walls nominated as heritage items.
Acid Sulfate Soils Planning Map (ASS)	Identifies different classes of acid sulfate soils risk for reference with respect to acid sulfate soils consent requirements.	Adopt ASS risk classes as per draft LEP 2011.
Drinking Water Catchments Map (WCM)	Identifies drinking water catchments subject to specific assessment considerations.	Not applicable as the study area is not within an urban drinking water catchment.
Flood Planning Map (FPM)	Identifies land on the floodplain that is subject to specific considerations in development assessment.	Maintain the flood planning map as per draft LEP 2011.
Strategic Urban Growth Area Map (SGA)	Identifies land considered to have urban development potential to enable review of potential use as part of development assessment process.	<i>Amendment proposed</i> - An amended SGA map outlining areas outside the LES study area for future investigation will be included in the draft planning proposal.
Urban Release Area Map (URA) - New Map	Identifies new release areas subject to cl.6.3 of the draft LEP 2011.	<i>New map proposed</i> - Identify land proposed for residential zoning as an urban release area.

### *Special provisions*

There are no special LEP provisions proposed as a part of the draft Cumbalum Precinct B draft Planning Proposal at this time. It is noted, however, that a special provision may be required to address stormwater issues discussed elsewhere in this report, subject to further consultation with the DP&I regarding the Standard Instrument LEP. It is noted that a special provision of this kind would require the approval of the DP&I and possibly other agencies.

### *Standards Instrument issues*

It is noted that a number of issues remain with respect to the application of the Standard Instrument to future development areas. These issues include:

- the capacity to excise residual rural allotments as part of future urban subdivision where the residual lot would be less than the minimum lot size nominated on the minimum lot size map. The Standard Instrument LEP is inflexible in this regard. Council staff continue to liaise with the DP&I in relation to the comprehensive Ballina LEP 2011 process, seeking resolution to this issue.
- Stormwater infrastructure is not a defined land use in the Standard Instrument. Drainage, although defined, is not a land use for the purpose of the land use tables. Consequently, stormwater infrastructure may be defined as 'any other purpose' or as an ancillary use for the purpose of the land use zones. This has the implication of making stormwater treatment a prohibited land use in the non-urban zones of the shire. It is argued that it is more appropriate to identify, in the first instance, locations for stormwater infrastructure in non-urban zones to manage development expectations in relation to future subdivision applications (i.e. separation of areas for stormwater management from residential zones provides clear direction in relation to its location and scope). Should Council resolve to proceed to public exhibition and consultation with Government agencies, this matter will be pursued with the DP&I;
- The minimum lot size map in the comprehensive Ballina LEP 2011 may need to be amended following subdivision works to clarify the intended development entitlements associated with future lots. It is noted, however, that the DP&I advises that this type of LEP amendment/planning proposal process should be more procedurally routine under the new plan making provisions of the Act. The DP&I has also been requested by Council, as part of the comprehensive LEP renewal process, to amend the standard instrument LEP to enable such subdivision to occur within the provisions of the LEP, without the need for a further planning proposal. Should Council resolve to proceed to public exhibition and consultation with government agencies, this matter would taken up further with the DP&I.

### *Development Control Plan*

Staff believe it is desirable to have information available with the public exhibition material that describes the intended development controls to apply to future subdivision and building works. Councillors will be aware that the introduction of the new comprehensive LEP has major implications for the content and structure of Council's Development Control Plan. Effectively, it must be re-written. Consequently, following the resolution of the comprehensive LEP process, Council's Strategic and Community Services Group will be proceeding to review the Development Control Plan in detail to ensure it conforms to the structure provided by the Standard Instrument LEP and the Housing Code SEPP. It is intended that this review will seek to simplify the structure and range of development controls that apply and, where appropriate, achieve consistency across the shire, with respect to the range of residential development controls.

Regrettably, a draft development control plan has not been prepared to inform public exhibition of the subject draft Planning Proposal. However, in the case of Cumbalum Precinct B, a document titled Cumbalum Design Guidelines, prepared by the proponents' consultants, provides some guidance with respect to future development character and design matters. This document can be included with the exhibition material, should Council resolve to exhibit the draft Planning Proposal.

It is noted that the draft Ballina LEP 2011 includes (by virtue of the Standard Instrument LEP) clause 6.3 which seeks to ensure that a development control plan is in place prior to the granting of development consent for development within an urban release area. Clause 6.3 states:

**6.3 Development control plan [local]**

- (1) *The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.*
- (2) *Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.*
- (3) *The development control plan must provide for all of the following:*
  - (a) *a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing,*
  - (b) *an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,*
  - (c) *an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,*
  - (d) *a network of passive and active recreational areas,*
  - (e) *stormwater and water quality management controls,*
  - (f) *amelioration of natural and environmental hazards, including bushfire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,*
  - (g) *detailed urban design controls for significant development sites,*
  - (h) *measures to encourage higher density living around transport, open space and service nodes,*
  - (i) *measures to accommodate and control appropriate neighbourhood commercial and retail uses,*
  - (j) *suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.*

As outlined above, the development control plan is required to address a range of matters including development staging, infrastructure provision, stormwater management, environmental hazards and building design controls. On face, the above clause provides Council with further security that development consents will not be granted until appropriate arrangements are in place in relation to these matters. It is noted, however, that section 74D of *The Environmental Planning and Assessment Act 1979* states:

**74D Development control plans required or authorised by environmental planning instruments**

- (1) *An environmental planning instrument may require or permit a development control plan to be prepared before any particular development or kind of development may be carried out (and make provision with respect to the preparation and content of any such plan).*
- (2) *Any such development control plan may outline the development of all the land to which it applies.*
- (3) *Any such development control plan may be prepared (and submitted to the relevant planning authority) by the owners of the land to which it applies or by such percentage of those owners as the environmental planning instrument concerned allows. A person authorised by those owners may act on their behalf for the purposes of this subsection.*
- (4) *The relevant planning authority may make a development control plan submitted to it under this section, including with such changes as it thinks fit.*
- (5) *If the relevant planning authority refuses to make a development control plan submitted to it under this section (or delays by more than 60 days to make a decision on whether to make the plan):*
  - (a) *the owners may make a development application despite the requirement of the environmental planning instrument concerned for the preparation of a development control plan, or*
  - (b) *the Minister may act in the place of the relevant planning authority to make the plan (with or without modification), but only if the environmental planning instrument concerned authorises the Minister to do so.*
- (6) *The regulations may extend the period of 60 days referred to in subsection (5) in connection with any failure by the owners to provide further information required by the relevant planning authority for the purposes of making the plan.*

This means that, whilst a DCP must be prepared in accordance with clause 6.3 of the draft Ballina LEP 2011 prior to the granting of development consent, section 74D of the Act provides for such a DCP to be drafted by the development proponents with Council having only 60 days to make a decision on the adoption of the plan before a development application can be lodged. It remains unclear whether the interrelationship between clause 6.3 of the LEP and section 74D of the Act would allow for any such application for development consent to be granted.

It will be recommended, therefore, that a DCP compliant with clause 6.3 of the draft LEP be prepared prior to the finalisation of the subject draft planning proposal.

*Options to progress the subject planning proposal*

Council has a number of options with respect to this matter. As outlined above, those parts of Cumbalum Precinct B that are embodied within the LES have been the subject of detailed urban suitability investigations. However, the remaining development matters remain to be resolved in a manner that would enable the draft planning proposal to be satisfactorily concluded. These include:

- Resolving the mechanism for the delivery of urban infrastructure to service future development by way of development contributions plan/s (and development servicing plans), voluntary planning agreements (VPAs) or some other appropriate mechanism; and
- The preparation, on Council's terms, of a development control plan compliant with clause 6.3 of the draft Ballina Local Environmental Plan 2011.

With respect to infrastructure delivery mechanisms, it is noted that Council is in the process of obtaining preliminary cost estimates for the s.94 infrastructure items identified in the Cumbalum IDP. Further, Council is in the process of revising Council's Development Servicing Plans (DSPs) for water and sewer prepared in accordance with s.64 of the *Local Government Act 1993*. It is anticipated that Council's Civil Services Group will be engaging further with Council with respect to infrastructure delivery options for the Cumbalum Urban Release Area.

Council is invited to consider whether the matter of the infrastructure delivery mechanism should be resolved prior to the public exhibition of the draft planning proposal. If this is the case then Council may defer the public exhibition process until this matter is resolved noting however that such action would contravene the instructions issued by the DP&I to expedite the planning proposals. Alternatively, Council may proceed to public exhibition without this material. It is noted that a development contribution plan or plans, and development servicing plans may need to be prepared and publicly exhibited prior to the finalisation of the draft planning proposal. It is noted, however, that a voluntary planning agreement or other appropriate mechanism may also be a means of progressing this matter in the short-term.

With respect to the preparation of a development control plan, compliant with clause 6.3 of the draft Ballina LEP 2011, although ideally it is staff's preference that the DCP would be included with the exhibition material to accompany the draft planning proposal, the DCP could be progressed, and separately exhibited, prior to the finalisation of the draft planning proposal.

### **Sustainability Considerations**

- **Environment**

Future development of the subject land would have implications for the natural environment of the site and the locality. The Local Environmental Study and draft planning proposal provide for the mitigation and amelioration of potential environmental impacts of future development.

- **Social**

The provision of additional residential development would contribute to the changing social environment of Ballina Shire and provide existing and future residents with greater housing choice. Development may also place additional demands on Council and other government and non-government organisations for the provision of social services and urban infrastructure. However, it is noted that development of this land will be consistent with Council's endorsed and established urban land release strategy.

- **Economic**

The increase in population arising from the future development of the subject land may contribute to the economic development of the locality and the shire, via the additional aggregate demand in the economy and the provision of labour resources to businesses.

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

The rezoning of land for residential and commercial purposes will enable land owners to lodge development applications for residential subdivision and development of the land.

It is noted that the funding mechanisms for the delivery of urban infrastructure has not been resolved to date. The reliance on conditions of consent for the provision of urban infrastructure, in the absence of voluntary planning agreements and/or statutory contributions plans, could expose Council to legal and financial risks.

Publicly exhibiting the planning proposal would have (minor but manageable) resource implications for Council's Strategic and Community Services Group.

### **Consultation**

Council should note that the new plan making provisions of the Act give the Director General for the DP&I the power to determine the circumstances around public exhibition procedures for planning proposals. In the case of the Cumbalum Precinct B Planning Proposal Gateway Determination of 15 November 2010, the DP&I has specified that the exhibition period will be 28 days. It is noted, due to the impending Christmas period, that Council may be concerned to ensure that adequate opportunity is provided for the community to consider and respond to public exhibition procedures should Council resolve to publicly exhibit the draft planning proposal. Consequently, the advice of the DP&I has been sought with regard to whether the public exhibition period can be extended over the Christmas period. However, at the time of report preparation Council has not received a response from the Department on this matter.



### Options

1. That Council resolve to place the Cumbalum Precinct B draft Planning Proposal on public exhibition for a period of 28 days, commencing in early 2012. Following the conclusion of the exhibition period, Council is to receive a further report regarding submissions and outcomes associated with the public exhibition period.

Under this option the draft Planning Proposal, Local Environmental Study and Infrastructure Delivery Plan will be placed on public exhibition. It is recommended, should Council pursue this option, that the exhibition period avoid the Christmas period. Further, under this option, Council's Civil Services Group would consult further with the development proponents and the elected Council to resolve infrastructure servicing issues during the public exhibition period.

Following the exhibition a further report, analysing the submissions received during the exhibition, will be prepared and presented to Council. Council will then be invited to consider the submissions, along with any recommended amendments identified during this process. Council may then proceed to recommend the planning proposal to the Minister for Planning for the amending LEP to be made, or alternatively, the Council may resolve to discontinue or defer the planning proposal.

It is noted that under this option, should the outcome of further consideration of infrastructure delivery options conclude that the precinct be incorporated into Council's statutory infrastructure plans (s.94 & s.64) consideration will need to be given as to whether the planning proposal can proceed prior to the finalisation of these plans, possibly involving an additional period of public exhibition.

Under this option the proponents for Cumbalum Precinct B will be invited to provide further information relating to the stormwater treatment issues raised in this report, prior to reporting this matter back to Council following public exhibition.

Option one is preferred and forms the basis of the recommendation.

2. That Council await the resolution of its preferred mechanism for infrastructure funding to service future development of Cumbalum Precinct B, prior to exhibiting the draft Planning Proposal. Under this option Council's Civil Services Group would consult further with the development proponents and the elected Council to resolve infrastructure servicing issues. Following resolution of this issue a further report would be presented to Council with regard to public exhibition of the draft Planning Proposal.

The views of the DP&I regarding the adequacy of information available to publicly exhibit the draft plan are noted. Further, the development proponents have argued that these issues can be adequately resolved prior the finalisation of the draft Planning Proposal. Having regard for these views, this option is not recommended.

3. That Council discontinue the planning proposal process for Cumbalum Precinct B. This option is available to Council, however due to the information available through the LES process and Council's strategic land use planning framework, this option is not recommended. Importantly, it should be noted that if Council resolves to cease further processing of the LEP amendment, the Minister for Planning & Infrastructure may elect to progress the matter separate from Council.

As mentioned the recommendation is for option one.

### **RECOMMENDATIONS**

1. That Council place the Cumbalum Precinct B draft Planning Proposal on public exhibition for a period of 28 days, commencing in early 2012.
2. Following the conclusion of the exhibition period, Council is to receive a further report regarding submissions and outcomes associated with the public exhibition period and information concerning the preferred means of infrastructure delivery to service new development within the precinct.
3. That the proponents for Cumbalum Precinct B be invited to provide further information relating to the stormwater treatment issues outlined in this report, prior to Council receiving a further report following public exhibition.

### **Attachment(s)**

1. Letter from Mr Owen Lynn (proponent) dated 1 September 2011 regarding delays in the processing of the Precinct B Planning Proposal.
2. Council's letter to Mr Own Lynn dated 2 September 2011.
3. Letter from Department of Planning and Infrastructure dated 5 October 2011 (Mr Neil McGaffin, Acting Deputy Director General, Plan Making and Urban Renewal).
4. Cumbalum Precinct B proposed zoning under the terms of the Draft Ballina Local Environmental Plan 2011. (separate attachment)

**9.3 Ballina LEP - Amendment No.90 - Stewart Farm, Skennars Head**

<b>File Reference</b>	Draft Ballina Local Environmental Plan 1987 Amendment No.90
<b>CSP Linkage</b>	Diverse and balanced land use
<b>Delivery Program</b>	Strategic Planning
<b>Objective</b>	To seek direction from Council with respect to further processing of Draft LEP 1987 Amendment No.90.

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**Background**

Council received a request in 2006 from Wave Break Properties Pty Ltd to initiate an amendment to the Ballina Local Environmental Plan 1987 relating to Lot 1 DP 184117, Lot 1 DP 449851, Lot 50 DP 755684, Lot 66 DP 755684, Lot 76 DP 755684 and Lots 1 and 2 DP 784864, commonly known as the Stewart farm at Skennars Head (Attachments 1 and 2). More specifically, the request sought the rezoning of the northern portion of the above land, immediately southward of Headlands Drive and the existing residential development at Skennars Head, to facilitate urban development.

With respect to the amendment request, Council resolved to prepare an amendment to the LEP at its December 2006 Ordinary Meeting as follows [Minute No.141206(009)]:

*"That Council prepare an amendment to the Ballina Local Environmental Plan to facilitate urban development and promote improved environmental outcomes over land owned by Dr and Mrs Stewart located adjacent to The Coast Road at Skennars Head. Further, that a local environmental study be prepared to support the draft local environmental plan."*

The amendment is known as Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm (Draft LEP Amendment No.90). The history of the amendment process is outlined in the report regarding Draft LEP Amendment No.90 presented at Council's July 2011 Ordinary Meeting. At that meeting, Council considered the progress of Draft LEP Amendment No.90 and resolved as follows [Minute No.280711/11]:

*"That this matter be deferred until after Council has held a workshop to discuss the matter, and that the workshop be held on a confidential basis due to commercial in confidence aspects."*

In accordance with the above resolution, a Councillor workshop was held on 12 September 2011. As an outcome of the workshop, Councillors identified a preference for the finalisation of lease arrangements between Council and Dr and Mrs Stewart in relation to land east of The Coast Road prior to the reconsideration of the progress of Draft LEP Amendment No.90.

Dr and Mrs Stewart agreed to terms associated with the lease of the land known as the Sharpes Beach car park and an adjoining area (including land to facilitate the shared coastal pathway) in October 2011. Given this, this report outlines the status of Draft LEP Amendment No.90 and seeks direction from Council with respect to further progress of the matter.

### **Key Issues**

- Progress of Draft LEP Amendment No.90

### **Information**

#### *Planning Policy Context*

The following provides an overview of the planning policy context associated with the land the subject of the initial LEP amendment request made by Wave Break Properties in 2006.

- Ballina Local Environmental Plan 1987

Attachment 3 illustrates the land use zoning applicable to the subject land under the Ballina Local Environmental Plan 1987. Significantly, a substantial portion of the land is subject to the 1(d) Rural (Urban Investigation) zone. This signals to land owners, the community and other interested parties that the land has been identified by Council as having potential for investigation in relation to urban land uses.

- Ballina Urban Land Release Strategy

The 1(d) zoned portion of the land is identified in Council's urban land release strategy as having potential for urban development by virtue of the current land use zoning applicable to the site.

- Lennox Head Structure Plan

The majority of the subject land is identified as Area T under the Lennox Head Structure Plan. The structure plan does not nominate preferred uses for the land, although it identifies visual separation between Skennars Head and East Ballina as a desirable outcome arising from the Lennox Head Community Aspirations Strategic Plan.

- Far North Coast Regional Strategy

The area of the site subject to the 1(d) zoning is identified in the Far North Coast Regional Strategy as a Proposed Future Urban Release Area. This acknowledges that the land has potential for urban land use subject to site specific analysis and considerations.

- Summary

Having regard for the above, substantial portions of the subject land are clearly identified in both State Government and local planning policies as having potential for future urban land uses. Importantly, however, this does not mean that the entire area the subject of the LEP amendment is suitable for urban land uses. The LEP amendment process may identify land use zoning arrangements that reflect other values such as environmental protection, urban separation or agricultural production. That is, LEP amendment processes (including Draft LEP Amendment No.90) do not only address urban land use outcomes.

*LEP Amendment Timing*

The Department of Planning and Infrastructure (DP&I) initially nominated the end of May 2011 for completion of Draft LEP Amendment No.90. Subsequently, the DP&I advised of a 3 month extension, making completion of the amendment due by 25 August 2011.

Following Council's July 2011 Ordinary Meeting, Council asked the DP&I to hold the amendment in abeyance pending Council's further consideration of the matter. In response, the DP&I advised of a further extension to the timeframe for completion of the amendment, with Draft LEP Amendment No.90 now due for completion before 25 May 2012.

*Processing to Date*

Although a local environmental study has been substantially completed for the land, and the relevant technical analysis for the site is essentially complete, Council has not been able to proceed to public exhibition or finalisation of the draft amendment. The progress of the draft amendment has to date been subject to confirmation of the terms of a proposed voluntary planning agreement between Council and the proponent and negotiations associated with land owned by Dr and Mrs Stewart east of The Coast Road (the Sharpes Beach car park area).

The initial intent of a voluntary planning agreement has been to ensure that several matters in the interest of the public are resolved prior to the rezoning of the land. Items considered in relation to a voluntary planning agreement have included provision of long term public access to the Sharpes Beach car parking area, public access to the remainder of the Stewart farm east of The Coast Road, revegetation of the planned urban break between East Ballina and Skennars Head and provision of public infrastructure upgrades, including improvements to the intersection of The Coast Road and Headlands Drive. Further detail in relation to the voluntary planning agreement in relation to the amendment is provided below.

As outlined above, further processing of the amendment was considered by Council at its July 2011 Ordinary Meeting. At that meeting, Council resolved to hold a confidential workshop. That workshop was held on 12 September 2011.

*Sharpes Beach Car Park Area*

It has been assumed in the processing of the amendment to date, that the incorporation of the land east of The Coast Road into public ownership remains a desirable outcome to Council. This approach was generally supported by those Councillors in attendance at the 12 September confidential workshop. In this regard, it should also be noted that in considering the progress of the amendment in January 2007, the DP&I indicated that the coastal land east of The Coast Road should be dedicated into public ownership as part of the rezoning process.

The matter of the coastal land east of The Coast Road (being part Lots 1 and 2 DP 784864) is significant as the land currently contains public infrastructure and facilitates public access to Sharpes Beach.

With respect to this land, alternate options have been examined to secure long term public access to the area given that Dr and Mrs Stewart have advised that Wave Break Properties does not have authority to act in relation to the land. That is, Wave Break Properties has not been able to demonstrate that it is in a position to provide for long term public access to the Sharpes Beach car park as an outcome of the LEP amendment process.

This is reinforced by the withdrawal of outcomes associated with the car park area from the foundations of a voluntary planning agreement proposed by Wave Break Properties.

In considering long term access to the Sharpes Beach car park area, Council resolved to enable the General Manager to negotiate terms for a long term lease of a suitable area of land with Dr and Mrs Stewart at its July Ordinary Meeting [Minute No.280711/25]. Dr and Mrs Stewart have now agreed to a 99 year lease to Council over the Sharpes Beach car park and adjoining land. In summary, the terms of the lease provide for the use of the land generally in accordance with the Sharpes Beach Master Plan (Attachment 4) and the provision of the shared coastal pathway along the Sharpes Beach foreshore.

To date Council has signed an agreement for lease with Dr and Mrs Stewart and the actual lease itself will be finalised once the separate allotment is created (for any lease over five years, a separate lot needs to be created).

*Planning Agreement*

Council has invited the address of several key issues (including infrastructure provision and the dedication of coastal land) relating to the LEP amendment request via a voluntary planning agreement. This essentially entails the proponent documenting a set of commitments that it will adhere to should the land be rezoned.

Council was advised at its July Ordinary Meeting that Wave Break Properties had not been able to present suitable documentation (whether via a draft voluntary planning agreement or other means) addressing its commitments to relevant matters of interest to Council. Since that time, Wave Break Properties has submitted documentation, via its consultant Elton Consulting, outlining the basis for a proposed voluntary planning agreement (Attachment 5).

With respect to the voluntary planning agreement (VPA) platform proposed by Wave Break Properties, it is considered that the following elements are key considerations:

- In framing the approach to the proposed agreement, Wave Break Properties suggests that Council requires Wave Break Properties to enter into a VPA. Importantly, Council does not require Wave Break Properties to enter into a VPA, but rather staff has suggested a VPA as a means of addressing several key issues of relevance to the proposed LEP amendment. Significantly, Council is yet to establish a formal position on the utilisation of a VPA or the progress of the draft LEP amendment.
- The proposed VPA platform does not include dedication of any land east of The Coast Road into public ownership. This is considered to be a key consideration for Council and relates to the lease agreement with Dr and Mrs Stewart as outlined above.
- With respect to the matter of road and transport infrastructure, Wave Break Properties identifies construction of a new access into Skennars Head off The Coast Road and rehabilitation of part of Headlands Drive as part of a VPA. In September 2011, Wave Break Properties proposed that Council would contribute approximately \$175,085.25 towards this work on the basis of traffic generation calculations associated with potential future development arising as a result of the LEP amendment.

In this regard, the proposed infrastructure is not identified under Council's 2010 Roads Contributions Plan and the verbal advice provided by Council staff to the proponent has been that the cost of the required access arrangements should be met by the development. However, staff has indicated that Council may contribute up to \$100,000 to the cost of works in the public interest.

