



## 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 15 December 2011 commencing at 9.00 am**

### Business

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

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

Paul Hickey  
**General Manager**

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

## **Deputations to Council – Guidelines**

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

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

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

## **Public Question Time – Guidelines**

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

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

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

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

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

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

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

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

## **Disclaimer**

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

## **Confidential Session**

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

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1. Australian National Anthem
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**1. Australian National Anthem**

The National Anthem will be performed by Ballina Primary 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 24 November 2011 were distributed with the business paper.

**RECOMMENDATION**

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

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

**6. Deputations**

**7. Mayoral Minutes**

Nil items.

**8. Regulatory Services Group Reports**

**8.1 DA 2011/359 - Child Care Centre, Porter Park, West Ballina**

<b>File Reference</b>	DA 2011/359
<b>Applicant</b>	Department of Human Services C/- NSW Public Works
<b>Property</b>	Lot 30 DP 260335 Porter Park Hayman Street, West Ballina.
<b>Proposal</b>	To Undertake the Establishment of a 59 Place Child Care Centre, and a Family Support Centre Providing Services such as Family Support, Parenting Programs, Playgroups, Health Services and Early Childhood Nurse Services for Aboriginal Children and all Children from Low Socioeconomic Backgrounds. The Facility will also provide a 21 Space Car Parking Area and Landscaping. The Application also seeks to Subdivide the Site For Lease Purposes.
<b>Effect of Planning Instrument</b>	The land is zoned 6(a) Open Space 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**

The report is being presented to Council as the development application is the next stage in this matter which has been considered by Council on two previous occasions.

Council at the Ordinary Meeting held on 24 February 2011 resolved in part as follows:

- 1 *That Council prepare an amendment to the Ballina Shire Generic Plan of Management for Community Land that would have the effect of changing the categorisation of part of Porter Park in West Ballina from "Sportsground" to "General Community Land"*
- 2 *The purpose of the amendment is to facilitate the establishment of the proposed Aboriginal Child and Family Centre as provided for under the Federal and State Governments "Closing the Gap" initiatives. The section of the park to be re categorised contains an area of approximately 3,800m<sup>2</sup> within the north-eastern corner of the reserve.*

Council at the Ordinary Meeting held on 28 July 2011 resolved in part as follows:

- 1 *That Council adopts Draft Amendment No 5 to the Ballina Shire Generic Plan of Management for Community Land as exhibited for public comment. The effect of this amendment is to allow the lodgement of a development application for a proposed Aboriginal Child and Family Centre on the north-eastern corner of Porter Park in West Ballina.*

The development application has now been advertised and given the level of public interest and issues arising from the proposal, the application is referred to Council for determination.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The matter was advertised in accordance with Council's public notification policy from 22 September to 24 October 2011.

Sixty eight owners, residents and agencies were notified and seventeen submissions were received. The contents of these submissions will be addressed later in this report.

### **Applicable Planning Instruments**

Environmental Planning and Assessment Act 1979.

Part 4 Division 4 Section 89 provides in part:

- (1) A consent authority (other than the Minister) must not:
  - (a) refuse its consent to a Crown development application, except with the approval of the Minister, or
  - (b) impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.
- (2) If the consent authority fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the Council may refer the application to the applicable regional panel.
- (2A) A Crown development application for which the consent authority is a council must not be referred to the Minister unless it is first referred to the applicable regional panel.
- (3) An applicable regional panel to which a Crown development application is referred may exercise the functions of the council as a consent authority (subject to subsection (1)) with respect to the application.

Part 4 Division 4 Section 89A provides in part:

- (1) On a referral being made by a consent authority or an applicable regional panel, or an applicant, to the Minister under this Division, the Minister may direct the relevant consent authority, within the time specified in the direction:
  - (a) to approve the Crown development application, with or without specified conditions, or
  - (b) to refuse the Crown development application.
- (2) A consent authority must comply with a direction by the Minister.
- (3) If the consent authority fails to comply, the consent authority is taken, on the last date for compliance specified in the direction, to have determined the Crown development application in accordance with the Minister's direction.
- (4) Despite subsection (2), a consent authority may vary a condition specified by the Minister with the approval of the applicant.

#### North Coast Regional Environmental Plan

The proposed development is consistent with the general provisions of this Plan that are applicable to this application.

#### SEPP 71 Coastal Protection

The proposed development is consistent with the general provisions of this Plan that are applicable to this application.

#### Ballina Local Environmental Plan 1987 (BLEP).

The site is zoned 6(a) Open Space, for the purposes of clause 9 of BLEP 1987.

The development is defined under the BLEP as a "community building."

Community building means a building or place owned or leased by the Council and used to provide facilities comprising or relating to any one or more of the following:

- Public health, welfare or information services
- Rest rooms
- Meeting rooms
- Childminding or
- Other community support facilities.

Community facilities are permitted on land zoned 6(a) Open Space under clause 9 of BLEP.



**The zone objectives for zone 6(a) Open Space are:**

A The primary objectives are:

- (a) to identify land that is used or capable of being used for active or passive recreation purposes
- (b) to encourage the development of open spaces in a manner which maximises the satisfaction of the community's diverse recreation needs and
- (c) to enable development associated with, ancillary to or supportive of recreation use and
- (d) to enable development that assists in meeting the social and cultural needs of the community.

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

The application proposes a development which will assist in meeting the social and cultural needs of the community, therefore, meets the objectives of the zone.

**Clause 26A Development within Zone No 6 (a)**

- (1) This clause applies to land within Zone No 6 (a).
- (2) The council shall not consent to the carrying out of development on land to which this clause applies unless it is satisfied that such development will promote or would otherwise be related to the use and enjoyment of the land for recreational and social needs of the community.
- (3) In determining an application for consent to carry out development on land to which this clause applies, the council must take into consideration the following matters:
  - (a) the need for the proposed development on the land,
  - (b) the likely impact of the proposed development on the existing or likely future use and character of the land,
  - (c) the need to retain the land for its existing or likely future use,
  - (d) whether any proposed building or use will be secondary and complementary to the existing or the proposed use of the land as open space,
  - (e) whether the proposed development will substantially diminish the use of the land for open space,
  - (f) whether the proposed development is compatible with the adjacent uses in relation to height, bulk, noise generation and any other aspects which the council considers may conflict with surrounding land uses, and
  - (g) the proposed development's consistency with any plan of management relating to the land.

The need for the proposed development was established as part of previous submissions to Council. These submissions resulted in Council's generic Plan of Management, being amended to permit the use of the site for such a facility.

The site is located in the north west corner of the park, which does not prevent Porter Park from being used for its main purpose, that being for active recreation.

Council Planners are of the opinion that the proposed use is not incompatible with adjacent uses and that, with appropriate controls being imposed through conditions of consent, will not conflict with surrounding land uses.

#### Draft Ballina Local Environmental Plan 2011

The site is proposed to be zoned RE1 Public Recreation and under the provisions of the Draft Plan the development is defined as a “community facility.”

Community facility means a building or place:

- a) Owned or controlled by a public authority or non-profit community organisation, and
- b) Used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

The proposed development complies with the requirements of the Draft Ballina Local Environmental Plan 2011.

#### Ballina Shire Combined Development Control Plan (BSCDCP)

The relevant sections of the BSCDCP are as follows.

Chapter 1 Policy Statement No 2 Car Parking and Access  
Chapter 1 Policy Statement No 3 Urban Building Lines  
Chapter 1 Policy Statement No 7 Building Heights  
Chapter 1 Policy Statement No 11 Flood Levels  
Chapter 13 Stormwater Management

The application complies with all relevant sections of BSCDCP.

#### **Report**

The following report is presented in accordance with the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

#### Proposed Development

The development is for the construction of a fifty nine place child care centre and family centre providing services such as family support, parenting programs, playgroups, health services and early childhood nurse services for aboriginal children and all children from low socio-economic backgrounds.

The building is proposed to be externally lined with axon cladding fibro cement product with a metal profile roof. The building is of a T shape, with the leg of the T facing Hayman Street. A play area is to be located behind the building for the children attending the child care centre.

A 21 place car parking area, one of which is to be a parking space for the disabled, and a bus parking area, is to be located between the building and Hayman Street on the eastern side of the property.

A 1.8m high fence is to be provided across the front of the car parking area, as a mini bus and two cars are to be housed on site. The fence as submitted showed gates opening outwards, however, at the request of Council officers, the applicant has agreed to have the gates opening inwards to allow the establishment of a landscaping screen in front of the fence. The remainder of the site is to be landscaped.

The application originally proposed a lapped and capped timber fence of varying heights from 1.8m to 3m, in order to provide adequate noise attenuation. This was considered unacceptable locally and the applicant was advised to amend the application, so that no fence was to be more than 1.8m in height.

The applicant subsequently made minor amendments to the application which enabled the fences to be reduced in height to not more than 1.8 metres and still comply with noise attenuation requirements.

#### Hours of Operation

The operating hours of the centre will be:

- Family component 8.30am to 6.00pm Monday to Friday
- Child care component 7.00am to 6.00pm Monday to Friday

The Centre is not proposed to be utilised in the evening or at weekends.

#### Social Need and Use of Porter Park

The social need and use of Porter Park for this development will not be discussed in this report as it has been addressed in previous reports to Council, other than to say that Council has previously accepted the need for such a centre at this location.

#### Visual Impact

It is considered that the visual impact of the development is less than desirable. Of main concern is the façade of the building facing Hayman Street, and in particular the western side of the façade which contains five doors opening directly onto the veranda. This is considered to be an undesirable design element.

Three of the five doors mentioned above are toilet doors which necessitates people who wish to use these toilets to exit the building and walk across the veranda to access the toilets. This is considered a problematic design element, and has been discussed with the applicant who has disagreed with the assessment planner and declined to amend the application to better address this matter.

#### Building Construction

The development is to be constructed on Council owned land leased to the Department of Human Services for a period of 21 years. At the end of this period Council will regain ownership of the building. It is therefore considered imperative that Council grant approval to a building constructed of durable materials that will be of low maintenance.

The building was originally proposed to be clad in a material called shadowclad and finished with a product called "Boscote Cladcoat".

Shadowclad is a plywood cladding which comes in 1200mm wide sheets with a shiplap weathergroove joint. The surface has a rough band sawn textured finish with vertical grooves at 150mm centres.

It was considered that this material with a Boscote Cladcoat finish would have higher maintenance costs than masonry construction, and that it would be very vulnerable to graffiti. The applicant was advised of Council's concerns and agreed to amend the finish of the building.

The building will now be finished in Axon, a fibro cement product, and painted with Dulux Weathershield Gloss Acrylic. Dulux Weathershield Gloss Acrylic is guaranteed not to blister, flake or peel for 15 years.

It is considered that this finish satisfies Council's concerns of ensuring that the building is finished in a low cost maintenance material.

#### Security/Graffiti

In response to Council officers enquiries relating to security and graffiti attack, the applicant has provided the following.

*The detailed design for construction will specify an anti graffiti coating to be applied to the timber fence.*

*The Centre Manger and Community Services (the lessee) will be developing an Anti Graffiti Management Plan. This will be coupled with the steps outlined below with regards to security which will also assist in minimising the attacks of graffiti. Items that may be considered for inclusion but not limited to, in the Anti Graffiti Management Plan will be 24 hour removal of graffiti, sensor lights, CCTV and security patrols.*

*It is envisaged that this public community facility will be a positive addition to West Ballina. The Centre Manager who has guardianship of the facility is to provide effective supervision of the building during opening hours.*

*The Centre Manager will establish and maintain relationships with the surrounding neighbourhood to facilitate effective passive surveillance after hours.*

*The design allows for passive surveillance by staff and users in all public spaces such as the entry forecourt and car park areas to Hayman Street, which is visually open to the street and also to Porter Park.*

*The childcare outdoor area has an address to Porter Park. This will enhance the passive security which is potentially provided by neighbouring properties.*

To comment on the last point. The childcare outdoor area is within a 1.8m high lapped and capped timber fence and provides no passive security of Porter Park, in fact any view of the rear of the development will be from a distance of in excess of 100 metres, which would not be a deterrent to trespass and criminal activity.

The application proposes the construction of a 1.8 metre high timber lap and cap fence along the eastern and southern side of the property and from the rear corner to the building on the western side. It is considered that without appropriate protection, these fences and the western side of the building may be open to graffiti vandals.

The eastern fence is to be protected by landscaping between the car parking area and the fence, which is considered acceptable, however, the remainder will be left unprotected. It is generally considered better to take the positive step of preventing access to such opportunities, having then to react to an attack. To this end it was suggested to the applicant, that a 1.8 metre high black chain wire fence be provided 2 metres from the proposed southern and western fence and the western end of the building with the area between being landscaped. This would remove the ability of the graffiti vandals to get direct access to the said walls and buildings as well as providing a protected landscaped area which would improve the visual impact of the development when viewed from Porter Park. These changes would also reduce the likelihood of unwanted intrusion from these points.

This matter has been discussed with the applicant who has agreed to provide the landscaping but not the fence. Whilst it is considered that the fence would have presented an extra degree of security, the lack of the fence is not considered critical.

#### Access

The application was referred to the Ballina Shire Access Group who raised a number of matters relating mainly to the provision of shade and the width of doorways.

These matters have been discussed with the applicant who has agreed to extend the covering over the access ramp at the front of the building, the front veranda and the disabled car parking space. The width of doors is covered by the relevant building codes.

Submissions

Council received seventeen submissions in respect to this application. A number of these submissions related to matters other than the application and as such are of no relevance in the determination of this application. A copy of all submissions received, with the exception of one confidential submission are attached.

The confidential submission will be provided to Councillors under separate cover.

The matters raised in submissions and comments relating to same are reproduced below.

*The impact on the drainage system due to the new flood regulations will have an impact on the drainage currently in place  
Drainage to provide for additional run off*

Comment

Council's Civil Services Group has advised that they are of the opinion that the proposed development complies with all of Council's flooding and drainage requirements.

*Community buildings require security fencing and security lighting which will impact on adjoining residents*

Comment

The matter of security fencing has been addressed above, however, the matter of security lighting is one of general concern and it will be recommended that Council seek to address this by way of conditions of consent which may be issued.

*Different to plans provided during discussion over the use of the land  
Possible extensions taking up more land*

Comment

This is not a matter to be determined in the assessment of this application.

*No buildings erected on Porter Park  
Loss of open space  
Loss of revenue from not charging rent  
Crime in the area, exposing children to this*

Comment

This matter has already been determined by Council during previous discussions on this matter, suffice to say that the proposed site is consistent with Council's Generic POM for Community Land.

*Building heights set at 2.5m rest of Hayman Street is 1.8m or lower*

Comment

It is thought that this submission is referring to the height of fences not the height of buildings. This matter has been addressed and all external fences will now be 1.8 metres in height.

*Objection to use of site for uses other than child care centre, uses such as parties, function or celebrations out of business hours*

Comment

The applicant has stated that the proposed development, will not be used for any purpose other than those stated, and that the centre will not be used of an evening or week end.

*Request introduction of alcohol free zones and new speed zones, to stop speeding cars and drinking in the park and street  
Need to reduce speed limit*

Comment

As stated the proposed centre will not be used for any purpose which will involve the use of alcohol. This matter and the matter of stopping speeding cars and drinking in the park and street, is a separate matter which Council may wish to discuss in a different forum.

*Noise from wooden decks*

Comment

This matter has been resolved by an alteration to the plan which proposes the provision of a concrete slab floor as opposed to the wooden floor originally proposed.

*Number of people working at the centre*

Comment

The maximum number of people working at the centre will be

- Family component 5 staff and 2 visiting specialist staff
- Child care component 18 staff (based on ratio 1 worker to 3 and 1 worker to 4) for a maximum placement of 59 children under the age of 5 years.

It is predicted however that the maximum numbers of employees will not be in attendance at all times

*Need for footpath*

Comment

The applicant has advised that they are of the opinion that a large number of patrons will walk to the Centre. It is therefore proposed that any conditions of consent which may be issued for this application should require the provision of a footpath for the length of Hayman Street.

*Unacceptable within residential areas*

Comment

With the services to be provided from the centre, it is considered that to have such a centre located within a residential area is an ideal location, so that patrons can gain easy access to the centre. This is demonstrated by the fact that the applicant envisages that a large number of patrons will walk to the centre.

*Additional Traffic*

Comment

A Traffic Impact Statement has been provided with the application and Council's Civil Services Group are of the opinion that the additional traffic generated by the proposed development will be within acceptable guidelines.

*Timber fences become unsightly*

Comment

This is a concern shared by Council's technical staff, who are of the opinion that a colourbond fence would be more durable. However, a colourbond fence would generate noise in excess of reasonable residential limits when hit by children. It should also be noted that the majority of the fences will be behind landscaping, which will lessen the visual impact of the fences.

*Overflow parking onto parkland*

*Size of the car park*

Comment

Council's Civil Services Group has assessed the application and are of the opinion that the centre is providing an adequate number of car parking spaces for the proposed use. It is considered however, that there will be occasions during the year, such as Christmas when functions will be held at the centre, that will generate a car parking demand in excess of that supplied and alternative arrangement will be required. A development can not be expected to provide sufficient car parking spaces to cater for these occasional events.

*The proposed building materials are not comparable with existing homes*

Comment

It is acknowledged that the majority of homes in the area are of brick construction, and that most of the subdivisions surrounding the site contain brick only covenants. However, this does not necessitate a need for this building to be of brick construction. It could also be argued that such a building should not be of the same construction as the surrounding dwellings so as to distinguish this building as a community building.

*Location of car park*

Comment

Council's technical officers expressed a similar concern and were advised, that the proposed car park was not located on the western side of the building as it was considered that locating the car park in this area would create a barrier between the building and Porter Park. The noise assessment report advised that the proposed car parking area would not generate noise in excess of the allowable limits at the adjoining residence.

*Appearance of building*

*Maintenance issues in the future*

*The height of the fences*

Comment

These matters have been addressed previously in this report.



### **Conclusion**

The basic structure of the application is sound and in accordance with Council's previous resolutions.

The development is to be located on Council owned land, leased to the Department of Human Services for a period of twenty one years at the end of which time the development will be returned to Council.

It is considered imperative therefore, that Council consents to a development which is not going to generate maintenance problems into the future. It is considered that the development as amended will not generate such a problem.

The matter of the appearance of the building, in particular the five doors in the façade facing Hayman Street, has been discussed with the applicant and they have declined to amend the application. This is considered to be undesirable, but not of such a concern as to warrant refusal of the application.

The application as originally submitted contained a number of matters of concern however through negotiations between the applicant and Council's technical staff, the majority of these matters have been resolved.

Council's technical staff are of the opinion that the application has been amended sufficiently, to warrant Council resolving to grant approval to the proposed development.

### **Options**

- 1 The application cannot be refused without the consent of the Minister. Such a request is not recommended.
- 2 Council can approve the development subject to conditions, however to implement those conditions the applicant must agree to them in the case of the Crown. The proposed conditions of consent attached to this report have been agreed to by the applicant. Even though it is not a matter for this assessment process, Council has also previously resolved that it will only provide a lease for the land, subject to the lessee complying with all development consent conditions.
- 3 Council can defer the application, pending further negotiations with the applicant in relation to the deficiencies mentioned above. This is not recommended.
- 4 The application can be referred to the regional panel in accordance with Section 89 (2) of the EP&A Act 1979. This option is not recommended.

Option two is recommended as the application has been assessed as being worthy of approval and the consent conditions have been agreed to by the applicant.

## **RECOMMENDATIONS**

That development application 2011/359 for the construction of a 59 place child care centre, and a family support centre providing services such as family support, parenting programs, playgroups, health services and early childhood nurse services for aboriginal children and all children from low socioeconomic backgrounds including a 21 space car parking area and landscaping in the north western corner of Porter Park, be **APPROVED** subject to the attached conditions of consent.

### **Attachment(s)**

1. Locality Plan
2. Elevation plans of the proposed development
3. Floor plan of the proposed development
4. Submissions (one confidential submission provided to Councillors)
5. Draft Conditions of Consent

**8.2 DA 2011/414 - Sundowner Motor Inn, Ballina**

<b>File Reference</b>	DA 2011/414
<b>Applicant</b>	Newton Denny Chapelle (C/- Wantana Pty Limited, Brown & Mills)
<b>Property</b>	Lot 1 DP 499510 & Lot 10 DP 244352, No. 274 River Street, Ballina
<b>Proposal</b>	To Undertake the following: <ul style="list-style-type: none"><li>• Demolition of all existing buildings on the lands (to slab level);</li><li>• Removal of three (3) advanced Norfolk Island Pine trees;</li><li>• Consolidation of the two (2) existing allotments into one (1) allotment; and</li><li>• Dedication of foreshore land for public access to the Richmond River.</li></ul>
<b>Effect of Planning Instrument</b>	The lands are zoned 3 – Business under the provisions of the Ballina LEP 1987.
<b>Locality Plan</b>	The subject lands are depicted on the locality plan attached.

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**Introduction**

The subject proposal incorporates four components:

- Demolition of all existing buildings on the lands (to slab level);
- Removal of three mature Norfolk Island Pine trees;
- Consolidation of the two existing allotments into one allotment; and
- Dedication of foreshore land for public access to the Richmond River.

The land that the application applies to comprises Lot 1, the northern-most lot having dual street frontage to River Street and Kerr Street, Ballina and Lot 10, the southern-most lot. The southern, western and eastern boundaries of Lot 10 have direct frontage to the Richmond River. The “Sundowner Motor Inn” and the associated refreshment room “By the River” currently stand predominantly on Lot 1. This site forms an integral and highly visible component of the western gateway into the Ballina Town Centre.

The applicants have prepared and submitted this application in order to have the Council provide a level of certainty for the current owners and prospective purchasers of the site about its 'developable' area.

The site is level, riverfront land and is in what is currently a 16m high (5 storey) redevelopment area of the Ballina Town Centre. Most relevantly for the purposes of this application, the lands are constrained for redevelopment by the following factors:

- The current standing older motel buildings
- Past waterfront usage in the area that has led to a level of contamination of the site and its environs
- Three substantial Norfolk Island Pines that are listed in Council's planning controls as having local landscape significance that warrants their retention
- The configuration of the site in two separate allotments, the waterfront one of which has virtually no direct street/road frontage and access and
- The State Government's state-wide planning provisions that require councils to obtain public waterfront access at the time of redevelopment of foreshore and river frontage lands.

It is the aim of the applicants to have the above factors resolved to varying degrees.

Two previous applications were made that sought to address some individual matters. One, for removal of the pine trees, was refused, and the other, seeking consent to demolish the motel and carry out a consolidation subdivision, was withdrawn and replaced by the current more comprehensive proposal.

Further specific discussion on the identified matters (and other relevant issues) will be outlined in the report.

### **Public Exhibition**

The application was not publically advertised.

### **Report**

The application has been assessed in accordance with the relevant heads of consideration under Section 79C of the EP&A Act.

Only those matters of contention and of development/planning significance will be specifically addressed as part of this report.

### **Ballina Combined DCP**

Chapter 2 of the Council's Combined DCP contains provisions directly relevant to the assessment of the application.

Excerpts from the DCP are attached for Council's reference and consideration and comprise:

- 'Ballina Town Centre Structure Plan' map that illustrates the "Desired public open space" and "Desired foreshore pathway" in relation to the subject lands
- Section 2.3.7 'Foreshore Open Space'. Council's attention is particularly drawn to the part entitled 'Between War Memorial Park and Kerr Street (Barlows and Sundowner Site)' being pages 14 & 15 of the Chapter and

- Section 3.8.3 'Other Development Controls'. Council's attention is specifically drawn to part (c) 'Norfolk Island Pines'.

With respect to the resolution of the extent and configuration of Foreshore Open space for the subject lands the DCP states:

*"Detailed planning and design for this site has not been possible in the preparation of this DCP. This would more effectively and appropriately be undertaken by collaboration between the land owners, Ballina Shire Council and relevant government agencies."*

What the DCP does do, is identify several objectives to guide future planning and design of the site. Relevantly these include:

- Provide a public open space network that connects the War Memorial Park with Kerr Street
- Provide continuous public access along the foreshore
- Retain references to the landscape setting by protecting existing Norfolk Island Pines
- Provide public open space that accommodates active and passive recreation
- Ensure that buildings do not dominate the entire river edge but rather a transition area is provided between the riverbank and the main bulk of buildings and
- Determine the extent and configuration of public parkland having regard to:
  - The alignment of the riverbank to the west and east of the site
  - The landscape and historical features on the site
  - Vistas along the foreshore, from the land to the river and from the river to the land
  - The area required for usable and effective public open space
  - Other objectives for the site identified above

Approval and implementation of the current application would, with the exception of retention of the Norfolk Island Pines, materially advance the objectives of the DCP set out above.

