



Notice of Commercial Services Committee Meeting

Notice is hereby given that a Commercial Services Committee Meeting will be held in the **Ballina Shire Council Chambers**, Cnr Cherry & Tamar Streets, Ballina on **Monday 20 February 2012 commencing at 4.15 pm**

Business

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

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

Paul Hickey
General Manager

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- 1. Apologies**
 - 2. Declarations of Interest**
 - 3. Deputations**
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- 1. Apologies**

- 2. Declarations of Interest**

- 3. Deputations**

4.1 Deputation - Kingsford Smith Marina

4. Committee Reports

4.1 Deputation - Kingsford Smith Marina

File Reference	Foreshore Management
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Commercial Services
Objective	To allow Mr Mark Prowse to make to a deputation to Council on a possible marina for Ballina.

Background

Mr Mark Prowse will make a deputation to the meeting on his attached proposal.

No other information is currently available and the recommendation is to note the contents of the deputation.

RECOMMENDATIONS

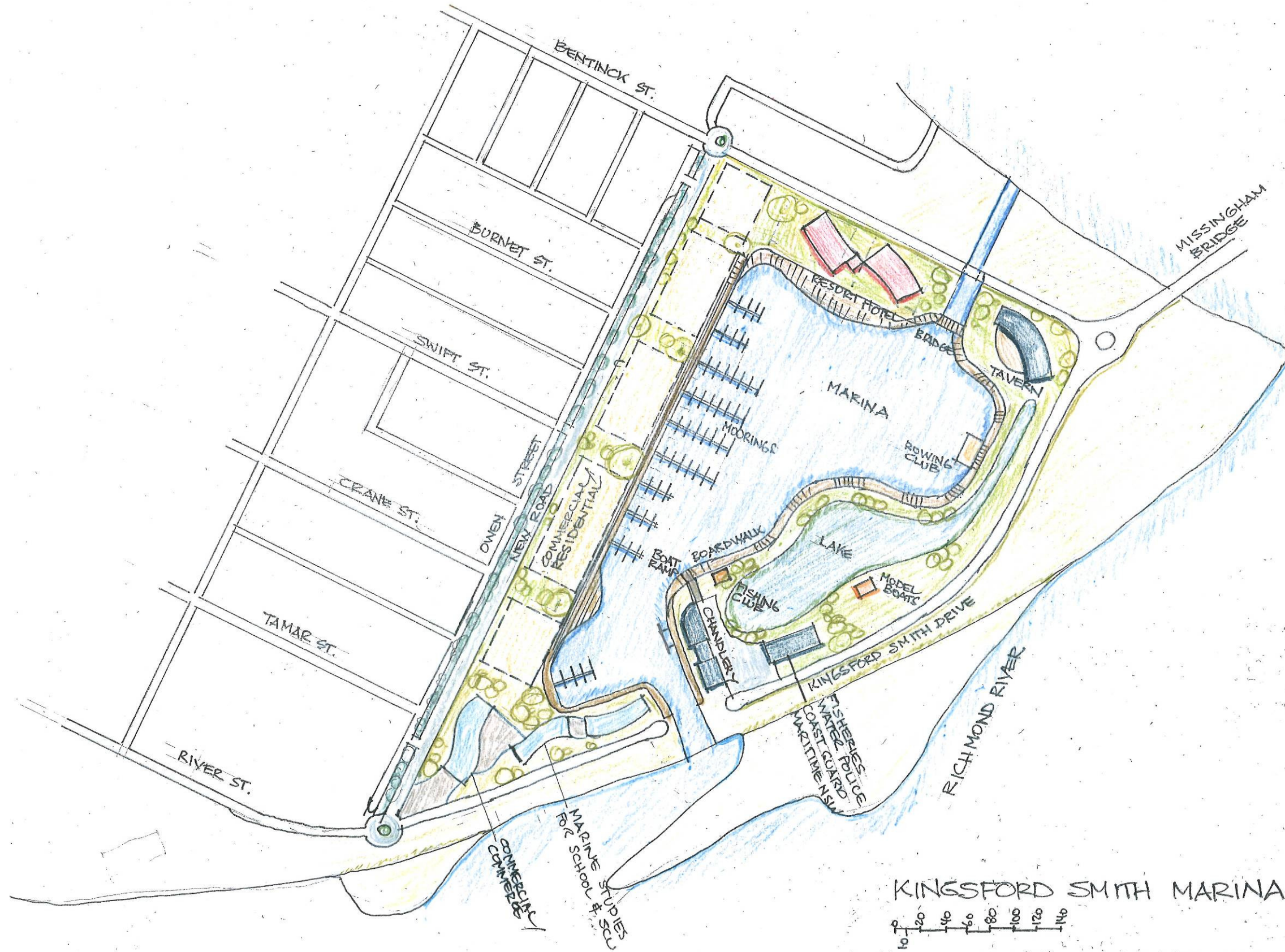
Council notes the contents of the deputation from Mr Mark Prowse.