- In relation to s94 developer contributions, staff has advised Wave Break Properties that items addressed by way of a VPA will not be considered in relation to the offset of required s94 contributions. That is, matters provided for via a VPA would be in addition to required s94 contributions as set out under Council's endorsed s94 plans.
- The VPA proposal does not include the dedication of environmental protection zoned land along the western side of The Coast Road or wetland areas adjacent to the proposed development footprint, embellishment of the currently 7(d) Environmental Protection (Scenic/ Escarpment) zoned area of the site and rehabilitation of wetland areas.

Given the nature of these areas, Council requested further information from Wave Break Properties on 23 September 2011. Specifically, Council requested clarification regarding the intended use of land associated with the draft LEP amendment that is identified as having either environmental protection or open space values. Council also sought confirmation of Wave Break Properties' proposed approach with respect to the management of stormwater and associated infrastructure relative to wetland areas in the locality.

Wave Break Properties responded with respect to the above in October 2011 indicating the following:

*"In relation to the dedication of environmental protection zoned land along the western side of The Coast Road, I can advise that a portion of this land, which will be located adjacent to The Coast Road and the new entrance road, will be a local park and the remainder of the land will remain in private ownership. The future use of that land would be in accordance with the provisions the applicable zone. As such the land does not form part of the VPA.*

*In relation to the environmental protection zoned land in the wetland area I can advise that this land will remain in the ownership of Dr Stewart. As set out in Engineering report, prepared by Cardno in 2007 and submitted with the original rezoning request, a treatment train, incorporating water sensitive design is proposed to ensure stormwater is treated to remove pollutants prior to discharge. The treatment train will function to protect the SEPP 14 Wetlands to ensure pollutant load reduction targets have been met prior to stormwater entering the wetland system. In addition, stormwater will be detained prior to discharging to the wetland, which will allow peak post development discharge flow rates to match the pre development flows. The detail will be resolved through the development application process."*

The future use of land identified as having environmental or open space values and the method of stormwater treatment and discharge remains of some concern. However, these matters can be further considered as part of the finalisation of the environmental study for the land and prior to public exhibition.

Having regard for the above and the information available to Council at present, the proposal for a VPA in the form submitted by Wave Break Properties in July 2011 is not considered satisfactory in relation to the address of the identified issues of interest to Council. However, the terms of a VPA can be further considered and revised in conjunction with the finalisation of the environmental study for the land and the public exhibition of the rezoning proposal should Council resolve to progress the amendment.

*Other Land Zoned 1(d) Rural (Urban Investigation) within the Stewart Farm.*

In addition to Lot 2 DP 784864, there are several other land parcels between Skennars Head and East Ballina that are currently zoned 1(d) Rural (Urban Investigation) under the Ballina LEP 1987. This land is described as part Lot 1 DP 784864, part Lot 50 DP 755684, part Lot 76 DP 755684, part Lot 1 DP 184117 and areas of road reserve. This land is identified as Area T under the Lennox Head Structure Plan. The structure plan does not nominate preferred uses for the land as the area was outside the scope of the plan. However, the plan identifies visual separation (a green space) between Skennars Head and



East Ballina as a desirable outcome arising from the Lennox Head Community Aspirations Strategic Plan.

Although it is apparent that Wave Break Properties is not able to act in relation to this land, site analysis and assessment undertaken in relation to the LEP amendment request addresses these land parcels. Given the analysis undertaken and the current zone arrangement, there is presently an opportunity to address the entire 1(d) zoned area and its surrounds with respect to the establishment of an urban buffer area between Skennars Head and East Ballina. It is recommended that the provision of an urban break between these urban areas by way of land use zoning and/or policy be considered in relation to the Wave Break Properties proposal should it proceed. This is consistent with Council's resolution of December 2006 in relation to Draft LEP Amendment No.90.

*Progress of Draft LEP Amendment No.90*

Given the historical circumstances associated with the land and the extent to which technical analysis associated with the proposal has been completed, it is considered appropriate to proceed to the public exhibition phase of the LEP amendment. This phase provides for completion of the environmental study associated with the proposal, an opportunity for the community to provide feedback in relation to the proposed rezoning and an avenue for the proponent to provide a revised VPA proposal should it wish to do so.

Importantly, Council is able to cease further progress on Draft LEP Amendment No.90 following its consideration of submissions and other information arising as a result of the public exhibition process. There is no merit-based recourse available to the proponent in relation to such an approach via the Land and Environment Court.

In addition to the above, it is suggested that where the LEP amendment progresses to public exhibition, the provision of an urban break between Skennars Head and East Ballina (possibly by way of an environmental protection land use zone) should be incorporated into the LEP amendment. Such an urban break would be advantageous in supporting ongoing separation between the East Ballina and Skennars Head urban areas as well as providing for recognition of an area understood to be of Aboriginal cultural significance at the southern end of the Stewart farm. Such an urban break could be identified whilst still enabling continued agricultural activity on the land.

In the event that Council resolves to proceed to publicly exhibit Draft LEP Amendment No.90, it is expected that this would occur in the first quarter of 2012 given the need to finalise the environmental study for the land and undertake the exhibition clear of the Christmas holiday period. In this regard, further processing of the proposal (including any exhibition) will be subject to payment of required fees and charges as adopted by Council. As at the time of writing this report, the proponent has outstanding fees that have not been paid. Notwithstanding this, the recommendation below suggests that the matter progress to public exhibition with fees to be resolved before commencing the finalisation of the environmental study for the land and public exhibition.

### **Sustainability Considerations**

- **Environment**

Draft LEP Amendment No.90 includes a variety of considerations that seek to ensure that land identified as having potential for urban land use is considered with respect to the environmental, social and economic attributes of the land. In particular, infrastructure, access to coastal land and management and protection of environmental attributes such as Aboriginal heritage, visual amenity and habitat corridor values are considered to be central considerations with respect to the future use of the land.

- **Social**

As above.

- **Economic**

As above.

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

Council has expended substantial internal resources with respect to the processing of this matter. In particular, substantial time has been expended in addressing issues associated with authority to act in relation to the land, the integration of land east of The Coast Road into the LEP amendment request and advancement of an agreement or mechanism that addresses the issues of significance to Council.

Notwithstanding the above, it is considered reasonable to advance the LEP amendment to public exhibition in the circumstances. Further steps in the process will be at the proponent's cost in accordance with Council's adopted fees and charges schedule and Council may terminate the amendment at any time.

### **Consultation**

No formal community engagement by Council has been undertaken to date. However, it is suggested that Council elicit feedback from the community in relation to the proposal via the public exhibition of Draft LEP Amendment No.90 in accordance with the terms of the *Environmental Planning and Assessment Act*.

### **Options**

1. Proceed to finalise the environmental study for the land and undertake public exhibition of Draft LEP Amendment No.90.

Under this approach, Council would place the draft amendment on public exhibition following the completion of the environmental study for the land. In accordance with the Department of Planning and Infrastructure's terms for the processing of the amendment, the exhibition period would be 28 days in duration. The exhibition would include details of the proposed amendment, the completed environmental study and identification of matters that may be suited to address via a VPA. However, it is anticipated that a public exhibition would not incorporate a formal VPA proposal on the basis that the current VPA material put forward by Wave Break Properties is not considered to be satisfactory to Council.

The public exhibition of the draft amendment is the recommended approach as it affords an opportunity for completion of the environmental study and community feedback in relation to the rezoning concept. It also allows for further opportunity to address key site issues via a VPA.

The proponent is required to meet the costs associated with this step and Council retains the option of ceasing the rezoning process following consideration of submissions or at any time in the amendment process if this is identified as a preferred course of action.

2. Cease further processing of Draft LEP Amendment No.90.

Council may elect to cease further processing of the LEP amendment. Under this scenario, Council would formally request that the Minister for Planning & Infrastructure discontinue Draft LEP Amendment No.90.

This approach is not recommended at this time as it is considered appropriate to provide for the finalisation of the environmental study and public exhibition of the draft amendment.

Council may consider the VPA platform set out by Wave Break Properties to be unsuitable and a reason for cessation of the draft amendment. However, a public exhibition period affords a further opportunity to discuss the terms of a VPA for consideration in light of community submissions in response to an exhibition period.

Importantly, it should be noted that if Council resolves to cease further processing of the LEP amendment, the Minister for Planning & Infrastructure may elect to progress the matter separate from Council.

If Council resolves to cease further progress on the amendment, the longer term status of the subject land should also be considered. That is, it is suggested that Council consider whether the land suitable for investigation for its urban potential again at a future date, or whether it is no longer considered a suitable location for future urban development. Where the later is the view of the Council, it is recommended that the land is removed from Council's planning framework for potential urban land and identified as part of an urban break between Skennars Head and East Ballina.

It is stressed that, whilst this is an option, it is not a recommended course of action. The land has appeared as a potential urban release area in Council's endorsed strategic land use planning documents for many years. Significantly, each of these documents has been an outcome of community engagement exercises. Given this, and the nature of the site assessment undertaken to date, it is considered appropriate that the technical assessment associated with the land and associated community engagement be undertaken prior to determining the outcome of the proposed LEP amendment (i.e. whether to proceed to rezone the land for urban purposes or cease further consideration of the matter).

3. Defer further processing of Draft LEP Amendment No.90.

Council may elect to defer its decision regarding the progress of the draft amendment pending further information. However, this is not recommended as Council has held a confidential workshop canvassing the proposal and a substantial amount of technical information is available in relation to the land.

### **RECOMMENDATIONS**

1. That Council endorses the public exhibition of Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm following completion of the environmental study for the subject land.
2. That progress of Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm incorporates consideration of provision for an urban break between Skennars Head and East Ballina by way of land use zoning and/or policy.
3. That the outcomes associated with the public exhibition of Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm be reported to Council for its further deliberation.

### **Attachment(s)**

1. Stewart Farm Study Area - Draft LEP Amendment No.90.
2. Proposed Structure Plan - Wave Break Properties.
3. Stewart Farm Study Area - Ballina LEP 1987 Land Use Zoning.
4. Sharpes Beach Master Plan.
5. Proposed Voluntary Planning Agreement Terms - Wave Break Properties (September and October 2011 correspondence).

**9.4 Shire Wide Aboriginal Heritage Study**

<b>File Reference</b>	Ballina Shire Aboriginal Heritage Study
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Strategic Planning
<b>Objective</b>	To report compliance and partnership outcomes of the Ballina Shire Aboriginal Heritage study

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**Background**

Council's Strategic and Community Services Group has recently completed the process of a shire-wide Aboriginal Heritage Study. Foremost, the study sought to revise Council's internal processes relating to Aboriginal cultural heritage assessment in accordance with the NSW National Parks and Wildlife Act and supporting regulations and guidelines. This study was undertaken in partnership with Jali Local Aboriginal Land Council and with funding from the Federal Department of Sustainability, Environment, Water, Population and Communities.

**Key Issues**

- Aboriginal cultural heritage assessment and Council's legislative responsibility in accordance with the NSW National Parks and Wildlife Act and supporting regulations and guidelines;
- Outcomes of the project and its partnership with Jali Local Aboriginal Land Council.

**Information**

In August 2009 Council engaged consultants Converge + Community and Heritage to work with Council staff and local Aboriginal community members to review its internal processes for undertaking Aboriginal cultural heritage assessment in the Ballina Shire.

This process was spurred by knowledge that Aboriginal cultural heritage sites in the shire (prior to the study) was poorly understood and documented; as well as by recent changes made with respect to Aboriginal cultural heritage management regulations and guidelines pertaining to the NSW National Parks and Wildlife Act 1974. The study process has enabled Council to update its internal procedures with respect to Aboriginal cultural heritage assessment and management in accordance with an improved record of Aboriginal sites, and having regard for recent changes to the above noted legislative requirements.

Aboriginal cultural heritage sites across the State are diverse. By far however, the majority of recorded sites are archaeological in nature; that is they are defined, or identified, by the presence of physical cultural material ranging from a single artefact, to more complex features/sites such as artefact scatters, middens, scarred trees etc.

Other types of sites are spiritual or social in nature, and therefore do not necessarily demonstrate any trace of physical evidence.

The NSW National Parks and Wildlife Act has regard for both physical and non-physical type Aboriginal cultural heritage sites/places. In addition, this legislation has regard for Aboriginal cultural heritage sites that are both known, (have been identified and/or recorded) or unknown. Unknown meaning that the heritage assessment process must take into consideration the potential presence of Aboriginal cultural heritage sites based on evidence such as historical documentation and landscape characteristics and/or features. All archaeological deposits in NSW are the property of the Crown.

In light of the above outlined changes to guidelines and regulations and the nature of Aboriginal cultural sites, key activities undertaken during the study were an archive search of local repositories to gather primary source material; an analysis of landscape characteristics, soils and landforms throughout the shire to identify environments that demonstrate a likelihood of containing Aboriginal cultural heritage sites. Community consultation days were held in Ballina and at Cabbage Tree Island, inviting community members to contribute oral evidence of sites.

This information, along with information already held by the NSW Office of Environment and Heritage, enabled the mapping of known and potential areas that contain, or may reveal evidence of, Aboriginal cultural material.

The compilation of this data will greatly improve Council's compliance with new guidelines regarding Aboriginal cultural heritage resulting from changes made to the NSW National Parks and Wildlife legislation in October 2010 and for addressing known and unknown Aboriginal cultural heritage issues. The changes to guidelines and regulations made in accordance with this legislation have significantly increased penalties for those knowingly, or unknowingly, harming or destroying, Aboriginal cultural heritage sites without consent from that authority.

Moreover, this study process will enable the improved management of Aboriginal cultural heritage sites/places in the shire as a result of a better record and understanding of sites/places of known and unknown significance. It will also provide improved processes for advising property owners, consultants, proponents and Council officers of obligations and procedures for assessing and managing Aboriginal cultural heritage.

Council will appreciate that data relating to Aboriginal cultural knowledge is sensitive in nature, as well as is often bound by cultural protocols regarding ownership of, and access to such information. The sensitive nature of, and important cultural considerations relating to, this information is further reflected by the legislation and associated mechanisms in place to manage this data by the NSW Office of Environment and Heritage through its Aboriginal Heritage Information Management System (or AHIMS database).

A further and important outcome of this project is that it provides a foundation upon which to develop other Aboriginal cultural heritage projects in the shire that recognise and promote Aboriginal cultural heritage, and its values. Future projects would also be planned and delivered in consultation with Aboriginal stakeholders in the shire.

Moreover, it is highlighted that the partnership with Jali Local Aboriginal Land Council to undertake this study has been a successful and rewarding experience for staff and representatives from both organisations.

### **Sustainability Considerations**

- **Environment**

The study has provided improved environmental outcomes through a better understanding of Aboriginal cultural heritage sites in the shire. It has potentially brought about improved external and internal mechanisms in accordance with the NSW Office of Environment and Heritage's guidelines for undertaking and assessing Aboriginal cultural heritage.

- **Social**

The study has increased community well-being resulting from the improved management and/or conservation of the shire's Aboriginal cultural heritage. It has also led to an improved understanding/working relationship with Jali Land Council concerning cultural heritage matters.

- **Economic**

Heritage conservation makes important economic contributions to communities through developing tourism and local visitor experiences/attractions.

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

Consultants engaged to undertake the study were funded by a grant from the Federal Department of Sustainability, Environment, Water, Population and Communities. Council made in-kind contributions through Council officers' time and associated administrative costs.

### **Consultation**

As noted, this project was undertaken in partnership with Jali Local Aboriginal Land Council, whose jurisdiction covers the Ballina Shire local government area. Like all local land councils across the State, one of Jali's key responsibilities is the care and promotion of Aboriginal cultural heritage in accordance with the NSW Land Rights Act 1984. Through a steering committee drawn from Jali's Board members, consultant personnel and Council officers, Jali assisted in planning and steering the project.

In accordance with the Office of Environment and Heritage's consultation guidelines, the project also provided the opportunity for all other Aboriginal stakeholders and/or community members to participate in the key project processes through attending community meetings to input the recording of sites and associated information. An Aboriginal Project Assistant was engaged to assist all aspects of the project and to encourage broader Aboriginal community participation through liaison.

A further project element that provided the opportunity for all Aboriginal community members' participation was the holding of an oral history workshop day to hear about the project and receive information and feedback on conducting oral history interviews of Aboriginal Elders in the shire. This workshop was facilitated by Mr Michael Aird, who is a renowned specialist in the fields of oral history and Aboriginal community exhibitions, as well as the academic field of Aboriginal people in historic photography. This workshop was well attended and established the desire for further project work that promoted the Aboriginal cultural heritage of the shire.

Consultation during the course of the project was also undertaken with representatives from the NSW Department of Environment and Heritage to address issues of Council's compliance with the NSW National Parks and Wildlife Act regarding Aboriginal cultural heritage. This included issues relating to the management of site data and cultural knowledge. Council's process will update the Department's data relating to Aboriginal cultural heritage which is wholly managed by that Department.

### **Options**

This report has been prepared to inform the Council of processes associated with the study. As it is essentially for information purposes, no options have been submitted for consideration.

### **RECOMMENDATIONS**

That Council notes the contents of this report relating to the Ballina Shire Aboriginal Heritage Study process and outcomes.

### **Attachment(s)**

Nil



**9.5 Ballina Community Services Centre - Renaming**

<b>File Reference</b>	Ballina Community Services Centre
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Community Planning
<b>Objective</b>	To invite Council's consideration of the renaming of the Ballina Community Services Centre

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**Background**

It has recently been brought to Council's attention that the name 'Ballina Community Services Centre' is applied to two separate buildings in Ballina, both in the ownership of Council. A local resident has written to Council outlining his concerns regarding the confusion caused by the duplicated naming, and requesting Council to rectify the situation.

The first of these buildings is located at No. 89 Tamar Street, which is occupied by the NSW Department of Family and Community Services as its administration centre. The second building is located on Bangalow Road in Treelands Reserve and is used for offices under lease by several organisations and also for the delivery of a diverse range of community services through casual hire. The Bangalow Road property was officially opened in April 2009, at which time the name was applied.

In recent communications between staff and officers with the Department of Family and Community Services, it has been established that the Department refers to all its administration buildings within NSW as Community Services Centres, prefixed by the name of the town in which the building is located. Consequently, the Department refers to the Tamar Street property as the Ballina Community Services Centre, even though it has not been officially named as such. This practice of the Department has operated for a considerable period of time, and was relevant prior to each of the two buildings being constructed.

**Key Issues**

- To determine whether a change of the name of a Council property is warranted and appropriate.

**Information**

Whilst it is acknowledged that the two facilities have operated independently of each other for a couple of years now, apparently without too much confusion being created, it is considered prudent for the Council to determine whether it wishes to take action to change the situation.

If Council does consider that action is warranted, the preferred thing to do is to change the name of the Bangalow Road premises, as the Department would not consider changing its practice on a State-wide basis in respect of its reference to the Tamar Street property. Under the current lease, the Department has the potential to be occupying that building until 2022.

Whilst a change to the name of the Bangalow Road property is a matter for Council, staff has been contemplating the matter and has provided the following suggestions:

- a The Treelands Centre - This name has been nominated as the building sits within Treelands Reserve, therefore it has a 'convenience' factor.
- b The Kentwell Centre - Ms Bernice Kentwell was a former prominent and active resident of Ballina who was an exceptionally strong advocate for the establishment of a community centre. Ms Kentwell was instrumental in enabling the construction of the existing building on Bangalow Road through a very substantial bequest from her Estate.
- c A third option could be to utilize an appropriate local Aboriginal word as an alternative name for the building. For example, a word meaning 'meeting place', or similar. From preliminary discussions with some Aboriginal community members however, it seems there may be some difficulty experienced in achieving consensus as to the most appropriate word to be used.

The Executor of Ms Kentwell's Estate has been contacted personally to ascertain whether there are any concerns regarding the nomination of this name. The Executor has advised that she believes the members of Ms Kentwell's family would be "delighted and exceptionally proud" to receive this nomination.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The purpose of implementing a name change for the Bangalow Road property would be to reduce the potential for further confusion within the community about the services offered within the respective buildings.
- **Economic**  
Not Applicable

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

From Council's perspective, there will be some costs and inconvenience in effecting a name change for the building, however these should be manageable.

The other key stakeholders are the tenants within the Bangalow Road property, who have each advised that a name change would not significantly adversely affect their operations.

### **Consultation**

The level of external consultation undertaken is outlined in this report.

Internally, there are mixed views from staff about the benefits and practicalities of a name change, hence Council's direction is sought. If Council's preference is to change the name, then proposed should be exhibited for public comment.

### **Options**

Council may either agree that a name change for the Bangalow Road property is warranted, or leave the situation as it is.

It acknowledged that the current duplication of names is not causing a significant community concern, though Council's attention has been brought to the fact that it can create confusion, and this has the potential to increase in the future. For that reason, a name change is seen as desirable.

If Council agrees, it remains for the Council to select one of the names nominated in this report, or choose another that it considers appropriate. Given Ms Kentwell's very substantial advocacy for a new community centre in Ballina, and her extremely generous donation toward its construction, it will be recommended that Council endorse 'The Kentwell Centre' as the new name of the property, for exhibition purposes.

### **RECOMMENDATIONS**

1. That Council provides, in principle support, for the Ballina Community Services Centre located on Bangalow Road, Ballina to be re-named 'The Kentwell Centre'.
2. The Centre is being named after Ms Bernice Kentwell, who was a long term supporter of the concept for the centre and provided a significant financial contribution to the construction of the centre through her Estate.
3. The Centre is being renamed due to the clash of the current name with the Ballina Community Services Centre building at 89 Tamar Street, Ballina.

### **Attachment(s)**

Nil

**9.6 Lennox Head Cultural and Community Centre - Waiver of Fees**

<b>File Reference</b>	Lennox Head Cultural & Community Centre
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Community Planning
<b>Objective</b>	To seek Council's approval for the waiving of hire fees pertaining to the Lennox Head Recreation and Social Club's planned use of the Lennox Head Cultural & Community Centre.

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**Background**

Prior to the construction of the new Lennox Head Cultural and Community Centre (LCCC) on Williams Reserve, the site was home to the Lennox Head Recreation and Social Club Hall. This hall was established on the crown reserve in 1962 by the Lennox Head Tennis Club, which maintained the building until the Lennox Head Recreation and Social Club was formed in 1968.

The club became incorporated in 1989 and continued to maintain the hall and was delegated by Council to manage all bookings at the facility until its closure and demolition in 2009, ahead of the construction of the new Lennox Head Cultural and Community Centre. On 17 June 2009 the club management submitted to Council funds raised from previous bookings of the hall totalling \$36,219.54.

A check of Council's financial records has confirmed the club's payment of this money to Council. The funds have been placed in consolidated revenue and effectively this means they have been used to assist in offsetting of the considerable costs associated with the construction of the LCCC.

Since the closure of the hall on Williams Reserve, the club has negotiated a temporary arrangement with Sanctuary Village, on Ross Lane, for the use of the village hall for the purposes of playing indoor bowls. This game is played twice-weekly and provides welcome social activity for this group that is now primarily comprised of senior citizens and aged pensioners. The move to Sanctuary Village has seen a drop in the number of participants however, and the busiest meets of the week are often attended by no more than twelve members.

Given that the current arrangement is only temporary, the club would like to return to Lennox Head and hire the sports hall in the new community centre, a move which is hoped may increase awareness and patronage of the group.

Due to the large felt mats used, the sports hall is the only space within the centre the game can be played; even though they would only use ¼ to ½ of the hall at a time. The standard cost for hire of this space would be \$40 per hour. Each session has a duration of three hours; resulting in a total charge of \$120 per visit, or \$240 per week.