### **Dedication of Land**

The application proposes the dedication of approximately 600m<sup>2</sup> of foreshore land to Council comprising a six metre wide strip along the southern (waterfront) boundary of Lot 10 and four metre wide strips partially along the eastern and western boundaries of Lot 10 and Lot 1 (copy of illustrative plan attached).

The applicant has based the proposed four metre and six metre width dimensions of foreshore land to be dedicated to the Council on a number of matters, including reference to other local developments particularly those in the Fawcett Street area.

The examples referenced by the applicant are not considered to be particularly relevant to the comprehensive merit assessment of the current proposal however as the Combined DCP Chapter 2 had not been adopted at the time of determination of the other developments.

During the assessment of the previously withdrawn and current proposal, Council planners advised the applicant that land dedication was considered to be a substantial public interest matter and was required to be addressed in order to meet and enhance public access to, and the amenity of, coastal waterfronts in accordance with the provisions of:

- State Environmental Planning Policy No. 71 – Coastal Protection
- The NSW Coastal Policy and
- Council's Combined DCP Chapter 2.

Additionally and consistent with State Government Planning provisions, Council's Combined DCP, Chapter 2 (and more specifically the Structure Plan contained therein) identifies in the long-term strategy for the Town Centre, the need for key open space areas and pedestrian linkages to and along foreshore areas.

The Structure Plan, which has been adopted and in effect since 2006, clearly identifies the area that includes Lot 10 and lands located immediately to the east as "Desired Public/Private Open Space" (copy attached).

The width of the 'Desired Public/Private Open Space' identified within Combined DCP, Chapter 2 has been shown illustratively on the 'Structure Plan' map as an extrapolation of the existing width of the open space area further to the east (i.e. the RSL War Memorial Park open space area immediately adjacent to the RSL car park).

The Memorial Park is approximately 30 metres in width at its narrowest point. This is substantially wider than the 6 metres proposed for land dedication in the subject application and would equate to an area of approximately 1280m<sup>2</sup> within the site rather than the 600m<sup>2</sup> currently proposed.

### **Relationship with 'Ballina Gateway' Project**

The subject land comprised part of the previous 'Ballina Gateway' project that was approved by the then State Government.

For reference, the 'Ballina Gateway' project was a mixed use development comprising an 84 room tourist hotel, 85 residential apartments distributed through 4 multi-storey buildings, an amenities block with swimming pool, gymnasium, and approximately 1200m<sup>2</sup> of ground floor retail, including a destination café on the waterfront.

As part of the 'Ballina Gateway' approval, 18 metres of public foreshore open space fronting the southern boundary of Richmond River (including the four metre wide approved boardwalk) was to be dedicated to Council and an additional 9.57 metres wide strip was to be dedicated along the western boundary fronting the Richmond River (including the 4 metre approved boardwalk).

Also, an additional 10 metres of private open space (landscaped terrace areas) was to be provided in the approved design plans, thereby furnishing approximately a 28 metre wide public/private open space area or setback along the southern boundary foreshore of Lot 10 as part of the overall, integrated development of the whole 'Gateway' site.

The current, subject application has to be distinguished from the 'Ballina Gateway' project consent because it does not apply to the whole 'Gateway' site and it is not for the redevelopment of the land for a new end land-use.

Consequently neither the need nor the opportunity to assess and/or negotiate a final detailed development outcome with respect to bulk and scale of buildings, intensity of use, traffic access, parking, open space provision, architectural design, public accessibility, etc., for the lands that are the subject of the current application are yet there.

Additional requirements and refinements of development conditions for the subject lands will, of necessity, occur at the time of submission of a re-development application. Therefore a direct translation of the land dedication and foreshore access provisions of the 'Ballina Gateway' development consent across to the current smaller land consolidation and demolition of buildings application should not be made.

By way of comment, during assessment of the application Council staff enquired of the applicant that, if the dedication of the land to the width of the Memorial Park was not supported by the landowners at this early stage then, as an alternative, an easement could be proposed indicating the required width and area of open space illustrated by the Structure Plan.

The width of the easement could then be further considered and varied by Council once a design for comprehensive re-development of the site was submitted and matters such as setbacks, landscaped open space, potential contamination, etc, were able to be reasonably considered in the context of the design, the site, and the locality.

In the interim, such an easement would highlight to prospective developers that this requirement is a key item to be considered in any design for the future re-development of the site and would also allow for suitable public access to the foreshore to occur across private lands in the interim period.

The applicant declined this suggestion.

### **Section 94 Contribution Plan – Open Space**

Although DCP 2 clearly identifies Lot 10 (and other adjoining lands) for intended or desired public/private open space, the Ballina Shire Contributions Plan 2008 is silent in this regard.

As there is no re-development proposed as part of this application, this matter is not particularly relevant at this time.

Notwithstanding this, if the land dedication as proposed by the applicant is accepted by Council as part of this application (free of cost), the recognition of credits for such provision may be applicable to a future re-development application for the site under the Ballina Shire Contributions Plan 2008 (or its equivalent at the time of determination).

For further clarity, should Council still wish to have these lands secured for use as public open space as outlined within DCP 2, the lands should also be identified within the Ballina Shire Contributions Plan 2008.

### **Potential Contamination of the Site(s)/Locality**

Similar to the land dedication and retention of trees matters, Council planners requested the applicant to provide further information about the potential contamination of the site(s).

The submitted Statement of Environmental Effects only provides a brief assessment and commentary on State Environmental Planning Policy No. 55 – Remediation of Land. This is not considered sufficient and does not comply with the requirements of the *NSW EPA Guidelines for Consultants Reporting on Contaminated Sites* and Council's Management of Contaminated Land Policy.

A preliminary site contamination assessment has not been undertaken on the subject site(s) as part of this application as it does not propose disturbance to the existing surface of the land or redevelopment of the site(s) for any purpose.

The current application does, however, reference the site investigation works report of Coffey Geosciences dated 25 November 2005 that was prepared as part of the 'Ballina Gateway' project. The Coffey Report recommended that further investigations be undertaken on the sites, including the sites subject to this current application.

The Coffey Report established the existence of tributyltin in sediments below the slipways including that slipway immediately to the east of the subject site and adjacent to the land proposed to be dedicated to Council to provide public access to the Richmond River foreshore. There is insufficient data at this time to assess the vertical and horizontal extent of the tributyltin or the presence of other contaminants. Additional investigation, sampling and analysis are required.

In the absence of a contamination report for the subject sites, particularly the area proposed to be dedicated to Council, a level of uncertainty about the condition of the land exists. This uncertainty should be resolved and the lands certified as being sufficiently clean of contaminants to be suitable for future use for open space purposes before the Council takes on any ownership obligations.

A preliminary contamination report on the proposed dedication of land area may provide a level of confidence with which Council could be confident that the proposed land is not affected by contamination and is suitable for its intended use.



In consideration that the proposed demolition component of the application is for all existing buildings on the land that are not in contact with ground level and that no disturbance of land, is proposed to occur, it is considered that the land in its current state, is suitable for allowing the demolition component of the development application and consolidation of allotments to proceed. In any event the full extent of contamination cannot be surveyed until the site is cleared of structures.

Additionally there appears to be a number of underground tanks on the subject sites whose use and condition cannot be verified and further investigations are required.

The extent of tributyltin and other contamination of the riverbed will determine whether the river silt should be disturbed by the proposed demolition of the timber jetties and any other foreshore works that may be necessary to secure the waterfront land from future erosion

### **Revetment Wall Structural Adequacy**

Although the applicant has confirmed that the existing timber jetties along the southern boundary and within the south-eastern corner will be demolished, the SEE has not had any regard for the structural adequacy of the existing revetment wall. The wall is likely within the area proposed to be dedicated to the Council.

If it is accepted without Council knowing the full structural adequacy of the wall, the community may inherit an asset that requires substantial work and expenditure of public monies in the immediate future.

In the absence of certification from a practising structural/specialist engineer describing the condition of the wall, verifying that it will withstand the force of a maximum probable flood, and confirming the stability of the riverfront/bed adjacent to the site, the necessary level of certainty as to the acceptability of the revetment wall to be transferred into Council's ownership is not there.

If works are found to be required to place the wall into an acceptable condition then such may, depending on the extent of work required, trigger integrated development and the need for separate approvals from other Government Agencies prior to the dedication of lands.

It should also be noted that the relatively narrow width of the land dedication may present access difficulties for future maintenance of the riverbank rock revetment.

To be fair, the wall has been in existence for a substantial period of time and appears to generally be in a good state of repair.

In the absence of accredited certification regarding land contamination, structural adequacy of the wall, and boundary identification survey, the land dedication should not proceed. If the Council is minded to approve the application, these requirements may be addressed by pre-commencement conditioning of any consent.

### **Norfolk Island Pines Removal**

Two existing and substantial Norfolk Island Pine trees are centrally located and in close proximity to the existing common boundary between Lot 1 and Lot 10. The remaining advanced Norfolk Island Pine tree is located along the northern River Street frontage of Lot 1.

The application proposes to remove all three of the mature Norfolk Island Pines for various reasons (including that they do not exhibit significant landscape qualities) and to compensate for this by providing a 5m radius area in the very south western corner of the site where a replacement tree can be planted.

The contention of the applicant that the existing trees do not have significant landscape value is not supported. Such a proposition is at odds with DCP Chapter 2.

The Norfolk Island Pines have landscape/scenic value not only to the site, but to the entrance to the Ballina Central Business District, to the river, and to the surrounding locality due to their dominating height in what currently is a flat, low level urban/riverside landscape.

This said, the tree on the River Street frontage of the site is not as fully foliated as the other two and is not as attractive.

The applicant also contends that the removal of the trees is required as redevelopment of the site is “unviable” if they are retained.

Viability of land for development is dependent upon a range of factors; not just the available land area and only some of these come within the ambit of the Council’s responsibilities.

It would generally be the case that the value (as opposed to viability) of land as a component of assessing a purchase price of land for development purposes would be concluded having regard for a whole range of factors. These would include all the planning controls applying to the identified land, but also other commercial considerations such as the state of the economy, entrepreneurial opportunity in the locality, finance issues, taxation, and the physical on-site constraints to building and construction.

The two trees towards the river occupy a substantial area of land given the overall size of the site. If they are required to be retained any development designer would need to allocate a substantial area to their protection.

Depending on the approach of the prospective developer and their designers this could, however, be seen as a design opportunity as much as a development constraint. In this regard the application does not provide any perspective other than that applying to the positioning of the trees within the site and the area they occupy as presenting a substantial physical constraint to future development options.

There is not a great deal of information to support the nominated replacement tree area as being well suited for off-set planting. It is right on the revetment wall and is currently exposed to winds off the river. Hence it may be difficult to achieve vigorous and healthy tree growth and as any large tree matures it may damage the revetment and or hinder future maintenance work.

It is also difficult to ascertain how pedestrian access would still be provided around the tree once it reaches maturity (i.e. within the six metre land dedication width). Council should also note that the applicant is not proposing to plant a tree within this area, so no physical offset for the removal of the three advanced species is proposed at this time.

Council Officers have considered the particular merits of this and other matters as they relate to the current proposal. Without a clear indication of the re-development of the site (as was the case with the Minister approved "Ballina Gateway" proposal) Council planners aren't really in a position to support the removal of the three trees.

Should the Council be minded to improve the "viability" of the site for redevelopment because of the substantial land area occupied by the trees and approve their removal, it could give consideration to approving one but not all trees to be removed, deferring a decision and requesting additional off-set sites be identified, and/or, by conditioning, require a higher ratio of off-set planting, at the cost of the landholders, elsewhere on public land.

Council's Arborist has conducted a further inspection of the trees and confirmed that the previous advice provided in May still remains, being:

*"All trees appear to be in good health and sound structural condition with little to nil deadwood....From an arboricultural perspective I can see no structural or ill health issues that would warrant the removal of these trees. As a genus Araucaria's are a heavily lignified tree and not highly prone to failure of branches."*

Although it is acknowledged that the trees were previously nominated for removal as part of the "Ballina Gateway" project (determined by the Minister of Planning), the trees can only be removed under that approval if the consent is enacted and the construction commenced. As the sites that were the subject of that application no longer comprise an agreed single development entity and the consent lapses on 20 June 2012, it is unlikely that this will eventuate.

### **Options**

From the contents and discussion contained within this report there are three options available to the Council in determining this application.

#### Option 1

Council could refuse the application on the grounds that the applicant has not provided sufficient information and justification in addressing the planning and development assessment issues identified in this report and as required to be considered under the provisions of s79C of the Environmental Planning & Assessment Act to warrant approving departures from the planning controls for the area.

There has also been insufficient documentation and investigation to give Council a reasonable level of confidence that the site(s) are free from contamination and that the revetment wall is within a sound and reasonable structural condition. This is particularly relevant in that Council should not accept the dedication of lands (particularly for public purposes) until it is satisfied that any such land is suited for its intended purpose and won't become an unreasonable cost burden for the local community.

In the event that Council decides to refuse the application, it should be noted that it may be some time until public access to the foreshore will be achieved in this locality.

This would be of some concern as the experience is that completing public land acquisitions of this type is difficult as they are usually long underfunded processes that carry a high risk of failure. Equally, a refusal would not provide any clarifying guidance to the landholders, or prospective purchasers, about what the Council's future requirements will be as far as interpreting the areas of land dedication needed for foreshore public access.

#### Option 2

Council could grant consent to aspects of the application applying suitable conditioning to address land identification survey, contaminated land and revetment wall condition certification and conditioning that identifies what, if any, trees are approved for removal and that detail replacement/off-set tree planting requirements.

This would give the applicant and others guidance about what is considered reasonable in relation to the matters of contention (i.e. the land dedication and removal of the trees).

Council Officers are generally supportive of the demolition of the nominated buildings/structures (to slab level) and the consolidation of the two allotments into one.

#### Option 3

Council could grant consent to the application as submitted. However due to the significant variations to Council's DCP 2 in relation to the removal of the three Norfolk Island Pines, identified as significant landscape items of interest and the potential dedication of contaminated lands and acquisition of a substantial asset that may not be structurally sound for public purposes; this option is not supported at this time.

### **Conclusions**

There are many commercial, entrepreneurial and government factors that go to the question of determining the development potential or "viability", of land. These are wide ranging and are all factors in the calculations that a prudent prospective developer would be expected to make in order to assess what could be reasonably expected to be able to be built on land.

The planning controls applying to the subject land include the Business zoning, the 16m height allowances, parking and traffic management requirements, foreshore public access, building lines, and infrastructure provision, as well as the identified protection of the trees. These local planning controls lie in that part of the development potential equation that the Council has responsibility for. They are a mixture of both incentives and costs as they give relative advantages and disadvantages to different landholdings.

It is a key responsibility of the Council to decide on its local planning controls and, in their preparation and implementation, strike a suitable balance between public and private interest for land across the Shire as a whole.

Having regard for the current and intended Draft Ballina Local Environmental Plan 2011 zoning and development standards applying to the site it is considered that the landholders can comply with the required land dedication and retain the trees in accordance with DCP 2, whilst still catering for and accommodating a substantial future re-development for the western gateway of the Ballina Town Centre. Such may not maximise the value of this land by giving it advantages over other lands but that is not the purpose of public planning policy.

The crux of the matter before the Council with this application is whether or not the combination of the applicable planning controls has struck the right balance for the land at this time. Clearly the applicant doesn't think they do. In this regard it could be argued that, due to the happenstance of history, this land has trees on it that occupy a substantial area and that other landholdings don't have such constraints. Such is not considered to be a valid argument on its own as all lands have differing characteristics and it is these that contribute to the normal variations in land values.

It is clearly in the interest of and would be of direct benefit to the local community and the owners of the site to have the land dedication, tree removal, revetment wall and potential land contamination matters resolved and confirmed as far as they can be at this time.

In reviewing the options the fundamental questions are:

- a) does Council wish to refuse the application to ensure the protection of the Norfolk Pines? OR
- b) does Council wish to accept the removal of the Norfolk Pines on the basis that foreshore land will be dedicated to the public? Such a dedication would be entirely dependent on Council ensuring that the revetment wall was in a satisfactory condition and there were no contamination issues with the land.

This then becomes a matter of public value of these assets and the difficulty from a staff recommendation perspective is to try and determine which item (the land or the trees) has the higher community value.

Due to the difficulty of this issue the recommendations that follow provide for both options. This thus allows Councillors to determine which item is of the higher value to the community.

## **RECOMMENDATION**

### **Option A**

That development application 2011/414 be **APPROVED** subject to the application of suitable conditions of consent, as determined by the General Manager, addressing site identification survey, revetment wall and contaminated land certification, replacement tree planting, standard demolition safeguards, submission of a subdivision certificate application and other relevant standard requirements.

### **OR**

### **Option B**

That development application 2011/414 be **REFUSED** as the application is inconsistent with local planning controls and is not in the public interest.

### **Attachment(s)**

1. Locality Plan
2. Required Land Dedication Area within the DCP 2 Structure Plan
3. Retention of the Three (3) Norfolk Island Pine Trees as Significant Landscape Items of Interest within the DCP 2 Structure Plan
4. Proposed Tree Removal by the Applicant
5. Proposed Land Dedication Area Nominated by the Applicant
6. Except from DCP Chapter 2.

**8.3 DA 2000/680 - Application to Modify Consent (Riverside Suites)**

<b>File Reference</b>	DA 2000/680
<b>Applicant</b>	S J Connelly CPP Pty Ltd
<b>Property</b>	Lots 12, 13, 16, 22, 25, 30, 31, 37, & 38, in SP 708901, 25-35 Fawcett Street, Ballina
<b>Proposal</b>	To amend the terms and conditions of Development Consent 2000/680 to allow the suites of rooms within the subject allotments of the 'Riverside Suites' building to be used flexibly as, alternatively, a smaller motel suite configuration, a larger tourist suite configuration, or, as a combined tourist accommodation configuration provided that each strata titled allotment is only being occupied by a single party of guests at any one time.
<b>Effect of Planning Instrument</b>	The land is zoned 3 - Business under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

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**Introduction**

Following Council's refusal of DA 2007/703 seeking consent for the full 'dual-key' use of various strata titled allotments within the subject building, including all the allotments that are the subject of this application, formal Orders have been issued to lot owners requiring them to comply with the original consented to development. In part the Orders require all differential numbering and locking of suites within each individual strata allotment to be removed in order to make them less readily able to be used simultaneously by unrelated parties.

The applicant has now been engaged by the owners of the allotments that are the subject of this report to make an application to the Council under the provisions of Section 96 (1A) of the Environmental Planning and Assessment Act to explicitly amend the terms of the original consent to allow for the flexible use of their suites as outlined in the proposal description above.

The proposal has been prepared to clearly differentiate the proposed land-use from a full 'dual-key' use as approval is being sought for a maximum of only one party to occupy each strata allotment at any one time.

If approved, those parts of the Orders seeking the removal of distinguishing numbering and individual locking mechanisms from each of the applicant premises would be superseded and would no longer need to be enforced. Amended Orders may need to be issued.

To facilitate future compliance monitoring the application also formally proposes a record keeping and Council inspection arrangement by way of a proposed additional condition of consent.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The proposal constitutes a minor amendment pertaining to internal arrangements and no public exhibition was required or undertaken.

### **Applicable Planning Instruments**

The proposal is permissible with the approval of the Council in the applicable Business Zone of the Shire Plan.

### **Report**

The Council will likely have a good understanding of the background circumstances to this application. In essence the requested amendment of development consent is of minor technical consequence as, unlike the previous 'dual-key' proposal, it will not authorise any additional individual accommodation within the building.

As no additional occupation is being sought, there is no increased parking and traffic being generated nor demands for open space, water, sewer, or other public infrastructure services. Further, as adjoining suites will not be being authorised for simultaneous occupation by unrelated parties, no issues arise with fire, smoke, or noise separation between suites under the BCA. These key aspects of the proposal are clear and significant differences to the assessment needed for a full 'dual-key' use development.

### **Options**

The options available to the Council in determining this request are:

#### **Option 1**

Approve the application as requested. This is the recommended action as the assessment has found that the merits of the proposal warrant its approval.

#### **Option 2**

Refuse the application. This option is not recommended as there have not been any grounds identified that would justify a refusal.

#### **Option 3**

Seek to have the applicant amend the application to address any outstanding issues that still need to be resolved. In this regard the only point that the Council might want to address is the proposed 14 day notice that is proposed in the compliance condition, as per the recommendation. The Council may wish to delete such a time delay. It is considered that the proposal is reasonable and that there would be little real utility in seeking to change the proposed and recommended condition.



### **Conclusion**

The proposal is for a minor amendment to the terms and limitations of the original development consent for the Riverside Suites building. Approval would not authorise any additional occupancy of the building but would clearly allow a flexible use of existing suites that would improve the commerciality of the owners' investments. The proposed management record keeping requirement would improve future compliance monitoring over the current situation. There aren't any unresolved public interest planning issues and the proposal warrants approval subject to the additional conditions outlined in the application.

### **RECOMMENDATIONS**

That the Section 96(1A) application to amend the terms and conditions of DA 2000/680 to allow the flexible use of the nominated strata allotments within Strata Plan 708901 in the manner requested be **APPROVED** subject to the following conditions supplementing the terms and conditions of the subject consent:

- (a) Notwithstanding the terms and other conditions of this consent, Lots 12, 13, 16, 22, 25, 30, 31, 37, and 38 in SP708901 may, when being used for tourist accommodation purposes, be used flexibly as, alternatively, a smaller motel suite configuration, a larger tourist suite configuration, or as a combined suites tourist configuration provided that each strata titled allotment is only being occupied by a single party of residents at any one time. To facilitate this flexibility of use, individual locks may be installed for entry foyer separating doors and differentiating suite numbering may be applied to doors and/or walls that relates to or indicates the separate occupancies.
- (b) In relation to Lots 12, 13, 16, 22, 25, 30, 31, 37, and 38 in SP708901, within 14 days of the Council making written request, certified copies of letting records are to be provided to the Council by the letting agents. Such letting records are to be kept by the managing agents in a manner where it can be easily determined if the separate suite configurations for each allotment have been let in compliance with the provisions of this consent or not.
- (c) This consent does not approve the simultaneous 'dual-key' use of suites within the building.

### **Attachment(s)**

1. Locality Plan

**8.4 DA 2011/341 - Wedding Function Centre - Dalwood**

File Reference	DA 2011/341
Applicant	Ardill Payne & Partners
Property	Lot 2 DP 703657, No. 104 Victoria Park Road, Dalwood
Proposal	To Utilise the Existing Premises for the Purpose of Holding Wedding Functions 'Deux Belettes'
Effect of Planning Instrument	The land is zoned 1(a1) – Rural (Plateau Lands Agriculture) under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

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**Introduction**

Council is in receipt of an application to utilise an existing premises (Deux Belettes) for the purposes of holding wedding functions. Council received this application following an investigation into a complaint regarding the alleged unauthorised operation of a Bed and Breakfast and Wedding Function Centre from the site.

Council received this complaint in October 2010. Council investigated these claims, which revealed that no approval had been granted by Council for the use of the land for wedding functions, and only a two bedroom bed and breakfast had been approved (via DA 1997/65).

The proposed development involves the use of the existing premises for wedding functions. No more than 12 events per year are proposed, and are to be located within the curtilage of the existing dwelling, in a marquee (which is hired by the client). Events are proposed to be limited to 100 guests, and guests are to arrive by 34-seat mini-buses.

Currently, a 2-room Bed and Breakfast is operating from the site, via DA 1997/65 (approved 28 October 1996). The B & B is also proposed to be used as part of the wedding function, with only guests attending the wedding permitted to use the B & B during that time. The bed and breakfast has separate development approval, and is permitted to operate year-round.

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

As part of the consideration of the proposed development, Council also undertook action to rectify some unauthorised building works which had also occurred on the property and were proposed to be used in conjunction with the wedding venue/bed and breakfast. Council has issued a Building Certificate for these works, and no works are now outstanding.

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

Councillors need to be satisfied that the definition of the proposed development is accurate, the proposed development is consistent with the objectives of the zone, and that the continued operation of weddings on the site will not adversely impact on the rural amenity of adjoining and surrounding neighbours.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The proposed development was placed on exhibition in accordance with Council's policy. The proposal was on exhibition from 18 August 2011 to 2 September 2011. During this exhibition period, a total of fifteen submissions from surrounding landowners were received, including two confidential submissions, one anonymous submission, and one (1) submission which was subsequently withdrawn. Of the 15 submissions, eight object to the proposal with the remainder in support of the application.

The Statement of Environmental Effects submitted with the development application also included six letters of support from adjoining and surrounding landowners.