Attachment(s)

Proposal from Mr Prowse

KINGSFORD SMITH MARINA

- sustainable social benefits
- enormous economic benefits
- 20 (plus) year plan
- town and marina together
- Ballina destination point... HUB
- Fully paid for sports complex.....Gallens Road?
- town growing towards Ballina Heights
- staged development
- Council zoning and approval...more long term income for Council
- permanent facility for
 - fisheries
 - water police
 - maritime NSW
 - coast guard
- rowing club
- fishing club
- proper marina
- facility for high school
- facility for university
- maintain existing lake and vegetation
- fill for industrial/airport land
- great wedding venue
- great night life for Ballina



4.2 Land Sale - Lennox Head

File Reference	PN 1437 & PN 1438
CSP Linkage	Diverse and balanced land use
Delivery Program	Commercial Services
Objective	To determine whether Council now wishes to authorise the disposal of two parcels of Council operational land at Lennox Head to the North Coast Accommodation Trust.

Background

A confidential report was presented to the Commercial Services Committee Meeting of 15 November 2011 regarding funding issues related to the redevelopment of the Lennox Head Surf Club.

The recommendation from the meeting, which was endorsed by the Ordinary Meeting of 24 November 2011, was:

- 1. That Council advise the Lennox Head Surf Club Committee that no funds are currently available in the 2011/12 budget to assist in funding the preparation of the development application for the re-development of the Surf Club, however funding will be considered as part of the preparation of the 2012/13 budget.*
- 2. The General Manager is authorised to conduct negotiations with the Land and Property Management Authority in respect to the possible sale of the neighbouring operational land, with the outcomes of those negotiations to be reported back to Council prior to a final decision being made. This next report will also review any other options in respect to the method of sale, the sale price and further consideration as to whether or not the land should be sold.*

The North Coast Accommodation Trust, on behalf of the Department of Lands, has now confirmed that they are interested in proceeding with the purchase of this land. Therefore the report aims to seek Council endorsement to now proceed with that sale.

Key Issues

- Sale price
- Sale process
- Transparency and community response
- Distribution of proceeds from sale

Information

Council owns two parcels of operational land that adjoin the Lake Ainsworth Holiday Park in Lennox Head known as Lots 1 and 2 DP 517499, Nos. 2-4 Ross Street, Lennox Head (**Attachment 1** contains a location plan).

The two sites have a total area of 1,011.70m² and are currently zoned 2(a) Residential (Living Area).

An independent valuer, appointed by Council, assessed the combined value of the two sites to be \$1,360,000 + GST.

Since the Ordinary Council Meeting of 24 November, 2011, Council staff have been negotiating with North Coast Accommodation Trust (NCAT), Reserve Trust Managers for the Lake Ainsworth Holiday Parks on behalf of the Crown, regarding the possible sale of these two parcels of Council operational land adjoining the Park. In the course of those negotiations, Council staff provided a copy of the independent valuation of the two parcels of land.

The outcome of negotiations is that NCAT have offered to purchase the two parcels of land for the agreed valuation. This purchase price is considered reasonable given:-

- the current depressed state of the local residential property market
- the prevailing economic climate
- the constraints to redeveloping the two sites including current and proposed zonings, various planning controls, coastal hazard issues and the fact that a caravan park adjoins the two sites
- the sale price is a net figure, no sales commissions are payable
- the future use of the site, as a caravan park, should help to appease concerns that local residents may have over the future use of the land.

