



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 26 April 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

Paul Hickey
General Manager

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

Deputations to Council – Guidelines

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

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

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

Public Question Time – Guidelines

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

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

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

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

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

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

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

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

Disclaimer

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

Confidential Session

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

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1. Australian National Anthem
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1. Australian National Anthem

The National Anthem will be performed by the Headliners.

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

4. Confirmation of Minutes

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 22 March 2012 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 22 March 2012.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil Items

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

8. Regulatory Services Group Report

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

Applicant	Ardill Payne & Partners
Property	Lot 3 DP 619233 and Lot 1 DP 787102, Old Bagotville Road, Bagotville
Proposal	<p>Section 96(2) application to amend DA 1996/29 by increasing the annual maximum rate of extraction from 50,000 tonnes per annum to 150,000 tonnes per annum.</p> <p>Section 96(2) application to amend DA 1996/30 by increasing the annual maximum rate of extraction from 56,000 tonnes per annum to 150,000 tonnes per annum.</p>
Effect of Planning Instrument	<p>Lot 3 DP 619233 (DA 1996/29) is zoned 1(e) Rural (Extractive and Mineral Resources) under the provisions of the Ballina LEP 1987.</p> <p>Lot 1 DP 787102 (DA 1996/30) is partly zoned 1(b) Rural (Secondary Agricultural Land) & partly zoned 1(e) Rural (Extractive and Mineral Resources) under the provisions of the Ballina LEP 1987.</p>
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council has received two almost identical applications seeking to increase the annual maximum production from two existing quarries at Bagotville, located in close proximity to each other. Each quarry is seeking permission to increase their production to 150,000 tonnes per annum.

Eaton's Quarry (DA 1996/29) currently has approval to extract 50,000 tonnes per annum. Monti's Quarry (DA 1996/30) currently has approval to extract 56,000 tonnes per annum. As the two applications are similar and to appropriately assess the cumulative impacts of the two applications on the locality, one report is submitted to Council for the two applications.

History

Deferred commencement consent was granted to **DA 1996/29** on 22 February 1996 for *"the continued operation and expansion of an existing Extractive Industry – extraction of shale and chert with extraction rates of 50,000 tonnes per annum (total resource of 975,000 tonnes)."* The deferred commencement conditions were complied with and the quarry has been operating ever since.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

The consent imposed a condition limiting the life of the quarry to not more than 20 years.

Deferred commencement consent was granted to **DA 1996/30** on 22 February 1996 for *“the continued operation and expansion of an existing Extractive Industry – extraction of shale and chert with extraction rates of 56,000 tonnes per annum (total resource of 1,500,000 tonnes).”* The deferred commencement conditions were complied with and the quarry has been operating ever since. The consent imposed a condition limiting the life of the quarry to not more than 27 years.

Both quarries have an Environment Protection Licence with the Office of Environment and Heritage for the crushing, grinding or separating of extractive materials with a capacity of between 30,000 and 50,000 tonnes per annum.

The applicant acknowledges the fact that these licences will need to be amended in line with any amended consent which Council may issue.

Eaton’s quarry has approval to extract 50,000 tonnes per annum, however, between 1998 and April 2010, a total of 159,697 tonnes of product had been extracted at an average of 12,200 tonnes per annum.

Monti’s quarry has approval to extract 56,000 tonnes per annum, however, between 1998 and April 2010, a total of 155,697 tonnes of product had been extracted at an average of 11,900 tonnes per annum.

This matter was previously reported to Council on 24 February 2011, when Council, on the day of the meeting, received a letter from the Environmental Defender’s Office Ltd, which questioned whether or not the application should be considered as an amending application or as a new development application. In view of this letter it was determined that the application should not be dealt with by Council at that meeting and further legal opinion sought as to whether or not the application should be considered as an amending application. This further legal advice was subsequently obtained.

Reportable Political Donations

- Nil

Public Exhibition

The two Section 96 applications were advertised from 17 June 2010 to 16 July 2010 and 74 people were notified. 49 submissions were received in relation to Eaton’s quarry and 42 submissions were received in relation to Monti’s quarry. Most people lodged a submission relating to each application.

In total, submissions were received from 52 individuals and groups. Thirty written submissions were received, and 22 were in the form of a circulated letter.

A petition has also been received with 93 names on it of which 77 names gave an address in Wardell or Cabbage Tree Island.

Due to the duplication of submissions, identical submissions have not been provided in the attached copies of submissions.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

Three Government Agency submissions were received relating to the amendment of DA 1996/29 and four submissions were received relating to the amendment of DA 1996/30.

Report

The applications have been assessed in accordance with the relevant provisions of Section 96, heads of consideration under Section 79C of the EP&A Act and Clauses 35 and 36 of Part 2 of the Environmental Planning and Assessment Regulations 2000.

In addition to relevant statutory requirements the principal merit issues to be assessed as part of each application relate to an increase in transport movements and environmental issues associated with the increased rate of extraction namely noise and dust.

Section 96

Section 96 (2) of the Environmental Planning and Assessment Act 1979 in part provides:

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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

As stated above the Environmental Defender's Office questioned whether or not the proposals were an amendment to the original applications or should be considered as new applications.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

In assessing the applications under S96, Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

The relevant case law in the NSW Land & Environment Court is the **Moto Projects** test which requires a qualitative and a quantitative comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is essentially or materially the same as the currently approved development.

To assist in this comparison, Clauses 35 & 36 of Part 2 of the Environmental Planning & Assessment Regulations 2000 must be taken into consideration.

Part 2 Are alterations or additions designated development?

Clause 35 - Is there a significant increase in the environmental impacts of the total development states:

Development involving alterations and additions to development (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.

Clause 36 Factors to be taken into consideration states:

In forming its opinion as to whether or not development is designated development, a consent authority is to consider:

- (a) The impact of the existing development having regard to factors including:*
 - (i) Previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice,*

Comment

The quarries have in the past and are continuing to operate under the terms and conditions of the 1996 development consents, 1998 Plans of Management (PoM) and EPA licences.

Up until the exhibition of the Section 96 application in June 2010, Council had not received any complaints in respect of the operation of the quarries since they commenced operation under the terms and conditions of DA's 1996/29 and 1996/30.

Council undertook a detailed audit of both operations in 2009. This audit involved a site inspection on November 4, 2009 and a review of the quarry operations, consent conditions and the PoM to assess the operational and environmental performance of the quarries.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

The only matter that was identified during the audit as requiring further action (being the only condition that was not being complied with) was that not all Section 94 contributions (heavy vehicle road haulage) had been paid. It should be noted that this non-compliance did not have any actual or tangible environmental impacts or consequences on the operation of the quarry. The contributions applicable to the applicant have since been paid. However, there are still contributions outstanding attributable to the quarry owner, and efforts are being made to recover these contributions.

As part of the 2009 audit the January 1998 PoM was reviewed by Council and was considered to be sufficient (no amendments or modifications were required). This PoM is the plan under which the quarries are and will continue to operate.

The previous environmental performance of the quarries was also checked by Council wherein it was confirmed that the quarries were operating in accordance with the terms and conditions of the development consent and the PoM (with the exception of the payment of contributions for heavy vehicle haulage).

The EPA (DECCW) has also recently reviewed the extractive operations in the context of its EPA licences and has advised that the quarries were operating within the environmental limits of their licences.

(ii) rehabilitation or restoration of any disturbed land,

Comment

The existing approved site rehabilitation (per the development consent and PoM) is not proposed to change, and will not change, as a consequence of the proposed modifications.

The proposed increased annual extraction rates will result in the site rehabilitation works being undertaken at an earlier time due to the fact that the maximum permissible volume of resources will be extracted quicker and thus extractive operations will cease on the site earlier.

The site rehabilitation is controlled by and will be undertaken in accordance with the requirements of the approved PoM.

(iii) the number and nature of all past changes and their cumulative effects,

Comment

The existing approved operations have not been the subject of any past operational changes or modifications. A Section 96 application was approved by Council on February 22 1996, which provided additional time within which to satisfy the deferred commencement consent conditions. There have been no changes to any operational parameters of the quarries.

(b) the likely impact of the proposed alterations or additions having regard to factors including:

- (i) the scale, character or nature of the proposal in relation to the development,*

Comment

The proposed modifications will result in a potential trebling of the annual extraction rate. The increase in annual extraction rates will be achieved by the quarries operating on an increased number of days in a year in the same manner as they have recently been operated. However, they will not result in any changes to the type, nature, extent or character of the operations on a day by day basis. The modifications will result in a much faster total extraction and thus the overall life of the quarries will be proportionally reduced.

The existing approved total maximum extractable amount, extractive operations and processing, staging, final rehabilitation, haulage routes etc will remain unchanged.

In considering the scale, character and nature of the proposal, it should be noted that the proposed modifications will not increase the actual daily peak production that was experienced during periods of previous peak extraction.

(ii) the existing vegetation, air, noise, and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality,

Comment

The existing approved total maximum extractable amount, extractive operations and processing, staging, final landform, site rehabilitation, haulage routes etc will remain unchanged.

The main consequential impacts will result from potential increases in noise (operational and haulage traffic noise) and more intensive truck haulage on local roads (impacts on the safety and efficiency of the local road network).

A detailed Traffic Impact Statement and Noise Impact Statement have been prepared to qualify, quantify and address these additional impacts. Both of these investigations were based on assessments of actual production rates (to peak daily levels) that are permissible under the terms of the existing approval and would be expected to apply for the increased annual extraction rate.

Detailed assessment/comments with respect to vegetation, air, noise, water quality, scenic character and special features of the land are provided below.

Vegetation

- The existing approved final landforms and proposed final land use reinstatement of stockpiled topsoil and establishment of suitable pasture grasses for cattle grazing and tree cover to provide preferred Koala food trees and future habitat will not change.
- There will not be any change to the existing approved extractable footprints and thus no additional vegetation is required or proposed to be removed.