A copy of each of the submissions is **attached**. Copies of confidential submissions have been provided to the Councillors under separate cover.

A summary of the issues and concerns raised in the objections are provided below:

1. The proposed use is inconsistent with the objectives of the 1(a1) – Rural (Plateau Lands Agriculture) Zone;
2. Potential Land Use Conflicts with adjoining agricultural uses;
3. Unauthorised operation and building works being undertaken on the land;
4. Amenity issues:
  - a. Noise from caterers, guests, music, etc
  - b. Fireworks; and
  - c. Traffic – specifically the use of buses.
5. Frequency of events per month – how are the weddings proposed to be spread over the twelve month period to reduce impact on surrounding residents?
6. Road damage and maintenance;
7. Damage to wildlife in the area;

8. Regulation of events – how can residents be guaranteed only twelve (12) weddings per year will be held and that the submitted noise management plan will be complied with; and
9. The eventual sale of the property, and new owners not complying with the development consent.

These issues will be discussed in further detail below.

### **Applicable Planning Instruments**

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

#### *Ballina Local Environmental Plan 1987*

The subject land is zoned 1(a1) – Rural (Plateau Lands Agriculture) under the provisions of the BLEP. Before a merit assessment can be undertaken on the proposed development, Council must be satisfied that the use of the subject land as a wedding venue is a permissible land use within the 1(a1) – Rural (Plateau Lands Agriculture) Zone.

The proposed wedding function venue may fall within the definitions of the BLEP and the Environmental Planning and Assessment Act Model Provisions 1980 as either a “*place of assembly*” or “*commercial premises*”. A “*place of assembly*” is a permitted land use within the 1(a1) zone, however “*commercial premises*” is a prohibited land use within the zone.

**“commercial premises** means a building or place used as an office or for other business or commercial purposes, but does not include a building or place specifically defined for the purposes of this plan, or a building or place at which a land use so specifically defined is carried on.”

**“place of assembly** means a public hall, theatre, cinema, music hall, concert hall, dance hall, open-air theatre, music bowl or any other building of a like character used as such and whether used for the purposes of gain or not, but does not include a place of public worship, an institution or an educational establishment.”

In addition, Council should be aware of a court case for a wedding reception centre in Strathfield (Boutros v Strathfield Municipal Council [2005] NSWLEC 76) in which the court sought to define the proposed development first, prior to determining its permissibility. The court deliberated whether the proposed wedding reception venue was defined as a “*place of assembly*” or as a “*commercial premises*”.

The reception venue, in this court case, comprised the erection of a two-storey purpose built reception centre incorporating three reception areas of varying sizes and a two-level basement car parking area. The centre was available for use for numerous types of functions including, weddings, engagements, private parties etc.

The court determined that the proposed wedding function centre was not considered to be defined as a “place of assembly”, but rather as a “commercial premises”. A copy of this judgement is attached.

In light of the above court case, Council requested the applicant to provide further justification as to why the proposed development better fits the definition of a “place of assembly”, rather than a “commercial premises”. The applicant has advised the following:

*“It is evident that the land use to which the Court was considering is a significantly different use to that which is being proposed by DA 2011/341.*

*The use in 10677 of 2004 is described as “...development as comprising demolition of the existing improvements and construction of a two-storey reception centre incorporating three reception areas ranging in size from 560 sqm to 1600 sqm. The facility is intended to be used for weddings, engagements and private parties with the individual reception areas hired for a fee. It is expected that the majority of events will occur on Friday, Saturday and Sunday evenings between approximately 5pm and 3am. Off-street car parking is proposed for 255 vehicles within a two-level basement structure with separate provision made for drop off/pick up facilities adjacent to the main entrances to the individual reception areas.”*

*As you will note, this development is for a substantial sized commercial type operation in a large purpose built building that could be used for any type of private function/reception/party, 5 days per week, until 3am with up to 3 functions operating concurrently. It is understandable that the Court held that this is a commercial land use due to its description and components and the fact that it can be used for a multitude of commercial type purposes at any one time.*

*It is submitted that the only real comparison that can be drawn between this use and Deux Belettes is the fact that both uses relate to wedding receptions.*

*What is proposed by DA 2011/341 is the use of an existing rural dwelling house/B&B for a maximum of only 12 weddings per year (not parties, engagements, functions or any other use), for no more than 100 persons (including catering/servicing personnel). The premises will be operated by the resident owners and will cease operations by 11.30pm. The property will be used for residential and B&B purposes 99% of the time.*

*The place of assembly definition in the BLEP includes a broad range of uses including theatre, cinema, music hall, concert hall, dance hall, open-air theatre, drive-in theatre, music bowl, or any other building of a like character.*

*Deux Belettes is a house and B&B that will be used for weddings which involves a group of people attending a ceremony and then celebrating two people’s union in marriage. Deux Belettes is available for hire by the general public (subject to satisfying their terms and conditions and payment of fees/charges) and will be a place where these people assemble. The hiring out of any of the above uses (such as theatre, cinema, music bowl or the like) for private functions is possible as is the case with Deux Belettes.*

*The use is considered to be more appropriately defined as place of assembly than a commercial premises (particularly in the context of the use described in 10677 of 2005), due to it involving a gathering/assembly of people, its small scale, limited and temporary use and direct association with the house and B&B.*

*Commercial premises is defined in the BLEP as a building or place used as an office or for other business or commercial purposes. The use is not an office and is not considered to be a typical "other business or commercial purpose". It should be noted that the commercial premises definition is dated, being some 24 years old (per BLEP 1987).*

*It is worth noting the current (2011) land use definition of commercial premises as contained in the DBLEP 2011 being:*

*"commercial premises means any of the following:*

- (a) business premises*
- (b) office premises*
- (c) retail premises "*

*Business, office and retail premises are all also defined in the DBLEP 2011, none of which contain any relevance or reference to weddings or receptions. It is evident that this modern land use planning definition is not intended to and does not relate in any manner to weddings. The DBLEP 2011 contains a land use definition of "function centre" which would be the appropriate land use definition under the DBLEP 2011.*

*It is likely that many wedding reception proposals have been defined over the years as "place of assembly".*

*Notwithstanding the above, the proposed use of Deux Belettes may not appropriately or neatly be defined by any of the BLEP land use definitions and that it could actually comprise an innominant use which should be described as:*

*To use an existing dwelling house/B&B for the purpose of holding no more than 12 weddings in any 12 month period*

*Having regard to the above, I am of the opinion that the proposed use is not appropriately defined as a "commercial premises" and is more appropriately defined as a "place of assembly". However, there is a further option that it actually comprises an innominant use as there is no current land use definition that appropriately defines the use."*

Council planners concur with key aspects of the applicant's rationale and are of the opinion that the proposed development does not meet the definition of commercial premises utilised in the current Shire Plan, as only twelve events are proposed per year, for a maximum of 100 guests per event and will be held in a temporary structure on the premises. The principal on-going land use on the site will continue to be a dwelling house, agriculture and a bed and breakfast establishment.

The nature of the development involves guests assembling to participate/witness a wedding, and the venue is available to the general public to hire. It is considered that the other uses contained within the “place of assembly” which may imply that they are for public use are also available to be used for private functions. Therefore, it is considered that this particular development proposal is more closely aligned to the definition of “place of assembly” and therefore is a permissible use within the 1(a1) zone.

In addition to the permissibility issues, the proposed development must also demonstrate consistency with the zone objectives. Clause 9(7) of the Ballina Local Environmental Plan provides that the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out. The subject property is located within the 1(a1) – Rural (Plateau Lands Agriculture) Zone. The objectives of the 1(a1) – Rural (Plateau Lands Agriculture) Zone are:

- A. *The primary objectives are –*
  - a. *To regulate the subdivision and use of land within this zone to ensure that –*
    - i) *Land actually used for purposeful agricultural production, particularly horticulture; or*
    - ii) *Land having the potential for purposeful agricultural production, particularly horticulture,*  
  
*is developed in a manner to optimise its production potential, as advised from time to time by the Department of Agriculture; and*
  - b. *To enable development which is ancillary to the agricultural use of land within the zone (particularly dwelling-houses, rural workers’ dwellings and rural industries) where such facilities do not significantly reduce the production potential of the subject land or other land in the locality.*
- B. *The secondary objectives are to ensure that development within the zone –*
  - a. *Maintains the rural character of the locality; and*
  - b. *Does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.*
- C. *The exceptions to these objectives are –*
  - a. *Development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical; and*
  - b. *Development of land for extractive resources extraction.*

A place of assembly is permitted with development consent within the 1(a1) zone. It is considered that the operation of the proposed development within the 1(a1) zone is consistent with the primary objectives of the zone for the following reasons:

- The proposed use being relatively infrequent is considered ancillary to the established use of the land; and
- The temporary nature and location of the events within the curtilage of the existing dwelling house is not considered to impact on or constrain the site's actual or potential agricultural purposes or that of surrounding properties.

The submitted plans show that the area used for the wedding events is located within the curtilage of the existing dwelling house/B & B on the site. As the site is approximately 12 hectares in area, there is not expected to be any impact on the agricultural viability of the site should consent be granted. In addition, only 12 events are proposed to be held in a 12 month period. The temporary nature of the events is not expected to adversely impact on the agricultural potential of the subject land or surrounding agricultural land.

The proposed development is also considered to be consistent with the secondary objectives of the 1(a1) zone, in that no agricultural land will be utilised for weddings, as events will be held within the curtilage of the existing dwelling. The premises cater to a specific client wanting a "rural wedding experience" and therefore the agricultural setting of the property will be maintained. No unreasonable demands are placed on public services or amenities as a result of the proposed development.

It is therefore considered that the proposed development is consistent with the objectives of the 1(a1) zone.

*State Environmental Planning Policy 55 – Remediation of Land*

Council's Environmental Health Officer has provided the following comments regarding SEPP 55:

*"The wedding functions are to be held within the curtilage of the dwelling and no soil disturbance is proposed. Therefore although the property has been previously used for agriculture, and is currently organically farming avocados, no further assessment of land contamination will be required at this time as the exposure risk from the proposed use is minimal to non-existent."*

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

Clause 12 of the NCREP provides:

- (1) *Council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the proposed development will cause a loss of prime crop or pasture land.*

The proposed development is to be conducted on land within the curtilage of the existing dwelling house and ancillary structures on the site. No additional buildings are proposed to be erected or constructed.



The property is 12 hectares in area, and the existing dwelling house utilises a small portion of the site. The remainder of the site is available to be utilised for agricultural production. The dwelling house is located centrally on the subject property, being approximately 190m from the eastern property boundary, 220m from the southern property boundary, and 140m from the western property boundary and 160m from the northern property boundary.

Given these distances from the property boundary, the proposed development is unlikely to adversely impact on the use of adjoining or adjacent agricultural land.

*Draft Ballina Local Environmental Plan 2011*

The Draft BLEP 2011 was publically exhibited during the period 19 September 2011 to 19 October 2011.

The proposed development is defined as a “function centre” under the definitions of the Draft LEP 2011:

*“a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.”*

The subject land is identified as being subject to proposed zoning part RU1 – Primary Production Zone.

The objectives of the RU1 – Primary Production Zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To maintain the rural, cultural and landscape character of the locality.
- To enable development compatible with the rural and environmental nature of the land.
- To ensure that there is not unreasonable and/or uneconomic demands for the provision of public infrastructure.

A “function centre” is a prohibited use within the RU1 zone. In this regard, Council would be unable to support the proposed development if the application was received after the gazettal of the Draft LEP.

Despite this prohibition, Clause 2.8(1) of the Draft LEP provides a mechanism for the temporary use of land:

*2.8 – Temporary Use of Land*

- (1) *The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*

- (2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 30 days (whether or not consecutive days) in any period of 12 months.*
- (3) *Development consent must not be granted unless the consent authority is satisfied that:*
  - (a) *The temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
  - (b) *The temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
  - (c) *The temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
  - (d) *At the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) *Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*
- (5) *Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

Despite a 'function centre' being prohibited in the RU1 zone, it is considered that Clause 2.8 may enable the proposed use to be permissible under the Draft BLEP 2011, subject to consistency with the zone objectives and the merit provisions of this clause. The question that arises here is whether or not Clause 2.8 envisages temporary and ongoing uses as opposed to one-off temporary uses.

#### *Ballina Shire Combined Development Control Plan*

Chapter 18 –Rural Land is applicable to the proposed development.

#### Part 3 – General Development Controls for Non-Urban Lands

##### 3.1 – Rural Land Use Conflict

This will be discussed in further detail in the report section of this report.

##### 3.10– On-Site Sewage Management System

Council has issued an "Approval to Install an On-Site Sewage Management System" (OSSM) on August 5 2011 for the existing dwelling and bed and breakfast.

An additional OSSM will be required to be installed, of a sufficient capacity for 100 guests to be connected to the toilet facilities previously constructed on the site. This will be conditioned appropriately.

### 3.14 – Roads, Vehicular Access & Parking

The subject site is accessed via Victoria Park Road, which is a sealed rural road. The subject site intends to utilise the existing driveway and internal layout. Due to the low traffic volume generated by the proposed development, Council's Development Engineer has advised that no upgrading works are required to the public road network or the internal driveway.

All guests are proposed to arrive and depart at events via 34-seat mini buses, therefore minimal parking is required. As previously discussed, the maximum number of guests proposed to be at a function is to be limited to 100 people. Council is aware that whilst it is proposed that guests will arrive and depart via mini buses, there may be occasions when a small number of guests at an event are unable to do so (i.e. elderly, guests who are late or have small children who need to leave early) and will drive in a private vehicle to the site and require a designated parking area. In addition, it is also expected that staff at the event (catering, musicians, celebrant etc) will also require car parking. Two (2) car parking spaces are available and designated to the Bed and Breakfast accommodation on the site. Staff parking has been denoted on the submitted plan, to the north of the dwelling – a total of 11 car parks have been provided. This is considered to be sufficient, as it is estimated that 8-10 staff would be required to work at each event.

A condition can be applied to a development consent requiring that all guests are to arrive and depart the premises by bus. The Terms and Conditions of the operation at Deux Belettes also require that all guests arrive and depart by bus. However, it is anticipated that there will be the odd occasion that a minimal number of guests for each wedding cannot use the bus. The applicant has advised that this would be a very rare occurrence. Submitted plans also show an area to the south of the dwelling which is to be used for car parking for guests who do not use the bus for whatever reason. The car parking area will be conditioned to be clearly signposted, and constructed to the appropriate Australian Standard.

### **Report**

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

During the exhibition fifteen submissions were received from surrounding landowners.

Of the submissions, seven were in support of the application, and eight submissions were objecting to the proposed development.

Discussions on the issues raised in the submissions are provided below:

1. The proposed use is inconsistent with the objectives of the zone

This is discussed under the heading "Applicable Planning Instruments" of this report.

2. Potential land use conflicts with adjoining agricultural uses

A number of adjoining and surrounding landowners raised concerns with potential land use conflicts with adjoining agricultural land uses. The north, west and southern boundaries of the subject site adjoin working macadamia farms. It is a valid concern for these properties that the proposed development has the potential to restrict the opportunity for agricultural production on the land, or that the existing agricultural activities will impact upon events being held at the subject premises.

A Land Use Conflict Risk Assessment (LUCRA) was submitted as an attachment to the development application Statement of Environmental Effects (SEE), which reported that:

- The weddings are held on land that is a minimum of 100m from the closest lot boundary;
- The weddings are held within the curtilage of the dwelling house which is situated generally central to the 12 hectare allotment;
- The periphery of the site is generally well buffered with existing mature plantings;
- The site provides for a rural wedding experience and thus guests are generally expressly seeking such an experience;
- There are only 12 weddings per year for a duration of 1 day and are generally held on the weekend;
- There were no identified land use conflicts raised by any local residents during the prior conduct of weddings on the site.

Council's Environmental Health Officer has provided the following comments in relation to land use conflicts:

*"The potential exists for poorly managed wedding functions to create issues in relation to noise, light and traffic to nearby dwelling houses. Some distance separation does exist however due to the quiet background noise levels that would exist in this locality the noise could very easily carry and be of a level to create offensive noise at these dwellings. To rely on management strategies to control noise can create a compliance problem if the proposed management strategy isn't being implemented correctly or fully. This situation can generate complaints and after hours compliance monitoring requirements for Council staff.*

*To address this matter it would be appropriate to require the applicant to submit an additional noise report following three months of operation to review and amend if necessary the noise management plan and report on any compliance issues that have arisen.*

*In relation to the concern between agricultural activities being restricted by the wedding functions occurring this is unlikely to occur as mobile agricultural plant and equipment and normal agricultural activities are not subject to time and duration restrictions. If complaints were received in relation to this issue the complainant would be advised of this position. However if a complaint was made in relation to fixed agricultural plant such as a macadamia silo or dehusker Council would be required to take action. However, this is no different to the current situation as a dwelling currently exists on the subject property and would generally be considered a more sensitive use than a*

*wedding function. Therefore by approving this application, Council would not be increasing the risk of sterilising the surrounding agricultural land.”*

If the proposed development is approved, the following condition should be applied to the consent to reduce the likelihood of a land use conflict occurring:

- The landowner is to provide adjoining properties with written notification that a wedding is to be held on the site a minimum of 2 weeks prior to the event. Details are to include date of the function, time of commencement of the function, number of guests, time of end of function, and the function number in that 12 month period (i.e. Function 1 of 12). Council can advise which landowners are to be notified.
3. Unauthorised operation and building works being undertaken on the land

Unauthorised building works have been rectified, with Building Certificates issued. There are currently no unauthorised building works being undertaken on the site.

4. Amenity issues
- a. Noise from caterers, guests, music etc
  - b. Fireworks
  - c. Traffic – specifically the use of buses.

Council received several submissions from surrounding landowners during the exhibition period, citing objections to the proposed development on the basis of noise/amenity issues relating to the use of the premises for wedding functions. The subject land is located within a rural area, on a 12 hectare allotment. The existing dwelling is a minimum of 200m from the nearest dwelling house in the area, and sited approximately centrally within the allotment.

It should be noted that for the number of years that the landowners have held weddings on the site without approval, Council has received only one (1) complaint regarding noise and amenity. This complaint was received on 11 November 2011, during the development application assessment process. The complaint was made in regard to offensive noise allegedly arising from a rock band used as entertainment at the venue and made by a surrounding resident. Following the initial complaint regarding the illegal use of the property for a wedding reception venue, Council staff had verbally advised the operators that no further weddings (other than those already booked) were to take place on the property until a determination of the development application was made. Council staff has investigated the complaint, and the landowners advised Council's Technical Officers that the wedding had been booked to be held at the property 12 months previously, and included a duo musical act with guitar, singing and bongo drums for some numbers. The landowner acknowledges that, if the wedding was booked at the property following the submission of the current development application, or during Council's investigation prior to the lodgement of the application, that the entertainment would not have been approved by the operators.

A Noise Management Plan has been submitted by the applicant. Council's Environmental Health Officer makes the following comments regarding this plan:

*"A Noise Impact Assessment has been prepared by Ambience Audio Services, dated 2 August 2011, and submitted to Council. A nominal background level of 30 dBA has been used for day, evening and night as the expected quietest time is likely to be below 30 dBA. This approach is in accordance with the requirements of the NSW Industrial Noise Policy.*

*The noise consultant has proposed a level of 40 dBA when measured at a point 30 metres from the closest effected residential premises (receiver 1) up to 10.00pm. This is acceptable to Council. After 10pm it is proposed that the noise from the use should not be audible at nearby residential premise.*

*A noise management plan has been proposed to aid the operators of the wedding function venue to meet the identified project specific noise levels. This has been submitted to Council for consideration.*

*The consent will be conditioned to address these matters. A number of enquiries have been received by Council from nearby properties in relation to the noise associated with the proposed use. A number of submissions have been made relating to concerns about noise and compliance issues if consent was to be issued for the proposed development.*

*To address the concerns of the nearby neighbours an amended report was required to be submitted to Council by the acoustic consultant that addressed the noise management of a wedding function and if required revise the noise management plan to ensure that the project specific noise levels are being achieved.*

*Again one avenue to address these concerns could be a limited consent for say 12-18 months to determine if the use has satisfactorily complied with the consent conditions and to determine if any compliance issues arise."*

The applicant has also submitted a copy of the "Deux Belettes Terms and Conditions" of venue hire, which clients must agree to prior to holding their wedding and/or reception at the premises. Conditions include:

- All guests must depart the premises by 11.30pm;
- All guests are to arrive and depart the function via 34-seat mini buses;
- No band is to continue after 11.00pm;
- All music levels to be minimal after 10pm (Deux Belettes management to determine this level); and
- The use of fireworks must be approved by the Rural Fire Service.

The amended noise report submitted by the applicant has made the following recommendations within the Noise Management Plan developed specifically for the premises while holding functions:

1. Hours of Operation for service industries to set up and remove equipment for the event to be conducted during business hours on weekdays;
2. No dismantling or removal of service equipment on Sunday;

3. All guests to be transported to and from the venue in buses with a capacity of no greater than 34 seats;
4. Glass bottles not to be bulk dumped during the event;
5. Music speaker system in the large marquee to face the west;
6. No bands with drum kits or guitar and keyboard amplifiers – acoustic guitarists with vocals and string quartet and woodwind type performances only;
7. Music levels to be no louder than 75 dBA (average) when measured 5m directly in front of the speaker;
8. Music levels to be no louder than 60 dBA (average) when measured 10m directly behind the speakers;
9. Music levels to be turned down after 10.00pm so that it is not audible at the front gate of the property;
10. No music to be played after 11.00pm;
11. All guests to be departed by 11.30pm;
12. Catering staff reminded and supervised to pack up in a quiet manner;
13. All staff reminded to leave premises in a quiet manner;
14. Event Co-ordinator responsible for controlling loud or offensive noise from patrons;
15. Deux Belettes management reserve the right in their absolute discretion to exclude or remove any undesirable persons from the event or premises without liability.

It is recommended that the Deux Belettes Terms and Conditions be amended to include the above conditions. This can be conditioned appropriately.

Council's Environmental Health Officer has made the following recommendations to minimise land use conflict and noise disturbance on adjoining and surrounding properties, to be enforced via conditions of consent:

- The LAeq noise level emitted from the use must not exceed 40 dB in any Octave Band Centre Frequency (31.5Hz to 8KHz inclusive) between the hours of 7.00am and 10.00pm when assessed 30m from the nearest affected residential dwelling;
- The LAeq noise level emitted from the use must not exceed the background (L90) noise level in any Octave Band Centre Frequency (31.5Hz to 8KHz inclusive) between the hours of 10.00pm and 7.00am when assessed at the boundary of the subject property. The background noise level must be measured in the absence of noise emitted from the use;
- Notwithstanding compliance with the points above, the noise from the use must not be audible within any habitable room in any residential property between the hours of 10.00pm and 7.00am;
- All music shall cease at 11.00pm;
- Live music shall be limited to acoustic guitars, vocals, string, woodwind or similar performances only. Rock bands and similar shall be prohibited;
- Guests shall be transported to and from the venue in small buses with a capacity of no more than 34 passengers; and
- All guests shall be unloaded and loaded completely within the subject property.

In addition, a Noise Management Plan shall be implemented in full during use of the premises for a wedding/reception, and a Revised Noise Impact Assessment to be submitted 3 months after the commencement of the use, and if necessary, the approved Noise Management Plan shall be required to be amended and submitted to Council for approval to address any non-compliance issues.

As previously discussed, the applicant proposes to transport guests to and from events at the premises via a 34-seater mini-bus. Numbers of guests at a wedding is proposed to be limited to 100 guests; therefore approximately 3 buses will be required. As events are proposed to be completed at the property by 11.30pm, each bus would be making only 2 trips per event (arrival and departure). Buses proposed to be used are relatively new, and therefore excessive noise from traffic is unlikely to be generated from the buses. Staff required for the event (bar staff, musicians, caterers) will not be arriving and departing on buses, and will require car parking. The applicant has estimated the number of staff vehicles per event as approximately 8-10. Council's Development Engineer has estimated that the proposed use of the premises for a wedding reception venue would generate approximately 26 additional vehicle trips per month.

Council's Development Engineer is satisfied that no external road upgrades are required based on the above information.

In regards to the use of fireworks at the property, the applicant has provided information that the fireworks were a one-time-only event however, appropriate approvals were in place. Fireworks are now not permitted for events at the premises, and the operators support a condition to this effect.

It is considered that the proposed use can be conditioned appropriately to minimise impact on the amenity of the area.

5. Frequency of events per month – how are the weddings proposed to be spread over the twelve month period to reduce impact on surrounding residents?