Furthermore it is generally accepted that an adjoining owner will pay a premium over and above the general market to secure an adjoining property. The sale price is supported by an independent valuation and there is considered to be no benefit in Council putting both properties on the open market, as future use as a caravan park is considered to be an ideal outcome for these properties.

Legal / Resource / Financial Implications

The two parcels of land are classified as operational land and as such Council is free to sell them. Funding for future infrastructure projects such as the Lennox Head Surf Club, can be sourced from the proceeds of this sale.

Consultation

Council staff have consulted with North Coast Accommodation Trust in regards to the sale of the two sites.

This report has been presented in open Council to ensure there is full transparency over the sale.

Options

1. Council can sell the two parcels of operational land known as Lots 1 and 2 DP 517499, Nos. 2-4 Ross Street, Lennox Head to North Coast Accommodation Trust for the agreed price of \$1,360,000 + GST.

This option is recommended as the price is considered to be fair and reasonable in the current residential property market, and also for the fact that an adjoining owner may generally pay a premium.

2. Council can place the two parcels of operational land on the open market to determine interest from other parties in relation to the sale of the site.

This option is not recommended in the current residential property market. A sale to a third party will also incur an agent's commission and thus reduce the net sale proceeds to Council. The future use of the site as a caravan park is also considered to be an appropriate outcome for these properties.

3. Council can choose not to sell the parcels of land.

This option is not recommended as Council has significant future infrastructure demands and these properties are considered surplus to Council's needs.

RECOMMENDATIONS

1. That Council approves the sale of Lots 1 and 2 DP 517499, Nos. 2-4 Ross Street, Lennox Head to the North Coast Accommodation Trust (i.e. Department of Primary Industries, NSW State Government) for the sale price as per the independent valuation obtained by Council.
2. That Council approves the attaching of the Council seal to all documents, notices, contracts and transfers required to facilitate the sale of Lots 1 and 2 DP 517499, Nos. 2-4 Ross Street, Lennox Head.
3. The funds generated from this sale are to be transferred to Council's Community Infrastructure reserve to assist in financing future infrastructure projects.

Attachment(s)

1. Site Plan
2. Letter from North Coast Accommodation Trust



4.2 Land Sale - Lennox Head

15 February 2012



P.O. Box 63, Urunga NSW 2455
PHONE 02 6655 3845 **FAX** 02 6655 301
EMAIL info@nchp.com.au
www.northcoastholidayparks.com.au

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

Dear Paul

Re: Lots 1 and 2 Ross St Lennox Head

I refer to our recent discussions regarding the possible purchase of the above Lots adjacent to Lake Ainsworth Caravan Park. The Trust has assessed the valuations provided and has an interest in pursuing this acquisition at the price of the valuation for the purpose of extending the caravan park.

As the Trust requires ministerial approval to proceed with the purchase of land, a resolution is required from Council confirming the preference for the sale of the land to the Trust.

Should Council resolve to offer the land for sale to the Trust at the valuation price, the Trust will prepare a report to the Minister seeking approval for the purchase to proceed, subject to receiving advice that the land is able to be used as a caravan park.

A handwritten signature in black ink, appearing to read "Jim Bolger".

Jim Bolger
Administrator
North Coast Accommodation Trust

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Recharge & reconnect

4.3 Compulsory Acquisition - Redevelopment of Ballina Surf Club

File Reference	Redevelopment of Ballina Lighthouse and Lismore Surf Life Saving Club
CSP Linkage	Diverse and balanced land use
Delivery Program	Commercial Services
Objective	To obtain Council approval for a land acquisition required for re-alignment of Compton Drive, East Ballina as part of the Ballina Surf Club re-development.