The club currently asks for a \$1 donation from each player, per session, which is used to cover the cost of purchasing and administrating the club's insurances over the course of the year. As such, it cannot afford to hire the new hall and has asked for a waiver of the fees.

A copy of the club's letter of request is attached to this report.

### **Key Issues**

- Variation to Council's adopted fees and charges
- Equity
- Impact on cash flow

### **Information**

The game of indoor bowls is played on three large felt mats that are too heavy and cumbersome to transport to and from the centre. These mats would need to be stored on site at the Lennox Head Cultural and Community Centre permanently.

Due to the limited storage available at the centre, the only space capable of storing the three mats would be the 'Art Room', which is currently being used for storage of other sports equipment as its size is inadequate for independent hire/use.

Whilst the mats can fit into this room they will take up most of the available space. It may be necessary to install some shelving to minimise the use of space and/or purchase/construct a trolley of some kind to assist in the removal of the mats from storage to court and back.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The Lennox Head Recreation and Social Club provides an important social engagement for senior community members. A move to the Lennox Head Cultural and Community Centre may result in an increase in membership from greater exposure, therefore creating greater opportunity for social inclusion for seniors and others in the local area.

- **Economic**

If approved, the waiver of fees would result in a potential loss of approximately \$12,000 per annum in potential income for the Lennox Head Cultural and Community Centre. This needs to be offset against the very substantial funds which the club transferred to Council upon the closure of the former "Recreation Hall".

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

The Lennox Head Recreation and Social Club hold their own public liability insurance.

Staff will likely be called upon as a resource to assist in the removal of mats from storage to court and back. This has OH&S implications that should be manageable. It is noted this type of work is presently being undertaken by staff to assist other users of the Centre (eg netball and futsal)

### **Consultation**

Centre Management has met with the Lennox Head Recreation and Social Club President, Mr Ron Bennett to discuss the group's financial position, scheduling needs and storage requirements.

### **Options**

Council may either accede to or decline the request from the club for the waiving of hire fees.

On the one hand, Council could advise the Club that it does not wish to set aside the fees as income is important to sustain the operation of the Centre for the benefit of shire residents and visitors. Departure from the fees and charges schedule adopted by Council may also be used as a precedent by other users of the facility.

Given the current circumstances, this course of action would likely mean that the club is prevented from using the Centre for its activities as the cost would be prohibitive. Whether income would be derived from an alternative use of the sports hall during the 'time slots' that would be allocated to the club is unknown.

On the other hand, Council could accede to the request by the club to waive all or part of the adopted fees, for a fixed period, say three years, or indefinitely, on the basis of the club's past stewardship of the former Recreation Hall and the significant financial donation it has made to Council, as outlined.

From the staff's perspective, the hire charges set by Council for use of the Centre are considered most reasonable and should be adhered to.

Clearly however, the unusual circumstances relating to this request involving the past use of this part of Williams Reserve and the club's generous financial donation to Council are understood.

Based on the \$240 hire fee, this currently equates to \$20 per person, assuming 12 members. One concern with a total waiver for a limited period is that at the end of that period the members may not be in a position to accept a significant increase in fees. Therefore recognising the significant financial contribution made one option would be to transition to the full fees over a period of time.

For example the next table provides one possible option.

#### **Transition Program**

<b>Year</b>	<b>Full Fee</b>	<b>% to be Paid</b>	<b>Payment (\$)</b>	<b>Donation (\$)</b>
11/12	6,000	12.50	750	5,250
12/13	12,000	25.00	3,000	9,000
13/14	12,000	37.50	4,500	7,500
14/15	12,000	50.00	6,000	6,000
15/16	12,000	62.50	7,500	4,500
16/17	12,000	75.00	9,000	3,000
17/18	12,000	87.50	10,500	1,500
18/19	12,000	100.00	12,000	0
<b>Total</b>				<b>36,750</b>

What this table identifies is that a gradual transition from 12.5% of the fee to 100% for the period 2011/12 to 2018/19 will allow Council to fully reimburse the original contribution made and also allows the members to adjust to full fees over a reasonable period of time.

The figures in the table have been kept in current values (i.e. \$12,000) rather than using CPI as in effect the \$36,219 has a foregone interest component that offsets CPI.

For 2011/12 it assumes that six months will be discounted (i.e. from 1 January 2012.)

The recommendation that follows is to use this approach as it recognises both the funds retained by Council and the need to gradually move to full fees over time. This is considered a reasonable compromise for all parties.

**RECOMMENDATIONS**

1. That due to the significant one-off contribution paid by the Lennox Head Recreation and Social Club to Council due to the closure of the former Recreation Hall (being \$36,219.54) that Council approves the implementation of a transitional arrangement to the payment of full fees for hire of the hall at the Lennox Head Community and Cultural Centre as per the following table:

<b>Financial Year</b>	<b>% to be Paid</b>
11/12	12.50
12/13	25.00
13/14	37.50
14/15	50.00
15/16	62.50
16/17	75.00
17/18	87.50
18/19	100.00

2. This agreement is based on a maximum of three hours per day hire for the hall, for a maximum of two days per week, in non peak times. Any hire in excess of this will be at full fees.
3. This arrangement not only recognises the Club's financial contribution as per point one, but also allows the Club to re-establish itself following their move from the former recreation hall.
4. That the discount provided by Council through this arrangement be recorded as a donation in Council's donation budget with the contra entry being shown as revenue in the Lennox Head Cultural and Community Centre budget. This then ensures that the income received and forgone by the Lennox Head Cultural and Community Centre is being accurately recorded.

**Attachment(s)**

- 1 Letter from Lennox Head Recreation and Social Club



**9.7 Alstonville Community Preschool**

<b>File Reference</b>	Children's Services
<b>CSP Linkage</b>	People attaining health and wellbeing
<b>Delivery Program</b>	Community Planning
<b>Objective</b>	To invite the Council's further consideration of assistance to the Alstonville Community Preschool in its attempt to secure new preschool premises.

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**Background**

Council has received several reports relating to the Alstonville Community Preschool's attempts to establish a new facility to provide early childhood services in that part of the shire.

Following consideration of various site options on both public and private land by a working party comprising the Mayor and C Ward Councillors, Council at its Ordinary Meeting held on 22 September 2011 resolved as follows:

- 1 That Council notes the outcomes of the Councillor working party concerning the assessment of site options for the establishment of a new preschool in Alstonville;*
- 2 That the General Manager be authorized to hold discussions with the Alstonville Agricultural Society Inc. to assess opportunities for the proposed facility to be established on part of the Alstonville Showground. Further, that the outcomes of these discussions be reported back to Council at the first available opportunity; and*
- 3 In respect of the Council-owned properties which have been addressed at this time, Council expresses its preference for the land fronting Cooke Avenue and Parkview Circle in Alstonville as the site for the proposed Alstonville Community Preschool.*

The following report provides Council with an update of information relating to this project.

**Key Issues**

- Identification of site options for a new facility.

### Information

Council's resolution from its meeting held on 22 September was conveyed to the Alstonville Community Preschool and a letter was also forwarded to the Alstonville Agriculture Society Inc. inviting a dialogue with Council representatives.

An informal meeting was also held with the Society's President as a means of providing a background to the proposal and Council's decision.

The Society has subsequently held a meeting to discuss the Council's resolution in more detail. As a result of those deliberations the Society has now advised that it does not wish to enable the preschool to be established on its land.

Following media coverage of Council's resolution from its 22 September meeting, considerable community interest has been raised concerning this project, particularly by the residents in the vicinity of the park fronting Cooke Avenue and Parkview Circle.

On 17 October, residents of this locality convened an informal meeting within the park to convey their displeasure concerning the potential for the new facility to be located there. The Mayor, Councillor Silver, together with Councillors Keith Johnston and David Wright, were in attendance. Representatives of the Alstonville Community Preschool were also present at the meeting.

The grounds cited by some residents for rejecting the possible establishment of the facility on this public reserve included:

- Alienation of important neighbourhood open space
- Excessive traffic generation/lack of capacity in the local street system
- Reduction in adjacent residential property values and
- General disturbance to the amenity of the locality.

A further review of the site options for the proposed facility has recently been undertaken, notwithstanding Council's earlier resolution.

C Ward Councillors have indicated that an area of Crawford Park, immediately behind the Alstonville Pool, may be able to be adapted to accommodate the new facility. An aerial photograph of this locality is **attached** to this report.

In terms of site suitability, this part of the reserve is classified as Community Land under the Local Government Act 1993, and categorized for the purpose of a Sportsground. If Council is inclined to indicate its support in principle for this site for a preschool, it will be necessary to re-categorize the western portion of Crawford Park for General Community Use.

In other respects, and in very general terms, the main function of this part of the reserve is to provide informal parking associated with the adjacent sporting fields. The land does form part of the drainage system for this part of Alstonville, conveying stormwater from the adjacent residential area. Stands of mature trees surround the central grassed area and their importance would need to be assessed if disturbance is contemplated.

Access to the reserve is via a poorly-formed track over a distance of approximately 100 metres, which extends from Freeborn Place adjacent to the eastern boundary of the Alstonville Pool.

A preliminary consideration of availability of Council's water and sewerage services indicated they are located reasonably adjacent to the reserve, though their capacity has not been assessed. The availability/capacity of other services (eg power) has not been determined.

The Alstonville Community Preschool has previously indicated that its preference would be to have access to a site containing an area of approximately 2000m<sup>2</sup> to accommodate existing and predicted enrolment numbers. Preliminary assessment of this site suggests this area could be available toward the northern part of the grassed area adjoining the pool and adjacent squash court complex.

Siting a building here may require removal of established trees, but it would have the benefit of being further away from more sensitive residential properties along Alston Avenue, which have the reserve at their rear.

As mentioned, this part of the reserve is presently used for informal parking. Construction of a building, on the face of it, may diminish the parking capacity. However, inclusion of a plan to rationalize/formalize parking for the reserve may lead to improved outcomes for other users. Further, associated illumination of the area may also be seen as advantageous.

The preparation of a concept plan(s) providing options for bringing these various elements together could be beneficial, particularly if Council wishes to proceed to amend the categorization of this part of the reserve, as mentioned above. Such a plan could assist in the mandatory community consultation processes associated with that.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Council has previously acknowledged its support for the establishment of a new preschool to promote the availability of this service to the residents of Alstonville and surrounding areas.
- **Economic**  
Council is looking to support the provision of affordable and accessible children's services in the Alstonville community.

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

To date, identification and assessment of site options for the establishment of a new preschool site has been undertaken within existing available resources (recognizing the important input from the Mayor and C Ward Councillors particularly, through the working party process).

Beyond this, Council has made no other commitment in terms of the delivery of the facility, recognizing that the project is not contained within the organisational work program.

### **Consultation**

No formal, Council-initiated community engagement processes have been undertaken in relation to this proposal. Some Councillors attended the recent neighbourhood meeting convened by residents adjacent to the park fronting Cooke Avenue and Parkview Circle, and have an understanding of the views of those residents.

### **Options**

Council has a number of options available to it concerning this matter, as follows:

1. Note the contents of this report. Given the advice from the Alstonville Agricultural Society Inc. (which does not support the proposed preschool on part of the Alstonville Showground), this would mean that the public reserve fronting Cooke Avenue and Parkview Circle would remain Council's preferred site for the establishment of the proposed facility.

In this scenario, no further work would be undertaken unless Council directed that more detailed investigations for this site be carried out. This further work would include a range of engineering and planning investigations that would support the lodgement of a development application in the future, as well as an engagement plan for liaising with residents of that locality. No funds have been allocated for this work;

2. Council could set aside its earlier decision in favour of an alternative site for the establishment of the proposed preschool; for example, the land described in this report. This part of Crawford Park appears to have some level of suitability, subject to the matters canvassed briefly in the above report.
3. Council can take no further action, and advise the Alstonville Community Preschool that options for the siting of a new facility on Council owned or controlled land in Alstonville have been exhausted. This would mean that the onus would rest with the preschool to identify and secure its own site to pursue the project.

Given Council's recent commitment to the park fronting Cooke Avenue and Parkview circle, option one is the Council's current position. There have been some objections to this proposal already from local residents, and it may well be in Council's interests to investigate Crawford Park to determine whether it is viable and whether there is stronger community support for this option.

In order to achieve that, the preferred approach would be to authorise the General Manager to conduct an exhibition process to change the category of the area of Crawford Park needed for the facility from sportsground to general community use. This would be a similar process to that followed for Porter Park and would provide an opportunity for Councillors to assess the level of community support for this option as compared to the Cooke Avenue option.

Despite the previous resolution of Council this is the preferred approach as it allows further community consultation to be undertaken prior to a final decision being made.

### **RECOMMENDATIONS**

1. That Council authorises the General Manager to conduct a community consultation process, as required by the Local Government Act, in respect to a proposal to alter that part of Crawford Park that would be required for the Alstonville Pre-school from sports ground to general community use.
2. This consultation is to be conducted following discussions with the proponents of the pre-school and the sporting clubs currently utilising Crawford Park to determine the appropriate size and location of the area for the pre-school.

### **Attachment(s)**

1. Aerial photograph of locality - Crawford Park

**9.8 Seniors Week**

<b>File Reference</b>	Aged Services
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Community Planning
<b>Objective</b>	To invite Council to consider the allocation of funding for the annual Seniors Week celebrations.

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**Background**

Council has, over the last five years, partnered with the Merrymakers Inc to conduct the Seniors Week Concert and Luncheon held at the Ballina RSL Club. The concerts have been hugely successful and regularly fill the auditorium to capacity. A number of current and previous Councillors have attended the concert.

Council supports a number of celebratory weeks throughout the year. These weeks are allocated by the Federal and State Governments.

Council receives a small allocation of funding from the NSW State Government towards the cost of conducting Youth Week. The financial allocations to support NAIDOC Week, Heritage Festival and Seniors Week are allocated from the Strategic and Community Services Group's operational budget.

The 2012 dates for the NSW Seniors Citizens Week are the 18-25 March.

**Key Issues**

- Allocation of financial support

**Information**

Council's contribution towards the annual Seniors Week Concert and Luncheon has been in the form of in-kind support and a contribution of \$4,500 inclusive of GST. The funds have been exclusively used to subsidise the cost of the meals at the luncheon. In return for Council's support the Merrymakers have agreed for the following:

- Guest speaking opportunity for the Mayor or representative
- Inclusion of Council logo/business name recognition on all printed materials, programs, and media releases
- Guest speaking opportunity for a Council officer and

- Provide a table of 10 for VIP guests including the Mayor or his/her representative and Councillors.

Typically, 350 people attend the Seniors Concert which is held in the auditorium of the RSL Club.

Although there has been no formal survey of the people who attend the concert/luncheon, staff who have been in attendance, report that the seniors are very appreciative of the concert and greatly enjoy the opportunity to be entertained, catch up with friends and meet new acquaintances.

During the time in which the partnership has been in place there have been no other requests of Council for financial support from any organisation for Seniors Week activities.

It is fair to say that whilst the annual concert and luncheon is most successful, and is greatly appreciated by our seniors and their carers, it probably could not be undertaken without the funding and other assistance provided by the Council and the Ballina RSL Club.

Given the obvious level of community support for the event (it is usually 'booked out'), the intention is not to disturb the current arrangement whilst ever the Merrymakers are available and motivated to continue.

However, given no policy is in place for the allocation of funds to recognize Seniors Week, staff is looking for confirmation from the Council that it is comfortable to maintain the current arrangement.

As stated, the support for the Merrymakers' concert uses almost the full annual allocation for seniors' activities/programs within our budget. A very small amount is retained for contingency costs. As an alternative to this 'centralized' expenditure on the one event, Council could determine to seek expressions of interest from other community, not-for-profit groups that would hold other activities in recognition of Seniors Week within the shire. Whilst this 'competitive process' has some advantages, the disadvantage is that the available funds would potentially be substantially 'diluted', unless of course Council was inclined to boost its seniors budget. This is not being advocated, given the many other requests for funding support.

It is also noted that other community groups which conduct seniors' services within the shire do benefit from Council's annual distribution of its Community Donations Budget. However, these are not usually expressly allocated toward Seniors Week celebrations.

### **Sustainability Considerations**

- **Environment**  
Not Applicable

- **Social**  
Access to appropriate and low cost events enables older people to participate fully in community life. Support for these activities is consistent with Council's endorsed Social Plan.
- **Economic**  
Not applicable

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

Council currently contributes approximately \$4,500 towards the cost of Seniors Week. There are no plans in place to seek an alternative level of assistance available.

The level of Council staff resources required to organise an alternative event can be very time consuming. This would be contingent upon redeployment of or a boost to existing resources. The partnership that has developed between Council and the Merrymakers Inc has become a very effective method of increasing older residents' opportunities to participate in a community event.

### **Consultation**

The Merrymakers Inc were advised that a report would be presented to Council to consider options regarding the allocation of assistance provided for Seniors Week activities.

### **Options**

If Council forms the view that it wishes to continue supporting Seniors Week activities in partnership with locally based organisations, the following options would appear to be available:

1. Council may choose to continue with the existing arrangements with the Merrymakers Inc.
2. Alternatively, Council may elect to establish a process whereby local incorporated not for profit community groups can apply for a share of the available budget to conduct small scale Seniors Week activities.

Option one is preferred and recommended, given its past success.

### **RECOMMENDATIONS**

That Council endorses the continuation of the partnership between Council and the Merrymakers Inc to recognize annual Seniors Week celebrations, due to the on-going success and community benefits that this event has provided and will continue to provide for the shire.

### **Attachment(s)**

Nil



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

**10.1 Use of Council Seal**

**File Reference**                      Use of Seal

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**RECOMMENDATIONS**

That Council affix the Common Seal to the following documents.

US11/24	<p>Minister for Education to Ballina Shire Council: 5 + 5 year lease of Lot 2 DP 1153430, Canal Road, Ballina, being a 1.807 Ha parcel of land contiguous with Fripp Oval on the NW boundary, and Ballina TAFE on the NE boundary.</p> <p>Explanation: Council as Reserve Trust Manager of Crown Reserve 83963 resolved in April 2009 to agree to a land swap between the Department of Education and Council as Reserve Trust Manager of Crown Reserve 83963. The land swap received the concurrence of the Dept Lands. Following the resubdivision of the land, the land swap resulted in Lot 2 DP 1153430 (1.807 Ha), located between Fripp Oval and Ballina TAFE, becoming Department of Education land and Lot 4 DP 1153430 (1.807 Ha), located between Ballina TAFE and Saunders Oval, becoming part of Crown Reserve 83963 and managed by Council as Reserve Trust Manager. To ensure continued public access and use of Lot 2 DP 1153430 until such time as the land is required for Ballina TAFE operational purposes, the Department of Education has agreed to lease the land to Council at peppercorne rental for the purposes as specified within the lease of public access, recreation and community markets, subject to Council as lessee maintaining the land, the shared pathway and the public amenities upon the land.</p>
US11/25	<p>The Old Tintenbar Council Chambers Reserve Trust to Arts Northern Rivers Incorporated: Temporary Licence Agreement to occupy the space within the old Tintenbar Shire Council Chambers known as Area 1 (unit 2) for a 12 month period commencing 1 December 2011 to 30 November 2012.</p> <p>Explanation: Arts Northern Rivers Incorporated currently occupy the 53.12 sq mtr space within the old Tintenbar Shire Council Chambers known as Area 2 (unit 1), and due to the expansion of staff numbers, they now require a larger office space that is afforded by the 106.46 sq mtr Area 1 following the surrender of the Licence Agreement for Area 1 by Ms J Barratt. Pending receipt of formal advice from the LPMA on the proposal to enter into a head lease for the area occupied by the Old Tintenbar Council Chambers and the Old Alstonville Hall situated at the rear of the old Chambers that will, in turn, enable Council to enter into sub-leasing arrangements with the various occupiers of the site, and to enable Arts Northern Rivers Inc. to occupy the vacant Area 1 due to their advised critical need, the Temporary Licence Agreement is recommended.</p>

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US11/26	<p>The Ballina Shire Holiday Parks Reserve Trust to Northern Region SLSA Helicopter Rescue Service Pty Ltd: Licence Agreement for the Management of the Lennox Head Market as conducted on the Ballina Coastal Reserve under trust management of the Ballina Coastal Reserve Trust (Ballina Council) for the 'Temporary Outlet for the Sale of Local Crafts and Goods', i.e. the market, for the 3 year term commencing 1 October, 2011.</p> <p>Explanation: The 3 year agreement for the Northern Region SLSA Helicopter Rescue Service Pty Ltd to manage the Lennox Head Market expired on 30 September 2011. The advertisement for the Registration of Interest (ROI 591) was placed with a closing date of 1 November 2011. The Northern Region SLSA Helicopter Rescue Service Pty Ltd was the sole respondent. The Market has been managed by Northern Region SLSA Helicopter Rescue Service Pty Ltd in an exemplorary manner since they assumed management on 1 October 2008, and the market has significantly improved and grown in that period to be comparable, albeit on a smaller scale, to the Byron and Bangalow Markets which are the two market 'benchmarks' in this Region. In 2010 the Market won a Lennox Head Chamber of Commerce 'Business Excellence Community' Award, and they have now been announced as recipients of the Lennox Head Chamber of Commerce 2011 'Business Excellence Award for Environment'. Stallholder funds received are allocated directly towards the rescue helicopter to help ensure the continued operation of the service.</p>
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**Attachment(s)**

Nil

**10.2 Investments Summary - October 2011**

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

**Background**

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

This report has been prepared for the month of October 2011.

Council's investments are all in accordance with the Local Government Act and the regulations. Due to changes in the total portfolio and the mix of investments the portfolio was now in breach of Clause 9.3 of the investment portfolio, in that we have 10.4% (allowed 10%) of the total portfolio invested in a single institution rated BBB, as at 31 October 2011. This breach was corrected on 1 November 2011 when the next investment in that institution matured.

The balance of investments as at 31 October 2011 was \$67,278,000. This represents a decrease from September of \$1,113,000. The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 October 2011, was \$1,484,084.

Council's investments as at 31 October are at an average (weighted) rate of 5.78%, which is 1.05% above the 90 Day Bank Bill Index of 4.73%.