Twelve events per year are proposed to be held at the premises. The applicant has advised that no more than one wedding per weekend will be held at the premises, and there may be instances where two weddings may be held in a month, particularly during peak wedding periods of September, October and March.

As previously discussed, Council can condition that the landowner provide adjoining properties with written notification that a wedding is to be held on the site a minimum of two weeks prior to the event. In addition, Council could include a development condition requiring that a copy of the Deux Belettes booking register be provided to Council at any time.

6. Road damage and maintenance

Traffic generation and the impacts of this on the local road network have been considered by Council's Development Engineer. Given that all guests are required to arrive by 34-seat mini bus, it is expected that general wear and tear only will occur on Victoria Park Road. Council regularly inspects all roads



within the Shire, and if any works are required following the inspection, these are undertaken. Also, if a maintenance issue is reported by the public, Council will inspect the road and undertake any works if required.

7. Damage to wildlife in the area

Concerns were raised by an objector regarding damage to wildlife in Victoria Park Nature Reserve, located approximately 200m to the south of the subject property. Victoria Park is managed by National Parks and Wildlife Services. There is no evidence to suggest that the proposed development will damage wildlife in the park.

8. Regulation of events – how can surrounding residents be guaranteed only 12 weddings per year will be held and the noise management plan will be complied with

Surrounding residents raised concerns that more than twelve (12) weddings per year may be held at the premises, as prior to the lodgement of the development application more weddings were alleged to be held at the premises.

As previously discussed, Council has received one complaint regarding offensive noise from a surrounding landowner regarding a particularly noisy wedding held recently.

Appropriate conditions can be included on the development approval, if granted, to restrict the number of weddings held at the property to twelve per twelve month period. In addition, it is recommended that Council require written notification a minimum of 14 days prior to an event be given by the operators, and to adjoining neighbours. If the premise is found to be operating outside of these terms and conditions, effective compliance action could be taken by the Council.

The noise management plan will be enforceable as a condition of consent. To verify complaints Council will need to gather evidence which may involve Council staff visiting the site during a wedding event or relying on witness statements.

9. The eventual sale of the property, and new owners not complying with the development consent.

The development consent runs with the land, not with the individual/corporation/body. If a property is sold, any new owner who intended to continue to conduct weddings at the property would be bound by any existing development consent permitting such.

Any breach of the conditions which Council became aware of would require Council to undertake necessary compliance/enforcement action. Development Consents are public information and any potential purchaser may request to view the development consents applicable to a certain property prior to purchase.

### **Conclusion**

It can be concluded from the information provided to Council that, in the current proposal, the subject facility is to operate as a small scale bed and breakfast facility and a wedding function venue ("place of assembly").

The consent can be suitably conditioned to minimize the impacts of the development upon the natural and man-made environments of the locality, but if the operators act outside these parameters, investigations and enforcement are imperfect and often unsatisfactory mechanisms for achieving compliance, as individual activities can be difficult to prove.

The proposed development application is permissible and considered to be consistent with the zone objectives and satisfies land use controls contained within:

- the Ballina LEP;
- the North Coast Regional Environmental Plan, 1988;
- relevant SEPPs;
- Council's Combined Development Control Plan

The proposed development is not substantial in size and proposes only twelve events per year. Only temporary structures are used for the events, and are catered externally.

Council must consider whether the wedding venue is capable of use and management in a manner which minimises potential adverse impacts consistent with the zone objectives detailed in the Ballina LEP and the public interest.

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

#### Option 1:

That Council REFUSE the development application, in consideration of the applicable provisions of the BLEP 1987 and the provisions of the Draft LEP, and/or if Council is not satisfied that the impacts on the amenity of the locality can be reasonably minimised; or

#### Option 2:

That Council APPROVE the development application subject to applicable conditions of consent.

As outlined in this report Council's planning staff are of the opinion that the application meets the relevant standards and the recommendation is to approve the application.

### **RECOMMENDATIONS**

That development application 2011/341 to utilise the existing premises for the purposes of holding wedding functions 'Deux Belettes' be **APPROVED** as a "place of assembly" subject to the **attached** conditions of consent.

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

1. Locality Plan
1. Site Plan and Statement of Environmental Effects
2. Copy of Submissions received during exhibition period (confidential submissions provided to Councillors under separate cover)
3. Noise Management Plan
4. Land Use Conflict Risk Assessment (LUCRA)
5. Copy of Boutros v Strathfield Municipal Council [2005] NSWLEC 605
6. Conditions of Consent

**8.5 Development Applications - Works in Progress as at December 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	Determination Pending
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
2010/1067	17/12/2010	Geolink	6 x Lot	Determination

8.5 Development Applications - Works in Progress as at December 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Community Title Subdivision Ranging in size from 1200m to 1600m and associated Infrastructure - No. 56 Greenfield Road, Lennox Head	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)	Being Assessed
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
2011/320	22/07/2011	Ballina Shire Council	To change the method of	Awaiting Additional

8.5 Development Applications - Works in Progress as at December 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			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	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
2011/336	01/08/2011	Stanton Dahl Architects	Extension and Room Additions to a Residential Aged Care Facility, No. 15 The Avenue, Alstonville	Awaiting Additional Information
2011/343T	05/08/2011	Anne Maria Wenham	Tree Removal (Fig Tree), No. 19b Karalauren Court, Lennox Head	Being Assessed
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
2011/363	19/08/2011	S Abicht	To Establish a Camping Ground to be used in association with the Ballina and	Awaiting Additional Information

8.5 Development Applications - Works in Progress as at December 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			District Equestrian Club and to undertake filling of land, No. 70 Gallan's Road, Ballina	
2011/373	29/08/2011	Newton Denny Chapelle	Staged construction of sporting fields and facilities including public road access, car parking, creation of sports field/court lighting, earthworks, provision of utility services, vegetation removal and other associated works, Rifle Range Road and Frank Street, Wollongbar	Awaiting Additional Information
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	Awaiting Additional Information

8.5 Development Applications - Works in Progress as at December 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			(2) x Two Storey Dwellings (being the final stage of a five unit development, No. 4/15 Gibbon Street, Lennox Head	
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	Awaiting Additional Information
2011/425	30/09/2011	Shell Aviation Limited	To Construct a Canopy Over Truck Parking Area, Southern Cross Drive, Ballina	Determination Pending
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
2011/438	12/10/2011	G & M Couch	Fencing and Water Supply for Livestock, Goat Island, Wardell.	Being Assessed
2011/451	20/10/2011	Neil Hargreaves	Retail Nursery, No. 30 De Havilland Crescent, Ballina	Determination Pending
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	On Exhibition



8.5 Development Applications - Works in Progress as at December 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			Store, No. 507 River Street, West Ballina	
2011/462	01/11/2011	Ardill Payne & Partners	Use of existing park for once weekly twilight market, 12-24 Fawcett Street, Ballina	Being Assessed
2011/463	01/11/2011	Chris Abbott Surveying	Boundary Adjustment Subdivision to create Two Modified Lots, Lot 6 Hermans Lane, Pimlico	Referred to Government Departments
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
2011/470	04/11/2011	SJ Connelly CPP Pty Ltd	Alterations & Additions to Gunundi, No. 70 Shelly Beach Road, East Ballina	Awaiting Additional Information
2011/473	07/11/2011	Peter Turner & Associates	Change of use and proposed Bulk Storage Facility, No. 18 Russellton Drive, Alstonville	Being Assessed
2011/476	04/11/2011	Kennedy Surveying	Two Lot Torrens Title Subdivision, No. 1 Higgins Place, Cumbalum	Being Assessed
2011/490	15/11/2011	Newton Denny Chapelle	12 x Lot Residential Subdivision, Tallowood Place, Lennox Head	Being Assessed
2011/498	17/11/2011	Andrew Leslie	The Erection of 2 Signs at either end of the property and 3	Being Assessed

8.5 Development Applications - Works in Progress as at December 2011

DA No.	Date Rec'd	Applicant	Proposal	Status
			banners on boundary line near entrance, No. 432 Wardell Road, Lynwood	
2011/503	21/11/2011	R Smith & C Read	Removal of 1 x Silky Oak and 1 x Eucalypt Tree (Lennox Head VMO), No. 21 Fig Tree Hill Drive, Lennox Head	Being Assessed
2011/505	23/11/2011	All-Steel Garages & Sheds	Staged development of light industrial units, 28 Barlows Road, Ballina	Being Assessed
2011/506	23/11/2011	Chris Lonergan Pty Ltd	Regularise existing caravan park and construct new amenities block and recreation building, No. 440 South Ballina Beach Road, South Ballina	Awaiting Additional Information
2011/513	30/11/2011	S Cameron	Erection of 5 x Industrial Sheds, No. 10 Northcott Crescent, Alstonville	Being Assessed
2011/514	30/11/2011	Newton Denny Chapelle	Strata Subdivision (Boundary Adjustment), No. 41 Stewart Street, Lennox Head	Being Assessed
2011/515	30/11/2011	Newton Denny Chapelle	Staged 5 x Lot Subdivision, No. 565-589 River Street, West Ballina	Being Assessed
2011/517	05/12/2011	Victor Holmes Town Planning	Proposed Consolidation of Lots and Change of Use from a Church to a Dwelling, Pacific Highway, Newrybar	Being Assessed
2011/520	06/12/2011	J Bainbridge	Removal of 1 x Tree (Lennox Head VMO), No. 89 North Creek Road, 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)**

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
NIL				

**RECOMMENDATION**

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

**Attachment(s)**

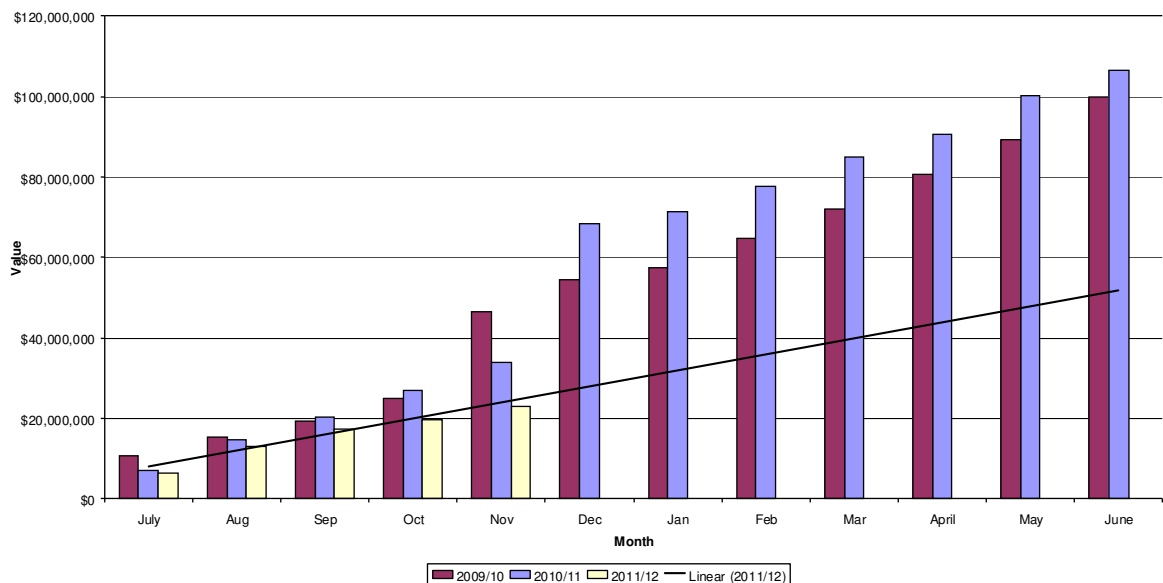
Nil

**8.6 Development Consent Statistics - November 2011**

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

<b>Number of Applications</b>	<b>Value of Work</b>
28 Other Building Related	\$ 870,000
6 Dwelling/Duplexes/Residential Flat Buildings	\$ 2,660,000
5 General Developments	\$ 1,000
<b>Total Value</b>	<b>\$ 3,535,400</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. As per recent reports the trend line remains well below previous years.



**RECOMMENDATION**

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

**Attachment(s)**

Nil

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

**9.1 Climate Action Strategy**

<b>File Reference</b>	Climate Action Strategy
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Governance
<b>Objective</b>	The purpose of this report is to provide Council with an overview of the public exhibition of the draft Climate Action Strategy and seek direction with respect to the finalisation of the strategy.

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**Background**

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

These include:

1. The preparation of a report entitled "Climate Change Strategic Planning Taskforce: Report on Findings" presented to Council in December 2009 (Minute Number 171209/ 1).
2. Responding to the January 2010 resolution of the Council to utilise the Climate Action Strategy process to articulate its corporate position and desired future for the shire with respect to climate change issues (Minute Number 280110/ 2).
3. The completion of a climate change risk assessment in collaboration with Council's insurer in March 2010.
4. A substantial community consultation process (based on deliberative democracy) endorsed by Council in May 2010 (Minute Number 270510/37) and undertaken between July and September 2010.
5. The Climate Ballina Citizens' Forum recommendations, presented to Council in November 2010 (Minute Number 251110/ 3). The endorsed recommendations have been used to inform the strategies and opportunities in the drafting of a Climate Action Strategy for Council.

6. A report regarding the draft Climate Action Strategy presented to Council at its October Ordinary Meeting. With respect to the consideration of the draft in October, Council resolved to exhibit the draft Climate Action Strategy for public comment (Minute Number 271011/ 4).

In accordance with Council's resolution, the draft Climate Action Strategy was publicly exhibited as outlined below. This report provides an overview of the exhibition process and outlines options in relation to the finalisation of the strategy.

### **Key Issues**

- Finalisation of Council's Climate Action Strategy

### **Information**

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

Following the October 2011 resolution of the Council to publicly exhibit the draft Climate Action Strategy, the document was placed on public exhibition between 10 November 2011 and 25 November 2011. Hard copies of the draft strategy were available for inspection at Council's community access points and an electronic copy was also available through Council's website.

No submissions were received during the exhibition period. This public exhibition period, together with the Climate Conversation Café and Climate Ballina Citizens' Forum events that were conducted during the preparation of the draft document now conclude the planned community engagement process for the draft Climate Action Strategy. Having regard for the above, it is recommended that Council now proceed to finalise the strategy as exhibited.

Further, as a means of formally concluding the community engagement process, it is also suggested that Council provide a letter of appreciation to each of the participants of the two former community engagement procedures, and furnish them with a copy of the finalized strategy in recognition of their contribution.

### **Sustainability Considerations**

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

- **Social**  
As above.
- **Economic**  
As above.

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

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

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

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

### **Consultation**

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

Opportunity for wider public comment on the draft Climate Action Strategy has also been provided through the recent exhibition of the document.

### **Options**

1. Adopt the Climate Action Strategy

Council can endorse the Climate Action Strategy and proceed to finalise the document.

In adopting the Climate Action Strategy, Council may adopt the strategy as exhibited or make amendments where considered appropriate. Finalisation of the strategy will include the preparation of a suitable introductory message for inclusion in the document, and typographical edits and formatting where required prior to publication. It is envisaged that the principles of the strategy will be integrated into Council's work program over time.

The adoption of the Climate Action Strategy as publicly exhibited is the recommended approach.

2. Defer the Climate Action Strategy

Council can choose to defer the finalisation of the strategy to obtain further information. Given the extent of community engagement undertaken and the underpinning activities and resolutions of Council that have guided the formulation of the strategy since 2009, deferral of the strategy is not recommended.

3. Cease further progress on the Climate Action Strategy

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

### **RECOMMENDATIONS**

1. That Council endorse the Ballina Shire Council Climate Action Strategy, as exhibited, and as attached to this report.
2. That Council furnish a copy of the endorsed Climate Action Strategy to each of the participants of the key community engagement forums in recognition of their valued contribution toward the document.

### **Attachment(s)**

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



**9.2 Northern Rivers Community Gallery - Naming Proposal**

<b>File Reference</b>	Northern Rivers Community Gallery
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Community Planning
<b>Objective</b>	To invite Council's consideration of a naming proposal for Gallery 1 in the Northern Rivers Community Gallery.

---

**Background**

The Ballina Arts and Crafts Centre Inc (BACCI) has recently written to the Mayor, Councillor Silver inviting the Council's consideration of a suggestion to name one of the exhibition spaces within the Northern Rivers Community Gallery the 'Grace Cruice Gallery'.

This report provides the Council with an opportunity to consider the proposal.

**Key Issues**

- Policy position for naming of Council owned or operated facilities.

**Information**

A copy of the correspondence received from BACCI is **attached**. The suggestion is that Gallery 1 within the Northern Rivers Community Gallery be named the Grace Cruice Gallery in recognition of Ms Cruice's past strong advocacy for the establishment of an art gallery within Ballina.

Council will recall the prominent role played by BACCI in lobbying for a gallery, its own significant financial contribution and its redirection of grant funding it had separately secured toward this project. During this process Ms Cruice, with other BACCI members, was active in promotion of the arts generally, and supporting the establishment of a gallery more particularly.

Whilst it is important to acknowledge BACCI's proposal, and the sentiment behind Ms Cruice's nomination, it is equally important, in the public interest, to consider the suggestion in a transparent and consistent way.

Council has recently adopted a policy for the naming of roads, bridges and public places (Minute No. 220911/26) however a policy position has not been established for the naming of Council's community facilities, or part thereof. It is clearly open to Council to prepare a new policy for circumstances such as this (or amend the recently adopted roads, bridges and public places naming policy to include facilities). However, given the relative infrequency of naming requests and the relatively small number of facilities that might be considered for naming, it is suggested that such a policy is not warranted at this time.

If it is determined to establish one, Council will be encouraged to provide very clear guidelines/criteria for the allocation of names where it involves individuals and/or organisations.

In relation to the current proposal, BACCI's suggestion was considered at a recent meeting of the Northern Rivers Community Gallery Advisory Committee. A firm recommendation did not arise from those discussions; it being noted it was a matter requiring Council's deliberation.

Quite recently, Council decided to change the name of another local community building. In that instance, an individual's name was selected principally because of her very significant personal financial contribution toward the construction of that facility. It is suggested those circumstances are distinguishable from the current proposal, which is the subject of this report.

### **Sustainability Considerations**

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

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

Administrative staff resources would be required if Council decided to establish a new facilities naming policy or modify the existing roads, bridges and public places naming policy to include Council owned or operated facilities.

### **Consultation**

The current suggestion relating to the Northern Rivers Community Gallery has been considered by the Gallery Advisory Committee. A recommendation was not made by the committee, noting that it is the province of Council to determine such matters.

### **Options**

Council may either support or not support the naming suggestion made by BACCI. Given the nature of the request, it is a matter for Council's determination.

From staff's perspective, it will be recommended that BACCI's suggestion be declined, solely on the basis that such decisions should be considered in the context of a clearly articulated policy. Presently, no such policy pertaining to Council's owned or controlled facilities is in place.

Also there are a limited number of these types of facilities in the shire and to start a process of naming rooms could result in equity issues down the track. It is acknowledged that Council had previously named a room at the Ballina Community Services Centre after Mrs Bernice Kentwell, with the building now named after her, however Mrs Kentwell provided a donation of approximately \$550,000 to that building.

The actual funding for the Community Gallery was as follows:

<b>Source</b>	<b>Amount (\$)</b>	<b>Percentage (%)</b>
Council	856,000	62
Federal Government	430,000	31
State Government	33,000	2
BACCI	54,500	4
<b>Total</b>	<b>1,373,500</b>	<b>100</b>

These figures are not designed to down play the contribution from BACCI or Mrs Cruice however the key issue is that there should be an extremely high benchmark for naming proposals such as this. Without a policy there is a risk of ad hoc decisions being made.

#### **RECOMMENDATIONS**

1. That Council not support the naming proposal proposed by BACCI for the exhibition space within the Northern Rivers Community Gallery due to concerns that this type of decision will result in the ad hoc naming of other facilities within the shire.
2. That Council receive a report on the options for formulating a policy for naming proposals as per the contents of this report.

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

1. Correspondence from BACCI

**9.3 Land Classification**

<b>File Reference</b>	Land Development
<b>CSP Linkage</b>	Diverse and balanced land use
<b>Delivery Program</b>	Commercial Services
<b>Objective</b>	To declare land recently purchased by Council and identified as Lot 2 DP 1168781 as Operational Land pursuant to the Local Government Act 1993

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**Background**

The following recommendation was made at the Commercial Services Committee Meeting held 12 July 2010:-

1. That the General Manager be authorised to negotiate the purchase of the properties outlined in this report for a price as referenced within this report.
2. That, if negotiations are successful, approval be granted to affix the common seal of Ballina Shire Council upon the Contract for Sale of Land and Deed of Transfer.
3. If the land is acquired, that in accordance with S31(2) of the Local Government Act, the land is to be classified as operational land.
4. That the funds for this purchase be sourced from Council's property reserves (i.e. commercial opportunities reserve).

The Committee recommendation was adopted by Council on 22 July 2010.

The properties referenced within the adopted resolution of Council were purchased for the proposed new sports fields at Wollongbar.

The purchase of the land has now been finalised and the purpose of this report is to ensure the properties are classified as 'operational land' in accordance with item 3 of the adopted resolution of Council referenced above.

**Key Issues**

- To declare the land purchased as 'operational' or 'community' pursuant to the Local Government Act, 1993.

### **Information**

Following the adopted resolution of Council on 22 July 2010, negotiations progressed and were finalised for the purchase of the two properties, with settlement occurring on Friday 21 October, 2011. The land parcels are now amalgamated as Lot 2 DP 1168781.

After settlement, and in accordance with item three of the adopted resolution of 22 July, 2010, an advertisement was placed in The Weekend Star on 5 November, 2011, notifying the public that Council resolved to negotiate the purchase of two parcels of land for the purpose of the creation of the new Wollongbar sports fields, and that on acquisition the land be classified as 'operational' in accordance with Section 31(2) of the Local Government Act 1993.

Public submissions were accepted up until Friday 2 December, 2011, and no submissions were received.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The land was purchased with the intention of creating the new Wollongbar sporting fields, subject to development consent.
- **Economic**  
If development consent for the creation of the new Wollongbar sports fields is not granted, and subject to the classification of the land as 'operational', Council will have the option of holding onto the land for future development (subject to zoning and consent), or disposal of the land. Those options will not be available if the land is classified as 'community'.

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

Classification of Lot 2 DP 1168781 as 'operational land' pursuant to the Local Government Act 1993 provides Council with appropriate and readily available options should development consent for the proposed new Wollongbar sporting fields not be granted.

### **Consultation**

In accordance with Section 31(2) of the Local Government Act 1993, a public notice was placed within a local newspaper that Council had resolved to purchase the land, now amalgamated and registered as Lot 2 DP 1168781, and that it intends to classify the land as 'operational land'. The notice appeared within The Weekend Star on Saturday 5 November, 2011.

**Options**

Council can resolve to classify Lot 2 DP 1168781 as 'community land'; or as 'operational land'.

Until such time as the outcome of the development application for the new Wollongbar Sports Fields is known, and as 'community land' is restricted in its use, and as the reclassification of land classified as 'community land' to 'operational land' is a lengthy and onerous process, it is recommended that Lot 2 DP 1168781 be classified as 'operational land'.

**RECOMMENDATIONS**

That Council classify Lot 2 DP 1168781 as operational land pursuant to the Local Government Act 1993.

**Attachment(s)**

**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 document.

US11/27	<p>Deed of Consent and Assignment of Lease and Licence agreements: E A Keemink to M Sims &amp; R Mamone t/as Fishheads @ Byron Pty Ltd: Lease of Council land Lot 1 DP 1095427, and Licence Agreement to occupy part Crown Reserve 1010068, being part Lot 402 DP 755684.</p> <p>Explanation: Ms Keemink is the Lessee (land component lease) of an area of Council operational land Lot 1 DP 1095427 + Licencee of part Crown Reserve 1010068, being part Lot 402 DP 755684. 'Shelly's on the Beach' café is located upon the land parcels referenced. Council granted consent for a 5 + 5 + 5 year lease agreement that commenced on 1 July 2010, with similar consent granted by The Ballina Coastal Reserve Trust and agreed by the LPMA, for part Crown Reserve 1010068 for a 15 year period, running concurrently with the lease. Both agreements terminate on 30 June 2025. The proposed ingoing tenants/licencees currently own and successfully operate 'Fishheads' restaurant of Byron Bay. Development consent has been granted (DA2010/336) for the redevelopment of the site.</p>
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**Attachment(s)**

Nil

**10.2 Investment Summary - November 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 November 2011.

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

The balance of investments as at 30 November 2011 was \$70,465,000. This represents an increase from November of \$1,113,000. The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 November 2011, was \$3,413,578.

Council's investments as at 30 November are at an average (weighted) rate of 5.71%, which is 1.08% above the 90 Day Bank Bill Index of 4.63%.