Background

The Joint Regional Planning Panel granted development consent to DA 2010/74 on 1 July 2010 *“to undertake the staged erection of a new Ballina Lighthouse & Lismore Surf Life Saving Facility comprising:-*

- *Stage 1 – The realignment of Compton Drive and Lighthouse Parade and extension of Cedar Crescent and McKinnon Street.*
- *Stage 2 – Clubhouse and Patrol Buildings, assessed infrastructure and carparking.”*

The re-alignment of Compton Drive is required to improve safety and traffic flow along Compton Drive and Lighthouse Parade. **Attachment one** contains a site layout plan for the proposed development.

On 13 December, 2010 Aboriginal land claims were lodged with Office of the Registrar (Aboriginal Land Rights Act 1983), by the NSW Aboriginal Land Council (“ALC”) on behalf of JALI Local Aboriginal Land Council for the following parcels of land:-

- ALC No. 33541 – Lot 533 DP 729679
- ALC No. 33570 – Lot 529 DP 729679
- ALC No. 33562 – Lot 531 DP 729679

Attachment two contains a plan detailing the parcels of land under claim.

The purpose of this report is to request Council to pass a resolution to acquire Crown land required to create a road reserve within which to construct the Compton Drive road realignment. **Attachment three** contains a plan detailing the land required for the proposed road reserve.

Council staff have obtained legal advice in regards to this matter that recommends Council acquire the subject land under the provisions of the NSW Land Acquisition (Just Terms Compensation) Act 1991 and Local Government Act 1993 (NSW).

Key Issues

- Necessity for land acquisition
- Legality
- Aboriginal land claims
- Acquisition cost

Information

The purpose of this report is to request Council to pass a resolution to acquire Crown land required to create a road reserve within which to construct the Compton Drive road realignment. The re-alignment of Compton Drive is required to improve safety and traffic flow along Compton Drive and Lighthouse Parade.

Details pertaining to the land to be acquired are summarised as follows:

- Title Details: Part of Lot 529 DP 729676, Part of Lot 531 DP 729676 and Part of Lot 533 DP 729676
- Land Owner: The three portions of Crown land are contained within the Ballina Coastal Reserve, and managed by Ballina Shire Council acting as a public authority in its capacity as manager of the Ballina Coastal Reserve Trust
- Approximate site area: 4,618m²
- Zoning:
 - Lots 529 & 531, 533 – 6(a) Open Space; Ballina LEP 1987
 - Lots 529 & 533 – RE1 Public Recreation; Draft Ballina LEP 2011
 - Lot 531 – E2 Environmental Conservation; Draft Ballina LEP 2011

Council staff have obtained legal advice from lawyers Allens Arthur Robinson. Extracts from that advice dated 24 October, 2011, advise that:-

*“The Land Acquisition (Just Terms Compensation) Act 1991 (NSW) **Acquisition Act** applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process.....Pursuant to section 186 of the Local Government Act 1993 (NSW) (LGA), a council may acquire land for the purpose of exercising any of its powers. Section 187 of the LGA states that land that a council is authorised to acquire may be acquired by agreement or by compulsory process in accordance with the Acquisition Act. Council is an authority of the State for the purposes of the Acquisition Act.*”

As the land to be acquired is Crown land, Council may acquire the land from the State by agreement, pursuant to section 29 of the Acquisition Act.”

4.3 Compulsory Acquisition - Redevelopment of Ballina Surf Club

Council staff have commenced discussions with the Grafton office of the NSW Department of Primary Industries (Crown Lands) to acquire the Crown land required for the Compton Drive Road realignment. Apart from the issue of the Aboriginal land claims, Crown lands have not raised any objection to Council acquiring the subject land and have advised that the acquisition process may formally commence.

As noted earlier, on 13 December, 2010 Aboriginal land claims were lodged with Office of the Registrar (Aboriginal Land Rights Act 1983), by the NSW Aboriginal Land Council ("ALC") on behalf of JALI Local Aboriginal Land Council for the following parcels of land:-

- ALC No. 33541 – Lot 533 DP 729679
- ALC No. 33570 – Lot 529 DP 729679
- ALC No. 33562 – Lot 531 DP 729679

Council was not formally advised of these claims by JALI or the Office of the Registrar (ALRA 1983), and only became aware of the claims in July 2011, when advised by a third party, Essential Energy.

