



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 23 February 2012 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 line extending from the end of the signature.

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

The National Anthem will be performed by Ballina Public 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 Wednesday 25 January 2012 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Wednesday 25 January 2012.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

8. Regulatory Services Group Reports

8.1 DA 2011/373 - Wollongbar Sporting Fields

File Reference	DA 2011/373
Applicant	Newton Denny Chapelle on behalf of Ballina Council
Property	Lot 4 DP 578242, Rifle Range Road and Lot 2 DP 875030, Lot 4 DP 600108, Frank Street, Wollongbar. (Now known as Lot 2 DP 1168781)
Proposal	Staged Construction of Sporting fields
Effect of Planning Instrument	The land is zoned 7(i) Environmental Protection (Urban Buffer) Zone under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council is in receipt of a Development Application for the staged construction and use of the subject properties for the purpose of Sporting Fields with associated amenities, carparking, sporting field lighting and Clubhouse facilities. The construction of these sporting fields will require bulk earthworks, civil works associated with the construction of public access roads, the planting of a biological buffer, and the provision of utility services to the site.

Refer to the **attached** site plan that illustrates the application.

The development is proposed to include the following works:

Stage 1

- 1 x AFL field and sports lighting
- 2 x Rugby grounds and sports lighting for these fields
- 1 x Cricket oval
- Land area for Clubhouse facilities
- 6 x tennis courts and associated sports lighting
- 198 car spaces and 5 bus parking bays provided within two designated car parks
- Pedestrian access to existing rugby field at Lyle Park

Stage 2

- 4 x Netball courts to the immediate east of the carpark
- Construction of vehicular access from Pearces Creek Road, a shared pathway from Pearces Creek Road and public carpark for 94 vehicles.
- A service link between the carparks.

It is proposed that the facility will be available for use between 7am and 10pm seven days per week. Lighting will be provided for the tennis and netball courts, AFL and Rugby Fields.

The subject site was created by a four lot subdivision (DA No 2010/1057) granted Development Consent 24 March 2011.

The development will require the construction of an intersection and public access road off Ramses Street, Wollongbar between existing residential dwellings, within an unformed road reserve. It is also proposed to construct a second access from Pearces Creek Road to the sporting field site during Stage 2 of the development, also via an unformed road reserve.

A Land Use Conflict Risk Assessment (LUCRA) has been prepared for the subject application to determine potential conflicts between the proposed development and adjoining landuses. One of the recommendations of the LUCRA is the planting of a 30m wide biological buffer upon the subject land along the western, southern and eastern boundaries to the macadamia orchards. The primary, but not sole purpose of this buffer is capturing airborne pesticides droplets from neighbouring macadamia plantations through the creation of a vegetation filter.

Surrounding land to the north, south and east is predominantly rural in nature and character, including smaller rural residential sized allotments (1.7ha to 3.6ha) and larger agricultural (macadamia cultivation and grazing) holdings (up to 32ha). Land to the west comprises the existing Wollongbar Village (residential subdivisions and Lyle Park Rugby Grounds).

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil (or state otherwise if this is not the case)

Public Exhibition

The application was placed on public exhibition from 9 to 23 September 2011. During this exhibition period ten submissions by way of objection were received from nine individual objectors.

At the request of Council, additional information was submitted by the applicant in December. Previous submitters were made aware of the additional information via letter and this information was available to the public online. Further submissions were accepted for a five week period over December 2011 and January 2012.

During this additional period one submission from a previous objector was received.

The main issues raised in the objection letters are outlined as follows:

Zone Objectives

The proposal is not consistent with the zone objectives of the 7(i) zone as it will be visible from Rifle Range Road.

A secondary objective of the 7(i) zone relates to the proposal being consistent with the primary objectives of the 1(a1) zone, namely the protection of rural land for existing or potential agricultural use. The proposal is in conflict with this objective.

Comment: The proposal has been assessed having regards to the objectives of the 7(i) and 1(a1) zones. This assessment has regard to the proposed use of the site and the LUCRA accompanying the development. This LUCRA is considered satisfactory and it is concluded that the proposal is consistent with these objectives as it will not adversely impact upon the special qualities of the locality. The development, assisted by the biological buffer and separation from agricultural and residential uses through site design, will not adversely impact upon adjoining agricultural activities and in fact will create a valuable buffer between the urban area and existing agricultural pursuits.

This issue is addressed in detail later in this Report under applicable planning instruments.

Section 41 of the Public Works Act

The Proposal is not considered a Public Work and is not a relevant consideration in accordance with Section 79C of the EP and A Act. (This relates to the 7(i) zone objectives)

Comment: The application states that an exception to the objectives of the 7(i) zone is use of land for public works. The application refers to Section 41 of the Public Works Act 1912. It is recognised that this Section does refer to acquisition of properties and not the development of land for certain purposes.

It is considered that the works are of a public nature being a service function that is the responsibility of Council pursuant to Chapter 6 of the Local Government Act 1993.

However, it is considered that the proposal is consistent with the primary and secondary objectives of the zone and therefore that the justification of the use due to the development being a Public Work is not considered necessary. The development is considered consistent with the Zone Objectives based on its merits.

Land Value

The proposal will adversely impact upon land values of the adjoining agricultural land.

Comment: This report outlines that the proposal is not likely to adversely impact upon adjoining landuses as it incorporates design measures to reduce anticipated issues between agricultural activities, residential properties and sporting fields. As potential issues are considered satisfactorily resolved it is likely that land values will not be adversely impacted by the subject development.

Buffer Zone

The proposed buffer zone is not consistent with the recommended requirements relating to width and separation distances, as outlined within the Living and Working in Rural Areas Handbook.

The biological buffer will provide a habitat for vermin. This vermin, namely rats, will result in macadamia nut losses.

The proposed biological buffer will not be sufficient to ensure that pesticide and insecticide use on adjoining agricultural properties will not be hampered. Can Council guarantee that the biological buffer will be sufficient to avoid unintended spray drift?

It is unclear how will this biological buffer be maintained?

Comment: An assessment of the merits of this biological buffer has been conducted and discussed in this report. It has been concluded that the buffer will be effective in minimising any potential landuse conflicts between the proposed development and adjoining agricultural activities.

Concern has been raised over the use of the buffer by vermin (rats). Vermin then access the macadamia crops resulting in nut losses. Council's Manager of Open Space and Reserves has explained that the maintenance plan for the site will assist in reducing vermin populations, however, if rats do become a problem upon adjoining macadamia plantations, baiting programs can be implemented.

Land Use Conflict

The sporting fields will result in land use conflict between existing horticultural operations and this non-agricultural development. As a result, the proposal will adversely impact upon adjoining farming practices. The proposal will result in unreasonable limitations being imposed upon existing agricultural operations.

The proposal will restrict the use of pesticides within the macadamia plantations. Council should compensate for lost production as a result of no spray areas adjoining the sporting fields.

Comment: Any use of pesticides is heavily regulated to ensure spray drift is limited, regardless of adjoining landuses. The use of the biological buffer will augment this regulation to minimise any drift onto the sporting fields.

Some conflict between the sporting fields and agricultural practices is possible especially before the vegetative buffer is fully established, however, this may be minimised by the operators of the various activities on the ground notifying the neighbours in advance of when major events are taking place which would enable the farmers to plan, or if necessary make adjustments to spraying or fertiliser application programs.

It is also acknowledged that farmers will need to be more compliant with existing regulations following the commencement of the sporting fields use.

Appropriate conditions of consent will be applied to any consent granted to implement these additional measures to minimise potential conflicts.

Notwithstanding, it is considered that the proposal will not affect adjoining agricultural pursuits to an extent that the project is fatally flawed. It is considered that the proposed design of the development, accompanied by the implementation of specific conditions of consent will minimise any anticipated impacts.

This issue is addressed in more detail later in this report under the heading "Land Use Conflict Risk Assessment"

Access from Ramses Street

The construction of a new road off Ramses Street to the proposed sporting fields will increase traffic volume, congestion and noise for adjoining residences and the surrounding residential streets. The new intersection will be unsafe due to sight distances.

The amenity of these residential properties will be adversely affected with removal of rear lane access and erection of street lights at the rear of the properties.

The access from Ramses Street should be pedestrian and cycle access only.

This Street should have a 40km speed limit and also have no parking signs installed.

Comment: An assessment of access from Ramses Street has been detailed within the Traffic and Vehicular Access of this report. Ramses Street has the capacity to cater for up to 3,000 vehicles per day. The current traffic loading is 1,000 vehicles per day, therefore, even with 100% of traffic for the sportsfields utilising this intersection, (662 trips on an event day) this street will sufficiently cater for the additional traffic.

Council's technical staff are satisfied that the road corridor for Ramses Street is situated such that there are good sight distances in both directions.

The application has included an Environmental Noise Impact Report for the proposal, including the impact of the Ramses Street access road at the rear of the Cerreto and Hellyar Drive properties. The results and conclusions of this study will be outlined below, however, predictions conclude that noise will exceed recommended levels. Measures proposed by the applicant to mitigate against these levels have the potential to adversely impact residents in other ways. Therefore, Council is recommending that a trial is undertaken following commencement of operations and the result of this trial determine mitigation measures to reduce the impact of this road upon affected residences. An Acoustic Barrier at the rear of the properties is an option however Council considers that this is not the only option available to satisfy adjoining residences.

Conditions of consent will also be imposed requiring 40km speed limits being imposed and the road being surfaced with a finish that minimises tyre noise but remains in suitable safety specifications. Traffic calming measures will also be a condition of any consent granted to further minimise noise from this new access road.

While it is recognised that the construction of a new road will impact upon adjoining properties, this road reserve was in place prior to the construction of these properties and it was reasonably foreseeable that a road would be constructed in this proposed location. Notwithstanding this, satisfactory measures are proposed to be put in place supplemented via conditions of consent to minimise adverse amenity impacts upon the adjoining residences.

Second Access from Pearces Creek Road

Submissions stated that a second access from Pearces Creek Road should be constructed to reduce traffic impacts on Wollongbar. As most Sporting Clubs are based in Alstonville, more traffic will originate from Alstonville rather than Wollongbar, hence the Pearces Creek access is more logical.

Submitters requested that this second access should be constructed during the first stage of the proposal and it was also suggested that a cycle and footpath only access for Wollongbar residents be constructed from Ramses street and/or the existing rugby facilities on Cerreto Circuit.

However, other submissions considered that any access from Pearces Creek Road would not be suitable due to adverse road safety conditions for traffic along Pearces Creek Road. It was claimed in a submission that the traffic study undertaken for this road was not accurate due to the timing of the study and that the proposal will in fact have a significant impact upon the road, contrary to this study.

Other submissions also requested that the Ramses Street access should not be constructed during the first stage of the development. Rather, the access from Pearces Creek should be constructed as a priority due to more traffic coming from Alstonville rather than Wollongbar.

Comment: Both Council's technical staff and the Local Traffic Development Committee (LDTTC) are satisfied with the methodology and timing of the traffic assessments associated with this Development Application.

Pearces Creek Road requires an evasion lane and dedicated turning lanes to be provided. The point of intersection has good sight distances for the speed and capacity of this rural road.

A shared pathway for pedestrians and cyclists will be constructed for both the western and eastern access roads.

It is considered that the western access road and Ramses Street are satisfactory to cater for all traffic prior to Stage 2 of the application, as discussed above. Therefore, Council will not need the eastern access to be constructed prior to the commencement of operations.

Car Parking not linked

The original plans included multiple carparking areas with one carpark accessed via Pearces Creek Road and the others accessed via Ramses Street. These carparks were not internally linked allowing through access within the site.

Comment: The development plans have been amended and all carparking will be linked to enable vehicles to access carparking areas from either Street

Alternative Access

Arrangements should be undertaken to enable the proposed development to have access from Rifle Range Road via the 'Porter' property.

Comment: *Alternative access points were considered during the assessment of the subdivision development application (DA 2010/1057) that created the sports field Lot. This is an extract of this report;*

- *“Option 1 – Utilise Existing Unformed Road Reserve From Ramses Street
This alignment enables a direct connection to a local collector road, has limited vegetation within the corridor and can comply with conventional road geometric design parameters. The intersection form with Ramses Street would be that of an urban 50kph configuration.*
- *Option 2 – Utilise Cerreto Circuit and Access Over Portion of Lyle Park Rugby Ground and Utilise Existing Unformed Road Reserve
This alignment option requires traffic to perform a 'non' direct series of turning movements including traversing through two intersections (i.e. new driveway connection to Cerreto Circuit and the Cerreto Circuit loop intersection) before connecting to a local collector road at Ramses Street. The function of Cerreto Circuit is that of a residential street whereby on-street parking is facilitated, thereby additional traffic would impact upon the level of access to residents and the Wollongbar sports field users alike. This access alignment is therefore less desirable than Option 1.*
- *Option 3 – Provide a New Connection To Rifle Range Road
Aside from addressing the issues of land acquisition, Rifle Range Road is classified as a rural sub-arterial road (Source: Ballina Strategic Road Network Study 2007) whereby limited controlled access points are sought, as the primary focus is the movement of traffic and heavy vehicles rather than the provision of local driveways and is therefore undesirable.*
- *Option 4 – Utilise Existing Unformed Road Reserve From Peaces Creek Road
The intersection form that would be required with Peaces Creek Road would be significant (i.e. creation of additional turning lanes and tapers) to enable compliance with the rural speed zoning of the area (i.e. 100kph). This alignment also has severe slopes with natural gradients occurring in the range of 15% to 20% in parts, which exceeds preferred geometric design parameters of 16% and is therefore undesirable.”*

As concluded in this previous assessment, the use of the Ramses Street intersection is most desirable. The report did conclude that the Peaces Creek Road intersection was not the favoured option however this related to this intersection being the only access to the development. This second access will be constructed during Stage 2 of the development and will share the traffic load with Ramses Street. While this intersection will be a more costly option, the intersection will be satisfactory in terms of safety. The second access will also reduce the load on the Ramses Street access road and will not have significant adverse amenity impacts on the surrounding rural properties.

Stormwater Runoff

The proposal will result in drainage water from the development adversely impacting upon adjoining agricultural land. Concerns are also raised about drainage from the proposed access roads onto adjoining residential properties and into existing creek systems.

Comment: A stormwater plan has been provided which is considered acceptable and consistent with Council's DCP. The plan includes details of stormwater management from the development and access roads into the development. Appropriate conditions of consent will be included within any consent granted to ensure these stormwater works are undertaken during construction prior to commencement of the use.

Pedestrian Access

While the development proposes a shared pathway from the Pearces Creek Access, no pathway is located along Pearces Creek. The encouragement of alternative means of transport along the new road but not continued into Pearces Creek Road is considered dangerous to the public.

Comment: This objection is considered to have some merit. It has been determined that while the shared pathway from the Pearces Creek Road will be supported, the construction of this pathway shall not occur until such time that a link from Alstonville can be provided to service this shared pathway. The consent will be conditioned accordingly.

Alternative Site for Sporting Fields

Council should utilise the old drive-in site for sporting fields.

Comment: This assessment will consider the merits of the subject application. It is not the role of the regulatory body in assessing the current application to assess if another site is more appropriate for the proposed development. Merit assessment will conclude that the subject site is suitable for the proposed development having appropriate regard to amenity, traffic, and landuse conflict issues.

The alternative site issue was explicitly addressed within the Development Application (No. 2010/1057) for subdivision. This is an extract from that report;

"The applicant has also stated that "Although the adopted Section 94 has identified the Council owned "drive-in" site in Rifle Range Road for the supply of open space, it was deemed to be unsuitable to adequately accommodate the full extent of required sports facilities for the existing and future population of Wollongbar, whilst it also had the potential to cause conflict with adjoining properties proposed to be developed as residential housing".

Potential Damage to Properties during Construction Period

Adjoining properties may experience damage to structures during the construction of the road.

Comment: A Management Plan will be required for the construction stage of the development. The proposed width and design specifications for the proposed access road from Ramses Street is not considered of such a scale that damage to adjoining properties is likely. However, any damage caused by construction work would be the responsibility of the contractor.

Amenity Issues

The proposal is of significant scale and will result in adverse amenity issues in the locality from traffic, noise, activities associated with the club house. The facility could become a major regional centre for major sporting events.

Comment: The amenity of the locality has been assessed within the body of the report. The application includes sufficient evidence including an Environmental Noise Impact Report, LUCRA and traffic study to conclude that the design and implementation of the proposal will not have unacceptable adverse impacts on adjoining properties. Further details regarding these issues have been outlined within the report below.

Intensification of the Use in Subsequent Years

There is a concern that the site will become a regional sporting facility, resulting in a more intense development with additional facilities such as grandstands, attracting high numbers of visitors to the detriment of local residents.

Comment: The proposal has been assessed having regard to the level of usage generated by the number of sporting fields onsite. This assessment has included a ENIR covering noise levels for the anticipated activities, such being satisfactory at all offsite sensitive receivers. Significant additions to any development proposed will require a new Development Application

Loss of Prime Agricultural Land

The sporting fields contradict the Northern Rivers Farmland Projects Classification of the land as State Significant Farmland.

Comment: This issue was examined in conjunction with the DA assessment for the Subdivision that created the sportsfield Lot. Below is an extract of the response to this objection;

The Northern Rivers Farmland Protection Project and Section 117 Direction No. 5.3 identify the subject land as State Significant Farmland. The Section 117 Direction requires that the rezoning of State Significant Farmland to permit development for infrastructure and public facilities occur only 'where no feasible alternative is available' (refer page 9 of Northern Rivers Farmland Protection Project Final Recommendations Report February 2005), and where such use would be consistent with the Far North Coast Regional Strategy.

The Far North Coast Regional Strategy and s.117 Direction No.5.1 - the subject land is located outside of the Town and Village Growth Boundary identified in the Far North Coast Regional Strategy (FNCRS). The FNCRS states that 'Open space may be located outside the Town and Village Growth Boundary where suitable land is not available within the mapped areas. In determining where future open space may be located outside the Town and Village Growth Boundary, areas of high environmental or natural resource value must be avoided.' Rezoning of land must be consistent with the FNCRS under the s.117 direction.

Importantly, however, the above provisions apply only where the land is subject to rezoning and do not apply to a sporting playing field land use that may be permitted with or without consent. In this regard, Council is not required to formally consider the Northern Rivers Farmland Project's classification of the land as part of the proposed development.

Notwithstanding the above, the foreshadowed future use of Proposed Lot 2 (as shown in the preliminary design plans) would result in a loss of 9.35ha of current macadamia plantations and 4.48ha of current grazing land.

Having regard to the ability of the site to provide a facility that will adequately cater for the needs of the expanding populations of Wollongbar and Alstonville without detrimental amenity impacts upon adjoining properties, the loss of this agricultural land within a 7(i) zone is considered satisfactory in the circumstances. The facility requires a significant size parcel to cater for such a use. The sourcing of alternative sites would also likely be upon agricultural land due to sizing requirements and therefore the loss of agricultural land for such a use is likely unavoidable.

Removal of fence from rear of new Access Road from Ramses Street
Submitters wished to retain privacy screens at the rear of these premises.

Comment: Please see the detailed assessment of the noise issues relating to the access road from Ramses Street in a latter section of this report

Applicable Planning Instruments

Ballina Local Environmental Plan 1987

The subject land is zoned 7(i) Environmental Protection (Urban Buffer) under the provisions of the BLEP. Sportsfields are not a defined land use within the BLEP. While Open Space is also not defined, it is listed as a land use within some of the zoning tables within the BLEP, including the 7(i) zone. Open Space is permissible with consent in the 7(i) zone. Therefore, it is considered that the proposed uses are permissible with consent within the 7(i) zone.

Objectives of Zone

The primary objective is to create a rural buffer in the locality of Alstonville and Wollongbar and to prevent development of an urban character within any part of the zone which is likely to be seen by existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality.

The applicant has submitted that while development of land for the purposes of sporting fields may be interpreted as being predominantly of an urban character, it is also considered that the development provides larger tracks of grassland for playing fields, limited disturbance for built form structures and as such is not deemed to be of an urban character.

The applicant further states that the design of the development is such that the visual impact of the land use from the surrounding village area is reduced. View paths from Rifle Range Road are limited given the fields are separated from the main road by a rural property.

It is concurred that the proposed development will be a suitable buffer between the existing urban areas and surrounding agricultural activities, consistent with the zone objective.

The secondary objective of the zone is to enable development as permitted by the primary and secondary objectives of Zone No 1 (a1), except for development which would conflict with the primary objective of this zone.

(A) The primary objectives 1(a1) are:

- (a) to regulate the subdivision and use of land within the 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 for horticulture, is developed in a manner to optimise its production potential, 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.*

Prior to the submission of this application, Council considered the use of the land for sporting fields during an assessment of the subdivision to create the subject Lots. The current application also includes a LUCRA assessment to enable adjoining agricultural activities to be maintained.

As a result of the subdivision assessment and the current application, the Council is now satisfied that the proposed sporting fields will not adversely impact upon the ongoing use of surrounding agricultural activities for the following reasons:

- The LUCRA lodged in conjunction with the application has satisfactorily demonstrated that the biological buffer will filter spray drift from adjoining properties
- All existing or future agricultural activities are required to comply with existing regulations regarding the use of pesticides. It is considered that the combination of these restrictions and implementation of the biological buffer will ensure public health is not placed at risk upon the subject site from pesticides.
- No other activities likely upon the adjoining agricultural properties are likely to be hampered as a result of the utilisation of the subject site for sporting fields.

The reasoning is supported by the assessment of the subject application.

Draft LEP 2011

In accordance with the provisions of Clause 79C(1)(a)(ii) of the EPA Act 1979, consideration must be given to any draft planning instruments applicable to the site. The Ballina Draft LEP 2011 has previously been placed upon public exhibition on two occasions and Council resolved to adopt the Plan in December 2011, This Draft Plan is applicable to the subject site.

The subject site is zoned E3 Environmental Management. The proposal is best defined as a recreation area in accordance with the provisions of the Draft LEP.

recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

(a) a children's playground, or

(b) an area used for community sporting activities, or

(c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

The proposed development is considered to be consistent with this definition and is permissible with consent within the zone.

The objectives of the E3 zone are to protect, manage and restore areas with special ecological, scientific, cultural, aesthetic or landscape values and provide for a limited range of development that will not have an adverse effect on the special qualities of that locality.

It is considered that the use of the land for sporting fields will ensure the aesthetic and landscape values of the locality is maintained and the development will not have any adverse impact on the natural environment. This report will provide sufficient evidence to support these conclusions.

It is noted that the road reserve from Ramses Street between existing dwellings is currently zoned 2(b) under the Ballina LEP 1987, roads being permissible in this zone. The Draft LEP will continue the residential zoning of this road reserve, being R2 Low Density Residential. Roads are permissible with development consent in this zone.

Ballina Combined DCP

Chapter 1 Policy Statement No 4- Urban Subdivision

This Policy statement provides typical parking requirements for various open space classifications. Having regard to the facilities onsite, Council's technical staff have concluded that the site requires the provisions of 176 spaces, pursuant to this Policy. The development will be providing 297 spaces when Stages 1 and 2 are complete. Stage 1 will provide 203 spaces including 5 bus bays. The remaining 94 spaces will be constructed in conjunction with Stage 2. Bicycle racks will be required as a condition of any consent granted.

Therefore the proposal is satisfactory in this regard. The Local Development Traffic Committee (LDTC) have made some minor recommendations to the layout and construction of the proposed carpark that can be conditions of any consent granted.

Chapter 18- Rural Land

The following sections of DCP Chapter 18 are relevant to the development.

Section 3.1 Landuse Conflict

The DCP aims to reduce conflicts between land uses. The DCP has been compiled having regard to the document prepared by the Department of Primary Industries titled "Living and Working in Rural Areas."

The use of biological and separation buffers between land uses is considered a useful tool in minimizing land use conflict. While the DCP does nominate separation distances for certain uses, Section 3.1 of the this DCP does not specify a minimum buffer distance for sporting fields from surrounding agricultural activities.

The DPI handbook recommends a minimum of 50m for stock grazing and a minimum of 300m for agricultural use such as macadamia plantations. However, these buffers are separation distances from urban development without the incorporation of biological or vegetated buffers.

The application has been accompanied by a LUCRA that provides a satisfactory assessment of the potential conflicts between proposed uses on site and surrounding agricultural activities. The LUCRA has proposed biological buffers incorporated with separation buffers to minimise potential conflict.

The proposed buffers are as follows

Tennis Courts	42m (western boundary) and 49m (southern boundary)
AFL Field	42m (southern boundary)
Rugby Fields	44m (eastern boundary) and 55m (southern boundary)
Netball Courts	36m (eastern boundary) and 38m (northern boundary)

This biological buffer and landuse conflicts will be discussed in a later stage of the report. The provisions of this Clause of the DCP area considered satisfied.

Section 3.3 Environmental and Ecologically Sensitive Areas

The application does include a report from Blackwood Ecological Services. Council's technical staff have reviewed this document and concur with the conclusions presented. The site does contain two Fig trees of significance to be protected and maintained during construction and use. The protection of these trees will be discussed within the body of this report. All other vegetation to be removed upon the site is not considered of such significance that warrants protection.

State Environmental Policy (Rural Lands) 2008

This SEPP aims to facilitate the orderly and economic use of rural lands, protection of rural lands and for the purposes of promoting the social, economic and environmental welfare of the State, reduce land use conflicts and identify State significant agricultural land.

Clause 10 of the SEPP contains a number of matters for consideration including whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominate land use in the vicinity of the development. This Clause further requests details of any measures proposed by the applicant to minimise incompatibility between rural residential landuses

The predominant surrounding land use is of a rural agricultural context. The use of adjoining State significant agricultural land does have the potential to impact upon the ongoing operations upon these lands. However, it is considered that this report will demonstrate that the proposal will not prejudice the adjoining agricultural uses.

The design of the proposal provides for the agricultural separation of the sporting fields to the macadamia plantations and the planting of a biological buffer on the perimeter of the subject site. This buffer will incorporate a minimum of 42 metres separation distance and 30m planted area to address the potential impacts from spray drift.

The proposed fields do not adjoin rural residential, with residential land being located some 360m to the west.

Therefore the proposal is considered consistent with the provisions of this SEPP.

SEPP 55 Contaminated Land

A review of the land contamination report has been undertaken. While the contents of the report are generally satisfactory, one location has been found to have a contamination of lead in the vicinity of a proposed carpark and road. It is considered sufficient that further sampling of this area shall be undertaken and a remedial course of action taken, if necessary, prior to any earthworks commencing onsite. However, the extent of the contamination is considered to be of such a confined area that a condition of consent is a satisfactory means of resolution of this issue.

Report

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

In addition to the applicable planning instruments and policies referenced in the preceding section of this report, other matters of contention and development/planning significance are specifically addressed below.

Traffic and Vehicular Access

Development Consent is sought to provide two points of access to the site.

Ramses Street Access

Access from Ramses Street will be via an unformed road reserve between Hellyar Drive and Cerreto Circuit. This access road will be 7m wide within an existing 20m wide corridor. The road will be approximately 700m in length prior to intersecting with the sportsfield site.

Ramses Street has the capacity to cater for 3,000 vehicles per day. The proposal will, at peak times, generate 662 trips per day. Currently, Ramses Street carries 1,000 vehicles per event day. Therefore, even with 100% of vehicles using the Ramses Street intersection until the construction of Stage 2, Ramses Street and the proposed intersection will be sufficient to cater for the proposed development.

A 2m wide bicycle and pedestrian shared pathway will also be constructed within the road reserve to link Ramses Street to the sportsfields and the existing Lyle Park Rugby field.

The sight distances in both directions at the intersection point of Ramses Street and the new access road are considered satisfactory by Council's technical staff.

The intersection of Ramses Street and Rifle Range Road will require an upgrade to reinforce driver behaviour. This will be a condition of any consent granted.

Pearces Creek Access

Consent is also sought for the provision of a connection to the sports fields from Pearces Creek Road, facilitating traffic from the south and east to access the facility without causing increased traffic to the Wollongbar local roads. The access will be constructed in conjunction with Stage 2 of the development. This 600m access road is located within an existing unformed road reserve and will be constructed to Council's requirements for width.

The intersection with Pearces Creek Road will require an evasion lane and dedicated turning lanes to be provided. While this intersection is along a rural road with a higher speed limit than Ramses Street, sight distances are still considered good in each direction.

A 2m wide shared pathway will also be provided from this intersection to the sportsfields in the future.

This access road is considered suitable for the proposed development and no objection is raised to the location of the proposed intersection.

Traffic Noise

The access road from Ramses Street to the subject site while located within an existing but unformed road reserve, will back on to properties in Hellyar Drive and Cerreto Circuit. An Environmental Noise Impact Report (ENIR) has been undertaken to determine the impact of this access road upon the locality, and particularly residences immediately adjacent to the new access road. The ENIR has found that the development will have an impact on the adjoining residents. The NSW Government in the recently published Road Traffic Noise Policy acknowledges that noise levels up to 55 dB(A) LAeq for a new road are acceptable. A level of 55dB(A) is equivalent to a group of people having a conversation measured at about 1 metre distant.

The ENIR has determined that the potential road traffic noise level for the western access road could be up to 60 dB(A) LAeq 1 hour based on the car park maximum capacity creating a traffic volume of 170 vehicles per hour. Quoting the Acoustic Consultant: *"The predicted impact of 60 dB(A) is a worst case 1 hour impact, which would generally only occur at the beginning and end of games / training activities occurring at the sports facility"*. The proximity of the rear facades of some of the dwellings has had a bearing on this calculation. This is an unacceptable level for residential properties and mitigation measures are necessary.

As a result of these predictions, the ENIR has recommended a course of action that may, or may not result in acoustic barriers erected following a twelve month trial period, commencing once the sporting fields become operational. If the acoustic barrier is built, it is proposed that the barrier will contain gates to allow for rear access for property owners. It is considered from a technical perspective that any acoustic fence should not include gates for rear access by residents. As the use of these gates cannot be regulated, noise travelling through these gates has the potential to adversely impact properties adjoining a gate that has been left open.

The public consultation undertaken by the applicant is recognised as a process undertaken to achieve an outcome that will aim to satisfy affected residents in the locality of this new access road. While no objection is raised to the technical assessment behind the proposed 12 month trial period, some measures proposed by the applicant are not supported as such are subjective and may disadvantage some residents.

Having regard to the anticipated noise levels and adverse amenity issues associated with this noise, it is recommended that a trial period is undertaken including noise monitoring at affected residences pursuant to the ENIR. This noise monitoring will determine what, if any, residential properties are affected by the proposal. It is then recommended that the applicant provides Council with proposed measures to mitigate against adverse noise levels, while attempting to maintain the broader amenity of the residents.

Carpark Access

Originally, the carparks within the site were not linked to prevent the site being used as a "rat run" between Pearces Creek Road and Ramses Street. A link will be included between carparks within the site however bollards will be erected if necessary outside operating times to prevent such occurring if this becomes an issue.

This assessment of the impact of traffic upon local residences is considered satisfactory and subject to the recommendations of this Report when presented to Council, the outcomes will ensure these properties are suitably protected from unacceptable noise levels following commencement of operations upon the site.

Onsite Activity Noise Impacts on Nearby Dwellings

The Environmental Noise Impact Assessment (ENIR) has undertaken a noise survey to determine predicted impacts at the nearest offsite dwellings. Based upon assumed noise levels, impacts at the nearest offsite dwellings are predicted to be within 2dB(A) of the evening background noise. The exception to this is spectator cheering and waste collection noise at 139 Pearces Creek Road and the Porter's dwelling to the north of the site.

Based upon these predictions a number of recommendations of the assessment will be incorporated into conditions of any consent granted.

These recommendations are;

- Sports events generally conducted between the hours of 7am and 10pm daily
- Waste collection be limited to the hours between 7am and 6pm

- Drainage grating over trafficable areas to be secured to prevent rattling
- Mechanical plant to be designed and installed to comply with noise criterion presented within the ENIR
- The management of noise emissions shall be the responsibility of a particular, nominated person, (this person is to be the Manager of Open Space and Reserves Ballina Shire Council).

The ENIR also includes recommendations for noise minimisation during the construction period. A Construction Management Plan will be a condition of any consent granted. This Management Plan will be required to incorporate the recommendations of the ENIR to minimise the disturbance of adjoining properties during this phase.

Land Use Conflict Risk Assessment

A land use conflict risk assessment (LUCRA) has been prepared and submitted with the application to identify potential conflicts that may arise from this development in relation to adjoining land use practices. Horticultural land (macadamia cropping) directly adjoins the property to the east and south. Grazing land is located to the north and residential housing is featured to the east.

A significant element of the LUCRA for the subject development is the planting of a 30m wide biological buffer upon the subject land, along the western southern and eastern boundaries to the macadamia orchard. The buffer will be wholly contained within the subject property and will be fenced to deter access.

As the primary function of the planting is minimising spray drift, species will be selected to replicate a natural rainforest system incorporating lower, mid, and canopy strata.

Due to the current lack of native trees in the locality, intensive planting will be required. This planting will take place immediately upon sufficient completion of land preparation and laying of carpark and tennis surfaces. The areas nominated for planting will be appropriately fenced for protection to act as a deterrent for access until the planted vegetation species are established.

The management of this buffer will be consistent with a planting and maintenance plan lodged in conjunction with the application. Council's Open Spaces and Reserves Section will be responsible for this buffer and have advised that they are satisfied with this document. It is noted that the buffer will take between 5 and 10 years to fully establish.

The buffer will allow adjoining macadamia operations to continue with current operating procedures, although compliance with existing regulations regarding the use of pesticides will become more pertinent. Noise issues from these agricultural activities are not considered to be an issue. However, the buffer will also assist in alleviating any noise for the rural properties due to the inability of persons to view the noise source.

Amenity

The biological buffer and distances from urban properties will alleviate any potential landuse conflict other than noise related issues between the proposed use and residents in Wollongbar. Noise levels have been assessed in a separate section of this report and deemed satisfactory. Lighting levels are also considered to be consistent with the relevant Australian Standards (see section below), and are therefore not anticipated to affect these properties, particularly having regard to separation distances.

It is considered that the amenity of adjoining rural and urban properties is unlikely to be adversely impacted by any other issue emanating from the proposed use. Consequently, it is considered that the proposal, subject to the implementation of the biological buffer and relevant conditions of consent will not adversely impact adjoining rural and urban properties in the locality.

Fig trees

The site contains two significant Fig Trees. Both are mature Fig Trees and pose a significant positive contribution to the landscape. Fig Tree No.1 is located adjacent to a Stage 1 carpark north of the proposed AFL field. While this Fig will be retained, some concerns regarding its ongoing health have been raised due to the proximity of services to its drip line and root system. The relocation of a shared pathway and services beneath this tree will assist in the protection of the ongoing health of the tree. This will be a condition of any consent granted.