Air

- There will not be any change to the extractive operations and plant/equipment used on the site or to the haulage routes.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

- The operation of equipment used in the extraction and haulage is and will continue to be managed in accordance with the existing consent conditions, PoM and EPA licence.

Noise

- There will be no change to the extractive operations and plant/equipment used on the sites or to the haulage routes
- There will be no increase in the daily noise generated as a result of extraction operations than presently exists. However, this noise will be generated over an increased number of days in any year, as extraction activities will be undertaken on an increased number of days.
- The amount of noise generated by trucks will not increase on a daily basis. However, as the quarry will be operating over an increased period of time during the year, there will be an overall increase in noise generated by truck movements during the proposed years of future operation.
- The operation of equipment used in the extraction is in accordance with the approved hours of operations as per the consent conditions, PoM and EPA licence.
- Operational noise monitoring was undertaken of the existing operations in accordance with the requirements of the EPA licence and based on the results of this monitoring a Noise Impact Statement was prepared, which demonstrated that the licensee can comply with the noise emission limits set in the EPA licence.
- The NIS is currently and will continue to be implemented to mitigate noise impacts

Water quality

- The extractive resources will continue to be sourced from within the original approved extractive footprints
- The existing stormwater management and quality systems will be maintained and carried through to service the continued extractions
- The proposed increases in annual extractions will not alter the existing approved stormwater management and treatment regimes in any way
- Erosion and sediment control plans were prepared and provided to the EPA in accordance with the requirements of the EPA licence
- The operations are currently and will continue to be undertaken in accordance with the requirements of the erosion and sediment control plans

Scenic character

- The subject sites are situated within a relatively sparsely settled rural environment that is characterised by scattered rural dwellings, sugar cane, stands of bushland and several other extractive industries.
- The extractions will continue into the side of a hill and as a consequence of the existing vegetation around the periphery of the site and the local topography, neither of the extractive operations is highly visible in the local landscape or streetscape.
- The visual impact of the proposed modified developments will be identical to those originally approved in that the extractive resources will continue to be sourced from within the existing approved extractive footprints, will be subject of the same staged extractions and the same rehabilitation and final land uses.

Special features

- There are no particular special features or characteristics with the subject lands or surrounding locality that will be impacted or changed in any way by the proposed increased annual extractions.

(iii) the degree to which the potential environmental impacts can be predicted with adequate certainty,

Comment

The existing extractive operations have been conducted at the sites for some 13 years. The extractive operations, practices, rehabilitation, final land uses etc for the proposed modified developments will remain as per the existing approved operations. As a consequence of such, the environmental impacts of the proposed developments are able to be practically and accurately determined – there is no need to predict or estimate such impacts. The only potential environmental impacts/consequences of the proposed increased annual extraction rates is from noise (both operational and traffic) and impacts on the local road network.

The NIS was based on actual monitoring of the existing operations and existing haulage routes and is thus based on fact rather than modelling. The existing and proposed noise environment is therefore able to be accurately identified and reported on. From this monitoring a noise mitigation plan has been prepared and is being implemented for each quarry.

The TIS was based on actual haulage using 10-20m³ haulage vehicles along existing haulage routes. The existing and likely road environment is therefore able to be accurately identified and reported on.

(iv) the capacity of the receiving environment to accommodate changes in environmental impacts,

Comment

The main impact upon the local receiving environment will result from noise from extractive operations and haulage trucks and the impacts that haulage trucks will have on the amenity of residents living adjacent to the local road network and the residents of Wardell. (The impact on the residents of Wardell will be discussed in more detail later in this report).

The haulage road network has been the subject of major upgrades over the years as a consequence of works required by this and a number of other extractive operation approvals along Old Bagotville Road. The upgrades have included:

- The reconstruction of the intersection of Old Bagotville Road and Back Channel Road to a Type A intersection with localized widening for the passing of turning vehicles
- Widening of Back Channel Road pavement
- Sealing of sections of Old Bagotville Road for a total length of 1150m
- Upgrading of sections of Old Bagotville Road as required under the terms and conditions of DA 2006/718

The haulage road network is considered to be of a sufficient design and construction standard (subject to on-going and routine maintenance) to accommodate the traffic generated by the quarry.

Should Council resolve to grant approval to this application, the recommendations of the traffic and noise impact reports will be incorporated into any consent issued.

(c) *any proposals:*

(i) *to mitigate the environmental impacts and manage any residual risk,*

Comment

A range of mitigation measures are contained within the traffic and noise impact reports and should Council resolve to grant approval to this application, the recommendations of the traffic and noise impact reports will be incorporated into any consent issued.

It should be noted that within the current consents for both quarries there are no restrictions on the number of truck movements in a day, or the times that trucks serving these quarries may travel through Wardell. Whereas, if Council is of a mind to grant approval to this application, the applicant has agreed to a condition being imposed restricting the number of truck movements in a week to a level below that recently experienced during peak periods. A further condition will be imposed restricting the times that trucks serving these quarries may pass through Wardell to provide an improved environment for Wardell residents.

(ii) *to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.*

Comment

The quarry operator/proponent has lengthy experience in extractive operations and acknowledges the statutory obligation to comply with the terms and conditions of DA 1996/29 and 1996/30 (as modified), the existing and any future updated plans of management and the EPA licences which would be identical to the situation and legal obligations of the existing operation.

Having regard to the above Clauses 35 & 36, it has been demonstrated by the applicants that the proposed changes do not significantly increase the environmental impacts of the two developments compared with the existing approved developments, and as such does not constitute “designated development”

Referring to the qualitative and quantitative comparisons it is considered that the above demonstrates the qualitative comparison between the amended applications and the current consents. In terms of a quantitative comparison the existing operations have approvals for a combined extraction rate of 106,000 tonnes per annum whilst the current applications are seeking to increase that output to 300,000 tonnes per annum.

The amended applications are not seeking to:

- increase the overall extraction tonnages
- change the method of extraction
- extract material from beyond the approved footprint
- Extend the operation beyond the existing approved time frame
- Change the submitted and approved rehabilitation plan
- Change the approved final land form
- Change the proposed use of the site after rehabilitation

The changes proposed are to increase the annual extraction rates. Associated with these increases will be a shorter term increase in the number of truck movements required annually to move this product from the quarries and an increase in the shorter term of air and noise pollution. Council should satisfy itself as to whether or not a trebling of the maximum amount of material to be transported in any given year with the associated increase in air and noise pollution constitutes substantially the same development as originally approved.

The Environmental Defender’s Office Ltd refers to a previous court case *Jendra Blue Metal Quarries Pty Ltd v Rainbow Flat Quarry Environment Committee*, where the Court held that an application to increase production from 50,000 to 150,000 tonnes was not substantially the same development.

This case is an older case and whilst it has not been overturned there are other cases which go the other way. Therefore, as established in the *Moto Projects* case, Council must satisfy itself that the developments to which the consents as modified relate would be substantially the same developments in both qualitative and quantitative terms as the development for which consent was originally granted. If Council is not so satisfied the applications should not be considered as modification applications and be refused, or referred back to the applicant.

Ballina Local Environmental Plan 1987

Lot 3 DP 619233 (DA 1996/29) is zoned 1(e) Rural (Extractive and Mineral Resources) under the provisions of the Ballina LEP 1987.

Lot 1 DP 787102 (DA 1996/30) is partly zoned 1(b) Rural (Secondary Agricultural Land) & partly zoned 1(e) Rural (Extractive and Mineral Resources) under the provisions of the Ballina LEP.

The objectives of Zone No 1 (b) Rural (Secondary Agricultural Land) Zone are:

- A The primary objective is to regulate the subdivision and use of land within this zone:
 - (a) to encourage the productive use of the land and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries, and
 - (b) to permit a range of uses which are compatible with the rural character of the land, particularly tourist oriented developments and recreation establishments and recreation facilities, and
- B The secondary objectives is to ensure that development within the zone:
 - (a) maintains the rural character of the locality, and
 - (b) does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.
- C The exceptions to these objectives are:
 - (a) development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical,
 - (b) development of land for extractive resource purposes, and
 - (c) development of an industry which, by reason of the processes involved or the method of manufacture or the nature of the materials used or produced requires isolation from other buildings.

The objectives of Zone 1(e) Rural (Extractive and Mineral Resources) Zone are:

- A The primary objectives are:
 - (a) to identify land which are extractive or mining industry potential
 - (b) to prohibit development which would result in the withdrawal of actual or potentially productive mineral resources land and
 - (c) to prohibit development which would be adversely affected by the operations of extractive or mineral resources development, particularly adverse affects from noise, vibration or dust.
- B The exception to these objectives is development of land within this zone for public works and services, outsider the parameters specified in the primary objectives.

The proposed amendments to each quarry are considered to comply with the objectives of the respective zones.

Quarries are a permitted use in each of the Zones with the consent of Council.

Draft Ballina Local Environmental Plan 2010

Lot 3 DP 619233 (DA 1996/29) is proposed to be partly zoned RU2 – Rural Landscape and partly zoned E2 Environmental Conservation. The quarry operations are wholly contained within that part of the property zoned RU2 – Rural Landscape

Lot 1 DP 787102 (DA 1996/30) is proposed to be zoned RU2 – Rural Landscape.

The objectives of Zone No RU2 Rural Landscape are proposed to be:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the natural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- to enable small scale tourist orientated development that is compatible with the rural nature of the land.
- To encourage development that involves restoration and/or enhancement of the natural environment where consistent with the production and landscape character of the land.
- To enable development that does not adversely impact on the natural environment, including habitat and waterways.
- To ensure that there is not unreasonable and/or uneconomic demands for the provision of public infrastructure.

Neither of the proposed developments is inconsistent with the objectives of the RU2 zone.