On 1 August, 2011, Council staff wrote to JALI requesting the land claims be withdrawn or amended seeking a meeting to discuss same, so as the Ballina Surf Club redevelopment project and realignment of Compton Drive can proceed.

Staff then met JALI CEO Veronica Williams and three members of the JALI board to discuss the project. Despite a number of follow up phone calls, Council did not receive a formal response from JALI until 2 February, 2012.

The response advised that JALI is not willing to request NSWALC to withdraw the claims over Lots 529, 531 & 533, but are "willing to talk to Council and DPI with a view to reaching agreement about their resolution".

They also advised that any discussions or negotiations require the involvement and co-operation of the NSWALC.

Legal advice from Council's lawyers is that the following can occur in relation to the subject land until the land claims are determined, without the consent of the Aboriginal Land Council:

- a development application can be made
- a development application can be determined
- an application to modify the Existing Development Consent can be made and determined
- a construction certificate for the Existing Development Consent can be obtained and the Existing Development Consent acted upon.

Based upon this advice construction of the road can proceed. In regards to acquisition, Council will submit to the DPI that acquisition of the Crown land can proceed as the road realignment is an essential public purpose, and therefore not claimable Crown land.

4.3 Compulsory Acquisition - Redevelopment of Ballina Surf Club

Council could also state that even if the land claims were to be upheld, an easement could be granted pursuant to Section 36(5A) of the Land Rights Act.

Legal / Resource / Financial Implications

Council's lawyers have been consulted in regards to this matter and the legal position has been outlined in this report. A valuation of the land to be acquired will be undertaken to determine the purchase price. The value of the land is not expected to be significant given the restrictive nature of its current and proposed zonings. It is proposed to fund this purchase of land out the Surf Club redevelopment budget.

Finally time is imperative for this project due to the \$2.3 million in Federal Government funding. This means Council is not in a position to await the outcomes of the NSWALC land claims as this could well take years to finalise.

Consultation

Consultations have been undertaken, and are on going, with:-

- NSW Department of Primary Industries (Crown Lands) – Grafton Office
- Jali Local Aboriginal Land Council
- Council's solicitors (Allens Arthur Robinson)

Options

1. Council resolves to proceed with the acquisition of Part of Lots 529, 531 & 533 in DP 729676 in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) and Local Government Act 1993 (NSW). As part of this Council authorizes the General Manager to conduct and finalise negotiations with NSW Department of Primary Industries to acquire Part of Lots 529, 531 & 533 in DP 729676.
2. That Council continues to consult with JALI and the NSW Aboriginal Land Council in regards to the land claims lodged over Lots 529, 531 & 533 in DP 729676.

As touched on earlier in the report there are time limits for the Federal funding for this project therefore it is important that we move forward as quickly as possible.

Council is legally entitled to proceed with the land acquisition and even though this may not be JALI or the NSWALC's preferred approach, discussions with those two parties can continue whilst the acquisition process proceeds. Therefore the preferred option is recommendation one.