The second tree is located adjacent to the proposed access road from the Pearces Creek Intersection. The tree straddles the road reserve and an adjoining property. The owner of the adjoining property will not give consent for the tree to be removed. Having regard to the location of the tree and its significance, the ongoing health of the tree during construction and operation should be ensured. While a report has been submitted by the applicant providing evidence that the tree will not be adversely impacted, the ongoing health of the tree having regard to the proximity of the carriageway, shared pathway and services, to the Tree Protection Zone remains a concern. A suitable condition will be placed on any consent granted requiring further information and/or measures confirming that the tree's on-going retention and health will be achievable.

Earthworks

The construction of the sporting fields and associated carparking and access roads will require large scale earthworks through a cut and fill design. The earthworks are necessary to provide the required surface design for the sporting fields and to integrate stormwater management through the creation of design platforms.

The four platform heights achieved through cut/fill of a maximum 5.5m will be for the AFL field, tennis courts, rugby fields and netball courts.

These earthworks will require approximately 120,000m³ of material to be reshaped.

As mentioned earlier, a Construction Management Plan, addressing measures to minimise amenity impacts, will be a condition of consent.

Landscape Plantings

The ecological assessment accompanying the application recommended landscaping and shade trees to be incorporated into the development and alongside access roads. This landscaping plan will be incorporated into any development consent granted.

Lighting

The proposed lighting scheme for the site has been submitted to a professional consultancy firm by the applicant for review. These consultants have concluded that the lighting design conforms to the Australian Standard for sports lighting. The design also conforms to Australian Standards for the control of obtrusive effects of outdoor lighting. All properties in the surrounding locality are well separated from the site and will not be adversely affected by lighting. The nearest property, being located to the north on a larger agricultural lot, will experience spill lighting levels well below the 10 vertical lux for pre-curfew hours.

The findings of the consultant are satisfactory in this respect. Regardless, a condition will be placed upon the consent requiring all lighting to be placed and managed to conform to the Australian Standard.

Clubhouses and Amenities

The development application has included details of the land areas to be provided for two clubhouse buildings and one toilet block. Details of these buildings including their layout and facilities have not been provided and will be the subject of a future Development Application. While the development does not require Clubhouses prior to the commencement of operations upon the site, sufficient amenities for users will be necessary. This will be a condition of any consent granted.

Public Unformed Road Reserve

It is noted that the unformed road reserve traversing the property will not accommodate access roads for its entirety. It is recommended that those sections of the road reserve be formally closed to avoid legal conflicts regarding through access upon the site.

Conclusion

The proposed development of sporting fields upon the subject site is considered to be consistent with the Ballina Local Environmental Plan 1987, Draft Ballina LEP 2011, Ballina Combined DCP and the relevant State Planning Policies.

The development has been designed to assist in the minimisation of any potential conflicts between the end use and existing surrounding landuses. While it is recognised that the proposal has the potential to create landuse conflicts, certain measures will be incorporated into the development to minimise these potential conflicts. The biological buffer is a significant measure that will primarily filter spray drift from any pesticide use upon the adjoining macadamia plantations. This buffer, combined with separation and compliance with regulations relating to pesticide use will minimise any potential health risks. It will also allow adjoining agricultural activities to continue, albeit with some consideration to the new landuse.

The western access road from Ramses Street also has the potential to adversely impact upon adjoining residences. Predictive modelling has indicated that noise will exceed the recommended noise levels of the Road Noise Policy at certain times during peak usage. However, the applicant has not proposed the installation of noise mitigation measures prior to commencement of the use, rather a 12 month trial period following commencement and further consultation with affected residents.

Council's technical officers are not satisfied with the applicant's proposed options following this 12 month trial. However, they are satisfied that the applicant will have a range of alternative options available, dependent upon noise monitoring during the 12 month trial, to resolve any amenity issues.

It is recommended that the consent be suitably conditioned to facilitate a satisfactory outcome for these residential properties adjoining the western access road, minimising adverse amenity impacts, including noise levels.

Notwithstanding the issues relating to the western access road, the noise assessment concluded that activities upon the sporting fields will not impact upon nearby residential properties and the amenity of those populating the area will not be affected, subject to limitations through conditions of development consent.

Council's technical officers are satisfied with both points of access to the proposal and that the development will have excess carparking to service users of the site. Additional detail will, however, be required regarding the ongoing protection of two significant fig trees onsite, at risk due to the proximity of services and access roads.

On the basis of the proposal before Council, being the development of the site for sporting fields with associated amenities, carparking, sporting field lighting and Clubhouse facilities, it is considered that the merits of the application are such that they are worthy of Council's support. In this regard, the application is recommended for approval, subject to the imposition of conditions of consent.

OPTIONS

1. Refuse the Development Application if Council determines that the development will adversely impact upon adjoining landuses despite proposed measures to address these impacts. (Not preferred Option)
2. Approve the Development Application subject to conditions, with the inclusion of the acoustic wall to mitigate against predicted noise levels generated by the western access road. (Condition 1a)

Noise Attenuation – Access Road off Ramses Street

1(a) A continuous barrier to restrict noise from the western access road shall be constructed in accordance with the design illustrated in Sketch 2 on page 24 of the report by Carter Rytenskild Group (CRG) dated 18 August 2011 but without openings in the position set out in "Sketch 1" on page 23 of the Report prior to use of the facility commencing.

3. Approve the Development Application subject to conditions including a 12 month trial (including further noise monitoring) to determine noise levels emanating from the new western access road and proposed mitigation measures (if necessary) submitted to and approved by Council following this trial period. (Preferred Option Condition 1b).

Noise Attenuation – Access Road off Ramses Street

1(b) During periods of high traffic flow on the western access road, the ENIR has predicted that traffic noise will exceed that deemed acceptable under the NSW Road Noise Policy for a new local road [Currently LAeq (1 hour) 55] potentially by up to 5 dB(A). Due to these predicted noise levels, a suitably qualified acoustic consultant shall conduct an assessment of the road traffic noise for compliance with the NSW Road Noise Policy (or equivalent that exists at the time) at the most disadvantaged property bounding the road during at least 4 periods of peak flow traffic. This assessment shall commence 6 months after the commencement of use of the playing fields and extend across both winter and summer playing seasons.

Should the results of the assessment confirm road traffic noise levels exceed the NSW Road Noise Policy, the applicant is to undertake appropriate actions to provide relief to affected residents which may include redirection of traffic, event management, or negotiated amelioration at affected properties. Proposed measures, if required, are to be submitted to, and approved by, Council prior to implementation.

Overall, on balance it is considered that the application is worthy of approval and the preferred option is to proceed with the noise attenuation proposal as per 1(b).

RECOMMENDATIONS

That DA 2011/373 for the staged construction of sporting fields with associated amenities, carparking, sporting field lighting, Clubhouse facilities, bulk earthworks, civil works associated with the construction of public access roads, the planting of a biological buffer and the provision of utility services to the site at Lot 4 DP 578242, Rifle Range Road and Lot 2 DP 875030, Lot 4 DP 600108, Frank Street, Wollongbar, (Now known as Lot 2 DP 1168781) be **Approved** subject to applicable planning, engineering and environmental condition including the following particular conditions.

Conditions

1. Noise Attenuation – Access Road off Ramses Street

1(b) During periods of high traffic flow on the western access road, the ENIR has predicted that traffic noise will exceed that deemed acceptable under the NSW Road Noise Policy for a new local road [Currently LAeq (1 hour) 55] potentially by up to 5 dB(A). Due to these predicted noise levels, a suitably qualified acoustic consultant shall conduct an assessment of the road traffic noise for compliance with the NSW Road Noise Policy (or equivalent that exists at the time) at

the most disadvantaged property bounding the road during at least 4 periods of peak flow traffic. This assessment shall commence 6 months after the commencement of use of the playing fields and extend across both winter and summer playing seasons.

Should the results of the assessment confirm road traffic noise levels exceed the NSW Road Noise Policy, the applicant is to undertake appropriate actions to provide relief to affected residents which may include redirection of traffic, event management, or negotiated amelioration at affected properties. Proposed measures, if required, are to be submitted to, and approved by, Council prior to implementation.

2. A separate Development Application will be required for any Clubhouses or buildings proposed for the site.
3. Satisfactory public amenities are to be provided onsite prior to commencement of the approved use.
4. At the developer's expense a 7m wide access road is to be provided from Ramses Street to the central roundabout. Details are to be submitted to and approved by Council prior to issue of a Construction Certificate.
5. At full cost to the Developer a centrally located roundabout is to be located near the tennis courts that enables both the tennis court car park and the greater car park to be locked when the fields / courts are not in use. Details are to be submitted to and approved by Council prior to issue of a Construction Certificate.
6. Vehicular connectivity between the greater car park and the stage 2 car park is to include the provision of removable lockable bollards. Details are to be submitted to and approved by Council prior to issue of a Construction Certificate. (Stage 2)
7. The concrete footpath from Pearces Creek road to the development shall not be constructed unless a shared path links this path from the intersection with Pearces Creek Road to Alstonville.
8. The location of the netball courts and the car park is to be amended to improve pedestrian linkage in the area and to prevent people walking across car parks to sports fields. Details are to be submitted to and approved by Council prior to issue of a Construction Certificate.
9. At the expense of the developer, traffic calming is to be included on the western access road and shall be designed such that it controls vehicle speeds without making undue noise. Details are to be submitted to and approved by Council prior to issue of a Construction Certificate.
10. The speed limit on the western access road is to be restricted to 40 kilometres per hour.

11. The western access road is to be surfaced with a finish that minimises tyre noise but retains suitable safety specifications from the intersection with Ramses Street to a distance of 40 metres east passed the last residential property.

Contamination

12. Detailed investigation of the area around sampling site SP36 is to be undertaken to disclose the source of this contamination. Soil is not to be moved or disposed of from this area until investigation has been completed and a report submitted indicating how this area is to be managed. If a remediation action plan is required this is to be submitted to Council for approval prior to the issue of the Construction Certificate.

Construction Management Plan

13. A comprehensive construction management plan is to be prepared that will include the following:
 - Entry exit arrangements to the site for plant and equipment required to undertake the major earthworks (in order to minimize noise and dust nuisance to residents and to minimize tracking out of soil from vehicles).
 - Management of stockpiles to prevent erosion by water or wind.
 - Arrangements to minimize dust production during periods of high wind including triggers for the need to curtail work.
 - Arrangements for dust suppression.
 - Arrangements for monitoring dust production through the major earthworks period
 - Hours of work,
 - Contact details of site manager,
 - Waste management,
 - General erosion and sediment control not already specified.

Construction Noise

14. Construction noise for the project is to be controlled in the manner outlined in the Carter Rytenskild Group report dated 18 August 2011. In addition to points set out at 6.3, it is noted these points trigger the NSW Department of Environment and Climate Change "Interim Construction Noise Guideline", and requires a more defined Noise Management Plan be prepared to take account of actual works programming.

Prescribed hours of operation

15. Noisy activities carried out on the land pursuant to this consent (not including initial construction works) shall only be undertaken between the hours of 7am and 10pm, seven (7) days per week

Vegetation

16. Council shall be provided with additional evidence and or measures from an appropriately qualified person confirming that the fig tree partially located within the proposed eastern access road can be retained in a healthy state during construction and after commencement of the proposed use.
17. Amended plans are to be submitted relocating services and the shared pathway away from beneath the existing significant fig tree north of the proposed AFL field. Details are to be submitted to and approved by Council prior to the Release of the Construction Certificate.

Biological Buffer:

18. A biological barrier to minimise potential land use conflict is to be established in accordance with the Planting and Maintenance Plan prepared by EnviTE Environment November 2011. Consideration is to be given to aspects of security on the site to ensure that the barrier is established within the expected timeframes. No walking track is to be established within the barrier.

Noise:

19. General: Acoustic treatment and practices for onsite activity are to be undertaken in accordance with the recommendations contained at 6.2 of the Report by the Carter Rytenskild Group dated 18 August 2011.

Unformed Road Reserve

20. The unformed road reserve traversing the Sports field site should be closed prior to commencement of use.

Attachment(s)

1. Locality Plan
2. Site Plan – Plan 2(a) Wollongbar Sports Fields – Stage 1
– Plan 2(b) Wollongbar Sports Fields – Stage 2
3. Biological Buffer – Plan 4 – Recommended Site Layout
5. Submissions

8.2 DA 2011/519 - 'Ramada', Martin Street, Ballina

File Reference	2011/519
Applicant	SJ Connelly CPP Pty Ltd
Property	Lots 52 & 53 SP 79299 52 & 53/2 Martin Street Ballina
Proposal	To Undertake a Change of Use of Lots 52 & 53 SP 79299 from Short Term Accommodation to Long Term Accommodation
Effect of Planning Instrument	The land is zoned No 3 Business under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

This report is presented to Council due to the public interest in the development and the recent Land and Environment Court decision, in which Commissioner Brown upheld Council's decision to refuse an application to convert the majority of lots and suites in the building to short term/long term accommodation.

Some aspects of this current application are non-compliant with elements of Council's Development Control Plans.

The section 88B instrument for the Strata Plan that applies to the subject building contains a clause which requires the Owners Corporation to require the written consent of Ballina Shire Council prior to granting any person exclusive use over any part of the Common property.

This application proposes that the owners of Lots 52 & 53 be granted exclusive use of part of the common property. Council must therefore be made aware of the fact that, if it is of a mind to grant approval to this application, by including occupation of the common property as proposed, it must also grant the Owners Corporation permission to grant exclusive use of those parts of the common property.

Proposed Development

The development application seeks Council approval to change Lots 52 & 53 in SP 79299 (units 601/602 & 603/604) from short term tourist accommodation to two long term residential accommodation dwellings. The two lots occupy the top level of the west wing of the Ramada building. There are no building works involved other than the proposed placement of a security gate across a balcony to separate the long term residents from short term/tourists, and the placement of a sky light in the roof of Lot 53.

Attached to this report is a plan showing the proposed development.

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 December to 17 January 2012.

Thirty six owners (being the owners of all the Lots within the building) were notified and subsequently five submissions were received. The contents of these submissions will be addressed later in this report.

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.

Applicable Planning Instruments

North Coast Regional Environmental Plan (NCREP)

Part 4 Urban development

Division 2 Urban Housing

41 Objectives

The objectives of this plan in relation to housing are to promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region's population.

Part 6 Tourism and Recreation

Division 1 Tourism

67 Objectives

The objectives of this plan in relation to tourism are:

- a) to encourage tourism activity that will complement the existing natural and man made features of the region and be of positive benefit to the region's economy, and
- b) not relevant.
- c) to encourage the location of tourist facilities so that they may benefit from existing air, road, and rail services, physical services infrastructure, other tourist attractions, natural features and urban facilities, and
- d) not relevant.

It is considered that the application is in accordance with objective 47, in that it is proposing an alternative form of housing. However, it is contrary to objective 67 (a), in that the objectives refer to the encouragement of tourism, and this application seeks to reduce the number of tourist accommodation units, be it by only 4 units, by changing existing tourist units to long term residential accommodation.

The loss of these units may be of some significance to the tourist industry as they are larger than most holiday units in the area and cater for a market that no other establishment in Ballina caters for, thereby providing accommodation to people that might otherwise not stay in the Ballina area.

Other than the above, the application complies with the objectives of the NCREP.

SEPP 65 – Design Quality of Residential Flat Development.

SEPP 65 – Design Quality of Residential Flat Development is not directly applicable to this application, for as can be seen from the definition of a *residential flat building* below, the policy only applies to developments containing 4 or more self contained dwellings.

The requirements of the SEPP and the Residential Flat Code should, however, be given a level of consideration, as they provide general guidelines for the benchmark of what is considered to be quality design of residential dwellings. These documents are also referred to by Commissioner Brown in the summation of his findings in the earlier court proceedings, and are referred to in this report for these reasons alone.

Residential flat building means a building that comprises or includes:

- a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) *4 or more self contained dwellings (whether or not the building includes uses for other purposes such as shops)*

Clause 30 of the SEPP requires the consent authority to take into consideration the requirements of the Residential Flat Design Code.

The Residential Flat Design Code provides as follows:

"The internal layout of an apartment establishes the spatial arrangement of rooms, the circulation between rooms, and the degree of privacy for each room. In addition, the layout directly impacts the quality of residential amenity, such as access to daylight and natural ventilation, and the assurance of acoustic and visual privacy. The apartment layout also includes private open space."

Building Configuration Apartment Layout:

Apartments should be designed to make the best of opportunities to respond to the natural and built environments and optimise site opportunities, by:

"Providing every unit with a private open space in the form of a balcony or garden. The primary balcony or garden must have a minimum depth of 2 metres."

Comment

Lots 52 & 53 both have balcony depth of more than 2.0 metres.

"Orientating main living spaces towards the primary outlook and aspect and away from neighbouring noise sources or windows."

Comment

Lots 52 & 53 are orientated towards the South and the river and away from neighbouring noise sources or windows

"Locating main living spaces adjacent to main private open space."

Comment

Lots 52 & 53 have their balconies as an extension of the living area.

"Locating habitable rooms, where possible kitchens and bathrooms, on the external face of the buildings thereby maximises the number of rooms with windows maximising opportunities to facilitate natural ventilation."

Comment

Lots 52 & 53 have a window on each side of the unit which facilitates natural cross flow ventilation.

"Requiring living rooms and private open space for at least 70% of apartments in a development to receive a minimum of three hours of direct sunlight between 9am and 3pm in mid winter."

Comment

Lots 52 & 53 face South and as such neither receive direct sunlight into their living rooms and very little to no direct sunlight into the private open space areas.

Commissioner Brown in his summation of the above mentioned Land and Environment Court hearing wrote "*I am not satisfied that the use of the building for long term accommodation can be supported on the basis of the solar access available to the majority of the units identified*". (Lot 53 was one of the lots inspected by Commissioner Brown during the viewing as part of the Land and Environment Court hearing, as an example of a unit that lacked solar access)

"Avoid locating kitchens as part of the main circulation spaces of an apartment, such as hallway or entry space."

Comment

Neither Lot 52 or 53 have kitchens located within the main circulation space (hallway).

SEPP 71 Coastal Protection

The proposed development is consistent with the applicable provisions of this Plan, in particular Clause 8 – Matters for consideration.

Ballina Local Environmental Plan 1987 (BLEP).

Clause 2 Aims, objectives etc:

- 1 the general aims of this plan are to encourage the proper management, development and conservation of natural and man made resources, to promote the social and economic welfare of the community and to provided a better environment.
- 2 the particular aims of this plan are:
 - (b) to encourage the Council to make development control plans regulating the carrying out of development in any zone:
 - (i) by restricting the carrying out of that development to a specified area within the zone, or
 - (ii) by fixing standards or specifying requirements in respect of any aspect of that development.
 - (c) to promote the efficient utilisation of land, services and support facilities in existing urban areas and to provide for the orderly growth of new urban areas which promise a high level of residential amenity,
 - (e) to contribute to continued economic growth of the Shire of Ballina by encouraging a pattern of development which will help to diversify and increase local employment opportunities.
 - (i) To encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents.

Council has adopted a number of Development Control Plans applicable to this application which will be discussed later in this report.

As either short term accommodation or permanent accommodation the use of the lots will effect the efficient utilisation of land, services and support facilities as they will help in providing accommodation diversity and will contribute to local employment opportunities. Whilst it is considered that the use of the lots for short term accommodation may have a more beneficial direct impact on employment, in this regard both uses will comply with these aspects of the aims of the Plan.

It is, however, considered that this proposal is contrary to objective 2(i) as approval would reduce the amount of tourist accommodation available. Whilst it is only four units, as will be explained later in this report, these particular units provide accommodation that is not otherwise available in the Shire.

It has been submitted that, if approval were to be granted to this application, such would prompt other owners of suites within the building to make similar applications thus creating a precedent for the progressive conversion of the building to residential use in the face of the Court's determination.

There are, however, diverse dispositions, designs, and sizes of units in the building and the two subject suites are not mirrored anywhere else. Any future application of this type, ie., conversion of other suites to residential use, would need to be assessed by the Council on its particular merits. Consequently, it cannot be taken that the determination of this application sets any precedent for others.

The site is zoned No 3 Business, for the purposes of clause 9 of BLEP 1987.

The proposed development is defined as a “dwelling” within a “residential flat development”.

The Model Provisions 1980 define a dwelling as “a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile”.

BLEP 1987 defines a residential flat development as a “building containing 2 or more dwellings”.

“Dwellings” and “residential flat developments” are permitted on land zoned No 3 Business under the provisions of clause 9 of BLEP.

The zone objectives for zone No 3 are:

A *The primary objectives are:*

- (a) *to regulate the subdivision and the use of land within the zone to maintain the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina,*
- (b) *to allocate sufficient land for retail, commercial and administrative purposes within the Shire of Ballina and to regulate the subdivision and use of that land so that it is developed in accordance with a commercial hierarchy,*
- (c) *to permit a wide range of uses within the zone that are associated with, ancillary to or supportive of the retail and service facilities within the zone, particularly tourist developments and industries referred to in Schedule 2, and*
- (d) *to permit development where it is compatible with the commercial character of the zone and provides its residents with appropriate leisure facilities to ensure a high level of residential amenity.*

B *The secondary objectives are:*

- (a) *to ensure there is adequate provision for car parking facilities within the vicinity of the zone, and*
- (b) *to minimize conflicts between pedestrians and vehicular movement systems within the vicinity of the zone.*

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

The application is consistent with the objectives of the zone.

Draft Ballina Local Environmental Plan 2011

The site is proposed to be zoned No B3 Commercial Core.

The Objectives of this zone are

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximize public transport patronage and encourage walking and cycling.*
- *To maintain a distinct retail hierarchy as identified in Council's strategic planning framework.*
- *To enable residential and tourist development compatible with the commercial nature of activities in the zone.*
- *To ensure a safe and accessible built environment.*
- *To encourage development that recognises natural, cultural and built heritage.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The application complies with the objectives of this zone

Under the provisions of the Draft Plan the proposal would comprise "Dwellings" in a "Shop Top Housing" development.

Dwelling means "a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile".

Shop top housing means "one or more dwellings located above ground floor retail premises or business premises".

The application is permissible with Council consent.

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

Policy Statement No 2 Car Parking and Access provides that the car parking requirements for a tourist unit in excess of 50sq metres is the same as that of an equivalent residential flat unit, that is 1.5 car parking spaces per unit plus 1 space per 5 Lots for visitor parking.

The Department of Planning approved the original development at a carparking rate below that required in Council's policy. The carparking rate was discounted by 0.75 space for dual key use and further discounted by 0.9 for hotel occupancy of that required in Policy No 2. The basis upon which the Department accepted this reduction was that the development provides for tourist accommodation and a number of patrons will arrive by public transport and will therefore not require a car parking space.

In accordance with the provisions of Policy Statement No 2 of the BSCDCP the proposed amended development would require the provision of 4 spaces (2 x 1.5 spaces + 1 visitor space) for long term occupation whilst the number of car parking spaces allocated to these two Lots or four units in the development approval with the applied reduced rates is 3 spaces (2 x 1 + 2 x 1.2 spaces reduced).

Car parking spaces in the building are part of the Strata Lot with each Lot owning one or two car parking spaces. The two Lots the subject of this application each own 2 car parking spaces. All car parking spaces within the building are pooled in accordance with regulations contained in the Strata Plan By-Laws with no person having the right to use a particular car parking space. The reason for the pooling of the car parking spaces is to enable people attending the other uses within the building the ability to use any car parking space which is not being used. If the spaces were not pooled there would be occasions when there would be a number of vacant spaces within the car parking area whilst at the same time people attending the other commercial uses within the building would be restricted to 6 car parking spaces.

It is considered that this pooling arrangement could be jeopardised if a long term owner was able to have the By-Laws changed to enable exclusive use to the car parking spaces they purchased even though, as Commissioner Brown noted, it must be assumed that any prospective purchaser would be aware of any constraints over onsite vehicle parking.

If the owners of these Lots were able to convince the Owners Corporation to seek to amend the By-Laws to permit sole occupancy of their parking spaces, the overall deficiency in car parking spaces for the building would be further increased, as the 2 Lots own a total of 4 car parking spaces whereas in the calculation for car parking demand they have only been counted as 3 on a pooled basis.

If Council were of a mind to grant consent to this application a condition could be imposed preventing the owners of these car parking lots from taking sole occupancy of their spaces.

Referring to car parking for the other uses within the building, Commissioner Brown states *it is necessary to determine whether sufficient car parking spaces are provided for the other uses on-site even though these uses are not the subject of this application.* When determining the car parking requirements for these other uses Commission Brown adopted a discounted rate of 0.9 for tourist staying in the building. Therefore, as the number of units change from short term accommodation to long term accommodation, this discount rate should reduce. The reduction in the discounted rate in the number of parking spaces for other uses as a result of the proposed change is 0.2 spaces. It is generally accepted that the development is substantially deficient in parking and if this application were to be approved this overall deficiency would be increased by a further 1.2 spaces.

As the deficiency rounds down to a single space, if the Council is otherwise minded to approve the application it could reasonably accept a cash contribution to its parking fund to cover this shortfall. Council normally wouldn't be advised to accept contributions in this locality as the capacity to provide additional spaces sufficiently close to the development is very limited. If the shortfall was for multiple spaces this recommendation wouldn't be made.

Ballina Shire Combined Development Control Plan
Chapter 2 - Ballina Town Centre

Clause 2.2 Development Principles provides in part “*demographic trends combined with other influences such as population growth, the low availability of 'greenfields' residential release areas and the need to support increased accessibility and mobility levels means that the provision of housing in close proximity to services and facilities should be encouraged. Housing should be provided within the Town Centre to address Shire-wide housing needs in a sustainable manner and to create a more vibrant and prosperous Town Centre by increasing the number of potential commercial customers 24 hours a day*”.

The application is proposing the establishment of two long term residential dwellings in accordance with the provisions of Clause 2.2.

Part 4 – General Design and Development Controls

This part of the DCP includes both mandatory and flexible design and development controls. Variations will generally not be permitted to mandatory controls, whereas, flexible controls provide guidelines for design and development.

Clause 4.2 Mixed use development

Objectives

- *To support the integration of appropriate retail and commercial uses with housing*
- *To create more active lively streets and urban areas, which encourage pedestrian movement, service the needs of the residents and increase the area's employment base.*
- *To ensure that the design of mixed use developments maintains residential amenity and preserves compatibility between uses*
- *To facilitate flexible building forms that can be adapted and converted over time.*

The application proposes a limited mixed use development in accordance with this policy. However, it is to be determined as to whether or not residential amenity and compatibility between uses are able to be reasonably maintained.

Commissioner Brown in his judgement found that the mix of short term accommodation and long term accommodation is in accordance with the requirements of Chapter 2 of the Ballina Shire Combined Development Control Plan (BSCDCP), although such a mixture must maintain the residential amenity and preserve the compatibility between the uses.

Referring to the incompatibility between long term and short term occupants, Commissioner Brown in his judgement referred to a previous decision he handed down where his comments have relevance to this case.

I agree that there is likely to be a difference in behaviour, living and activity patterns between short term and long term occupants. A conclusion that short-term occupants are likely to have less concern about maintaining the amenity of the building than long-term occupants is a finding that can be reasonably made, in my opinion. That is not to say that all short-term occupants are likely to have less concern about maintaining the amenity of the building than long-term occupants but only that there is likely to be a greater proportion who use the building differently through their behaviour and activities in and around the building.

The greater frequency of short-term occupants in and out of the building is potentially disruptive for long-term occupants, particularly at times such as early in the morning or late at night. These movements may not always create excessive noise but may occur at a time when long-term occupants reasonably expect not to be disturbed. These disturbances could relate to matters such as doors closing, noise from adjoining apartments and general conversation in common areas. While there may be measures, such as door closers to minimise potential noise impact, it would be unlikely that all sources of noise could be removed.

In general terms, long-term occupants would generally have a greater expectation and promote a more quite and peaceful amenity than short-term occupants, as they would regard their apartment as a home compared to a temporary place to reside for short-term occupants. Long term occupants are also likely to be less tolerant of disturbances and likely to be more concerned with activities that may potentially cause damage to the building, as they would have a greater feeling of ownership and ultimately be responsible through the Owners Corporation for repairs.

Whilst the affect of any conflict may be seen as subjective and different people may be differently affected by any conflict, I am not convinced that it is a matter that can be simply addressed through the By-Laws to the strata plan. There was no evidence to suggest that there was the opportunity for the quick enforcement of the By-Laws in instances where there was a need to rectify an event that was disturbing a resident or occupier of the building. Any need for enforcement, in my view, would be significantly reduced if there was, at a minimum, the separation of long-term and short-term occupants on different floors of the building.

It is agreed that by isolating the long term occupants from short term occupants as is proposed in this application, a number of the issues mentioned above will be alleviated. The proposal though, still requires long term and short term occupants to access their units by common property and share the communal open space areas (swimming pool & gym), which may trigger the kind of conflicts Commissioner Brown refers to in relation to damage to the building and the enforcement of the By-Laws.

Clause 4.17.3 Waste and recycling
Mandatory requirements:

- *Locate storage areas for rubbish bins away from the front of the development where they have a significant negative impact on the streetscape, on the visual presentation of the building entry and on the amenity of residents, building users and pedestrians.*

- *Waste facilities must be provided at a rate of 120litres of waste capacity per dwelling.*
- *Recycling facilities must be provided at a rate of 120 litres of waste capacity per dwelling.*
- *Communal waste facilities are required in the following circumstances:*
 - *where the number of dwellings in a development exceeds six.*
 - *Where the number of individual bins would not fit on the street frontage*
- *Communal waste facilities must be stored in a designated area that is physically and visually integrated into the development at ground or underground such that it:*
 - *is not visible from the street*
 - *is easily accessible to dwelling occupants*
 - *may be serviced by collection vehicles*
 - *has water and drainage facilities for cleaning and maintenance*
 - *Does not immediately adjoin private open space, windows or clothes drying areas*

The waste collection provisions of the policy are complied with. However, concern is expressed at the fact that residents would be required to dispose of their own waste to the waste collection area. This is located on the ground floor in the back of house area of the hotel which is accessed by common property. Such an arrangement may attract both Security and Occupational Health and Safety concerns. The proposal is also contrary to the current By-Laws which require occupants to dispose of their waste in the garbage receptacle on their level.

The matter of the disposal of waste is one to be determined between the applicants and the Owners Corporation/Management, and until such arrangements have been determined to Council's satisfaction, the use of the subject Lots for long-term accommodation should not commence.

Clause 4.18.1 Solar access and overshadowing

Mandatory requirement – *provide some north facing habitable rooms and open spaces in each residential apartment in order to maximise access to sunlight.*

Referring to solar access, Commissioner Brown writes *there can be little argument that for a hotel, where short-term accommodation is the norm and where prolonged exposure to winter sunlight is largely unnecessary, this design is appropriate. In my view, it does not necessarily follow that a similar design solution is appropriate for a residential flat building where there is long-term accommodation and the need for winter sun is unquestionably greater.*

I am not satisfied that the use of the building for long term accommodation can be supported on the basis of the solar access available to the majority of the units identified. (Lot 53 was one of the lots inspected by Commissioner Brown during the viewing as part of the Land and Environment Court hearing, as an example of a unit that lacked solar access). First, the Code refers to “direct sunlight” rather than “effective sun”. The use of “effective sun” significantly

dilutes the effectiveness of the Code requirement of providing direct sunlight to living areas and private open space. Second, the provision of communal open space is not a reasonable basis for the basis of good solar access to the living areas and private open space of a unit, given the different circumstances in which the two areas are likely to be used. Third I do not accept the suggestion that the more tropical climate of Ballina should be used as a basis for inadequate solar access in mid-winter. Fourth (not relevant to this matter). Fifth, the proposal is inconsistent with the objective for solar access and overshadowing in cl 4.18.1 of the DCP in that it does not “ensure that new development provides design consideration for solar access for habitable rooms/living spaces and private spaces”. Sixth, the amount of sunlight is inconsistent with Principle 6- Amenity of SEPP 65 in that it does not provide acceptable “access to sunlight”.

I do not accept that the site constraints and orientation prohibit the achievement of the standards in the Code. The constraint is not the “site” but the design of the existing building.

Lots 52 and 53 are both south facing Lots with limited direct solar access. Lot 52 receives limited direct sunlight via a window in the bedroom and an extension of the living room. Lot 53 receives no direct sunlight at all. This fact is acknowledged by the applicant who proposes the installation of a skylight no larger than 0.6m² in the living room of Lot 53. Such a skylight can practically afford the general amenity of a ‘sunny’ living area, without compromising the summer performance of the space. Whilst this overcomes the requirement for the provision of solar access to the living room it does not overcome the lack of solar access to the private open space area. At this stage Owners Corporation approval has not been confirmed for the installation of the skylight.

The applicant states that *a wide open space balcony is available to service the units and it faces north to maximise sunlight.* This statement is true, and the Owners Corporation has agreed to grant exclusive right to use this balcony. However, it should be pointed out that the balcony does not act as a direct extension of the living areas of the dwellings as required by the policy.

Clause 4.18.6 Private open space.

Mandatory requirements

- *Provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building.*
- *Design private open spaces so that they act as direct extensions of the living areas of the dwellings that they serve.*
- *Clearly define private open spaces through the use of planting, fencing or landscaping features*
- *Screen private open space where appropriate to ensure privacy.*

The proposed development provides an acceptable amount of private open space as a direct extension of the living areas. However, all of the private open space is located on the southern side of the Lots.

Clause 4.19.5 Site facilities

Provides a mandatory requirement “to provide a secure space exclusively for storage with a minimum area of four square metres per dwelling (minimum volume eight cubic metres) set aside exclusively for storage as part of the dwelling unit”.

The application states that the storage area can be provided but does not indicate where or how. Until such details are provided to Council’s satisfaction, the conversion of the subject Lots, for long term accommodation should not proceed.

Liquor License

The applicant has advised that the two Lots in question will be de-licensed from the requirements of the Liquor Licence, such a move will require the consent of the current holder of the Liquor License, who has advised that such permission will not be granted. This would create a mixed situation where the building including the common property will be licensed, and the two Lots will be de-licensed. This matter has been discussed with the licensing sergeant of the Richmond River Area Command who has advised that he does not see this as a concern as there are already a number of premises in the area with the same situation.

If Council were to grant approval to this application it is recommended that a condition be imposed requiring all costs associated with the change in the Liquor License to be met by the applicants.

Social and economic impacts in the locality.