State Environmental Planning Policy (Mining, Petroleum, Production and Extractive Industries) 2007

Clause 12 - Compatibility of proposed mine, petroleum production or extractive industry with other land uses

Each application is for an amendment to a mining operation that has been operating within a rural area for the past 13 years or so. During this period neither operation has had a significant impact on the surrounding land uses. It is not envisaged that the general surrounding land uses will change radically in the approved lifetime of the quarries.

Clause 13 - Compatibility of proposed development with mining, petroleum production or extractive industry

There are a number of other quarries in the locality, and the proposed increase in extraction rates will not adversely impact any of these operations.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

Clause 14 - Natural resource management and environmental management

Each existing operation is operating within the present environmental controls contained within the conditions of consent, licence requirements and Plan of Management, and if consent is granted to the increase in extraction rates, the amended operations will continue to operate within these controls.

Clause 15 - Resource recovery

The current method of extraction (excavator, stockpiling, crushing and loading and truck haulage) is considered to be the most practical, efficient and cost effective method of resource recovery and transport. The existing operations will continue to be deployed with the proposed increase in extraction rates.

Clause 16 - Transport

The existing methods of transport (haulage trucks) and haulage routes will remain unchanged.

The quarry operator has developed a code of conduct for truck drivers, and has opened lines of communication with the residents of Wardell for notification of breaches of this code of conduct.

Clause 17 - Rehabilitation

Each site is currently controlled by a Plan of Management, which incorporates a Rehabilitation Plan. The proposed amendments will in no way alter the implementation of the rehabilitation plans other than to require their implementation sooner than would otherwise apply.

North Coast Regional Environmental Plan (NCREP)

The provisions of the NCREP were taken into account as part of the original assessment. The proposed changes will not alter the assessment.

A number of other State Environmental Planning Policies (SEPP) apply to the sites and establishment of quarries in this location. None, however, contain any specific requirements to be applied to an application to amend an existing quarry's operations.

The social and economic impacts in the locality

The Department of Primary Industry - Mineral Resources has advised that:

"the Bagotville area represents a strategically important concentration of low to intermediate grade, rock based, construction material resources which are currently valuable district sources of construction materials and which will become increasing so as resources are depleted. This strategic importance arises from a combination of geological suitability, proximity to markets, past extractive history and rural setting, and therefore optimal, long term resource utilization would be desirable in all such areas, including Bagotville, if district construction material supply is to be maintained without the uncertainty and cost of relying on distant sources. In this context, the subject resource would be a modest, but useful addition to the collectively significant resources of the Bagotville area."

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

The social impact on the residents of Wardell will be discussed elsewhere in this report.

The New South Wales Government intends to construct a dual carriageway highway through the area by 2016. This construction will require the extraction of a considerable amount of material over a short period of time, as was recently demonstrated with the construction of the Ballina and Alstonville By-Passes.

The construction of such a road will have great social and economic impact on the region and it is imperative that local quarries have the capacity to fulfil their part in the construction of this essential piece of infrastructure.

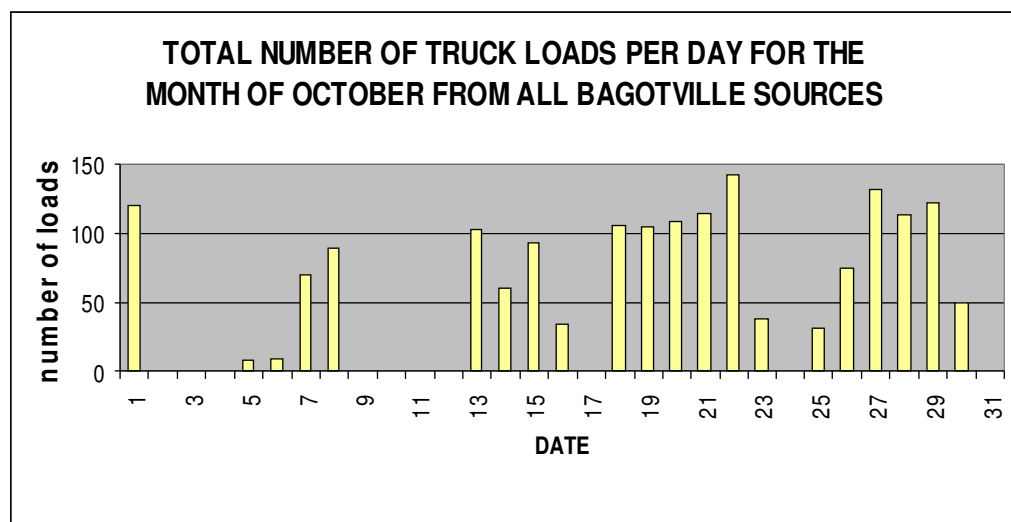
Transport Movements

The increase in production from the two quarries will see the annual maximum tonnage increase from a combined 106,000 tonnes per annum to 300,000 tonnes per annum.

This increase in annual tonnage will not increase truck movements above those previously experienced during peak extraction periods. Council has been made aware of the fact that, in order to comply with contractual obligations for the construction of the Ballina and Alstonville By-Passes, the quarries have cumulatively exceeded the 300,000 tonnes requested in this application.

Gibson's quarry which is located in the same area has approval to extract a maximum of 50,000 tonnes annually. To date no application has been received to increase the capacity of this quarry. Also located in this area is a new Monti's quarry that was granted Council approval in 2007 to extract a maximum of 75,000 tonnes per annum. This quarry is in the process of being developed and has not as yet commenced production.

All kinds of mathematical calculations can be made relating to average truck movements or total truck movements per day, as has been done by a number of people in their submissions. However, as the following graph indicates, this is an exercise having limited, if any, practical utility as the number of truck loads per day depends entirely on demand unless a maximum daily truck movement rate is set.



8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

The above graph shows the irregularity in truck movements with periods of nil to light truck movements and other periods of heavy movements for the period of October 2010.

As a result of discussions with the applicant, if approval is granted, the applicant has agreed to the two applications being limited to a maximum number of 880 truck movements or 440 loads per 5.5 day week, or an average of 160 truck movements or 80 truck loads per day. This figure is less than has been experienced during heavy truck movement weeks.

It is to be recommended that, if Council were to grant consent to these applications, a condition should be imposed restricting the maximum number of truck loadings to 220 per week for each quarry, or a total of 440 loadings per week for the two quarries. There is currently no restriction on the number of trucks that can be loaded in a week within the current consents for each quarry.

Another issue raised in submissions was that trucks were travelling through the residential area on their way to the quarry prior to 7.00am. This matter has been taken up with the applicant. The applicant originally advised drivers that trucks would no longer be loaded prior to 7.00am which was the approved starting time. This action, however, did not stop trucks travelling through Wardell prior to 7.00am.

The applicant then, whilst having no statutory obligation to do so, requested drivers via letter (copy attached) not to pass through the residential areas prior to 7.00am, and also not to travel in convoy style. This, judging from reports from residents, was, on the whole, complied with.

Noise

Noise assessments of the quarry operations have been undertaken in association with these applications. The assessments found that the Monti's quarry was exceeding noise limits and that further remediation action would be required.

This work has now been completed and DECCW the licensing agency for the quarries has advised that the required Environment Protection Licence (EPL) noise limit of 43dBA for both quarries has been complied with.

Referring to the noise of trucks travelling through Wardell, the noise consultant has provided Council with a table which details the total number of trucks that may pass through the village at particular hours of the day before the *Environmental Criteria for Road Traffic Noise* (ECRTN) is exceeded.

The ECRTN is a guide designed to allow the best mix of short, medium and long term strategies to be selected to meet an appropriate noise level from road traffic, given existing and emerging conditions and takes into account such matters as the state of the road, the type of road surface, the volume of traffic, the make up of that traffic and the speed of the traffic.

It must be emphasised that this number refers to the total number of trucks and not just the trucks from these two quarries.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

The table below contains information on the number of trucks required to travel through the village at certain times of the day in order to exceed the ECRTN.

Hours of the Day	6 to 7	8 to 9	4 to 5	Day Non Peak
No of trucks per hour required to exceed noise levels	5	18	17	22

(NB: The figures relate to all truck movements on the road and not just truck movements from the 2 quarries).

It can be seen from the above that it does not take many truck movements per hour to exceed the nominated noise levels. It must be remembered that these figures are a guide only.

The intention of the ECRTN is to provide a guide to authorities for road planning purposes. It does not take into account, in this instance, that the road through Wardell is an existing collector road, carrying all kinds of traffic through the middle of an existing residential area, with little opportunity to redirect traffic around this area, or to provide for any form of noise attenuation barriers.

It is not practical to try to limit the number of vehicles travelling on the roads, especially as the roads are collector roads. The only means in this instance, by which traffic noise can be reduced is by altering the road environment. This has been partly achieved by reducing the speed limit from 80KPH to 50KPH.

Council's Civil Services Group has undertaken a heavy road patching programme for Carlisle Street which it is anticipated will reduce the amount of traffic noise by eliminating some of the noise generating defects in the road.

Whilst it has been acknowledged above that it is not reasonable to limit the number of trucks passing through Wardell per hour to meet the ECRTN Guidelines, it is considered that the imposition of a limit on the maximum number of trucks loaded in a week, the heavy road patching programme and the existing restrictions contained in the letter from the applicant to the truck drivers, would result in traffic noise being able to be managed at an acceptable level across the lives of the quarries.

It should be noted that the quarries have been liable for road maintenance contributions since commencing operations. These contributions will continue to be paid at a rate indexed to the consumer price index and this money will continue to be used for the maintenance of roads along the truck haulage route.

Dust

It is considered that levels of dust emissions from the quarrying operations, are in accordance with the conditions of consent, and the requirements of the DECCW licence. There is a dust issue with trucks travelling on the unsealed section of Old Bagotville Road in terms of road safety for other vehicles on the road.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

If Council were to resolve to grant approval to this application a condition should be imposed requiring the applicant to maintain a water truck in the vicinity and to undertake watering of the road when required.

Matters raised in submissions.