RECOMMENDATIONS

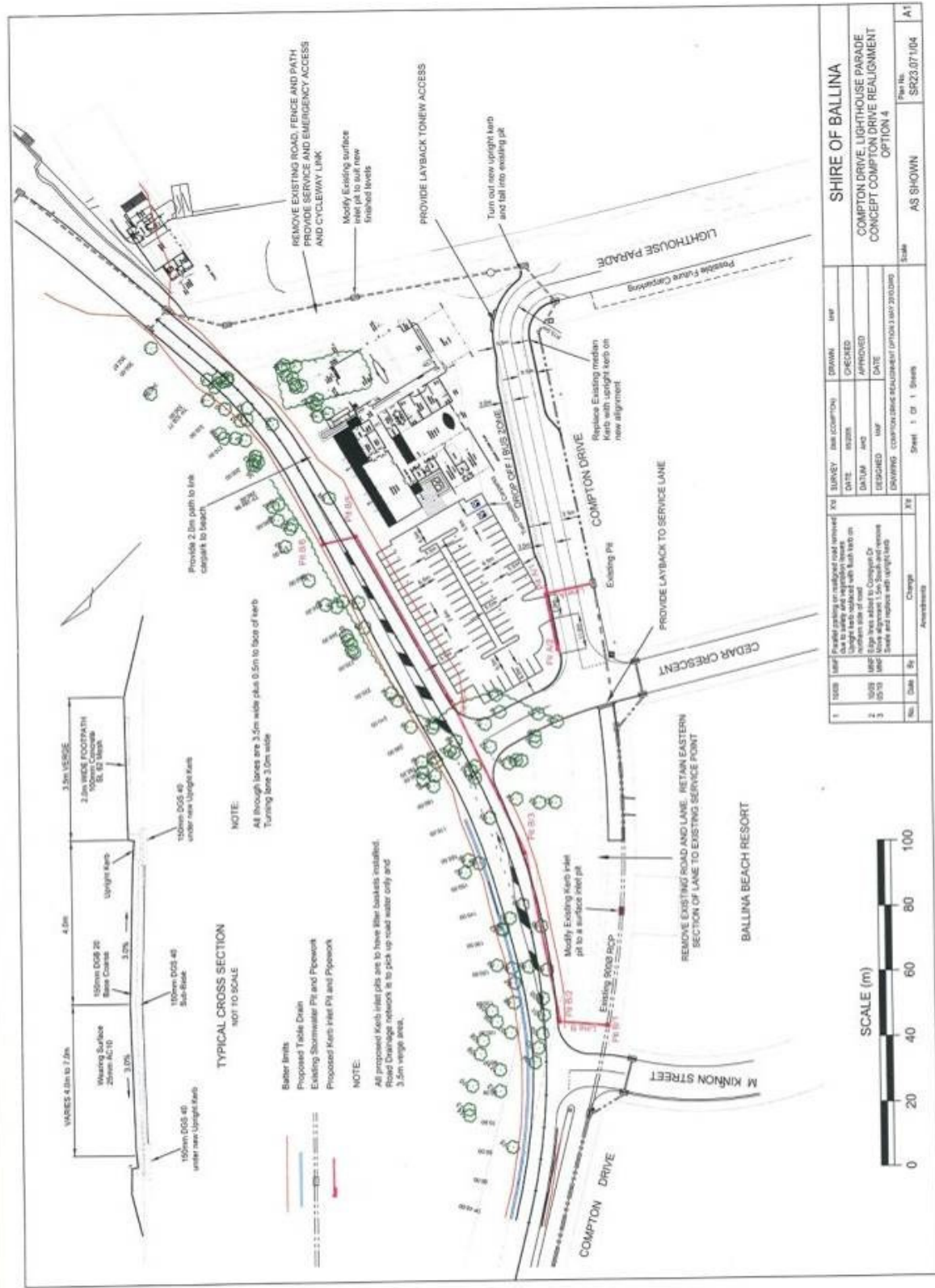
1. That Council resolves to proceed with the acquisition of Part of Lots 529, 531 & 533 in DP 729676 in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) and Local Government Act 1993 (NSW).
2. Council authorises the General Manager to conduct and finalise negotiations with NSW Department of Primary Industries to acquire Part of Lots 529, 531 & 533 in DP 729676.
3. Council approves the attaching of the Council seal to all documents, notices, contracts and transfers required to facilitate acquisition of Part of Lots 529, 531 & 533 in DP 729676.
4. That Council continue to consult with JALI and the NSW Aboriginal Land Council in regards to the land claims lodged over Lots 529, 531 & 533 in DP 729676.