The majority of the approximately \$67 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

<b>Reserve Name</b>	<b>Internal/External Restriction</b>	<b>Approx % of Portfolio*</b>
Water Fund (incl. developer contributions)	External	19
Sewer Fund (incl developer contributions)	External	23
Section 94 Developer Contributions	External	11
Bonds and Deposits	External	4
Domestic Waste Mgmt / Stormwater Charges	External	2
Other External Restrictions	External	6
Land Development	Internal	8
Employee Leave Entitlements	Internal	3
Carry Forward Works	Internal	12
Miscellaneous Internal Reserves	Internal	11
Unrestricted		1
<b>Total</b>		<b>100%</b>

\* Based on reserves held as at 30 June 2011

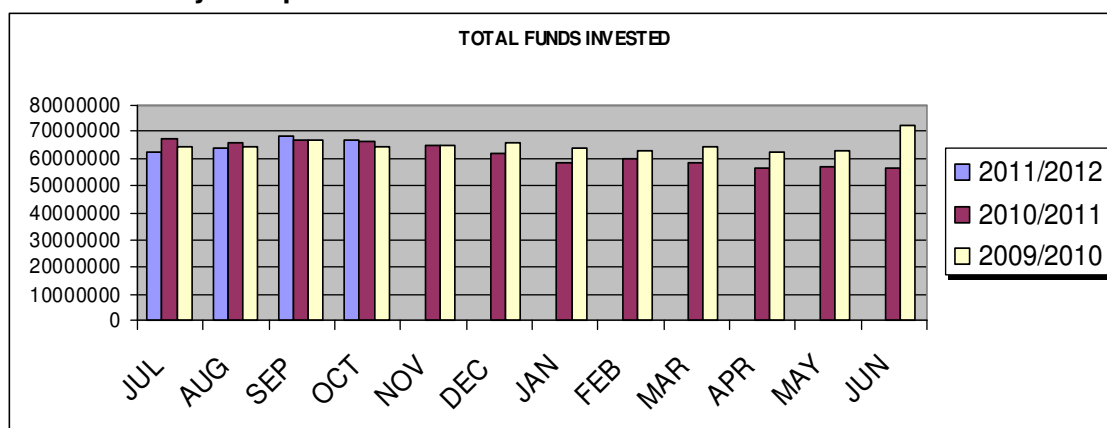
## Information

### A. Summary of Investments by Institution

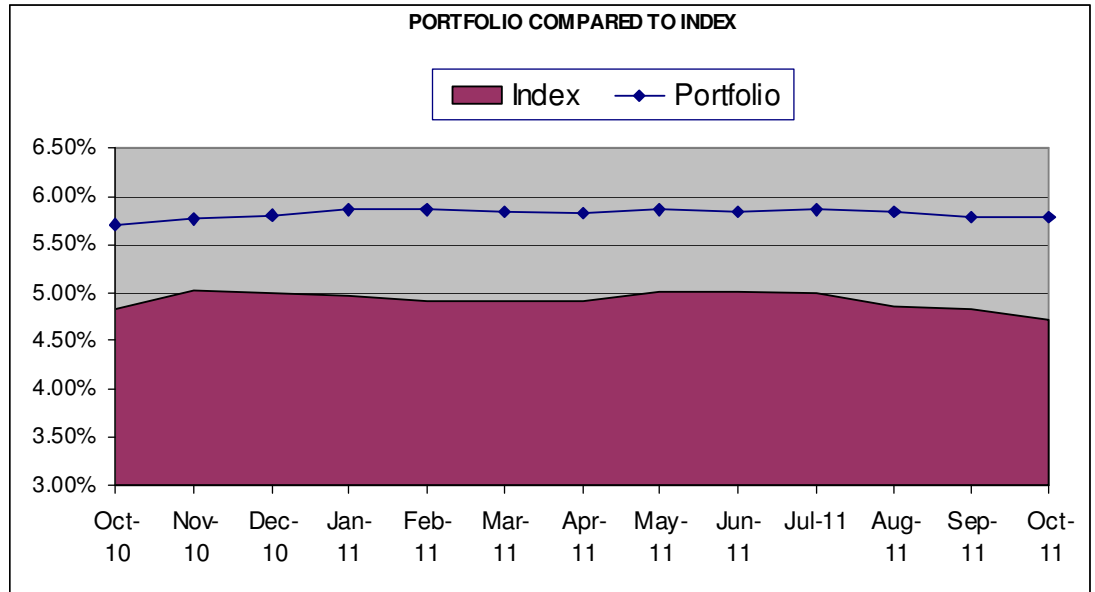
Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	% of	Total
<b>Grandfathered Investments</b>						
ANZ Bank	AA-	No	2,000	2,000	3.0	
Bendigo Bank Ltd	BBB	No	1,000	1,000	1.5	
Deutsche Bank	A+	No	4,000	4,000	5.9	
Goldman Sachs	AA-	No	1,000	1,000	1.5	
Heritage Building Society	BBB	No	3,000	3,000	4.5	
HSBC Australia	AA-	No	1,000	1,000	1.5	
Local Govt Fin Service	A	No	5,000	5,000	7.4	
Longreach Capital Markets 23	AA-	No	1,000	1,000	1.5	
Longreach Capital Markets 28	AA+	No	1,000	1,000	1.5	
Morgan Stanley	A	No	2,000	2,000	3.0	
National Australia Bank	AA	No	1,788	1,788	2.7	
National Wealth M'ment Holding	A	No	2,000	2,000	3.0	<b>37%</b>
<b>Rated Institutions</b>						
ANZ Bank	AA-	No	105	91	0.1	
Bank of Queensland	BBB+	Y-\$1m	7,000	7,000	10.4	
Bank of Western Australia	AA	Y-\$m	4,958	4,958	7.4	
Commonwealth Bank of Australia	AA	Y-\$2m	8,429	6,441	9.6	
Credit Union Australia	BBB+	Yes	2,000	2,000	3.0	
Illawarra Mutual Bld Society	BBB	Y-\$1m	4,000	4,000	5.9	
Members Equity Bank	BBB	Y-\$1m	1,000	1,000	1.5	
National Australia Bank	AA	Y-\$1m	1,000	1,000	1.5	
Newcastle Permanent Bld Soc	BBB+	Y-\$1m	4,000	2,000	3.0	
Suncorp Metway Bank	A	Y-\$1m	10,111	9,000	13.4	
ING Bank Ltd	A+		0	3,000	4.5	<b>60%</b>
<b>Unrated ADI's</b>						
Defence Force Credit Union				1,000	1.5	
QLD Country Credit Union		Yes	1,000	1,000	1.5	<b>3%</b>
<b>Total</b>			<b>68,391</b>	<b>67,278</b>	<b>100%</b>	<b>100%</b>

Rating is on Capital only by UBS AG, London (Ser 23) & Citigroup Pty Ltd (Ser 28)

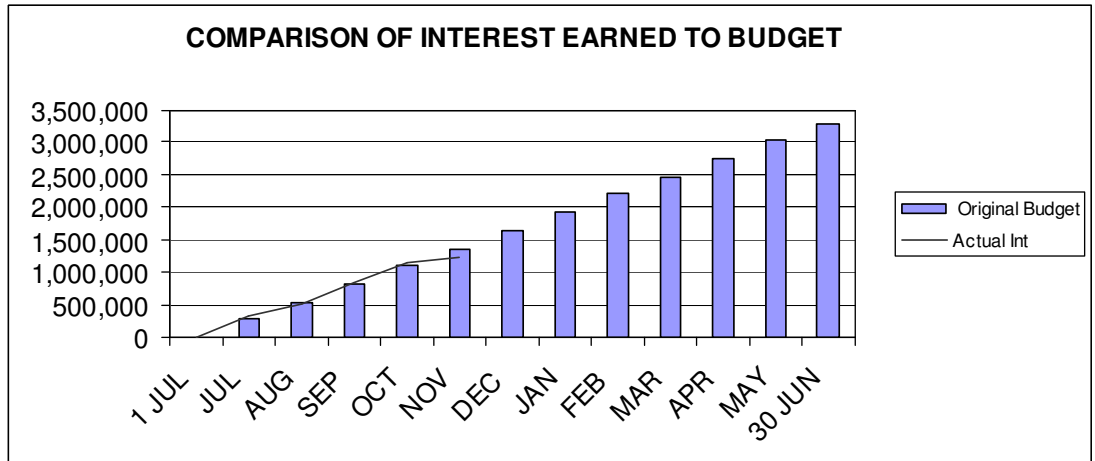
### B. Monthly Comparison of Total Funds Invested



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



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



**Comment**

At the meeting held 1 November 2011, the RBA Board decided to lower the cash rate by 25 basis points to 4.5 per cent, effective 2 November 2011.

The reduction to the official cash rate will make it more difficult to achieve budget. However due to the reduction in the sewer capital program the total portfolio will be greater than anticipated and this will counter the reduced rate. The additional interest income will benefit sewer operations.

Financial conditions have been easing somewhat recently, with market interest rates declining a little and competition to lend increasing. But overall conditions have remained tighter than normal, with borrowing rates still a little higher than average, credit growth subdued and asset prices lower than earlier in the year. The exchange rate has been very variable over the past few months, but on the whole has remained at historically high levels.

**E. Investments Held as at 31 October 2011**

Purchase Date	Issuer	Type	Rate %	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	5.72	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	5.72	23/04/14	2,000
20/09/04	National Australia Bank	FRN	6.15	Perpetual	1,788
08/08/05	Morgan Stanley	FRN	5.33	08/08/12	2,000
12/04/06	Goldman Sachs	FRN	5.22	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	5.41	16/06/16	2,000
04/12/06	Heritage Building Society	FRN	5.35	04/12/11	2,000
28/02/07	Longreach Series 23	IRLN	8.66	10/02/12	1,000
25/01/07	Local Govt Fin Service	CRI	5.51	20/03/12	5,000
28/06/07	Longreach Series 28	FND	0.00	27/06/14	1,000
21/09/07	Bendigo Bank	FRN	5.95	21/09/12	1,000
18/10/07	Heritage Building Society	FRN	6.02	18/10/12	1,000
18/10/07	ANZ Bank (FRN)	FRN	5.48	18/10/12	2,000
14/03/08	HSBC Australia Ltd	FRN	7.07	14/03/13	1,000
16/12/08	Commonwealth Bank of Australia	CRI	6.38	16/12/11	1,000
17/12/08	Commonwealth Bank of Australia	CRI	5.95	17/12/13	1,000
17/12/08	Commonwealth Bank of Australia	TD	5.93	17/12/13	996
17/04/09	Commonwealth Bank of Australia	FRN	6.06	17/04/12	1,000
03/02/10	Commonwealth Bank of Australia	FND	4.70	At Call	2,445
05/05/11	Bank of Queensland	TD	6.23	01/11/11	1,000
05/07/11	Queensland Country Credit Union	TD	6.05	02/11/11	1,000
11/07/11	Suncorp-Metway Bank	TD	6.22	09/01/12	1,000
14/07/11	Credit Union Australia	TD	6.08	11/11/11	1,000
19/07/11	BankWest	TD	5.85	16/11/11	1,958
20/07/11	ANZ Bank	FND	3.70	At call	91
02/08/11	Suncorp-Metway Bank	TD	6.16	31/10/11	1,000
10/08/11	Suncorp-Metway Bank	TD	6.05	10/11/11	1,000
15/08/11	National Australia Bank	TD	5.89	14/11/11	1,000
15/08/11	Bank of Queensland	TD	6.05	14/11/11	1,000
29/08/11	Newcastle Permanent Bld Society	TD	5.91	28/11/11	1,000
01/09/11	Bank of Queensland	TD	5.85	30/11/11	1,000
01/09/11	Suncorp-Metway Bank	TD	5.90	30/11/11	1,000
21/09/11	Newcastle Permanent Bld Society	TD	5.75	20/12/11	1,000
27/09/11	BankWest	TD	5.80	27/03/12	3,000
27/09/11	Bank of Queensland	TD	6.00	05/01/12	2,000
27/09/11	Suncorp-Metway Bank	TD	5.90	05/01/12	1,000
28/09/11	Suncorp-Metway Bank	TD	5.90	04/01/12	2,000
04/10/12	Defence Force Credit Union	TD	6.00	02/04/12	1,000
04/10/12	ING Bank Ltd	TD	5.9	01/02/12	1,000
10/10/11	Illawarra Mutual Bld Society	TD	5.8	07/02/12	2,000
19/10/11	Illawarra Mutual Bld Society	TD	5.75	19/01/12	2,000
21/10/11	Suncorp-Metway Bank	TD	5.88	19/01/12	2,000
25/10/12	ING Bank Ltd	TD	5.99	22/02/12	2,000
28/10/11	Credit Union Australia	TD	5.95	27/01/12	1,000
28/10/11	Members Equity Bank	TD	6.05	24/02/12	1,000
31/10/11	Suncorp-Metway Bank	TD	5.86	30/1/12	1,000
<b>Totals:</b>					<b>67,278</b>
TD=Term Deposit		FRN=Floating Rate Note		FND=Managed Fund	
IRLN=Interest Rate Linked Note		CRI=Committed Rolling Investment		ELN=Equity Linked Note	

**RECOMMENDATIONS**

That Council notes the record of banking and investments for October 2011.

**Attachment(s)**

Nil

**10.3 Ballina Cup - Half Day Public Holiday 2012**

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

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**Background**

Council at its October Ordinary meeting resolved to support the declaration of a half-day public holiday throughout the Ballina Shire for Thursday 6 September, 2012 in respect to the 2012 Ballina Cup.

The Ballina Jockey Club has subsequently advised that it has changed the day of the 2012 Ballina Cup to Friday 14 September 2012. Council's application to NSW Industrial Relations will need to be amended.

**Key Issues**

- Change in date of the 2012 Ballina Cup.

**Information**

It has been a standard process followed every year by Council to apply for a half-day public holiday however this will be a Friday for the first time. This may well prove attractive to visitors who could be more inclined to stay for the entire weekend.

**Sustainability Considerations**

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

**Legal / Resource / Financial Implications**

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

**Consultation**

Consultation has occurred with the Ballina Jockey Club.

**Options**

1. Approve the request for change in date.
2. Not approve the request for change in date.

The recommendation is to approve the request.

**RECOMMENDATIONS**

That following further advice from the Ballina Jockey Club, Council supports the declaration of a half-day public holiday throughout the Ballina Shire for Friday 14 September, 2012 in respect to the 2012 Ballina Cup in lieu of the previous nominated date of Thursday 6 September 2012.

**Attachment(s)**

Nil



**10.4 Fair Go Skate Festival - Review**

<b>File Reference</b>	Public Sporting Events Permission
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Tourism
<b>Objective</b>	To provide information on the Fair Go Skateboarding Competition and seek guidance on the future direction of the management and funding of this event.

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**Background**

Fair Go Skateboarding Competition was established 12 years ago in 2000, as a Ballina Youth Service initiative by the Ballina District Community Services Association (BDCSA). The event was initially held over two days during Youth Week at Ballina Fair and was an immediate success, raising Ballina Shire's awareness to the needs of youth in our region.

The event, which now attracts hundreds of competitors and spectators each year, was also instrumental in generating the momentum for the construction of the Missingham Bridge Skatepark in 2001, which is now recognised and touted as one of the finest skating facilities in NSW.

Council has provided funding since 2000 to assist with the organisation of the event.

In 2002 the event moved to the new Missingham Skatepark and remained under the management of Ballina Youth Service, continuing to grow and raise awareness and recognition as a leading amateur skating event in Australia. Council provided limited financial support and staff resources during this time to assist with insurance and infrastructure items.

In 2008 Ballina Youth Service decided that the event no longer aligned with their core business and the event was taken on by an organising committee who had been involved in the event previously in a volunteer capacity.

Running the event, without the skills of an organisation, proved too difficult in 2008 for the committee and they requested assistance from Council to manage the 2009 event.

Whilst Council, at a staff level, agreed to take on the event it was made clear to the committee that Council's role was to arrange and pay for the event infrastructure, and cover the risk management and insurance.

It was agreed that the committee would essentially run the event on the ground and contribute to all other costs through revenue raising activities such as sponsorship, participant registrations and raffles.

A budget has been provided specifically for this event under the Open Spaces and Reserves budget for the past 12 years. The budget currently stands at \$9,000 and has recently been transferred to the Tourism Section, with Council's appointment of an Events & Grants Support Officer who coordinated the event this year.

With the Festival & Event Support Program now running successfully in its second year, all community events seeking funding are required to apply through this program. The question has been raised as to whether or not the Fair Go Skateboarding Competition funding should sit under this Festival & Event Support Program.

The purpose of this report is to ensure the transparency of the Fair Go funding and to determine how Council wishes to manage this budget into the future.

### **Key Issues**

- Equity in funding

### **Information**

The Fair Go Skateboard competition is a significant youth event in Ballina Shire that provides an opportunity for the public to support the youth. It also offers the general public an opportunity to appreciate the ever growing skateboarding talent in the community. Fair Go also promotes and connects the Ballina Shire youth with the industries of skateboarding at a professional and structured level.

This is one of the few youth events that are offered in Ballina Shire, with others being Gromfest and the All Girls surfing competitions. The event has a history of being safe and well managed. Fair Go was awarded Ballina Shire's Community Event of the Year at the Ballina Shire Australia Day Awards ceremony in January 2011.

The current Fair Go Organising committee is an informal group, made up of local representatives from the skateboarding community and a Council representative. The role of committee members is to organise sponsorship and fund raising to provide prizes and prize money for the event. The committee also organise volunteers and judges, and manage the competition on the day.

Council's role was to initially oversee the expenditure of the funds allocated but more recently involvement has increased to attendance at committee meetings, to organise and manage the logistical arrangements for the event and to oversee the acquittal of the funding provided. Staff involvement includes:

- liaising with the NSW Police
- hiring security guards
- construction of the judging tower
- provision of power
- cleaning of the site

- setting up marquees
- attendance for the duration of the event.
- development of risk management plan

Council has had an important role in developing an event risk management plan and the successful management of alcohol consumption in partnership with the NSW Police to ensure that this is a safe, alcohol free family event.

The success of this event is a combination of the work of the volunteer committee and the funding and logistical support provided by Ballina Shire Council. Without the continued financial and logistical assistance from Council, the event would not have the resources to continue.

The question has been asked should this event be included in Council's Festival and Event Support Program as it is now the only event that is being funded and in part managed by Council, without a formal expression of interest process being conducted.

The committee is not incorporated and has no desire to be, which would automatically make the event ineligible to apply for funding under the Festival & Event Support Program. The nature of funding under the program is highly competitive and given the recent resolution by Council to pre-allocate \$25,000 funding from the 2012/2013 program, it is unlikely that the event would receive the funding required to continue to run the event.

The committee annually seeks funding and have attempted to attract funding from the major skateboard companies and brands but have had limited success. Enough funding can be sourced to provide prizes and prize money each year however there has been no interest in sponsorship to fund the event.

### **Sustainability Considerations**

- **Environment**  
Not Applicable.
- **Social**  
Promotes and connects the Ballina Shire youth and provides a platform for youth to demonstrate their talents.
- **Economic**  
Attracts competitors and spectators from outside the Shire which generates economic benefits for the Shire

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

There are no legal implications relating to this matter and as the funding is already allocated for this event there are no additional resource and financial implications resulting from this report.

### **Consultation**

A meeting was held with the Fair Go Organising Committee to discuss the future direction of the event. The option was given to the committee to become incorporated and apply for funding under the Festival and Event Support Program. However the committee felt that as the Festival and Event Support Program funding was allocated for a set period of time to get events started that without a guaranteed funding, the risk of losing the event was too high. The committee is extremely happy with the current partnership that exists with Council in running this event.

### **Options**

1. Council may resolve to continue to provide ongoing event funding under the Tourism Section, outside of the Festival and Event Support Program. This will allow for the event to continue to run in partnership with Council. This option will also allow Council to continue to be seen as supporting one of the Shire's mayor youth events. This will however mean that the event sits outside the current event policy that Council has developed. The specialised nature of the event and the lack of youth events in the shire could be viewed as adequate reason to make this event an exception.
2. Council may resolve that the committee must apply for funding under 'Council's Donation Policy'. As this is an annual application there is no certainty in this process and so this is not a preferred option for the committee.
3. Council may resolve that the committee apply for funding under the '2012/2013 Festival and Event Support Program'. Again this is not a preferred option for the committee as the funding is based on annual applications and does not provide certainty from year to year.
4. Council may resolve to cease funding the event and leave the management and funding of the event to others. This most probably would result in the event ceasing to run based on the current capacity of the volunteer committee. Alternatively this could result in another organisation taking over the event, however this is unlikely as the BDCSA have already removed themselves from any involvement in the event and attempts by the committee to seek funding and support from the community have not been successful. Should a commercial sponsorship opportunity arise similar to the arrangement under which Gromfest operates then this opportunity would be seriously considered. However to date there has been no success in attracting such a sponsor.

In weighing up the options the preferred approach is option one. It is considered that due to the very specific nature of this event, which is aimed directly at the youth of the shire, and which utilises a key component of Council infrastructure (the Ballina skate park), that there are sufficient reasons to justify this event being supported outside the Festival and Events Support program.

One of the major risks with Council co-ordinating an event is that the budget can increase as the community expects more and more from Council and service levels increase. However as this budget has been maintained at a relatively low level (\$9,000) after 12 years of operation, then there is considered to be a low risk of any substantial increases.

The recommendation is for Council to continue to support this event, with the funding to be reviewed on an annual basis, as part of the normal process Council undertakes in preparing its annual budget.

### **RECOMMENDATIONS**

1. That Council approves the General Manager to continue to manage and co-ordinate the annual Fair Go Skateboard event as part of our annual commitment to Festivals and Events in the shire.
2. The Council funding to support this event is to be provided as a separate allocation to the Festivals and Events Support program, due to its very specific focus on youth and its successful record of operation for at least the last ten years.

### **Attachment(s)**

Nil

**10.5 Community Donations**

<b>File Reference</b>	Community Donations
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To invite Council to consider additional donation requests.

---

**Background**

Council approved a number of general and capital assistance donations at the July 2011 meeting for the 2011/2012 financial year. Since that time additional requests have been received. Generally Council staff advise the applicants to reapply next financial year. However there are certain requests that are considered meritorious for the current year and on that basis, as allowed by the Council policies, they are submitted to Council for consideration.

Three such requests are considered in this report and copies of the applications are attached.

**Key Issues**

- Nature of request
- Community benefit
- Funding available

**Information**

Details of the new requests are as follows:

***Rous Mill Rate Payers Association***

The Rous Mill Hall Committee has planned a number of working bees at the hall which will generate a considerable amount of rubbish.

They have requested that Council waive the waste fees for approximately three utility loads of rubbish.

***Tintenbar School of Arts Incorporated***

In 2009 Tintenbar Community Hall sought the waiver of development application fees for DA 2010/221 (\$1,918), and they were advised at that time that all donations funds had been allocated. They are now asking again for a refund of the fees.

They are also seeking a refund of development application fees for DA 2011/63 (\$185) lodged earlier this year.

They have advised that they have had an increase in insurance premiums and are seeking the refunds to help cover these additional expenses.

It has been Council's practice to consider only the development application fee as a donation, excluding numerous other fees charged as part of the development application fees. Based on this the relevant fees are as follows:

- Fees to Council -\$1,628 - DA 2010/221 - Walkway and new toilet block
- Fees to Council - \$185 - DA 2011/63 - Signage

### ***Biala Support Services***

This is a request for assistance with a tree removal which is causing a high risk for their special needs students.

Council staff have inspected the site and the estimate to remove the tree is \$3,200.

### **Sustainability Considerations**

- **Environment**  
Not applicable
- **Social**  
Donations such as that requested provide valuable support to community groups.
- **Economic**  
Not Applicable

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

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

<b>Items</b>	<b>Budget</b>	<b>Expended</b>	<b>Balance</b>
Donations (General)	65,000	59,246	3,955
Donations (Halls)	40,000	37,500	2,500
Donations (DA Fees)	2,000	2,349	0

### **Consultation**

The annual donations program is subject to formal public exhibition and generally Council attempts to ensure that all donations are considered at the same time to ensure there is equity in the allocation process. However there has been no specific consultation in respect of this application.

### **Options**

#### *Rous Mill Rate Payers*

The options are to approve or decline the request.

If Council were to approve the request it is suggested that the donation be capped at \$100 (excl GST) as the fee for three utility loads of rubbish could vary considerably depending on the weight.

#### *Tintenbar School of Arts Incorporated*

The options are to approve or decline the requests, either in full or one only. For example Council may wish to only approve the recent request as the 2009 development application fees are relatively old. It could mean that each year Council is beset with applications that have been rejected in previous years. Also the intent of the donations (Fees) policy is "to assist community groups in the delivery of capital projects and fundraising events". The capital project to which this development application relates has been completed.

#### *Biala Support Services*

This is obviously a very worthy service, however the major issue is the magnitude of the cost of removing the tree at \$3,200.

As donations are somewhat subject the option of either approving or declining the requests is included in the recommendations.