Submission - Disturbance to quality of life

Comment – There is no doubt that, to have trucks, both quarry trucks and other trucks, travelling through what would otherwise be a quiet residential area, will have an impact on the quality of life in that area. What has to be determined, however, is the degree to which that quality is impacted. It should be noted that quarry trucks can only be loaded between 7.00am and 5.00pm Monday to Friday and between 8.00am and 1.00pm on Saturday morning.

Quarry trucks are therefore not interfering with the amenity of the neighbourhood in any way of an evening, Saturday afternoons or Sundays whereas other trucks may be. On the busiest day shown in the previous graph, a truck from the two quarries would pass through Wardell every two minutes.

It should also be noted that there were three weekdays and two Saturdays, when there were no quarry truck movements at all from the subject developments.

It is considered that whilst the trucks do and will continue to impact on the amenity of Wardell, the amount of time this would happen would be limited and is not considered overall to be unreasonable.

This point has been acknowledged in one of the submissions *“I believe most of the material is being used for the Alstonville By Pass Road. We have put up with the constant noise, dust and blasting so far as we consider it would all be over when the By Pass is completed.*

This statement is true, as the bulk of the material extracted recently has been used in the Ballina and Alstonville By-Passes. Now that these projects are completed, extraction rates have returned to pre by-pass levels. These rates will remain depending upon where and when the next big project occurs.

Submission - Splitting of haulage routes.

Comment - The alternative truck route has not been identified, however it has been assumed that they mean trucks travelling south along Old Bagotville Road and joining the Pacific Highway at Broadwater.

Whilst this suggestion is possible, it is considered impractical for a number of reasons, not least of which is that such a move would have trucks travelling longer distances, over lesser quality roads, thereby causing more damage to roads and increasing the possibility of accidents.

By way of comments, future Pacific Highway road upgrades may be such that transportation can be managed along haulage routes and will not necessarily rely upon traffic through Wardell.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

Submission - Increase impact on Koala population

Comment – The potential impact is the possibility of koalas being hit by trucks. There is no indication that this is a problem at the moment. No additional habitat loss would occur as a consequence of these two applications.

Submission - Use of exhaust brakes

Comment – Truck drivers have been asked in the letter of request issued by the applicant, not to use their exhaust brakes in or around the village of Wardell. Since the directive has been issued Council has not been advised of any complaints relating to the use of exhaust brakes.

The elimination of the use of exhaust brakes is another factor towards reducing the overall noise impact on the residents.

Submissions - Trucks exceeding the 50kph speed limit

Comment – Figures obtained during Council's traffic count in Carlisle Street Wardell for the period 20 July and 3 August 2010 indicated that all Class 3 to Class 10 trucks, which includes all vehicles with more than two axles, recorded an 85% percentile speed of 56.9 KPH.

Submissions - Buses travelling along truck routes

Comment – Quarries were operating at or near the requested capacity for periods in 2010 and it appears that there was no reported conflict with school buses. Given the design capacities of the rural road network, it is considered that this will not be a problem in the future.

Submission - Degradation of road surface

Comment – Council's Civil Services Group has advised that the road surface along the traffic route is capable of carrying the additional traffic without substantially damaging the road.

The quarries are paying Section 94 contributions for road maintenance, which go towards repairing any damage in the road system which may be attributed to truck use.

Submission - Increased number of trucks with dogs travelling through Wardell;

Comment – See traffic volume comments in this report

Submission - That dust from the unsealed section of Old Bagotville Road will impact on the drinking water of residents along Old Bagotville Road

Comment - There are no residences immediately adjoining the unsealed section of Old Bagotville Road used by these trucks.

Submission – The statement is made that the proposed increase in extraction rates will impact on flora and fauna without giving any examples.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

Comment – The extraction footprints and total amount of extraction of the quarries are not being increased. Therefore there will be no additional loss of habitat for the flora and fauna. The increase in daily traffic movements must carry a proportional possibility of road kill.

Submission – expressing concern with one large blast

Comment – The quarry is a scheduled operation and as such the control of blasting comes under the control of the DECCW.

Submission – Trucks are passing through Wardell early in the morning especially on Saturdays.

Comment – The applicant has taken measures to prevent trucks from their quarries doing this. This will be supported by a condition of consent.

Refer to attached letter from the applicant to truck drivers.

Submission – the intersection of Carlisle Street and the Pacific Highway is a known black spot.

Comment - RTA has raised no concerns with the corner of the Pacific Highway and Carlisle Street.

Submission – Old Bagotville Road should be sealed to eliminate the dust and improve the safety of all who use the road.

Comment – Council's Civil Services Group has assessed the option to seal Old Bagotville Road and is of the opinion that such a request cannot be reasonably justified.

Submission – the S bend in Old Bagotville Road, 100 metres east of Monti's farm, is extremely narrow and any on-coming traffic coming is not visible.

Comment - This stretch of road has recently been upgraded, and the S bends eliminated.

Submission - We already have been understanding with increased truck & dog traffic from the Alstonville bypass and Ballina bypass but were tolerant due to the impending completion of these projects but this is too much to ask.

Comment – The bulk of the material recently extracted was used in the Ballina and Alstonville By-Passes, and now that these projects have been completed, extraction and traffic movements have returned to pre By-pass days, and will continue to do so until the next big project.

By requesting these quantities on a permanent basis it allows the quarries to cater for bigger road projects without having to seek Council approval on each occasion.

Submission - Noise at Quarry site

Comment – Noise at the Quarry site is regulated by the DECCW. The noise report submitted by the applicant has been accepted by the DECCW as demonstrating compliance with the licence requirements for the quarries.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

Submission - Truck noise in Wardell

Comment – Trucks passing along a road generate noise, and a percentage of that noise can be attributed to the state of the road.

Council has recently received a Section 94 contribution payment for road maintenance from the Quarry owner and has completed a heavy road patching program which it is anticipated will reduce truck noise in this locality.

Submission - Danger to pedestrians especially children – lack of footpaths

Comment – It is accepted that there are no footpaths in Carlisle Street thus forcing pedestrians to walk on or near the road. If Council is of a mind to grant approval to this application, a condition will be included requiring the applicant to construct a footpath and road crossing from the bus stop to Bath Street at their expense. The applicant has agreed to the imposition of this condition.

Submission - Structural damage to dwellings

Comment – If any person is of the opinion that they have suffered structural damage to their house caused by some action (or inaction) of Council, they have the opportunity to present their case to Council's insurers. To date no such claims have been lodged.

Conclusion

Prior to making a determination in this matter Council must satisfy itself of two things:

Firstly, do the proposed changes constitute “designated development”? and

Secondly, is the development as currently approved, and the development as proposed to be modified, substantially or materially the same?

Having regard to Clauses 35 & 36 of Part 2 of the Environmental Planning and Assessment Regulations 2000, it is considered that the information provided demonstrates that the applications are not “designated development”.

In relation to whether the development as proposed to be modified is substantially the same development (following the Moto Projects test as outlined in the report), the proposed development does **NOT** intend to change the following:

- The extractive material footprint
- The total amount of material to be extracted
- The method of operation and processing
- The Haulage routes
- The approved time frame
- The approved plan of management for the operations
- The method by which the material is to be extracted
- The rehabilitation plan or the timing of the rehabilitation plan
- The finished rehabilitated landform
- The use of the rehabilitated land from
- Alter the existing stormwater management and quality systems.

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

- Alter the requirements of the air and noise impact statements

The proposed development **DOES** intend to change the following

- Increase the annual rate at which the material is to be extracted.
- Increase the number of truck movements through Wardell in a year.

It is considered that there are no issues with the actual extraction of the additional annual production. However, Council must give consideration to the impact this increased extraction will have on the people of Wardell, who have in no uncertain terms advised Council through their submissions that they are concerned about the increase in the number of trucks travelling through Wardell and the impacts this will have on their lives.

The key matters for Council to consider in making a comparison between the existing and proposed developments as they relate to truck movements through Wardell are:

- Overall there will be no increase in the number of trucks travelling through Wardell.
- The number of trucks travelling through Wardell in a year will increase, possibly three fold.
- This annual increase in extraction will result in the quarries reaching their approved tonnages in a shorter period of time, resulting in truck movements from these quarries ceasing earlier than previously expected.
- The current approvals contain no limitations on the number of truck movements through Wardell in any given period.
- It is proposed to impose via a condition of consent, a limit on the number of trucks from these quarries allowed to pass through Wardell in a week. This limit will be less than the number of trucks experienced in recent peak periods.
- The current approvals contain no limitations on the times that trucks servicing these quarries may travel through Wardell.
- It is proposed to impose via a condition of consent a restriction on the times, trucks servicing these quarries may pass through Wardell.

The applications seek to increase the annual output from the two quarries from 50,000 tonnes p.a. and 56,000 tonnes p.a. to 150,000 tonnes p.a. each. This change will not impact on each quarry operation, which is licensed by DECCW. DECCW has advised that each Quarry is operating within the limits of its license.

During 2010 the quarries were operating at or near the requested annual **production** (which was above approved) **levels**, in order to comply with contractual obligations to the Alstonville and Ballina By-Pass projects. These exceedances of approval levels are continuing to be attended to as separate compliance issues.

It would appear that the majority of those making submissions were of the opinion (and rightly so) that if the applications were to be approved, local residents would be experiencing three times the number of truck movements they have generally experienced in the past. This would not be the case. In fact if Council were to grant approval to this application, they could be experiencing fewer trucks from the subject quarries during peak contract

8.1 DAs 1996/29 & DA 1996/30 - Increase in Quarry Extraction Rates

periods as it is intended to impose a restriction on the number of trucks that can be loaded in a week. This is a restriction that currently does not exist.

Concern has been expressed at the danger the trucks pose to pedestrians. This is acknowledged as there are no footpaths in Carlisle Street. This concern is to be addressed by the imposition of a condition requiring the applicant to construct a footpath from the bus stop to the intersection of Carlisle and Bath Streets.