The change from short term to long term will possibly result in an increased occupation of the rooms. At the moment the rooms are occupied approximately 50% of the year or the equivalent of 1600 visitor nights,

Whereas with long term occupation it cannot be assumed that the owners of these units will live in the units on a permanent basis, it would be reasonable to assume a higher occupancy rate would likely occur.

Approval of the application would likely result in the loss of convenience spending of visitors in the immediate locality. This would be countered to a degree by the expenditure of residents in the broader local economy.

Notwithstanding economic factors outlined above, a Lot owner should have a reasonable expectation that they can obtain consent to change their land-use subject to compliance with relevant policy requirements.

Submissions

Five submissions have been received which refer to the following.

Submission from the manager and caretaking service of the hotel withdrawing their support for the application.

Comment

This is not critical to Council's assessment of the application. However, should Council resolve to grant approval to the application, there are a number of agreements between the applicant and the management company which Council should require to be resolved prior to the Lots being activated for use for long term accommodation.

Submission from the manager and caretaking service of the hotel advising that, it is their opinion, that the change of By - Laws permitting the private use of the common property will not be approved.

Comment

This is both an internal matter for the Owners Corporation and an external one for Council by virtue of the conditions of development consent for the building. The applicant has produced a change of By-laws document showing Lots 52 & 53 having exclusive right to use the area adjacent to those Lots and until Council is advised differently, this notice is accepted as an agreement of the Owners Corporation to amend the Strata By – Laws accordingly. The building managers have advised in their submissions that they haven't agreed to this By-law.

Setting a precedent for further similar application

Comment

This matter has been commented on earlier in this report. The particular orientation, floor areas and designs of the subject 2 lots and their top-floor positioning are not replicated elsewhere in the building thus the assessment merits of other similar applications are likely to be significantly different.

Changes to the structure of the of the Owners Corporation and the running of the building.

Comment

Not a matter to be considered as part of this application.

Car parking and waste.

Comment

These matters have been addressed previously.

Loss of standing with regard to attracting new internationally branded hotels.

Comment

Speculation and not a matter to be considered as part of this application.

Investment in the area and the hotel itself, based on the knowledge that the building was to be an internationally branded hotel.

Comment

The possible loss of four units is not going to impact greatly on the working of the hotel, however, if this application is used by other owners as a precedent, which is of concern to those making the submission, the integrity of the hotel could eventually be downgraded. The terms and representations of individual purchase contracts is a private matter and not one for the Council in the determination of this application

Mixed land use

Comment

This matter has been addressed previously.

Lack of Management Agreement.

Comment

There are a number of matters still to be resolved between the applicant and the Owners Corporation/Management. These matters have been mentioned previously, and should Council be of a mind to grant consent to this application a condition should be imposed requiring these matters to be resolved to Council's satisfaction prior to the occupation of the lots on a permanent basis.

The penthouse units add a different dimension/variety to the hotel.

Comment

This opinion is agreed with and has been discussed in this report.

Liquor Licensing.

Comment

Not a matter to be considered as part of this application. However, if the application were to be approved, a condition is recommended to be imposed requiring any changes to the Liquor License to be met by the applicants/landowners and not the licensee.

Lack of utilisation of the units.

Comment

This matter has been addressed previously.

Lack of demand for penthouse accommodation.

Comment

Not a matter to be considered as part of this application.

Public Interest

If the application were to be approved, it would have little impact on the operation of the Ramada Hotel, which is the major accommodation provider in Ballina and acts as a catalyst to tourists visiting the area. What is of concern, and this has been expressed in a number of the submissions, is the possibility of this application being used as a precedent for similar applications.

If this application was to be approved future applicants should not assume that their applications would receive an automatic approval, as each case would have to be assessed on its own merits and, as discussed above, there are likely to be substantial merit assessment differences given the design of the hotel building.

Conclusion

The application seeks to change 2 Lots (4 units) from short term accommodation to long term accommodation as 2 residences.

The application does not comply with the following requirements of Council's Development Control Plans or the Residential Flat Code.

- The units do not receive any, or alternatively, may receive very little direct sunlight in the summer months into the main living areas or private open space though this is proposed to be off-set by installation of skylighting and use of northside verandah areas;
- The application will increase the existing deficit in car parking by an additional 1.2 car parking spaces;
- The units do not have any North facing private open space other than the proposed verandah use.

The application is contrary to the Objectives of the Ballina Local Environmental Plan and the North Coast Regional Environmental Plan, in that, it is proposing the removal of tourist accommodation from the available pool; be it by only two lots or 4 units.

The units involved are unique units in the available tourist accommodation market, in that they are larger than the average units and attract a particular clientele, which would otherwise be lost to the Ballina area.

These units last year accounted for a total of 1,600 visitor nights.

It is considered that the loss of these units will have an overall minimal impact on the economy of the area.

The major concern of submitters is a fear that this application will be used as a precedent for similar applications in the building, which will, if successful jeopardise the existence of the hotel as it is currently known.

Conversely, the application, if approved, would contribute to the diversity and availability of dwellings in the Shire and thus advance the residential objectives of the applicable planning provisions.

The building would add to the mixed development in the Ballina Town Centre and to Shop Top Housing. These are two particular planning goals of the Council for the Ballina Town Centre.

Options

- 1 Approve the application subject to conditions.
- 2 Refuse the application.

- 3 Defer the application until all approvals of the Owners Corporation and Management have been obtained.

Should Council be of the opinion that the loss of tourist accommodation and impacts of the associated flow on effects that would follow from the approval of this application would be marginal and that the development would add to the diversity and stock of residential accommodation in the Ballina Town Centre it is recommended that Option 1 be adopted.

If Council concludes that the particular type of tourist accommodation represented by the subject suites is not represented elsewhere in the Shire and is sufficiently vital to the local tourist industry, and that the limitations of the design of the building as a hotel haven't been satisfactorily resolved then it may choose Option 2.

Should Council be of the view that the deficiencies in the details of the application with respect to by-law approvals, unit storage, skylighting provision, and on-site waste management to service the residential tenancies have not been sufficiently resolved it may choose Option 3.

Having regard for all the circumstances of the case, it is considered that conditioned development consent is warranted subject to particular conditions requiring:

- Building management details being documented and agreed to
- Providing for the servicing of the two residential suites for postal, visitor and waste management services
- Details being provided for personal unit storage
- The monetary contribution of the equivalent of 1 new parking space under Council's parking contributions plan being made
- The applicants/landowners meeting the costs associated with amendments of the liquor licensing of the building
- Owners Corporation approval being given to by-laws amendments to allow private occupancy of common property areas and to the construction/installation of roof windows to the living areas of the apartments
- The installation of sufficiently sized (minimum areas 0.6m) roof windows to the living areas of the two strata lots and
- The requirement of all car parking spaces in the building to be universally made available by a common car-pooling arrangement.

RECOMMENDATIONS

That development application 2011/519 for the change of use from short term accommodation to permanent accommodation of Lots 52 and 53 in Strata Plan 79299 being units 601/602 & 603/604 of the Ramada Hotel be **APPROVED** subject to the attached conditions of consent.

- 1) Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, except as modified by any condition of consent.
- 2) The applicants/landowners are to be responsible for the all the cost associated with any change required to the liquor licensing of the building.
- 3) The allotments are not to be used in accordance with the terms of this notification until Council has been advised that the changes required to be made to the Strata Plan By-Laws have been registered at the relevant Government agency. Such changes are to be submitted to and approved by Council prior to lodgement.
- 4) The allotments are not to be used in accordance with the terms of this notification until Council has been advised that the changes required to be made to the instrument setting out the terms of easements and restrictions pursuant to Section 88B of the Conveyancing Act, 1919 and Section (3) of the Strata Schemes (Freehold Development) Act 1973, have been registered at the relevant Government agency. Such changes are to be submitted to and approved by Council prior to lodgement.
- 5) Details are to be provided to and approved by Council for the provision of a dedicated 8m³ of personal storage within each unit in compliance with the guidelines, prior to the Construction Certificate being issued.
- 6) The payment to Council of a monetary contribution towards the provision of one car parking space, which is required as a result of this development application. The contribution amount is to be paid prior to the issue of the Construction Certificate, and is to be paid at the rate applicable at the time of payment.
- 7) The Occupation Certificate is not to be issued until the roof windows to the living areas of the two apartments, have been installed to the satisfaction of the Owners Corporation and Council. The roof windows are to be of a size (minimum areas 0.6m) to provide adequate solar access to the living areas of the two strata lots.
- 8) A Building Management Plan encompassing but not restricted to the following, is to be prepared to provide for the requirements of permanent residents. The Building Management Plan is to be submitted to and approved by Council, prior to the issue of the Occupation Certificate.
 - A dispute resolution mechanism;
 - The collection and delivery of mail and parcels;
 - The disposal of waste;

- A mechanism for allowing visitors to the subject allotments into the building;
 - A mechanism whereby tradesmen can be permitted into the building to attend the subject allotments
- 9) An Occupation Certificate for the Lots' permanent residential use is not to be issued until Council has been advised that the required changes to the liquor licensing of the building have been completed.
- 10) Car parking in the building is to be operated on a universal access pooled basis other than for those spaces that involve stack parking and a car parking plan showing the use of all car parking spaces in the building is to be prepared and submitted to and approved by Council prior to any Occupation Certificate for the subject lots being issued.
- 11) All conditions of this consent are to be completed to the satisfaction of Council prior to any Occupation Certificate for the permanent residential occupation of each lot being issued.

Attachment(s)

1. Locality Plan
2. Floor plan of the proposed development
3. Submissions

8.3 DA 2011/458 - Bunnings Warehouse, West Ballina

File Reference	DA 2011/458
Applicant	Bunnings Group Ltd
Property	Lot 135 DP 872709, 507 River Street, West Ballina
Proposal	To Undertake the Construction of a 10,458 square metres Bunnings Building, Containing Hardware, Building Supplies and Timber Sales, Café, Children's Play Area, a 742 square metre area under Fabric Sail at the Front of the Building for the Sale of Nursery Items and Garden Supplies, the Relocation of the "Big Prawn" Structure, 257 Car Parking Spaces Associated Advertising Signage, Noise Barrier Fencing and Landscaping
Effect of Planning Instrument	The land is zoned 2(a) under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

The report is presented to Council due to the size of the development and the public interest in the development.

The development application has now been advertised and Council has received two submissions by way of objection one of which cannot be reconciled.

Proposed Development

It is proposed to demolish the existing buildings on the site and relocate the "Big Prawn" to a position adjacent to the River Street/Quays Drive roundabout. The structure is to be freestanding and will be completed by the provision of a tail, the prawn is shown to be 15 meters in height which is higher than the present structure. Approval has previously been issued for the demolition of the existing buildings via DA 2010/58 and is not part of this application.

The development will contain 10,458 square metres of hardware and building supplies including 1,901 square metres of timber trade sales, 1,477 square metres of bagged goods, a customer café, children's play area, 742 square metres under fabric sails between the building and River Street of open nursery/garden supplies area, 257 car parking spaces and 3,746 square metres or 15% of the site is to be landscaping. The building is rectangular in shape approximately 125 metres long x 70 metres wide.

Customers will enter and exit the site via the River Street/Quays Drive roundabout whilst delivery trucks will enter the site from Horizon Drive and exit via the roundabout.

Delivery trucks will typically be unloaded between 7am and 6pm. Trucks will not be permitted to enter the site between 8.30am – 9.30am and 2.30pm - 3.30pm on school days, in order to alleviate congestion with traffic attending Emmanuel College.

It is intended that the shop be open from 6.30am to 9pm Monday to Friday and 8am to 6pm on weekends and most public holidays.

The shop will employ a total of 120 either full time or part time employees with a maximum of 45 employees on the site at any time.

A 5m and 3.6m high timber noise attenuation fence is proposed adjacent to all the adjoining residential properties. The 5m wall is to be provided along the northern boundary to ameliorate the noise from the unloading operations and from the timber trade sales area. Council has advised the applicant, that timber walls of this height are not considered appropriate, and if Council were to grant approval to this application a condition will be imposed requiring the fence to be constructed from a material suitable to Council.

The 5m high fence is proposed to be constructed 3.3m from the property boundary with the area between the fences planted with trees and shrubs to lessen the impact of the fence on the adjoining properties. It has been put to the applicant and the applicant has agreed to having a condition imposed in any consent, which may be issued, requiring the fence to be moved a further 1.5m from the property boundary. This will facilitate better landscape screening of the wall and will lessen the impact of the trees on the adjoining residents.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The matter was advertised from 14 November 2011 to 13 December 2011.

Sixty one owners, residents and agencies were notified and four submissions, two by way of objection, were received from individuals and two (2) responses from Government agencies.

The contents of these submissions will be addressed later in this report.

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.

Applicable Planning Instruments

North Coast Regional Environmental Plan (NCREP)

The NCREP sets down a range of aims, objectives and policies to be followed by a Council in researching and establishing its LEP controls – ie. It is policy and process based not site-specific.

Clause 49 of the NCREP tall buildings provides for buildings over 14 metres to be subject to the opportunity for public comment, and assessed for their local impact and regional significance. Whilst the building is less than 14 metres the “Big Prawn” is shown as being 15 metres. The “Big Prawn” was advertised as part of the overall notification process and no comments were received relating to the “Big Prawn”. Referring to the assessment of the Big Prawn in a local impact and regional significance, it is considered that the “Big Prawn” is too high in relation to surrounding structures and it is considered that if Council were of a mind to grant consent to this application a condition should be imposed requiring the height of the “Big Prawn” to be commensurate with the existing structure. Referring to the regional significance, it is considered that the “Big Prawn” is part of the region’s tourist infrastructure.

SEPP 55 Contaminated Land

In 2010 the site was declared to be ‘significantly contaminated land’ under the Contaminated Land Management (CLM) Act on the basis that petroleum hydrocarbon impacted groundwater had migrated off site. NSW Environment Protection Authority (EPA) regulates significantly contaminated land under the CLM Act.

The EPA required the previous operator of the site Caltex, to enter into a Voluntary Remediation Proposal (VRP) to address contamination both on the site and offsite.

The Department of Environment, Climate Change and Water (DECCW) (formerly the EPA) advised Council on 12 December 2011 that the requirements of the VRP had been satisfied.

DECCW on 2 February 2012 issued a notice of completion of approved voluntary management proposal, advising that it is satisfied that the terms of the proposal have been carried out in accordance with its approval.

Possible minor contamination of the site is not considered a concern as the proposal will effectively cap the site, as the proposed development comprises a slab on ground and sealed car park across the majority of the site, with the remainder of the site being utilised as landscaping. It is considered therefore, that no additional site audit statement will be required for the whole site.

SEPP 64 Advertising and Signage

Some of the signage is business identification signs and some is general advertising.

Clause 8 of the State policy requires the consent authority, prior to granting consent to an application for signage, to consider the objectives set out in clause 3(1) and the assessment criteria specified in Schedule 1.

The advertising signs comply with the objectives, contained in Clause 3(1).

Clause 9 provides that business identification signage is exempt from the provisions of Part 3 (controls of advertisements) of the SEPP. However the remaining signs are required to comply with the provisions of Part 3.

The relevant clauses of Part 3 are:

Clause 13 provides the matters for consideration:

The application complies with the requirements of Clause 13

Clause 18 requires advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road to be referred to the Roads and Maritime Services (RMS),

The proposed signs are greater than 20 square metres and are visible from the River Street a classified road. As such the application was referred to the RMS who have advised, they have no issue with the proposed Bunnings hardware store.

Schedule 1 Assessment criteria

1 Character of the area

- Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?
- Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?

2 Special areas

- Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?

3 Views and vistas

- Does the proposal obscure or compromise important views?
- Does the proposal dominate the skyline and reduce the quality of vistas?
- Does the proposal respect the viewing rights of other advertisers?

4 Streetscape, setting or landscape

- Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?
- Does the proposal contribute to the visual interest of the streetscape, setting or landscape?
- Does the proposal reduce clutter by rationalising and simplifying existing advertising?
- Does the proposal screen unsightliness?
- Does the proposal protrude above buildings, structures or tree canopies in the area or locality?
- Does the proposal require ongoing vegetation management?

5 Site and building

- Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?
- Does the proposal respect important features of the site or building, or both?
- Does the proposal show innovation and imagination in its relationship to the site or building, or both?

6 Associated devices and logos with advertisements and advertising structures

- Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?

7 Illumination

- Would illumination result in unacceptable glare?
- Would illumination affect safety for pedestrians, vehicles or aircraft?
- Would illumination detract from the amenity of any residence or other form of accommodation?
- Can the intensity of the illumination be adjusted, if necessary?
- Is the illumination subject to a curfew?

8 Safety

- Would the proposal reduce the safety for any public road?
- Would the proposal reduce the safety for pedestrians or bicyclists?
- Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?

It is considered that the proposed signage complies with assessment criteria.

SEPP 71 Coastal Protection

The proposed development is consistent with the general provisions of this Plan, and in particular Clause 8 – matters for consideration.

Ballina Local Environmental Plan 1987 (BLEP).

The site is zoned 2(a) Living Area Zone, for the purposes of clause 9 of BLEP 1987.

The proposed development is defined as a “Shop”. For the purposes of Clause 6 of BLEP “Shop” is defined in the 1980 Model Provisions as;

Shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause.

Shops are listed as a permissible land use (advertised development) on land zoned 2(a) Living Area Zone in the land use tables in clause 9 of BLEP.

The zone objectives for Zone 2(a) Living Area are:

- A The primary objectives are:
- (a) to regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area,
 - (b) to permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store), and
 - (c) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban and tourist facilities.
- B The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.
- C The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.

By virtue of Objective A(b) the development is not consistent with the objectives of the zone.

The scale and operational characteristics of the proposed development being that of a "Bulky Goods" outlet is not what would normally be considered as a mainstream shop, and certainly not one you would expect to find in a normal living area zone.

This is an opinion not shared by Council who resolved to grant approval to a bulky goods/general retailing complex on the adjoining property in April 2011.

It should also be pointed out that, the Ballina Draft Local Environmental Plan 2011 provides for the establishment of such a development, this will be addressed more fully below.

Clause 17 Limitation on Building Height provides that approval shall not be granted to a building taller than 6.4 metres in height unless the Council is satisfied the building will not:

- (a) adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy,
- (b) significantly obstruct views from adjacent buildings and public places,
- (c) have an adverse impact on the scenic or landscape quality of the locality, or
- (d) exceed 2 storeys.

The proposed development will not adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy, due to the distance between the proposed building and the adjoining dwellings.

The proposed development will not significantly obstruct views from adjacent buildings and public places, as there are no significant views in the area.

The proposed development will have no adverse impact on the scenic or landscape quality of the locality as there is no quality scenic or landscape vistas in the locality.

The building is 2 storeys high.

Draft Ballina Local Environmental Plan 2011 (DBLEP)

The Draft Ballina Local Environmental Plan 2011 was adopted by Council on 15 December 2011 and has been referred to the Department of Planning for the making of the Plan.

The DBLEP proposes to zone the site B6 Enterprise Corridor.

The DBLEP dictionary defines the proposed development as a "Hardware and Building Supplies."

Hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas:

Hardware and building supplies are a permitted use within zone B6 Enterprise Corridor.

The objectives of the B6 Enterprise Zone are:

- To promote business along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.
- To provide for residential uses, but only as part of a mixed use development.
- To encourage integrated mixed use development centred on business and office based activity.
- To minimize conflict between land uses within the zone and land uses within adjoining zones.
- To encourage development that achieves the efficient use of resources such as energy and water.

The proposal complies with the objectives of the zone.

Referring to the objective at the third dot point, limiting retailing activities in order to maintain the economic strength of the existing commercial centres. This is a reference to activities which you would normally expect to find in the existing commercial centres. This point does not apply to this development as it is generally not the type of development you would normally expect to find in one of the existing commercial/retail centres.

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

As the implementation of the DBLEP is imminent and affects Council's future direction, Council may choose to place significant weight on the requirements of the DBLEP in determining a development's permissibility.

Ballina Shire Combined Development Control Plan (BSCDCP)

BSCDCP classifies the land as T1 Tourist Accommodation.

The preferred land uses for a T1 Classification on land zoned 2(a) Living Area are:- motel, caravan park, low density forms of tourist accommodation.

It is proposed that the T1 Classification will no longer be applicable to the site under changes proposed for the BSCDCP in keeping with the changes included in the DBLEP.

Chapter 1 Policy Statement No 2 Car Parking and Access

The proposed development provides for the parking on site of 257 cars which is in excess of the number required for a development of this kind and size. It should also be noted that the minimum width of car parking access aisles is 7.2 metres where the normal width is 6.5 metres. This additional width is provided to enable safe pedestrian access whilst walking to and from the store.

All manoeuvring areas are in accordance with the relevant codes.

Initially the application proposed delivery vehicles were to enter the site from the River Street/Quays Drive roundabout and exit via Horizon Drive. It was subsequently suggested to and agreed to by the applicant that the truck path be reversed. This eliminates the need for trucks waiting to be unloaded to wait adjacent to the rear of adjoining properties and instead wait in the access lane between Horizon Drive and the unloading dock.

It has also been suggested to and agreed to by the applicant that in addition to the shown landscaping, shade trees be placed within the car parking area, which will also assist in the drainage of the site, by creating additional absorbent areas amongst the hard paved parking area.

Chapter 1 Policy Statement No 3 Urban Building Lines

Policy Statement No 3 provides for a building line setback of 6 metres to River Street, and 6m to Horizon Drive with the possibility of a 2m reduction to Horizon Drive as this frontage is a secondary frontage.

The proposed development provides for a setback of 20 metres to the building and 8.5 metres to the front of the open nursery/garden supplies area from River Street and 8.5 metres from Horizon Drive to the building. All setback areas other than accessways are to be extensively landscaped with special emphasis on the Horizon Drive frontage where additional tree plantings have been provided in an attempt to screen the western elevation of the building.

Chapter 1 Policy Statement No 7 Building Heights

Policy Statement 7 provides that buildings shall be no more than 2 storeys and restricted in height to 6.4 metres, except where the building will not:

- (a) adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy;
- (b) significantly obstruct views from adjacent buildings and public places;
- (c) have an adverse impact on the scenic or landscape quality of the locality;
- (d) exceed 2 storeys; and provided
- (e) no well founded objection, in the opinion of the Council, is raised to the proposed development by persons likely to be affected by that development.

The height of the building will be 9.5 metres from finished floor level to the height of the parapet.

The height of the building will not adversely affect the amenity of adjoining properties. It is located a sufficient distance from any dwelling so as not to impact in any way on the amenity of the adjoining properties by overshadowing or loss of privacy.

The proposed building will obstruct the views, as limited as they may be, from adjacent properties. However, this obstruction of views may not be as severe as if the area were to be developed for residential or other commercial development, which could result in 2 storey buildings being erected much closer to the existing residences, thereby having a bigger impact on the local residents. The obstruction of views in this instance, will be mitigated by a landscaping plan to provide trees ranging in height from 6 metres to 20 metres along the boundary of all adjoining properties.

The height of the building will not detrimentally impact on any scenic or landscape quality of the locality.

The proposed building will not contain more than 2 storeys.

The matter of height has been raised by one objector

The matter of the height of the building has been discussed with the applicant, who advised that the height of the building was required for the stacking of the racks used in the building and was also part of the Bunnings corporate image of being a warehouse.

Chapter 1 Policy Statement No 11 Flood Levels

Policy Statement No11 requires buildings constructed within the flood plain to comply with the minimum floor level set for the area. In this instance the minimum floor level is set at 2.7m AHD. The minimum floor level of the proposed building is 2.7 AHD which requires the area under the building to be filled approximately 1.1metres with the car parking area graded from this level to the street and adjoining properties at existing ground level. There will be no significant change in levels at any property boundary.

Chapter 13 Stormwater Management

The site complies with the requirements of the policy in that 800 square metres of the landscaped area is to be used as an on-site stormwater detention area and a 30,000 litre rainwater storage tank is to be provided to capture roof water and use it for various functions on the site.

Chapter 14 Advertising Signage

The advertising is restricted to Signs painted on the side of the building (Wall Sign) and a new panel in the existing Pylon Sign.

The policy requires wall signs to comply with all the following development controls:

- Only one sign per building elevation; and

Comment

The building has 2 signs on the western, eastern and southern elevations. This is considered reasonable due to the size of the walls and the compatibility between the size of the signs and the size of the wall. It is considered that the signage actually assist the streetscape appeal of the building.

- Does not project above or beyond the parapet or eaves; and

Comment

The signs do not project beyond the parapets or eaves of the building.

- Does not protrude more than 300mm from the wall, unless OH&S standards require a greater protrusion; and

Comment

The signs are painted on the wall of the building.

- Does not extend over a window or other opening, or significant architectural feature;

Comment

The sign does not extend over any window or other opening, or significant architectural feature.

- Size, shape and location determined by façade grid analysis.

Comment

The signs are in accordance with the above.

- Must not have an area greater than 10% of the building elevation, if the elevation is > 200m²

Comment

The signs occupy approximately 12 % of the building's elevations. This exceedence is considered reasonable taking into account the size of the building and the fact that the signage is in 6 separate panels located around the building, and is considered to improve the appearance of the building by improving the streetscape appeal of the building.

The pylon sign will comprise the placement of a new advertising panel in the existing pylon sign.

Otherwise prohibited.

The proposed signage does not comply with two of the above listed requirements, however, taking into account the size of the building, and the size and location of the signage, it is considered that the signage lessens the impact of the building by improving the streetscape appeal of the building.

Social and Economic Impacts.

The proposed development will have a range of economic benefits. These include the expenditure of \$15 million during construction, the provision of much needed additional employment, the on going spending of the approximate 120 full and part time employees, and the significant multiplier effects to benefit the local community.

Landscaping

The landscaping is to involve the planting of numerous trees on the site and with Council approval within the footpath area. The trees will be selected for their strong visual character and appropriateness to this location, with native species where appropriate complemented with hedging, groundcovers and native grasses. The plantings are designed to soften the built form of the building, noise attenuation fences and car park, with additional plantings in the car park to provide shade. Council's Manager Open Space and Reserves has advised that some of the trees along Horizon Drive may be located within Council's road reserve in order to improve the general amenity of the area.

The noise attenuation fences are to be located a minimum of 2.2 metres from the boundary of the adjoining residential properties. This area is to landscaped with trees and shrubs, so as to lessen the impact of the fences on the adjoining residential properties.

Local Traffic Committee

Recommendations from the Local Traffic Committee will be submitted to this Council meeting for adoption. The report recommends that the 4.5t load limit imposed on part of Horizon Drive be lifted.

If Council is of a mind to not adopt the recommendations of the Local Traffic Committee in part or in full, the following conditions will be required to be applied to this application.

Delivery vehicles to the subject site must not exceed 4.5T in accordance with the requirements of the Motor Transport Act.

The matter of B-Doubles accessing the subject site was also discussed at the meeting and it was determined that a decision not be made on this matter until further negotiations have been held with the school,

Noise

A noise assessment of the proposed development has been undertaken by Wilkinson Murray in accordance with the relevant Australian Standards. The noise assessment included provisions for the assessment of an accumulation of all noise associated with the site. The noise assessment predicted a slight increase of 3dBA (a level barely detectable) above the acceptable standard. The applicant has been advised that this is unacceptable and requested to investigate alternative procedures, to eliminate this exceedance.

At the time of writing this report an alternative solution had not been produced. If Council is of a mind to grant approval to this application, a condition will be imposed requiring this exceedance to be corrected prior to the operation commencing. A further condition will be imposed requiring a compliance report within 1 month of the operation commencing.

Access committee

The development has been discussed by Council's Access Committee who have made the following recommendations:-

- The accessible parking spaces should be covered by a metal roofed carport or like structure.
- That a covered walkway links the accessible parking spaces to the entrance doors of the proposed development.

This information has been passed onto the applicant, who has responded with the following:-

Neither the marked pedestrian walkway nor the covering/awning are standard Bunnings features.

With regard to the pedestrian walkways I note that all aisles in our car parks are oversized which allows easy and convenient access for pedestrians and cars. In fact it is Bunnings' view, and experience from almost 200 warehouses, that marked walkways are redundant in our car parks and their absence does not present a safety concern.

With regard to the covering/awning I note this is only for a short distance from the main entrance. In heavy rain events it is entirely reasonable to anticipate mobility impaired customers to wait in the main entrance lobby until the rain had subsided before attempting to leave the store.

If Council is of a mind to require the implementation of the covered walkway the following conditions should be imposed.

A 1.2 metre wide covered walkway is to be constructed from the entrance of the building for the length of the accessible car parking spaces. The footpath is to be located between the accessible car parking spaces and the building.

The accessible car parking spaces are to be covered by a metal roofed carport or like structure, details to be provided to and approved by Council prior to the release of the Construction Certificate.

The suitability of the site.

The proposed site is considered suitable because:-

- The proposed development is consistent with the desired future character of the area, and with the objectives of the planning controls adopted for it (DBLEP)
- The site is directly accessible from an arterial road and requires no access from residential streets and is of an appropriate size and configuration to accommodate the development.
- The subject site provides good connectivity with the Pacific Highway for the supply of goods.
- Site planning and landscaping have both been designed to minimise any adverse impacts on adjoining residential development.
- The site is not impacted by any environmental concerns.

Contributions

The existing use of the site included a 24 pump service station, convenience store, restaurant, takeaway store, seafood retailer, bait and tackle shop and a gym. The existing credits from these uses were greater than the demands the proposed development places on the roads, sewer servicing, water supply and Rous Water. Therefore no contributions are applicable to the proposed development.

Submissions

Submissions have been received from 4 respondents with one making numerous submissions. Two submissions were opposed to the development and two were in favour. The matters raised in the submissions are as follows. A copy of all submissions received are attached.

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

The development is too large for the site.

Comment

The development is not considered to be too large for the site and in fact is of such a size that it is able to provide more car parking spaces than is required by Council's policy, the development also proposes additional building setbacks than that required by the BCA and Council's policy.

Warehouse to service other Bunning's stores.

Comment

The proposed development will not be used to service other Bunnings stores.

The development should be located in an industrial area.

Comment

The use of the site is in keeping with the desired future character of the locality as contained within the Draft Ballina Local Environmental Plan 2011.

The site should be used for residential purposes.

Comment

Council, through the Draft Ballina Local Environmental Plan 2011, has made a conscious decision that this area not be developed for residential uses.

The site being used by hoons/ or unsocial behaviour.

Comment

This is considered a reasonable concern and has been passed onto Bunnings as it will be a matter for them to address as part of their ongoing management of the site.

Improvements to road infrastructure

Comment

It is considered that this development will not generate sufficient additional traffic above that of past uses of the site, to warrant such an action.

Devaluation of property

Comment

This is considered as speculation only as no qualified evidence has been produced to support this statement.

Bunning's apathy towards residents

Comment

Bunnings have engaged a consultancy group who distributed letters to all local residents, including offers to meet and discuss the proposal in more detail. A meeting was held with representatives of Emmanuel College, a flier was distributed to 800 homes in the West Ballina area, a doorknock was undertaken of the adjacent residents and a community information session was conducted at the Ballina RSL.

Delivery trucks during peak school traffic times.

Comment

Bunnings have advised that they have amended the hours that trucks will be permitted to unload to exclude the hours between 8.30am-9.30am and 2.30pm – 3.30pm on school days.

Expansion of Emmanuel College.

Comment

Any possible future expansion of Emmanuel College cannot be considered as part of this application, and the impact of Bunnings on any expansion which may take place will be assessed at that time.

Noise assessment including the cumulative impact.

Comment

This matter has been addressed in the report.

Truck parking area adjacent to the rear of the residential properties.

Comment

It has been suggested to Bunnings and they have agreed that the direction of travel of trucks be reversed. This reversal of travel direction will eliminate the need for trucks to wait behind the adjoining residential properties.

The 110 staff will park on Horizon Drive making the situation of traffic much worse and the danger to pedestrians greatly increased.

Comment

The maximum number of employees proposed to be on site at any time will be 45. Employees cars are included in any car parking calculation, for on-site parking provisions and in this instance Bunnings are providing more cars than required. It is not anticipated that any cars will be parked in Horizon Drive.

Referring to the concern associated with the dangers to pedestrians, this is considered to be a legitimate concern where pedestrians have to walk on the road. If Council is of a mind to grant approval to this development application, a condition will be imposed requiring the applicant to construct a footpath from the River Street/Quays Road roundabout to the Horizon Drive Westland Drive intersection, such a footpath will reduce the risk of danger to pedestrians.

Road surface of Horizon Drive

Comment

Council's Civil Services Group has advised that the road surface in Horizon Drive is more than capable of handling the additional traffic from the proposed development.

The Statement of Environmental Effects Attachment E page 55 makes incorrect references to a number of matters.

Comment

The Statement of Environmental Effects Attachment E page 55 refers to the assessment criteria required by SEPP 64 which relates to advertising only, not the development as a whole.

Impact on amenity, design of the complex and character of the complex in relation to the surrounding area.

Comment

Taking into account the location of the site, the size of the site, the future zoning of the site, the landscaping to be developed around the site and the separation of the building from adjoining residences or any building, it is considered that the proposed development will not unduly impact on either the current or the future planned amenity of the locality.

Impact from truck exhaust

Comment

The reversal of the delivery truck direction of flow will eliminate the need for trucks waiting to be unloaded to park behind the adjoining residential developments, thereby removing the major source of truck fumes.

The visual scene from the backyard will be a 5m wooden sound barrier fence in front of an 11m massive square block building. This building will also limit the view of the sky from the backyard.

Comment

Whilst it is acknowledged that this is a concern to the residents it should be pointed out that Council's policy and the Building Code of Australia provides that a building for any use within any zone can be constructed to a height of 6.4 metres in the same location as the fence.

It should be noted that the noise attenuation fences will be located a minimum of 2.2 metres from the property boundary. Referring to the particular circumstance of the person making the submission, the noise attenuation fence was originally shown as being 3.3 metres from the boundary. However it has been put to the applicant and the applicant has accepted that this fence be moved a further 1.5 metres from the property boundary, making a distance of 4.8 metres from the property boundary. The area between the fence and the property boundary is to be landscaped with trees and shrubs to lessen the visual impact of the fence.

The applicant has also been advised that a timber fence is not acceptable, and if Council were to grant approval to this application, an alternative durable material will have to be used, with details provided to and approved by Council prior to construction.

Health and safety of school children

Comment

It is hard to image how this development will have an impact on the health and safety of children walking between the bus stop and the school, as they walk on the western side of the road, and will not be required to cross any access point to be used by the proposed development.

Lack of footpath

Comment

This is a matter identified by Council as requiring attention and if Council resolves to grant approval to this application, a condition is recommended to be imposed requiring the construction of a footpath from the intersection of Horizon and Westland Drive to the roundabout at River Street and Quays Drive.

The requirement for all B Double trucks to make a 180⁰ turn around a very small roundabout to enable the vehicles to travel back to the By-Pass.