### **RECOMMENDATIONS**

#### Option A

1. That Council approves the donation of waste fees, to a maximum of \$100 (excluding GST), for the Rous Mill Ratepayers Association in respect to the disposal of waste generated from their working bees, as per their application, due to the significant community benefit provided by the Association.
2. That Council approves the donation of the Council development application fees, being \$1,628 for DA 2010/221 and \$185 for DA 2011/63, for the Tintenbar School of Arts, due to the hall being a major public asset.
3. That Council approves a donation for the cost of removing the tree causing safety issues at the Biala School, due to the significant community benefit provided by the Association.

### **OR**

#### Option B

1. That Council not approve the donation of waste fees for the Rous Mill Ratepayers Association in respect to the disposal of waste generated from



their working bees due to the request being outside the normal cycle for the allocation of general donations.

2. That Council not approve the donation of the Council development application fees, being \$1,628 for DA 2010/221 and \$185 for DA 2011/63, to the Tintenbar School of Arts Incorporated due to the 2011/12 budget having been exhausted.
3. That Council not approve the donation for the removal of the tree for Biala Support Services due to the request being outside the normal cycle for the allocation of general donations.

**Attachment(s)**

1. Rous Mill Rate Payers Association (page 2 highlighted)
2. Tintenbar School of Arts Inc.
3. Biala Support Services Inc.

**10.6 Policy (Draft Review) - Risk Management**

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To review the Risk Management policy.

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**Background**

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

Council first adopted this policy in 25 January 2007.

Risk management is an integral part of good management practice and fully supports risk management as an integral element in its governance processes. Council should adopt a risk management approach consistent with Australian Standards in their planning, approval, review and control processes.

The Risk Management Policy outlines the systems and processes required to manage the risks involved in the Council's activities so as to maximise opportunities and minimise negative outcomes. The policy provides the overarching guidelines under which a number of risk management practices are then put into place.

**Key Issues**

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

**Information**

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

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, related documents and the application of the policy.

The changes have been marked in yellow.

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

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Create an environment where all Council employees understand and accept the importance of risk management. Maintain the highest possible integrity for services provided by the Council
- **Economic**  
Improve the Council's ability to be proactive rather than reactive in risk management.

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

Demonstrate better corporate governance through transparent and responsible risk management processes aligned with accepted best practice standards and methods. Improve incident management and reduction in loss and the cost of risk, including insurance premiums

### **Consultation**

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

### **Options**

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

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

**RECOMMENDATIONS**

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

**Attachment(s)**

1. Review – Risk Management Policy

**10.7 Annual Financial Statements - 2011**

<b>File Reference</b>	Financial Statements 2011
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Financial Management
<b>Objective</b>	Section 419 of the Local Government Act requires that the audited financial reports be formally presented to the public. The report that follows looks to satisfy this statutory requirement.

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**Background**

Council considered the annual financial reports for the financial year ended 30 June 2011 at the October ordinary meeting. The principal auditor, Mr Kevin Franey of Thomas Noble and Russell, also addressed Council at that meeting.

The audit opinion was that Council's accounting records had been kept in accordance with the requirements of the Local Government Act and Australian accounting standards. The records fairly presented the Council's financial position and the results of operations. The audit was unqualified. Council subsequently endorsed the reports.

In accordance with Section 418 of the Local Government Act the Council must then formally present the financial reports to the public. This public presentation must be advertised. The advertising process has now been completed and this report complies with that section of the Local Government Act.

**Key Issues**

- Compliance with the Local Government Act
- Content of the financial reports
- Submissions to the advertised reports

**Information**

In accordance with the Local Government Act and Council's resolution the reports were advertised for public comment. One submission was received and a copy is attached to this report.

Councillors may wish to bring their copy of the annual financial reports, as distributed at the October meeting, in case there is any further discussion on the matter.

The writer of the submission is of the view that Council's arrangements with the NSW Department of Human Services constitutes a Joint Venture under accounting standards and should be noted within the annual financial reports.

It seems that this conclusion is drawn principally because certain items of correspondence between Council and the Department of Human Services refer to a partnership. It is understood that this correspondence has been obtained through freedom of information procedures.

In respect to the submission, and as relevant to the 2010/11 financial reports there were no leases or contracts entered into by both or either party. There was ongoing correspondence however at best it would be very debatable as to whether any formal arrangement was reached in 2010/11.

It is also not agreed that the proposed arrangement between Council and the Department of Human Services constitutes a Joint Venture. A Joint Venture must involve a contractual arrangement whereby two or more parties undertake an economic activity that is subject to joint control. Joint control is an agreed sharing of strategic, financial and operating decisions of an economic activity.

It is contended that for it to be a Joint Venture Council would need to be in some form of joint control of the day to day and strategic operations of the proposed community facility. It is understood that this is not proposed but rather it will be a typical lessee / lessor arrangement whereby the lessee is solely responsible for the operations of the activity and the lessor is acting as a landlord.

A copy of the relevant accounting standard is attached.

The matter has been discussed with Council's external auditors and they are of the same view in that the proposed arrangement does not meet the definition of a Joint Venture. They have also advised the correspondent in writing of this advice.

### **Sustainability Considerations**

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

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

The annual financial reports state the financial position of Council as at 30 June 2011 and the financial performance of Council over the twelve months.

### **Consultation**

Notice of the reports was advertised in the local paper, on council's website and at community access points. The community was invited to make submissions.

### **Options**

Council may adopt the annual financial reports for presentation to the public or choose not to adopt the reports. The recommendation is to adopt the reports.

### **RECOMMENDATIONS**

That the annual financial reports and auditor's reports for the financial year ended 30 June 2011, as publicly advertised, be adopted and presented to the public.

### **Attachment(s)**

1. Submission
2. Excerpt from Australian Accounting Standards Board
3. Letter from NSW Government Human Services Community Services

**10.8 Financial Review - Quarter ended 30 September 2011**

<b>File Reference</b>	Financial Management
<b>Sustainability Plan</b>	Responsible and efficient use of resources
<b>Management Plan</b>	Financial Management
<b>Objective</b>	To review the Council budget as at 30 September 2011.

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**Background**

In accordance with the Local Government Act the responsible accounting officer of a council must, not later than two months after the end of each quarter, prepare and submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year.

The report that follows provides this review for the first quarter of 2011/12.

**Key Issues**

- Variations to the budget

**Information**

The purpose of this report is to provide information on known budget variances as at 30 September 2011. The format of the report has been modified to comply with the Quarterly Budget Review Statement Guidelines set down by the Division of Local Government.

It is fair to say that some of the requirements are new and this review is seen as a first step in meeting the guidelines. Whilst it is considered that the report substantially meets the requirements it proposed to seek industry feedback prior to the next review which may result in modifications to this report going forward.

In this regard it is important that the report meets the requirements and expectations of Councillors and the community. Therefore any feedback is most welcome.

To comply with the guidelines an Operating Statement, Capital Budget, Cash and Investment Statement, Key Performance Indicators, Contractors, Consultants, Legal Information and certification by the Responsible Accounting Officer are all needed.

Commentary on the variations recommended is then provided after the tables.



A brief overview of the information provided in each of the three tables is as follows:

### **Operating Income and Expenses**

This table provides the operating income and expenses for the Fund (General, Water and Sewer) and is useful in determining whether the Fund is operating at a surplus or deficit (before and after depreciation).

The operating performance for each major activity within the General Fund is also able to be monitored by matching income and expenses.

### **Capital Budget**

This table outlines how capital expenditure is being funded. Capital funding and expenditure equal each other.

### **Cash and Investment Statement**

This table provides details on the projected movements in reserve balances in each of the funds.

### **Key Performance Indicators**

This table shows the calculated position as at 30 June 2011 together with the estimated position at 30 June 2012. The ratios provide an indication of the financial health of the organisation.

It does need to be remembered that in forecasting ratios there are many variables and assumptions in the calculations that mean the forecast is very much a best guess scenario.

### **Contractors/Consultants/Legal Expenses**

Details of specific expenses incurred and contracts entered.

### **Certification**

Statement by the Responsible Accounting Officer as to whether the current years estimated financial performance and position is or is not satisfactory.

For the tables, the ORIGINAL budget plus / minus changes previously approved by Council equals the REVISED Budget figure. REVISED Budget plus / minus recommended changes for this quarter equals the PROJECTED Year End Budget figure for the year.

Actual figures to 30 September are also included in the final column as a comparison to the PROJECTED Budget.

### **General Fund**

This next section of the report deals with Council's General Fund operations.

## General Fund - Statement of Operating Income and Expenses (by Activity) (\$'000)

Operating Income	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sept 000's
<b>Strategic Services</b>						
Strategic Planning	393		393	23	416	26
Community Services	159		159	0	159	62
Community Gallery	52		52	0	52	20
<b>Sub Total</b>	<b>604</b>		<b>604</b>	<b>23</b>	<b>627</b>	<b>108</b>
<b>Regulatory Services</b>						
Development Services	305		305	0	305	92
Building Services	845		845	0	845	174
Public and Env Health	176		176	0	176	158
Admin and Public Order	87		87	0	87	25
<b>Sub Total</b>	<b>1,413</b>		<b>1,413</b>	<b>0</b>	<b>1,413</b>	<b>449</b>
<b>Civil Services</b>						
Asset Management	208		208	(11)	197	15
Stormwater and Env Prot	273		273	4	277	289
Roads and Bridges	100		100	20	120	36
Ancillary Transport Services	1,331		1,331	0	1,331	22
Roads and Traffic Authority	1,351		1,351	0	1,351	27
Open Space and Reserves	722		722	86	808	413
Fleet Mgmt and Workshop	3,292		3,292	40	3,332	937
Rural Fire Service	182		182	0	182	
Quarries and Sandpit	315		315	0	315	74
Swimming Pools	283		283	0	283	76
Waste-Landfill/Commercial	6,502		6,502	(85)	6,417	1,727
Waste-Domestic	6,566		6,566	0	6,566	5,935
<b>Sub Total</b>	<b>21,125</b>		<b>21,125</b>	<b>54</b>	<b>21,179</b>	<b>9,551</b>
<b>General Manager's Group</b>						
Administrative Services	26		26	0	26	15
Financial Services	19,663	(846)	18,817	102	18,919	16,268
Regional Library	92		92	0	92	
Information Services	4		4	0	4	1
Human Resources and Risk	76		76	34	110	41
Tourism	33		33	16	49	30
Property Management	3,478		3,478	0	3,478	1,121
Ballina Byron Airport	4,032		4,032	0	4,032	440
<b>Sub Total</b>	<b>27,404</b>		<b>26,558</b>	<b>152</b>	<b>26,710</b>	<b>17,916</b>
<b>Total Operating Income</b>	<b>50,546</b>	<b>(846)</b>	<b>49,700</b>	<b>229</b>	<b>49,929</b>	<b>28,024</b>

## General Fund - Statement of Operating Income and Expenses (\$'000) (continued)

Operating Expenses (excluding depreciation)	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sep 000's
<b>Strategic Services</b>						
Strategic Planning	1,015	371	1,386	9	1,395	254
Community Services	693	30	723	75	798	103
Community Gallery	150	4	154	14	168	17
<b>Sub Total</b>	<b>1,858</b>	<b>405</b>	<b>2,263</b>	<b>98</b>	<b>2,361</b>	<b>374</b>
<b>Regulatory Services</b>						
Development Services	1,394		1,394	0	1,394	355
Building Services	768		768	0	768	197
Public and Env Health	664	5	669	0	669	159
Admin and Public Order	1,024		1,024	0	1,024	265
<b>Sub Total</b>	<b>3,850</b>	<b>5</b>	<b>3,855</b>	<b>0</b>	<b>3,855</b>	<b>976</b>
<b>Civil Services</b>						
Asset Management	2,719	25	2,744	(11)	2,733	853
Stormwater and Env Prot	518	210	728	50	778	211
Roads and Bridges	2,859		2,859	267	3,126	58
Ancillary Transport Services	2,142	44	2,186	104	2,290	303
Roads and Traffic Authority	1,352	8	1,360	0	1,360	115
Open Space and Reserves	3,373	198	3,571	86	3,657	981
Fleet Mgmt and Workshop	2,375		2,375	40	2,415	750
Rural Fire Service	370		370	44	414	159
Quarries and Sandpit	67		67	69	136	24
Swimming Pools	669		669	0	669	94
Waste-Landfill/Commercial	5,093		5,093	301	5,394	1,190
Waste - Domestic	6,380		6,380	(270)	6,110	1,442
<b>Sub Total</b>	<b>27,917</b>	<b>485</b>	<b>28,402</b>	<b>680</b>	<b>29,082</b>	<b>6,180</b>
<b>General Manager's Group</b>						
Governance	947	17	964	15	979	364
Administrative Services	904		904	0	904	278
Financial Services	(2,825)	26	(2,799)	4	(2,795)	(959)
Regional Library	1,280	54	1,334	0	1,334	645
Information Services	1,496	10	1,506	0	1,506	733
Human Resources and Risk	1,537		1,537	97	1,634	673
Tourism	616		616	35	651	196
Property Management	1,645	50	1,695	47	1,742	671
Ballina Byron Airport	2,577		2,577	0	2,577	695
<b>Sub Total</b>	<b>8,177</b>	<b>157</b>	<b>8,334</b>	<b>198</b>	<b>8,532</b>	<b>3,296</b>
<b>Total Operating Expenses</b>	<b>41,802</b>	<b>1,052</b>	<b>42,854</b>	<b>976</b>	<b>43,830</b>	<b>10,826</b>
<b>Net Operating Result</b>						
<b>Before Depreciation</b>	<b>8,744</b>	<b>(1,898)</b>	<b>6,846</b>	<b>(747)</b>	<b>6,099</b>	<b>17,198</b>
Depreciation Expense	12,475		12,475		12,475	12,475
<b>Net Operating Result from Continuing Operations</b>	<b>(3,731)</b>	<b>(1,898)</b>	<b>(5,629)</b>	<b>(747)</b>	<b>(6,376)</b>	<b>4,723</b>

**General Fund Working Capital Forecast**

Item	Opening Balance (1)	Sept Estimated Movement (2)	Revised Closing Balance (1 +2)
Working Capital	2,775	(125)	2,650

**Comments - General Fund**

As an overall comment it is fair to say that there are some really significant projects, both community and commercially focussed, occurring and proposed to occur in the Fund. It is considered to be a tenuous time financially that makes estimating future outcomes difficult given the number and size of the projects on the drawing board.

There have been a large number of major adjustments to the General Fund budgets already this financial year. In August Council approved budget variations relating to incomplete 2010/11 works that have been carried forward to 2011/12. Comments in this report do not reference the works carried forward and a general premise is that a variance has not been considered material if it is within 5-10% of the base amount.

The variations associated with the carry forwards have contributed to the reduced **forecast operating surplus** (before depreciation) from \$8.7 million to \$6 million. This is due to operating expenses being added to the budget, which are financed from reserves (i.e. an internal reserve created to carry forward the previous year's funding).

As reserve transfers do not form part of operating income, they do not offset the increased operating expense, as per the statement of operating income and expense.

The estimated **unrestricted working capital** movement has deteriorated slightly from a forecast deficit of \$115,000 to \$125,000. This indicates that whilst the forecast operating surplus has deteriorated by \$700,000, this has been offset by other funding sources such as reserves.

In the process of preparing this statement a review of the methodology to calculate working capital has been undertaken. Based on industry advice it has been determined to alter the manner in which working capital is calculated such that the position at 30 June 2011 has been amended to \$2,775,000, somewhere between \$3m to \$4m is the preferred benchmark and this matter will be discussed in a report to be tabled later this financial year on our financial indicators.

There are a number of budget adjustments detailed in the comments that follow but the larger changes that affect working capital during the quarter include:

- The revised forecast for income from ordinary rates is now \$15.5 million which is \$64,000 more than the original estimate (positive change)

- the budget for public liability insurance has been reduced by \$60,000 to \$470,000 (positive change)
- workers compensation insurance expenses will be \$156,000 more than anticipated (negative change).

In a number of instances where expenditure forecasts have been exceeded efforts have been made to compensate for this adjustment by reducing expense to other areas.

### **General Fund - Operating Income**

#### *Strategic Planning*

Rezoning Fees: New budgets have been raised for rezoning fees to \$18,000. Developers pay in advance for Council to process applications. Also grant income to \$5,000 has been received regarding economic development. An equal increase to strategic rezoning expenses is also required. **Increase in income of \$23,000 which is offset by an increase in expense (see strategic expense which include this and other adjustments).**

#### *Roads and Bridges*

Storm damage: Grant income of \$20,000 has been received in respect to the January 2011 event. These funds are necessary to meet expenses already incurred in 2011/12 in respect to this event. **Increase to income and expense of \$20,000.**

#### *Open Spaces and Reserves*

Vegetation Management: See comment in expenditure section.

#### *Fleet Management*

Operating income: Forecast income has been increased by \$40,000 as contributions from staff to lease council vehicles are trending higher than forecast. **Increased income \$40,000.**

#### *Landfill Management*

Bulk Waste Collection: The budget assumed that the bulk waste collection business would have been sold before years end and this was not the case. Both income and expense have been incurred in relation to bulk waste and new budgets to \$60,000 have been raised. **Increase to income and expense \$60,000.**

Miscellaneous: Slightly more income than forecast (\$10,000) has been received from annual charges, and both bin sales and compost sales have increased by \$10,000 each based on trending. **Increase to income \$30,000.**

Recyclable Gate Fees from Domestic Waste (DWM): See comment at the bottom of this report titled 'Waste Management' where it is proposed to reduce the DWM gate fee from 1 October 2011. The reduced gate fee is expected to result in reduced income to Landfill Management of \$440,000 and reduced expense of \$440,000 to Domestic Waste Management. **Decrease to income \$440,000.**

Waste Disposal Income from DWM: Again it is proposed to reduce the DWM mixed and green waste gate fee from 1 October 2011. However even if this occurs, based on current trending, the budget for gate fees from DWM will be exceeded by \$140,000. **Increase to income \$140,000.**

Levy Reimbursement: it was estimated that Council would receive \$114,000 reimbursement from the State imposed waste levy and it has been revised to \$239,000. **Increase to income \$125,000.**

*Finance - General Purpose Revenues*

Financial Assistance Grant: Estimated grant income was \$3,377,000 and the actual grant will be \$3,389,000. **Increase in income of \$12,000.**

NB: The table shows a reduction to income of \$846,000 relating to the carry forwards from the previous year. The original estimate included the FAG forecast at \$3,377,000 however of this amount \$846,000 was paid at the end of the 2010/11 financial year.

The prepayment was put into reserve and carried forward to 2011/12. This meant that forecast income fell by the value of the prepayment because it now resides as a transfer from reserve.

Ordinary Rates: Income was underestimated, principally due to the growth of assessments, and the forecast has been increased by \$64,000. **Increase to income \$64,000.**

Interest on Rates Outstanding: forecast income has been increased by \$20,000 to \$78,000. Owing to workloads related to introducing the Civica software system, follow up on outstanding rates has been minimal over the last two years. Also in 2010/11 statutory interest charged on outstanding rates was 9% and in 2011/12 it has jumped to 11%. **Increase to income of \$20,000.**

Credit Card Surcharge: forecast income increased by \$5,000. Higher than average numbers are using credit to pay Council. **Increase to income \$5,000.**

*Human Resources*

Insurance Reimbursement: Refund of expense relating to buildings damaged in the May 2009 storm event. **Increase to income \$17,000.**

Centrelink Payment: contribution from State Government regarding extended maternity leave payments. **Increase to income \$15,000.**

*Tourism*

Grant Income: Recognition of funds received from the Department of Trade to develop a regional tourism strategy. Additional funds will be received but they have not been recognised at this time. **Increase to income \$16,000.**

## **General Fund - Operating Expenses**

### *Strategic Planning*

Operating Expense: Various budgets have been reduced by small amounts totalling \$14,000. The budgets have been reduced to enable an increase to the community gallery budget of \$14,000. Also see comment on strategic income whereby expense budgets have been increased by \$23,000 for project works. **Increase in expense of \$9,000.**

### *Community Services*

Lennox Head Community Services Centre: The budget has been increased by \$75,000 to fund anticipated legal fees concerning issues relating to the construction of the centre as reported to the September 2011 Commercial Services Committee. The expenses will be funded from property reserves. **Increase to expense \$75,000 and increase to transfer from reserves of \$75,000.**

### *Community Gallery*

Operational Expenses: Budget increased by \$14,000 as it was evident that the existing budget of \$154,000 would not be sufficient. **Increase in expense of \$14,000.**

### *Stormwater and Environmental Protection*

Asset Data: New budget raised to collect data on stormwater assets. The budget has been relocated from stormwater capital. **Increase to operating expense of \$50,000 and reduction to capital expense of \$50,000.**

### *Roads and Bridges*

Heavy Patching: Funds have been relocated from the capital budget to the operating budget to allow more expenditure on heavy patching. **Increase to operating expense of \$247,000 and reduction to capital expense of \$247,000.**

Storm Damage: Refer to roads income comment.

### *Ancillary Transport*

Street Lighting: Council is in the process of placing energy saving infrastructure into street lights. The estimates envisaged that the reduced lighting bill would be in place from the commencement of the year and this has not been the case. The budget has been increased by \$104,000 and this is offset by reducing the transfer to property reserves. The dollar value of the anticipated energy saving was to be returned to property reserves. **Increased expense \$104,000 and reduced transfer to reserve \$104,000.**

*Open Space and Reserves*

Mowing: Budgets totaling \$10,000 have been relocated from Open Spaces and Reserves to the donation section of the ledger. This relates to mowing expenses for Wardell Recreation Ground and Alstonville Showground. **Reduced parks expense \$10,000 increased donations expense \$10,000.**

Tree Planting: Budget for \$15,000 for tree planting has been relocated to capital expense to pay for over expenditure on the Crane Street War Memorial. **Reduced operating expense and \$15,000 increased capital expense \$15,000.**

Vegetation Management: Grant income has been received of \$86,000 for Bitou Bush work, Chickiba wetland and Big Scrub. New expense budgets have been raised to spend the grant income. **Increased income and expense \$86,000.**

Cemetery Operations: Operational budgets for the cemetery were not sufficient and have been increased by \$70,000. This appears to have been an under estimate in the original budget based on previous years. **Increased expense of \$70,000 and reduced transfer to reserve \$70,000.**

Coastal Reserves: The budget of \$56,000 is primarily used for project work and \$25,000 has been relocated to capital expense to enable construction of a dressing shed at Fripp Oval. **Reduction to operating expense \$25,000 and increase to capital expense \$25,000.**

Special Events: Responsibility for special events has been transferred to the grants and events officer who is attached to the tourism section of the organisation, hence the budget of \$20,000 has been relocated to tourism. **Reduction to Parks expense \$20,000 and increase to Tourism expense \$20,000.**

*Fleet Management*

Operating expenses: Actual expense is trending marginally high so an additional \$40,000 has been added to the total forecast. This change offsets an increase to forecast Fleet income of \$40,000. **Increase to income and expense of \$40,000.**

*Rural Fire Service*

Operational expenses: The contribution to the Rural Fire Service is \$14,000 greater than was initially advised. This contribution takes into account central administration costs as well as local issues.

Also accounts relating to the last financial year of approximately \$30,000 have been paid in the current financial year. This problem was anticipated and unexpended funds from last year were transferred into reserve.