Concern was expressed at the noise generated by the trucks. Council has since undertaken a heavy road patching program which it is considered has reduced the amount of truck noise.

The applicant and residents have shown a considerable degree of goodwill in this matter. The applicant has opened a direct line of communication between themselves and residents of Wardell and shown empathy with the residents of Wardell by instigating substantial procedures to control the activities of the truck drivers, as demonstrated by the attached letter.

It must be acknowledged, that the control the applicant has over truck drivers is limited as they are not employees of the applicant. They are truck drivers, driving registered trucks on public roads, and as such are controlled by the rules of the road. Notwithstanding this, there have been marked improvements in truck operations, as a consequence of the quarry operators' actions and control.

Options

1. Council determine that the application is not substantially the same development as that originally approved and request the applicant withdraw the current application and submit a new development application.
2. Approve the applications as submitted subject to conditions.
3. Refuse the applications as submitted

On balance it is considered that the applicants and the conditions of consent can or have addressed all matters that they are either able or legally required to do and on that basis It is recommended that Option 2 be adopted and the application be approved subject to conditions.

RECOMMENDATIONS

That the Section 96(2) applications seeking to amend DA 1996/29, Lot 3 DP 619233, Old Bagotville Road, Bagotville, and DA 1996/30, Lot 1 DP 787102, Old Bagotville Road, Bagotville by increasing the annual extraction rate of each quarry to 150,000 tonnes per annum be **APPROVED** subject to the attached conditions of consent applicable to DAs 1996/29 and 1996/30.

Attachment(s)

1. DA 1996/29 & 1996/30 - Locality Plan
2. Submissions - Part 1
3. Submissions - Part 2
4. Letter from Applicant to Truck Drivers
5. Response from Department of Lands
6. Response from Department of Industry & Investment
7. Response from DECCW for DA 1996/29 dated 17 January 2011
8. Response from DECCW to DA 1996/29 dated 22 July 2010
9. Response from DECCW to DA 1996/30 dated 22 July 2010
10. Response from DECCW for DA 1996/30 dated 27 August 2010
11. Response from Department of Industry & Investment dated 27 July 2010
12. Response from RTA dated 22 July 2010
13. Conditions applicable to DA 1996/29 & 1996/30

8.2 Development Applications - Works in Progress - April 2012

8.2 Development Applications - Works in Progress - April 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 Sneesbys 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
2011/320	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	Being issued

8.2 Development Applications - Works in Progress - April 2012

DA No.	Date Rec'd	Applicant	Proposal	Status
			dry/inert waste to the retention as a flooded pit as part of the rehabilitation works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	
2011/470	04/11/2011	SJ Connelly CPP Pty Ltd	Alterations and Additions to Gunundi, No. 70 Shelly Beach Road, East Ballina	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	Awaiting 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	Awaiting Additional Information
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	Awaiting Additional Information

8.2 Development Applications - Works in Progress - April 2012

DA No.	Date Rec'd	Applicant	Proposal	Status
			River Street, West Ballina	
2011/535	16/12/2011	Peter Carmichael	Erection of Industrial Shed, 38A Smith Drive, West Ballina	Determination Pending
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	Being Assessed
2011/541	20/12/2011	Ballina Shire Council	Construction of a Surf Club Storage Building, 75 space carpark, bulk earthworks and landscape works; Cedar Crescent, Light House Parade & Compton, Drive East Ballina	Being Assessed
2011/546	22/12/2011	Tony Hart	Establishment of a retail plant nursery and art studio, 935 Fernleigh road, Brooklet	Being Assessed
2011/554	23/12/2011	Ardill Payne & Partners	Alterations & Additions to Ballina Fair Shopping Centre, 84 Kerr Street, Ballina	Being Assessed
2012/23	24/01/2012	Don Taylor	Five Lot Strata Title Subdivision of an Existing Industrial Building, 6 Russellton Drive, Alstonville	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	Awaiting Additional Information

8.2 Development Applications - Works in Progress - April 2012

DA No.	Date Rec'd	Applicant	Proposal	Status
			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	
2012/47	21/02/2012	GSA Project Consultants P/L	To operate the existing Ballina Hockey and Sports Complex Facility as a Sports Club, 17-49 Owen Street, Ballina	Being Assessed
2012/57	28/02/2012	Ardill Payne & Partners	Boundary Adjustment Subdivision of Three (3) Existing Lots to Create 1x 58ha, 1 x 57ha and 1 x 4ha allotments, Owenia Way, Broken Head	Being Assessed
2012/60	29/02/2012	GL Gerrard	To undertake selective removal of Camphor Laurels Trees, 126 Bagotville Road, Meerschamvale	Being Assessed
2012/69	7/03/2012	D Cope	Erection of a Rural Worker's Dwelling, 161 Broken Head Road, Newrybar	Awaiting Additional Information
2012/70	7/03/2012	Michael Hajjar Surveying	Two Lot Boundary Adjustment Subdivision and road Widening, 7 & 9 North Creek Road, Ballina	Being Assessed
2012/75	9/03/2012	The Living Word Pty Ltd	To Undertake a proposed 15 Lot subdivision of	Being Assessed

8.2 Development Applications - Works in Progress - April 2012

DA No.	Date Rec'd	Applicant	Proposal	Status
			land comprising 14 residential lots (proposed Lots 1-14) and one residue lot (proposed Lot 15), extension of Rancher Court to service proposed Lots 1-14 and associated works, 66-74 Rifle Range Road, Wollongbar	
2012/82	13/03/2012	T Duwenhogger	Lennox Head VMO - Removal of 1 x Lemon Scented Gum Tree, No. 108 North Creek Road, Lennox Head	Being Assessed
2012/84	13/03/2012	Chris Abbott Surveying	Subdivision by way of Boundary Adjustment and Consolidation of Ten (10) Lots to Create Five (5) Modified Lots, Teven Road, Teven	Being Assessed
2012/88	14/03/2012	Newton Denny Chapelle	Establishment of a Waste/Resource Management Facility and Depot for Bobcat and On-site Earthworks, 19-21 Northcott Crescent, Alstonville	Being Assessed
2012/114	29/03/2012	The Living Word Pty Ltd	To Undertake the establishment and ultimate construction of a place of public worship (approximately 200 persons) as a staged development, along with associated works including driveway access, car parking, landscaping, acoustic	On Exhibition

8.2 Development Applications - Works in Progress - April 2012

DA No.	Date Rec'd	Applicant	Proposal	Status
			boundary fencing and signage, 66-74 Rifle Range Road, Wollongbar	
2012/118	2/04/2012	Ardill Payne & Partners	Six Lot Residential Subdivision, Chilcott Circuit, Cumbalum	Being Assessed
2012/121	3/04/2012	TJ & NM Besseling	To remove Two Trees, 70 Northumberland Drive, East Ballina	Being Assessed

Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
NIL				

Major Development (Determined by Minister)

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

RECOMMENDATIONS

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

Attachment(s)

Nil

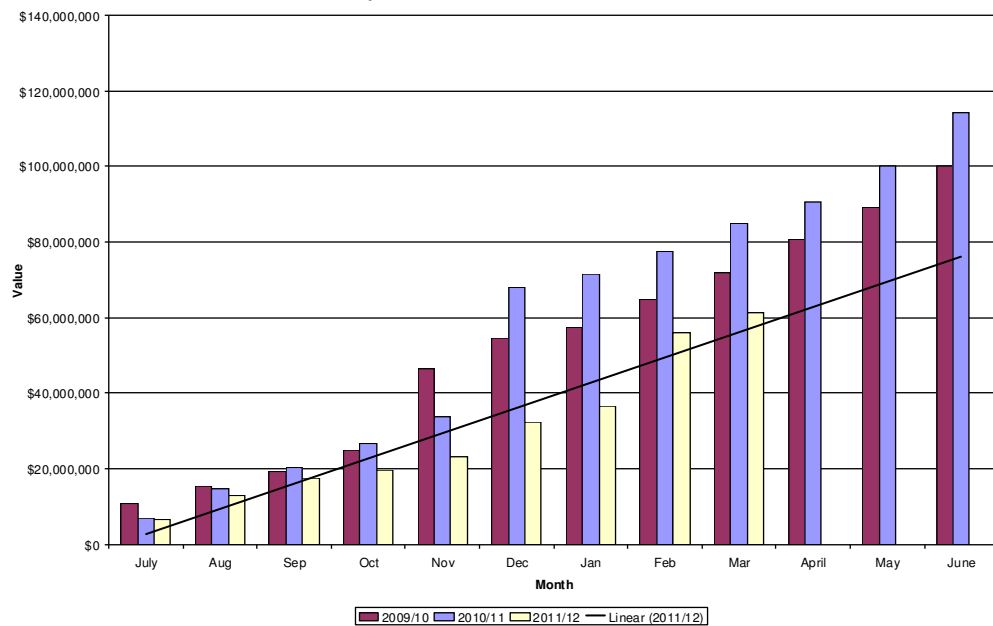
8.3 Development Consent Statistics - March 2012

8.3 Development Consent Statistics - March 2012

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

Number of Applications	Value of Work
32 Other Building Related	\$ 1,755,000
9 Dwelling/Duplexes/Residential Flat Buildings	\$ 3,377,000
3 General Developments	\$ 1,000
Total Value	\$ 5,133,000

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.



RECOMMENDATIONS

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

Attachment(s)

Nil

9.1 Growth Management Strategy - Draft

9. Strategic & Community Services Group Reports

9.1 Growth Management Strategy - Draft

Delivery Program Strategic Planning

Objective To invite the Council to publicly exhibit a draft Ballina Shire Growth Management Strategy for public comment.