Comment

The original application required trucks exiting the site to make a 180⁰ turn around the roundabout at the intersection of River Street and Quays Drive to gain access back to the By-Pass. It should be noted that the change in the direction of travel of delivery trucks, will eliminate this requirement and require trucks to make a 90⁰ turn at the roundabout to travel back to the Highway.

When purchasing the property the land was zoned tourism (and to my knowledge this has not been changed)

Comment

The land has never been zoned tourism, the zoning of the land since 1987 has been 2(a) Living Area. The land was, however, classified as Tourist Accommodation in the BSCDCP. It is true that the zoning has not been changed. Council has placed on exhibition the Draft LEP 2011 which proposes to change the zoning of this property. This plan has been certified, exhibited and adopted by the Council and its assent by the government is imminent.

Very high and bright security lighting poles will be erected in the development grounds and will flood light not only my backyard and my house but the backyards of all the residents' properties during night time hours.

Comment

Bunnings seek only to illuminate service vehicle driveways, the unloading area, and open car park area to satisfy standards of utility and security. The illumination of the service driveway and Goods inwards area will be mounted upon the wall and oriented down and baffled where required to satisfy safe working requirements without light spilling out onto adjoining properties. If Council is of a mind to grant approval to the proposed development a condition should be imposed requiring illumination to be in accordance with the relevant Australian standard.

The surface and the massive roof area of the proposed development will most certainly need adequate drainage. The metre of fill under the building will also ensure the run off of water heads onto low lying areas such as the residents' homes behind the development.

Comment

The development is to be provided with a 30 cubic metre tank to capture and recycle roof water and 800 square metres of detention basin to ensure stormwater leaves the site in a controlled manner. Referring to the metre of fill, only the area under the building will be filled to this depth, the remainder of the site will be graded to existing ground level and drained in a manner which will ensure that no additional water will drain from this site onto adjoining properties.

The removal of the 4.5t Load limit

Comment

This matter has been addressed in the report.

Planted trees growing over the back fences of the residents and overshadowing the back yards.

Comment

As the trees are on the southern side of the residential properties, any overshadowing will be only marginal. As reported previously, the planting area behind the 5metre high wall will be increased by 1.5metres to lessen this impact.

The roots of the trees planted within the drainage easement will enter the drain negating the purpose of the drain.

Comment

Council's Civil Services have advised that only shallow rooted trees and shrubs are to be used in this area.

Toxic dust hazard

Comment

This matter has been addressed in the report. If Council is of a mind to grant approval to the application a condition will be imposed requiring a watering system to be designed and implemented to suppress dust that may arise during construction.

The submission proposes that trucks enter the site from the existing entrance off the main road, that is only a few metres east of the corner with Horizon Drive, then they could enter a new repositioned delivery area and exit out the next exit right on the roundabout.

Comment

The delivery truck route described in the submission is impractical and would require a complete redesign of the whole project which would result in a less desirable development than is presently proposed. The intent of the alternative route is to avoid trucks passing the rear of the properties and parking adjacent to the rear of the properties. The alternative arrangement to be adopted will eliminate the parking behind the adjoining residence but not the passing of the trucks.

Conclusion

The application is for the development of a large Hardware and Building Supplies store, which complies with any site coverage and car parking requirements with 15% of the site to be used for landscaping purposes.

Concern was expressed with the applicant, about the appearance of the building from the west. The applicant has taken this concern on board and has proposed that the western elevation be screened by the planting of trees along the western side of the site.

The proposed development is in accordance with the proposed land zoning under the provision of the Draft Local Environmental Plan 2011.

A number of changes have been suggested to the applicant, who has agreed to the proposed changes, and it is considered that the application as now submitted to Council is an improvement on the application originally submitted to Council.

The Access Committed has requested the provision of a covered walkway between the entrance of the building and the accessible car parking spaces. The applicant has declined to accept this change and Council has to make a decision as to whether or not this covered walkway is to be provided.

The application contains a number of non-compliance issues relating to signage. However, it is considered that the non-compliance's result in a better impact on the streetscape than would be achieved if the policy had been complied with.

A number of matters have been raised in submissions, it is considered that a number of these have been addressed through changes to the application, or the conditions that are recommended.

The Department of Environment, Climate Change and Water have advised that the Voluntary Management Proposal has been complied with to their satisfaction, and the site is now considered suitable for the proposed development.

Options

- 1 Grant approval to the proposed development subject to conditions.
- 2 Refuse the application for reasons to be determined.
- 3 Defer making a decision in this matter until all the fine details of the application have been determined as suggested in a submission.

It is recommended that Option one be adopted and the application be approved subject to conditions as the application has been designed to largely comply with Council's policies and to meet the site specific aspects of the proposal in a responsible manner.

RECOMMENDATIONS

That development application 2011/458 for the construction of a 10,458 square metres Bunnings Building, Containing Hardware, Building Supplies and Timber Sales, Café, Children's Play Area, a 742 square metre area under Fabric Sail at the Front of the Building for the Sale of Nursery Items and Garden Supplies, the Relocation of the "Big Prawn" Structure, 257 Car Parking Spaces Associated Advertising Signage, Noise Barrier Fencing and Landscaping at Lot 135 DP 872709, 507 River Street, West Ballina be **APPROVED** subject to the attached conditions of consent.

Attachment(s)

1. Locality Plan
2. Elevation plans of the proposed development
3. Site Plan
4. Submissions
5. Draft Conditions of Consent

8.4 DA 2010/962 - Section 96 Amendment to Roads Levy

File Reference	Section 96 Amendment No.1 DA 2010/962 - Construction of a Highway Service Centre comprising Service Station, associated Fast Food Restaurants, Auto Repair Centre, associated Vehicular Accesses (including a round-about intersection on the existing Pacific Highway alignment), Car and Truck Parking, Infrastructure Works, Filling, Landscaping, Earthworks and Advertising Structures upon Lot 11 DP 1011575, Pacific Highway (now known as No. 565-589 River Street, West Ballina) and a Two (2) Lot Subdivision (Lot 1 – Highway Service Centre & Lot 2 – Agricultural Residue).
Applicant	sj Connelly CCP Pty Limited
Property	Lot 11 DP 1011575, Pacific Highway, West Ballina.
Proposal	Application under Section 96(1A) of the EP&A Act to Modify Development Consent DA 2010/962.
Effect of Planning Instrument	The land is zoned part 9(a) Roads (Main Roads Proposed), part 1(b) Rural (Secondary Agricultural Land), Part 1(a2) Rural (Coastal Lands Agriculture) and part 2(a) Living Area Zone under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council, at its Ordinary Meeting of 23 June 2011, received a report (refer to **attached**) in relation to the abovementioned proposal and resolved to grant deferred commencement conditional consent to the Construction of a Highway Service Centre comprising Service Station, associated Fast Food Restaurants, Auto Repair Centre, associated Vehicular Accesses (including a round-about intersection on the existing Pacific Highway alignment), Car and Truck Parking, Infrastructure Works, Filling, Landscaping, Earthworks and Advertising Structures upon Lot 11 DP 1011575, Pacific Highway (now known as No. 565-589 River Street, West Ballina) and a Two (2) Lot Subdivision (Lot 1 – Highway Service Centre & Lot 2 – Agricultural Residue).

Council is now in receipt of three applications under Section 96 (1A) of the *Environmental Planning and Assessment Act 1979* to modify the consent in the following ways:

Amendment No 3 to amend the following conditions:

Condition No.1.4 to extend the period of compliance with the deferred commencement conditions of consent from twelve months from the date of the consent to twenty four months from the date of the consent; and

Condition No. 3.3(i): terms (j) and (k). Both these items are being amended to allow for the construction of an asphaltic concrete road pavement in relation to road works on the old Pacific Highway (River Street) rather than to a concrete road pavement as previously required.

This amendment was approved under delegated authority, as the amendments proposed were not matters that the Council debated or raised issue with when the application was approved.

Amendment No 2 to amend the consent to accord with the expert advice from their geotechnical consultants Coffee Geotechnics in relation to detailed specifications for site settlement. This amendment involved modification to the following conditions – 1.10, 3.7, 4.2; 4.11, 4.12, 4.13 & 5.1. This amendment is to be approved under delegated authority, as the amendments proposed were not matters that the Council debated or raised issue with when the application was approved and are technical specifications assessed by the Council's geotechnical consultant. At the date of the completion of this report, the amendment had not been finalised, however it is anticipated that an approval will be issued within the next week.

Amendment No. 1 (being the subject of this report)

Amendment No. 1

Approval is sought to modify the amount of developer contributions payable as specified in Condition No. 5.23 and Schedule 1 of the consent. Below is the existing and proposed Schedule 1.

Existing Schedule 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST
North & West Ballina Roads 2010	5202	equivalent residential allotment	\$10,123.00	231.5519	\$2,343,999.88
Roads Administration 2010	5203	equivalent residential allotment	\$154.00	231.5519	\$35,658.99
West Ballina Sewerage (DSP Area B)	3003	equivalent tenement	\$6,886.00	48.3170	\$332,710.86
West Ballina Water (DSP Area B)	2003	equivalent tenement	\$3,179.00	30.2720	\$96,234.69
Rous Water 2009	5001	equivalent tenement	\$6,222.00	30.2720	\$188,352.38
TOTAL					\$2,996,956.81

Initial Proposed Schedule 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Units Payable	TOTAL COST
West Ballina Sewerage (DSP Area B)	3003	equivalent tenement	\$6,886.00	48.3170	\$332,710.86
West Ballina Water (DSP Area B)	2003	equivalent tenement	\$3,179.00	30.2720	\$96,234.69
Rous Water 2009	5001	equivalent tenement	\$6,222.00	30.2720	\$188,352.38
TOTAL					\$617,297.93

In support of this application the proponent provided advice from expert traffic engineers Cardno Eppell Olsen.

That advice looked at the intent of the Ballina Shire Council Contributions Plan as it relates to roads, examines the traffic generation associated with the highway service centre and reviews the Section 94 contributions having regard to the proper calculation of trips as well as offsets applicable under Council's plan.

Based on the advice received from Cardno Eppell Olsen the proponent submitted that the contribution amounts included in Schedule 1 of the consent have been miscalculated and need to be appropriately altered as described in the (Initially) proposed Schedule 1 above.

Report

In determining this application to modify DA 2010/962 Council must assess the proposed modifications against the heads of consideration as contained in Section 79C of the *Environmental Planning and Assessment Act 1979* (EP&AAct) as are of relevance to the application.

In addition, Council may grant consent to modify this consent if it is satisfied that the development to which the consent as modified relates is substantially the same development as that originally consented to.

The original consent for DA 2010/962 granted approval for the Construction of a Highway Service Centre comprising Service Station, associated Fast Food Restaurants, Auto Repair Centre, associated Vehicular Accesses (including a round-about intersection on the existing Pacific Highway alignment), Car and Truck Parking, Infrastructure Works, Filling, Landscaping, Earthworks and Advertising Structures upon Lot 11 DP 1011575, Pacific Highway (now known as No. 565-589 River Street, West Ballina) and a Two (2) Lot Subdivision (Lot 1 – Highway Service Centre & Lot 2 – Agricultural Residue).

The proponents have been methodically working through the consent requirements in order to determine the viability of the project and a timing sequence for commencement of works on the subject lands.

During the preconstruction stage a number of requests have been received for amendments to be made to conditions of consent.

The amendment under Section 96 (1A) of the Environmental Planning & Assessment Act 1979 (as amended) that is the subject of this report is to reassess the roads contribution levy as imposed under condition 5.23 and Schedule 1 of the consent.

In support of their requested amendment, the proponents have submitted advice in the form of a trip generation report from expert traffic engineers Cardno Eppell Olsen (Cardno).

This report indicates that Council has over-estimated the anticipated daily trips generated to the Highway Service Centre.

Council, upon review of the submitted trip generation report forwarded correspondence to Cardno requesting further substantiation of the figures provided.

On the 1 December 2011, Cardno forwarded additional information in a response to Council's request.

This additional information indicates that the previous report from Cardno required further substantiation. Consequently the proponents commissioned RPS Australia (RPS) to provide a detailed trade area assessment which clarified the quantum, origin and classification of trips likely to be generated to the Highway Service Centre facility.

The RPS report identifies that the facility generated some 5,861 daily trips as opposed to the original estimate in the initial Cardno report of 3,518 daily trips.

In their original assessment, Council officers determined 7,525 daily trips for the purposes of determining the applicable Section 94 levies attributable to the development (North and West Ballina Roads 2010 levies). This was based on retail floor space and service station site area for the development.

As can be seen from the above figures there is quite a difference between all three assessed daily trip rates to the facility and consequently to the calculated Section 94 roads contribution rates.

Council, via development consent dated 23 June 2011, required a payment for roads contribution of \$2,343,999.88 and a roads administration levy of \$35,658.99.

The initial Cardno report, dated 15 August 2011, and submitted with the Section 96 amendment which is currently before Council, recommends 3,518 trips be used for the purpose of determining the appropriate Section 94 roads contribution levy. Using this trip value the report calculates a Section 94 roads levy payable for the development of \$139,641.

The revised Cardno report, dated 1 December 2011, recommends the daily trip generation to be 5,861 trips and a Section 94 road contribution levy under the roads contribution plan of \$745,524. It is considered that the method used for the calculation of the daily trip generation in this latest Cardno report deduces a reasonable trip generation rate based on sound data.

Cardno's latest report concludes that the total leviable traffic demand for the facility is 5,861 multiplied by a discount factor of 8% which equates to 468 leviable trips. Using this method Cardno have concluded that a roads contribution levy of \$745,524 should be imposed.

When further reviewing the Section 94 roads contributions for the facility, Council officers are of the opinion that it is reasonable for Council to use the RPS data and the Cardno report methodology for determining the total trips, but then excluding those trips which are considered to be non-leviable under the plan. This means the following:

- by-pass only traffic are fully excluded (i.e traffic entering and exiting from the Bypass only)
- INTER regional trips are fully excluded and
- INTRA regional trips are included at a 20% value in accordance with the Roads Contributions Plan. This discount is based on employment generated or journey-to-work trips from outside the Shire to or from employment generating developments.

Council officers are of the opinion that rather than discounting all daily trips generated to the facility to 8%, a more realistic rate would be to discount only those trips that are generated from outside the shire using the adopted 20% rate in the Roads Contribution Plan. This 20% figure is based upon journey to work results from recent census data whereby it is estimated approximately 20% of trips to or from employment developments anticipated under the Ballina Shire Roads Contribution Plan 2010 are likely to be generated by or attributable to development outside the Ballina LGA.

Statutory Assessment

96(1A) Modification

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*

Comment

The proposed amendment to the roads contribution component of the Section 94 levies applicable to the proposed development does not result in a development that is substantially different to that which was approved by Council.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The proposed amendment was not required to be placed on public exhibition in accordance with Council's policies and the statutory requirements

Conclusion

The Section 96(1A) application currently before Council for consideration to amend Development Application DA 2010/962 (The Highway Service Centre) for the recalculation of the Roads contribution levy should be supported on the following grounds:

- The proposal results in a development that is substantially the same as that approved by the Council and
- The revised levy associated with the North & West Ballina Roads 2010 contribution under the Roads Contribution Plan 2010 is based on additional information supplied by the proponent's consultants and is in accordance with the Roads Contribution Plan 2010

RECOMMENDATION

That the Application under S96 (1A) of the Environmental Planning and Assessment Act to amend the provisions of Condition 5.23 and Schedule 1 of DA 2010/962 in relation to the roads contribution levy be **APPROVED** subject to strict compliance with the specified condition as set out below:

Developer Contributions

Prior to issue of the Construction Certificate (Building) where building work is proposed, payment to Council of non-refundable monetary contributions shall be made towards the provision of public services, infrastructure and amenities, which are required as a result of the development in accordance with the following contribution plans prepared under Section 94 of the Environmental Planning & Assessment Act, 1979:

Contribution Plan/Development Servicing Plan	Adopted
Ballina Shire Contributions Plan 2008	23 October 2008
Ballina Shire Roads Contribution Plan 2010	25 February 2010
Ballina CBD Car Parking Contribution Plan	25 November 2004
Lennox Head Village Centre Car Parking Contribution Plan	12 February 2004
The Council of the Shire of Ballina Section 94 Contributions Plan: Heavy Vehicle Traffic Generating Development - Maintenance and Construction of Roads	9 February 1996

The Contribution Plans provide for the indexing of contribution amounts and are also subject to amendment. The contribution rates payable will be the rates that are applicable at the time payment is made. Copies of the Contribution Plans may be viewed at Council's Customer Service Centre, Cherry Street, Ballina or on Council's website www.ballina.nsw.gov.au.

The Contribution amounts applicable at the time this consent is issued are as per Schedule 1 (as follows).

Schedule 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST
North & West Ballina Roads 2010	5202	equivalent residential allotment	\$10,123.00	104.3845	\$1,056,684.29
Roads Administration 2010	5203	equivalent residential allotment	\$154.00	104.3845	\$16,075.21
West Ballina Sewerage (DSP Area B)	3003	equivalent tenement	\$6,886.00	48.3170	\$332,710.86
West Ballina Water (DSP Area B)	2003	equivalent tenement	\$3,179.00	30.2720	\$96,234.69
Rous Water 2009	5001	equivalent tenement	\$6,222.00	30.2720	\$188,352.38
TOTAL					\$1,690,057.44

Attachment(s)

1. Locality Plan
2. Council report to the Ordinary Meeting of 23 June 2011.

8.5 Pool Fencing Legislation - Proposed Modifications

File Reference	Pool Fencing Legislation
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Building Services
Objective	Proposed modifications to NSW Government Pool Fencing Legislation- Discussion Paper

Background

Council is in receipt of a recent discussion paper “Swimming Pools Act 1992 Review” received from the NSW Government Department of Premier and Cabinet, Division of Local Government dated 15 January 2012.

In the interests of child safety, the Department is seeking feedback from pool owners, local councils, key water safety organisations, State agencies and the wider community on proposed amendments to the Swimming Pools Act requirements.

The Department estimates 340,000 private swimming pools exist within NSW where the number of fatal drownings of young children in private backyard pools stands at approximately six per year based on the five year average to June 2009. The Department suggests faulty or deficient pool fencing barriers continue to play a major factor in drownings with 60-80% of barriers suspected to be non compliant, based on past inspection evidence from some local councils.

The draft legislation applies to all private pools including those associated with dwellings, tourist and multi residential unit developments.

Key Issues

- Proposed changes
- Impact on resources
- Benefits

Information

The proposal includes **two actions**, summarised as follows:

1. Establishment of a State Based Swimming Pool Register

- All pool owners will be required to electronically register their pools within a State based register at no cost to the owner. The registration will be a once only process where owners can complete the registration themselves or request that their local council complete the on-line process for them using a standard form at a prescribed cost of no more than \$10.

- As part of the registration process, owners will be required to undertake a “self certification” assessment of their pool including the completion of a checklist. Owners have the option of requesting private accredited certifiers or councils undertake the certification on their behalf at a prescribed council fee of \$70 or market fee for private certifiers.
- A transitional period of 12 months will apply for owners to register their pool. Penalties apply for the failure to register, attracting a minimum amount of \$220 and maximum \$2200.
- The State based centralised register is to be maintained by the Division of Local Government, Department of Premier and Cabinet supported by mail out reminders relating to pool fencing maintenance.
- An evaluation of the process is planned three years after implementation of the system.

2. Council Swimming Pool Barrier Inspection Program

- Councils will be required to establish and publish on their web a swimming pool barrier inspection programme that is acceptable and affordable to their community.
- All pools associated with tourist, multi- occupancy and visitor accommodation developments are to be inspected by councils at maximum three year intervals.
- Properties containing pools that are being sold or leased need to hold a valid compliance certificate (validation period being two years) certifying the pool fencing as being compliant.
- Prescribed maximum inspection fees are proposed, being \$150 for the initial inspection and \$100 for one additional inspection. No further fees can be charged for any additional inspections. The fees need to be listed in the council’s Operational Plan.
- Councils are required to report annually on the number of pool fencing inspections undertaken and level of compliance with the Act.

Comments:

The Department has given limited time to comment on the proposal with the closing date for submissions being Friday 24 February 2012. The Department has requested all submissions be made in writing using their attached feedback form where any additional comments can be attached.

Council is obviously supportive of the NSW Government’s aim to reduce the number of drownings of young children. There will be costs involved for councils in the preparation, maintenance and resourcing of the proposed “Pool Barrier Inspection Program”. It is envisaged by the Department that the program can be operated on a cost recovery basis, however there may be limitations with the costings proposed due to the prescribed fees and limit on the number of inspection charges permitted by councils.

Due to the complexities of the Act and Australian Standard 1926, there are often numerous inspections required to meet full compliance. The proposed do and charge fee process is also viewed as being administratively cumbersome, where the introduction of an annual charge against the property similar to the On-Site Sewage Management strategy would be easier for councils to manage. At the \$150 maximum fee per inspection, an annual charge of \$50 could be applied to those existing pools to be inspected at 3 year intervals and \$30 to those inspected every 5 years. Additional inspections may require extra one off charges.

Under the fee charging proposal suggested, it is envisaged councils will have difficulty in recovering monies with all inspections, particularly where Penalty Infringement Notices (PINS) are issued and/or fencing upgrade works are required.

At this stage, Council is unaware of the total number of pools existing within the Shire due to past limitations with our electronic recording system. The introduction of the self certification registration system will assist greatly in this regard including where properties are leased or on sold.

In recent years, Council's building surveyors have been involved in an inspection regime for newer pools (generally from 2005- present) where final inspections had not been finalised. This inspection regime will now be ongoing for newer installations due to the introduction of a file resubmit and inspection process. Council has also been actively involved with annual media releases, promoting pool safety awareness.

The proposed establishment of the ongoing reinspection program for all pools may be best serviced by temporary/ part time staff, dependent upon the number of pools and regularity of inspections, for example every five years for single dwellings and the mandatory three years for other identified higher risk development. The preparation of the program will require a detailed cost recovery analysis assessing the likely number of inspections /year and fees to be charged. Councils will be required to implement the program within six months of the commencement of the legislation. This requirement will need to be addressed at budget preparation stage, in preparation for the legislation.

Due to the limited timeframe, a response has been made by Council's Building Services and Compliance Sections. The following issues have been raised with the Department:

- In order to assist councils in the preparation and resourcing of their inspection program, consideration be given to the establishment of the NSW Government pool register initially to identify the number of pools existing in each council area prior to councils preparing their Pool Barrier Inspection Program
- To cover ongoing inspection costs and minimise financial administration issues, consideration be given to the introduction of an annual charge applied to all pool owners similar to the On –Site Sewage Management System strategy

- Should a pool fencing bond for applications be paid to councils/ private certifiers to encourage final inspections of pools, refundable on the issue of a Final Occupation certificate?
- How is the NSW Govt register to be updated, on receipt of new applications or on completion inspections? It is recommended consideration be given to councils having access to update the electronic register on the issue or submission of Final Occupation Certificates, similar to the existing NSW Government BASIX system.
- Should certain portable swimming pools, spas and child resistant barriers be Exempt Development as is currently the case under the NSW Exempt and Complying Development Codes SEPP?
- Will private certifiers be responsible for pool fencing enforcement where they are involved in the certification of a pool that does not comply, such as the serving of notices, orders/ PINS or will councils be burdened with the ongoing compliance issues at no cost?
- Are pool owners the correct people to self certify their pool fences at registration stage, considering the complexities of navigating the Swimming Pools Act and Australian Standard 1926?
- What are the required qualifications for council officers who inspect pools as part of the Barrier Inspection Program and do they require accreditation with the Building Professionals Board?
- Prior to the issue of a compliance certificate, will accredited Certifiers be required to verify when a pool was constructed to identify the fencing requirements that prevailed at the time of approval?

A copy of the discussion paper is available on the Division's website at www.dlg.nsw.gov.au

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
There will be widespread community benefit through the introduction of a program aimed at reducing the number of child drownings.
- **Economic**
The introduction of the program will result in initial setup costs and ongoing annual inspection and register maintenance costs for councils and pool owners.

Legal / Resource / Financial Implications

Both councils and pool owners will be obliged to comply with the relevant legislation. The process will require a cost analysis and adequate annual financial and staff resourcing to support the program.

Consultation

The proposed program involves consultation between a number of stakeholders including the NSW Government Department of Premier and Cabinet Division of Local Government, local councils, key water safety organisations, other NSW State Government agencies and the local community.

Options

This report has been presented to provide an update on the proposed legislation and the actions taken by staff.

RECOMMENDATIONS

That Council notes the contents of this report on the discussion paper "Swimming Pools Act 1992 Review" received from the NSW Government Department of Premier and Cabinet, Division of Local Government dated 15 January 2012.

Attachment(s)

Nil

8.6 Smoke Free Outdoor Area Legislation

File Reference	Health Smoking
CSP Linkage	Transparent and accountable governance
Delivery Program	Environmental & Public Health
Objective	To determine whether Council wishes to support a request from the Cancer Council of NSW for the State Government to legislate for smoke free outdoor areas such as children's playgrounds and outdoor dining areas.

Background

Dr Andrew Penman CEO of the Cancer Council of NSW has written to Council (and as we understand to other councils in NSW) seeking support for the NSW Government to legislate State-wide for certain outdoor areas to be smoke free.

This report provides information on that proposal.

Key Issues

- Merit of proposal
- Practicality of proposal

Information

The request acknowledges that 62% of councils in NSW have adopted smoke free outdoor area policies. Such has never been recommended to Ballina Shire for the reason that there were significant costs involved in the necessary signage, maintenance of signage, and policing of a policy.

Individual council policies can also lack uniformity, causing confusion particularly for visitors.

It is also now acknowledged that a Council policy could not extend to controlling smoking in outdoor eating areas on land over which it did not have control.

This shortcoming of Council policies is now recognised and uniform State Legislation is being called for that would overcome some of the difficulties.

Campaign Material under the Heading "Clear the Air: Smoke free outdoor areas" supporting the call appears on the NSW Cancer Council Website:

<http://www.canceraction.com.au/big-issues-2/smoke-free-outdoor-areas/#action>

Briefly the site presents the following arguments and advice:

- Smoking kills
- Side-stream tobacco smoke is a health hazard
- People have a right not to smoke – including hazardous second hand smoke
- NSW Government remains inactive on this issue whereas a number of other States have laws banning smoking in specified outdoor areas
- 60% of councils in NSW have adopted Policies for smoke free outdoor places
- There is misinformation about the impact on businesses of having smoke free dining areas

It claims the solution is for the NSW Government to bring in smoke free laws covering busy outdoor public places, with priority given to children's playgrounds and areas where food is served as part of a business

It goes on to recommend actions that may be taken by individuals, restaurant and café owners, and local government.

The recommended local government actions are set out in a "sample motion" reproduced as an appendix to this report together with relevant background information:

Sustainability Considerations

- **Environment**
If legislated, the environment benefits from cleaner air and less butt littering in public open spaces.
- **Social**
If legislated, people with asthma or other respiratory problems would be able to enjoy public open spaces without the discomfort of other people's side-stream smoke. Medical authorities claim that side-stream tobacco smoke is injurious to health and OH & S legislation now reflects this in requiring work places to be smoke free. This should accrue to a benefit for both individuals and the State in less tobacco related illness.
- **Economic**
The State and individuals benefit if there is less morbidity or mortality from the affects of tobacco smoking. Some cost would accrue from required publicity and to regulate in the prescribed areas.

Legal / Resource / Financial Implications

There is no cost to Council to lend its support to a campaign seeking to achieve this objective, and to advise the Cancer Council of this, however to actively lobby in the manner the Cancer Council suggests will require some resourcing. It appears there is already a legislative frame work in the Smoke Free Environment Act that with amendment could bring new requirements into being. Under the current legislation the primary responsibility for ensuring compliance with the Act is with the building owners. The NSW Ministry of Health is responsible to ensure they undertake this function. Ballina Shire has for instance an obligation in respect of its public buildings including the Wigmore Arcade. If the legislation were to extend to public places under Council's care control and management, then there would need to be a local compliance commitment by the Council. No doubt some areas would need to be signposted however there may be less obligation to erect and maintain signage if the legislation is uniform State-wide. The full extent of how such legislation might impact local government is not known. If there is however a strong lobby from local government for such legislation it will have to expect to shoulder some of the responsibility for implementing the legislation.

Consultation

No consultation has been undertaken. In this instance it is really the NSW Cancer Council consulting with Council.

Options

1. Take no action – inform the Cancer Council NSW that Ballina Council wishes to remain neutral on the issue
2. Indicate to the Cancer Council of NSW that whilst it supports the organisation's efforts to achieve the benefits that would accrue from having State-wide Smoke- free legislation in nominated outdoor areas Ballina Council cannot support such a move, without knowledge of the potential implications for local government to inform the public and enforce such legislation.
3. Adopt the motion suggested by the Cancer Council of NSW.

As resourcing and the practicalities of implementing a ban have always been a major concern the recommendation as proposed by the Cancer Council appears to provide a more practical approach and on that basis the recommendation is as per the Cancer Council motion.

RECOMMENDATIONS

1. That Council lobby the NSW Government to introduce and enforce legislation that uniformly prohibits smoking:
 - a) within 10 metres of children's playgrounds
 - b) within 10 metres of sporting fields
 - c) in all outdoor dining areas where food is provided as part of a business
 - d) in covered bus shelters and taxi ranks
 - e) in reserves

2. That Council demonstrate its call on the NSW Government to introduce and enforce smoke-free outdoor areas legislation by:
 - a) Writing to the local MP, Minister for Local Government, the Minister for Health and the Premier, alerting them to Council's desire for legislation and requesting that they take steps to progress it.
 - b) Publicising the resolution to the community through Council's website and relevant communication channels. Promote the Cancer Council campaign website www.canceraction.com.au
 - c) Tabling the issue for discussion at a NOROC meeting to encourage other councils to give their support.
 - d) Advising Cancer council NSW of Council's actions.

Attachment(s)

1. Sample Motion recommended by the Cancer Council of NSW and Background Notes

8.7 Development Applications - Works in Progress - February 2012

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

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

DA No.	Date Rec'd	Applicant	Proposal	Status
2006/242	20/10/2005	Ardill Payne & Partners	Site Filling - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2008/578	6/2/2008	A Koellner	Erection of a Shed for Steel Fabrication - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2010/278	6/11/2009	Ardill Payne & Partners	To Establish a dwelling/house site – No. 263 Sneebys Lane, East Wardell	Awaiting Additional Information
2010/892	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	Being Assessed
2011/166	15/04/2011	SJ Connelly CPP Pty Ltd	Construction of a residential flat development comprising 30 x two storey dwellings and associated works, Condon Drive, East Ballina (North Angels Beach)	Awaiting Additional Information
2011/188	28/04/2011	P & A Isaac	Two Lot Torrens Title Subdivision, No. 110 North Creek Road, Lennox Head	Being Assessed
2011/233	01/06/2011	Victor Holmes Town Planning	Environmental Restoration Works, No. 69 Sartories Road, Pimlico and No. 120 Coolgardie	Being Assessed

DA No.	Date Rec'd	Applicant	Proposal	Status
			Road, Coolgardie	
2011/320	22/07/2011	Ballina Shire Council	To change the method of extraction of an existing Extractive Industry "Ballina Airport Sandpit" from dry (excavation) to wet (dredging) and to change the end use of the pit from a landfill for dry/inert waste to the retention as a flooded pit as part of the rehabilitation works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	Awaiting Additional Information
2011/336	01/08/2011	Stanton Dahl Architects	Extension and Room Additions to a Residential Aged Care Facility, No. 15 The Avenue, Alstonville	Being Assessed
2011/363	19/08/2011	S Abicht	To Establish a Camping Ground to be used in association with the Ballina and District Equestrian Club and to undertake filling of land, No. 70 Gallan's Road, Ballina	Determination Pending
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
2011/391	02/09/2011	Newton Denny Chapelle	Erection and Strata Title	Being Assessed

DA No.	Date Rec'd	Applicant	Proposal	Status
			Subdivision of a Residential Flat Development comprising Two (2) x Two Storey Dwellings (being the final stage of a five unit development, No. 4/15 Gibbon Street, Lennox Head	
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
2011/470	04/11/2011	SJ Connelly CPP Pty Ltd	Alterations & Additions to Gunundi, No. 70 Shelly Beach Road, East Ballina	Awaiting Additional Information
2011/476	04/11/2011	Kennedy Surveying	Two Lot Torrens Title Subdivision, No. 1 Higgins Place, Cumbalum	Awaiting Additional Information
2011/505	23/11/2011	All-Steel Garages & Sheds	Staged development of light industrial units, 28 Barlows Road, Ballina	Awaiting Additional Information
2011/506	23/11/2011	Chris Lonergan Pty Ltd	Regularise and expand existing caravan park from 55 sites to 178 sites and to construct new amenities block and recreation building, No. 440 South Ballina Beach Road, South Ballina	Being Assessed
2011/513	30/11/2011	S Cameron	Erection of 5 x	Awaiting

DA No.	Date Rec'd	Applicant	Proposal	Status
			Industrial Sheds, No. 10 Northcott Crescent, Alstonville	Additional Information
2011/515	30/11/2011	Newton Denny Chapelle	Staged Development - 5 x Lot Subdivision for future cluster housing development and construction of public road, No. 565-589 River Street, West Ballina	Awaiting Additional Information
2011/517	02/12/2011	Victor Holmes Town Planning	Proposed Consolidation of Lots and Change of Use from a Church to a Dwelling, Pacific Highway, Newrybar	Referred to Government Departments
2011/529	09/12/2011	United Petroleum Pty Ltd	Proposed 24hour Service Station and Associated Convenience Store, Car Wash Facilities, Car Parking, Signage and Related Works, 413-423 River Street, West Ballina	Awaiting Additional Information
2011/535	16/12/2011	Peter Carmichael	Erection of Industrial Shed, 38A Smith Drive, West Ballina	Being Assessed
2011/540	20/12/2011	Ballina Shire Council	Construction of a new Ballina Lighthouse and Lismore Surf Life Saving Club House and Patrol Building and associated bulk earthworks, vegetation removal and landscape works, Light House Parade, East Ballina	Awaiting Additional Information
2011/541	20/12/2011	Ballina Shire Council	Construction of a Surf Club Storage Building, 75 space carpark, bulk	Awaiting Additional Information

DA No.	Date Rec'd	Applicant	Proposal	Status
			earthworks and landscape works; Cedar Crescent, Light House Parade & Compton, Drive East Ballina	
2011/546	22/12/2011	Tony Hart	Establishment of a retail plant nursery and art studio, 935 Fernleigh road, Brooklet	Awaiting Additional Information
2011/547	21/12/2011	Northcott Society	Change of use to establish a transitional group home (accommodation for people with a disability) and facility to operate programs for people with a disability and associated administration, 27 Cawarra Street, Ballina	Being Assessed
2011/552	22/12/2011	Newton Denny Chapelle	Two Lot Subdivision to Create a 1 x 7.35 ha (approved Highway Service Centre) and 1 x 9.6 ha (residue) allotments, 565-589 River Street, West Ballina	Being Assessed
2011/554	23/12/2011	Ardill Payne & Partners	Alterations & Additions to Ballina Fair Shopping Centre, 84 Kerr Street, Ballina	Being Assessed
2012/04	09/01/2012	T Duwenhogger	Removal Lemon scented Gum and Forest Red Gum Trees, 108 North Creek Road, Lennox Head	Being Assessed
2012/18	20/01/2012	Ardill Payne & Partners	Boundary Adjustment, Stanley Park Road & Central Park Drive, Wollongbar	Referred to Government Departments
2012/23	24/01/2012	Don Taylor	Five Lot Strata	Determination

DA No.	Date Rec'd	Applicant	Proposal	Status
			Title Subdivision of an Existing Industrial Building, 6 Russellton Drive, Alstonville	Pending
2012/26	30/01/2012	P & A Isaac	Removal of Blue Gum Tree, 110 North Creek Road, Lennox Head	Determination Pending
2012/32	03/02/2012	Ballina Shire Council	Sharpes Beach Car Park Upgrade and Associated Works Including Upgrade of Coast Road Intersection, Surf Lifesaving Tower and Storeroom, Viewing Deck and Shower, Unisex Toilet, Picnic Facilities, Shared Pedestrian Path and Beach Accesses and Associated Infrastructure and Rehabilitation Works; Lot 2 DP 784864 & Lot 7032 DP 1063896 (Ballina Coast Reserve), The Coast Road, Skennars Head	On Exhibition

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

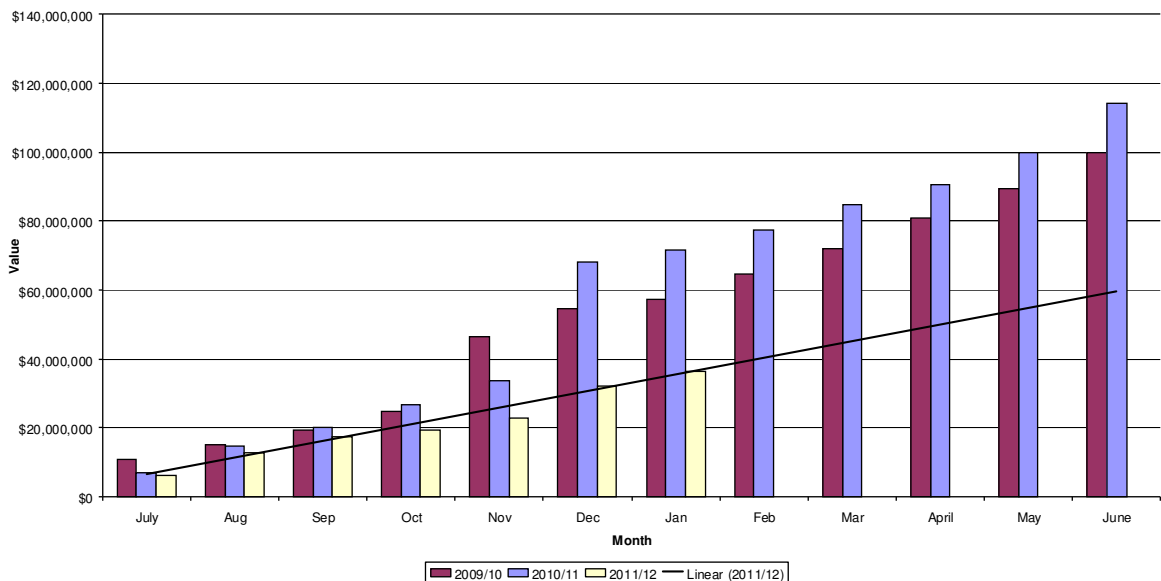
That Council notes the contents of the report on the status of outstanding development applications for February 2012.