The majority of the approximately \$70 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



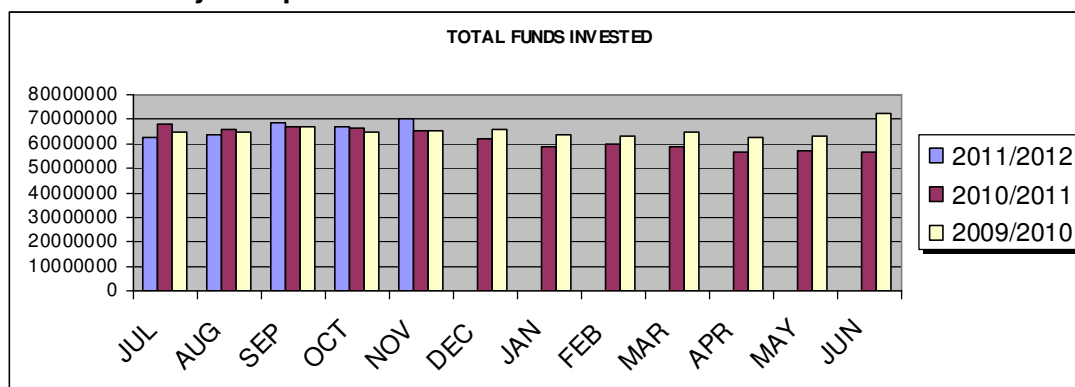
## Information

### A. Summary of Investments by Institution

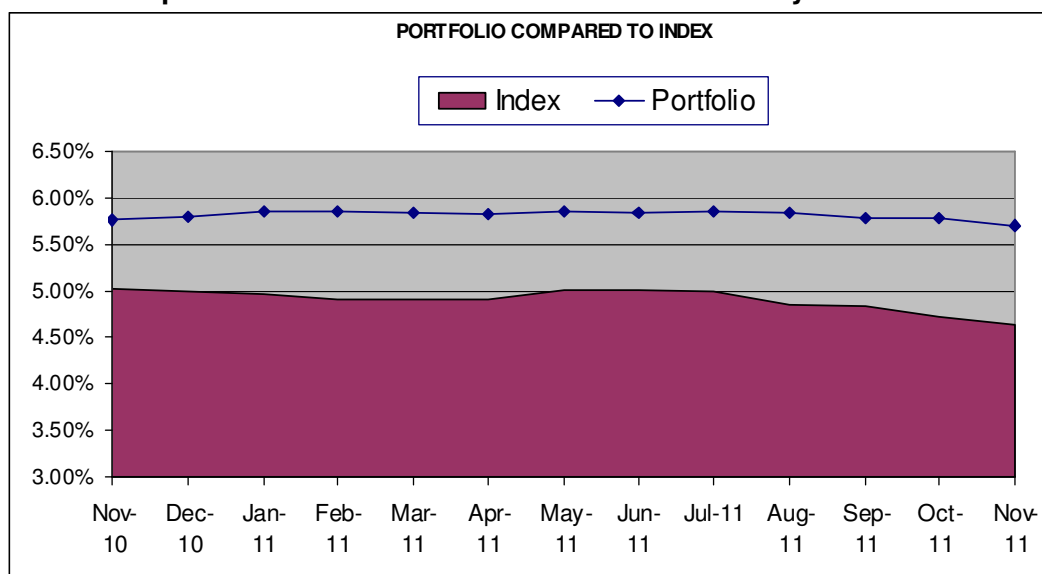
Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	% of	Total
<b>Grandfathered Investments</b>						
ANZ Bank	AA-	No	2,000	2,000	2.8	
Bendigo Bank Ltd	BBB	No	1,000	1,000	1.4	
Deutsche Bank	A+	No	4,000	4,000	5.7	
Goldman Sachs	AA-	No	1,000	1,000	1.4	
Heritage Building Society	BBB	No	3,000	3,000	4.3	
HSBC Australia	AA-	No	1,000	1,000	1.4	
Local Govt Fin Service	A	No	5,000	5,000	7.1	
Longreach Capital Markets 23	AA-	No	1,000	1,000	1.4	
Longreach Capital Markets 28	AA+	No	1,000	1,000	1.4	
Morgan Stanley	A	No	2,000	2,000	2.8	
National Australia Bank	AA	No	1,788	1,788	2.5	
National Wealth M'tment Holding	A	No	2,000	2,000	2.8	<b>35%</b>
<b>Rated Institutions</b>						
ANZ Bank	AA-	No	91	28	0.1	
Bank of Queensland	BBB+	Y-\$1m	7,000	5,000	7.1	
Bank of Western Australia	AA	Y-\$m	4,958	4,196	6.0	
Commonwealth Bank of Australia	AA	Y-\$2m	6,441	9,453	13.4	
Credit Union Australia	BBB+	Yes	2,000	2,000	2.8	
Illawarra Mutual Bld Society	BBB	Y-\$1m	4,000	4,000	5.7	
Members Equity Bank	BBB	Y-\$1m	1,000	2,000	2.8	
National Australia Bank	AA	Y-\$1m	1,000	3,000	4.3	
Newcastle Permanent Bld Soc	BBB+	Y-\$1m	2,000	2,000	2.8	
Suncorp Metway Bank	A	Y-\$1m	9,000	9,000	2.8	
ING Bank Ltd	A+		3,000	4,000	5.7	<b>63%</b>
<b>Unrated ADI's</b>						
Defence Force Credit Union			1,000	1,000	1.4	
QLD Country Credit Union		Yes	1,000	0	0	<b>2%</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)

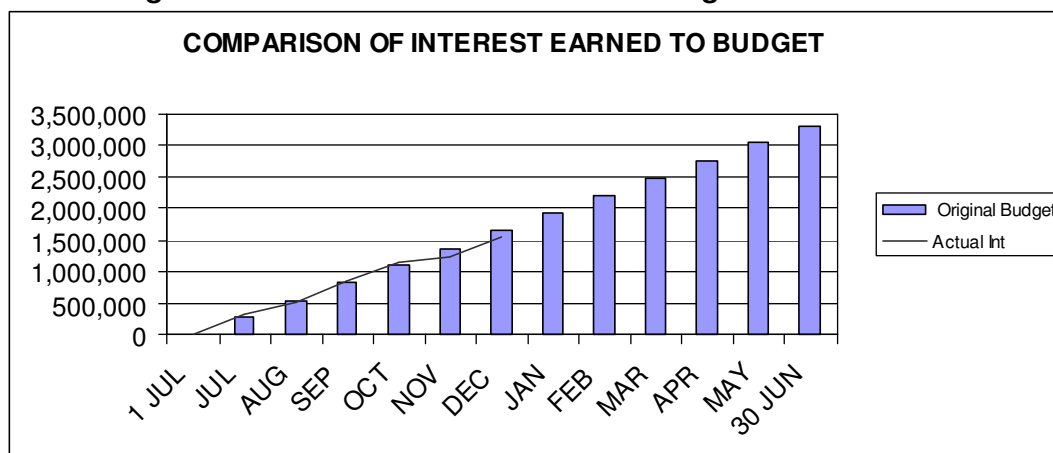
### B. Monthly Comparison of Total Funds Invested



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



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



**Comment**

The Reserve Bank again cut the cash rate at its meeting on 6 December 2011. This cut was fully expected by the markets, who are also expecting a further 1% of cuts over the next 6 to 9 months. The accompanying statement focused on two factors that influenced their decision; Australian inflation and the European debt/banking crisis.

On Australia's inflation they said "Accordingly, the banks current judgement is that inflation is likely to be consistent with the 2-3 per cent target in 2012 and 2013." So in other words the RBA is comfortable with the outlook for inflation so their focus and reason for loosening policy is growth, or more accurately, the risks to the downside for growth.

On Europe they said "Financial markets have experienced considerable turbulence and financing conditions have become more difficult, especially in Europe. This, together with precautionary behaviour by firms and households, means that the likelihood of a further material slowing in global growth has increased." So the risks to growth have increased, so the RBA was left with little choice but to cut with the door left wide open for more cuts to come if required.

Council has been advised that "Heritage Building Society" has changed its name to "Heritage Bank Ltd" as from 1 December 2011. The name change has been approved by the Australian Prudential Regulation Authority. The ownership structure of the organisation has not changed, they remain a mutual organisation owned by the members. Council has two 'grandfathered'

## 10.2 Investment Summary - November 2011

investments in Heritage, \$2m maturing on 4 December 2011 and \$1m maturing on 18 October 2012. The organisations rating of BBB has not changed and Council has and will continue to invest in Term Deposits as competitive rates dictate.

### E. Investments Held as at 30 November 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	5.90	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	9.33	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	4.45	At Call	5,457
11/07/11	Suncorp-Metway Bank	TD	6.22	09/01/12	1,000
20/07/11	ANZ Bank	FND	3.70	At call	28
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	5.90	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	27/02/12	1,000
31/10/11	Suncorp-Metway Bank	TD	5.86	30/01/12	1,000
01/11/11	Members Equity Bank	TD	6.10	04/01/12	1,000
02/11/11	Bank of Queensland	TD	5.96	31/01/12	2,000
05/07/11	ING Bank Ltd	TD	5.84	01/03/12	1,000
10/11/11	Suncorp-Metway Bank	TD	5.81	09/02/12	1,000
11/11/11	Credit Union Australia	TD	5.85	09/02/12	1,000
14/11/11	National Australia Bank	TD	5.90	14/03/12	1,000
16/11/11	BankWest	TD	5.60	14/02/12	1,196
28/11/11	Newcastle Permanent Bld Society	TD	5.80	27/01/12	1,000
30/11/11	Bank of Queensland	TD	5.80	29/03/12	1,000
30/11/11	Suncorp-Metway Bank	TD	5.90	28/02/12	1,000
30/11/11	National Australia Bank	TD	5.99	29/03/12	2,000
<b>Totals:</b>					<b>70,465</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 November 2011.

**Attachment(s)**

Nil

**10.3 Staff Presentations - 15 and 25 years Service**

<b>File Reference</b>	Civic Reception/Congratulations
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Human Resources
<b>Objective</b>	To formally recognise long serving employees.

---

**Background**

Council has a practice of annually recognising employees who have completed either 15 or 25 years of service.

**Key Issues**

- Acknowledgment of the service of employees.

**Information**

At 10.30am Council is scheduled to recognise the service of the following employees:

**25 Years of Service**

Brad Myers  
Garry Meredith  
Rod Willis  
Steve Barnier  
Graeme Flanagan  
Stewart Littleford

**15 Years of Service**

Brad Mansfield  
Di McNabb  
Max Beecher  
Leslie Sanderson  
John Fittock  
Wayne Edwards  
Jason Black  
Annie Lees

The employees will be present at the meeting and for morning tea with the Council.

**Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Long term employees make a significant contribution to the expertise, tradition and social fabric of the council.
- **Economic**  
Not Applicable

**Legal / Resource / Financial Implications**

Nil

**Consultation**

This report is provided to publicly recognise long serving employees.

**Options**

The only option is to recognise the employees.

**RECOMMENDATIONS**

That Council acknowledges and congratulates the staff members outlined in this report on their long service with Council.

**Attachment(s)**

Nil

**10.4 Ordinary Meeting Date - January 2012**

<b>File Reference</b>	Ordinary meetings
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Administration
<b>Objective</b>	To determine a date for the January 2012 Ordinary meeting

---

**Background**

Clause 2.1 of Council's Code of Meeting Practice states as follows:

**2.1 How often does Council meet?**

- (1) *The Council is required to meet a minimum of 10 times each year, each time in a different month. (s365 of the Act)*
- (2) *There will be one Ordinary Meeting of the Council, held on the fourth Thursday, each month, commencing at 9:00 am with the exception of the December meeting which will be held on the third Thursday. Meetings will be held in the Council Chamber, Corner of Cherry and Tamar Streets, Ballina.*
- (3) *Council can vary meeting times through the consideration of a Notice of Motion or consideration of a report on this matter.*

The date of the January 2012 meeting falls on Australia Day, which is a public holiday therefore an alternate date is required.

The preferred date is Wednesday 25 January as this does not impact on any people who may wish to use the Australia Day holiday to have a long weekend away.

**RECOMMENDATIONS**

That due to the clash of the normal meeting date with the Australia Day holiday Council's January 2012 Ordinary meeting will be held on Wednesday 25 January 2012.

**Attachment(s)**

Nil

**10.5 Policy (Review) - Privacy Management Plan**

<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 Privacy Management Plan

---

**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 Privacy Management Plan.

Council first adopted this policy in 24 August 2006.

The Privacy Management Plan outlines Council's commitment to the collection, security and disclosure of personal health information, and specific information storage and retention arrangements for all documentation.

This Plan is in accordance with the Privacy & Personal Information Protection Act 1998 (PPIPA) and the Health Records & Information Privacy Act 2002 (HRIPA) which provide for the protection of the privacy of individuals. These Acts also provide the public certain rights, to ensure that personal information is not used for unlawful purposes, and provides internal and external review mechanisms to protect those rights.

**Key Issues**

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

**Information**

This review of this policy identified the following changes:

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Updates to the policy to include provisions of the Government Information (Public Access) Act 2009 (GIPA). Previously the administration of the Privacy & Personal Information Protection Act 1998 (PPIPA) interacted with the Freedom of Information Act (FOI). FOI was repealed and replaced by the GIPA Act and Regulation in 2010. The new legislation has required



amendments to the Privacy Management Plan which are essentially changes to references.

- Amendments to the policy in light of changes to the Local Government Act (LGA). When GIPA was proclaimed, Section 12 of LGA was repealed. Section 12 made certain directions to Councils in respect to information access, including some registers that Council is required to keep. Following the repeal of Section 12 and in light of GIPA, detailed advice in respect to numerous registers maintained by Council have been deleted. General statements in respect to access of registers have been added to the policy in their stead.

The changes have been marked in yellow, and deletions lined through.

A copy of the amended policy is attached to the report.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Consistent with community expectations that the privacy of individuals is protected and information is not used unlawfully.
- **Economic**  
Breaches of the Privacy Management Plan, PPIPA, HRIPA and GIPA may result in financial consequences for Council.

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

It is important that the Privacy Management Plan comply with PPIPA, HRIPA and GIPA.

### **Consultation**

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. 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 Privacy Management Plan, 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 – Privacy Management Plan

**10.6 Legal Cases - Status**

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

**Background**

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

**Key Issues**

- Type and cost of litigation

**Information**

This report provides an opportunity to examine legal matters in which the Council is, or has been, involved, with particular reference being to the last two years.

The report has been provided in open Council to ensure the information is available to the public. If Councillors wish to discuss matters in detail it may be necessary to resolve into confidential session to ensure the discussion does not prejudice any on-going legal action.

Brief details on all legal cases involving Council where matters are still to be finalised, or additional information is available since the last legal status report, are as follows.

<b>Solicitor for Council</b>	<b>Parties</b>	<b>Case Description</b>	<b>Estimated Costs (\$)</b>	<b>Costs Paid to Date (\$)</b>
Maddocks Solicitors	SJ Connelly v Ballina Shire Council	Land & Environment Court - ref. no. 2010/40457 - Temporary stockpile interpretation - Class Four	\$50,000	\$66,000

**Comments**

Differing interpretation as to whether development for temporary stockpile was Designated Development. Matter heard and case awarded against Council with Council responsible for the Plaintiff's costs. A cost reimbursement of \$40,000 has been paid to the Plaintiff.

The Local Government and Shires Association (LGSA) approved a request by Council to seek reimbursement of costs from other councils, due to the legal precedent set by this case. Under the LGSA policy Council pays the first \$20,000 and it is hoped that the balance will be recouped from contributions from other councils. Council received a reimbursement of \$43,731 from the LGSA significantly reducing our costs for this case.

Solicitor for Council	Parties	Case Description	Estimated Costs (\$)	Costs Paid to Date (\$)
Blake Dawson	Oshlack v Ballina Shire Council & Ors	Land & Environment Court - ref. no. 2010/40570 - Challenge to approval of Marom Creek fluoridation plant - Rous Council and Lismore also joined in this case - Class Four	\$100,000	\$159,000
<b>Comments</b>				
<p>Mr Oshlack is appealing the process followed by Rous, Lismore and Ballina councils in approving fluoridation. Rous Council engaged Blake Dawson Solicitors and Ballina staff have agreed for that firm to also represent Ballina Council with costs to be shared, as this should result in cost savings. Lismore Council has engaged a separate firm to act as their solicitors.</p> <p>The costs for this legal action are sourced from Council's water budget.</p> <p>The initial defence of the appeal sought a decision of the court regarding a preliminary point of law. This motion, which was pursued by Ballina and Rous Councils, was heard by the Court on 14 March 2011. The point of law examined the relative powers of the Fluoridation Act and the Environmental Planning and Assessment Act and in doing so argued that the broader question of any environmental issues associated with the addition of fluoride has been dealt with by the Government and is an assessment beyond the capacity of the Council. If a decision in response to this point of law was favourable then the appeal would no longer proceed. Both Ballina and Rous were subsequently unsuccessful in respect to this preliminary point of law.</p> <p>The hearing of the appeal was then conducted in late June 2011. The decision of the court is yet to be published. In terms of the proceedings completed to date, no further funds are expected to be expended. Council, in conjunction with Rous Water, has written to the Judge for a determination, due to the lengthy delay to date. It appears a judgment will now be forthcoming by February 2012. Further correspondence to the NSW State Government asking for assistance with costs was unsuccessful, with a copy of the State Government response distributed to all Councillors for information.</p>				

### Legal / Resource / Financial Implications

This next section of this report provides an update on legal costs for 2011/12, as at 30 November, along with a comparison to the previous three financial years.

Description	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Budget	2011/12 Actual
<b>Planning Legals</b>					
Avalon	86,000	0	0	260,000	0
Bryson and Blake	33,000	57,000	0		0
Greenwood Grove	53,000	44,000	7,000		0
Lennox Head Apartments	0	26,000	0		0
Ramada	0	51,000	364,000		2,000
Rich and Rich	0	16,000	1,000		0
Simpson	125,000	0	0		0
Stockpile - Temporary	0	0	66,000		0
Advice - Optus Tower	0	0	0		1,000
Advice - Riverside Suites	95,000	35,000	4,000		7,000

Description	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Budget	2011/12 Actual
Advice - North Angels	0	7,000	4,000		0
Advice - Service Centre	0	0	37,000		0
Advice - Bulky Goods	0	0	0		4,000
Insurance / Misc Advice	44,000	43,000	61,000		40,000
<b>Sub Total</b>	<b>436,000</b>	<b>279,000</b>	<b>544,000</b>	<b>260,000</b>	<b>54,000</b>
<b>Property Legals</b>					
Gunundi	139,000	23,000	3,000	0	0
Homeworld - Sec 96	52,000	0	0	0	0
Homeworld - BLEP	163,000	110,000	4,000	0	0
Lennox Head Comm Ctre	0	0	0	75,000	19,000
<b>Sub Total</b>	<b>354,000</b>	<b>133,000</b>	<b>7,000</b>	<b>75,000</b>	<b>19,000</b>
<b>Water Legals</b>					
Oshlack - Fluoride	0	0	159,000	35,000	0
<b>Total Expenses</b>	<b>790,000</b>	<b>412,000</b>	<b>710,000</b>	<b>370,000</b>	<b>73,000</b>
<b>Expenses Recouped</b>					
Freedden	52,000	0	0		0
Jacobson / McMillan	103,000	0	0		0
Simpson	6,000	0	0		0
Stubberfield	0	29,000	29,000		0
Gunundi	0	0	71,000		0
Homeworld	0	0	190,000	0	0
Ramada	0	0	8,000		0
Greenwood Grove	0	0	15,000		0
Stockpile Temporary	0	0	37,000		6,000
Miscellaneous	0	0	3,000		0
<b>Total Income</b>	<b>161,000</b>	<b>0</b>	<b>353,000</b>	<b>0</b>	<b>6,000</b>
<b>Net Cost</b>	<b>629,000</b>	<b>412,000</b>	<b>357,000</b>	<b>295,000</b>	<b>67,000</b>
<b>Fund Summary</b>					
General Fund	629,000	412,000	198,000	260,000	67,000
Water Fund	0	0	159,000	35,000	0

In respect to 2011/12 the pleasing point is that there has been minimal expenditure to date. The major outstanding matters are the Oshlack case and the Lennox Head Community Centre insurance claim. The insurance claim is not, at this point a legal case, however legal advice forms a major part of our on-going negotiations.

From a town planning perspective there is no current litigation, which to some extent reflects the current down turn in the property market.

### Options

This report is provided for information.

### RECOMMENDATIONS

That Council notes the contents of the legal status report.

### Attachment(s)

Nil

**10.7 Tourism and Economic Development - Workshop**

<b>File Reference</b>	Visitor Services / Economic Development
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Tourism
<b>Objective</b>	To respond to a Council resolution from the September meeting.

---

**Background**

Council considered the following notice of motion at the September Ordinary meeting.

1. *That Council, as part of the 2011/12 Operational Plan, include the following projects:*
  - a) *Installation of shire gateway signage - \$100,000*
  - b) *Production of a generic promotional CD that will have multiple purposes; i.e. community and council to promote Ballina Shire as a conference venue, holiday destination, business hub etc - \$20,000*
  - c) *Seed funding for an Economic Development Strategy - \$30,000 (with this funding only to proceed if matching grant funding can be sourced from the NSW State Government)*
2. *That this funding be sourced from Council's Commercial Opportunities Reserve.*

The resolution arising from this notice of motion was as follows:

*That the item be deferred and that Council receive a report on options for promotion and signage that will enhance our shire and encourage people to visit and that Council hold a workshop as part of the preparation of the report.*

The workshop mentioned in this resolution was held Monday 7 November 2011. The report that follows addresses the discussions from the workshop, the original notice of motion and the resolution from the September meeting.

**Key Issues**

- Options
- Benefits and costs

### **Information**

The November workshop discussed the pros and cons of the three items identified in the original notice of motion and an overview of the tourism and economic development activities currently occurring was also provided.

Brief comments on each of these matters are as follows.

#### *Gateway Signage*

Gateway signage typically refers to major signage on the edge of a local government area. For Ballina Shire, gateway signage could be installed at Boundary Creek south of Wardell, McLeans Ridges, Newrybar and the Coast Road between Byron Bay and Lennox Head.

The \$100,000 figure mentioned in the notice of motion is an indicative figure sourced from the original consultant who designed the current town signs and to date no firm quotations have been sourced for this work. The actual cost may well be below the \$100,000 dependent on the type of sign produced.

For example the Tweed Shire Council gateway signage is relatively small and it would be hoped that a similar type of signage could be produced for around \$10,000 per sign.

The RTA (or now RMS) has a policy of not allowing this type of signage on highways, however, as mentioned, Tweed has managed to obtain permission and it would be hoped that Ballina Council could obtain approval also, if funding was available.

Correspondence has been sent to the RMS on whether or not approval would be forthcoming for this signage, but to date there has been no response.

With the Ballina by-pass having now opened discussion at the workshop considered options of improving the northern and southern entrances to Ballina or possibly providing improved signage just for Ballina.

What is apparent in now driving along the bypass is that there could well be an opportunity for a sign that highlights the natural assets of Ballina to assist in promoting the town. The view of the farming / cane fields along the bypass is impressive and for example a sign (maybe a billboard, although these are prohibited in Council's DCP) that also pictured the beaches and / or river could well provide promotional benefits.

Discussions with Council's Regulatory and Civil Services Groups indicate that there may be a possibility of pursuing this type of more specific signage with the RMS, focusing on the benefits of Ballina. Even though advertising signs are not allowed, there is some latitude for signage from a tourism or information perspective.

One other idea that was brought forward was rather than spending \$100,000 on signage, it may well be more beneficial to expend this level of funding on providing a boulevard of trees along both the northern and southern entrances to Ballina. This has the potential to provide Ballina with what could be termed entry treatments that promote a positive perception of the town.

With Council also planning to provide a boulevard type road to the airport we would then have three of the main entrances to Ballina having a similar feel.

#### *Promotional CD*

In respect to the creation of a promotional CD concerns were expressed that this type of technology is becoming outdated and there may be other options available to provide promotional information.

During the last three months Council has purchased excellent footage of the Shire from Craig Parry photography, with this footage being shown as Council's commitment to public art at the Lennox Head Cultural and Community Centre.

Council has also recently partnered with Ballina Tourism and Hospitality, Northern Rivers Tourism and Destination NSW (formerly Tourism NSW) in creating a television advertisement that is being shown in south east Queensland and regional NSW to promote Ballina Shire.