Background

The preparation of a Growth Management Strategy (GMS) has arisen due to the need to:

- Provide an updated strategic framework for future urban development in Ballina Shire;
- Identify lands which, subject to detailed environmental assessment and comprehensive structure planning, may be suitable for rezoning and development for urban purposes;
- Provide a framework for the assessment of development applications for new release areas, to ensure that the release of these areas occurs in a coordinated and integrated way;
- Provide a framework to identify future infill development areas and to inform the assessment of development applications in these areas;
- Establish the framework for Council's consideration of rezoning proposals, where required for lands identified within the strategy; and
- Assist, through the above, the coordination of State and Local Government (Council) functions including the provision of community services and infrastructure.

Local policy for the management of urban development, and consequently of population and employment growth, has previously been provided by Council's Urban Land Release Strategies (URLS) prepared in accordance with (and as required by) Section 38 of the North Coast Regional Environmental Plan (REP 1988). The first ULRS was adopted by Council in 1990, with subsequent iterations endorsed in 1996 and 2000.

Since the adoption of the ULRS-2000 several significant changes have occurred to the planning system in New South Wales and the region. Changes to the Environmental Planning and Assessment Act 1979 and the introduction of the standard instrument LEP have altered the statutory arrangements for the rezoning and development of land. Further, the North Coast REP under which the URLS was prepared will no longer have effect in Ballina Shire following the gazettal of the Ballina Shire LEP 2011.

The Far North Coast Regional Strategy has been introduced to guide the future development of the region. The FNCRS has (limited) statutory status by virtue of a Section 117 Direction that requires local councils to be consistent with the FNCRS when preparing draft Local Environmental Plans.

The FNCRS requires councils to prepare a local growth management strategy to guide urban growth at a strategic level.

Key Issues

- Economic development
- Affordable housing
- Protection of social, cultural and natural values of the shire
- Infrastructure planning

Information

The Far North Coast Regional Strategy (FNCRS), prepared by the NSW State Government in 2006, is the principal planning strategy guiding future development of the Far North Coast region's settlements to 2031. The FNCRS has several key elements that have implications for planning undertaken by local councils, namely:

- A planning framework, including a settlement hierarchy, comprised of Cities, Major Regional Centres (Tweed Heads and Lismore), Developing Major Centres (Ballina), Major Towns (Murwillumbah), Towns (such as Byron Bay and Mullumbimby) and Inland and Coastal Villages (such as Bangalow and Lennox Head.);
- The establishment of settlement 'footprints' within which future development will be confined. No further land east of the Pacific Highway (2006 alignment) will be considered for future urban development, outside those areas already identified in councils' local strategies. The identification of additional lands west of the Pacific Highway in council strategies may be considered if consistent with the Regional Strategy's 'Sustainability Criteria'; and
- Setting down requirements for the preparation of local Growth Management Strategies and new generation Local Environmental Plans.

The draft Ballina Shire Growth Management Strategy has been prepared as required by the Far North Coast Regional Strategy and associated planning guidelines.

The draft Growth Management Strategy presented in association with this report, and distributed to Councillors under separate cover, has been prepared on the basis of Council's existing growth management policy as articulated in the Urban Land Release Strategy 2000 and updated by the following:

- Locality-based land use plans and structure plans endorsed by the Council including:
 - Lennox Head Structure Plan (2003)
 - Wardell Strategic and Land Use Plan (2003)
 - Cumbalum Structure Plan (2006)
 - West Ballina Structure Plan (2011)

- Shire wide analysis including:
 - Retail Strategy 2003
 - Ballina Shire Industrial and Commercial Land Use Review (2008)
 - Ballina Bulky Goods Retailing Investigation (2012)
- Reporting and Council deliberations associated with the Comprehensive Renewal LEP 2011.

The following section outlines the general structure and content of the draft GMS.

Guiding principles

Provides a set of overarching objectives which have informed the preparation of the draft GMS. The objectives are taken from the Council's comprehensive long term strategic plan, '*People, Place, Prosperity: A Framework for a more sustainable Ballina Shire 2025*' that is now embedded in Council's Community Strategic Plan.

Foundations for Growth

Provides an overview of the key drivers of demographic and economic growth and development in Ballina Shire, including key statistics.

Land Supply and Demand

Analysis of the current and projected demand and supply situation for residential, commercial, industrial and bulky goods / large format retail in Ballina Shire for the forthcoming planning period.

Growth Management Framework

Describes the planning context for the strategy in terms of the relationship with previous Urban Land Release Strategies and with the comprehensive renewal LEP (Ballina LEP 2011) through which the strategy will largely be implemented. This section also includes specific growth management principles, taken from the Council's comprehensive renewal LEP process (Discussion Papers), which underpin the strategy.

This section of the strategy also identifies other key social, economic, cultural and environmental values relevant to the future development of Ballina Shire, including Indigenous and European Heritage, high conservation value vegetation, drinking water catchments, visually significant land and existing and potential quarry resources. The implications of projected climate change are also considered.

Local Growth Strategies

Local strategies are articulated for each of Ballina Shire's urban localities. For each locality, the following is provided:

- a vision/locality character statement;

9.1 Growth Management Strategy - Draft

- a description of the main features of the locality, in land use planning terms;
- a list of key land use planning issues associated with change in the locality;
- a set of locality objectives to guide future development;
- strategic actions which identify Council actions to support the achievement of the locality objectives;
- reference to other locality specific strategic planning policies where relevant.

Land Release Program

Provides an overview and rationale for Council's ongoing commitment to maintaining adequate supplies of land, for residential, commercial, industrial and bulky goods purposes, into the future. Provides information regarding the rezoning process associated with Council's consideration of 'strategic urban growth areas'.

Infrastructure Servicing and Delivery

Provides information associated with Council's planning for future infrastructure delivery and funding, including an overview of Council's key infrastructure plans and strategies.

Census data

It is noted that the population projections and housing demand and supply analysis incorporated into the draft GMS has been prepared on the basis of the 2006 Census data. The 2011 Census data is due for release in July 2012. It is noted however that the new census information is unlikely to indicate any significant changes to the general direction of key demographic trends affecting growth and development in Ballina Shire. Notwithstanding, a census update to the strategy will be prepared when the 2011 Census data become available.

Requests for inclusion in the GMS

During the preparation of the comprehensive renewal LEP Council received a number of requests from landholders to have land included as 'strategic growth areas' either in the LEP or in the GMS. At the time Council advised those landholders that those requests would be considered in the context of the reporting of the GMS to the Council. Consequently, those requests have been reviewed by staff and the following information is provided:

9.1 Growth Management Strategy - Draft

Landholding	Description	Comments
Ashwood & Bryant, North Creek Road, Skennars Head	The subject land is zoned 1(d) Rural (Urban Investigation) Zone under the terms of the Ballina LEP 1987 and is identified for urban investigation in the Ballina URS 2000.	Due to the status of the subject land under the terms of the Ballina URS 2000, the subject land is identified in the Ballina LEP 2011 as a 'Strategic Urban Growth Area' and is identified as such in the draft GMS. Consequently, the suitability of the land for urban purposes can be considered through the statutory rezoning (planning proposal) process, in due course.
Tekadl (Woods family), West Ballina	The subject land is zoned 1(d) Rural (Urban Investigation) Zone under the terms of the Ballina LEP 1987 and is identified for urban investigation in the Ballina URS 2000.	Due to the status of the subject land under the terms of the Ballina URS 2000, the capability of the land to accommodate urban development was extensively considered in context of the West Ballina Structure Plan. Consequently, parts of the subject land is identified in the Ballina LEP 2011 as a 'Strategic Urban Growth Area' and is identified as such in the draft GMS. Consequently, further consideration regarding the suitability of the land for urban purposes can be considered through the statutory rezoning (planning proposal) process, in due course.
Tsikleas, Glen Ross Drive, Tintenbar	The subject land is zoned 1(d) Rural (Urban Investigation) Zone under the terms of the Ballina LEP 1987 and is identified for urban investigation in the Ballina URS 2000. It is noted that the land is located to the north of land that is the subject of the Cumbalum Precinct B Planning Proposal.	Due to the status of the subject land under the terms of the Ballina URS 2000, the land is identified in the Ballina LEP 2011 as a 'Strategic Urban Growth Area' and is identified as such in the draft GMS. Consequently, the suitability of the land for urban purposes can be considered through the statutory rezoning (planning proposal) process, in due course.
Anderson, Coopers Close, Lennox Head	The subject land is zoned 1(b) Rural (Secondary Agricultural Land) Zone under the terms of the Ballina LEP 1987. The land is identified as a 'Candidate Investigation Area' in the Lennox Head Structure Plan.	The designation of the subject land as a 'Candidate Investigation Area' in the Lennox Head Structure Plan has been reflected in the draft GMS. Consequently, subject to Council's deliberations, an amendment to the Ballina LEP 2011 will be commenced to include the land on the 'Strategic Urban Growth Area' Map, following the adoption of the GMS. It is noted that the urban investigations of the Cooper Close area should only occur in the context of investigations of the broader locality including the investigation area directly to the south (Barrett Land).

Landholding	Description	Comments
Anderson, Ross Lane, Lennox Head	The subject land is presently zoned 1(a2) Rural (Coastal Lands Agriculture) under the terms of the Ballina LEP 1987. The land is not identified in local or State policy as a potential area for urban investigations.	Given that the land is not currently identified as a potential urban release area in local or State Government planning policy or local structure planning the subject land has not been identified as a Strategic Urban Growth Area in the draft GMS. Further, the rural zoning of the locality is consistent with the maintenance of an urban break between the potential urban extents of Lennox Head and Cumbalum (as presently planned). This matter may be further considered by Council following exhibition of the draft GMS if desirable to do so.
Glucina, Bruxner Highway, Wollongbar	The subject land is located to the south of the Alstonville Bypass at Wollongbar. The land is zoned 1(a1) under the terms of the Ballina LEP 1987.	<p>The request for inclusion in Council's Growth Management Strategy was made in the context of early negotiations over the possible purchase of the land and construction of playing fields thereon, by the Council. Subsequently, Council has identified an alternative site for playing fields in Wollongbar (on Rifle Range Road). The initial rationale posited by the landholder for including the subject land therefore no longer applies.</p> <p>Regardless, it is noted that the inclusion of the subject land as a Strategic Urban Growth Area would be contrary to Council's long-term strategy for the Plateau of limiting the outward expansion of Alstonville and Wollongbar.</p>

It should be noted that the investigation areas referred to in the above table represent only a small number of land parcels already identified in the GMS as Strategic Urban Growth Areas (for urban investigation). Further, when receiving requests to commence rezoning investigations for land parcels so identified, Council will seek to ensure such investigations are undertaken on a comprehensive basis, and include similarly identified adjoining properties. This approach provides the best opportunity to achieve integrated planning outcomes and provide for efficient delivery of infrastructure and associated services.