8.8 Development Consent Statistics - January 2012

The Council is advised that during the period of 1 January 2012 to 31 January 2012 the Regulatory Services Group issued Development Consents comprising of:

Number of Applications	Value of Work
30 Other Building Related	\$ 1,666,550
8 Dwelling/Duplexes/Residential Flat Buildings	\$ 2,382,000
8 General Developments	\$ 220,000
Total Value	\$ 4,268,550

The following chart details the cumulative consent figures for 2011/12 as compared to 2010/11 and 2009/10. A trend line has also been provided for 2010/11 to assist in the comparison.



RECOMMENDATION

That Council notes the contents of the report on development consent statistics for 1 January 2012 to 31 January 2012.

Attachment(s)

Nil

9. Strategic & Community Services Group Reports

9.1 Bulky Goods Retailing Investigation

File Reference	Bulky Goods Retailing
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To inform Council of the outcomes of the Ballina Shire Bulky Goods Retailing Investigation and seek direction with respect to the recommendations of the study.

Background

During the preparation of Council's Draft Ballina Local Environmental Plan 2010, a number of representations were made with respect to the permissibility of bulky goods retailing on certain land. These representations typically related to one of two issues; being either the prohibition of bulky goods premises on industrial zoned land or the prohibition of bulky goods retailing uses on specific land parcels. The permissibility of bulky goods retailing in certain zones and on specific land parcels was identified by Council as a matter requiring further and more detailed consideration as part of the LEP renewal program.

In response to the above, Council engaged consulting firm Hill PDA to carry out investigation and analysis with respect to bulky goods retailing and large format retailing (LFR) land use in Ballina Shire. The primary purpose of the investigation and analysis was to inform the establishment of a land use planning framework for bulky goods retailing and LFR premises in Council's new Standard Instrument local environmental plan (LEP) and Local Growth Management Strategy (LGMS).

More specifically, the objectives of the project were as follows:

- Provide a sound basis for the establishment of a land use planning framework for bulky goods and LFR uses in the forthcoming planning period to 2026 and
- Provide a platform for the address of bulky goods and LFR in Council's long term strategic planning under its Local Growth Management Strategy and
- Identify relevant trends in bulky goods and LFR to support decision making in the forthcoming planning period to 2026.

Hill PDA has completed the preparation of the Ballina Shire Bulky Goods Retailing Investigation (a copy of the study has been distributed to Councillors under separate cover). In this regard, Hill PDA provided a briefing for Councillors on 31 January 2011 to outline the project methodology, findings and recommendations. This report further outlines the findings of the study and seeks direction with respect to the recommendations made by Hill PDA in relation to the local planning framework and particularly the provisions of Council's local environmental plan.

Key Issues

- Strategic planning framework for bulky goods retailing in Ballina Shire.
- Approach to bulky goods retailing land uses under the Ballina Local Environmental Plan.

Information

Study Purpose and Methodology

As outlined above, the purpose of the Ballina Shire Bulky Goods Retailing Investigation is to inform Council with respect to the formulation of a local planning framework in relation to bulky goods retailing and large format retailing (LFR). The study examined the period between 2011 and 2026.

The study addressed Council's requirements through the following methodology:

- Review of background information including Council's draft Standard Instrument local environmental plan
- One on one stakeholder meetings (see below)
- Bulky goods retailing and LFR floorspace supply audit
- Assessment of suitability of different precincts to accommodate bulky goods retailing and LFR
- Retail expenditure demand modelling to determine bulky goods retailing and LFR floorspace demand and
- Provision of advice with respect to meeting projected demand and the address of this within Council's planning policy.

Hill PDA conducted stakeholder engagement sessions in August and September 2011. The sessions were an opportunity for identified stakeholders to provide information and views for consideration in relation to the study. Stakeholders were selected having regard for the bulky goods retailing and LFR focus of the study. As such, local chambers of commerce, landholders with interests in bulky goods known through the LEP renewal program and key bulky goods retailing interests were invited to participate.

The sessions were conducted as 'one on one' discussions between the stakeholder and Hill PDA. The stakeholders who responded to Council's invitation and engaged in the process were as follows: Clarke Street landholders, Ballina Chamber of Commerce and Industry, Ballina Shire Council Commercial Services Unit, Alstonville/ Wollongbar Chamber of Commerce, Homeworld Ballina, Wesfarmers (Bunnings), Woolworths Masters and Harvey Norman.

Key Findings

The key findings of the investigation as detailed in the study report are as follows:

- Bulky goods and LFR land uses are distributed over several locations in Ballina, primarily in the Ballina Town Centre, Kerr Street retailing precinct, Clarke Street industrial area, West Ballina along the Pacific Highway and the Southern Cross industrial precinct.
- The Southern Cross industrial precinct houses the greatest proportion of bulky goods and LFR floorspace, with some 20,000m² of available floorspace.
- The Harvey Norman Centre in the Southern Cross industrial precinct provides for the greatest concentration of bulky goods retailing floor area in the shire at present.
- Demand modelling indicates the following:
 - Current bulky goods retailing floor space demand (at 2011) is approximately 52,000m².
 - Projected bulky goods retailing floor space demand (to 2026) is approximately 70,000m².
 - Current occupied and available bulky goods floor space in Ballina Shire is approximately 36,000m², suggesting that Ballina Shire is presently undersupplied in terms of floor area for bulky goods retailing uses.
 - There is also potential for Ballina Shire to accommodate approximately 17,000m² of LFR floor area (separate to bulky goods retailing) in the period to 2026.
- Having regard for the demand modelling, Hill PDA estimates that Ballina Shire will require around 49,500m² of additional floor area for bulky goods retailing and LFR land uses during the period to 2026.
- If all mooted developments were to occur in the shire (including Homeworld, Masters, Bunnings and expansion of the Harvey Norman precinct), there will be more than sufficient supply to meet demand.
- Hill PDA considers that it is unlikely that all mooted developments will occur in the period to 2026. Rather, it is more likely that a combination of the mooted developments will occur over time.
- Hill PDA considers it advantageous to concentrate bulky goods retailing and LFR floor space in one location.

- On the basis of the demand analysis, consideration of potential locations and potential development scenarios, Hill PDA recommends that Council should seek to encourage a bulky goods retailing and LFR cluster in the Southern Cross industrial precinct in and around the Harvey Norman Centre. Hill PDA suggests that this cluster could be achieved by using approximately 6ha of land to the north and west of the Harvey Norman site that is presently zoned for industrial purposes under the Ballina LEP 1987.
- Additional land required to meet demand where other development does not proceed in the shire could be accommodated in the vicinity of the Harvey Norman Centre, being on greenfield land that is proposed for the expansion of the Southern Cross Industrial Estate. Hill PDA estimates that the additional land area needed to meet demand, beyond that noted above, is approximately 3 ha.
- Council could encourage a cluster of bulky goods retailing and LFR uses in the Southern Cross industrial precinct through the application of a B5 Business Development zone under its Standard Instrument LEP.

Planning Framework

The recommendations of the Ballina Shire Bulky Goods Retailing Investigation advocate the application of local planning policy that supports the clustering of bulky goods retailing and LFR land uses around the Harvey Norman Centre (Lot 951 DP 1165266) in the Southern Cross industrial precinct.

Having regard for the available land area immediately to the north and west of the Harvey Norman site and the potential for the expansion of the estate into greenfield areas, it is considered that this approach will provide the opportunity to accommodate demand for bulky goods retailing floor space to 2026. This approach is also consistent with Council's previous investigations in relation to bulky goods retailing uses and the strategic policy position associated with bulky goods identified in the adopted Southern Cross Precinct Master Plan.

One way in which Council could seek to introduce the above policy into its local planning framework is to incorporate a bulky goods specific zoning into the Standard Instrument LEP for the shire (the Draft Ballina Local Environmental Plan 2011). Hill PDA recommends the introduction of a B5 Business Development zone into Council's Standard Instrument LEP that is applied specifically to Lot 951 DP 1165266 and the adjacent lots to the north and west (Attachment 1) to achieve this outcome. Council's Standard LEP Instrument does not presently use this zone, but it is open to Council to seek its inclusion.

The advantage of this approach is that the land use zoning framework would clearly identify specific land in the Southern Cross industrial precinct as a location for bulky goods, thereby encouraging a clustered outcome. The zone could also be tailored to accommodate other associated use such as cafes and hardware and building supplies. Importantly, it should be noted that this zone includes several mandated permitted land uses as identified in Attachment 3.

The introduction of a targeted bulky goods zone would require an amendment to Council's Standard Instrument LEP. In order to advance this, Council will need to commence a planning proposal to amend its Standard Instrument LEP. Council can commence a planning proposal in advance of the introduction of the Standard Instrument LEP and can seek to align the amendment with the finalisation of the principle plan where desirable to do so. That is, it may be possible to complete the standard LEP and an amendment in relation to bulky goods retailing concurrently.

In considering the above, it is important to distinguish between the concepts of bulky goods retailing and large format retailing (LFR). Hardware and building supplies are also noteworthy as this use can include large hardware stores like Bunnings and Masters. The following provides an outline of the three concepts in relation to the Standard Instrument LEP.

Bulky Goods Retailing

Bulky goods retailing premises are defined as follows in the Standard Instrument LEP:

bulky goods premises means a building or place the principal purpose of which is the sale, hire or display of bulky goods, being goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, and
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire, and including goods such as floor and window supplies, furniture, household electrical goods, equestrian supplies and swimming pools, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.

Having regard for the definition, bulky goods premises are a specific type of retail outlet and there are limitations on the type of use that can be considered to be a bulky goods land use. For example, shops that principally sell food or clothing are not bulky goods premises.

If Council seeks to introduce the B5 Business Development zone into its Standard Instrument LEP, it will be mandatory that bulky goods retailing premises will be a land use that is permitted with development consent on the land subject to the zone. Given this and the other mandatory land uses in the zone, it is expected that outlets such as large hardware stores, warehouses, furniture shops could establish on land in the zone. Council may also add additional uses that are permitted in the zone where considered appropriate. For example, a café or restaurant may be an appropriate use permitted in the zone to complement retailing activity.

Large Format Retailing

There is no clear definition of LFR in the Standard Instrument LEP. For the purposes of Hill PDA's study, LFR was taken to mean a retail outlet of more than 1000m² in floor area. Whilst a bulky goods premises can also be LFR, there is a range of other retail activities that may fit the concept of LFR. For example, grocery stores, warehouse chemists and department stores could be considered to be LFR.

A key challenge with this use under the Standard Instrument LEP is that the use is not specifically defined. As such, many such uses broadly constitute a shop which is defined as a *premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.*

Given the lack of a specific definition for LFR, the permissibility of retail land uses aside from those already noted as mandatory in the B5 zone could lead to the establishment of activities more akin to traditional retail outlets currently located in the Ballina Town Centre and Kerr Street retailing areas in an area intended for bulky goods premises. This may be disadvantageous in terms of maintaining the Ballina Town Centre and Kerr Street areas as the apex of the commercial hierarchy in the shire.

The distinction between bulky goods premises and LFR provides an opportunity for Council to define the form of development it intends in the B5 zone if applied. That is, Council could limit the extent of LFR type premises in a bulky goods retailing precinct by limiting the range of permitted land uses. Alternatively, Council could enable LFR type uses in a bulky goods retailing precinct. This approach could be supported by specific criteria for LFR premises such as a minimum floor area.

If Council endorses the application of a B5 Business Development zone as outlined above, options for the structure of the zone will be reported to Council for further consideration prior to the submission of a planning proposal to the Department of Planning & Infrastructure.

Hardware and Building Supplies

Hardware and building supplies are specifically defined in the Standard Instrument LEP as follows:

hardware and building supplies means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.

It is possible for large floor area hardware stores that sell some bulky goods type items to meet the terms of this definition. Importantly, hardware and building supplies is a permitted land use in the B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B6 Enterprise Corridor and IN1 Industrial zones under Council's Draft Ballina LEP 2011.

As such, hardware and building supplies are permitted in a broader range of locations than bulky goods retailing uses. This means that such uses may not necessarily cluster into a bulky goods specific precinct if nominated. However, if the B5 zone is utilised as discussed above, listing of this use as permitted with development consent would be mandatory in the zone. Hence, such uses could collocate within a nominated bulky goods precinct.

Clarke Street Precinct

Hill PDA examined the Clarke Street area as part of its investigations and concluded that the locality is not particularly suitable for additional bulky goods retailing and LFR floor space having regard for the matters considered in their study. However, Hill PDA suggested that the Crown Land immediately west of Clarke Street and adjacent to North Creek Canal may be a suitable site for the particular form of development proposed by Masters purely from a location perspective.

However, there are a number of known and potential constraints applicable to this land and it is considered important to integrate any consideration of this site with the broader Clarke Street area. It is recommended that no specific action is taken in relation to this land in advance of a master plan for the Clarke Street precinct (including the Crown Land holdings to the west). In this regard, the preparation of a master plan is identified as a project in Council's current operational plan but it is not presently funded.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Bulky goods retailing is a significant, and apparently growing, part of the retail sector in the shire. Council has an opportunity to recognise this aspect of retailing and the potential benefits to the community through its local planning framework.
- **Economic**
Hill PDA has identified that there is presently an undersupply of floor space for bulky goods retailing purposes in the shire. Council has an opportunity to plan for the projected demand having regard for economic activity and outcomes in the shire.

Legal / Resource / Financial Implications

This report outlines the findings of a study into bulky goods retailing in Ballina Shire. The report was completed by consultant firm Hill PDA and financed from within the existing Strategic and Community Services Group planning budget.

There are no specific legal, resource or finance implications arising from the study. However, should Council proceed to implement changes to its local planning framework, there is a statutory process under the terms of the *Environmental Planning & Assessment Act* to be followed, and staff resources will be required.

Consultation

Stakeholder consultation was undertaken by Council's consultant, Hill PDA, as part of the preparation of the Ballina Shire Bulky Goods Retailing Investigation. The outcomes of this engagement informed the findings of the study.

Options

1. Implement the strategic planning framework recommended by the Ballina Shire Bulky Goods Retailing Investigation.

Hill PDA has undertaken a comprehensive investigation into supply and demand associated with bulky goods retailing, as well as site analysis and consideration of planning mechanisms available to address bulky goods in the Standard Instrument LEP.

On the basis of the investigations undertaken, Hill PDA has recommended that Council seek to cluster bulky goods retailing uses in the Southern Cross Industrial Estate in the vicinity of the established Harvey Norman Centre. In order to implement this policy position, an amendment to Council's Standard Instrument LEP through the preparation of a planning proposal will be required.

If this approach is adopted by Council, a further report documenting the planning proposal in full, as well as options for the structure of a suitable zone to facilitate bulky goods retailing land uses, will be prepared. Such a report will also include further consideration of LFR land uses. In endorsing the preparation of a planning proposal, Council is supporting the recommendations of the report but will have a further opportunity to consider key issues and refine outcomes prior to proceeding with an LEP amendment process.

Under this approach, steps would also be taken to integrate the recommendations of Hill PDA into relevant strategic planning frameworks and policy where appropriate. For example, the concept of clustering bulky goods retailing land uses could be identified in Council's Local Growth Management Strategy which is currently under preparation.

The key advantages of this approach are that a clear strategic direction will be provided to prospective developers and Council will have established a platform to meet demand for bulky goods retailing in the shire based on analysis of the specific circumstances of our local government area. This approach also creates a destination for bulky goods retailing in the shire and to some extent, the region.

A disadvantage of this approach is that there will be limitations on the options available for the siting of bulky goods retailing uses in the shire (although such uses are permitted in several of the business zones under the Draft Ballina LEP 2011). It is also important to note that some uses that may be seen as bulky goods retailing or LFR that are specifically defined under the Standard Instrument LEP are permitted in various zones under Council's Draft Ballina

LEP 2011. As such, a clustering policy will likely encourage, but cannot guarantee, the collocation of all like facilities.

Preparation of a planning proposal and implementation of the Hill PDA recommended strategic framework for bulky goods retailing in the shire is the recommended course of action.

2. Implement an alternate strategic planning framework

Council may seek to implement an alternate strategic planning framework in relation to bulky goods retailing. If this is the preferred approach of Council, clear direction regarding the desired outcomes will be required.

An example alternate approach could be to broaden the permissibility of bulky goods retailing in Ballina Shire under the Standard Instrument LEP and leave market forces to determine outcomes.

This approach is not recommended.

3. No action at this time.

Council may elect to take no further action at this time. This approach is not recommended as the matter of bulky goods retailing has been a significant issue in recent times and has been a specific matter arising from the LEP renewal program. There is no bulky goods retailing specific zone in the current Draft Ballina Local Environmental Plan 2011, with a limited number of business zones permitting this land use. As such, the present draft LEP does not establish a clear strategic direction for bulky goods retailing in the shire.

This approach is not recommended as it is considered advantageous to clearly identify the intended approach for bulky goods retailing in the shire. This will provide direction for potential developers and other interested parties and help to avoid ad hoc development proposals that are not consistent with Council's strategic planning framework for the shire.

RECOMMENDATIONS

1. That Council notes the contents of the Ballina Shire Bulky Goods Retailing Investigation report prepared by Hill PDA.
2. That Council proceed to implement a strategic planning framework for bulky goods retailing in Ballina Shire consistent with the recommendations in the Ballina Shire Bulky Goods Retailing Investigation report prepared by Hill PDA.
3. That Council proceed to prepare a planning proposal for the application of a suitable zone over Lot 951 DP 1165266 and the proposed Lots 2 and 3 (as shown in attachment 2) at the Southern Cross Industrial Estate to facilitate a bulky goods retailing precinct.
4. That in the preparation of a planning proposal in accordance with point three, options be canvassed in relation to the collocation of large format retail uses with bulky goods premises.

Attachment(s)

1. Ballina Shire Bulky Goods Retailing Investigation (Hill PDA January 2012) - Distributed under separate cover.
2. Subdivision Layout, Lots 1, 2 and 3 - Harvey Norman Complex and surrounds at the Southern Cross Industrial Estate.
3. Standard Instrument LEP Extract - B5 Business Development Zone.

9.2 Combined DCP - Waste Minimisation and Management

File Reference	Ballina Shire Combined DCP 2006
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction with respect to the public exhibition of Ballina Shire Combined Development Control Plan Draft Chapter 19 – Waste Minimisation and Management.

Background

The Waste and Sustainability Improvement Payment (WaSIP) program is administered by the NSW Office of Environment & Heritage (OEH) and assists councils "...to invest in additional programs and actions that will make improvements in waste avoidance, resource recovery and waste management and improvements in environmental sustainability practices and services across their local government area".

Participation in the WaSIP program is voluntary. Council has agreed to participate in the WaSIP program for 2011-2012 and received payment from the State Government in October 2011 totalling approximately \$240,000. The receipt of funding is conditional on the delivery of standards identified by the NSW Office of Environment & Heritage including the preparation of a 'Waste Not' Development Control Plan.

This funding is effectively a return on the levy Council pays to the State Government for all waste collected at the Ballina landfill.

Draft DCP provisions have been prepared to meet the above funding condition and this report seeks Council's endorsement to proceed to publicly exhibit the draft provisions.

Key Issues

- WaSIP funding conditions
- Draft DCP provisions
- Supporting education program

Information

Council's Civil Services Group agreed to participate in the NSW Government's Waste and Sustainability Improvement Payment (WaSIP) for 2011–2012 in August 2011. The intent of the WaSIP program is to assist councils in the 'regulated area' to invest in additional actions and programs that will make improvements in waste avoidance, resource recovery and waste management and overall improvements in environmental sustainability.

By agreeing to participate, Council has committed to undertake a number of actions in relation to waste and sustainability for 2011-2012. The standards required to be met by Council for the 2011-2012 funding period include:

- Have in place a 'Waste Not' Development Control Plan (DCP) or a policy of similar nature by 31 May 2012
- Develop and adopt a Strategic Waste Action Plan that contains performance milestones that will contribute to Council reaching the 2014 municipal waste target by 30 April 2012 and
- Submit an audit report and raw data sheets from the household residual waste composition audit (conducted between November 2010 and November 2011) by 31 May 2012 (unless an exemption has been granted by OEHL).

Council's Strategic and Community Services Group agreed to the preparation of a draft DCP Chapter addressing the principles of a 'Waste Not' DCP at the request of the Civil Services Group in late 2011. As noted earlier the draft DCP provisions are required to be in place by 31 May 2012.

The Civil Services Group is undertaking a review of the Integrated Waste Strategy to ensure compliance with the condition regarding the Strategic Waste Action Plan and is also undertaking the audit report as required. It is also noted that the Action Plan contained in the Integrated Waste Strategy Report (prepared by Aurecon and dated 5 August 2010) includes the preparation and adoption of DCPs to support active waste minimisation at source.

Draft DCP provisions

The agreement with the OEHL details the minimum elements that must be contained in the draft DCP, as follows:

- a requirement to address the management of demolition and construction waste and
- a requirement for submission of a waste management plan in association with proposed development that includes details of the amount of demolition and construction waste likely to be generated and how these materials are to be sorted and dealt with; and
- a requirement for the on-site retention of demolition and construction waste dockets to confirm which facility received the material for recycling and disposal and
- consideration of the facilities required for the post completion ongoing operation of recycling and waste management services.

Ballina Shire Combined Development Control Plan Draft Chapter 19 – Waste Minimisation and Management addresses the elements above, as required. The draft DCP Chapter includes 'sample' forms to assist proponents in providing the relevant information to Council.

It is noted that the introduction of the controls will have resource implications for the Regulatory Services Group. However, it is anticipated that the supporting education program outlined below will assist in the implementation of the provisions.

It is also noted that the review of the Integrated Waste Strategy being undertaken by the Civil Services Group may identify additional measures that are best addressed via DCP provisions. In this event any additional matters will be highlighted in the reporting on the outcomes of the exhibition period to Council.

One issue that has become evident in the process of the preparation of the draft DCP Chapter is that the standardisation of Complying Development provisions effectively means that Council will not be able to require the submission of a waste management plan for Complying Development (as Council controls will be replaced by the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)).

Consultation with the Regulatory Services Group and the Manager for Water and Waste indicates that single dwelling-houses are likely to be a key source of construction waste. Given the DCP provisions are an initiative of the State Government, it is also recommended that representations be made to the State Government requesting that the provisions be applied to Complying Development through the Codes SEPP.

Subject to Council's endorsement, it is proposed to publicly exhibit the draft DCP Chapter for a period of at least 28 days in accordance with Clause 18 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

Supporting education program

The introduction of new controls addressing waste minimisation and management presents an opportunity to engage with relevant professions regarding the aims and objectives of the provisions and the information required to be submitted with development applications.

It is proposed that appropriate allocation of the funding received by Council under the WaSIP program can provide for information sessions with builders and building designers. For example, there may be opportunities for builders and building designers to include the preparation of a waste management plan in their standard development application package offered to clients.

As a minimum, it is considered that two workshops should be held, one during the exhibition period and a second workshop following the adoption of the draft DCP Chapter but prior to the date from which it becomes effective. Invitations to the workshops would be extended to builders and building designers that are regularly involved in construction projects within the shire. The workshops would be organised and facilitated by Council's Civil Services

Group, with appropriate support from Council's Strategic and Community Services Group.

In addition to the industry sessions, it is also proposed to hold information sessions for Council's Regulatory Services Group and customer service staff.

Sustainability Considerations

- **Environment**
The introduction of provisions to address waste minimisation and management will result in positive impacts on the shire's environment.
- **Social**
It is considered that the proposed supporting education component will assist in effecting positive behavioural changes in the longer term.
- **Economic**
The reuse and recycling of materials will likely result in positive economic outcomes in the shire.

Legal / Resource / Financial Implications

The implementation of the draft DCP provisions will result in additional workload for the Regulatory Services Group in terms of answering questions and providing information to the public, assessing documentation submitted with applications, and compliance-related issues. As noted earlier in this report, it is proposed that some of the WaSIP funding be allocated to the supporting education component of the project.

In considering whether to proceed with the draft DCP chapter, it is important to recognise that implementation of a waste DCP is a condition for the receipt of the funding that has been provided. Further, funding is provided on an annual basis where Council meets the specified conditions.

Consultation

It is proposed to publicly exhibit the draft DCP Chapter for a period of 4 weeks in accordance with Clause 18 of the EP&A Regulation.

It is also proposed to conduct a minimum of two industry workshops and one staff workshop in relation to the proposed controls. As noted above, the industry workshops will be held both during the exhibition period and following the adoption of the draft DCP Chapter but prior to the controls coming into effect.

Options

1. Not proceed with the preparation of draft DCP Chapter 19 – Waste Minimisation and Management

This option will not realise the potential positive impacts presented by the introduction of waste minimisation and management controls. It will also mean that Council will not meet the conditions specified by OEH for the provision of the WaSIP program funding. However it will lessen the impact on the building industry. On balance this approach is not recommended.

2. Proceed to exhibit draft DCP Chapter 19 – Waste Minimisation and Management

This is the preferred option and will provide the opportunity to introduce provisions to pursue the minimisation and management of waste within the shire. It will also enable Council to meet the obligations of the WaSIP program and complete a task identified in the Integrated Waste Strategy Report.

Prior to exhibition Council may make changes to the draft document. Further, and importantly, Council will have another opportunity to consider the DCP chapter prior to its implementation following the public exhibition period.

Public exhibition of the draft DCP chapter, as attached to this report, is the recommended approach.

RECOMMENDATIONS

1. That Council approves the exhibition of draft DCP Chapter 19 – Waste Minimisation and Management for a minimum period of four weeks.
2. That Council hold industry workshops during the exhibition period and prior to the DCP provisions being reported back to Council.
3. That Council make submissions to the NSW Office of Environment & Heritage and the Department of Planning & Infrastructure in relation to the application of the waste minimisation and management provisions to Complying Development identified in accordance with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Attachment(s)

1. Draft Ballina Shire Combined DCP Chapter 19 – Waste Minimisation and Management (distributed to Councillors under separate cover)

10. General Manager's Group Reports

10.1 Use of Council Seal

File Reference Use of Seal

RECOMMENDATIONS

That Council affix the Common Seal to the following documents.

US12/04	<p>Deed of Acquisition of Easement between Essential Energy and Ballina Shire Council - Lot 205, DP 246509 situated at Maple Drive, Alstonville and Deposited Plan Administration Sheet for the plan of Easement for Multi Purpose Electrical Installation within Lot 205, DP 246509.</p> <p>Explanation: Essential Energy has approached Council for permission to under bore electrical conduits and install electrical cables across the Public Reserve (Lot 205, DP 246509) adjacent to Maple Drive at Alstonville. This work is an important part of the overall works involved with the Alstonville Zone Substation upgrade.</p> <p>The Manager for Open Spaces and Reserves advised there were no objections to this work being undertaken subject to Essential Energy creating an easement over the cables on completion of the work and all survey, legal and registration costs involved in the creation of the easement will be the responsibility of Essential Energy. Council will not be pursuing compensation for the creation of the easement over the public reserve.</p> <p>The seal is required on the deed of acquisition, documents and plans associated with the creation of the 'Easement for Multipurpose Electrical Installation 3 Wide' through public reserve being Lot 205 DP 246509 at Maple Drive, Alstonville.</p>
US 12/5	<p>Deed of Consent & Assignment of Lease of Ballina Byron Gateway Airport Hangar site Lot 2 DP1045699 from R E Lloyd & J V Hutchinson as joint tenants, to J V Hutchinson solely.</p> <p>Explanation: Council is in receipt of a request from the current joint tenants (Lloyd & Hutchinson) to assign the lease from the joint names to J V Hutchinson solely. The lease is for a 10 + 10 year term that commenced on 11 November 2002 terminating this year on 10 November 2012, with a 10 year option period commencing on 11 November 2012 to 10 November 2022.</p>

10.2 Investments Summary - February 2012

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

Background

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

This report has been prepared for the month of January 2012.

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 31 January 2012 was \$73,008,000. This represents an increase from December of \$484,000. The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 January 2012, was \$2,106,592.

Council's investments as at 31 January are at an average (weighted) rate of 5.71% which is 1.31% above the 90 Day Bank Bill Index of 4.40%.