**Increased expense \$44,000 and increased reserve transfer \$44,000.**



### *Quarries*

Sandpit quarry: Expense relating to monitoring of the quarry and getting development application approval are exceeding forecast. These costs will be funded from the Tuckombil quarry reserve because original estimates forecast that all sandpit quarry reserves will be consumed by 30 June 2011. **Increase in expense of \$20,000 and transfer from reserve \$20,000.**

Tuckombil Quarry: A budget of \$50,000 has been relocated from capital to operational expense. The budget is for a strategic options report. **Increase to operating expense decrease to capital expense of \$50,000.**

### *Landfill Management*

Salaries: Correction of salary allocations to the business have resulted in additional expense. **Increase expense \$30,000.**

### *Domestic Waste Management*

Gate fees: Based on trends in the first quarter and a proposal that fees be reduced from 1 October 2011 a net reduction to expenses of \$300,000 is anticipated. See comment on Waste Management at the end of this report. **Reduction to expense of \$300,000.**

Green waste collection: Expenses for this new service are trending reasonably close to forecast and a fine tuning adjustment of \$30,000 is recommended to the original budget of \$620,000. **Increase to expense \$30,000.**

### *Human Resources and Risk Management*

Workers Compensation Insurance: A premium of \$620,000 was estimated and based on current information the premium is likely to be \$760,000. This expense is variable depending on claims and gross wages paid. **Increase to expense \$156,000.**

Public risk insurance: the forecast has been reduced by \$60,000 to \$470,000. Last year this premium was \$509,000. **Reduction to expense \$60,000.**

### *Tourism*

Special Events: See comment in parks and reserves.

Regional tourism strategy: New budget raised, funded by grant income, to produce the strategy. **Increase to expense \$16,000.**

### *Property Management*

Property Assessment and Evaluation: Budget increased from \$15,000 to \$35,000 to fund assessment of development opportunities. Expense is funded from reserve. **Increase to expense \$20,000 and transfer from reserve \$20,000.**

Development Application Fee: Refund of fees relating to section 94 contributions. Expense is funded from reserve. **Increase to expense of \$27,000.**

#### *Airport*

Comment: There are no changes proposed for the airport however it is advised that actual income is well beneath forecast. This is because accounts have not been raised for two commuter airlines as negotiations are in progress concerning revised fees.

### **Water Operations**

This next section of the report deals with Council's water operations.

#### **Water - Statement of Operating Income and Expenses (\$'000)**

Item	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Projected Year End Budget 000's	Actual to Sept 000's
Operating Income	8,145		8,145	0	8,145	3,528
Operating Exps (excl. dep)	8,520	123	8,643	0	8,643	2,648
<b>Net Operating Result Before Depreciation</b>	<b>(375)</b>	<b>(123)</b>	<b>(498)</b>	<b>0</b>	<b>(498)</b>	<b>880</b>
Depreciation Expense	2,100		2,100		2,100	2,100
<b>Net Operating Result from Continuing Operations</b>	<b>(2,475)</b>	<b>(123)</b>	<b>(2,598)</b>	<b>0</b>	<b>(2,598)</b>	<b>(1,220)</b>

There are no adjustments proposed to water operations this quarter.

### **Sewer Operations**

This next section of the report deals with Council's Sewer operations.

#### **Sewer- Statement of Operating Income and Expenses (\$'000)**

Item	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Projected Year End Budget 000's	Actual to Sept 000's
Operating Income	11,788		11,788	0	11,788	9,515
Operating Exps (excl. dep)	9,078	53	9,131	552	9,683	2,475
<b>Net Operating Result Before Depreciation</b>	<b>2,710</b>	<b>(53)</b>	<b>2,657</b>	<b>(552)</b>	<b>2,105</b>	<b>7,040</b>
Depreciation Expense	4,334		4,334		4,334	4,334
<b>Net Operating Result from Continuing Operations</b>	<b>(1,624)</b>	<b>(53)</b>	<b>(1,677)</b>	<b>(552)</b>	<b>(2,229)</b>	<b>2,706</b>

Income is trending reasonably close to forecast and there appears no reason for adjustments to forecasts at this time.

Expense has increased by \$552,000 which is mainly attributable to a recalculation of loan interest. At the time of the original budget the loan arrangements had not been finalised and the corrected calculation has resulted in an increase to interest expense of \$474,000.

Also the budget for energy costs associated with treatment plants and pumping stations has been increased by \$78,000 to cope with rising electricity tariffs.

### Capital Expenditure

This next section of the report looks at capital expenditure and examines proposed changes to the program.

#### General Fund - Capital Budget - Source and Application of Funds (\$'000)

Source and Application	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sept 000's
<b>Source of Capital Funding</b>						
General Revenue	3,581		3,581	(222)	3,359	
Reserves	13,949	10,698	24,647	(2,971)	21,676	
Loans	3,300		3,300	(2,000)	1,300	
Section94 contributions	720	3,120	3,840	(720)	3,120	
Grants and contributions	3,624	0	3,624	0	3,624	
<b>Total Funding</b>	<b>25,174</b>	<b>13,818</b>	<b>38,992</b>	<b>(5,913)</b>	<b>33,079</b>	<b>4,013</b>
<b>General fund capital Expense</b>						
<i>General Manager's Group</i>						
Information Services	31		31	0	31	3
Property Management (Commercial)	4,700	1,466	6,166	(3,802)	2,364	897
Property Management (Community)	5,740	443	6,183	426	6,609	44
Camping Ground	10		10	0	10	0
Ballina Airport	1,135		1,135	0	1,135	154
<i>Regulatory Services</i>						
Bubble Aerator			0	11	11	11
Animal Shelter		25	25	280	305	0
<i>Civil Services</i>						
Asset Management	225	10	235	25	260	32
Stormwater	394	610	1,004	(47)	957	84
Roads and Bridges	3,350	6,579	9,929	(1,275)	8,654	1,570
Ancillary Transport Services	1,217	737	1,954	73	2,027	186
Town Beautification	5,300	2,175	7,475	(1,995)	5,480	396
Water Transport and Wharves	308	90	398	(37)	361	27
Open Space - Parks & Reserves	317	231	548	15	563	120
Open Space - Sporting Fields	140	335	475	25	500	161
Cemeteries		100	100	0	100	0
Fleet and Plant	2,237		2,237	0	2,237	231

(continued on next page)

Source and Application	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sept 000's
Quarries and Sandpits	50		50	(50)	0	0
Waste Management	20	1,040	1,060	365	1,425	97
<b>Total Capital Expense</b>	<b>25,174</b>	<b>13,841</b>	<b>39,015</b>	<b>(5,986)</b>	<b>33,029</b>	<b>4,013</b>
<b>Water Supply Capital Works</b>						
<b>Water Capital Funding</b>						
Reserves	450		450	0	450	
Section 64 contributions	4,490	200	4,690	(3,900)	790	
<b>Total Funding</b>	<b>4,940</b>	<b>200</b>	<b>5,140</b>	<b>(3,900)</b>	<b>1,240</b>	<b>173</b>
<b>Water Capital Expense</b>						
Water storage	3,500		3,500	(3,000)	500	0
Trunk mains	990	200	1,190	(900)	290	65
Other	450		450	0	450	108
<b>Total Capital Expense</b>	<b>4,940</b>	<b>200</b>	<b>5,140</b>	<b>(3,900)</b>	<b>1,240</b>	<b>173</b>
<b>Sewer Services Capital Works</b>						
<b>Sewer Capital Funding</b>						
Reserves	1,826		1,826	(1,826)	0	
Section 64 Contributions	1,190		1,190	(1,190)	0	
Loans	50,000	4,652	54,652	(14,367)	40,285	
<b>Total Funding</b>	<b>53,016</b>	<b>4,652</b>	<b>57,668</b>	<b>(17,383)</b>	<b>40,285</b>	<b>4,541</b>
<b>Sewer Capital Expense</b>						
System Upgrade	52,816	4,652	57,468	(17,383)	40,085	4,541
Mains Renewals	200		200	0	200	
<b>Total Capital Expense</b>	<b>53,016</b>	<b>4,652</b>	<b>57,668</b>	<b>(17,383)</b>	<b>40,285</b>	<b>4,541</b>

### General Fund - Capital Budget

Various adjustments to the capital program were approved by Council via the 'Works Carried forward Report' presented to Council at the August meeting. It is not proposed to again detail these adjustments as part of this report.

It is also the case Council that considered a capital works report at the October meeting that included an attachment that looked at programs in detail as well as providing an overview of proposed adjustments to the program.

Hence the comments in this report are confined to material changes to the budget that Council has not considered to date.

### General Manager's Group

Property Management (Commercial): Forecast expense has fallen by \$3.8 million which is mainly due to the fact that proposed a commercial property at Lennox Head, valued at \$4 million, has been deleted from the 2011/12 budget and added to the 2012/2013 financial year.

It is also the case that the budget of \$1.4 million to purchase land at Wollongbar was insufficient and a further \$96,000 has been added to the budget. Further, new budgets have been raised to \$50,000 each (total adjustment of \$100,000) regarding expenses associated with the sale of land to the Bridge Club and final works relation to the sale of land to Harvey Norman.

The net reduction to forecast expense of \$3.8 million results in a reduction to reserve funding.

Property Management (Community): Adjustment relates to additional expenses associated with the completion of Lennox Head Cultural and Community Centre \$375,000 previous approved, and a further \$51,000 has been added to the Ballina Surf Club budget represents funds carried forward.

The net increase to forecast expense of \$426,000 is funded from reserves via a transfer from the properties activities reserve.

### Regulatory Services

Animal Shelter: New budget raised to enable a new animal shelter to be constructed.

The net increase to forecast expense of \$280,000 is funded via an increase to reserves being a transfer from the properties activities reserve.

### Civil Services

Asset Management: Forecast expense has increased because the extension to the SES building will go over budget by an estimated \$8,000 and a new budget to \$17,000 has been raised for fire safety work carried out on the administration building.

The net increase to forecast expense of \$25,000 is funded from general revenue.

Roads and Bridges: Replacement of River street roundabout (\$1,028,000) has been deleted from the roads program and budget to \$247,000 has been relocated from capital to maintenance expense to accommodate the heavy patch budget.

The net decrease to forecast expense of \$1,275,000 is reflected in funding sources by a decrease in funding from section 94 reserves of \$750,000 and a decrease in funding from properties activities reserves of \$308,000 regarding the roundabout, and a decrease to funding from general revenue of \$247,000.

Ancillary Facilities: Forecast increase to expense relates to shifting the budget for the Yacht Club car park refurbishment from the 'Water Transport' to 'Ancillary facilities' programs. Also additional funds have been applied to the energy reduction street lighting campaign.

The additional budget for the street lighting works is funded from the properties activities reserve.

Town Beautification: budget for Ballina town centre reduced by \$2 million as the total budget of \$5.3 million will not be required this financial year.

A loan of \$2 million was proposed in respect of the Ballina town centre works in 2011/12 which has been removed from the budget.

Open Space Sporting Fields: Capital program increased by \$25,000 as additional work is planned as part of the amenities improvement at Fripp Oval. A new dressing shed will be constructed.

The dressing shed works are funded from general revenue. To offset the increase to capital expense there has been an equal reduction to operating expense sourced from the coastal reserves budget.

Quarries: Budget of \$50,000 relocated from capital to operating expense. The budget relates to a strategic options report in respect to our quarries.

Waste Management: The budget to purchase four new waste trucks was not sufficient and has been increased by \$365,000 to \$1,265,000, as approved by Council.

The extra capital expense has been funded from reserves, namely the Landfill and resource recovery reserve.

#### Water Supply

Water Storage: A budget of \$3.5 million to construct a new reservoir has been reduced by \$3 million to \$500,000 as it is evident that the whole budget will not be required this year. Also the budget for trunk mains to service the reservoir has been reduced by \$900,000 to \$90,000.

Funding from section 64 contributions has reduced accordingly.

#### Sewer Services

System Upgrade: A critical examination of the works program has resulted in works estimated to cost some \$17.3 million being removed from the current financial year and placed in later years.

As Council is aware, a set agreement has been entered into in respect to borrowing \$63 million to fund the capital program over the next two years. The reduction to the capital works program will mean that there will be a substantial excess of loan funds over and above capital expenditure.

During 2011/12 Council will receive a total of \$51.2 million dollars in monthly instalments from the loan facility and we now forecast capital expense of \$40.2 million so there will be a substantial increase in cash reserves due to unexpended loan funds.

During 2011/12 and 2012/13 the loan facility is based on interest only loan repayments at a rate of 5.88%. The average investment rate achieved by Council for the first three months of the year was 5.78% so the net loss in comparison to the loan is reasonably good. That is considering that a normal differential between investment rates and loan rates would be substantially higher than 0.02%.

### Investments

The next table shows details of the projected cash and investments for the Council.

	Original budget 2011/12	Changes for approval	Projected Year end result 000's	Actual YTD 000's
<b>Unrestricted</b>	<b>1,970</b>			<b>0</b>
<b>Externally Restricted</b>				<b>0</b>
- Section 94	7,297	(1,986)	5,311	0
- Domestic Waste M'tment	98	(35)	63	0
- Unexpended Grants	46	285	331	0
- Other	64	183	247	0
- Section 64 Water	3,329	4,405	7,734	0
- Water	1,659	402	2,061	0
- Section 64 Sewer	714	3,939	4,653	0
- Sewer	6,788	8,409	15,197	0
<b>Total Externally Restricted</b>	<b>19,995</b>	<b>15,602</b>	<b>35,597</b>	<b>0</b>
<b>Internally Restricted</b>				
- Employee Leave Entitlements	1,674	4	1,678	0
- Plant Replacement	208	567	775	0
- Quarries	1,468	42	1,510	0
- Properties Activities	759	1,925	2,684	0
- Rental Properties Refurbishment	185	34	219	0
- Management Plans & Studies	180	25	205	0
- Cemeteries	115	16	131	0
- Landfill Management	1,514	530	2,044	0
- Civil Works	658	127	785	0
- Other	197	145	342	0
<b>Total Internally Restricted</b>	<b>6,958</b>	<b>3,415</b>	<b>10,373</b>	<b>0</b>
<b>Total Restricted</b>	<b>26,953</b>	<b>19,017</b>	<b>46,970</b>	<b>0</b>
<b>Total Cash Investments</b>	<b>28,923</b>	<b>19,017</b>	<b>47,940</b>	<b>69,031</b>

Notes to the statement

This statement focuses on cash and investments. The unrestricted cash figure is not inclusive of transactions that would normally be included when calculating working capital. ie it is exclusive of movements in items such as debtors and creditors.

The available cash figure is taken from note six of the financial statements as at 30 June 2011. Council does not track movements in available cash on a quarterly basis. The changes for approval column includes carry forward adjustments from the 2010/11 financial year.

Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for September 2011, funds invested amounted to \$68,391,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 30 September 2011 to the amount of \$639,913.
4. Actual year to date cash and investments amount to \$69,031,000 as at 30 September 2011. This amount includes cash at bank of \$639,913 and funds invested of \$68,391,000 which has been reconciled to bank statements and investment reports.

## Bank Reconciliation Summary as at 30 September 2011

Balance as per Bank Statement	700,301.92
Less Unpresented Cheques	-160,799.01
Sub Total	<u>539,502.91</u>
Plus Outstanding not Credited	130,343.28
Sub Total	<u>669,846.19</u>
Less Amounts Deposited at end of month not in ledger	-29,932.77
Balance as per ledger	<u><u>639,913.42</u></u>

**Comment on cash and investment position**

The original budget for cash and investments was made prior to finalisation of the end of year accounting for 2010/11. Hence there is significant scope for variance between the original estimated cash and investments position as compared to the revised position in September. It is also the case that Council has approved the carry forward of various works and services that have also affected the movements in the table.

The forecast reserves position has increased from \$28.8 million to \$48.5 million. This reflects changes to capital works programs, funding strategies and assumptions. Details of the major changes are summarised below.



## **Recommended changes in revised budget**

### Section 94 Reserves

Forecast section 94 reserves have decreased by approximately \$2 million. The major changes include:

1. The original budget assumed that Council would receive \$4 million from developers in relation to the roads contributions plan. This forecast has been reduced by \$3 million to \$1 million which is considered to be more realistic given current information. Impact on forecast reserve: decrease by \$3 million.
2. It was proposed to apply \$720,000 from the roads contribution plan to River street roundabout. This roundabout will not be constructed this financial year and has been removed from the capital works program. Impact on forecast reserve: increase by \$720,000.

The forward financial plan for the roads contribution plan estimates that the plan is forecast to be overdrawn by some \$11 million. This is not sustainable and it will be necessary to push proposed capital works out to later years to enable a funding strategy to be devised.

### Section 64 Water Reserves

The forecast section 64 water reserve increased by \$4.4 million which is primarily attributable to a reduction to the capital works program. Proposed new reservoirs and trunk mains were deleted from the 2011/12 program.

### Sewer Fund Reserves

Since the original budget was prepared both the capital works program and the funding strategy have been adjusted resulting in an increase to forecast reserves of approximately \$12 million.

1. The 2011/12 capital works program has been reduced by approximately \$17 million as detailed in the capital expenditure review report to the October Ordinary meeting of Council. This has resulted in the dramatic increase to forecast reserves.
2. Council committed to a loan facility with the ANZ bank whereby we will be paid \$63 million over the next two years to finance capital works. This cash will be received as per the contracted schedule despite the fact that the works program has been adjusted with capital works pushed back into later years. In terms of the funding strategy this means that all works will be funded from loan income without the need to use reserve funds.

### Plant Replacement

The forecast reserve balance has increased by \$567,000. This is because proposed capital expense in 2010/11 did not occur. This means that the reserve balance at the commencement of the current financial year was \$567,000 greater than anticipated.

### Properties Activities

The forecast balance has increased by \$1.9 million. The reasons for this increase are detailed below. It is also mentioned that the sale of the Harvey Norman site occurred during the quarter with \$6 million going into the property reserve.

1. The major adjustment was to remove from the capital works program proposed developmental works at Lennox Head estimated at \$4 million. Impact on the reserve: increase of \$4 million.
2. Additional land development expenditure at Wollongbar was introduced to the budget estimated at \$1.5 million. Impact on the reserve: reduction of \$1.5 million.
3. Unforecast expense associated with Lennox Head Cultural and Community Centre of \$450,000. Impact on the reserve: reduction of \$450,000.

### Landfill Management

There are various budget amendments proposed for this business however the primary adjustment is due to the sale of the bulk waste collection business which has resulted in additional forecast income of some \$600,000.

### **Key Performance Indicators**

The next section of the report takes selected financial benchmarks that have been adopted by Council and compares the September forecast with the ratio calculated as at 30 June 2011. The performance indicators that have been selected have a short term focus which suits the quarterly review which also tends to focus on the short term.

The actual and forecast performance indicators measured against the benchmark provide an important insight into the financial well-being of the organisation. The indicators should be used to assist financial policy and strategy.

### **Key Performance Indicators - General Fund**

1. Unrestricted Current Ratio - unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

2010/11	2011/12 (Sept Estimate)
2.55	1.39
Pass	Fail

Comment

The ratio has shifted to a fail as cash is converted into fixed assets. Internally restricted general fund cash is forecast to fall from \$18 to \$10 million this financial year. This forecast movement in the ratio is partially a consequence of the community infrastructure construction program that Council has undertaken. The forecast movement in the ratio does serve as a warning that Council's general fund liquidity is not as strong as it was and suggests that the general fund is totally committed, perhaps tending towards over-committed.

In respect to 2011/12 it is important to note that this is a forecast and forecasting ratios is not an exact science. The actual outcome for 2011/12 is highly dependant on the level of capital expenditures on projects such as the Ballina surf club and town centres. Also as the investment profile graduates towards a shorter time horizon, as floating rate notes are converted to term deposits, it is likely that more cash will be classified as current which will improve the ratio.

Looking to future years it is likely this ratio will fall as Council is committed to borrowing external funds to finance further infrastructure works.

2. Rates & Annual Charges Outstanding Ratio - Rates and annual charges outstanding divided by rates and annual charges collectible. The purpose of this percentage is to measure the impact of uncollected rates and charges on Council's liquidity and the adequacy of Council's debt recovery efforts.

Benchmark: <6

2010/11	2011/12 (Sept Estimate)
6.23	5
Fail	Pass

Comment

It is expected that this ratio will fall, hopefully to within the benchmark, as recovery action is now being pursued as normal.

3. Available Working Funds (General Fund Only) - Total of cash, investments, receivables and inventory assets less total payables liabilities, externally restricted receivables, internally and externally restricted investments and real estate inventory. The benchmark is to be greater than 5% of expenses (excl depreciation and wages) plus 2% of income (excl rates & annual charges and grants & contributions) plus core inventory and receivables balance. The purpose of this measure is to show Council's short term ability to cover short term financial shocks whether they be reductions in anticipated revenues or unplanned additional expenditure.

Benchmark: \$3,000,000

2010/11	2011/12 (Sept Estimate)
\$2.7m	\$2.6m
Fail	Fail

Comment

There has been little change in this benchmark in comparison to the 30 June 2011 position as Council endeavours to manage a budget that will minimise any negative impact on working funds. Ideally at years end Council can achieve a surplus that may enable the benchmark to be achieved.

4. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is to measure whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12 (Sept Estimate)
(4)	(13)
Pass	Fail

Comment

The forecast is for a loss that exceeds the negative 10% maximum which is not satisfactory. However the forecast can be distorted by numerous issues. For example the forecast operating result does not include approximately 25% of income from the Federal Assistance Grant (FAG). This is because we actually received the money last financial year as a prepayment. It may be that we will receive a similar pre payment this financial year which would change the forecast ratio to a loss of (11%).

Needless to say however the ratio does highlight that the operating result is a matter for concern and efforts must continue to improve the result.

**Benchmark Indicators - Water Fund**

1. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage measures whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12 (Sept Estimate)
(24.26)	(32)
Fail	Fail

Comments

The operating position of water fund is not good. A loss of \$2.6 million is forecast and even if depreciation is excluded a loss of \$498,000 is forecast. Clearly cash losses are not sustainable and future years charging structures must be adjusted to improve the operating position.

2. Debt Service Ratio - Loan principal & interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions. (as per Note 13). The purpose of this percentage is to measure whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: < 12

2010/11	2011/12 (Sept Estimate)
0.05	0.05
Pass	Pass

Comments

The fund is virtually debt free so passes this benchmark with ease. It is also the case that the fund has reasonable cash reserves on hand.

3. Rates & Annual Charges Coverage Ratio - Rates & annual charges levied divided by total operating revenue from continuing operations. The purpose of this percentage is an indicator of a Council's financial self sufficiency. It indicates how a Council covers its operating costs through its taxation revenue. Councils that have a low ratio tend to be more reliant on grants and generally have lower flexibility to vary these charges. Ratio includes annual user charges as they qualify as taxation revenue.

Benchmark: <40

2010/11	2011/12 (Sept Estimate)
90.47	87
Pass	Pass

Comments

The majority of the funds income is derived from legislated taxation so in this regard the revenue stream is very secure.

### Benchmark Indicators - Sewer Fund

1. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12 (Sept Estimate)
(15.33)	(19)
Fail	Fail

#### Comments

Operating loss of \$2.2 million is forecast. The benchmark will accept a loss of up to 10% which takes into account the rapidly escalating rise in depreciation as assets are revalued. However the forecast is nearly double the outer limit of the benchmark which indicates council must look to improve the operating performance of the fund.

This is Council's strategy and charging structures must be carefully monitored with the long term financial plan to ensure that the fund is always in a position to meet commitments.

2. Debt Service Ratio - Loan principal & interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions. (as per Note 13). The purpose of this percentage is a measure of whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: <12

2010/11	2011/12 (Sept Estimate)
14.22	24
Fail	Fail

#### Comments

The ratio is indicating that the amount of recurrent income tied up repaying debt is excessive. This means that the fund may well struggle to finance operational contingencies and or capital works.