Attachment(s)

1. Site Layout Plan
2. Site Plan indicating land claims
3. Site Plan of Compton Drive Realignment

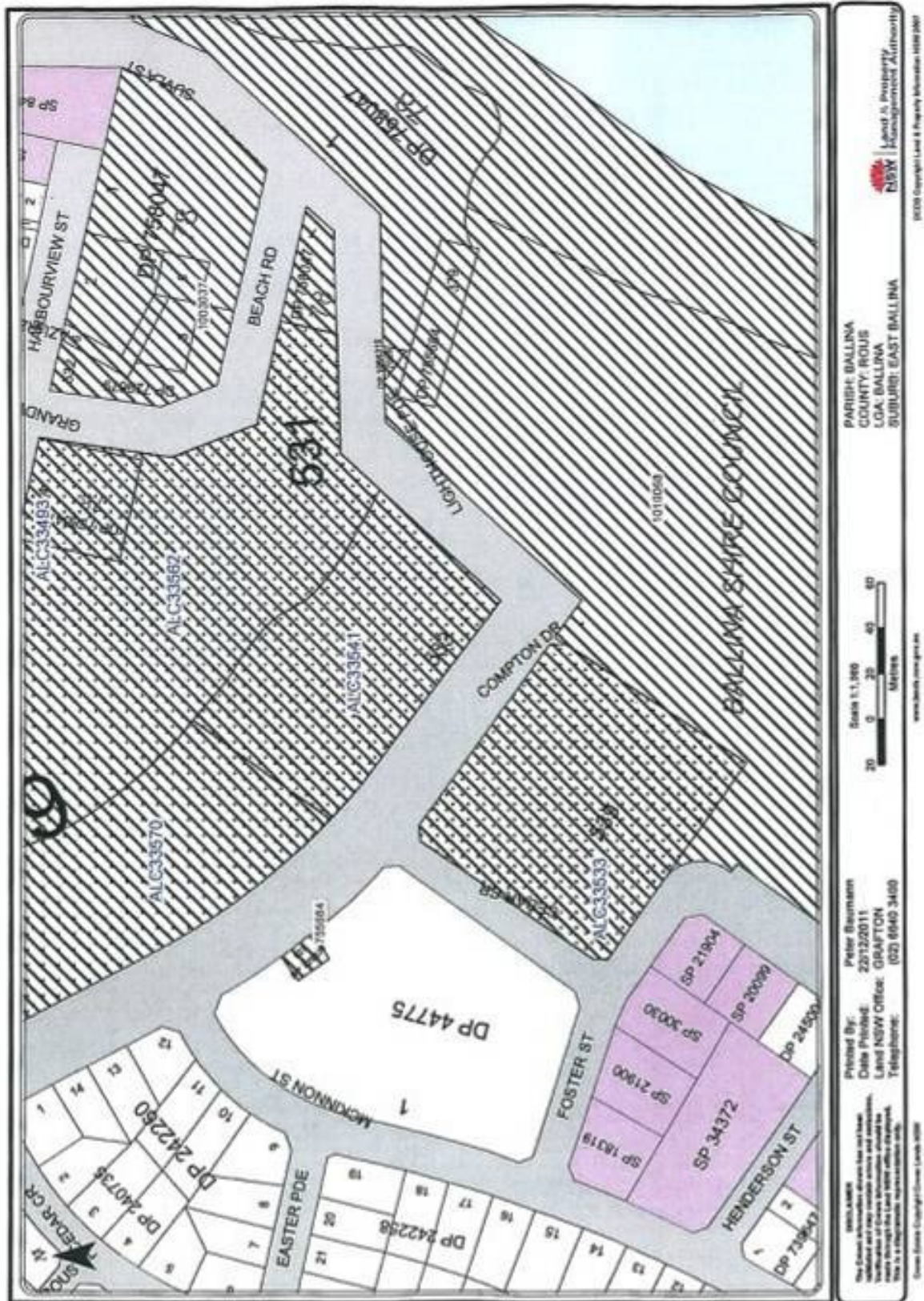
4.3 Compulsory Acquisition - Redevelopment of Ballina Surf Club