The majority of the approximately \$73 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

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

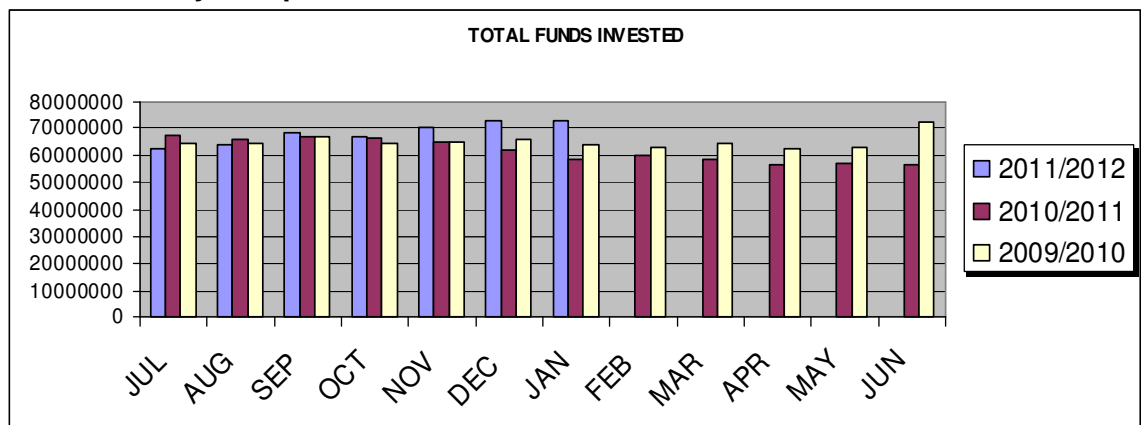
* Based on reserves held as at 30 June 2011

Information

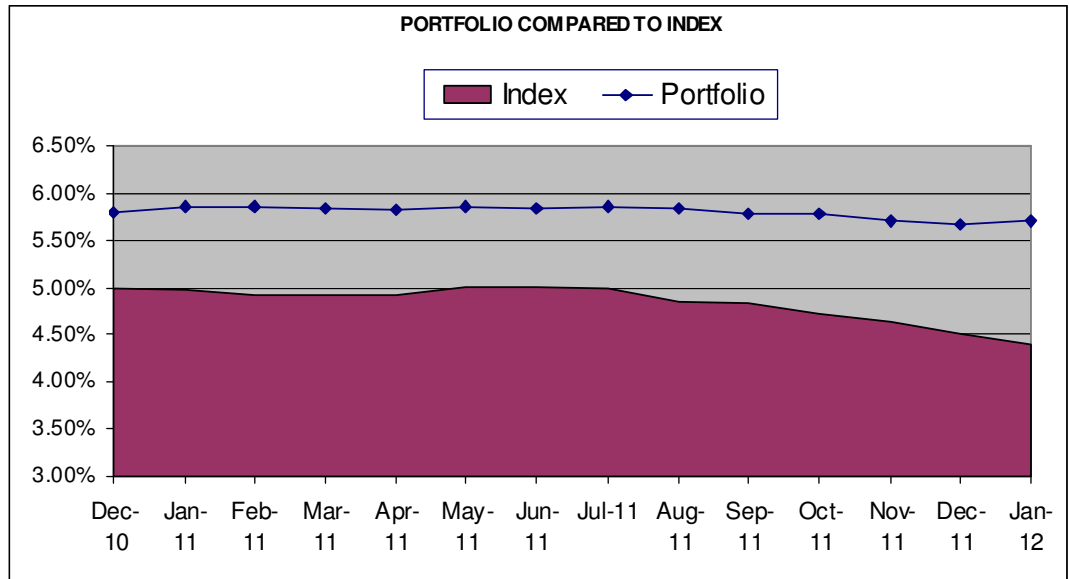
A. Summary of Investments by Institution

Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
Grandfathered Investments							
ANZ Bank	AA-	No	2,000	2,000	0	2.7	
Bendigo Bank Ltd	BBB	No	1,000	1,000	0	1.4	
Deutsche Bank	A+	No	4,000	4,000	0	5.5	
Goldman Sachs	AA-	No	1,000	1,000	0	1.4	
Heritage Building Society	BBB-	No	1,000	1,000	0	1.4	
HSBC Australia	AA-	No	1,000	1,000	0	1.4	
Local Govt Fin Service	A	No	5,000	5,000	0	6.8	
Longreach Capital Markets 23	AA-	No	1,000	1,000	0	1.4	
Longreach Capital Markets 28	AA+	No	1,000	1,000	0	1.4	
Morgan Stanley	A	No	2,000	2,000	0	2.7	
National Australia Bank	AA-	No	1,788	1,788	0	2.4	
National Wealth M'ment Holding	A	No	2,000	2,000	0	2.7	31%
Rated Institutions							
ANZ Bank	AA-	No	67	51	20	0.1	
Bank of Queensland	BBB+	Y-\$1m	6,000	6,000	10	8.2	
Bank of Western Australia	AA-	Y-\$m	4,196	5,196	20	7.1	
Commonwealth Bank of Aust	AA-	Y-\$2m	6,473	4,973	20	6.8	
Credit Union Australia	BBB	Yes	2,000	2,000	10	2.7	
Illawarra Mutual Bld Soc	BBB	Y-\$1m	4,000	4,000	10	5.5	
ING Bank Ltd	A		4,000	5,000	20	6.8	
Members Equity Bank	BBB	Y-\$1m	2,000	2,000	10	2.7	
National Australia Bank	AA-	Y-\$1m	10,000	10,000	20	13.7	
Newcastle Permanent Bld Soc	BBB+	Y-\$1m	1,000	1,000	10	1.4	
Suncorp Metway Bank	A+	Y-\$1m	9,000	9,000	20	12.3	67%
Unrated ADI's							
Defence Force Credit Union		Yes	1,000	1,000	\$1m	1.4	1%
Total			72,524	73,008		100 %	100%

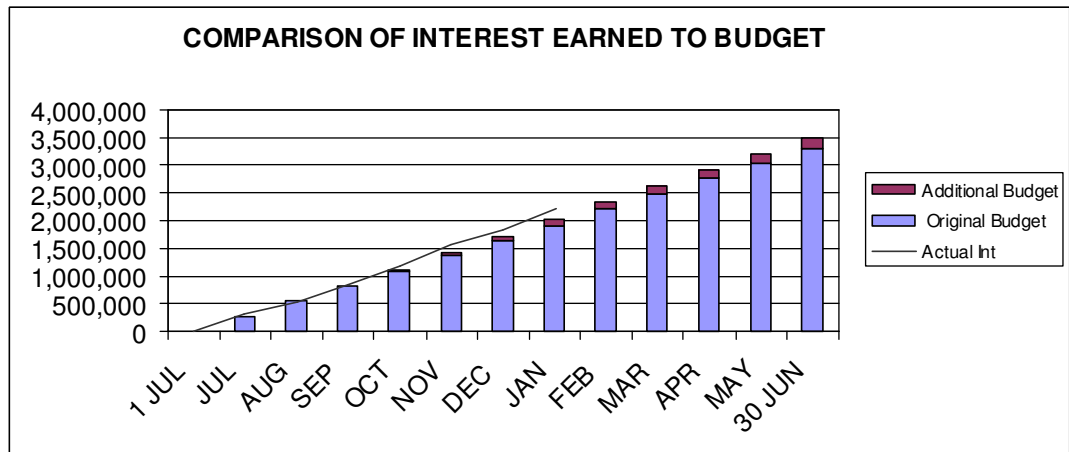
B. Monthly Comparison of Total Funds Invested



C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



The Reserve Bank Board surprised most commentators by leaving its cash rate unchanged at 4.25% at its meeting on 7 February 2012. Looking at Graph C in this report, there is a widening gap between the portfolio return, 5.71%, and the 90 day BBSW rate, 4.40%, a margin of 1.31% (0.86% six months ago). One of the main reasons for this is that the 'Big Four' Australian banks have been placed on rating 'watch negative' by Fitch rating agency. This follows on from a recent downgrade from AAA to AA- for all four banks. The reason Fitch have given for both the downgrade and the rating 'watch negative' is the reliance of the majors on sourcing 30% to 40% of their borrowings (our investments) from overseas and the trouble they may have securing further funding if the European debt crisis worsens.

The Australian 'big four' are now very keen to obtain more of their funding from within Australia and are offering high rates to secure this funding. We are now seeing the case where the highly rated banks are, in many cases, offering better rates than lower rated and even unrated organisations. The concept of risk/reward seems to have been turned on its head! Council is therefore receiving rates that are at least the equal of that achieved six months ago despite the RBA cutting the cash rate by 0.25% in November and December.

E. Investments Held as at 31 January 2012

Purchase Date	Issuer	Type	Rate %	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	5.36	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	5.36	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	4.98	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	5.05	16/06/16	2,000
28/02/07	Longreach Series 23	IRLN	9.33	10/02/12	1,000
25/01/07	Local Govt Fin Service	FRTD	5.23	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	5.64	21/09/12	1,000
18/10/07	Heritage Building Society	FRN	5.70	18/10/12	1,000
18/10/07	ANZ Bank (FRN)	FRN	5.15	18/10/12	2,000
14/03/08	HSBC Australia Ltd	FRN	6.74	14/03/13	1,000
17/12/08	Commonwealth Bank of Australia	FRTD	5.63	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	5.69	17/04/12	1,000
03/02/10	Commonwealth Bank of Australia	FND	4.20	At Call	3,477
11/07/11	Suncorp-Metway Bank	TD	6.22	09/01/12	1,000
20/07/11	ANZ Bank	FND	3.70	At call	67
27/09/11	BankWest	TD	5.80	27/03/12	3,000
04/10/12	Defence Force Credit Union	TD	6.00	02/04/12	1,000
04/10/12	ING Bank Ltd	TD	5.90	01/02/12	1,000
10/10/11	Illawarra Mutual Bld Society	TD	5.80	07/02/12	2,000
25/10/12	ING Bank Ltd	TD	5.99	22/02/12	2,000
28/10/11	Members Equity Bank	TD	6.05	27/02/12	1,000
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
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
05/12/11	National Australia Bank	TD	6.10	05/04/12	2,000
07/12/11	Bank of Queensland	TD	6.00	06/03/12	1,000
20/12/11	National Australia Bank	TD	6.20	20/04/12	1,000
22/12/11	National Australia Bank	TD	6.20	23/04/12	4,000
04/01/12	Suncorp-Metway Bank	TD	5.96	03/05/12	2,000
04/01/12	Members Equity Bank	TD	5.90	03/04/12	1,000
05/01/12	Bank of Queensland	TD	5.95	04/05/12	2,000
05/01/12	Suncorp-Metway Bank	TD	6.00	05/07/12	1,000
19/01/12	Illawarra Mutual Bld Society	TD	5.90	19/04/12	2,000
19/01/12	Suncorp-Metway Bank	TD	5.91	18/04/12	2,000
24/01/12	ING Bank Ltd	FRTD	6.31	24/01/17	1,000
25/01/12	BankWest	TD	5.90	24/04/12	1,000
27/01/12	Credit Union Australia	TD	5.81	26/04/12	1,000
27/01/12	Newcastle Permanent Bld Society	TD	5.85	26/04/12	1,000
30/01/12	Suncorp-Metway Bank	TD	5.91	30/04/12	1,000
31/01/12	Bank of Queensland	TD	5.95	30/05/12	2,000
Totals:					73,008
TD=Term Deposit		FRN=Floating Rate Note		FND=Managed Fund	
IRLN=Interest Rate Linked Note		FRTD= Floating Rate Term Deposit		ELN=Equity Linked Note	

RECOMMENDATIONS

That Council notes the record of banking and investments for January 2012.

10.3 Community Donations

File Reference	Community Donations
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To invite Council to consider an additional donation request.

Background

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

One such request is considered in this report and a copy of the letter and quotation are attached.

Key Issues

- Nature of request
- Community benefit
- Funding available

Information

Details of the new request are as follows:

Rous Mill & District Memorial Hall Inc

In the 2011/2012 Halls Donation Program the Rous Mill Hall Committee sought a donation of \$9,476 on a 50/50 basis and were granted the sum of \$4,738 to paint the exterior of the Hall.

In the meantime it has come to light that various parts of the building exterior are in critical need of repair before the painting takes place and they have requested a further donation of \$3,880 for this work.

Staff have been advised that if Council were to grant the donation on a 50/50 basis (\$1,940) the Hall Committee would have the funds to match the donation from Council. However the Hall Committee has asked Council to provide the full amount of \$3,880. In making this request the committee has a works program that includes replacing door jams \$3,480 and improving/repositioning toilets \$10,700, as well as the cladding and painting.

Sustainability Considerations

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

Legal / Resource / Financial Implications

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

Items	Budget	Expended	Balance
Donations (General)	65,000	62,556	2,444
Donations (Halls)	40,000	37,500	2,500
Donations (DA Fees)	2,000	4,162	(2,162)
Net Amount Available			2,782

Consultation

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

Options

The options are to approve the request for 50% or 100% or decline the request.

Overall the preference is to provide support on the 50% basis as this is the standard approach followed and it helps to leverage Council's funds. Also there are inadequate funds available to finance the 100% option.

RECOMMENDATION

That Council approves the donation to the Rous Mill & District Memorial Hall Inc of 50% (\$1,940) of the repair cost (\$3,880) as per the attachment to this report and as per Council's Halls Donation Program.

Attachment(s)

1. Letter & Quotation - Rous Mill & District Memorial Hall Inc.

10.4 Sundry Debtors - Write Offs

File Reference	Sundry Debtors
CSP Linkage	Transparent and accountable governance
Delivery Program	Finance
Objective	To seek Council approval to write off outstanding debts considered irrecoverable.

Background

Procedures for the management of outstanding debts include an assessment of when it is no longer viable to continue to pursue accounts not paid. In conducting this assessment, it is apparent that three accounts fall into this category.

The General Manager only has delegated authority to write-off debts to the value of \$1,000 and the debts outlined in this report are above that threshold.

Key Issues

- The value of the write off
- Recovery action undertaken to date
- Avenues to continue recovery action
- Cost versus benefit of continuing action. Council uses a debt collection agency called ARL

Information

The procedure for debt recovery involves staff conducting follow up action including telephone calls and varying letters of demand. This includes finance staff advising the staff member responsible for providing the credit initially, and enlisting their assistance to recover the debt. The matter is then passed on to our debt recovery agency that looks to take the most appropriate course of action. This will include the issue of a summons and having a sheriff seize goods where appropriate.

Legal costs associated with recovery, including expenses of the collection agency, are added to the debt and recovered as part of the account. When the account cannot be recovered then Council must meet the costs associated with attempted recovery. There is a point at which an account must be deemed as uneconomical to collect. The three accounts detailed in this report are considered to have reached this point.

Even though the account is written off it does not mean that the debt ceases to be due and payable. It does however mean that Council will cease to actively pursue payment.

Also Council debtor staff will issue an internal email to all Council staff advising the names of 'bad debtors'. Staff are requested not to conduct business with any persons or entities on the list and if this is not possible under no circumstances are staff to provide works or services without pre payment.

Details of the three accounts that have been identified to be written off are as follows.

Account One

Debtor Name:	Kelly's – S & C Cremin – Wigmore Arcade premises at 141 River Street, Ballina
Original amount due:	\$40,668.01
Service provided and date rendered:	Rent
Payments received:	\$35,000.00
Balance currently outstanding:	\$5,668.01

Details of recovery action to date:

- Council meeting 24 May 2011 adopted a recommendation from the Commercial Services Committee which included reference to an amount for payment of \$35,000, being approximately 80% of the total debt.
- Cremins accepted the negotiated settlement figure of \$35,000.00 payable over three instalments on 1 June 2011, 10 June 2011 and 28 June 2011 and have paid in full.
- Recommendation from Commercial Services is to write off the remaining balance of \$5,668.01.

Account Two

Debtor Name:	Mr I J Preston
Original amount due:	\$2,272.70
Service provided and date rendered:	Removal of tree at 20 Coogee St, East Ballina caused damage to Council sewer pipes August 2008
Late payment fee:	\$30.00
Payments received:	\$0.00
Balance currently outstanding:	\$2,302.70 (plus \$1,026.52 legal costs)

Details of recovery action to date:

- Details sent to ARL (Council's debt recovery agency) April 2009 and a summons was subsequently issued and served 26-08-09 by leaving summons in mailbox at business address in Ballina after sheriff spoke to Mr Preston at home in Alstonville. Mr Preston said he would take care of it the next day
- Payment was not received
- Request to ARL to issue another summons in December 2010
- Debtor served personally 01-02-11
- Requested ARL to proceed to Judgement 24-03-11
- Judgement entered 11-05-11

- Debtor not home when Sheriff visited
- Further payment required to pursue with a second visit so decision taken to cut our losses and discontinue pursuing Debtor.
- Name has been added to "bad debtors" list in September 2011 which is circulated regularly to all Council staff.

Account Three

Debtor Name:	Ramsgate RSL Memorial Club Ltd
Original amount due:	\$111,997.55
Service provided and date rendered:	Roadworks May 2007 to May 2008
Payments received:	\$85,866.18
Balance currently outstanding:	\$26,131.37
Details of recovery action to date:	

- Phone calls to Debtor March 2008, April 2008 and June 2008
- Legal action 22 August 2008
- Debtor advised September 2008 they would only pay quoted amount, not full invoice amount.
- Total project amount is over the original quoted price as the works were delayed for approximately 10 months due to a dispute with an elderly neighbouring resident. Council undertook negotiations in good faith to resolve this dispute. This resulted in:
 - a) Additional establishment costs
 - b) The installation of a new mountable kerb on the northern side of King Street to create a grassed pedestrian footpath area;
 - c) Increase in material costs of road pavement material and concrete; and
 - d) Increase in bitumen prices for the sealed surface of the new road

Prior to the previous request for Council to consider this write off, Ramsgate RSL negotiated with Civil Services staff regarding the original fixed quote and both parties agreed to meet a portion of the additional costs involved. Civil Services sent a report to Ramsgate RSL detailing the revised negotiated amount to be paid by Ramsgate RSL and the amount of the over expenditures that Council would accept. The amount of \$26,131.37 is the amount that Civil Services negotiated that Council would accept.

A copy of a letter from Ramsgate RSL is attached confirming the discussions and negotiations which took place and their belief that no payments are outstanding.

The majority of Council's private works are undertaken on a do and charge basis plus 15%. Unfortunately this work was carried out based on a Council quotation as Ramsgate required a quotation to meet their needs and the project was considered relatively straight forward.

Private works do carry some risk however Council has traditionally generated a reasonable level of profit from these works over the years.

Councillors had previously wished for Council to pursue this debt through other means, such as the lease or licence for the land, however the real issue is that in fact there is doubt over whether or not there is a debt. The reality is that Council provided a quotation for the work and the actual cost was in excess of that quotation. Typically these variations are absorbed in Council's operating result for private works this year, although in this case, due to some uncertainty, a debt was raised. From a legal perspective it is not considered that Council has any real chance of pursuing this debt, therefore the recommendation remains to write the debt off.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
Some of the bad debts relate to the deterioration in the financial climate over the past two to three years.

Legal / Resource / Financial Implications

In an accounting sense there is an obligation on Council to recognise in the books of account when it becomes very likely that an account will not be paid. In a practical sense there is an obligation on Council to use community resources wisely and recognise that it is no longer economical to continue to pursue the debt.

Consultation

Consultation is typically undertaken with the debtor, Council staff and our debt collection agency ARL.

Options

1. Council resolves to write off the debt and cease active recovery action.
2. That Council's debtor's officer in conjunction with the recovery agency continues to actively pursue the debt.

For the reasons outlined in this report the preferred option is option one.

RECOMMENDATIONS

That Council approves the write off of the following debts, totalling \$34,102.08 as the further pursuit of these debts is considered uneconomical.

Debtor Name	Outstanding (\$)
Cremin – Kelly's, Wigmore Arcade	5,668.01
Ramsgate RSL Memorial Club Ltd	26,131.37
Mr I Preston – Sewer Pipe Damage	2,302.70

Attachment(s)

1. Letter from Ramsgate RSL Memorial Club

10.5 Financial Review - Quarter Ended 31 December 2011

File Reference	Financial Management
Sustainability Plan	Responsible and efficient use of resources
Management Plan	Financial Management
Objective	To review the Council budget as at 31 December 2011.

Background

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

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

Key Issues

- Variations to the budget

Information

The purpose of this report is to provide information on known budget variances as at 31 December 2011. The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Division of Local Government.

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

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

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

Operating Income and Expenses

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

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

Capital Budget

This table outlines proposed capital expenditure and how the expense is being funded.

Cash and Investment Statement

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

Key Performance Indicators

This table shows the calculated position as at 30 June 2011 together with the estimated position at 30 June 2012. The ratios provide an indication of the financial health of the organisation. In forecasting ratios there are many variables and assumptions in the calculations that mean the forecast is very much a best guess scenario.

Contractors/Consultants/Legal Expenses

Details of specific expenses incurred and contracts entered.

Certification

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

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

Actual figures to 31 December are also included in the final column as a comparison to the PROJECTED Budget.

General Fund

This next section of the report deals with Council's General Fund operations. Tables of income and expense follow, including recommended variations to budget.

Following the tables are comments in respect to proposed budget variations that are considered to be material.

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

Operating Income	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sept 000's
Strategic Services						
Strategic Planning	393	23	416		416	39
Community Services	159		159	17	176	101
Community Gallery	52		52	8	60	31
Sub Total	604	23	627	25	652	171
Regulatory Services						
Development Services	305		305	7	312	193
Building Services	845		845	(145)	700	290
Public and Env Health	176		176	10	186	166
Admin and Public Order	87		87	(10)	77	35
Sub Total	1,413		1,413	(138)	1,275	684
Civil Services						
Asset Management	208	(11)	197	(15)	182	63
Stormwater and Env Prot	273	4	277	15	292	289
Roads and Bridges	100	20	120	23	143	107
Ancillary Transport Services	1,331		1,331	(345)	986	262
Roads and Traffic Authority	1,351		1,351	4	1,355	198
Open Space and Reserves	722	86	808	43	851	552
Fleet Mgmt and Workshop	3,292	40	3,332	12	3,344	1,569
Rural Fire Service	182		182	0	182	191
Quarries and Sandpit	315		315	0	315	133
Swimming Pools	283		283	0	283	140
Waste-Landfill/Commercial	6,502	(85)	6,417	(120)	6,297	3,400
Waste-Domestic	6,566		6,566	(110)	6,456	6,041
Sub Total	21,125	54	21,179	(493)	20,686	12,945
General Manager's Group						
Administrative Services	26	0	26	1	27	23
Financial Services	19,663	(744)	18,919	81	19,000	17,325
Regional Library	92	0	92	0	92	0
Information Services	4	0	4	0	4	2
Human Resources and Risk	76	34	110	30	140	82
Tourism	33	16	49	0	49	70
Property Management	3,478	0	3,478	(55)	3,423	1,914
Ballina Byron Airport	4,032	0	4,032	(397)	3,635	1,586
Sub Total	27,404	(694)	26,710	(340)	26,370	21,002
Total Operating Income	50,546	(617)	49,929	(946)	48,983	34,802

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

Operating Expenses (excluding depreciation)	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sep 000's
Strategic Services						
Strategic Planning	1,015	380	1,395	0	1,395	481
Community Services	693	105	798	(44)	754	436
Community Gallery	150	18	168	8	176	77
Sub Total	1,858	503	2,361	(36)	2,325	994
Regulatory Services						
Development Services	1,394	0	1,394	(100)	1,294	614
Building Services	768	0	768	0	768	375
Public and Env Health	664	5	669	0	669	299
Admin and Public Order	1,024	0	1,024	(10)	1,014	460
Sub Total	3,850	5	3,855	(110)	3,745	1,748
Civil Services						
Asset Management	2,719	14	2,733	189	2,922	1,584
Stormwater and Env Prot	518	260	778	15	793	318
Roads and Bridges	2,859	267	3,126	373	3,499	2,190
Ancillary Transport Services	2,142	148	2,290	(287)	2,003	947
Roads and Traffic Authority	1,352	8	1,360	2	1,362	347
Open Space and Reserves	3,373	284	3,657	47	3,704	1,787
Fleet Mgmt and Workshop	2,375	40	2,415	(1)	2,414	1,158
Rural Fire Service	370	44	414	0	414	220
Quarries and Sandpit	67	69	136	0	136	39
Swimming Pools	669	0	669	0	669	326
Waste-Landfill/Commercial	5,093	301	5,394	40	5,434	2,308
Waste - Domestic	6,380	(270)	6,110	(117)	5,994	2,807
Sub Total	27,917	1,165	29,082	261	29,343	14,031
General Manager's Group						
Governance	947	32	979	0	979	535
Administrative Services	904	0	904	(130)	774	332
Financial Services	(2,825)	30	(2,795)	0	(2,795)	(1,718)
Regional Library	1,280	54	1,334	0	1,334	658
Information Services	1,496	10	1,506	0	1,506	1,060
Human Resources and Risk	1,537	97	1,634	10	1,644	846
Tourism	616	35	651	0	651	333
Property Management	1,645	97	1,742	20	1,762	676
Ballina Byron Airport	2,577	0	2,577	117	2,694	0
Sub Total	8,177	0	8,532	17	8,549	2,722
Total Operating Expenses	41,802	1,673	43,830	132	43,962	19,495
Net Operating Result Before Depreciation						
	8,744	0	6,099	0	5,021	15,307
Depreciation Expense	12,475		12,475		12,475	12,475
Net Operating Result from Continuing Operations	(3,731)	0	(6,376)	0	(7,454)	15,307

General Fund Working Capital Forecast

Item	Opening Balance (1)	Sept Estimated Movement (2)	Revised Closing Balance (1 +2)	Dec Estimated Movement	Revised Closing Budget
Working Capital	2,775	(125)	2,650	(57)	2,593

Comments - General Fund

The **forecast operating surplus** (before depreciation) has reduced from \$6.1 million to \$5 million. This is due to a number of issues including:

- reduction to forecast surplus for the airport of \$514,000 and private works of \$55,000
- additional operating expenses being added to the budget that are financed from reserve such as roads repair of \$300,000
- reduced income in areas such as property rentals and building services
- there have also been increases and decreases to operating expenses, with the significant adjustments detailed in the comments below.

The estimated **unrestricted working capital** movement has deteriorated from a forecast deficit of \$125,000 to \$182,000. This indicates that whilst the forecast operating surplus has deteriorated by \$1.1 million, this has been offset by other funding sources such as reserves.

However the deterioration of the working capital forecast is not desirable and has occurred despite efforts to offset negative budgetary movements. This highlights that across the organisation we must strive to adhere to budgets and improve efficiencies where possible.

General Fund - Operating Income*Strategic and Community Services Group*

Lennox Head Cultural and Community Centre: Increase in income of \$17,000 as room hire is trending better than forecast. **Increase to income \$17,000.**

Regulatory Services

Building Services: Income is trending well below forecast and is unlikely to achieve budget. The flat property market has contributed to the poor outlook. **Decrease to income \$145,000.**

*Civil Services Group**Roads and Bridges*

Storm Damage: Grant income of \$70,000 has been received in respect to the January 2011 event. These funds are necessary to meet expenses already incurred in 2011/12 in respect to this event. **Increase to income and expense of \$70,000.**

Interest on Loan Funds - Plateau drive: Loan funds taken out to fund the construction of Plateau drive were invested until the funds were required. It was estimated that \$100,000 would be derived however this forecast has been reduced to \$45,000 which is mainly to do with the timing of the works. **Decrease to income of \$55,000 and decrease to reserve transfer of \$55,000.**

Contribution to Works: \$8,000 has been contributed towards the cost to clean up a fallen tree at the Alstonville showground. **Increase to income \$8,000.**

Ancillary Transport Services

Private Works: it is often difficult to accurately estimate the level of private works that will occur in a year. Quite often it depends on whether or not a large road job is undertaken. In the current year private works is trending considerably lower than estimated.

The proposed adjustments are shown in the table below.

Item	September Estimate	December Estimate
Income	825,000	480,000
Expense	750,000	462,000
Surplus	\$75,000	\$18,000

Forecast income and expense have both been decreased as has forecast surplus. The reduced surplus is mainly due to the reduced quantum of works but also some jobs did not achieve the targeted 15% surplus.

Open Spaces and Reserves

Grant Income: Grant income of \$31,000 received from the Department of Defence to support staff on duty in the army reserves. The funds were not budgeted and they have been used to pay for increased expenses associated with the surf life saving contract \$25,000 and maintenance expense on the Shelly Beach Surf Club \$6,000. **Increase to expense and income of \$31,000.**

Vegetation Management: Grant income received of \$12,000 for Bitou bush eradication. **Increase to income and expense of \$12,000.**

Landfill Management

Adjustments to forecast income include:

- reduction bulk waste collection of \$20,000 as the business sale is now finalised and actual income did not achieve forecast

- general disposal fees increased by \$20,000 as trending is marginally above estimate
- reduction to disposal fees paid for construction and demolition material of \$120,000 which is trending well below forecast.

Net decrease to forecast income of \$120,000. This change is offset by a reduction in reserve transfers.

Domestic Waste Management

Plant Hire: Internal charge within the business that credits income and debits expenditure collection budgets. Both income and expense are trending below forecast. **Reduction to income and expense of \$110,000.**

General Manager's Group

Finance

Ordinary Rates: Forecast income from rates and charges has been increased by \$61,000 as supplementary levies are issued taking total forecast income from ordinary rates to \$15.6 million. **Increase to income of \$61,000.**

Interest on Overdue Rates: A further \$20,000 has been added to the forecast for interest income on rates and charges. The higher than normal income from this source is due to the higher than normal percentage of accounts outstanding. **Increase to income of \$20,000.**

Human Resources

Insurance Refund: Council annually receives a refund from Statecover regarding our workers compensation insurance. This amount can fluctuate from year to year and this year \$30,000 was forecast and it will be close to \$60,000. **Increase to income \$30,000.**

Property Management

Rental Income: Forecast reduction to income of \$55,000 primarily due to Wigmore arcade rentals (shop vacancies). **Reduction to income \$55,000.**

Ballina Byron Airport

Operating Income: Income estimates have proven to be quite optimistic in relation to passenger fees paid by the airlines and income has been reduced by \$480,000. This has been partially offset by increases to income forecasts for parking fees and fines and rental franchises. **Decrease to income of \$397,000.** The net impact of this reduction is offset by reduced transfers to reserve.

General Fund - Operating Expenses

Community Services

Lennox Head Community Services Centre: The budget has been increased by \$30,000 relating to wages and cleaning/building expenses. **Increase to expense \$30,000.**

There is a net reduction of \$44,000 to expenses in this section. This is because a budget of \$74,000 has been relocated from the Community Services to Property sections of the budget. The budget relates to forecast legal expenses concerning the construction of the centre.

Development Services

Legal Expenses: This budget has been reduced from \$235,000 to \$135,000 based on current cases and forecasts for the remainder of the year.

Civil Services

Asset Management

Depot Expenses: Various aspects of Depot running expenses are exceeding forecast and an additional \$30,000 has been added to the vote. The funds have been sourced from proposed capital works to upgrade the depot. **Increase to operating expense and decrease to capital expense.**

Cumbalum Delivery Plan: New budget raised for further expenses incurred relating to the preparation of the delivery plan for infrastructure to the Cumbalum precinct. These funds have been sourced from the Single Invitation Contract reserve (profits from the contract). **Increase to expense \$24,000 - Transfer from reserve \$24,000.**

State Emergency Services: Sundry expenses to assist SES operations have exceeded budget and a further \$6,000 is necessary to equal current expense. **Increase to expense of \$6,000.**

Budgets totaling \$130,000 have been relocated from Administration to Asset Management. The budgets relate to operating expenses for the Customer Service Centre.

Roads and Bridges

Roads Repair Section 94: Funds have been applied from section 94 reserve (Heavy vehicle Haulage Plan) to roads maintenance at Ross Lane \$27,000, Newrybar Swamp Road \$6,000, Tintenbar Road \$151,000, South Ballina Beach Road \$10,000, Back Channel Road \$50,000, Bagotville Road \$22,000 and North Teven Road \$7,000. **Increase to expense \$273,000 - Increase to reserve transfer \$273,000.**

Kerr Street: Council was required to complete a defect repair associated with private works carried out by Council on behalf of the RTA. This expense has been funded from the Single Invitation Contract reserve. **Increase to expense \$30,000 - Increase to reserve transfer \$30,000.**

Ancillary Transport

Private Works: Refer to comment in income section of this report.

Open Space and Reserves

Refer to comments in income section of the report.

Landfill Management

Salaries: Correction of salary allocations to the business have resulted in additional expense. **Increase expense \$20,000.**

Weighbridge Administration: Budget increased by \$20,000 which is due to one off expenses in the form of a new computer and staff training plus additional funds for staff time spent on the weighbridge. **Increase to expense of \$20,000.**

Domestic Waste Management (DWM)

Adjustments to DWM expense estimates include:

- reduction to internal plant expense for the collection service of \$120,000.
- reduction to plant operating costs \$30,000
- increase to forecast cost of distributing bins \$34,000

Net increase to expense of \$116,000. This is offset by a reduction in the transfer to reserve.

General Manager's Group

Administrative Services

Customer Services Centre: Budgets of \$130,000 have been relocated from Administration to Civil Services as this was deemed a more appropriate area of the budget for these costs. **Nil change to budget.**

Property Management

Property Assessment: Budget increased from \$35,000 to \$55,000 to fund assessment of various projects. **Increase to expense \$20,000.** Offset by reserve transfers.

Airport

Comment: Operating expenses have increased by \$117,000 which is mainly due to salaries as one extra casual staff member has been assisting with operations. There have also been increases to budgets for building maintenance, administration, security and consultants.

Water Operations

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

Water - Statement of Operating Income and Expenses (\$'000)

Item	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Projected Year End Budget 000's	Actual to Sept 000's
Operating Income	8,145	0	8,145	0	8,145	3,722
Operating Exps (excl. dep)	8,520	123	8,643	0	8,643	3,997
Net Operating Result Before Depreciation	(375)	(123)	(498)	0	(498)	(275)
Depreciation Expense	2,100	0	2,100	0	2,100	2,100
Net Operating Result from Continuing Operations	(2,475)	(123)	(2,598)	0	(2,598)	(2,375)

The adjustments to income and expense amount to a zero net change, however there are changes proposed, as detailed below, that improve the accuracy of individual forecasts.

Operating income:

- increase to interest income of \$50,000 mainly due to the removal of capital works from the budget in September.
- Reduction to forecast income from water tapping fees of \$80,000 which is a continuation of the impact of a flat property market
- Increase to income from internal plant hire of \$30,000.

Operating expense has also had some minor adjustments within the program with a zero net change.

The forecast **operating result** is poor, with a loss, excluding depreciation, of \$498,000. Council must look to remedy this situation when setting the charging structure for next financial year.

Sewer Operations

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

Sewer- Statement of Operating Income and Expenses (\$'000)

Item	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Projected Year End Budget 000's	Actual to Sept 000's
Operating Income	11,788	0	11,788	269	12,057	9,791
Operating Exps (excl. dep)	9,078	605	9,683	110	9,793	4,001
Net Operating Result Before Depreciation	2,710	(605)	2,105	159	2,264	5,790
Depreciation Expense	4,334	0	4,334	0	4,334	4,334
Net Operating Result from Continuing Operations	(1,624)	(605)	(2,229)	159	(2,070)	1,456

Forecast income has been increased by \$269,000 which is attributable to the following proposed adjustments:

- the budget for interest on funds invested is proposed to increase by \$180,000. At this stage it appears as though the balance of funds invested will be higher than anticipated. This is because loan income received this financial year is likely to exceed associated capital works.
- Council called upon bank guarantees to \$81,000 provided by a contractor who did not perform as per the contract requirements
- Fine tuning of sewer access charges results in an increase of \$8,000.

Proposed adjustments to expense are:

- staff leave entitlements are trending well above what was anticipated and a further \$90,000 is necessary
- increase to votes for rates and office administration totaling \$10,000.

The forecast **operating result** is a surplus of \$2.2 million excluding depreciation. This surplus will be elevated going forward to meet loan repayments for ongoing borrowings and to better position the fund to meet costs of depreciating assets.

Capital Expenditure

This next section of the report looks at capital expenditure and examines proposed changes to the program.