This ratio will get a lot worse when the real loan repayments kick in 2013/14 associated with the \$63 million loan.

3. Rates & Annual Charges Coverage Ratio - Rates & annual charges levied divided by total operating revenue from continuing operations. The purpose of this percentage is an indicator of a Council's financial self sufficiency. It indicates how a Council covers its operating costs through its taxation revenue. Councils that have a low ratio tend to more reliant on grants and generally have lower flexibility to vary these charges.

Benchmark: &lt;40

2010/11	2011/12 (Sept Estimate)
78.32	89
Pass	Pass

Comments

The majority of the funds' income is derived from legislated charges so in this regard the revenue stream is very secure.

**Contractors**

The table below provides details of contracts entered into in the September quarter. Contracts below \$50,000 are not included.

Contractor Name	Purpose of Contract	Amount	Start Date	Duration Of Contract	Included in Budget Y/N
Aurora Research	Produce a Regional Visitor Services Strategy	57,000	16.08.11	6 mths	Y
PDT Architects	Design of Sports & Leisure Centre	407,000	29.07.11		Y
Thomas Noble and Russell	External auditing services	51,200 First year	01.07.11	6 years	Y
Clean Works North Coast	Provision of cleaning services to various buildings	Schedule of rates	01.07.11	3 years	Y
NJ Constructions	Supply and installation of electrical substation	152,000	28.07.11		y
Bennett Constructions	Alterations to departure lounge at airport	136,000	05.09.11		Y
Boral Asphalt	Provision for Supply & Laying of Asphalt	\$111,627.81	01.07.11	1 year	Y
Clark Asphalt P/L	Provision for Supply & Laying of Asphalt	Schedule of rates	01.07.11	1 year	Y
Fulton Hogan Industries P/L	Provision for Supply & Laying of Asphalt	\$445,855.82	01.07.11	1 year	Y
Tropic Asphalts P/L	Provision for Supply & Laying of Asphalt	Schedule of rates	01.07.11	1 year	Y
Holcim	Supply & Delivery Quarry Rock for Coast Road	Schedule of rates	01.07.11		Y
Symbio Alliance	Provision of Laboratory Testing Services	Schedule of rates	14.11.11	2 years 30.06.13	Y
Scientific Analytical Services	Provision of Laboratory Testing Services	Schedule of rates	14.11.11	2 years 30.06.13	Y
Iveco Trucks in conjunction with Superior Pac	Supply of 4 side load garbage trucks	1,428,888	28.09.11	Expected delivery in Feb 2012	Exceeded budget
Arkwood Organic Recycling	Removal of Biosolids from Wastewater Plants	559,193.50	2 years 30.06.13	2 years	Y
Steven Van Der Mere	Mowing of various sporting fields	Approx \$80,000 to \$100,000		asap	Y

### Consultants

The table below summarises the expense incurred in the September quarter on consultants. The definition of consultants includes a person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist advice or professional advice to assist decision making by management.

	Expenditure YTD	Included in Budget Y/N?
Consultancies	3,400	Y

### Legal Expenses

The table below summarises the expense incurred in the September quarter on legal fees. For the purposes of the report legal fees have been included where there is a dispute situation. This will include processing of infringement notices but exclude amounts paid to legal firms that may be related to the creation of a lease or sale of land.

	Expenditure YTD	Included in Budget Y/N?
Legal Fees	75,700	Y

### Other Matters

#### *Waste Management*

Council will be aware that there is a very close relationship between the Landfill Management business and the Domestic Waste Management (DWM) business. DWM provides the collection service and pays gate fees to place the rubbish at the landfill whilst Landfill Management looks after the landfill and waste recovery.

Landfill Management has been in financial hardship over recent years and DWM has been paying gate fees that are in excess of what commercial and self haul users are paying at the gate. This strategy has greatly assisted the Landfill Management business to the point where the business is accumulating reserves to pay for future remediation and it looks likely that the current waste cells will last for the life of the loans that were taken out to construct them.

However DWM is starting to struggle financially. This is attributable to the high gate fees, an ever increasing waste volume and also the fact that the business is looking to purchase four new trucks in the one year. DWM also has the new waste collection service to manage however this does seem to be going quite close to plan.

It is proposed that, as from 1 October 2011, the gate fees paid by DWM be reduced such that they are the same as those paid by commercial and self haul users of the landfill. It will be noted that the gate fees paid by DWM for green waste are the same as that charged for mixed waste. The relevant part of the 2011/12 Landfill Management fee structure is shown below.



Mixed waste	
Commercial users	\$174 per tonne
DWM	\$222 per tonne

Recyclates	
Commercial users	\$ 74 per tonne
DWM	\$200 per tonne

The revised forecasts for both businesses are shown in the tables below. The forecasts assume that the altered fee structure is approved.

#### Forecast as at September for Landfill Management

	September Estimate \$000's
Operating income	6,417
Operating expense	5,394
Operating surplus before depreciation	1,023
Capital income	662
Capital expense	160
Loan capital	1,210
Net cash movement	315
Reserve balance at start of year	1,729
Cash movement 2011	315
Reserve balance 30/6/2012	2,044

The forecast shows that the revised operating position for Landfill Management is not ideal given that a surplus of \$1,023,000 is anticipated and the loan capital repayment is \$1,210,000. Hence there is a cash shortfall of \$187,000 before contemplating depreciation and capital works.

However the reserve movement is positive due to the sale of the bulk bin business (see capital income) and the reserve forecast of over \$2 million is starting to reach the desired level to pay for post closure remediation.

The next table forecasts the estimated performance of DWM, again assuming reduced gate fees.

#### Forecast as at September for Domestic Waste Management

	September Estimate \$000's
Operating income	6,566
Operating expense	6,110
Operating surplus before depreciation	456
Capital income	
Capital expense	1,265
Loan capital	126
Net cash loss	(935)
Reserve balance at start of year	997
Cash movement 2011	(935)
Reserve balance 30/6/2012	62

The forecast operating surplus of \$456,000 is sound. The business needs to fund approximately \$300,000 annually for one new truck and pay \$126,000 in loan capital. So the forecast operating performance is achieving necessary financial goals.

The current financial year is abnormal in that four new trucks are being purchased which will drain available reserves. However the business will be well positioned with new vehicles.

The Landfill Management and DWM businesses are very closely linked. Both businesses are very important to Council and the community so it is important that they are meeting financial benchmarks. The adjustment to the charging structure should achieve this outcome in 2011/12. It is also preferable to have DWM paying the same rate as commercial customers.

### **Statement**

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 30/9/2011 indicates that Council's projected financial position at 30 June 2012 will be satisfactory\* at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

\* Technically the forecast position of Council as at 30 June 2011 is not sustainable and therefore unsatisfactory.

This is because on a consolidated basis and on a fund basis the organisation is making an operating loss and this is predicted to continue into the foreseeable future. However the certification has been signed as satisfactory because it is based on the short term (12 months) performance of Council.

This Council has historically functioned with a recurrent operating loss. There is typically a surplus before depreciation with surplus funds applied to the asset base. Hence the forecast for the current financial year is no different to the way it has been over time.

Ballina Shire Council is different to a commercial business. Being a Government instrumentality and based on current information the organisation will continue in perpetuity. The primary funding sources are annual rates and charges that are guaranteed. The organisation will go through cycles in terms of operating performance and financial position that are both good and bad but there will always be a cash flow and continuity.

It will also be noted that some of the key financial performance indicators set by Council are not forecast to be achieved this financial year and the certification of satisfactory is premised on the twelve month focus. Performance indicators are useful to gauge trends and provide signals that should be used to assist when setting policy and strategy.



Signed Peter Morgan, Responsible Accounting Officer

### **Sustainability Considerations**

- **Environment**

This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.

- **Social**

As above.

- **Economic**

As above.

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

This report informs Council of actual results to date in comparison to budget. Where legal ramifications are envisaged they are detailed within the information section of this report.

### **Consultation**

This report has been prepared to inform the community of any budget variations.

### **Options**

Council may approve the budget amendments proposed, make changes or not approve any changes.

It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

**RECOMMENDATION**

1. That Council notes the contents of the September 2011 Quarterly Budget Review and approves the changes identified within the report.
  
2. That the gate fees paid by Domestic Waste Management be reduced to the same rates those charged for commercial users as from 1 October 2011.

Mixed waste (includes green waste)  
Commercial users     \$174 per tonne  
DWM                     \$222 per tonne

Recyclates  
Commercial users     \$ 74 per tonne  
DWM                     \$200 per tonne

**Attachment(s)**

Nil.

## 11. Civil Services Group Reports

### 11.1 Elizabeth Ann Brown Park - Draft Revised Masterplan

<b>File Reference</b>	Elizabeth Ann Brown Park
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Open Space and Reserves
<b>Objective</b>	To seek Council's endorsement of a revision of the Elizabeth Ann Brown Park Masterplan.

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#### **Background**

In March 2009 Council adopted an 'Elizabeth Ann Brown Park Concept and Management Plan'. This plan was prepared after extensive consultation with stakeholders and then exhibited for more general consultation with the wider community. A copy of this plan is included in this report as Attachment One.

The Masterplan has guided some recent projects to embellish the park including the construction of two sets of play equipment and the installation of a BBQ with picnic tables and seats.

The C Ward Committee however had expressed an interest in reviewing the Masterplan and established a sub committee to liaise with staff for this project.

The sub committee was assisted by a local landscape architect engaged by Council. The work of the subcommittee was presented to the C Ward meeting on 15 September 2001 and the meeting the following was noted in the minutes.

*A revised draft master plan was presented to the meeting for consideration. A copy of the draft plan is attached to the minutes.*

*The words 'optional future pathway' was requested to be removed from the plan. It was agreed that this should happen prior to the plan being submitted to Council for consideration.*

*The consensus at the meeting was that the revised draft master plan be now submitted to Council for adoption for placement on public exhibition.*

A copy of the draft revised Masterplan is attached to this report as Attachment Two.

The purpose of this report is to now present to Council the draft revision Elizabeth Ann Brown Park Masterplan.

### **Key Issues**

- Contents of the draft revised Elizabeth Ann Brown Park Masterplan.

### **Information**

The changes proposed in the revised plan are the deletion of the proposed circular path and the relocation of the existing war memorial. The plan also includes a path that supports more direct connectivity for pedestrians who have crossed Main Street with the stairs in Elizabeth Ann Brown Park that provide access to the shopping centre.

There is currently no Council funding allocated for any additional works in Elizabeth Ann Brown Park. The C Ward committee are interested however in seeking the support of community groups to assist with projects in the plan.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Parks and public open spaces are important places for recreation and community gatherings.
- **Economic**  
Not Applicable

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

There are no legal implications relating to this draft revised Masterplan. In adopting the draft revised Masterplan there may be an expectation that the work will be funded by Council. Currently there is no funding for any further works in Elizabeth Ann Brown Park.

### **Consultation**

The request to revise the plan was made by community representatives contributing to the C Ward Committee consultation process. A sub committee of key stakeholders was established to consult with regarding the work to revise the plan.

The recommendation to this report makes the suggestion to Council to seek further community inputs from a public exhibition.

### **Options**

1. Retain the existing Elizabeth Ann Brown Park Masterplan adopted in 2009.
2. Adopt the revised Elizabeth Ann Brown Park Masterplan attached to this report
3. Place the revised Elizabeth Ann Brown Park Masterplan attached to this report on public exhibition
4. Make amendments to the revised Elizabeth Ann Brown Park Masterplan attached to this report and place on public exhibition.

As key stakeholders have reviewed the Masterplan and are suggesting changes in response to contemporary thoughts about the park, it is recommended that the proposal be placed on public exhibition so that the Council can assess any feedback on the changes.

### **RECOMMENDATIONS**

That Council place on exhibition for public comment, the revision of the Elizabeth Anne Brown Park Masterplan, as attached to this report, with any submissions received to be resubmitted back to Council. If no submissions are received then the revised Masterplan will be recorded as adopted by Council.

### **Attachment(s)**

1. Existing Adopted Elizabeth Ann Brown Park Concept and Management Plan March
2. Draft Revised Elizabeth Ann Brown Park Masterplan

**11.2 Tender - Wollongbar Urban Expansion Area Sewerage Scheme**

<b>File Reference</b>	WUEA Water/Sewer DSP, Tenders & Quotations
<b>CSP Linkage</b>	Responsible and efficient use of resources
<b>Delivery Program</b>	Sewer Services
<b>Objective</b>	To represent tender assessment for the construction of the Wollongbar Urban Expansion Area Sewerage Scheme.

---

**Background**

The Wollongbar Urban Expansion Area Sewerage Scheme (WUEA) is a key item of infrastructure needed for this expansion area and the project is included in the 2010/11 budget at an estimated cost of \$2.2 million (ex GST). The work is being funded from an interest free loan from the State Government for \$2.35 million (ex GST). The construction of the Wollongbar Urban Expansion Area Sewerage Scheme is a responsibility of Council under the current Development Servicing Plan with the contribution from development under S64 contributions being 100% of the cost. The current Development Servicing Plan applicable to this area was approved by Council in January 2006.

Development approvals have since been awarded at the WUEA, including the Wollongbar Park Estate and Avalon. These developments now require the establishment of an operating sewerage scheme to serve new residents to those subdivisions.

Tenders for the required works were called on 20 August 2011, and closed on 20 September 2010. Submissions were received from eight companies and this report outlines the outcome from the tender assessment process.

**Key Issues**

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

**Information**

The tenders were called using the open tendering method, in accordance with clause 167 of the Local Government (General) Regulation 2005. The evaluation method included weighted price and non-price criteria with a price:non-price ratio of 85:15.



Price information was not considered until scoring of non-price was completed.

A Tender Evaluation Plan consistent with the Regulation and the Conditions of Tendering in the RFT documents was prepared and endorsed by a Tender Evaluation Committee prior to close of tenders.

Four addenda were issued during the tender period.

The following tender submissions were received.

- Eire Contractors Pty Ltd
- SEE Civil Pty Ltd
- Demacs Constructions Aust Pty Ltd
- Arogen Pty Ltd
- AJ Lucas operations Pty Ltd
- Ledonne Constructions Pty Ltd
- National Tapping Service Pty Ltd
- JOSA Constructions Pty Ltd

Initial Evaluation

Tenders from National Tapping Service Pty Ltd and JOSA Constructions Pty Ltd were considered late and in accordance with clause 177 (2) of the Regulation these tenders were not considered further.

The remaining contractors included the completed schedules required to be submitted with the tender, however, Eire Contractors were the only remaining contractor that completed all of the Schedule of Rates for Variations items.

All tenders acknowledged the three addenda that were issued on their tender form.

Except for the qualifications and departures dealt with adequately in Evaluation of Price and Non-Price, all tenders conformed with the requirements of the RFT documents.

Evaluation of Non Price Criteria

The information submitted by the tenderers was evaluated against the specified non-price criteria, in accordance with the Tender Evaluation Plan. The non-price scores were weighted, totalled and normalised. The total non-price scores are summarised below.

<b>Tenderer</b>	<b>Total Normalized Non-Price Score</b>	<b>Rank</b>
Eire Contractors Pty Ltd	11.8	4
SEE Civil Pty Ltd	15	1
Arogen Pty Ltd	10.9	5
AJ Lucas operations Pty Ltd	12.7	2
Ledonne Constructions Pty Ltd	12.7	2
Demacs Construction Pty Ltd	0	N/A

The TEP stated that a score below certain minimum requirements, and at the TEC's discretion, may either pass over the tender or allocate a score of zero for this criterion. Demacs Constructions Aust Pty Ltd scored below that benchmark in the non price criteria item that included program and methodology and was not reviewed further in accordance with the TEP.

Evaluation of Price

The tenders were lump sum tenders and assessed on the basis of the tendered price submitted on Schedule 1 – Tender Form and the Schedule of Prices for variations.

Any variations arising from difficult ground conditions will be managed using the Schedule of Prices for variations. Council's ground investigation has informed that significant quantities of rock is likely to be encountered during the works. Consequently, Council's assessed tender amount included estimated quantities for variations and if required an estimate of rates for variations if not submitted with the tender.

Eire Contractors Pty Ltd was requested to clarify its qualifications and departures in accordance with clause 176 of the Regulation and rates for variations. There were no changes to their tendered amounts.

See Civil Pty Ltd was also requested to clarify its qualifications and departures in accordance with clause 176 of the Regulation and rates for variations. SEE Civil Pty Ltd submitted rates for variations that were previously omitted from their tender. No other tender was requested to clarify qualifications, departures or variations as their Tender Amount was greater than Eire Construction Pty Ltd's Assessed Tender amount.

The pricing submitted Tender Amount (Lump Sum) and Assessed Tender Amount (Lump Sum plus anticipated variations) for the tenders was as follows (all inclusive of GST).

<b>Tenderer</b>	<b>Tender Amount (incl GST)</b>	<b>Assessed Tender Amount (incl GST)</b>
Eire Contractors Pty Ltd	\$2,707,000	\$3,338,279
SEE Civil Pty Ltd	\$3,200,410.42	\$4,507,464
Demacs Constructions Aust Pty Ltd	\$3,228,178.21	Culled after non price evaluation
Arogen Pty Ltd	\$3,362,846.80	\$4,215,360
AJ Lucas operations Pty Ltd	\$3,442,873.18	\$4,499,538
Ledonne Constructions Pty Ltd	\$4,074,896	\$4,964,432
National Tapping Service Pty Ltd	\$2,859,322.16	Late Tender
JOSA Constructions Pty Ltd	\$3,657,080.17	Late Tender

The reason for the anticipated variations is the amount of rock drilling that is required under the contract. To reduce risk, Council has completed geotechnical assessment, however the full extent conditions for the drilling is uncertain. Therefore the assessed tender applies unit rates to the total assuming the worst case scenario for the ground conditions.

It is to Council's advantage to manage the risk through variations, subject to Council understanding the cost of the worst case scenario. Otherwise, under a lump sum arrangement, Council would have paid a premium price for the works if the ground conditions were found to be better than the worst case scenario.

The rates tendered in the Schedule of Rates were compared with the pre-tender estimate. The comparison revealed a significant difference with Eire Contractors Pty Ltd exceeding the pre-tender budget estimates by 39%.

Clause 178 of the Regulation requires Council to accept the most advantageous tender. In order to identify which tender was 'most advantageous' for the specified work, the values of the qualifications and departures were assessed and added to the original Tender Amounts.

The tenders were compared on the basis of the Assessed Tender Amounts, calculated by adding the assessed values of qualifications and departures to the original Tender Amounts.

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

<b>Tenderer</b>	<b>Weighted Price Score</b>	<b>Ranking</b>
Eire Contractors Pty Ltd	85	1
SEE Civil Pty Ltd	66.15	4
Arogen Pty Ltd	70.8	2
AJ Lucas operations Pty Ltd	66.2	3
Ledonne Constructions Pty Ltd	58.7	5

*Selection of the Most Advantageous Tender*

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

<b>Tenderer</b>	<b>Total Normalized Non-Price Score</b>	<b>Weighted price score</b>	<b>Total score</b>	<b>Ranking</b>
Eire Contractors Pty Ltd	11.8	85	96.8	1
SEE Civil Pty Ltd	15	66.15	81.1	3
Arogen Pty Ltd	10.9	70.8	81.7	2
AJ Lucas operations Pty Ltd	12.7	66.2	79	4
Ledonne Constructions Pty Ltd	12.7	58.7	71.5	5

The tenderer with the highest total score was Eire Contractors Pty Ltd and therefore identified as the most advantageous.

The Recommended Lump Sum Tender Amount is \$2,707,000 (incl. of GST) (\$2,460,909 ex GST). The Assessed Tender Amount for the management of variations is \$3,338,279 (incl. GST) (\$3,034,799 ex GST). An additional 10% contingency of \$333,828 (incl GST) (\$303,478 ex GST) should be included. Recommended Total Tender amount is \$3,672,107 (incl. GST) (\$3,338,279 ex GST).

*Commentary on the Recommended Tenderer's Capability*

A financial assessment by Kingsway Financial Assessments Pty Ltd rated Eire Contractors Pty Ltd as 'Unsatisfactory' with a score of 35.

Upon the receipt of additional information from Eire Contractors Pty Ltd, Kingsway Financial Assessments Pty Ltd undertook further review of their original report. Final assessment by Kingsway Financial Assessments Pty Ltd rated Eire Contractors Pty Ltd as "Good" with a score of 69.

One of the reasons that the preferred tender price represents a significant saving when compared to others is that the contractor has nominated a smaller drilling plant item.

In developing the specification, Council has been assisted by a rock boring specialist and this consultant reported concerns about the capability of the plant offered in the tenderer's methodology. Council has now received documentation from the contractor that acknowledges this risk and provides their agreement (to and evidence of access) to use a larger drilling plant item without changing the price.

This does present some risks to Council, however with appropriate security and contract management the risk is acceptable given the potential savings offered.

Referees, nominated by Eire Contractors Pty Ltd, were contacted. Although they identified a number of areas that Eire Contractors Pty Ltd could improve, overall satisfactory past performance by Eire Contractors Pty Ltd on recent contracts was advised.

It is noted also that the NSW Government performance reports identified one poor OHS performance report over the last two years for the company.

Whilst the above performance matters are of interest, overall performance history of the contractor is considered to be adequate. Monitoring of the Occupational Health and Safety performance will be carried out during the contract to ensure compliance with approved Occupational Health and Safety Site Management Plans and Systems.

Overall, the resources proposed for the work have been reviewed and the Tender Evaluation Committee considers Eire Contractors Pty Ltd capable of completing the contract satisfactorily.

## **Other Matters**

### Regulatory Approval

The WUEA Sewerage Scheme will be constructed over the following land parcels:

- Sneaths Road Reserve
- Lot 1 DP 1149478 (UPA of NSW Ltd)
- Lot 2 DP 1149478 (Kurrabri Pty Ltd)
- Lot 3 DP 1158133 (Mt Moriah Pty Ltd)
- Lot 4 DP 1161720 (Mr EL Smith & Ms LM Smith & MG Smith)
- Lot 2 DP 1162144 (Messrs CR & BR & RL Brown & Two Minum Two Pty Ltd)
- Lot 5 DP 1161720 (Ballina Shire Council)
- Rifle Range Road, Ramses Street and Queens Park Court road reserves.

Council's Regulatory Services Group has granted approval of the WUEA Sewerage Scheme in the following approvals:

- Works over Sneaths Road Reserve, Lot 1 DP 1149478 (UPA of NSW Ltd) and Lot 2 DP 1149478 (Kurrabri Pty Ltd) were approved under Part V of the Environmental Planning and Assessment Act 2008 on 9 July 2010
- Works over Lot 3 DP 1158133 (Mt Moriah Pty Ltd) in DA 2009/633
- Works over Lot 2 DP 1162144 (Messrs CR & BR & RL Brown & Two Minum Two Pty Ltd), Lot 5 DP 1161720 (Ballina Shire Council) and Road Reserve were approved under Part V of the Environmental Planning and Assessment Act 2008 on 9 September 2011.

Works over the over Lot 4 DP 1161720 (Mr EL Smith & Ms LM Smith & MG Smith) are currently being assessed. Works over the Smith Property are included in Separable Portion 3 of the Contract. Separable Portion 3 shall only be awarded following approval of works over this land parcel.

### Access to Land

Council have agreements in place with all landowners to permit the construction of the WUEA Sewerage Scheme:

- UPA of NSW Ltd dated 12 July 2010
- Kurrabri Pty Ltd undated
- Mt Moriah Pty Ltd dated 11 June 2010

Construction in part has been granted by Messrs CR & BR & RL Brown & Two Minum Two Pty Ltd, dated 31 May 2011. Access only has been granted by Mr EL Smith & Ms LM Smith & MG Smith dated 10 October 2010.