Attachment 1



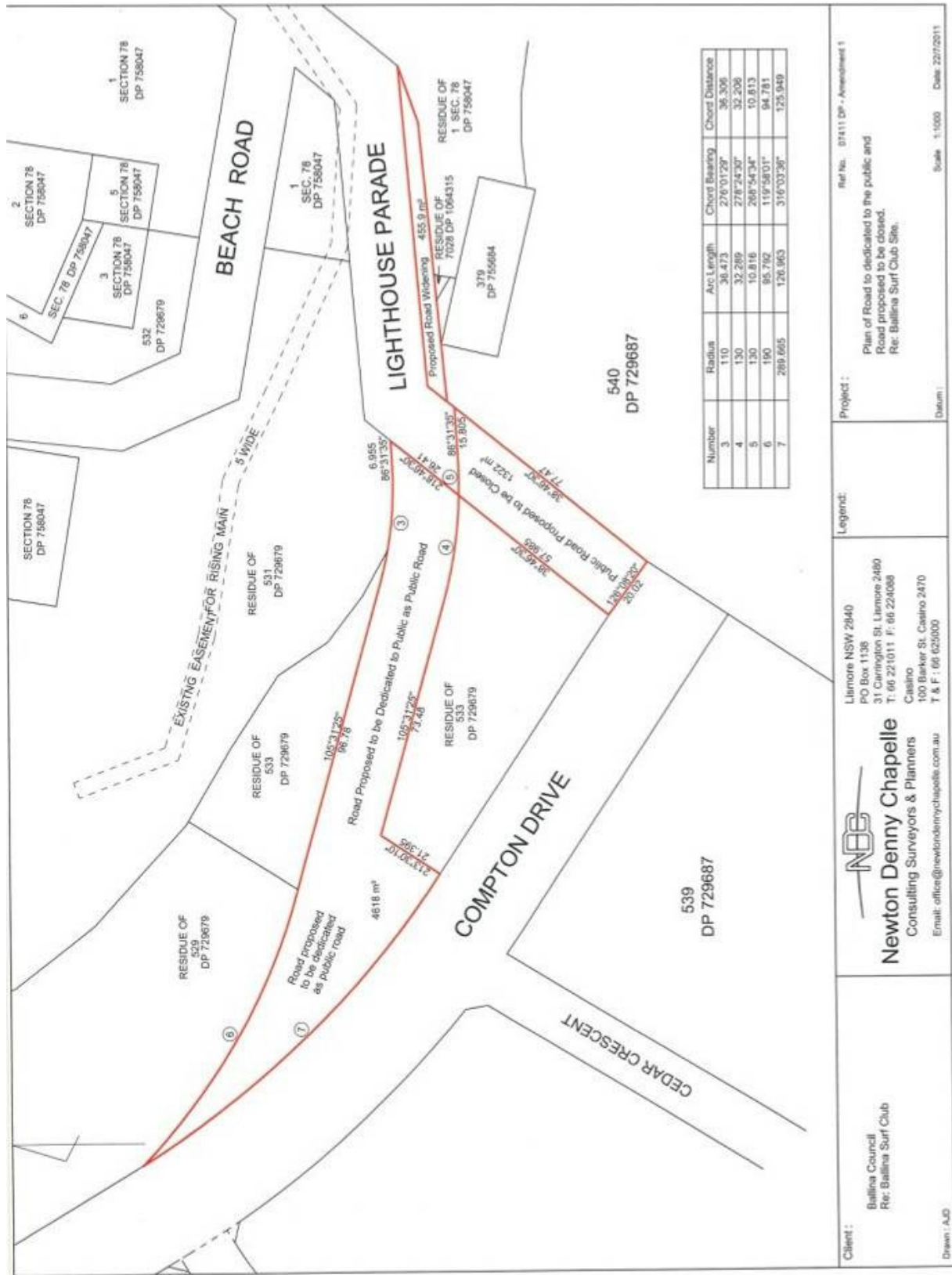
4.3 Compulsory Acquisition - Redevelopment of Ballina Surf Club

Attachment 2



4.3 Compulsory Acquisition - Redevelopment of Ballina Surf Club

Attachment 3



5. Confidential Session

5. Confidential Session

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the report recommended for consideration in confidential session follows:

Item 5.1 - Aboriginal Land Claim - Redevelopment of Ballina Surf Club

This report contains information which relates to legal matters.

RECOMMENDATION

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

5.1 Aboriginal Land Claim - Redevelopment of Ballina Surf Club

Reason for Confidentiality

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

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as confidential legal advice is being discussed in respect to the contents of the report.