General Fund - Capital Budget - Source and Application of Funds (\$'000)

General Fund Capital Works	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sept 000's
Capital Funding						
General Revenue	3,581	(222)	3,359	308	3,667	0
Reserves	13,949	7,727	21,676	(2,815)	18,861	0
Loans	3,300	(2,000)	1,300	0	1,300	0
Section 94 Contributions	720	2,400	3,120	135	3,255	0
Grants and Contributions	3,624	0	3,624	(348)	3,276	0
Total Funding	25,174	7,905	33,079	(2,720)	30,359	0
Capital Expenditure						
<i>General Manager's Group</i>						
Information Services	31	0	31	0	31	9
Property Management (Commercial)	4,700	(2,336)	2,364	146	2,510	1,780
Property Management (Community)	5,740	869	6,609	(5,426)	1,183	464
Camping Ground	10	0	10	0	10	0
Ballina Airport	1,135	0	1,135	(220)	915	551
<i>Regulatory Services</i>						
Bubble Aerator	0	11	11	0	11	11

	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for approval 000's	Year End Budget 000's	Actual to Sept 000's
General Fund Capital Works						
Animal Shelter	0	305	305	340	645	0
<i>Civil Services</i>						
Asset Management	225	35	260	(3)	230	38
Stormwater	394	563	957	0	957	178
Roads and Bridges	3,350	5,304	8,654	2,387	11,041	4,611
Ancillary Transport Services	1,217	810	2,027	0	2,027	258
Town Beautification	5,300	180	5,480	0	5,480	1,201
Water Transport and Wharves	308	53	361	0	361	86
Open Space - Parks & Reserves	317	246	563	(9)	554	169
Open Space - Sporting Fields	140	360	500	7	507	179
Cemeteries	0	100	100	15	115	5
Fleet and Plant	2,237	0	2,237	0	2,237	170
Quarries and Sandpits	50	(50)	0	0	0	0
Waste Management	20	1,405	1,425	120	1,545	6
Total Capital Expenditure	25,174	7,855	33,029	(2,670)	30,359	9,716
Water Supply Capital Works						
Water Capital Funding						
Reserves	450	0	450	0	450	0
Section 64 contributions	4,490	(3,700)	790	(24)	766	
Grants and Contributions	0	0	0	24	24	
Total Funding	4,940	(3,700)	1,240	0	1,240	0
Water Capital Expenditure						
Water storage	3,500	(3,000)	500	0	500	0
Trunk mains	990	(700)	290	0	290	101
Other	450	0	450	0	450	114
Total Capital Expenditure	4,940	(3,700)	1,240	0	1,240	215
Sewer Services Capital Works						
Sewer Capital Funding						
Reserves	1,826	(1,826)	0	0	0	0
Section 64 Contributions	1,190	(1,190)	0	0	0	0
Loans	50,000	(9,715)	40,285	1,159	41,444	0
Total Funding	53,016	(12,731)	40,285	1,159	41,444	0
Sewer Capital Expenditure						
System Upgrade	52,816	(12,731)	40,085	1,159	41,244	8,091
Mains Renewals	200	0	200	0	200	0
Total Capital Expenditure	53,016	(12,731)	40,285	1,159	41,444	8,091

General Fund - Capital Budget

The total funding for capital works has fallen by approximately \$3 million which aligns to a reduction in the works program. The majority of the reduced funding results in an increase to forecast reserves on hand at years end. The comments in this report are confined to material changes to the budget.

General Manager's Group

Property Management (Commercial): Forecast expense is proposed to increase by \$146,000. Additional funds are required at Southern Cross Estate to finalise works at the Harvey Norman site (\$100,000), continue works on storm water for stage 13 (\$20,000) and earthworks on the estates residue land (\$20,000). A further \$6,000 has been added to the budget for the purchase of land at Wollonbar for sports fields. These expenses are funded from property reserves.

Property Management (Community): The major change is the relocation of the Ballina Surf Club from the current year's budget resulting in a reduction to the capital program of \$5.5 million. The other change is the relocation of the budget (\$75,000) for legal expenses at Lennox Head Cultural and community Centre from the Community Services section of the budget to Property.

Airport: The works program has been reduced by \$220,000 and a summary of the adjustments are as follows:

Airport Capital Works	September Estimate (\$)	December Estimate (\$)
Terminal Upgrade	270,000	370,000
Pavement rehabilitation	130,000	10,000
Apron upgrade	250,000	300,000
Chain wire fence	60,000	0
Lease area stage 1	250,000	50,000
Freight shed	50,000	0
Long term carpark	35,000	45,000
Drainage	0	50,000
Total	1,045,000	825,000

The adjustments look to defer works to future years.

Regulatory Services

Animal Shelter: The budget increased by \$340,000 following the proposed sale of the former shelter. Proceeds from the sale have been applied to the budget to construct the new shelter (\$315,000) and the abandoned vehicle pound (\$25,000)

Civil Services

Roads and Bridges: The works program has increased by \$2,387,000 and details of the changes are as follows:

- Road refurbishment on Ross Lane \$55,000, North Teven Road \$30,000 and Hutley Drive preliminary works \$50,000 funded from section 94 developer contributions.
- Compton Drive (\$42,000) and River Drive (\$64,000) upgrades have exceeded budgets and these over expenditures have been offset by a reduction to the Fenwick Drive (\$106,000) budget which is under expended.
- New budgets have been raised for Rifle Range Road (\$850,000), Ross Lane (\$259,000) and Coast Road Slip (\$1,143,000) with grant funding from the Roads and Traffic Authority.

Domestic Waste Management: Four new collection vehicles have been purchased and the final cost will be \$1,384,000 which is \$120,000 more than previously anticipated.

Sewer Services

Wollongbar Urban Expansion Area: At the November ordinary meeting Council approved an increase to this budget of \$1,159,000.

Investments

The next table shows details of the projected cash and investments for the Council.

	Original budget 2011/12 000's	Approved changes Sept 000/s	Revised Budget 000's	Changes from Approval 000's	Projected year end Result 000's	Actual YTD 000's
Unrestricted	1,970		1,970		1,970	0
Externally Restricted				0		
- Section 94	7,297	(1,986)	5,311	(408)	4,903	
- Domestic Waste M'ment	98	(35)	63	(114)	(51)	
- Unexpended Grants	46	285	331	0	331	
- Other	64	183	247	(55)	192	
- Section 64 Water	3,329	4,405	7,734	85	7,819	
- Water	1,659	402	2,061	(86)	1,975	
- Section 64 Sewer	714	3,939	4,653	180	4,833	
- Sewer	6,788	8,409	15,197	(1,034)	14,163	
Total Externally Restricted	19,995	15,602	35,597	(1,432)	34,165	
Internally Restricted						
- Employee Leave Entitlements	1,674	4	1,678	0	1,678	
- Plant Replacement	208	567	775	12	787	
- Quarries	1,468	42	1,510	12	1,522	
- Properties Activities	759	1,925	2,684	2,465	5,149	
- Rental Properties Refurbishment	185	34	219	(31)	188	
- Management Plans & Studies	180	25	205	0	205	
- Cemeteries	115	16	131	(15)	116	
- Landfill Management	1,514	530	2,044	(180)	2,024	
- Civil Works	658	127	785	1	786	
- Other	197	145	342	(68)	274	
Total Internally Restricted	6,958	3,415	10,373	2,196	12,569	0
Total Restricted	26,953	19,017	46,970	764	46,734	0
Total Cash Investments	28,923		47,940		48,704	72,524

This table focuses on cash and investments. The unrestricted cash figure is not inclusive of transactions that would normally be included when calculating working capital. I.e. it is exclusive of movements in items such as debtors and creditors.

The available cash figure is taken from note six of the financial statements as at 30 June 2011. Council does not track movements in available cash on a quarterly basis.

Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for December 2011, funds invested amounted to \$72,524,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 31 December 2011 to the amount of \$438,550.
4. Actual year to date cash and investments amount to \$72,962,000 as at 31 December 2011. This amount includes cash at bank of \$438,550 and funds invested of \$72,524,000 which has been reconciled to bank statements and investment reports.

Bank Reconciliation Summary as at 31 December 2011

<i>Balance as per Bank Statement</i>	<i>607,553</i>
Less Unpresented Cheques	248,275
Sub Total	<u>359,278</u>
Plus Outstanding not Credited	120,600
Sub Total	<u>479,878</u>
Less Amounts Deposited at end of month not in ledger	41,328
Balance as per ledger	<u>438,550</u>

Comment on Cash and Investment Position

The forecast reserves position has increased from \$47.9 million to \$48.7 million. This reflects changes to capital works programs, funding strategies and assumptions. Details of the major changes are summarised below.

Recommended Changes in Revised BudgetSection 94 Reserves

Forecast section 94 reserves have decreased by approximately \$408,000. The major changes include:

- Funds applied from the Heavy Vehicle Haulage plan to \$358,000. New budgets raised for maintenance of various roads impacted by the routes taken by quarry vehicles.

- Preliminary Expense on Hutley Drive has exceeded available budget of \$50,000 and the vote is proposed to be increased by \$50,000 funded from the roads plan.
- Adjustments are proposed to forecast income from section 94 contributions based on current trending. The net affect of the changes is nil however forecast income from the Roads Plan has been adjusted down by \$360,000 which is offset by increases to forecast contributions to Parks, Community Facilities and Heavy Haulage plans.

Domestic Waste Management (DWM)

The forecast is that DWM will have a reserve balance of negative \$51,000 at year end. This will require an internal loan from the Landfill and Resource Recovery business.

The outlook has deteriorated over the second quarter by \$114,000 which is essentially due to the purchase of four new vehicles which exceeded budget by \$120,000.

Sewer Fund Reserves

The revised forecast is for a decrease to reserves of \$854,000 (net movement of section 64 and refurbishment reserves). Whilst the forecast operating position is estimated to improve the primary impact on the reserve is negative due to an increase in the budget for the Wollongbar Urban Expansion Area of \$1,159,000.

Property Activities

The reserve has increased by \$2.4 million which is mainly attributable to the following:

- the majority of the surf club budget has been relocated to the next financial year. Hence proposed transfers from the reserve of \$2.9 million will not be required. Increase to reserve of \$2.9 million.
- Additional budget is necessary in respect to Southern Cross estate capital expenditure of \$140,000. Decrease to reserve of \$140,000.
- airport reserve is forecast to go further into negative by \$297,000 which is being funded by property. Decrease to reserve of \$297,000.

Landfill Management

Adjustments for the period result in a decrease to the forecast reserve balance of \$180,000. This is due to a forecast reduction in operating income of \$120,000, an increase to expense of \$40,000 and reduced capital income of \$20,000.

The adjustments to operating budgets are explained in the income and expense section of this report. The reduction to capital income reflects the finalisation of the sale of the bulk waste business and actual income was \$20,000 less than forecast.

Key Performance Indicators

The next section of the report takes selected financial benchmarks that have been adopted by Council and compares the December 2012 forecasts with the ratio calculated as at 30 June 2011. The performance indicators that have been selected have a short term focus which suits the quarterly review which also tends to focus on the short term. The actual and forecast performance indicators measured against the benchmark provide an important insight into the financial well-being of the organisation. The indicators should be used to assist financial policy and strategy.

Key Performance Indicators - General Fund

1. Unrestricted Current Ratio - unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

2010/11	2011/12 Dec
Actual	Estimate
2.75	1.73
Pass	Fail

Comment

The ratio has shifted to a fail as cash is converted into fixed assets. Internally restricted general fund cash is forecast to fall from \$18 to \$12 million this financial year. The forecast movement in the ratio is partially a consequence of the community infrastructure construction program that Council has undertaken. The forecast movement in the ratio does serve as a warning that Council's general fund liquidity is not as strong as it was and suggests that the General Fund is totally committed, perhaps tending towards over-committed.

In respect to 2011/12 it is important to note that this is a forecast and forecasting ratios is not an exact science. The actual outcome for 2011/12 is highly dependant on the level of capital expenditures on projects such as the Ballina Surf Club and town centres. In fact the majority of expense associated with the surf club has been removed from the 2011/12 budget which has impacted the outlook of this ratio from September to December.

2. Debt Service Ratio – Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions (as per note 13). The purpose of this measure is to test whether Council has excessive debt servicing costs relative to revenue.

Benchmark: <12%

2010/11	2011/12 (Dec Estimate)
6.70	7.36
Pass	Pass

Comment

The ratio is forecast to rise as borrowings for Teven Bridges and Ballina Airport take effect in 2011/12.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is to measure whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12 (Sept Estimate)
(4)	(15)
Pass	Fail

Comment

The forecast is for a loss that exceeds the negative 10% maximum which is not satisfactory. However the forecast can be distorted by numerous issues and forecasting this ratio is filled with assumptions.

For example the forecast operating result does not include approximately 25% of income from the Federal Assistance Grant (FAG). This is because we actually received the money last financial year as a prepayment. It may be that we will receive a similar pre payment this financial year which would change the forecast ratio to a loss of (13%).

Needless to say however the ratio does highlight that the operating result is a matter for concern. A loss of this magnitude, assuming estimates and assumptions are correct, is not sustainable over the medium term and corrective action will be necessary. Corrective action may take the form of increasing operating revenue, decreasing operating expense or a combination of the two.

4. Available Working Funds (General Fund Only) - Total of cash, investments, receivables and inventory assets less total payables, liabilities, externally restricted receivables, internally and externally restricted investments and real estate inventory. The benchmark is set at \$3 million which is based on percentages of income and expenses. The purpose of this measure is to show Council's short term ability to cover short term financial shocks whether they be reductions in anticipated revenues or unplanned additional expenditure.

Benchmark: \$3,000,000

2010/11	2011/12 (Sept Estimate)
\$2.8m	\$2.6m
Fail	Fail

Comment

The available working funds benchmark has not been achieved and based on current forecasts the position will deteriorate by the end of the current year.

The December review forecasts a reduction to working funds of \$182,000 which reflects a very tight budget. The flat economy has not assisted the situation with reduced development resulting in a significant reduction to income forecast from building services.

The strategy needs to be to achieve a budget surplus, as opposed to the current forecast deficit, that will enable working funds to increase.

Benchmark Indicators - Water

1. Unrestricted current ratio - unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

Benchmark: <2:1

2010/11	2011/12 (Dec Estimate)
114	80
Pass	Pass

Comments

The fund is in a very strong position from the balance sheet perspective with almost no debt.

2. Debt Service Ratio - Loan principal & interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions. (as per Note 13). The purpose of this percentage is to measure whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: < 12

2010/11	2011/12 (Dec Estimate)
0.05	0.05
Pass	Pass

Comments

The fund is virtually debt free so passes this benchmark with ease.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage measures whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12 (Dec Estimate)
(24.26)	(32)
Fail	Fail

Comments

The operating position of water fund is not good. A loss of \$2.6 million is forecast and even if depreciation is excluded a loss of \$498,000 is forecast. Clearly cash losses are not sustainable and future years operating performances must be adjusted to improve the operating position.

Benchmark Indicators - Sewer

1. Unrestricted current ratio - unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

Benchmark: <2:1

2010/11	2011/12 (Dec Estimate)
9.7	14.1
Pass	Pass

Comments

The ratio is predicted to improve this year however it is arguably misleading because the fund has borrowed \$63 million with some \$45 million to be received this financial year. However the loan structure is such that we are making interest only payments for two years. This means that the ratio will not be affected until the interest only period expires.

This ratio will fall dramatically once the loans impact on the ratio.

2. Debt Service Ratio - Loan principal & interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions. (as per Note 13). The purpose of this percentage is a measure of whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: <12

2010/11	2011/12 (Sept Estimate)
9.40	24
Pass	Fail

Comments

The ratio is indicating that the amount of recurrent income tied up repaying debt is excessive. This means that the fund may well struggle to finance operational contingencies and or capital works. This ratio will get a lot worse when the real loan repayments kick in 2013/14 associated with the \$63 million loan.

However whilst the ratio will be very poor the financial plan takes the debt and associated repayments into account. The real strength of sewer fund is the guaranteed income source from annual charges and the fact that the charging structure is at council's discretion. This means that major capital works can be financed with a high level of confidence.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12 (Sept Estimate)
(11.28)	(19)
Fail	Fail

Comments

An operating loss of \$2 million is forecast. The benchmark will accept a loss of up to 10% which takes into account the rapidly escalating rise in depreciation as assets are revalued. However the forecast is well in excess of the benchmark which indicates council must look to improve the operating performance of the fund.

Charging levels have been graduated up for a number of years by amounts well in excess of cost of living increases to prepare for the capital outlay currently occurring. It will be necessary to continue with these increases for some years to come and this strategy will improve the operating result.

Contractors

The table below provides details of contracts entered into in the September quarter. Contracts below \$50,000 are not included.

Contractor Name	Purpose of Contract	Amount (\$)	Start Date	Duration Of Contract	Included in Budget Y/N
Arkwood Organic Recycling	Dewatering of biosolids from waste water treatment plants	Schedule of rates	Jan 2012	2 years	Y
Steven Van Der Mere	Mowing of various cricket ovals	Schedule of rates	01.12.11	3 years	Y
Eire Contractors	Construction of sewer scheme Wollongbar Urban Expansion Area	3,338,279	01.12.11	2 years	Partly
Alan Kneale	Sports field lighting, Lennox Head	141,000	01.12.11	1 month	Y
Aussie Rock Landscapes	Construction of Niche walls at Alstonville Cemetry	102,000	01.12.11	6 weeks	Y

Consultants

The table below summarises the expense incurred in the December quarter on consultants. The definition of consultants includes a person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist advice or professional advice to assist decision making by management.

	Expenditure YTD	Included in Budget Y/N?
Consultancies	149,000	Y

Legal Expenses

The table below summarises the expense incurred to the end of December on legal fees. For the purposes of the report legal fees have been included where there is a dispute situation. This includes for example processing of infringement notices but exclude amounts paid to legal firms that may be related to the creation of a lease or sale of land.

	Expenditure YTD	Included in Budget Y/N?
Legal Fees	194,000	Y

Other Matters

Reconstruction work between Ramses Street and Avalon Estate

Information was requested by Council on the cost to construct additional road length between Ramses street and Avalon Estate. The cost of this work is estimated at \$176,000. No funding has been identified for these works.

Plateau Drive Intersection, Water and Sewer Infrastructure at Wollongbar

The roads budget includes funding of \$1,618,000 for the construction of the Plateau Drive Sneaths Road intersection. Expense totaling \$2.4 million has been costed to this budget, however the expense includes works to provide water and sewer infrastructure to the Wollongbar expansion area.

The correct apportionment of costs is currently being clarified and accordingly no budget adjustments have been carried out as part of this review. Preliminary indications are that budgets in the roads and water sections will be exceeded and if so this will be reported as part of the next quarterly review.

Ballina/Byron Airport

In this quarter there have been some significant changes to forecasts so it was considered appropriate to put all of the changes together as shown in the table below.

Item	September Estimate (\$)	December Estimate (\$)
Operating Income	4,031,500	3,634,500
Operating Expense	3,327,200	3,444,200
Operating Surplus	704,300	190,300
Less depreciation	750,000	750,000
Surplus excl Depreciation	1,454,300	940,300
Loan repaid	319,300	250,600
Capital Works	1,135,000	915,000
Cash Forecast	0	(225,300)

Forecast income has been reduced by \$397,000 and forecast expenses have increased by \$117,000. This represents a significant shift in the forecast operating performance of the business. To counter the revised outlook the capital program has been reduced and internal loan repayments have also been reduced.

The revised estimates mean that existing internal loans of \$302,000 will increase by a further 225,300 to \$527,300.

Whilst the forecast operating performance remains reasonable the capital works program will need to be assessed carefully going forward.

Statement

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 31/12/2011 indicates that Council's projected financial position at 30 June 2012 will be satisfactory* at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

* Technically the forecast position of Council as at 30 June 2011 is not sustainable and therefore unsatisfactory.

This is because on a consolidated basis and on a fund basis the organisation is making an operating loss and this is predicted to continue into the foreseeable future. However the certification has been signed as satisfactory because it is based on the short term (12 months) performance of Council.

Council will ideally work towards an operating surplus inclusive of depreciation and exclusive of capital grants. If this is not achieved it is likely that there will be insufficient funds to maintain assets at a satisfactory standard over the long term.

This Council has historically functioned with a recurrent operating loss (including depreciation and excluding capital grants). There is typically a surplus before depreciation with surplus funds applied to the asset base.

Hence the forecast for the current financial year is no different to the way it has been over time. However technically and practically the Council will struggle to have sufficient funds to adequately maintain existing assets and at times compromises may be required to upgrade particular assets to meet prevailing standards.

It will also be noted that some of the key financial performance indicators set by Council are not forecast to be achieved this financial year and the certification of satisfactory is premised on the twelve month focus.

Performance indicators are useful to gauge trends and provide signals that should be used to assist when setting policy and strategy.

Signed Peter Morgan, Responsible Accounting Officer

Sustainability Considerations

- **Environment**
This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.

- **Social**
As above.

- **Economic**
As above.

Legal / Resource / Financial Implications

This report informs Council of actual results to date in comparison to budget. Where legal ramifications are envisaged they are detailed within the information section of this report.

Consultation

This report has been prepared to inform the community of any budget variations.

Options

Council may approve the budget amendments proposed, make changes or not approve any changes.

It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

RECOMMENDATION

That Council notes the contents of the December 2011 Quarterly Budget Review and approves the changes identified within the report.

Attachment(s)

Nil

11. Civil Services Group Reports

11.1 Ballina Shire Cemeteries - Overtime Charges

File Reference	Cemeteries
CSP Linkage	Transparent and accountable governance
Delivery Program	Open Space and Reserves
Objective	To seek a policy review by the Council in relation to late burial fees.

Background

The Council considered a report at its December 2010 meeting regarding the development of a cemetery policy. One of the issues considered in the report was late burial fees. The policy was subsequently adopted after public exhibition and the information section of this report explains the current position of Council.

Recently Council received a complaint about these fees. The complainant has met with the General Manager and staff. The outcome of this meeting was that staff are satisfied that they have determined the matter in accordance with the policy. The complainant did not see this decision as a satisfactory outcome and therefore it was agreed to refer a report reviewing the policy to Council for its determination.

Key Issues

- Review of fee Structure

Information

The complaint to Council expresses the view that the late burial fee should only apply outside of 9 am to 5 pm as that is standard business hours. The complaint indicates that for some burials there may not be options for alternate times dependent on logistics such as family travel, church availability, funeral director availability and so on.

The reason for the reduced hours was explained in the previous report to Council, which in part included the following.

Late Burial Fee (excluding weekend or public holiday burials). The draft policy sets burial times for booking during the working week that enable cemeteries to operate within normal Council operating hours. Burials that are booked outside of normal operating hours incur additional costs with overtime to staff. To protect Council from incurring additional operating costs it is proposed that a fee will be charged to cover the cost to Council of the additional wages that

are incurred when burials go past or take place outside of normal working hours (other than on weekends or public holidays).

Setting operational hours and service levels is important to ensure the effective and efficient management of cemetery. Defined service levels assist in ensuring the community understands the Council's performance goals for this function. Furthermore, by Council establishing service levels, staff are able to make consistent operational decisions in response to customer inquiries and manage budget and other issues. The hours available for burial bookings are limited to 3 pm as staff are required to complete a number of tasks once the burial service is over.

The relevant section of the policy is reproduced below.

2. HOURS OF OPERATION & FUNERAL BOOKING TIMES

The hours of operation in which burials will be undertaken for the shire cemeteries are 9.00am to 3.00pm (Monday to Friday). Burials which require a booking time after 2.00pm will incur an additional cost to cover overtime hours that staff are required to work to service these burials.

Council will set burial times to prevent conflicting times between ceremonies and to ensure adequate time is provided for graves to be prepared and filled during normal working hours. In most instances 48 hours notice must be given for all burials.

The time allocated for a graveside funeral is one hour. The time allocated for a burial is 30 minutes. An additional fee will be charged should funerals take longer than the allotted time, and which result in Council staff working outside normal working hours. This fee will be based on the additional cost incurred by Council for the payment of staff.

After hours burials will be considered and will depend on staff availability and conditions. Council will make every attempt to accommodate requests for burial times. Weekend or public holiday burials are generally not provided. However, in exceptional circumstances and if staff are available, a booking may be accepted. There may be times when requests can not be accommodated due to staff availability. Additional fees will apply, to cover additional costs such as the payment of overtime wages for staff.

The key issue is that have a number of tasks to complete after burials and to close the cemetery down for the day. It is preferred that these are completed in normal working hours for a range of reasons. In particular it is noted that in the winter months the length of available daylight is a consideration.

Discussed in the options section of this report is the question of fees and whether Council should charge additional fees for out of hours service.

Sustainability Considerations

- **Environment**
Not Applicable

- **Social**
The purpose of this report is to consider equity in Council pricing
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Setting service levels and fees are needed to manage resources and costs in managing a cemetery.

There are no legal implications with the recommendation to this report.

Consultation

The Cemetery Policy was placed on public exhibition.

This report has been prepared after staff were unable to satisfactorily resolve a complaint.

Options

The options available to Council include:

1. *Maintain the status quo of the policy and take no further action*

The late burial fee, outside of this complaint, appears to be working well. The fee recognises the additional costs, and assists in reinforcing the Council's preference for burials to be completed within normal operating hours.

2. *Amend the policy by deleting the late burial fee*

This option would address the issue of inequity that the complainant has expressed concerns about. The Council could accept a loss on those burials or increase fees for standard burials. This would represent a cross subsidy. Generally cross subsidies are considered appropriate for shared services offered by the Council from rates and other sources of income. For fee for service activities, cost recovery for the service is preferred without the need for cross subsidy.

3. *Amend the policy to provide longer operating hours*

Regardless of the fee charged, it is considered important to maintain the adopted service level to ensure customers are aware of the staff availability and other issues associated with burials outside of hours. If this option was the preference of Council, it would be necessary to review the operational management of the cemetery, such as providing additional training for staff coverage and rosters to support the change.

Option one is the recommendation to Council on the basis that the policy would appear to be working well since its introduction, the Council is seeking to meet its costs in delivering a service, and a cross subsidy for a fee for service activity is not typically preferred.

RECOMMENDATIONS

That Council notes the contents of this report in respect to current cemetery practices relating to over time for burials.

Attachment(s)

Nil

11.2 Tender - Inflow and Infiltration

File Reference	Sewer - Infiltration and Inflow Program
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Sewer Services
Objective	For Council to consider tenders submitted for Sewer Pipeline Rehabilitation

Background

During the development of the Urban Water Management Strategy (UMWS) in 2002 it was identified that Council would benefit from a program to reduce inflow and infiltration to the sewer system.

Reports prepared at that time, and in more detail subsequently, confirmed the extent of issues to manage. From inflow and infiltration Council has to deal with additional saline and increase volumes for processing at the Waste Water Treatment Plants. Further, excessive inflow and infiltration results in additional energy costs and wear and tear pumping stations and treatment plants.

As a result of the investigations, a program of works was created that represented the optimal expenditure to address the issue. For example, Council has adopted an Reuse Water Masterplan. A key outcome of the Masterplan was that it identified an acceptable level of salinity that increased the opportunity for treated water to be reused sustainably. With investment in inflow and infiltration reduction it may be possible for Council to avoid or significantly reduce the need to utilise higher order technologies at the treatment facilities to address salinity and ensure the provision of fit for purpose recycled water.

In March 2009 Council awarded a contract to Underground Asset Service Pty Ltd to undertake the program of repairs identified during the investigative works. As reported to Council previously, Underground Assets experienced a number of problems and the contract was terminated. This meant that remediation works on a number of faulty liners was required.

Following the contract termination, and a review of technologies, fresh tenders were called. The new tender specified that the products to be used were for relining works was to be spiral wound or fold and form PVC liners. Both technologies have the advantage of relatively simple removal should any problems be identified in the relining process.

Council has also taken the opportunity to go to the market through a joint tender with Richmond Valley Council. The contract was offered as a single contract with both councils to act as principal, jointly and severally. Tenders were advertised in December 2011, closing in January 2012, and this report outlines the outcome of the tender process.

Key Issues

- Award the contract in accordance with Local Government (General) Regulations 2005
- Engage a suitably qualified and experienced contractor that provides the most advantageous outcome based on the tenders.

Information

Details of the Work

Ballina Shire and Richmond Valley Councils sought tenders for sewer rehabilitation services under a single contract. Under the contract, both Councils are to act as Principal, jointly and severally, with the work packages for each Council forming two separate Milestones. Works for Ballina Shire Council form Milestone 1 while works for Richmond Valley Council form Milestone 2.

A single contract is expected to deliver both councils more competitively priced tenders and lower project management costs.

Works in the contract are to be executed under a Schedule of Rates and Lump Sums. Works under the contract include the rehabilitation of sewer lines using either a spiral wound or fold and form PVC liner system as well as other tasks such as spot patching and installation of junction formers and dead end liners.

Tenders Received

Open tenders were called on 2 December 2011 and were initially due to close on 17 January 2012. This closing date was extended via addendum until 9:30am on 31 January 2012. The extension was granted after tenderers raised concerns that the Christmas shut down period would make it difficult to submit thorough and competitively priced tenders.

The following tenders were received.

Tenderer	ABN	Tender Amount	Total Assessed Tender Amount	Assessed Tender Amount 1 BSC Milestone 1	Total Score	Recommend Tender Amount
Interflow P/L	34000563208	\$1,633,395	\$1,800,274	\$1,090,197	97.56	\$1,800,274
Kembla Watertech P/L	76003807010	\$1,819,280	\$1,745,137	\$1,069,246	100	\$1,745,137

Notes:

The 'Assessed Tender Amount' is the Tender Amount plus (or minus) the Assessed Values of qualifications and departures (anomalies) in the tender and any loadings that apply. (GST Inc.)

The 'Total Score' includes the scores for price and non-price criteria for the Total Assessed Tender Amount for both Milestones 1 and 2.

The 'Recommended Tender Amount' is the Tender Amount for both Milestones 1 and 2 plus (or minus) adjustments offered by the Preferred Tenderer to withdraw qualifications and departures. (GST Inc.)

Examination of the Tenders

Pre-Evaluation Actions

The tendering process was required to comply with the Local Government (General) Regulation 2005 (the Regulation). It was decided to call tenders using the open tendering method, in accordance with clause 167 of the Regulation.

A Tender Evaluation Committee (TEC), including representation from Ballina Shire Council, was established to carry out the assessment of the tenders.

A Tender Evaluation Plan (TEP) consistent with the *Regulation* and the Conditions of Tendering in the RFT documents was prepared and endorsed by each member of the TEC before viewing or discussing tender submissions. The tender evaluation procedure is described in the TEP.

The tender evaluation criteria and weighting was established in the TEP and RFT documents. The price to non-price weighting ratio was established as 70:30.

The non-price criteria were as follows:

- Recent Experience and performance in comparable works – 10%
- Construction methodology and program for the whole of works – 15%
- Proposed personnel and resourcing – 5%

Four addenda were issued during the tender period. They included an extension to the tender closing date, clarification of changes to OHS legislation and the supply of additional CCTV footage. None of the addenda are considered to have had an impact on the tendered prices.

A single envelope tender submission format was adopted but an independent officer at the tender closing office separated the price from the non price information. The non price information wasn't disclosed to the Tender Evaluation Committee (TEC) members until they had completed their evaluation of the non-price criteria.

Initial evaluation

Tenders were received through the NSW Government e-tendering website from Kembla Watertech P/L and Interflow P/L prior to the close of tenders.

The submissions included completed copies of all the necessary schedules and signed copies of all the addenda.

Except for the qualifications and departures dealt with in Evaluation of Price, all tenders met the requirements of the RFT documents.

Evaluation of Non-Price Criteria

The information submitted by the tenderers was evaluated against the specified non-price criteria, in accordance with the Tender Evaluation Plan. The non price scoring was assessed based on the whole contract rather than individual milestones. The non-price scores were weighted, totalled and normalized. The total non-price scores are summarised below.

<i>Tenderer</i>	<i>Total Normalized Non-Price Score</i>	<i>Rank</i>
Kembla Watertech P/L	30	1
Interflow P/L	29.71	2

Evaluation of Price

Examination of Tendered Rates

During a preliminary review of Interflow's tendered rates it was noted that an identical amount had been submitted for lump sum items 1.1 and 1.3 of Milestone 1 and similarly for lump sum items 2.1 and 2.3 of Milestone 2.

Given the amounts were identical and that similarities existed between the item descriptions, it was considered possible that the tenderer had made an error in their calculations.

Interflow P/L were asked via email to confirm that the rates tendered for these items were correct. In their initial email response on 3 February 2012 Interflow advised that these rates were correct. However, in a later email on 7 February 2012 they advised that a mistake had been made.

They requested that items 1.1 and 2.1 be evaluated as \$0.00 because they were repetition of items 1.3 and 2.3 respectively. Their Assessed Tender Price was adjusted via the Qualifications and Departures Table. Correction of this mistake did not substantially alter the original tender and was permitted under clause 176 of the Regulation.

The rates tendered in the Schedule of Rates for Milestone 1 were compared with the pre-tender estimate. The rates tendered by both tenderers are 30 – 35% lower than the pre-tender estimate. Values used for the estimate were based on previous experience from other contracts, and it is believed that the combined Council tendering has assisted in achieving very competitive prices and ones that reflect the current market rates.

A sensitivity analysis was undertaken to identify if there would be any impact on the relativity of the Assessed Tender Amounts as a result of changes to the nominated quantities in the tender schedules.

The analysis revealed that for a range of likely quantities the relativity of the Tenders was not altered.

Assessment of Qualifications and Departures

Each of the tenders contained qualifications and departures (anomalies) not fully meeting the requirements in the RFT Documents. Clause 178 of the Regulation requires Council to accept the most advantageous tender. In order to identify which tender was 'most advantageous' for the specified work, the values of the qualifications and departures were assessed and added to the original Tender Amounts.

The rate tendered by Interflow P/L for Items 1.2.13 and 2.2.13 (Supply and install dead end liner to suit 150mm diameter dead end lines with only a single access point for quantities between 0 and 1,000) was qualified as having excavated access to the dead end location. Interflow P/L's qualification provided an over and above price that could be added to the tendered rate to provide a conforming tender to install an Interline CIPP lining system (as per Interflow P/L's tender) with access from a single point only. This rate was used to determine the Assessed Value of the Non-Compliance.

Interflow P/L did not provide a rate for Items 1.2.14 and 2.2.14 (Supply and install fibre reinforced plastic repair pre patches, if required, prior to full relining of 150 mm dead end lines with a single entry point, for quantities between 0 and 100). This was based on having excavated access to the dead end point, and having the ability to install a spiral wound liner, which do not need pre patching. As access is only available from a single point, the spiral wound liner cannot be installed, and an Interline CIPP lining system (as per Interflow P/L tender) would need to be installed. This liner system would require the pre patching as per the quantities of the tender schedule. To determine the Assessed Value of the Non-Compliance, Interflows rate for Items 1.2.6 and 2.2.6 (Supply and install structural cured in place Fibre Reinforced plastic repair patches for 150 mm diameter pipelines identified for patching only, for quantities between 0 and 500) was utilised.

Determination of Loadings and Other Assessments

Tenderers were asked to nominate a discount rate which would apply to all their tendered rates, excluding any provisional sums, should they be awarded both milestones of work. Kembla Watertech P/L nominated a 3% discount while Interflow P/L offered a 0.74% discount.

Kembla Watertech P/L committed to provide an additional \$10,007 lump sum discount off each Milestone were they to be awarded both Milestones.