Sustainability Considerations

- Environment**
The draft strategy aims to guide future development in Ballina Shire so as to not impinge on the environmental values of the shire.

- **Social**

By giving effect to the Council's Sustainability Plan, through guiding development and economic activity in a balanced and managed way, the strategy aims to provide for positive social outcomes over the forthcoming planning period. By providing continued opportunities for residential development the draft Strategy aims to facilitate improved housing affordability outcomes.

- **Economic**

The draft strategy aims to provide for economic growth and development opportunities in the shire over the forthcoming planning period.

Legal / Resource / Financial Implications

The draft GMS identifies a number of strategic actions that will form the basis of Council's Strategic and Community Services Group work program going forward. The need for additional resources associated with actions arising from this strategy will be the subject of further reporting to the Council, should a need be identified.

Consultation

It is noted that the draft GMS is based on Council's current planning position as articulated in various Council policies, strategies and decisions of the Council, incorporated into a single document.

Given the extensive community and government agency consultation undertaken by Council in relation to recent Council decisions including Council's sustainability framework, the comprehensive Renewal LEP (Ballina LEP 2011), and in relation to the various locality-based strategic planning projects on which the draft strategy is based, a further round of extensive community consultation regarding the strategic direction of urban development in the shire is not considered necessary at this time. Notwithstanding, and whilst there is no statutory requirement for the Council to publicly exhibit the draft local Growth Management Strategy, it is considered desirable to seek community feedback on the draft strategy.

Should the Council approve the public exhibition of the draft GMS, the strategy will be distributed to Council's exhibition locations and made available on Council's website. An exhibition period of 28 days is recommended.

Options

1. That Council publicly exhibit the draft Ballina Shire Growth Management Strategy for a period of 28 days. Following the conclusion of the exhibition period, a report is to be presented to the Council regarding submissions received during the public exhibition period.

As the draft Growth Management Strategy is based on Council's existing policy, this option is recommended.

2. That Council receive a workshop regarding the draft Growth Management Strategy.

9.1 Growth Management Strategy - Draft

As the Council has received staff briefings on the draft strategy, most recently on 29 March 2012, this option is not recommended. Notwithstanding, if the Council wishes to consider, in detail, elements of the draft strategy this option may be pursued.

RECOMMENDATIONS

That Council publicly exhibit the draft Ballina Shire Growth Management Strategy for a period of 28 days. Following the conclusion of the exhibition period, a report is to be presented to the Council regarding submissions received during the public exhibition period.

Attachment(s)

1. Draft Ballina Shire Growth Management Strategy (Under separate cover)

9.2 Reclassification of Community Land to Operational Land

9.2 Reclassification of Community Land to Operational Land

Delivery Program Commercial Services

Objective To report the outcomes of the public exhibition and Public Hearing associated with draft Ballina LEP 1987 Amendment No.114 to Council and to seek endorsement to proceed with the finalisation of the amendment.

Background

Council has prepared a planning proposal to amend the Ballina Local Environmental Plan 1987 (the LEP) to reclassify a number of parcels of land from Community Land to Operational Land.

The Local Government Act 1993 (LG Act) requires all public land in Council ownership to be classified as either Community Land or Operational Land. "Operational Land" is generally held and used in connection with Council's administrative operations, utilities (water and waste water) and commercial activities.

The planning proposal was prepared in response to Council's Commercial Services Section identifying a number of anomalies in the classification of land parcels owned or acquired for infrastructure and commercial purposes, and small parcels adjoining roads more suited to being part of the road reserve.

Council resolved at its Ordinary Meeting held on 24 February 2011 to prepare a planning proposal to reclassify the following land parcels from Community Land to Operational Land:

- Part Lot 11 DP 260847 North Creek Road, Ballina
- Lot 1 DP 858199 adjoining the Richmond River at Ballina
- Lot 34 DP 1121058 Alexander Circuit, Lennox Head
- Lot 4 DP 1036635 Brunswick Street, Teven
- Lot 116 DP 1111892 Commercial Road, Alstonville

The planning proposal was placed on public exhibition from 18 August 2011 to 19 September 2011.

As draft LEP Amendment No.114 involves the proposed reclassification of public land, Council is required to hold a Public Hearing in accordance with Section 29 of the Local Government Act 1993. The required Public Hearing was held on 27 February 2012.

This report provides information regarding the outcomes of the public exhibition and Public Hearing processes.

Key Issues

- Public response

Information

Draft LEP Amendment No.114 seeks to reclassify five parcels of Council owned land from Community Land to Operational Land. The land parcels the subject of the draft LEP are:

- Part Lot 11 DP 260847 North Creek Road, Ballina
- Lot 1 DP 858199 adjoining the Richmond River at Ballina
- Lot 34 DP 1121058 Alexander Circuit, Lennox Head
- Lot 4 DP 1036635 Brunswick Street, Teven
- Lot 116 DP 1111892 Commercial Road, Alstonville

Details regarding the land parcels and the proposed reclassifications are contained in the excerpt from the planning proposal contained in **Attachment 1**.

Public Exhibition

The planning proposal addressing the proposed reclassification of land was placed on public exhibition from 18 August 2011 to 19 September 2011. One submission was received in relation to the proposed reclassification of Lot 4 DP 1036635 Brunswick Street, Teven.

The submission raises objections to the proposed reclassification on the basis of concern regarding plans drafted in 2001 to create an alternative road configuration in this locality. The submission notes that in May 2001 Council prepared plans to use Brunswick Street as an alternative to a section of Teven Road, from near the intersection with Tintenbar Road to near the old Teven school site.

The submission notes that the works comprising the first section of the plan were completed but that the works identified in the second stage were put on hold pending the availability of further funds.

Shortly thereafter the submission notes that the transfer of the land from the Lands Department to Council occurred. The submission notes that the reason provided in the planning proposal for the disposal of the land as 'an isolated parcel of land in a rural area' is questionable. It is also noted that the description of the land as containing an existing dwelling-house is incorrect.

The submission requests that Council withdraw the matter to enable discussions with surrounding residents in relation to the intentions for Stage 2 of the road works identified in 2001.

Council's Civil Services Group has now expressed a preference for the land to remain in Council's ownership to maintain the potential for the Stage 2 road works to be reviewed in the future.

9.2 **Reclassification of Community Land to Operational Land**

Public Hearing

As the draft LEP Amendment No. 114 involves the proposed reclassification of public land, Council is required to hold a Public Hearing in accordance with Section 29 of the Local Government Act 1993. A Public Hearing was held at Council's Customer Service Centre on Monday 27 February 2012.

The Public Hearing was conducted by Mr Gary Faulks. The report regarding the Public Hearing is provided in **Attachment 2**. The report notes that there were three attendees at the Public Hearing.

The submissions made at the Public Hearing all related to Lot 4 DP 1036635 Brunswick Street, Teven, and can be summarised as follows:

- Owners of adjacent land outlined their interest in purchasing the land should it become available.
- Adjacent land owner reiterated the issues raised in his written submission to the draft LEP including concerns regarding the intention of Council in relation to the future road works associated with the relocation of Teven Road, and concerns regarding errors in the description of existing development on the land.

Having regard for the issues raised in the submission and at the Public Hearing, and for the comments provided by Council's Civil Services Group, the inclusion of Lot 4 DP 1036635 in the draft LEP amendment requires further consideration.

It is evident that it is the preference of Council's Civil Services Group to maintain this parcel of land and not dispose of it as doing so would prevent any further consideration of the future relocation of Teven Road. On this basis, and given the objections to the reclassification of this parcel raised during the exhibition and Public Hearing process, it is concluded that the draft LEP should be amended by deleting the reference to Lot 4 DP 1036635 Brunswick Street, Teven. That is, under this approach, this land would remain classified as community land at this time.

Sustainability Considerations

- **Environment**
The proposed reclassification of the subject land parcels is not considered likely to have any environmental implications.
- **Social**
The proposed amendment is not likely to result in adverse social impacts.
- **Economic**
In the event that the land parcels are sold following their reclassification to operational land there would be a very modest financial return to Council.

Legal / Resource / Financial Implications

The proposed amendment to LEP 1987 is not likely to raise any legal issues or have any particular resourcing implications.

9.2 Reclassification of Community Land to Operational Land

Consultation

The consultation undertaken as detailed in this report has been conducted in accordance with the requirements of the relevant provisions of the Environmental Planning and Assessment Act 1979 and the Local Government Act 1993.

Options

1. Not proceed with the finalisation of the planning proposal (draft Ballina LEP 1987 Amendment No.114) as exhibited

This option is not preferred as the analysis undertaken and the associated community engagement outcomes do not suggest that the land should not be reclassified except in relation to Lot 4 DP 1036635 (see option 3).

2. Proceed with the finalisation of the planning proposal (draft Ballina LEP 1987 Amendment No.114) as exhibited

This option is not preferred as it does not respond to the issues raised in the consultation process or those raised by the Civil Services Group.

3. Proceed with the finalisation of the planning proposal (draft Ballina LEP 1987 Amendment No.114) with the exception of Lot 4 DP 1036635 Brunswick Street, Teven.