Following discussions with the Airport Manager Council staff have recently engaged a graphic design firm to use this information, along with photos from Council's photographic library to produce two DVDs that can be used for promotional purposes.

The first DVD will be displayed at the airport to highlight the attributes of Ballina. This DVD will be displayed in the arrivals section to ensure that passengers, whilst waiting for their luggage, are provided with an overview of the excellent natural assets and services that exist within the Ballina Shire. This DVD will not have any sound as the advice from the Airport Manager is that sound at airports is often over-ridden by other noise; i.e. speaker announcements, conversation etc. However it will have written references and a branding theme similar to the Locals Rewards Campaign promoting the Ballina Coast & Hinterland. There will be no advertising of commercial businesses on this DVD.

The second DVD will have both music and voice overs that promote Ballina Shire. This DVD will be in a format that can be used on the web, at the Visitor Information Centre and for general promotional opportunities (i.e. submissions for conferences). Additions will be able to be made to the DVD dependent upon the type of use planned, include advertising, if supported by Council.

Overall it is considered that this project, which is being undertaken within existing budgets, will go a long way towards achieving the outcome envisaged through the original notice of motion for a promotional CD.

#### *Economic Development Strategy*

This issue has been raised many times and the need for such a strategy was one of the recommendations from the Division of Local Government's Promoting Better Practice report for Council.

Essentially there are two lines of thought:



- a) Ballina Council is not like a lot of other regional and rural councils that are struggling to attract development in that we already have major businesses such as Woolworths, Bunnings and Harvey Norman looking to or expanding their business activities in the Shire. Therefore our focus should not be on expending monies to attract development, but rather to ensure that our planning and infrastructure systems are in place to appropriately manage development. Similarly a focus on sound infrastructure, that meets the needs of residents and visitors, then provides a platform in itself to attract business.
- b) Alternatively, an economic development strategy would allow Council to focus on particular gaps or deficiencies in our economic growth.

The biggest risk in producing such a strategy is to ensure that the strategy is practical and outlines achievable objectives. Council is limited in the funding we have available for economic development therefore any strategy will need to recognise the resources currently available.

Councils such as Clarence Valley have produced substantial economic development strategies and if Council wishes to pursue such a strategy it may be beneficial in discussing the benefits and / or dis-benefits of this work with a number of other councils who have been through the process before making a final decision.

#### *Other tourism related activities*

The workshop provided an opportunity to discuss other tourism activities underway or planned with the major items of interest being:

- Ballina Coast & Hinterland Visitor Guide – March 2011
- Participation in Travel Shows (with regional partners) – June 2011
- Re-designed in-house brochures for Visitor Centre – June 2011
- Northern Rivers Scenic Drives Brochure – August 2011
- New Discoverballina.com website – October 2011
- Locals' Rewards Campaign – November 2011 – March 2012
- Interpretative Signage – December 2011 to June 2012

#### *Other economic development related activities*

In respect to economic development, Council no longer has a dedicated position of economic development officer with certain services now provided by a staff member within the Strategic and Community Services Group. The major actions or services provided currently include:

- Point of contact for all economic development enquiries
- Profile ID – General Demographics on the Council web site
- Production of the annual economic profile for Ballina Shire
- Pursuing the Twilight and Missingham Markets approvals
- MOU with NSW Trade and Investment
- Internal Economic Development Taskforce looking at opportunities to streamline Council processes and / or costs for business.

### **Sustainability Considerations**

- **Environment**

It is anticipated that any preferred tourism and / or economic development activities would be identified to provide a range of environmental / social and economic benefits.

- **Social**

As above

- **Economic**

As above, with tourism being one of the major economic drivers for the shire.

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

There are no direct financial implications arising from this report. Ultimately it is a matter for Councillors to determine whether or not funding should be allocated to any of the items discussed, ideally as part of an overall budget discussion, when all priorities are considered.

### **Consultation**

There has been limited external consultation undertaken, albeit that the Ballina Chamber of Commerce has previously advised Council of their support for the contents of the original notice of motion.

### **Options**

The options are to support or oppose any one of the activities identified in this report. Currently there is no funding allocated to commence any new projects, which means if extra funding is needed, the preferred outcome is to use this report to identify the projects that are considered worthy of consideration as part of the 2012/13 budget deliberations.

In summing up the preferred options for consideration are:

*a) Signage*

Council does not have adequate funding for shire wide gateway signage and the preference is focus our promotion on the major economic destination for the shire, being Ballina itself.

The Ballina bypass provides an excellent opportunity for signage and subject to regulatory approval being able to be obtained it is recommended that Council support this project. It may well even be possible to complete this work within existing budgets, dependent on the final size and cost of the sign.

With further bypasses to occur at the southern and northern ends of the shire the preference is to provide more substantial gateway signage once those bypasses are completed.

*b) Consideration of an entrance street tree planting program.*

There are both significant environmental and economic benefits from providing this type of entry treatment and it is a project that could be completed over a few years. Therefore it is worthy of consideration as part of the 2012/13 budget.

*c) Promotional CD*

The work currently being undertaken on the promotional DVDs for the airport etc appears as though it could meet the need originally identified. Therefore it is recommended that Council take no further action on this item until the current project is completed, operational and reviewed.

*d) Economic Development Strategy*

Council's funding limitations are recognised and without funds to assist in implementing actions identified in such a strategy there are concerns that it may not provide outcomes that are achievable. Councillors may wish to pursue this further through an investigation of the success of strategies developed for other similar councils to Ballina.

The recommendations that follow are based on the outcomes identified above.

**RECOMMENDATIONS**

1. That in respect to the provision of increased signage Council confirms its preference is to install signage along or near the Ballina bypass that can promote the benefits of Ballina and surrounds, along with the services on offer. The General Manager is authorised to pursue the installation of this signage, from within existing budgets, however if additional funds are required, they will need to be considered as part of the 2012/13 budget deliberations.
2. That as part of the 2012/13 budget deliberations, Council receives a report on the options, including financing and staging, to implement a street tree planting program for the northern and southern entrances to Ballina.
3. That Council notes the comments in this report in respect to the work currently being undertaken to produce a promotional DVD.
4. That Council notes the comments outlined in this report in respect to the possibility of preparing an Economic Development Strategy.

**Attachment(s)**

Nil

**10.8 Ballina Hockey Club - Sporting Facility Liquor Licence**

<b>File Reference</b>	Ballina Hockey Club
<b>CSP Linkage</b>	Resilient and adaptable communities
<b>Delivery Program</b>	Community Planning
<b>Objective</b>	To consider whether Council wishes to support a proposal by the Ballina Hockey Club for a sporting club liquor licence as part of the new hockey complex at Kingsford Smith Reserve.

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**Background**

The new synthetic hockey field at Kingsford Smith Reserve has now been operating for a period of over six months and from all reports it has been well received by the community.

The Ballina Hockey Club who manage this facility, and who were largely responsible for ensuring the facility was built (aside from Council's financial contribution of almost \$500,000), have now approached Council with respect to a proposal to establish a sporting club liquor licence for the complex.

There is no adopted policy of Council to guide staff in assessing the merits of this proposal and on that basis the report that follows seeks to obtain a Council policy position on this request.

**Key Issues**

- Benefits and dis-benefits of a licence
- Type of licence being proposed
- Ownership of land
- Implications for other sporting clubs

**Information**

Following discussions with a range of staff and other interested parties such as the NSW Police, the Ballina Hockey Club has written to Council asking that support be provided to an application to obtain a sporting club liquor licence for the Hockey complex. A copy of the Club's correspondence is attached to this report.

Briefly the issues under consideration are as follows:

- The Hockey Club advises that the licence is needed to assist in generating funds to ensure the on-going viability of the complex. This is an important point in that the Hockey Club are somewhat different to other sporting groups in that the facility they are using has a limited life and will be very

expensive to replace. Therefore funds need to be set aside for future asset replacement. This is somewhat different to sports such as cricket, soccer, rugby etc where a sporting field has an unlimited life, albeit that they do need on-going maintenance, seeding etc.

- The Hockey Club is not satisfied with the traditional function liquor licence, under which the majority of other sporting clubs operate. A function licence identifies the days each year when the licence is in operation, with a limit of 52 days. This works for most sporting clubs as they nominate the days when games are scheduled. However the Hockey Club wishes to have greater flexibility to include training days, meetings and other specified functions to maximise flexibility.
- Originally it was envisaged that there would be some form of reciprocal relationship between the Hockey Club and the Ballina Seagulls Rugby League Club, however the Hockey Club has advised that both clubs agree this is not working. The Hockey Club has also advised that the Rugby League Club has no objection to the Hockey Club having its own licence, although this has not yet been confirmed in writing.
- There appear to be differing viewpoints of the NSW Police's position on this proposal, with Council staff being of the opinion that the Police do not support it, whereas the Hockey Club believe they are receptive to the idea, which is similar to the method of operation used at the Goonellabah Hockey Club complex. An elected Council position will assist the relevant authorities in making a final decision on the application.
- The final approval for a liquor licence application rests with the NSW Office of Liquor, Gaming and Racing (OLGR), based on feedback from organisations such as Council and the NSW Police. However the OLGR cannot approve such an application unless the Hockey complex has development consent as a "sporting club".
- The current development consent for the complex only provides for a "sporting facility" therefore the Hockey Club will need to submit a development application to operate as a sporting club. The Regulatory Services Group advises that an approval to operate as a sporting club should be able to be obtained, although any consent will contain strict operating conditions such as opening hours, similar to that proposed in the submission.
- A sporting club approval does provide an opportunity for a greater range of uses at the hockey complex, albeit that Council can limit many of those uses through appropriate consent conditions.
- As the complex is on crown land, the land owner is the Land and Property Management Authority (LPMA). Council is the reserve trust manager, however there could be some complexities if the LPMA see the licence as a commercial activity, in that the LPMA may either wish to obtain a share of the revenue or may not even consider such a licence appropriate. They may also decline to sign any development application for the Hockey Club to act as a sporting club. The position of the LPMA could well depend on the elected Council's preferred position.

- The Hockey Club, as per their submission, have identified a number of restrictions under which the proposed licence would operate (i.e. closing at 10pm, no take away alcohol etc).

It is fair to say that sections within Council are of the opinion that the proposed licence should not be supported as:

- All other sporting groups on Council owned or controlled land operate effectively under the standard function licence. Other sporting groups have also been advised that such a sports club licence would not be supported by Council
- Council should not be supporting the consumption of alcohol
- The sale of alcohol can result in management issues for the sporting club, Council in overseeing sporting fields and the NSW Police
- Council has been working with Federal Government's Good Sports Program, which is a program that has been developed and is run by the Australian Drug Foundation in response to the Australia wide association of alcohol and sport. The program aims to assist sporting clubs manage alcohol responsibly and reduce alcohol related problems such as binge and underage drinking.

The program also tries to encourage sporting clubs to look at other means of fund raising and not rely on the sale of alcohol. The program is supported by the NSW Police and NSW Sport and Recreation and through councils provides information and assistance to clubs. In response to this program staff have actively promoted the program and supported the limited licensing of alcohol for sporting clubs to the 52 events a year.

Extensive information on the program is available at the following web site [www.goodsports.com.au](http://www.goodsports.com.au) with some of the key points from that web site being:

*The Good Sports program is an initiative of the Australian Drug Foundation (ADF) to develop safer and healthier communities. The program helps sporting clubs manage alcohol responsibly and reduce alcohol related problems such as binge and underage drinking. Good Sports is recognised in the community health sector for its extensive research. The program is evidence-based and evaluation continues on an on-going basis.*

*Displaying the Good Sports logo sends an important message to club members and the community. It confirms that the club promotes a responsible attitude towards alcohol and that it provides a safe environment for players, members, families and supporters.*

*How does the program work?*

*The key strategy of Good Sports is the accreditation program. The three level accreditation criteria consist of a set of alcohol management standards for clubs that serve and consume alcohol. Clubs are required to move through the levels in a set amount of time (maximum 5 years), maintaining all the criteria from previous levels as they do so.*

*One of the key benefits to clubs of registering in the free program is the support that they receive in changing culture. A Good Sports Project Officer assists club committee members through the entire process.*

*A study of more than 500 young people found:*

*- more than 30% of 13-17 year olds had participated in unsupervised drinking at a sports club... 71% of these had never been asked for proof of age.[1]*

*Another survey among sporting club members found:*

*- 51% of drinkers at sports clubs are consuming alcohol at harmful or hazardous levels.[2]*

*A study of community football clubs in 2000 showed:*

*- 13% of 18-20 year olds drank 13 or more standard drinks each time they visited the club*

*- 83% left the club as the driver of a vehicle. [3]*

*- 70% of males (30% of females) believe drinking is an important tradition at their club.*

*Further, more recent research conducted in community sports clubs across Australia found:*

*-20% of men aged 18-30 consume 10 or more standard drinks each time they visit the club. [4]*

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*[1] Survey conducted by Australian Drug Foundation, Centre for Youth Drug Studies (CYDS) 1994*

*[2] Survey conducted by CYDS 1999, Hazardous Levels as defined by National Health and Medical Research Council of Australia*

*[3] Survey conducted by CYDS 2000*

*[4] National Attitudes and Behaviours study-conducted by CYDS 2004*

It is fair to say that the provision of the sporting club liquor licence does appear to contradict the objectives of the Good Sports program.

The concern that the Hockey Club now has is that they do not wish to lodge a development application to obtain approval as a "sporting club", unless there is in principle support from the Council on this licence proposal. This in principle support does not mean any development application will be approved or even the application for the liquor licence will be approved, as that will be assessed by the NSW Police and OGLR.

As there are some objections from Council staff and there is no firm policy position on this at an elected Council level, it is considered appropriate to seek Council's position on this issue.

### **Sustainability Considerations**

- **Environment**

There is not considered to be any environmental impacts from this proposal.

- **Social**

There could be both social benefits through increased social use of the facilities or dis-benefits through the detrimental impact of alcohol.

- **Economic**

The proposal is aimed to generate additional funds to improve the complex and to assist with asset renewal, and possibly attract additional games.

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

There are no immediate legal / resource or financial implications from this report.

### **Consultation**

The liquor licence application is subject to a range of consultation by OGLR and any development application would be subject to Council's standard exhibition processes.

### **Options**

At this point in time the Hockey Club is only seeking Council's in principle support for the proposed sporting club liquor licence. As mentioned, even if with in principle support, there are still both the development and liquor licence applications to be processed.

Therefore the options to Council are to provide or not provide that support. As there is no firm Council policy position on this matter both options have been included in the recommendation.

## **RECOMMENDATIONS**

### **Option A**

1. That Council provides in principle support for the Ballina Hockey Club to lodge a development application to operate as a sporting club at the Ballina Hockey Club complex at Kingsford Smith Reserve.
2. In providing this support Council acknowledges that:
  - a) any development consent obtained will provide strict operating conditions that minimise any impact of the Club on the existing amenity of the locality
  - b) The development consent will assist the Hockey Club in obtaining approval for a sporting club liquor licence
  - c) Funds raised from the sale of liquor are to be reinvested into the complex and to assist with asset renewal, such as the future replacement of the synthetic surface



d) This in principle support does not in any way pre-empt the outcome of the assessment of the subject development application.

3. That Council receive a report on the development of a policy that will assist Council in managing future requests for licences of this type.

**OR**

**Option B**

1. Council does not support the establishment of a sporting club liquor licence at the Ballina Hockey Club complex as a fully licensed facility is nearby, this support would be inconsistent with the majority of other sporting clubs in the shire, and Council's preference is not to support or promote alcohol consumption at sporting fields.

**Attachment(s)**

1. Correspondence from Ballina Hockey Club

## 11. Civil Services Group Reports

### 11.1 Tender - Ballina Heights Drive Construction

<b>File Reference</b>	Ballina Heights Drive
<b>CSP Linkage</b>	A built environment contributing to health and wellbeing
<b>Delivery Program</b>	Asset Management
<b>Objective</b>	To report to Council the outcomes of direct tender negotiations.

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#### **Background**

At the October Meeting of Council, a report was provided in respect of the tenders for the construction of Ballina Heights Drive. This report identified that the preferred tender was substantially above the available budget for the project.

In response to this, the Council resolved the following;

- 1. That in accordance with clause 178 (1) (b) of the Local Government (General) Regulation 2005 (the Regulation), Council rejects all of the tenders received for the construction of Ballina Heights Drive on the basis that no tender represents value for money at this time.*
- 2. That Council authorise the General Manager, in accordance with the regulation, to enter direct negotiations with the preferred tenderer, the NSW Roads and Transport Authority, and that the outcomes of those negotiations be reported to Council for determination.*

Negotiations have been conducted with the RTA and the purpose of this report is to advise the Council of the outcomes.

#### **Key Issues**

- Value for money in a major civil construction project.

#### **Information**

To ensure appropriate probity measures were established, a direct negotiation plan was prepared.

The plan included a process to enable the contractor, Council's technical staff and the engineering designers for the project to meet to discuss aspects of the tender specification that, if amended, could result in reduced pricing. Specifically the meeting examined opportunities to reduce or change the scope of works, the risk allocation for the project between the parties,

innovation opportunities, and potential engineering changes. The plan proposed that the Council could document the changes and invite the RTA to reprice. Council would prepare an estimate in advance of the repricing to assist in the assessment of value for money.

A meeting with the above objectives in mind was held. A summary of the meet is set out below.

- In general terms for lump sum contracts, pricing risks are carried by the contract and for schedule of rates contracts, the risks tend to lie with the principal. This contract is lump sum. The RTA agreed that they would be prepared to reprice on a schedule of rates basis. Depending on conditions and other factors, this could result in savings to the Council although the extent of these would not be known at the commencement of the contract. Some reductions in unit rates however would be expected given the risk transfer. Whilst the RTA were willing to reprice under a different contract form, there were large portions of their tender that were sub contract items and had been priced to the RTA as a lump sum making repricing problematic unless there was certainty that the Council would proceed.
- Some changes in scope were identified that would reduce the price. However, outside of the bridge item discussed below, the total of these reductions is not considered sufficient to address in any major way the budget shortfall as the scope changes were in the order of half a million dollars.
- The project includes the construction of a bridge. Subject to regulatory consent, the review identified that it would be possible to defer the construction of the bridge. The resultant savings from this idea are of the order of \$1.5 million depending on the extent of civil works required to support the interim arrangements. For this proposal the constructed road would, at times, be subject to inundation. When the road was inundated access would be available through Deadman's Creek Road. The bridge could be constructed later, with traffic managed either from a temporary bypass or road closure with detour.
- A staged approach to the project was proposed. This is possible as the developer intends to construct Power Drive in the very near future which, in the short term could provide access to the lower portion of the development to be serviced by Ballina Heights Drive, making the first stage of Council's project to be a stage serving the allotments beyond this lower portion. A copy of the site layout, with Power Drive identified, is included as an attachment to this report.

It was agreed that before more resources were allocated to the direct negotiations, the Council would make a determination on the feasibility of the bridge as without that decision it was unlikely that repricing the amended specification would yield enough savings to address the budget shortfall.

It is the opinion of Council's technical staff that if a staged approach was to be adopted, the connection to Power Drive would be more suitable than deferring the bridge. The reasons for this is that providing infrastructure that has reduced service levels, even having communicated the staging plan, can result in poor community acceptance of the project, road closing

arrangements are required and additional total construction costs in total would be typically expected because of the costs of the temporary works.

As discussed in the options section of this report below, should Council support the staging approach, having regard to the extent of the changes to the contract, which would include the identified changes in scope of works and risk transfer, the most appropriate way forward under this option is to end the direct negotiation and retender.

### **Sustainability Considerations**

- **Environment**  
The construction of these works will be managed by a construction environmental management plan.
- **Social**  
This project will provide a transport link for residents and therefore support their social needs.
- **Economic**  
This project is critical for the future orderly development of a major planned land release area and therefore is important for economic development

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

The legal issues in this matter relate to probity and meeting the statutory requirements for tendering.

There no financial implications to the recommendation to this report which seeks to resize the project to meet the available budget. Future reporting will have to address the options if a budget shortfall is established. As the Council will be reviewing the tender outcome, no commitment beyond the existing budget is being made from this report.

### **Consultation**

The developer's engineering consultant has been consulted in respect of this matter.

### **Options**

1. Continue with Direct Negotiation, inclusive of bridge component

The disadvantage of this option is that it is unlikely that the result will provide enough savings to address in a substantial way the budget shortfall.

If budget issues could be addressed, this option has the benefits of avoiding future cost increases. However, the lack of funds is essentially problematic and even if this could be addressed it would have effects on the broader program.

2. Continue with Direct Negotiation, exclusive of bridge component

The above report identified that this option is possible, however there are a number of issues that arise. On balance, as there are other options to provide access required at this time, this option is not recommended.

Furthermore, the extent of the scope and specification changes ideally would suggest that retender would be preferred than direct negotiation if the Council preferred this option as the construction outcome.

3. Terminate Direct Negotiation and take no further action

As per earlier reports to Council, it is desirable to build this road at this time, however it is not essential. The reason for this is that there is alternate access to the land release area providing sufficient availability of land. From this option, the Council would re-examine the timing of the project on the basis of the development demands from the release area.

The advantage of this option is that it defers expenditure that can be utilised elsewhere and allows further section 94 developer contributions to be collected prior to the need to draw on the funds.

The disadvantage is that further delay will likely increase the cost of the project.

4. Terminate Direct Negotiation and retender stage one works

Under this option, an initial, but still valuable stage of works will be completed now and this would represent a good compromise between the above options.

Under this option the scope of works would be adjusted to take advantage of the savings identified from the direct negotiation process.

For a Stage One project, it is currently proposed to construct from Power Drive to the CURA-A boundary, however this requires further review and cost estimation.

This option is recommended.

**RECOMMENDATIONS**

1. That in respect of the current tender for construction of Ballina Heights Drive, the Council resolves to terminate the direct negotiation with NSW RTA and advise the RTA of this decision as the scope of the project remains beyond Council's current financial resources.
2. That Council call tenders for the construction of Stage One of Ballina Heights Drive, being a road project from Power Drive to the limit of the required works (i.e. CURA-A boundary).

**Attachment(s)**

1. Ballina Heights Drive - Road Location Plan

**11.2 Surf Life Saving - Service Levels**

<b>File Reference</b>	Surf Life Saving
<b>CSP Linkage</b>	People attaining health and wellbeing
<b>Delivery Program</b>	Open Space and Reserves
<b>Objective</b>	The purpose of this report is to review the lifeguard services provided at the Shire's beaches.

---

**Background**

To assist councils in the management of access by the community to recreational water, the Division of Local Government has prepared Practice Note 15, which encourages a risk based approach to underpin the management arrangements.

In 2005 Ballina Council contracted Surf Life Saving NSW to prepared Aquatic Risk and Safety Audit reports for each of the following beaches.

- Seven Mile Beach (at the Lennox Head Surf Life Saving Club location)
- Sharpes Beach
- Shelly Beach
- Lighthouse Beach
- South Ballina Beach (just south of the Richmond River)
- Patches Beach

The risk assessments examined the types of conditions experienced at each beach and the amount of visitors and reported on the risk management options to address the issues identified.

In response to this assessment, by resolution, Council determined surf life saving service levels having regard to the reported risk management options and the available funding.

This report seeks to review the experience since that time and assess the appropriateness of the current service levels. Specifically, this report draws on information from the Australian Lifeguard Service's 2010/2011 season report. A copy of the report is attached.

**Key Issues**

- Risk management
- Cost effectiveness
- Desired level of service

## Information

### Summary of the 2010/2011 Lifeguard Season

Table one details the current service level that Ballina Council provides using professional lifeguards. This service is augmented by the two local Surf Clubs who provide patrols on weekends and public holidays.

Table two provides a summary of the 2010/2011 season of patrols by the Lifeguards.

**Table One - 2010/2011 Season Service Levels**

<b>Beach</b>	<b>Period</b>	<b>Lifeguards</b>
Lennox Head	7 months	1
	Summer holidays	2
Ballina (Lighthouse)	7 months	1
	Summer holidays	2
Sharpes Beach	Summer holidays	1
	Easter holidays	1
Shelly Beach	Summer holidays	1
	Easter holidays	1
South Ballina	Christmas - New year peak period (10 days)	2

*(7 months: 27 Sept 2010 - 21 April 2011, with Lennox Head commencing a week earlier 20 Sept 2010)*

**Table Two - Lifeguard Statistics - 2010/2011 Season**

<b>Beach</b>	<b>Lives Saved</b>	<b>Preventative Action</b>	<b>First Aid</b>	<b>Public Relations</b>	<b>Attendance</b>
Lennox Head	13	2,653	128	2,917	45,961
Ballina Lighthouse	10	2,087	32	2,391	24,340
Sharpes Beach	9	1,063	236	707	11,104
Shelly Beach	7	1,439	53	5,87	13,457
South Ballina	0	203	0	73	542
<b>Total</b>	<b>39</b>	<b>7,445</b>	<b>449</b>	<b>6,675</b>	<b>95,404</b>

The statistics in Table Two are based on data collected by the lifeguards. The preventative actions undertaken by lifeguards includes advising swimmers that they are swimming in a dangerous location or swimming outside the flags and proactively providing other safety advice. Public relations are when a lifeguard provides information to beach goers on more general safety matters or tourism information.