Normalised Price Scores

As required by the Tender Evaluation Plan, the objective of the tender evaluation process is to identify the most advantageous tenderer to both Ballina Shire Council and Richmond Valley Councils.

11.2 Tender - Inflow and Infiltration

The tenders were compared on the basis of the Assessed Tender Amounts, calculated by adding the assessed values of qualifications and departures and the discount offer rate to the original Tender Amounts. This was done for the whole of the works as well as for each milestone. The relativity of the tenders did not vary between the two assessments.

The Assessed Tender Amounts were used to calculate the weighted and normalised price scores using the method set out in the Tender Evaluation Plan.

For all Works Under the Contract

Tenderer	Weighted Price Score	Ranking
Interflow P/L	67.86	2
Kembla Watertech P/L	70	1

For works under Milestone 1

Tenderer	Weighted Price Score	Ranking
Interflow P/L	68.65	2
Kembla Watertech P/L	70	1

Selection of most Advantageous Tenderer

Total scores were obtained for each of the two tenders by adding the normalised total non-price score and weighted price score. The total scores are summarised below.

For all works under the Contract

Tenderer	Total Normalized Non-Price Score	Weighted Price Score	Total Score	Ranking
Interflow P/L	29.71	67.86	97.56	2
Kembla Watertech P/L	30.00	70	100	1

For works under Milestone 1

Tenderer	Total Normalized Non-Price Score	Weighted Price Score	Total Score	Ranking
Interflow P/L	29.71	68.65	98.36	2
Kembla Watertech P/L	30.00	70	100	1

The tenderer with the highest total score was Kembla Watertech P/L. Kembla Watertech P/L was also the tenderer with the lower of the two Assessed Tender Amounts. This was the case for both the whole contract as well as Ballina Shire Council's works package specifically.

Kembla Watertech P/L was requested to withdraw its unacceptable qualifications and departures (ie to correct the anomalies in the tender), in accordance with clause 176 of the Regulation. Kembla Watertech P/L agreed to do so without adjustment to their original Tender Amount. The Adjusted Tender Amount for Kembla Watertech P/L remains as \$1,069,246 (Inc GST) for the Ballina Shire Council package of works.

Kembla Watertech P/L's Adjusted Tender Amount for the whole contract is 35% cheaper than the estimate. Kembla Watertech P/L's Adjusted Tender Amount for works under Milestone 1 is 33% cheaper than the estimate. Interflow's tender was also significantly below that of the estimate. Kembla Watertech P/L was asked to confirm in writing that it fully understands the nature and extent of the contract work and is satisfied the Tender Amount properly reflects all contractual obligations. Kembla Watertech confirmed this in writing.

The Recommended Tender Amount for Ballina Shire Council's package of works (Milestone 1) is \$1,069,246 (Inc GST).

The Recommended Tender Amount for the Whole of the Works is \$1,745,137 (Inc GST).

Tenderers Capability

Referee reports indicate satisfactory past performance by Kembla Watertech P/L on recent contracts. The Tender Evaluation Committee contacted the referees and obtained additional information that supported the reports provided with the tender.

Kingsway Financial Assessments Pty Ltd undertook a financial check on Kembla Watertech P/L and returned a rating of 'Good'.

Kembla Watertech P/L has an OHS management system accredited by the NSW Government. It also has Environmental Management and Quality Management systems independently certified to comply with the relevant ISO standards. . This is recorded in the completed Checklist for Reviewing Tenderer's OHS Management Performance and the completed Checklist for Reviewing Tenderer's Environmental Management Performance.

The resources proposed for the work have been reviewed and the Tender Evaluation Committee considers Kembla Watertech P/L capable of completing the contract satisfactorily.

Sustainability Considerations

- **Environment**
The project will reduce the risk of a discharge of sewage to the environment. Management systems are a requirement of the contract during construction to limit the risk of environmental issues.
- **Social**
Infrastructure services assist Council to provide social benefits including supporting public health outcomes.

- **Economic**

The proposed works will increase efficiency in the management of the sewer network. Efficient delivery of infrastructure services supports economic development.

Legal / Resource / Financial Implications

This report is provided to assist Council meet its statutory requirements in relation to tendering and procurement.

The original program as developed in 2008 included an estimate of four million dollars with the budget allocating a million dollars per year for four years.

Council has sufficient funds in the 2011/12 allocated budget to cover the cost of this contract including provision for adequate project management and contingencies.

Consultation

A public tender process was undertaken.

Options

Under the Local Government (General) Regulations 2005 Council must either accept the tender that “appears to be the most advantageous” or decline to accept any of the tenders.

Council has a range of options available to it in accordance with the tendering regulations however it is recommended that the tender of Kembla Watertech Pty Ltd be accepted.

This recommendation is made on the basis that the works have been programmed for some time and are considered to be a critical infrastructure upgrade. The tendered amount is within the budget estimate and the tender evaluation process set out above has yielded a service provider meeting the requirements of the tender.

RECOMMENDATIONS

1. That Council accepts the tender of Kembla Watertech Pty Ltd for Contract No. 1102389 for Ballina Shire Council Rehabilitation – Sewer Mains Lining and Spot Repairs.
2. Council authorises the General Manager to attach the Council seal to the contract documents.

Attachment(s)

Nil

11.3 Tender - Teven Bridges Project Bridge Demolition

File Reference	Teven Road MR146 Realignment - Double Bridges
CSP Linkage	A built environment contributing to health and wellbeing
Delivery Program	Engineering Works
Objective	Tender assessment and recommendation for demolition of old timber bridges across Maguires Creek and Emigrant Creek, Teven

Background

The staged completion of the replacement concrete bridges across Maguires Creek and Emigrant Creek, Teven was completed during 2011. The final works comprised the realignment of Teven Road, across the new Emigrant Creek bridge, in late July 2011.

Subsequently tenders were prepared for the demolition of the old and redundant timber bridges.

Tenders were advertised on 3 December 2011 with close of tenders being 24 January 2012. A compulsory pre-tender site inspection was held on 15 December 2011, and two addenda were issued during the tender period.

A two envelope open tender system was adopted. The evaluation of weighted non-price criteria was initially undertaken, followed by the price criteria evaluation.

The Tender Evaluation Plan pre-determined the following evaluation criteria.

Non-Price Criteria

Proposed methodology and program	10
Similar demolition experience	10
Proposed personnel	10
WHS & quality systems	<u>5</u>
	35%

Price Criteria 65%

At the close of tenders, five submissions were received plus an alternative tender. A late tender was also received, following close of tenders.

Key Issues

- Award of tender in accordance with the Local Government (General) Regulation 2005

Information

At the close of tenders the following submissions were received:

- Bridge and Civil Pty Ltd
- Demolition Environmental Civil Contractors (DECC)
- Ironbark Demolition Pty Ltd
- Southern Cross Demolition Pty Ltd
- Southern Cross demolition Pty Ltd - alternative
- Synergy Resource Management Pty Ltd

A tender was received from Tweed Coast Demolition and Excavation, however this was late, and did not include all of the required information and completed schedules.

The remaining five submissions were therefore considered for non-price evaluation.

The price criteria evaluation was undertaken following the non-price evaluation.

A summary of tender rankings is as follows:

Name	Non-Price Criteria 35%	Price Criteria 65%	Total 100%
Ironbark Demolition Pty Ltd	34.19	63.85	98.04
Synergy Resource Management Pty Ltd	17.77	65.00	82.77
Bridge and Civil Pty Ltd	21.00	38.64	59.64
Southern Cross Demolition Pty Ltd (1)	35.00	16.54	51.54
DECC	28.27	21.11	49.38

(1) *Alternative tender did not change result*

Based on the assessment process outlined above, Ironbark Demolition Pty Ltd is the recommended tenderer, having scored highly (second place) in both non-price and price criteria. The tendered amount from Ironbark Demolition Pty Ltd is \$165,506 including GST.

Sustainability Considerations

- **Environment**
Regulatory approvals have been granted for construction and demolition of the bridges at Teven, with appropriate conditions for mitigating impacts to the environment.
- **Social**
Completion of new two lane bridges will improve road user safety and demolition of old bridges will reduce the risk of incidents caused by decaying structure.
- **Economic**
Completion of new two lane bridges will improve road user costs and demolition of old bridges will reduce potential costs of incidents associated with decaying structure.

Legal / Resource / Financial Implications

The regulatory approval which has been issued for the Teven Bridges project includes, amongst many considerations, the aspect of heritage value. A heritage assessment of the bridges was undertaken during project development and concluded the bridges have moderate local significance.

Accordingly the following measures have been implemented in accordance with regulatory approval and in consultation with Council's Heritage Officer and Open Spaces and Reserves Manager.

- Photographic archival recording of the bridges prior to construction of the new bridges (complete).
- Photographic recording of the demolition process (included with tender).
- Selected salvageable timber to be stockpiled at the Council depot for future use for public art and/or open space landscaping (included with tender).

With respect to the Teven Bridges budget, the demolition tender is the final major cost element for project completion. The current remaining project budget is \$251,895, and the demolition contract value (excluding GST) is \$150,460.

Following demolition there will be further site works by BSC to reshape and tidy embankment surrounds.

Consultation

A public open tender process was undertaken.

Options

The options for Council are set out within the Local Government (General) Regulations 2005. The tender assessment indicated that a reliable market has been established and the tender assessment has determined a preferred tenderer.

RECOMMENDATIONS

1. That Council accepts the tender from Ironbark Demolition Pty Ltd for Contract No. 1102236 for the demolition of timber bridges over Maguires Creek and Emigrant Creek, Teven.
2. Council authorises the General Manager to attach the Council seal to the contract documents.

Attachment(s)

Nil

11.4 Policy (Review) - Water Metering

File Reference	Council Policies
CSP Linkage	Transparent and accountable governance
Delivery Program	Governance
Objective	To review the Water Metering Policy.

Background

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

Council first adopted this policy in January 2007 and it was developed to ensure a uniform and consistent approach for property owners to apply to Councils for the installation of water meter services within Ballina Shire Council LG area.

Key Issues

- Content of policy
- Relevance of policy
- Address amendments in reviewed document period

Information

The proposed changes to the water meter policy clearly outline the process that an applicant must follow and the information required from the applicant by Council when making an application to have; a water meter service, fire service, and reclaimed water service or rainwater tank installed.

Amendments also clarify the responsibilities of each section within Council during the processing and assessing of the application and the installation of the required work by Council field staff.

Changes also address rainwater tank top up connections in areas supplied with a drinking water service which are now required for newly constructed homes.

A copy of the amended draft is included as the attachment to this report.

Sustainability Considerations

- **Environment**
Ensuring the ongoing protection of Councils drinking water infrastructure, and its water quality. Allowing for sustainable development that utilises rainwater tanks to harvest rainwater, which also have a council supplied drinking water top up connection, and reclaimed water services.
- **Social**
Protection of the drinking water supply, ensuring public safety, with policy that also provides for best practice installation along with sustainable development.
- **Economic**
Ensuring contractors/property owners pay for water used for commercial and residential activities within the BSC LG area. Allow property owners to reuse rainwater within the home as well as reclaimed water use supplied by Council.

Legal / Resource / Financial Implications

The proposed changes to the policy will have no requirement for additional resources. The proposed changes ensure that Council meets its legal obligations relating to water services, fire services, reclaimed water services and rainwater tank installations, and merely clarify and formalise existing practice.

It is hoped that changes will ensure that more users of Council's drinking water and reclaimed water systems pay for this service and reduce the costs associated with lost/unmetered water within the Ballina Shire Council LG Area.

Consultation

It is recommended that this policy be placed on exhibition as per Council's normal practice. No external consultation has been undertaken in preparing this revised version of the policy.

Options

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

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

The recommendation is for Council to adopt the policy.

RECOMMENDATIONS

1. That Council adopt the amended Water Metering Policy, as attached.
2. That Council place the Water Metering 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. Policy Final - Water Metering

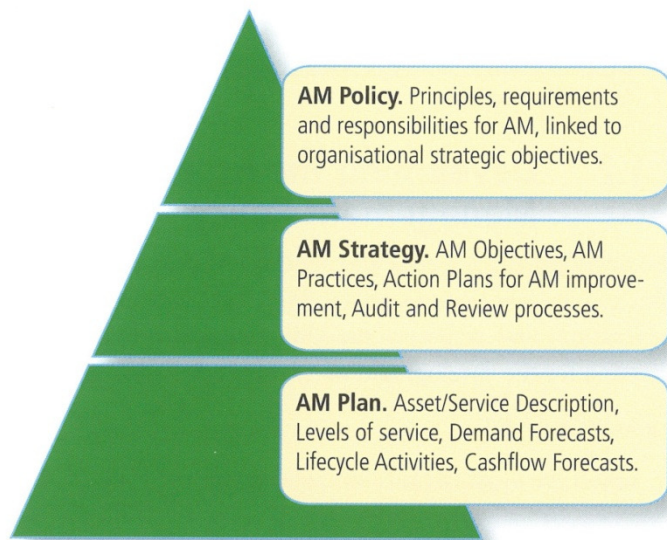
11.5 Asset Management Strategy

File Reference	Asset Register
CSP Linkage	Transparent and accountable governance
Delivery Program	Financial Management
Objective	To consider the adoption of an updated asset management strategy for Council.

Background

Asset Management is a major component of the Division of Local Government's Integrated Planning and Reporting Program and in 2009 Council adopted an Asset Management (AM) Strategy. This strategy guides the ongoing development of Council's asset management practices. Given the Council's current level of maturity in terms of asset management practice, the strategy essentially sets out the actions for a continuous improvement program.

The following diagram shows the components of the recommended approach for an Asset Management process. Essentially the AM Strategy allows the implementation of the AM Policy.



A review of the Asset Management Strategy had been completed and this report presents an updated version for Council's consideration.

Key Issues

- Updates to the Asset Management Strategy

Information

An Asset Management Strategy is a strategic review of current asset management practices against the requirements of the asset management policy, which includes an information gap analysis and a program of works required to fill these knowledge gaps. This process will ultimately put Council in a position to more effectively manage, maintain, renew and meet statutory reporting requirements for its asset base.

The AM Strategy was developed in response to the following key questions.

- What is our existing level of asset knowledge?
- What is our required / desired level of asset knowledge?
- What can be done to fill in our knowledge / information gaps?
- What resources are required to achieve these tasks?
- What is a practical timeframe to achieve these tasks?

The asset management strategy assists to align the management of infrastructure assets to best meet the service delivery needs of the community both now and into the future.

The purpose of the AM Strategy is to develop a set of actions aimed at improved asset management practices through:

- improved stewardship and accountability for assets
- improved communication and relationships with service users
- improved risk management
- ensuring more effective utilisation of assets and
- improved financial effectiveness.

The AM Strategy is a living document and will influence the further development of Council's Asset Management Plans as the Council's data, knowledge, systems improve over time. It is proposed to review the strategy annually.

As touched on earlier that asset management plans are a requirement of the NSW Government's Integrated Planning and Reporting Framework.

The AM Strategy targets a number of tasks in order to narrow the existing gaps in our data knowledge. The accomplishment of these tasks will allow Council to more efficiently understand, maintain and manage its asset base. These tasks are detailed in the strategy and are summarised into a number of groups below.

- Update Physical Data

The more complete the asset register is the more reliable a long term works program will be and the less likelihood of Council maintaining uninsured assets. Missing data should be located and brought online.

- Obtain Asset Condition Data

The recording of asset condition data, albeit simple 1 to 5 assessment or specialised condition assessment is directly related to Council's ability to value assets and measure / meet our performance based Level of Service targets.

- Obtain Asset Risk Assessment Data

This will involve the assigning of critical assets and the application of risk assessment methodology based on the consequence of asset failure.

- Incorporate GIS location systems for Asset Base

This is not required for all assets, but would be a very useful user interface in locating specific assets within a large network and ensuring that asset updates are performed on the actual asset being maintained / replaced.

- Asset Management Software

The Council is upgrading its software to increase the level of integration with the corporate system

- Ensure Data is maintained and updated

For similar rationale to the first point, new assets and any capital expenditure on existing assets should be brought into the registers as soon as they come on-line.

Sustainability Considerations

- **Environment**

Assets that are not providing their intended level of service can have a negative impact on the environment.

- **Social**

Assets provide service potential that support the social needs of the community.

- **Economic**

Infrastructure services are required to support ongoing economic development

Legal / Resource / Financial Implications

Asset management planning is considered vital to the financial planning of Council. Asset management plans can assist the Council understand the amount of funds required to maintain its assets. It can also allow the Council to understand the extent of its capacity to acquire new assets.

There are no direct legal, resource or financial implications associated with the recommendations to this report.

Consultation

The Asset Management Strategy 2012 has been developed based on the International Infrastructure Management Manual 2011 which is considered best practice guidelines.

The strategy is a statement of direction and intent for Council. The key public documents in respect to the management of assets are the asset management plans and the long term financial plan. It is proposed that the updated AM Strategy be posted on Council's website without formal public consultation. Should any feedback be received from time to time regarding the strategy, this can be dealt with by staff or reported to Council when required.

Options

This report aims to promote to Council about the importance of asset management and provide some information about the background work that has been occurring to improve Council's asset management planning capability.

The ongoing development of the Council's asset management practices are considered essential for the proper stewardship of the Council's infrastructure and to ensure Council is meeting its statutory obligations. The strategy sets out Council's approach to this ongoing development and is therefore recommended for adoption.

RECOMMENDATION

That Council adopts the draft Asset Management Strategy 2012, as attached to this report.

Attachment(s)

1. Asset Management Strategy 2012 (forwarded to Councillors under separate cover)

11.6 Local Traffic Committee - February 2012

File Reference	Local Traffic Committee
CSP Linkage	Transparent and accountable governance
Delivery Program	Asset Management
Objective	This report is presented to Council for its consideration of items referred to the Local Traffic Committee meeting held in February 2012.

Background

The Local Traffic Committee (LTC) met on 8 February 2012. A copy of the agenda for those meetings was circulated to all Councillors. This report provides the recommendations of the Committee to Council.

Key Issues

- Consideration of recommendations from the LTC

Information

The agenda contained seven business items of which two items require referral to Council for determination. A copy of the minutes of the meeting will be forwarded to Councillors once finalised.

Items Referred to Council

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

a) **Road Closure - Anzac Day 2012 - Ballina**

The Committee reviewed an application for road closures and a traffic control plan for the ANZAC day parade in Ballina on 25 April 2012.

The application proposes to close River Street at Martin Street, Cherry Street, Moon Street and Grant Street for the parade and to close Grant Street between River Street and Richmond River for the dawn service. The event is essentially the same as last year, which operated without incident.

The Committee was unanimous in its position to recommend to Council approval for the Road Closure in accordance with the submitted traffic management plan.

b) Road Closure - ANZAC Day 2012 - Alstonville

The Committee reviewed an application for road closures and a traffic control plan for the ANZAC day parade in Alstonville on 25 April 2012.

The application proposes to close Main Street from Budgen Avenue to Elizabeth Brown Park. The event is essentially the same as last year, which operated without incident.

The Committee was unanimous in its position to recommend to Council approval for the Road Closure in accordance with the submitted traffic management plan.

Sustainability Considerations

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

Legal / Resource / Financial Implications

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

Consultation

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

Options

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

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

RECOMMENDATIONS

1. That for the purpose of the annual ANZAC Day parade, Council grants approval to close River Street (Martin to Grant Streets) in accordance with the submitted Traffic Management Plan.
2. That for the purpose of the annual ANZAC Day parade, Council grants approval to close Main Street (Budgen Street to Elizabeth Brown Park) in accordance with the submitted Traffic Management Plan.

Attachment(s)

1. Traffic Management Plan - Ballina Anzac Day
2. Traffic Management Plan - Alstonville Anzac Day

12. Public Question Time

12. Public Question Time

13. Notices of Motion

13.1 Rescission Motion - Fig Tree Management

File Reference Vegetation Maintenance - Council Controlled Land

Councillor Cr Susan Meehan
 Cr Robyn Hordern
 Cr Jeff Johnson

We, the above Councillors, move that Part 6 of Resolution 250112/27, as follows, be rescinded:

Fig Tree - Management

6. *That Council approves the removal and replacement of the single fig tree in Bentinck Street with a replacement tree.*

If the above resolution is rescinded, we propose to move the following motion:

That Council defer the removal of the Bentinck Street fig tree and establish a maintenance program, for a minimum period of at least 12 months, to minimise any damage to the public and private infrastructure and to protect and enhance the health of this tree.

COUNCILLOR RECOMMENDATION

That Part 6 of Resolution 250112/27, as follows, be rescinded:

Fig Tree - Management

6. *That Council approves the removal and replacement of the single fig tree in Bentinck Street with a replacement tree.*

Attachment(s)

Nil

13.2 Rescission Motion - Richmond Tweed Regional Library - Structure

File Reference	Regional Library
Councillor	Cr Jeff Johnson Cr Sharon Cadwallader Cr Ben Smith

We, the above Councillors, move that Resolution 250112/23, as follows, be rescinded:

Richmond Tweed Regional Library - Structure

- 1. That Council, based on the contents of this report, confirms that its preferred structure for the current operation of the Richmond Tweed Regional Library is through the Administrative Council model.*
- 2. That the current structure continue to be monitored during which time the General Manager shall arrange for comprehensive data collection to be undertaken. This data shall be used to provide direct comparisons with RTRL performance prior to the Administrative Council model being used.*
- 3. If the Administrative Council Model is not supported by a sufficient number of member councils to ensure the sustainability of the Richmond Tweed Regional Library service then Council's preferred position is to work towards a Shared Services model with the level of in-house and shared services to be determined through further negotiations with the existing members.*

If the above resolution is rescinded, we propose to move the following motion:

Ballina Shire Council reserves its position on the future of the library until further advice is received from the State Library in relation to the recent changes to Section 12A of the Library Act and Byron Shire Council has reported back on other options that include a return to an independent library system as was resolved at the Feb 7th meeting of the RTRL committee.

COUNCILLOR RECOMMENDATION

That Resolution 250112/23, as follows, be rescinded:

Richmond Tweed Regional Library - Structure

- 1. That Council, based on the contents of this report, confirms that its preferred structure for the current operation of the Richmond Tweed Regional Library is through the Administrative Council model.*
- 2. That the current structure continue to be monitored during which time the General Manager shall arrange for comprehensive data collection to be undertaken. This data shall be used to provide direct comparisons with RTRL performance prior to the Administrative Council model being used.*

3. *If the Administrative Council Model is not supported by a sufficient number of member councils to ensure the sustainability of the Richmond Tweed Regional Library service then Council's preferred position is to work towards a Shared Services model with the level of in-house and shared services to be determined through further negotiations with the existing members.*

Attachment(s)

Nil

13.3 Rescission Motion - Recreational Pathway

File Reference	Notices of Motion/Coastal Pathway
Councillor	Cr Alan Brown Cr Keith Johnson Cr David Wright

We, the above Councillors, move that Resolution 250112/6, as follows, be rescinded:

That Council endorses, for the segment of the Coastal Recreational Path from Sharpes Beach underpass to Boulder Beach, the use of consolidated gravel or similar treatment, and steps, as required, as per Revision D, as attached to this report.

If the above resolution is rescinded, we propose to move the following motion:

- 1. That Council endorses, for the segment of the Coastal Recreational Path from Sharpes Beach underpass to Boulder Beach, the use of consolidated aggregate and boardwalk,, as per Revision D produced in the attachment provided at the Ordinary Council Meeting of the 25th January 2012;*
- 2. That every avenue be investigated with a view to eliminating steps on the whole of the Recreational Path to be constructed between Pat Morton Lookout and Sharpes Beach underpass.*

COUNCILLOR RECOMMENDATION

That Resolution 250112/6, as follows, be rescinded:

That Council endorses, for the segment of the Coastal Recreational Path from Sharpes Beach underpass to Boulder Beach, the use of consolidated gravel or similar treatment, and steps, as required, as per Revision D, as attached to this report.

Attachment(s)

Nil

13.4 Notice of Motion - Proposed Increase to Road Resealing Program

File Reference	Notice of Motion Roads & Streets - Road Assets
Councillor	Cr Jeff Johnson

I move

1. That Ballina Shire Council acknowledge that the funds allocated to the road resealing program have been below recommended levels for a number of years.
2. That Ballina Shire Council receives an urgent report that examines,
 - A. The current state of our road network,
 - B. The proposed resealing budget for 2012/2013
 - C. Funding options available to Council to increase the budget for the resealing program. This should include interest free or low interest loans through the Regional Infrastructure Funding package.

Councillor Comment

When a road reaches a certain age it either needs to have a resealing applied or a reconstruction. The recommended time frame for a road resealing is between 10-15 years. Once a road gets beyond this point it often requires a reconstruction which costs approximately 10-12 times more than a reseal. Over recent years Council has been resealing approximately 2% of our roads. With this level of funding it would take approximately 50 years to reseal them all. Clearly this is not enough to prevent the need for the much costlier reconstruction. Furthermore, once the roads get beyond the 10-15 years Council is required to spend additional money on repairs and maintenance (pot hole repair and patch work).

The report to Council (April 2011) gave details about the 'inadequate funding' allocation for reseals on our 600km road network. The report called for a 3 fold increase in funding. Due to budget constraints a 3 fold increase was not achieved. There is an argument that the resealing program should be increased by 5 fold to avoid the need for future reconstructions.

It is clear that Council can either increase the budget for road resealing or accept that it is deferring an increasing cost burden to a future Council and ratepayers. The only other possibility is the acceptance of a deteriorating road network.

The NSW Government has recently introduced a no interest/low interest infrastructure fund that could provide additional funding at an affordable price. An large increase to the resealing program is necessary and makes economic sense due to the large cost savings in the medium term.

COUNCILLOR RECOMMENDATION

1. That Ballina Shire Council acknowledge that the funds allocated to the road resealing program have been below recommended levels for a number of years.
2. That Ballina Shire Council receives an urgent report that examines,
 - A. The current state of our road network,
 - B. The proposed resealing budget for 2012/2013
 - C. Funding options available to Council to increase the budget for the resealing program. This should include interest free or low interest loans through the Regional Infrastructure Funding package.

Attachment(s)

Nil

13.5 Notice of Motion - Planning Proposals - Cumbalum Precincts A & B

File Reference	Notices of Motion/BLEP Amendment 105 Cumbalum Precincts A & B
Councillor	Cr Jeff Johnson

I move that

1. Ballina Shire Council organise a public meeting to provide the Ballina community the opportunity to hear a presentation about the Cumbalum Precinct A and B Planning Proposals.
2. That this public meeting be held at the Lennox Head Community Centre on Saturday 17 March at 10am. That the exhibition period for these proposals be extended until the end of March.

Councillor Comment

The Proposed Cumbalum Precinct A and B Planning Proposals are the largest proposed housing subdivisions in Ballina for many years, and possibly the largest ever. The documents on exhibition are quite lengthy and difficult to understand. While the landowners within the Cumbalum Precinct A and B have had the opportunity to receive a Council presentation, the wider community has not had the same opportunity. Since the sheer size and extent of the proposals are likely to have major ramifications for the whole Shire, this Council needs in the spirit of proper consultation to be as generous as possible in giving the community all the information it needs to assess their impact.

COUNCILLOR RECOMMENDATION

1. Ballina Shire Council organise a public meeting to provide the Ballina community the opportunity to hear a presentation about the Cumbalum Precinct A and B Planning Proposals.
2. That this public meeting be held at the Lennox Head Community Centre on Saturday 17 March at 10am. That the exhibition period for these proposals be extended until the end of March.

Attachment(s)

Nil

13.6 Notice of Motion - Richmond Tweed Regional Library

File Reference Notices of Motion/Regional Library

Councillor Cr Ben Smith

I move that:

1. Council write a letter to Byron Shire Council asking if they would support a Co-operative model for the RTRL where required services are purchased from Lismore City Council.
2. If Byron Shire Council does not support this option Council will continue its current direction as an administrative model, continuing negotiations with Lismore City Council over the SLA ensuring the best possible outcome for accountability and terms of contract (consistent with previously passed motions).
3. That Council receive the much requested report from the State Libraries with regards to options and changes in the Library Act to ensure all information is on the table.

Councillor Comment

The purpose of this motion is to determine if a rational middle ground can be reached that's satisfactory to all 4 councils without wasting potentially months/years on a final outcome.

The county council model is not support amongst the majority of the councils, it's off the table, however there is a genuine feeling that it would be ultimately the best outcome if all councils remained part of the RTRL.

A co-operative model is a less formal but independent structure that would allow the library to operate independently with a board etc and would purchase its services from Lismore City Council.

The proposed model would not create any significant set backs or issues with regards to the work completed to date. The SLA work completed to date would still be utilized and employees could still be under the Lismore city banner and contracted to the co-operative.

Effectively, the difference is the independence but without the highly bureaucratic and expensive costs of a county council.

If Byron supports such a model then the issue can be wrapped up in a much more straight forward manner.

If Byron does not support this model, then it's fair to conclude that views on the matter may be too far apart from the other councils to consider further options, and rather than delaying a decision or avoiding one all together, it's important that council firmly commits to status quo, as on balance, 87% of stakeholdership in agreement is far better than splitting the RTRL member base all together.

The final point in the motion is with regards to the report that some are seeking. I believe the request is worth supporting, as even though it in the end is unlikely to alter the final outcome, it will mean that all the cards are on the table and will mean Ballina Shire Council has looked at all of the information available in making its final decision when the time comes.

COUNCILLOR RECOMMENDATION

1. Council write a letter to Byron Shire Council asking if they would support a Co-operative model for the RTRL where required services are purchased from Lismore City Council.
2. If Byron Shire Council does not support this option Council will continue its current direction as an administrative model, continuing negotiations with Lismore City Council over the SLA ensuring the best possible outcome for accountability and terms of contract (consistent with previously passed motions).
3. That Council receive the much requested report from the State Libraries with regards to options and changes in the Library Act to ensure all information is on the table.

Attachment(s)

Nil

13.7 Notice of Motion - Twilight Markets

File Reference Notice of Motion/Markets

Councillor Cr Robyn Hordern

I move

That Council lodge a Development Application to allow the Ballina Twilight markets to be continued on a permanent basis in Fawcett Park between September/October and April each year.

Councillor Comment

The current trial has proven to be a success with the markets being supported by retailers, residents and the Ballina Chamber of Commerce. The markets will only improve over time therefore it is important that Council obtain development consent to allow the markets to operate on a permanent basis. Obtaining development consent sooner rather than later will also allow planning to commence for the markets later this year.

COUNCILLOR RECOMMENDATION

That Council lodge a Development Application to allow the Ballina Twilight markets to be continued on a permanent basis in Fawcett Park between September/October and April each year.

Attachment(s)

Nil

13.8 Notice of Motion - Mobility Scooters

File Reference Notices of Motion/Road Safety

Councillor Cr Susan Meehan

I move

That Ballina Shire Council write to the local Member for Ballina and Minister for the North Coast, Hon Don Page expressing concern regarding the proliferation of electric scooters using footpaths and expressing our concerns at the size of some and lack of regulation or protocols regarding them.

Councillor Comment

It is acknowledged that the use of electric scooters has enhanced the life of many people constrained by immobility.

However recently there have been a number of instances in the CBD of Ballina which have been a serious safety concern.

In our community we have citizens and seniors who must be able to be safe on our footpaths and inside shops.

COUNCILLOR RECOMMENDATION

That Ballina Shire Council write to the local Member for Ballina and Minister for the North Coast, Hon Don Page expressing concern regarding the proliferation of electric scooters using footpaths and expressing our concerns at the size of some and lack of regulation or protocols regarding them.

Attachment(s)

Nil

13.9 Notice of Motion - Woolworths River Street Store

File Reference Notice of Motion/Economic Development - Other

Councillor Cr Susan Meehan

I move:

1. That Ballina Shire Council writes to Woolworths Pty Ltd regarding the Woolworths store damaged by fire in River Street last December.
2. We ask that Council seek official confirmation on Woolworths commitment to re-open at that address, a possible timeline for reconstruction and information on concepts for the site which are being considered.

Councillor Comment

The unfortunate closure of downtown Woolies has had a detrimental effect on business in the River Street precinct. Seniors struggle with the trip to Kerr Street or Bangalow Road, and as we know downtown Woolies is seen by the locals as their own, very convenient, store which they like to support.

The Chamber of Commerce and River Street traders in the area are very concerned about the direction and commitment to rebuild a key driver of other business in that area.

Daily there seems to be new theories and suggestions about possible outcomes for the site and an official public comment clarifying matters would be greatly appreciated to quell peoples uncertainty in these difficult retail times.

COUNCILLOR RECOMMENDATION

1. That Ballina Shire Council writes to Woolworths Pty Ltd regarding the Woolworths store damaged by fire in River Street last December.
2. We ask that Council seek official confirmation on Woolworths commitment to re-open at that address, a possible timeline for reconstruction and information on concepts for the site which are being considered.

Attachment(s)

Nil

14. Advisory Committee Minutes

14.1 Commercial Services Committee Minutes - 20 February 2012

File Reference Commercial Services Committee

The Minutes will be distributed prior to the meeting.

RECOMMENDATIONS

That Council confirms the minutes of the Commercial Services Committee meeting held Monday 20 February 2012 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

15. Reports from Councillors on Attendance on Council's behalf

15.1 Mayoral Meetings

File Reference	Mayoral
Councillor	Cr Phillip Silver

Activities since the January 2012 Ordinary meeting:

<u>Date</u>	<u>Function</u>
3/2/12	NOROC Ordinary meeting in Ballina
5/2/12	Gold Coast Suns launch in Ballina
6/2/12	NBN Lennox Head parking
6/2/12	Dredging Taskforce meeting in Ballina
7/2/12	ABC Regional Transport
7/2/12	Regional Library meeting in Mullumbimby
15/2/12	Rous Water Ordinary meeting in Lismore
16/2/12	Deputation re marina with staff in Ballina
21/2/12	Pearces Creek Hall deputation in Ballina
21/2/12	Lennox RFS meeting with staff in Ballina

RECOMMENDATION

That Council notes the contents of the report on Mayoral meetings.

Attachment(s)

Nil

- 16. Questions Without Notice
 - 17. Confidential Session
-

16. Questions Without Notice

17. Confidential Session

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

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

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

Item 17.1 - Tender - Concrete Pavers for Ballina Town Centre Project

This report contains information relating to commercial negotiations taking place, and if released to the public could prejudice those negotiations.

RECOMMENDATION

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

17.1 Tender - Concrete Pavers for Ballina Town Centre Project

Reason for Confidentiality

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

(d) commercial information of a confidential nature that would, if disclosed:

- (i) prejudice the commercial position of the person who supplied it, or
- (ii) confer a commercial advantage on a competitor of the council, or
- (iii) reveal a trade secret,

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as commercial negotiations are still in progress and release of that information could prejudice those negotiations.