Correspondingly and in keeping with the approach discussed above under regulatory Approval, works over Lot 4 DP 1161720 (Mr EL Smith & Ms LM Smith & MG Smith) are included in Separable Portion 3 of the Contract. Separable Portion 3 shall only be awarded following the granting of permission by the landowner.

### **Sustainability Considerations**

- **Environment**  
The Construction of the Wollongbar Urban Expansion Area will enable the collection and transfer of wastewater from future development in this area to the existing Wollongbar Sewer Scheme and ultimately the Alstonville Wastewater Treatment Plant. The final design has made considerable allowances for both environmental planning and conservation objectives, particularly in the adoption of gravity sewer underbores to avoid environmentally sensitive areas and future environmental restoration areas. The proposed design also involves the decommissioning of three existing sewage pump stations (Sneaths Road, Queens Park Way and Stanley Park Drive).
  
- **Social**  
Construction of critical infrastructure assists Council to achieve social benefits and public health outcomes.
  
- **Economic**  
The economic benefits of the contract include release of additional residential development areas.

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

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

In regard to finance matters, Council has a \$2.35 million dollar interest free loan from the NSW Government towards this project. The funds for the loan repayments and other costs will be sourced from section 64 Developer Contributions.

The original estimate was prepared some time ago and is now considered to be insufficient. The tender process has provided a good market response and pricing that is considered to be realistic. The revised estimate for his project is tabled below.

<b><u>Item</u></b>	<b><u>Amount (ex GST)</u></b>
Tender	\$3,034,799
Contingency	\$ 303,480
Costs to date	\$ 268,483
Consultancies`	\$ 50,000
Mech & Elec	\$ 159,000
Power Supply	<u>\$ 100,000</u>
Total	<u>\$3,915,762</u>

As noted above the tender price includes the potential for price variations based on adverse ground conditions.

Having regard to the overall size of the capital works in the sewer program, the shortfall in funds can be managed with the expected ranges for variations to this program during the year. Accordingly it is proposed to make the necessary adjustments at the next quarterly review. It is also noted that the Developer Contributions Plan will be adjusted to reflect the change in costs.

### **Consultation**

A public tender process was conducted.

### **Options**

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

1. Council may determine not to accept any of the tenders received and invite fresh tenders.
2. Council may award the contract to Eire Contractors Pty Ltd for the work set out in the tender specification

Option one is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005 and a satisfactory result has been achieved. Additionally, there is a pressing need to serve new development currently under construction in the WUEA.

The recommendation that follows is to accept this tender.

### **RECOMMENDATIONS**

1. That Council accepts the tender for the construction of the Wollongbar Urban Expansion Area Sewerage Scheme to Eire Contractors Pty Ltd for the amount of \$2,707,000 inclusive of GST.
2. That the Council notes the information in the above report in relation to the possibility that approved variations to this contract may increase the contract to a value of \$3,338,279 (incl GST).
3. That the Council notes that the revised project estimate is \$4,307,339 (incl GST) and that a budget variation will be required at the time of the next review of the sewer capital works program.
4. That Council notes that the tendered amount includes Separable Portion Three and this portion of the contract will not be awarded until outstanding landowner permissions and regulatory approvals are obtained.
5. That Council authorises the Mayor and General Manager to attach the Council's seal as necessary to the contract documents.

**11.3 Biodegradable Bags - Supply**

<b>File Reference</b>	Gardens & Organics Service
<b>CSP Linkage</b>	A healthy natural environment
<b>Delivery Program</b>	Waste Services
<b>Objective</b>	To respond to Council's request for a report regarding providing residents with biodegradable kitchen bags/kitchen tidy bins.

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**Background**

At the Ordinary Meeting held on 27 October 2011 Council requested that a report be prepared regarding the options available for supplying biodegradable kitchen bags.

This report responds to that decision and also provides information on the options for supply of kitchen tidy bins.

**Key Issues**

- Cost and benefit

**Information**

The weekly organics service for urban residents was introduced 4 July 2011 and included the collection of garden waste, food scraps and other putrescible waste.

To assist residents maximise the opportunities from this service, and to assist Council achieve its waste minimisation targets, as part of the roll out of the new service, an initial supply of 3000 kitchen tidy bins and rolls of 75 biodegradable bags were made available for collection by residents.

The initial supply of 3,000 kitchen bins and rolls of bags was estimated to be a supply for six months based on the demand experienced by Lismore City Council for a similar initiative. With each roll of biodegradable bags providing 75 bags, for most households a roll would last six months.

This was considered to be a useful time to allow residents to become familiar with the service and be aware of the options to manage the sorting and disposal of their waste. It was intended that by the time this supply ran out the demand would have been met for those residents who wanted access to this offer.



The cost for this supply of 3,000 kitchen tidy bins was \$12,210 and 3000 rolls of 75 bags \$15,070 (a total of \$27,280). The supply was taken up within six weeks.

Since the Council supply ceased in mid-July, several businesses have taken up selling the biodegradable bags including IGA and a number of smaller suppliers. Biodegradable bags can also be purchased online. The retail price for an equivalent roll of bags to the ones issued by Council is between \$9 and \$11.

Advice from Lismore City Council indicates that it is currently spending around \$30,000 per year on bags and kitchen tidies. It is understood that the Lismore collection involves around 11,000 services.

As Ballina Council has 14,000 services and based on the previous interest, it is fair to assume that providing the bags would at least cost \$30,000 per annum and there is a strong likelihood that the cost could be substantial more than that.

### Analysis

#### 1. Waste Minimisation

The current levels of contamination in the organic waste stream are less than 1% and this is considered an excellent result, particularly for a new service. It will be important for Council to continue to educate and communicate with residents regarding the use of the service, however from a contamination management perspective, there would be no economic return to the Council in terms of reduced downstream costs from providing the bags.

#### 2. Service Offering

The Council may be inclined to provide the bags as a service offering to residents. In this case, the two issues to consider are cost and equity.

Assuming residents are collecting a roll of bags twice per year, from the figures for Lismore a rough estimate would suggest that around 20 – 30% of people provided with the service choose to collect and use the free bags. As the cost is recovered via the Domestic Waste Management Charge, these arrangements present a subsidy from a group of residents to others and therefore the Council needs to be mindful of equity issues.

The current cost when purchased in bulk for each roll of 75 bags is \$4.84 (inc GST and excluding freight). As noted above, the retail price is around \$10.

Therefore, based on two rolls a year, the Council is providing a \$20 economic advantage to residents at a cost to Council of around \$10.

The Council provides 14,000 organic waste collection services weekly. At two rolls per year at \$5 per roll, a budget of \$140,000 would be required if the Council was to supply the benefit to all residents.

If Council elect to subsidise the supply or alternatively supply biodegradable bags and/or kitchen tidy bins for free the local supermarket suppliers will likely pull out of the market. This represents some lost commercial opportunity for these businesses which incrementally impacts on business sustainability and economic development.

Council officers estimate they are receiving currently around 20 requests a week for the bags.

#### Kitchen Tidy Bins

The Council resolution requesting this report was silent in terms of the kitchen tidy bins. As these were included in the service implementation phase and continue to be provided by Lismore City Council, the following comment is provided.

The kitchen tidy bins are durable and also perform the purpose of the collection of food scraps on their own, and can be rinsed between fills. The style of kitchen tidy bins (non-aerated) was chosen to allow residents to either put food straight into the kitchen tidy bin and then into the organics bin or line the kitchen tidy with newspaper or biodegradable bags.

The purchase cost of the kitchen tidy bins, when purchased in bulk, is \$4.07 (inc GST and excluding freight).

There is a wide range of suitable containers available for this purpose. Furthermore, as these containers can be used for many storage or other tasks, Council would need to have a reasonably robust administration process to record the issues made and policy direction about the frequency of replacement.

It is noted that demand for kitchen tidy bins may be initially high and then decrease over time whereas biodegradable bags are consumable and will need to be continually provided.

#### **Sustainability Considerations**

- **Environment**

The Council is achieving acceptable contamination levels within the organic collection service. Although biodegradable bags are helpful to residents in the process of collecting food scraps and placing them neatly in the organics bin, they are not necessary for the organics service. Wrapping food scraps in newspaper is considered the best environmental alternative

- **Social**

The supply of kitchen bags is considered a service that would assist some residents.

- **Economic**

Local retail outlets are able to supply suitable bags. This supply assists the commercial sustainability of their business by providing a stock item of interest to local residents.

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

The above report sets out information in relation to the financial and resource implications of the options for this service. There are no legal implications.

### **Consultation**

No public consultation has been undertaken in preparing this report, although it is noted that Council does continue to receive requests for bags.

### **Options**

1. Supply biodegradable bags without charge to all urban residents.
2. Supply biodegradable bags upon request and without charge to all urban residents.
3. Continue to supply a kitchen tidy (limit one per household) upon request.
4. Supply biodegradable bags and bins with a cost recovery charge.
5. Promote the opportunity to buy biodegradable bags at local retail outlets.

The above report identified that based on the current level of contamination in the organic waste stream, from a waste minimisation perspective, there is no benefit to the Council to supply biodegradable bags or kitchen tidy bins.

Therefore options one, two, and three should only be considered further on the basis of providing a service.

Option one, is considered prohibitively expensive and results in providing a service where there are a range of alternatives available for residents. Option two is still expensive and includes a subsidy from those electing to use alternate options.

Option three is also not recommended now that the service is implemented. The bins have other uses than the intended purpose and there will create demand while ever they are free of charge.

Option four provides some economic advantage to residents (around \$10 per year) and could be implemented. The disadvantage is that it generates an additional function for staff which diverts those resources from existing activities. The recommendation recognises the additional demand on staff resources and that the bags and bins are readily obtainable at commercial outlets.

Option five ensures residents who are interested remain aware of the sources for the bags and supports through some small increment the commercial sustainability of those businesses.

Option five is recommended as it is considered that Council is already now providing all three collection bins, at no extra, besides the annual charge, and as the private sector is now starting to provide this service, it is preferable that it remain with the private sector. Therefore Council should focus on education as its primary role.

### **RECOMMENDATIONS**

That Council notes the contents of this report on the supply of biodegradable bags and confirms that our approach to support this program will focus on education of the benefits of the organics service and information on locations where the bags can be commercially purchased.

### **Attachment(s)**

Nil

**11.4 Policy (Draft Review) - Backflow Prevention**

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To review the Backflow Prevention policy.

---

**Background**

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

Council first adopted this policy in 25 October 2007.

**Key Issues**

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

**Information**

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

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

The additions been marked in yellow. A copy of the amended policy is attached to the report.

**Sustainability Considerations**

- **Environment**  
The purpose of this policy is to outline council's commitment to appropriate levels of backflow prevention, cross-connection prevention and protection of our water supply. It specifies Council's position where the NSW Code of Practice, Plumbing and Drainage and AS/NZS 3500 provide scope for the local authority's requirements. It also defines Council and stakeholder responsibilities for backflow prevention.
- **Social**  
Not applicable

- **Economic**  
Not Applicable

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

This policy ensures that the legislative requirements and methods for the prevention of contamination of the drinking water within the water service and the water main are known and implemented.

### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

1. Review – Backflow Prevention

**11.5 Policy (Draft Review) - Pressure Sewer**

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

---

**Background**

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

Council first adopted this policy in January 2008 and it was developed to assist with a program to provide sewer systems to already developed properties. The backlog program of works has now been completed, however the policy is still relevant to manage the on-going operation and maintenance of those systems.

**Key Issues**

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

**Information**

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

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Clarification has been provided to Council's responsibility for the ongoing maintenance up to and including the individual Sewage Pump Stations on each property, inclusive of the pump well, pump, electrical control cabinet and associated fittings.

The additions have been marked in yellow.

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

### **Sustainability Considerations**

- **Environment**  
This policy is designed to provide solutions that meet environmental standards but also assist with development.
- **Social**  
As above
- **Economic**  
As above

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

Nil

### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

1. Review – Pressure Sewer Policy



**11.6 Policy (Draft Review) - Building Over Council Assets**

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To review the Building Over Council Assets policy.

---

**Background**

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

Council first adopted this policy in 22 May 2008 and it is an important policy that assists Council staff in managing requests relating to buildings that are proposed to be built close to or over Council infrastructure.

**Key Issues**

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

**Information**

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

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Amendments to minor variations structures over or adjacent to underground assets
- General clarification of sections in the policy.

The additions have been marked in yellow, with deletions lined through and highlighted green.

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

**Sustainability Considerations**

- **Environment**  
Not Applicable

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

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

The implementation of this policy is to ensure that Council's assets are protected.

### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

1. Review – Building Over Council Assets Policy

**11.7 Policy (Draft Review) - Road Closing Applications for Public Roads**

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To review the Road Closing Applications for Public Roads policy.

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**Background**

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Road Closing Applications for Public Roads policy.

Council first adopted this policy in June 2008.

**Key Issues**

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

**Information**

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

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

The additions have been marked in yellow.

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

**Sustainability Considerations**

- **Environment**  
Ensure that road reserves are managed so that community access and use of these roads is preserved.
- **Social**  
Not Applicable.

- **Economic**  
Not Applicable.

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

Not applicable

### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

1. Review – Road Closing Applications for Public Roads

12. Public Question Time

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**12. Public Question Time**

**13. Notices of Motion**

**13.1 Notice of Motion - Coal Seam Gas**

**File Reference** Notices of Motion/Mining Act

**Councillor** Cr Jeff Johnson

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I move

That pending further guidelines from the State or Federal Governments, any application made to Council for testing or exploration for CSG on Council owned or administered land be reported to Council.

**Councillor Comment**

Extensive areas of the northern rivers, including parts of the Ballina LGA are subject to a mining exploration license. Metgasco is currently exploring for CSG in the northern rivers and has plans to either build a pipeline into SE Queensland or to build a pipeline to the coast for an offshore processing facility. Other mining companies also have exploration licenses in the region.

Given the concerns about the environmental and social impacts of CSG in our region, it's important that any approaches to BSC from mining companies be reported to Council.

**COUNCILLOR RECOMMENDATION**

That pending further guidelines from the State or Federal Governments, any application made to Council for testing or exploration for CSG on Council owned or administered land be reported to Council.

**Attachment(s)**

Nil

**13.2 Notice of Motion - Richmond Tweed Regional Library**

**File Reference** Notices of Motion/Regional Library

**Councillor** Cr Jeff Johnson

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I move

1. That Ballina Shire Council invite Cameron Morley, Manager of the NSW State Library's Public Library Services Branch, to advise on the future structure and management options available to the Richmond Tweed Regional Library.
2. That copies of this report be sent to all RTRL member councils and the Minister for Local Government, Mr Don Page.

**Councillor Comment**

Cameron Morley manages the NSW State Library Services Branch. The branch administers the state funding provided to NSW Council's for Library Services, monitors local authority compliance with the Library Act (recently amended, altering the way library's can be managed) and provides free library management consultancy services to NSW Council's.

This report would be prepared by the State Library expert in the field and would be provided free of charge.

**COUNCILLOR RECOMMENDATION**

1. That Ballina Shire Council invite Cameron Morley, Manager of the NSW State Library's Public Library Services Branch, to advise on the future structure and management options available to the Richmond Tweed Regional Library.
2. That copies of this report be sent to all RTRL member councils and the Minister for Local Government, Mr Don Page.

**Attachment(s)**

Nil

**14. Advisory Committee Minutes**

**14.1 Commercial Services Committee Minutes - 15 November 2011**

**File Reference** Commercial Services Committee

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**Attendance**

Cr D E Wright (Chair), Crs P W Silver (Mayor) (arrived at 4.07 pm), S L Cadwallader, B C Smith, K H Johnson, R A Hordern, J L Johnson (arrived at 4.06 pm) and S M Meehan.

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

There were no people in the gallery at this time.

**1. Apologies**

An apology was received from Cr Alan Brown.

**RESOLVED**

(Cr Ben Smith/Cr Sharon Cadwallader )

That such apology be accepted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Silver, Cr Moore, Cr J Johnson, Cr Brown

**2. Declarations of Interest**

Nil

**3. Deputations**

Nil

Cr J Johnson arrived at 4.06 pm



#### **4. Committee Reports**

##### **4.1 Policy (Review) - Property Investment & Development**

###### **RECOMMENDATION**

(Cr Keith Johnson/Cr Susan Meehan)

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

Cr Silver arrived at 04:07 pm

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

AGAINST VOTE - Cr J Johnson

ABSENT. DID NOT VOTE - Cr Moore, Cr Brown

##### **4.2 Directional Signage - Southern Cross Industrial Estate**

###### **RECOMMENDATION**

(Cr Sharon Cadwallader /Cr Susan Meehan)

That Council authorises the General Manager to pursue the erection of directional signage, with appropriate wording such as "Home Makers Centre", 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.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore, Cr Brown

##### **4.3 Building Better Regional Cities - Grant Program**

###### **RECOMMENDATION**

(Cr Sharon Cadwallader /Cr Ben Smith)

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

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore, Cr Brown

## **5. Confidential Session**

### **RESOLVED**

(Cr Susan Meehan/Cr Sharon Cadwallader )

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 Land Sale - Russellton Industrial Estate**

#### **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.

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

(The Committee moved into Confidential Session at 4.30 pm)

### **5.1 Land Sale - Russellton Industrial Estate**

#### **RECOMMENDATIONS**

(Cr Phillip Silver /Cr Robyn Hordern)

1. That Council authorises the General Manager to finalise negotiations for the sale of the subject Site, as outlined in option three of this report.
2. That Council consent to the use of the Common Seal of Ballina Shire Council upon the Contract for Sale of Land, and Deed of Transfer in this matter.
3. The proceeds from the sale of this land are to be transferred to the Industrial Land Development Reserve to finance future development of the industrial estates.

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

### **5.2 Lennox Head Surf Club - Redevelopment**

A **Motion** was moved by Cr Sharon Cadwallader and seconded by Cr Ben Smith.

1. That Council advise the Lennox Head Surf Club Committee that no funds are currently available in the 2011/12 budget to assist in funding the preparation of the development application for the re-development of the Surf Club, however funding will be considered as part of the preparation of the 2012/13 budget, subject to point three below.

2. The General Manager is authorised to conduct negotiations with the Land and Property Management Authority in respect to the possible sale of the neighbouring operational land, with the outcomes of those negotiations to be reported back to Council prior to a final decision being made. This next report will also review any other options in respect to the method of sale, the sale price and further consideration as to whether or not the land should be sold.
3. That the General Manager report back on alternative options to finance the \$80,000 required to allow the DA to be progressed.

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

FOR VOTE - Cr Silver, Cr Cadwallader, Cr K Johnson

AGAINST VOTE - Cr Smith, Cr Hordern, Cr Wright, Cr J Johnson, Cr Meehan

ABSENT. DID NOT VOTE - Cr Moore, Cr Brown

A **Motion** was moved by Cr Jeff Johnson

That the General Manager report back on alternative options to finance the \$80,000 required to allow the DA to be progressed.

The **Motion** **LAPSED**.

#### **RECOMMENDATION**

(Cr Susan Meehan/Cr Robyn Hordern)

1. That Council advise the Lennox Head Surf Club Committee that no funds are currently available in the 2011/12 budget to assist in funding the preparation of the development application for the re-development of the Surf Club, however funding will be considered as part of the preparation of the 2012/13 budget.
2. The General Manager is authorised to conduct negotiations with the Land and Property Management Authority in respect to the possible sale of the neighbouring operational land, with the outcomes of those negotiations to be reported back to Council prior to a final decision being made. This next report will also review any other options in respect to the method of sale, the sale price and further consideration as to whether or not the land should be sold.

FOR VOTE - Cr Silver, Cr Cadwallader, Cr Smith, Cr Hordern, Cr Wright, Cr Meehan

AGAINST VOTE - Cr K Johnson, Cr J Johnson

ABSENT. DID NOT VOTE - Cr Moore, Cr Brown

### **5.3 Land Sale - Southern Cross Industrial Estate**

#### **RECOMMENDATIONS**

(Cr Sharon Cadwallader /Cr Keith Johnson)

1. That Council authorises the General Manager to progress the negotiations outlined in this report through the offer of a six month option based on the terms and conditions outlined within the report.
2. That Council receives a further report that details the various cash flows for this project, including the provision of road infrastructure.

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

Crs Cadwallader and J Johnson left the meeting after Item 5.3 at 05:16 PM during the Confidential Session.

#### **Open Council**

#### **RESOLVED**

(Cr Robyn Hordern/Cr Robyn Hordern)

That Council move into Open Council and out of Committee of the Whole.

FOR VOTE - All Councillors voted unanimously.  
ABSENT. DID NOT VOTE - Cr Cadwallader, Cr Moore, Cr J Johnson, Cr Brown

(The Council moved into Open Council at 5.35 pm)

The General Manager reported to the Open Meeting the recommendations made while in Confidential Session.

#### **Adoption of Recommendations from Confidential Session**

#### **RESOLVED**

(Cr Keith Johnson/Cr Ben Smith)

That the recommendations made whilst in Confidential Session be adopted.

FOR VOTE - All Councillors voted unanimously.  
ABSENT. DID NOT VOTE - Cr Cadwallader, Cr Moore, Cr J Johnson, Cr Brown

#### **MEETING CLOSURE**

5.35 pm

**RECOMMENDATIONS**

That Council confirms the minutes of the Commercial Services Committee meeting held Tuesday 15 November 2011 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

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

**15.1 Mayoral Meetings**

**File Reference**            Mayoral  
**Councillor**                Cr Phillip Silver

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Activities since the October 2011 Ordinary meeting:

<u>Date</u>	<u>Function</u>
28/10/11	REX Route Launch at Newcastle Airport
29/10/11	Alstonville Show opening in Alstonville
31/10/11	NR Foodlinks Launch in Ballina
1/11/11	Prime TV, Dunoon Dam and water re-use
1/11/11	Entertainment & Sports Centre Architects Briefing in Ballina
2/11/11	House with No Steps Grocer Opening in Alstonville
3/11/11	Training & Investment Conference opening in Lennox Head
3/11/11	BDCSA Swift Street Centre opening in Ballina
4/11/11	Prime TV, Dunoon Dam and water re-use
4/11/11	NR Art Gallery, Fox Street Preschool Exhibition opening in Ballina
4/11/11	BACCI Art Exhibition opening in Ballina
5/11/11	Volunteer Ball in Byron Bay
7/11/11	ABC Radio, Big Prawn
7/11/11	Tourism/Economic Development workshop in Ballina
8/11/11	NBN, Big Prawn
8/11/11	A Ward Committee
10/11/11	Ballina Fishermen's Co-operative deputations with staff in Ballina
10/11/11	NR Community Foundation launch in Ballina
11/11/11	Remembrance Day in Ballina
14/11/11	Bypass Ready Taskforce meeting
14/11/11	B Ward Committee
16/11/11	Rous Water Ordinary meeting
16/11/11	Ballina Rewards Campaign launch in Ballina
18/11/11	Kimberley Campers factory start in Ballina
18/11/11	Ballina Players, Dusty opening in Ballina
20/11/11	SDA 20 year Anniversary in Alstonville
21/11/11	Bahas celebration in Ballina
22/11/11	Cumbalum briefing in Ballina
22/11/11	BDCSA AGM in Ballina
23/11/11	Aviation Access Working Group meeting in Sydney

**RECOMMENDATION**

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

**Attachment(s)**

Nil



16. Questions Without Notice

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**16. Questions Without Notice**

17. Confidential Session

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**17. Confidential Session**

Nil items