Lifeguards are required to estimate (a cumulative figure over the course of the day) beach attendances in daily logs. While the attendance figures are not precise, they do provide an indication of the level of visitation for each of the beaches when they are patrolled by the lifeguards.



The weather conditions during the 2010/2011 season were unfavourable with heavy rain, high winds and large swells. In the seven month patrol period the beaches were affected 70% of the time by rain.

During the busy summer and Easter school holidays the beaches were affected 60% of the time by rain. This generally results in lower visitation rates however it also provides more dangerous conditions.

This information does not include statistics on the services provided by the volunteer Surf Life Saving Clubs at Lennox Head and Lighthouse Beach, Ballina.

#### Issues Identified with the Current Service

##### Number of Lifeguards on Duty at each Location

The Australian Lifeguard Service in its 2010/2011 Season report made a recommendation that all of the service locations are manned by two lifeguards. The following was included in the report.

*"The one-up lifeguard scenario places both the lifeguard and beachgoers at risk if the lifeguard has to manage a mass rescue situation, major first aid or search and rescue, with no additional immediate lifeguard support. Due to this inherent risk, the Australian Lifeguard Service is of the opinion that two lifeguards be on duty at all times at all Beach for the duration of the contract period."*

A recent incident on 11 October 2011 illustrates this point. A single lifeguard was on duty at Lighthouse Beach and performed two rescues in the space of 15 minutes. The first rescue involved three people and the second rescue involved two people. The lifeguard was assisted by surf board riders at the beach at the time.

Sharpes Beach has become a very popular beach and the requirement for two lifeguards at that location is considered to be urgent. The beach is more isolated than the other beaches and does not have the support of an adjacent surf life saving club where people are often present.

The implication of having two lifeguards on duty at all patrols for Council is a significant increase in the cost of providing the lifeguard service at its current service levels.

#### South Ballina

When the current service levels were adopted in 2005 there was some attention given to the merits of the South Ballina service. One option was to not place any service at this location as a way of promoting the patrolled beaches as the preferred surfing locations. This option was considered in part to manage costs and also to recognise that by patrolling this relatively isolated and risky area, in effect, Council was encouraging people to swim there.

The report suggested that people would be at risk as they would continue swimming outside of patrolled hours when there are less people around to assist in an emergency or to generally be aware of incidents as they occur.

The alternate view recognised that the South Ballina caravan parks attracted visitors to the area who would want to use the nearest beach.

At the time the staff recommendation was to not provide a service. Council did not accept this recommendation and elected to provide a service between Christmas and New Year. Given the remoteness of the location, its risks and the limited support available to a single lifeguard, the service has been provided using two lifeguards.

The section of South Ballina Beach that Council currently patrols using the lifeguard service is in not an area that is managed by Ballina Council. The beach is the shared responsibility of NSW National Park and Wildlife Service as it is part of the Richmond River Nature Reserve and NSW Department of Primary Industries, Crown Lands Division.

There is no agreement in place with these land managers for Council to provide the lifeguard service at South Ballina.

The 2005 Aquatic Risk & Safety Audit for South Ballina Beach recommended that due to the isolated location of South Ballina Beach any patrol should at a minimum be two lifeguards with the correct equipment being 2-way radios, a quad bike, rescue boards, rescue tubes, equipment shed, first aid room and lifeguard room.

The report also indicated that it was advisable to have a jet ski or Inflatable Rescue Boat (IRB) and defibrillator at this location when a service is provided.

The only equipment provided is the 2-way radios, rescue board, rescue tube, and a first aid kit. None of the other equipment is provided at this location.

If this equipment and staff could not be provided the report says that the continuation of a one man service is not advisable as it does not meet requirements for Occupational Health and Safety for the lifeguard/s or fulfil the required duty of care for public safety and the safety of the lifeguard.

In addition to the above, there are no amenities for the lifeguards and therefore during toilet breaks lifeguards are required to leave the site resulting in only one lifeguard being on duty. The option to provide a portable toilet has been considered however the level of vandalism experienced at this location suggests that this it is not possible to locate such a toilet in the area.

With no shelter at this site, in poor weather lifeguards are only protected by a small tent. Council has no authority to place shelter structures in this area and as the service it is provided for ten days, it is not practicable to provide more substantial temporary shelter.

It is recognised that it can be difficult for the community to accept the withdrawal or reduction in a service. This is especially so given the tragedy south of this location two years ago, although this incident occurred outside of the patrol period.

As noted in Table One above, the service is provided for ten days. However, given the above information regarding the OHS issues for the lifeguards and risks to the community, it is recommended that Council no longer provide the service and advise the NSW Department of Primary Industries, Crown Lands Division and NSW NPWS of this decision and recommend to these agencies that they give consideration to the management of swimming safety at this location.

Furthermore, since the 2005 audit there has been significant improvements to communications and response. Information in this regard is discussed below.

#### Radio Network – Improved Response Times

The ability of both volunteer surf life savers and contracted lifeguards to respond to incidents has significantly improved in the last two years with the introduction of the 13 SURF number, and response arrangements that are in place with the NSW Police and the Surf Communications network.

Surf Life Saving Services operates under the SLSNSW Radio Communications Licence. Season 2011-12 sees the introduction of a centralised State Operations Centre (SOC) for all Australian Life Saving Lifeguard services. Via Voip technology and an enhanced 'repeater' network SLSNSW has established an innovative and technologically advanced communications system that now allows for all lifeguards, regardless of location, direct communication to professional staff (based in Belrose) to assist with emergency scenarios, daily collection of statistical data and sign-on and sign-off obligations.

The State Operations Centre also takes the NSW Police endorsed, Emergency Response system (13SURF) to a new level, whereby majority hours are now covered by SLSNSW staff to alleviate volunteer burden and allow for a more streamlined and effective communication mechanism for coordinated response to emergencies among the key emergency services.

The SLSNSW radio licence also extends in a partnership arrangement with the affiliated Surf Life Saving Clubs and the local Branch's support operations – a Jet Rescue Boat, a fleet of rescue jet skis and a 24 hour emergency response system. This ensures a uniform and coordinated radio network in the area.

Response times in Ballina, with the availability of the Jetboat and IRBs, are very quick. The ability to get help to locations such as South Ballina has improved to a point where it is considered safer for the volunteers and life savers to respond to such call outs with appropriate resources than it is to place lifeguards on the beach without equipment.

#### Sharpes Beach

The attendance patterns at Sharpes Beach have also identified that it would be desirable to have an additional service at this location during the spring school holidays.

Request for Contribution from NSW Department of Primary Industries, Crown Lands Division

A letter has been sent to the NSW Department of Primary Industries, Crown Lands Division requesting a contribution towards the cost of the provision of Lifeguard activities at Lennox Head. This request was based on the collocation of the Crown managed Lennox Head Holiday Park and the provision of lifeguard services at the Lennox Head Surf Life Saving Club.

This request however was refused as the NSW Department of Primary Industries as the Crown Lands Division does not contribute to the provision of life saving services.

Proposed Amendments to Service Levels

To address the safety issues identified, a revised set of service levels is provided for Council's consideration. To achieve an increase in service at Sharpes Beach and to increase the number of services with two lifeguards it has been necessary to reduce the services at other locations during the off peak periods. Overall the following service levels are considered a better use of Council's resources. The main change is that Lighthouse Beach would not be patrolled outside of holidays.

Beach	Service	Number of Lifeguards
Lennox Head	7 months	2
Lighthouse Beach	Spring Holidays	1
	Summer Holidays	2
	Autumn/Easter Holidays	1
Sharpes Beach	Spring Holidays	2
	Summer Holidays	2
	Autumn/Easter Holidays	2
Shelly Beach	Summer Holidays	1
South Ballina	No service	

The proposed service indicated above is costed at \$218,915 for a complete year. After amending the cost for the balance of the 2011/12 year the cost is \$208,409. This is an increase in cost of \$16,497 for the 2011/12 financial year which has been funded with \$191,912.

This proposal has been prepared in consultation with Surf Lifesaving Services NSW and they have provided the following comments:

- Two lifeguards posted at Lennox for seven months, enables this beach to remain under surveillance in the event of an emergency incident requiring use of the Rescue Water Craft (RWC). The presence of two lifeguards also alleviates OH&S concerns around launching and removing RWC from beach and general safety of the lifeguards.
- The provision of one lifeguard at Shelly during Summer School holidays can be assisted in the event of an emergency, by the additional lifeguard posted at Lighthouse, whilst maintaining one posted lifeguard at Lighthouse.

- The provision of two lifeguards posted at Lennox, Sharpes and Lighthouse Beaches reduces burden on Lifeguards and eases OH&S concerns regarding breaks (toilet and lunch), emergency assistance callouts and surveillance issues.
- No service has been proposed to be provided at South Ballina. The use of triple zero and 13 SURF is the most effective coverage for this beach.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Professionally patrolled beaches provide the community with safe access to beaches and the social and health benefits that arise from outdoor recreation.
- **Economic**  
Patrolled and safe beaches assist the tourism industry in attracting visitors to the Shire.

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

Council has budgeted \$191,000 for the provision of lifeguard services in the 2011/2012 Management Plan. To address the issues identified in this review it is necessary to either amend some of the current service levels or allocate additional funds. The recommendation to this report proposed both changes to service levels and the allocation of an additional \$17,000 in this budget year and \$27,000 per annum after.

The Council has obligations and some protection in terms of statutory civil liability provisions.

No immediate funding source is available, however due to the importance of this service it is recommended that the proposal be endorsed with the General Manager to identify savings elsewhere in the budget to offset this increase as part of the next Quarterly Financial Review.

### **Consultation**

Consultation has been conducted with Council's service provider, Surf Life Saving Services NSW, with regard to the service currently provided and concerns that they have for the occupational health and safety of the lifeguards.

No community consultation has been undertaken in the preparation of this report.

### **Options**

The options available to Council include the following:

1. Maintain the Status Quo

This option has the disadvantage that it does not deal with the recommendations of the ALS.

2. Defer a Decision

This option allows for further consideration by the Council and any community consultation it wishes to take. It has the advantage of no immediate budget impacts.

Deferral would result in the existing OHS remaining, however that is acceptable to ALS on the basis that there would be a future opportunity for ALS to work through the issue with Council.

3. Accept the Recommendation of ALS

This option recognises the professional advice provided to Council. The disadvantage is the budget issues.

4. Adjust the ALS Recommendation to Match Current Budget

This option would require further discussion with ALS, however the combinations looked at in preparing this report were reducing the services (on the recommended option) that are provided to the out of School holiday periods.

The recommendation to his report is Option Three. This option does have a negative budget impact however it does improve the allocation of resources to high use areas and responds to OHS and other liability issues. However as indicated above, if Council does not wish to make this change immediately, it is possible to defer a decision.

**RECOMMENDATIONS**

1. That Council, having regard to changes in patronage, the available budget and professional risk management advice amend its service levels for life guard services from those described in Table One to those in Table Two, as outlined below.

**Table One - Current Service Levels**

Beach	Service	Number Lifeguards
Lennox Head	7 months	1
Lighthouse Beach	7 months	1
Sharpes Beach	Summer Holidays	1
	Autumn/Easter	1
Shelly Beach	Summer Holidays	1
	Autumn/Easter	1
South Ballina	2 weeks (Xmas to New Year)	2

**Table Two - Revised Service levels:**

<b>Beach</b>	<b>Service</b>	<b>Number of Lifeguards</b>
Lennox Head	7 months	2
Lighthouse Beach	Spring Holidays	1
	Summer Holidays	2
	Autumn/Easter Holidays	1
Sharpes Beach	Spring Holidays	2
	Summer Holidays	2
	Autumn/Easter Holidays	2
Shelly Beach	Summer Holidays	1
South Ballina	No service	

2. That Council advise the NSW Department of Primary Industries, Crown Lands Division and the National Parks and Wildlife Service of the decision in point one in relation to South Ballina Beach and recommend to these agencies that they give further consideration to the management of swimming safety at this location.
3. That the General Manager identify savings, as part of the next Quarterly Budget review, to offset the estimated increase in costs for this service for 2011/12, being approximately \$17,000.

**Attachment(s)**

1. Ballina Shire - Australian Lifeguard Service 2010/11 Season Report (attached under separate cover)

### 11.3 **Fleet Acquisition and Replacement Program**

<b>File Reference</b>	Vehicles Plant
<b>CSP Linkage</b>	Responsible and efficient use of resources
<b>Delivery Program</b>	Operational Support (Engineering)
<b>Objective</b>	To present a report recommending alteration to the adopted plant acquisition program.

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#### **Background**

At its Finance Committee meeting of 7 April 2011, Council considered a report regarding the purchase of plant to reduce the continuing reliance on hired plant, and resolved to proceed with the purchase of the following items:

- 1 x Backhoe
- 1 x Roller
- 2 x Tipping trucks and Dog Trailers
- 1 x Water truck
- 1 x mini excavator
- 2 x Light Tipping Trucks
- 1x Crew Cab utility

Prior to embarking on the purchase of plant items a specification is developed with staff from the section that will operate the plant and the justification for purchase reconfirmed and refined. In the course of that process it is evident that changes in operating circumstances now dictate that alternate plant would better suit Council's purpose. This report seeks Council's approval to adjust the acquisition program.

#### **Key Issues**

- Revision of approved plant purchase program
- Changes and benefits

#### **Information**

During consultation with Engineering Works staff to develop the specifications for the new plant the current types of works and future works programs were checked to ensure that correct choices had been made for the most appropriate plant. This consultation identified the following.

- In the case of the 2 x Tipping Trucks and dog trailers, it appears that some of the data used as the basis for this decision was obtained from a period when a previous stage of the Southern Cross Industrial Estate filling work was being project managed internally, by engaging plant contractors utilising truck and dog trailer combinations.



More recently, the whole of this type of work has been contracted out, and the truck and dog trailer combinations are unsuited to Council's road construction works due to turning restrictions on narrow road sites. In this case, it is proposed to delete the purchase of the dog trailers and purchase two only body tipping trucks.

- It was assumed that a towing vehicle would be available internally to transport the mini excavator, however that item will be much more useful if it was provided with a dedicated transport truck (approx 16 tonnes GVM). This would enable transport of the excavator and spoil as one unit, similar to those operated by hire contractors. This additional purchase will be funded by the saving made by not purchasing the dog trailers, and will be driven by the excavator operator.
- Council owns a Pacific multi tyred roller, purchased in 1993. This machine was used for bitumen sealing work and some patching. Council now performs this activity by complete service contracts and hence utilisation of the plant does not justify its retention. It is listed in the adopted replacement program for 2012-13 at an estimated replacement cost of \$166,399. Engineering Works advise that a 2.5-4t self propelled roller (and towing trailer) is hired consistently for patching works and it is desired to dispose of the rubber tyred roller and purchase a self propelled roller and trailer as a replacement.
- It is also advised that one of the light tipping trucks approved would be more versatile if fitted in a crew cab configuration to allow deployment of extra staff when required for certain activities.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
These proposed changes will reduce the reliance on externally hired plant

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

Council has approved the purchase of the plant listed above by the application of loan funds.

The recommended alterations to the approved program will have the following affects:

***Estimated Savings:***

Dog Trailers and specification changes to tip trucks 2 @\$80,000 =	\$160,000
Sale of rubber tyred roller	\$ 30,000
<b>Total</b>	<b><u>\$190,000</u></b>

***Estimated Costs***

Purchase 9t tipping truck + ramps for excavator	\$120,000
Purchase 3t self propelled roller and trailer	\$ 60,000
Upgrade of Light tipping truck to Crew cab	\$ 10,000
<b>Total</b>	<b><u>\$190,000</u></b>

This proposal will result in a saving to the plant reserve of \$166,399 in the 2012-13 year by not having to replace the rubber tyred roller.

**Consultation**

Extensive consultation has been undertaken with the Engineering Works Staff to ensure that the proposed purchases meet the needs of the planned works.

**Options**

For Council to deliver its programs and services a contemporary plant fleet suited to its operations is necessary, complemented by plant contractors as required. This report presents a request to Council to vary the adopted program to better meet Council's needs.

**RECOMMENDATIONS**

That Council approves an amendment to the adopted 2011/12 additional plant purchase program from that listed in Table One to those in Table Two, as outlined below.

Table One

- 1 x Backhoe
- 1 x Roller
- 2 x Tipping trucks and Dog Trailers
- 1 x Water truck
- 1 x mini excavator
- 2 x Light Tipping Trucks
- 1x Crew Cab utility

Table Two

- 1 x Backhoe
- 1 x Roller
- 2 x Tipping trucks
- 1 x Water truck
- 1 x mini excavator
- 1 x Tipping truck(16T approximately excavator transport)
- x Light Tipping Trucks (one with crew cab)
- 1x Crew Cab utility
- 1 x 2.5-4t self propelled roller and towing trailer; and
- Disposal of Plant 168 Pacific Multi Tyred Roller

**Attachment(s)**

Nil

12. Public Question Time

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**12. Public Question Time**

**13. Notices of Motion**

**13.1 Rescission Motion - Cumbalum Precinct B Planning Proposal**

<b>File Reference</b>	BLEP Amendment 105 - Precinct B Cumbalum Ridge
<b>Councillor</b>	Cr Jeff Johnson Cr Phillip Silver Cr Susan Meehan

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We, the above Councillors, move that Resolution 241111/9, as follows, be rescinded:

**9.2 *Cumbalum Precinct B Planning Proposal***

- 1. That Council place the Cumbalum Precinct B draft Planning Proposal on public exhibition for a period of 42 days, as soon as possible.*
- 2. Following the conclusion of the exhibition period, Council is to receive a further report regarding submissions and outcomes of the exhibition.*
- 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.*
- 4. That Council advise the proponent and the NSW Department of Planning that notwithstanding the Council's endorsement for the public exhibition in point one above, the Council will not proceed further with any consideration of the draft proposal until a strategy is confirmed that satisfactorily addresses Council's significant concerns in relation to infrastructure servicing issues.*

If carried, it is proposed to move the following alternative motion:

That Council discontinue the planning proposal process for Cumbalum Precinct B.

**Staff Comment**

There has been no material difference to the information provided in the report to the November 2011 ordinary meeting however it is recommended that Councillors bring their copy of that report to this meeting to assist with any debate on the rescission motion.

## **COUNCILLOR RECOMMENDATION**

That Resolution 241111/9, as follows, be rescinded:

### **9.2 Cumbalum Precinct B Planning Proposal**

1. *That Council place the Cumbalum Precinct B draft Planning Proposal on public exhibition for a period of 42 days, as soon as possible.*
2. *Following the conclusion of the exhibition period, Council is to receive a further report regarding submissions and outcomes of the exhibition.*
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.*
4. *That Council advise the proponent and the NSW Department of Planning that notwithstanding the Council's endorsement for the public exhibition in point one above, the Council will not proceed further with any consideration of the draft proposal until a strategy is confirmed that satisfactorily addresses Council's significant concerns in relation to infrastructure servicing issues.*

### **Attachment(s)**

Nil

**13.2 Rescission Motion - Ballina LEP - Amendment No. 90 - Stewart Farm**

<b>File Reference</b>	Amendment No. 90 - Stewart Farm
<b>Councillor</b>	Cr Alan Brown Cr Sharon Cadwallader Cr Robyn Hordern

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We, the above Councillors, move that Resolution 241111/12, as follows, be rescinded:

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

**241111/ 5      *RESOLVED***

*That Council cease further processing of Draft LEP Amendment No. 90 for, but not limited to, the following reasons:*

- *Uncertainties with respect to land dedication*
- *Scenic Zone*
- *Council liability for infrastructure*
- *Inability to negotiate with a single owner*
- *Outstanding fees*

The purpose of this rescission motion is to allow Council to review a revised proposal submitted by the proponents for the rezoning. It is understood that the General Manager will provide details of that revised proposal in conjunction with this rescission motion.

**Staff Comment**

Council's consideration of this amendment to the LEP has been the subject of a substantial history, which commenced in May 2005, when Council considered a request to rezone only **Lot 2 DP 784864**, being the area of the Stewart Farm immediately south of Headlands Drive.

Council subsequently resolved **not to initiate** the rezoning process on the basis that it preferred to consider future land use outcomes in the locality more broadly.

In December 2006, in response to an enlargement of the proposed study area to cover the entire Stewart Farm (**being Lots 1 and 2 DP 784864, Lots 50, 66 and 76 DP 755684, Lot 1 DP 449851 and Lot 1 DP 184117**), Council resolved **to initiate** an amendment to the LEP, being amendment No. 90, to facilitate urban development and improved environmental outcomes over the land.

A copy of a locality plan and lot descriptions for this amendment are provided as attachments one and two.

At that time Council also resolved that a local environmental study be prepared.

The report to the November 2011 meeting provided an overview of the progress of this amendment, with Council subsequently resolving as follows:

*"That Council cease further processing of Draft LEP Amendment No. 90 for, but not limited to, the following reasons:*

- *Uncertainties with respect to land dedication*
- *Scenic Zone*
- *Council liability for infrastructure*
- *Inability to negotiate with a single owner*
- *Outstanding fees"*

Due to the complexities of this amendment and the associated issues the November report has been included as a separate attachment to this rescission motion.

Also the proponents have now submitted an updated proposal for items to be included in a voluntary planning agreement, and a copy of that proposal is included as the third attachment to this rescission motion.

A key aspect of Council's consideration of the proposed rezoning has been the extent of the study area. Council initially resolved that the entire area of the Stewart Farm in the coastal corridor between East Ballina and Skennars Head was to be considered. This position was the basis of the commencement of a local environmental study for the land and discussions with Wave Break Properties in relation to outcomes associated with the rezoning (such as the dedication of certain land).

As the investigations and analysis associated with the LEP amendment progressed, it became unclear as to the area of land that Wave Break Properties was able to act upon and ensure desired outcomes. This caused a substantial delay in the processing of the amendment and has led to some confusion about the extent of the LEP amendment under consideration.

In this regard, it appears from the information that has been made available to Council, that Wave Break Properties is only able to act specifically in relation to the western portion of Lot 2 DP 784864 as part of the LEP amendment process.

Given this issue, recent reports focussed primarily on Lot 2 DP 784864, which was the area that Wave Break had authority to act on. These reports took a more general approach to the remainder of the Stewart property, largely through the consideration of the establishment of an urban break between East Ballina and Skennars Head as part of the shire-wide LEP amendment process.

What is now apparent is that even though recent reports have focused on Lot 2 DP 784864, it is important that any exhibition process provide a holistic consideration of the entire Stewart Farm, which is in effect the coastal land between East Ballina and Skennars Head, as per attachments one and two.

If the Council is of a mind to rescind its November 2011 resolution and enable further consideration of draft LEP Amendment No.90, there appear to be a few main points that are continually being raised and therefore require clarification.



1. Land to the eastern side of the Coast Road - It has been confirmed on a number of occasions that the Stewart Family is not prepared to dedicate this land to Council as part of the rezoning. Therefore if Councillors wish to see this land dedicated as part of any rezoning process, then that should clearly be stated in a resolution. If this occurs, the current rezoning may cease for a number of years. Council has a 99 year lease (or deed of agreement at this point in time) over a significant section of this eastern parcel of land, with that lease ensuring public access. This lease does come at a cost to the public with the annual fee being \$37,373 (excl GST).
2. Buffer on the western side of the Coast Road - As per **attachment three to the original report** (copy of original report attached) there is a significant strip of land zoned 7(d) Environmental Protection - Scenic / Escarpment alongside the western edge of the Coast Road. The November 2011 report highlighted that it was unclear as to whether or not this land would be dedicated to Council as part of any rezoning. The latest correspondence from Wave Break has now confirmed that this land will be dedicated to Council, for that part of the land over which Wave Break has an interest, being Lot 2 DP 784864.

It has been suggested that ideally the entire strip of 7(d) land owned by the Stewart Family should be dedicated to Council as part of this rezoning. The difficulty with this is that Wave Break only currently have an interest in Lot 2 DP 784864 and the balance of the 7(d) land is in Lots 1 DP 784864 and Lot 76 DP 755684. It is also understood that the Stewart Family wish to retain control over this remaining land until the land is developed at a future date, assuming development does eventually occur. This is a reasonable position for the Stewart Family to take, in that they will most likely continue to reside and utilise the remainder of the farm until it is developed.

To satisfy all parties a recommended solution could be:

- a) Council accept the dedication of the 7(d) component of Lot 2 DP 784864 as part of this rezoning, if it is to proceed and that;
  - b) Council also ask as part of a voluntary planning agreement, that the balance of the 7(d) land be dedicated to Council at the time of future development (eg. subdivision). This then ensures that the Stewart Family is able to utilise the southern sections of the farm until it is developed.
3. Distance of the buffer on the western side of the Coast Road - As per **attachment three of the original report** the 7(d) land to the west of the Coast Road differs markedly in width, being rather wide at the northern end and far narrower at the southern end. It has been suggested that a more consistent width would be more desirable. From a staff perspective this is not considered necessary as the area is sufficiently wide enough at all points to allow appropriate plantings etc. Future residential development will also be designed with the noise from the Coast Road under consideration. Wave Break has indicated that they would be willing to liaise with the Stewart Family on this issue on the basis that any increase in width would be offset by decreases in the wider areas (i.e. not

net impact). Whether or not that is to be pursued is a matter for Councillors, however it is not considered essential.

4. Headlands Drive Intersection and Roundabout - The latest correspondence from Wave Break has confirmed that they will accept an offer of \$100,000 as Council's contribution to the overall construction of this intersection, which includes a roundabout. From a community perspective this then provides one entrance to the entire Headlands Estate along with a roundabout that provides safe access to Sharpes Beach, the Headlands Estate and north and south along the Coast Road. This is an excellent outcome.
5. Stormwater Management - The latest correspondence from Wave Break suggests that this matter will be adequately resolved prior to exhibition.
6. Outstanding Fees - All outstanding fees have been paid.

What is also important to appreciate is that even though the majority of the local environmental study has been completed there is still work outstanding and it may take three to six months to complete. Attachment four to this rescission motion provides a very preliminary indication of potential final zonings, although it must be emphasised **that it is preliminary and may change prior to final reporting** to Council, if the decision is to proceed with this work.

Typically, this information would not be released into the public domain until finalised as it may create false expectations, however due to the complexity of this rescission motion it has been considered necessary to release this information.

In respect to the potential urban development zonings it is possible that these may **reduce** in the final document as further studies are completed.

The document has been included to highlight that even with any rezoning there will be significant environmental areas and an environmental buffer between North Angels Beach Estate and the southern end of any urban development of the Stewart Farm will be maintained.

From a community perspective it is also agreed that any public exhibition of Amendment No. 90 should only occur if the entire land parcel is exhibited. Therefore, in discussions with representatives from Wave Break it was agreed, verbally, that a possible way forward was:

- a) Council clearly enunciate its requirements for a voluntary planning agreement, which will provide Wave Break with the confidence to expend additional monies on both the rezoning and preparing the voluntary planning agreement;
- b) Council confirm that its preference is to exhibit the entire rezoning proposal once the Local Environmental Study is completed, along with the draft voluntary planning agreement. This will then ensure the public has all the information necessary to make an informed submission on the rezoning. It appears that it may still take approximately three to six months

for the Local Environmental Study to be completed and reported back to the elected Council.

A draft recommendation that encapsulates all these points is as follows. Obviously this resolution is entirely dependent upon the rescission motion being successful.

***Draft Recommendation***

1. Subject to point two below, Council confirms that it will only proceed with the exhibition of LEP Amendment No. 90 subject to the following items being included in a voluntary planning agreement with the proponents, with that agreement to be exhibited as part of the public exhibition process. The minimum items to be included are:
  - a) Dedication to Council of the land that forms a buffer on the western side of the Coast Road that is currently zoned 7(d) Environmental Protection - Scenic / Escarpment. The 7(d) land that forms part of Lot 2 DP 784864 is to be dedicated to Council as part of this amendment, however the balance of the dedication can occur at future subdivision, with the exact details of this arrangement to be confirmed through appropriate legal advice.
  - b) Acceptance of Council's contribution of \$100,000 (excluding GST) and subject to annual CPI adjustments, for the reconstruction of Headlands Drive and associated infrastructure such as the proposed roundabout.
  - c) Satisfactory arrangements being made for the management of stormwater.
2. That Council confirms that its preference for the public exhibition of LEP Amendment No 90 is to ensure that the entire study area is exhibited following the completion of the Local Environmental Study. This then ensures that the community is in a position to obtain a holistic perspective of the amendment. Once the Local Environmental Study is completed, proposed LEP Amendment No. 90 is to be presented to Council for consideration to then allow Council to provide approval for public exhibition.

### **COUNCILLOR RECOMMENDATION**

That Resolution 241111/12, as follows, be rescinded:

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

**241111/ 6 RESOLVED**

*(Cr Ben Smith/Cr David Wright)*

*That Council cease further processing of Draft LEP Amendment No. 90 for, but not limited to, the following reasons:*

- *Uncertainties with respect to land dedication*
- *Scenic Zone*
- *Council liability for infrastructure*
- *Inability to negotiate with a single owner*
- *Outstanding fees*

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

1. Locality Plan
2. Study Area - LEP Amendment No. 90
3. Latest correspondence from Wave Break Properties Pty. Ltd.
4. Preliminary Zone Boundaries
5. Report and attachments to Ordinary meeting held 24 November 2011

**13.3 Notice of Motion - Ballina CBD Parking**

**File Reference**                      Notices of Motion/Parking

**Councillor**                         Cr Ben Smith

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I move

That Council receive a report in relation to the options for the provision of two hour parking in the Ballina CBD where there is a dominance of service based businesses that require such parking.

**Councillor Comment**

There have been a few letters recently in relation to Ballina CBD parking. Hair/beauty salons specifically were saying that one hour is insufficient time for parking for appointments and it would be interesting to see if any options are available to improve the current arrangements

**COUNCILLOR RECOMMENDATION**

That Council receive a report in relation to the options for the provision of two hour parking in the Ballina CBD where there is a dominance of service based businesses that require such parking.

**Attachment(s)**

Nil

**13.4 Notice of Motion - Killen Falls**

**File Reference**                      Notices of Motion/Killen Falls Reserve

**Councillor**                          Cr Jeff Johnson

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I move -

That Council receive a report on the current state of the pathway and public access at the Killen Falls Reserve. This report is to include cost estimates for any possible improvements or maintenance works that could be undertaken to improve the condition of the path. The options to utilise grant funds should also be considered as part of this report.

**Councillor Comment**

Killen Falls Reserve is a popular attraction for both locals and visitors. It is promoted on various websites, at the Ballina VIC and throughout the Northern Rivers. The area has been regenerated over the past decade and the birds and other wildlife have returned. This is largely due to the many hours of volunteer work that the local landcare group have contributed over the years (including successful grant applications). The reserve is situated next to the Rous Water Walk which in itself attracts a lot of visitors and is promoted on the Rous website.

The path that this motion refers to is the pathway to the lookout over the waterfall. This path has been impacted by erosion and can be quite slippery. Beyond the waterfall lookout the path is quite dangerous. Various websites show the images from below the waterfall. This section of the walk is quite dangerous and should be blocked off or at least have a warning/caution sign attached to the fence.

**Staff Comment**

The information required for this report should be relatively easy to obtain and presented in a report. The B Ward Committee also recently recommended that Council write to Rous Water, who own the majority of the reserve on which Killen Falls is located, to provide improved infrastructure such as toilets and waste facilities. As this was considered to be a reasonable request, especially seeing Rous has provided some basic infrastructure such as car parking, which has tended to increase usage of the site, Council staff implemented that recommendation by writing to Rous. No response has been received to date.

**COUNCILLOR RECOMMENDATION**

That Council receive a report on the current state of the pathway and public access at the Killen Falls 'Reserve'. This report is to include cost estimates for any possible improvements or maintenance works that could be undertaken to improve the condition of the path. The options to utilise grant funds should also be considered as part of this report.

**14. Advisory Committee Minutes**

**14.1 Environmental & Sustainability Committee Minutes - 1 December 2011**

**File Reference** Environmental & Sustainability Committee

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**Attendance**

Cr P W Silver (Mayor - in the chair), S L Cadwallader (arrived at 5.00 pm), B C Smith, K H Johnson (arrived at 4.46 pm), R A Hordern, D E Wright, J L Johnson (arrived at 5.02 pm), A J Brown and S M Meehan.

Steve Barnier (Strategic Services Group Manager), Matthew Wood (Strategic Planning Manager), Simon Scott (Strategic Planner) and Kate Singleton (Strategic Planner) were in attendance.

There were 48 people in the gallery at this time.

**1. Apologies**

An apology was received from Cr Peter Moore.

(Crs K Johnson, J Johnson and Cadwallader were not in attendance at this stage).

**RESOLVED**

(Cr David Wright/Cr Robyn Hordern)

That such apology be accepted.

FOR VOTE - All Councillors voted unanimously.

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

**2. Declarations of Interest**

**Cr Silver** – declared interests in Item 4.2, 4.4 and 4.9 (Nature of Interest: pecuniary – property owner in those locations).

**Cr Meehan** – declared interests in Item 4.3, 4.7 and 4.8. (Nature of Interest: pecuniary – property owner in those locations).

**Cr Cadwallader** – declared an interest in Item 4.6. (Nature of Interest: pecuniary – property owner in that location).

**Cr Brown** – declared an interest in Item 4.5. (Nature of Interest: pecuniary – property owner in that location).

**3. Deputations**

1. Tim Reilly (51)
2. Bill Allen, Ballina Investments (57)
3. David Johnston (30)
4. Dave Bouren (45)
5. Dennis McCarthy (19)
6. Fran Byrne, Ballina Coastcare (9) (5 minutes)
7. Paul Earner (23)
8. Barry Campey (42)
9. Ruth Bennett (55)
10. David Lewis-Hughes (48)
11. Jim Kalinowski (14)
12. Steve Connelly - Highway Service Centre - East (72)
13. Steve Connelly - Highway Service Centre - West (56)
14. Simon or Terry Prendergast (15/15a)
15. Marco Veronesi (31)
16. Steve Connelly - Roman Catholic Church, Lennox Head (74)
17. Steve Connelly - Angels Beach Estate (68)
18. Steve Connelly - The Dunes, East Ballina (64)
19. Steve Connelly - Michael Hickey (49/49a)
20. Lyn Walker, Ballina Environment Society (12/12a) (5 minutes)
21. Bill Grace (71)
22. Lou Wilson, Pollid Pty Ltd (46/62)
23. Steve Connelly - Riverbend (70)
24. Michael Petrie (n/a)

- Draft Ballina LEP 2011 submission number is shown in (brackets). Submission numbers relate to the general submissions set and the information contained in attachment 3.
- Deputations are scheduled for 3 minutes duration unless made on behalf of a community organisation. Community organisations have had 5 minutes allotted for deputations.

Cr K Johnson arrived at 4.46 pm, during the Deputation session.  
Cr Cadwallader arrived at 5.00 pm, during the Deputation session.  
Cr J Johnson arrived at 5.02 pm, during the Deputation session.



#### 4. Committee Reports

##### 4.1 Ballina LEP Renewal - Re-exhibition and LEP Finalisation - Principal Report

#### RECOMMENDATIONS

(Cr Robyn Hordern/Cr Alan Brown)

1. That Council amend the Draft Ballina Local Environmental Plan 2011 as exhibited based on:
  - (a) the amendments set out in Attachments 3, 4, 5 and 6 and associated consequential adjustments to descriptions, numbering and plan formatting (in relation to both the written instrument and mapping); and
  - (b) Council's decisions with respect to each of the items relating to the content of the LEP contained elsewhere in this business agenda; and
  - (c) general typographical adjustments in relation to text, grammar, labelling and formatting; and
  - (d) other directions provided in relation to the content of the draft LEP 2011 with respect to the items identified below:

Submissions: Couch (28), Veronesi (31), Allen (57), Highway Service Centre East (72), Catholic Church Lennox Head (74), Grace (71), Prendergast (15/15a), Earner (23), Macadamia Castle (6), Hickey (49,49a), Dodgson (46), Lewis-Hughes (48) and Ballina Environment Society (12/12a).

2. That Council submit the revised Draft Ballina Local Environmental Plan 2011 to the Department of Planning & Infrastructure and request that the plan be finalised for implementation in accordance with the terms of the *Environmental Planning and Assessment Act* and associated Regulation.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Moore

Cr Silver declared a pecuniary interest in Items 4.2, 4.4 and 4.9 and left the meeting at 7.40 pm. Cr David Wright, Deputy Mayor, assumed the Chair.

Cr Meehan left the meeting at 7.40 pm

Cr Hordern left the meeting at 7.40 pm

**4.2 Report A - Duck Creek/ Gum Creek Catchment Area**

**RECOMMENDATIONS**

(Cr Keith Johnson/Cr Ben Smith)

That Council endorse the planning framework for the Duck Creek/ Gum Creek catchment area as exhibited under the Draft Ballina Local Environmental Plan 2011.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Silver, Cr Moore, Cr Hordern, Cr Meehan

Cr Hordern returned at 7.41 pm

**4.4 Report C - Fawcett Street, Ballina**

**RECOMMENDATIONS**

(Cr Alan Brown/Cr Keith Johnson)

That Council endorse the planning framework for Fawcett Street in the vicinity of Fawcett Park, Ballina as exhibited in the Draft Ballina Local Environmental Plan 2011.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Silver, Cr Moore, Cr Meehan

Cr Meehan returned at 7.41 pm

**4.9 Report E - Alstonville Village Centre**

**RECOMMENDATIONS**

(Cr Keith Johnson/Cr Ben Smith)

That Council endorse the planning framework for the Alstonville Village Centre as exhibited in the Draft Ballina Local Environmental Plan 2011 but with amendment to apply a 9m building height standard to the site of Crawford House.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Silver, Cr Moore

Cr Wright left the meeting at 7.42 pm

Cr Silver returned at 7.42 pm and resumed the Chair

Cr Meehan declared a pecuniary interest in Item 4.3 and left the meeting at 7.42 pm

**4.3 Report B - Summerhill Crescent, Cumbalum**

**RECOMMENDATIONS**

(Cr Robyn Hordern/Cr Keith Johnson)

That Council endorse the application of an R2 Low density residential zone and 2ha minimum lot size for subdivision for the Summerhill Crescent locality.

FOR VOTE - Cr Silver, Cr K Johnson, Cr Hordern, Cr Brown

AGAINST VOTE - Cr Cadwallader, Cr Smith, Cr J Johnson

ABSENT. DID NOT VOTE - Cr Moore, Cr Wright, Cr Meehan

Cr Brown declared a pecuniary interest in Item 4.5 and left the meeting at 8.01 pm  
Cr Meehan returned at 8.02 pm

**4.5 Report D - North Creek Road North Ballina**

**RECOMMENDATIONS**

(Cr Sharon Cadwallader /Cr Ben Smith)

That Council endorse the planning framework for the southern end of North Creek Road at North Ballina as exhibited in the Draft Ballina Local Environmental Plan 2011.

FOR VOTE - Cr Silver, Cr Cadwallader, Cr K Johnson, Cr Smith, Cr Hordern, Cr Meehan

AGAINST VOTE - Cr J Johnson

ABSENT. DID NOT VOTE - Cr Moore, Cr Wright, Cr Brown

Cr Brown returned at 8.02 pm  
Cr Cadwallader declared a pecuniary interest in Item 4.6 and left the meeting at 8.02 pm

**4.6 Report F - Brighton Street and Easton Place, East Ballina**

**RECOMMENDATIONS**

(Cr Ben Smith/Cr Alan Brown)

That Council endorse the planning framework for the residential areas in Brighton Street and Easton Place, East Ballina as exhibited in the Draft Ballina Local Environmental Plan 2011.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Cadwallader, Cr Moore, Cr Wright

Cr Cadwallader returned at 8.06 pm  
Cr Meehan declared a pecuniary interest in Items 4.7 and 4.8 and left the meeting at 8.06 pm

**4.7 Report G - Oakland Avenue West Ballina**

**RECOMMENDATIONS**

(Cr Keith Johnson/Cr Ben Smith)

That Council endorse the planning framework for the southern end of Oakland Avenue, West Ballina as exhibited in the Draft Ballina Local Environmental Plan 2011.

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

**4.8 Report H - Camoola Avenue, Ballina**

**RECOMMENDATIONS**

(Cr Sharon Cadwallader /Cr Ben Smith)

That Council endorse the planning framework for the land in the vicinity of Camoola Avenue, Ballina as exhibited in the Draft Ballina Local Environmental Plan 2011.

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

Cr Meehan returned at 8.08 pm

**MEETING CLOSURE**

8.08 pm

**RECOMMENDATIONS**

That Council confirms the minutes of the Environmental & Sustainability Committee meeting held Thursday 1 December 2011 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

**14.2 Facilities Committee Minutes - 12 December 2011**

**File Reference**                      Facilities Committee

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The Minutes will be distributed prior to the meeting.

**RECOMMENDATIONS**

That Council confirms the minutes of the Facilities Committee meeting held Monday 12 December 2011 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

**14.3 Civil Committee Minutes - 12 December 2011**

**File Reference**                  Civil Committee

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The Minutes will be distributed prior to the meeting.

**RECOMMENDATIONS**

That Council confirms the minutes of the Civil Committee meeting held Monday 12 December 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**

<b>File Reference</b>	Mayoral
<b>Councillor</b>	Cr Phillip Silver

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Activities since the November 2011 Ordinary meeting:

<u>Date</u>	<u>Function</u>
25/11/11	NOROC AGM at Maclean
26/11/11	Ballina Naval Association All Ships Reunion in Ballina
27/11/11	Ballina Bypass Family Fun Day
29/11/11	Ballina Bypass opening
29/11/11	DLG Code of Conduct forum in Ballina
30/11/11	Prime TV, Cumbalum development
1/12/11	Festival of Ability FNC at Casino
4/12/11	Ballina Community Garden opening in Ballina
6/12/11	Organ Transplant Book Launch in Ballina
8/12/11	Emmanuel College, Years 7 - 11 Awards in Ballina
9/12/11	Lennox Primary School Awards Day in Lennox Head
9/12/11	Dredging Taskforce meeting in Ballina
13/12/11	Private citizenship ceremony in Ballina
14/12/11	RSL Lifecare Residents Christmas lunch in Ballina

**RECOMMENDATION**

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

**Attachment(s)**

Nil

**15.2 Australian Airports Association 30th National Convention**

**File Reference** Councillor Development

**Councillor** Cr Alan Brown

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The 30<sup>th</sup> National Convention of the Australian Airports Association was held between 14 & 15 November 2011 at the Brisbane Convention and Entertainment Centre. I attended as this Council's delegate with our airport manager, Mr. Neil Weatherson. The Ballina-Byron Gateway Airport Operations Manager, Graeme Gordon attended the Technical Workshop Sessions on the two days following the convention.

Delegates and participants from airports Australia wide attended and were made up of representatives from both civil and local governments who have participated over many years in the operation of their airports including small rural aerodromes, regional airports, major domestic airports as well as the international airports.

First day of the convention was opened by the president John McArdle . The opening address was to delivered by Minister Anthony Albanese MP however as he has done on all previous occasions delivered his address via video and little was said in this address to excite anyone.

A keynote address was given by Angela Gittens being the Director General of the Airports Council International outlining major issues impacting on airports globally and latest international trends. She being based in America predicted that in Australia there will be a 17% increase in passenger numbers within the next 12 months and only a 7% increase in the USA.

Other speakers included Alan Joyce CEO of Qantas outlining the vision for its domestic regional network. Jos Nijhuis CEO of Schiphol Group (Netherlands) gave a very colourful and humorous address dealing with the Amsterdam Airport on the environmental issues including noise affecting airports as well as community engagement at airports.

Senator Nick Sherry the Minister Assisting the Minister for Tourism, Martin Ferguson, in which he outlined the major changes being experienced for the mining boom with 'fly-in/fly-out' market resulting in airports being developed in mining centres and the demand being made at many regional airports particularly in Western Australia and Queensland. Pressure is also experienced with some of the major carriers coping with these issues.

Of particular interest was an address given by Qantas Captain Richard de Crespigny the captain of Qantas Flight 32, flying an Airbus A380 Aircraft which had an engine explosion just after take off from Singapore Airport last year with 469 passengers on board. His address was enthralling where he displayed on 'power point' graphic photographs of the damage to the engine and aircraft. Despite all of this damage he and his crew managed to keep the



aircraft flying and finally landing it back at Singapore Airport without loss of life. A truly remarkable example of aviation emergencies, what procedures were required to take place and being able to manage the crew through a crisis situation, not to mention handling the terrified passengers throughout the ordeal.

Panel discussions were held during the convention on matters such as airport investment decision making, best practice in handling passengers, tourism and its appeal to overseas travellers and airspace management. Another interesting session was held where the previous year's Excellence Award Winners discussed in some detail the way in which they carried out the work at their respective airports in order to gain their awards. This particular panel was chaired by the judges of the awards who also had input to this session.

The Annual General Meeting was held on the last day of the convention with the usual reports from the Chairman, John McArdle and the Executive Director Caroline Wilkie. Following this an election took place for the position of chairman and the standing chairman Mr. John McArdle stood again with Mr. Stephen Goodwin (Queensland Divisional chairman) standing against him. A secret ballot was held and Mr. Goodwin was declared the winner as the new National Chairman for the Australian Airports Association voted upon by the delegates attending the meeting. Mr. Goodwin outlined his intention to concentrate on regional matters as a priority in his leadership and it is clear he has an understanding of issues in this regard.

During the course of the convention the Annual Awards Presentations for Aviation Excellence were announced as follows:

***CORPORATE PROJECT OF THE YEAR:***

*AIRBIZ AVIATION STRATEGIES for their Qantas Next Generation Check-In Project;*

***EXECUTIVE OF THE YEAR AT A REGIONAL OR REMOTE AIRPORT:***

*Mr. Grant Drummond, General Manager Operations, Ceduna Airport;*

***EXECUTIVE OF THE YEAR AT A CAPITAL CITY OR MAJOR AIRPORT:***

*Mr. Matthew Brown, Head of Aviation, Canberra Airport;*

***AVIATION PERSONALITY OF THE YEAR:***

*Mr. Phil Baker, Former Managing Director, Adelaide Airport, Mr. Michael Dubois, Business Manager Business and Economic Development, Tamworth Airport;*

***NON-CERTIFIED AERODROME OF THE YEAR:***

*HUNTER VALLEY AIRPORT CESSNOCK for The Hangar – Flying Museum;*

***REGIONAL AIRPORT OF THE YEAR – LESS THAN 50,000 PASSENGERS:***

*PARKES REGIONAL AIRPORT for the Reconstruction of the Main Runway 04/22 Project;*

***REGIONAL AIRPORT OF THE YEAR –50,000 – 499,999 PASSENGERS:***

*GLADSTONE AIRPORT for their Airport Upgrade Project;*

**MAJOR AIRPORT OF THE YEAR:**

*NEWCASTLE AIRPORT for their Airport Schools Program*

*SUNSHINE COAST AIRPORT for their Terminal Redevelopment Project;*

**CAPITAL CITY AIRPORT OF THE YEAR:**

*ADELAIDE AIRPORT for their Runways and Taxiways Overlay Project*

These awards are presented and judged by an independent panel and those wishing to participate are required to present their case so that an assessment can be made by the judges.

This convention was one which I immensely enjoyed and consider it to be most important in maintaining a close relationship with airport owners generally and particularly for Ballina Byron Gateway Airport to keep pace with others in this ever changing and expanding business.

There was a variety of exhibitors displaying their products associated with the industry. I am certain that our staff representatives, Neil Weatherson and Graeme Gordon, have gained further knowledge and experience in the field of their positions at the airport.

Our airport manager, Neil Weatherson presented himself at this Convention and is well known to most all of the delegates who attended this Convention and his respected reputation as a skilled and diligent personality is well known within the industry.

In the past I have been criticised for presenting a lengthy report on the AAA Conventions and have endeavoured to condense the information to this meeting as best I could but I feel that many important aspects of this Convention warranted being reported to you.

I would like to thank the Ballina Shire Council for allowing me the opportunity to attend the Convention in Brisbane. I believe we have again continued to maintain an understanding of the importance this industry is to Ballina which allows us to further our interests and keep pace in the overall scheme of the operation of our airport. A CD from the conveners of the convention, Calcutt Watson & Associates Pty Limited, will be available and can be passed on to staff and councillors if requested. I would be pleased to answer any questions in relation to this convention.

**RECOMMENDATION**

That Council notes the contents of the report from Cr Alan Brown on his attendance at the Australian Airports Association 30<sup>th</sup> National Convention.

**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