This is the preferred option as it will enable the reclassification of the land parcels which did not attract any submissions, while removing Lot 4 DP 1036635 from the planning proposal process (i.e. this parcel would remain as community land for the time being).

RECOMMENDATIONS

1. That Council amend the draft Planning Proposal (draft Amendment No. 114 to LEP 1987) to remove Lot 4 DP 1036635 Brunswick Street, Teven from the process.
2. That Council submit the revised Planning Proposal (draft Amendment No. 114 to LEP 1987) to the Department of Planning & Infrastructure and request that the plan be finalised for implementation in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 and associated Regulation.

Attachment(s)

1. Excerpt from Planning Proposal - draft Ballina LEP 1987 Amendment No.114)
2. Report regarding the Public Hearing – Reclassification of Public Land Ballina Local Environmental Plan 1987 Amendment No. 114

9.3 **Ballina LEP Amendment Request - Stoville, Alstonville**

Delivery Program Strategic Planning

Objective To seek direction from Council with respect to the submission of a planning proposal to the Department of Planning and Infrastructure for determination through the gateway process relating to Lot 1 DP 817406 adjacent to the Russellton Industrial Estate, Alstonville.

Background

Council resolved at its Ordinary Meeting held on 28 July 2011 to prepare a planning proposal for part of Lot 1 DP 817406 to enable the application of an industrial land use zone in response to a request from Geolink on behalf of the landowner. A copy of the request and submitted planning proposal can be viewed in **Attachment 1**.

The subject land is identified on the locality plan in **Attachment 2**. Lot 1 DP 817406 is owned by Stoville Pty. Ltd. and is currently used for agricultural purposes with the exception of a portion of the land in the northwest corner adjacent to the existing industrial zone. This portion contains a rural dwelling which is currently occupied by the operators of the adjoining tank manufacturing industry (Duraplas) as a short-term interim solution to a land use conflict issue. The land is also utilised for tank storage by Duraplas at present.

It is proposed that, pending the success of the rezoning, the rezoned portion of the site will be consolidated with the adjoining property owned by JC & RM Fleming (proprietors of Duraplas) and will be used in conjunction with Duraplas tank manufacturing activities.

At its Ordinary Meeting held on 28 July 2011, Council also resolved:

That prior to the preparation of a planning proposal:

- a) *The proponent is to provide Council with suitable documentation outlining the proponent's proposed approach to the following matters in the event that an industrial zone is applied to part of Lot 1 DP 817406:*
- *the removal, relocation or permanent decommissioning of the dwelling house on Lot 1 DP 817406;*
 - *the mechanism for subdivision of the land; and*
 - *the provision of a formal buffer between industrial and agricultural land uses on Lot 1 DP 817406.*
- b) *Council is to receive a further report regarding the proposed LEP amendment where there is uncertainty in relation to the removal, relocation or decommissioning of the dwelling on Lot 1 DP 817406, a suitable mechanism for the subdivision of the land and/or provision of a suitable buffer area between industrial and agricultural land uses.*

The proponent has submitted documentation which addresses the matters detailed. A draft planning agreement has been prepared which provides a commitment from the current landowner (Stoville Pty Ltd) and the owner of the adjoining industrial land parcel (JC & RM Fleming) to the following:

- that following the rezoning of the land, subdivision will only proceed by way of a boundary adjustment that adds the rezoned portion of Lot 1 DP 817406 to Lot 2 DP 707837;
- that prior to the issue of a Subdivision Certificate for the boundary adjustment subdivision, the existing dwelling on the land will be removed from the site or rendered uninhabitable; and
- that prior to the issue of a Subdivision Certificate for the boundary adjustment subdivision of the land, a 10 metre wide landscape buffer will be planted within the dedicated buffer along the southern and eastern boundaries of the land.

Having regard for the above commitments by the affected landowners, it is considered that the requirements of Council's resolution at its 28 July 2011 Ordinary Meeting have been addressed satisfactorily to enable the processing of the planning proposal to proceed.

A draft planning proposal for the rezoning has been prepared should Council resolve to proceed with the request and seek a determination from the Department of Planning and Infrastructure (see **Attachment 3**). In preparing the draft planning proposal, Council officers have undertaken an assessment of the proposed rezoning in accordance with the requirements of the Department, including the provisions of relevant statutory planning instruments. During this assessment, a number of issues have come to the attention of Council officers in relation to the Department's guidelines for planning proposals. These issues are further detailed in this report.

This report has been compiled having regard for the legislative requirements for amending the *Ballina Local Environmental Plan 1987* (BLEP) as well as having consideration for the importance of the ongoing viability of industrial land use activities in the Shire.

Key Issues

- Good planning practice
- Compliance with Far North Coast Regional Strategy
- Consistency with Ministerial directions

Information

Good planning practice

Section 55 of the *Environmental Planning and Assessment Act 1979* requires Council, as the relevant planning authority, to prepare a planning proposal in relation to amending the zoning provisions of the *Ballina Local Environmental Plan 1987*. The planning proposal must then be submitted to the Department of Planning and Infrastructure for a determination by the Minister (or delegate) in accordance with the gateway determination provisions in section 56 of the Act.

The Department's publication "*A guide to preparing planning proposals*" provides guidance with regard to the content of a planning proposal. It recommends particular attention be given to the justification of the need for the planning proposal and consideration of whether or not the planning proposal is the best means of achieving its objectives or intended outcomes.

The subject planning proposal seeks to rezone a small section of land currently within the 7(i) – Environmental Protection (Urban Buffer) Zone adjacent to the Russellton Industrial Estate at Alstonville. The subject site has been a source of land use conflict for some years due to the presence of a rural dwelling in close proximity to an intensive industrial activity. To date, interim short-term measures have been undertaken to ameliorate the conflict which has resulted in the operator of the adjoining industrial activity occupying the rural dwelling through a lease agreement with the landowner. Unfortunately, the land use conflict issue has remained unresolved in the long-term. In addition, the tank storage activity involves the occupation of part of the site for industrial storage purposes without the relevant regulatory approval or authority.

As a consequence of the above, and in an attempt to achieve a permanent resolution to the land use conflict, Council has previously resolved to consider the rezoning of that portion of the subject site containing the rural dwelling and unauthorised land use.

The subject site has not been considered by Council as part of any strategic planning with regard to the expansion of industrial zoned land in the Russellton Industrial Estate and Council previously resolved in its Ordinary Meeting held on 28 February 2002, as part of a similar earlier rezoning request for the subject site that:

- a. There are sufficient stocks of industrial land in the vicinity for the foreseeable future.*
- b. No study or decision has been taken by Council on whether the existing Industrial Estate should be expanded or how it will be expanded.*
- c. The proposal will alienate high quality agricultural land by consuming the said land for industrial use by the provision of appropriate buffers.*
- d. The proposal will compromise the 7(i) – Environmental Protection (Urban Buffer) zone.*
- e. The proposal is not part of an integrated plan for the industrial estate with the accompanying planning of services.*

Although it has been 10 years since the above resolution, these matters are considered to be still applicable to the locality. It should also be noted that the above matters are now further supported by the adoption of the Far North Coast Regional Strategy (see further discussion below). Council's 2008 Industrial and Commercial Land Audit concluded that there is adequate zoned and planned industrial land in the shire to meet projected demand until approximately 2028.

It is acknowledged that Duraplas is a substantial local employer and there are substantial economic benefits associated with the ongoing operation of this enterprise. However, the rezoning of part of Lot 1 DP 817406 involves several significant planning considerations, including:

9.3 Ballina LEP Amendment Request - Stoville, Alstonville

- There is no Council-endorsed planning strategy for the expansion of the Russellton Industrial Estate. To the contrary, Council has maintained the application of the Alstonville/Wollongbar urban buffer to the east of the estate since the late 1980s.
- There is existing undeveloped zoned industrial land within the Russellton Industrial Estate for which Council has subdivision approval.
- Council may establish an undesirable precedent through a spot rezoning to solve a land use conflict issue.
- There are alternative means of resolving the land use conflict (such as expansion/relocation of the intensive industry within the existing industrial zone, relocation of the rural dwelling, etc., or undertaking compliance action).
- The proposal is inconsistent with a number of planning instruments applicable to the land.

In consideration of the above, it should also be noted that the 7(i) – Environmental Protection (Urban Buffer) Zone has been applied to the land surrounding Alstonville and Wollongbar since the *Ballina Local Environmental Plan 1987* was first gazetted. This land provides a highly valued green belt and agricultural buffer around the two villages and, to date, Council has not undertaken any LEP amendments that have altered the originally gazetted 7(i) – Environmental Protection (Urban Buffer) Zone. This means the buffer zoning has been maintained for almost 25 years.

Far North Coast Regional Strategy

The proposed rezoning is inconsistent with the provisions of the Far North Coast Regional Strategy (FNCRS) which provides the regional framework for consideration of rezoning land for urban purposes in Ballina Shire. The subject site is located outside the identified Town and Village Growth Boundary and is not part of an identified Proposed Future Urban Release area.

The FNCRS provides that any development proposed for greenfield sites in the non-coastal area that is located outside of the Town and Village Growth Boundary will be subject to satisfying the Sustainability Criteria as specified in Appendix 1 of the Strategy and as detailed in the table below.

Threshold Sustainability Criteria for any proposed development site outside designated areas in regional strategies	Planning Proposal
1. Infrastructure Provision Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way.	Complies. Satisfactory infrastructure services exist to service the subject site.
2. Access Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provided.	Complies. Satisfactory access is available to the subject site.
3. Housing Diversity Provide a range of housing choices to ensure a broad population can be housed.	Not applicable.

9.3 Ballina LEP Amendment Request - Stoville, Alstonville

Threshold Sustainability Criteria for any proposed development site outside designated areas in regional strategies	Planning Proposal
4. Employment Lands Provide regional/local employment opportunities to support the Far North Coast's expanding role in the wider regional and NSW economies.	Complies. The planning proposal will seek to allow for the continued permanent use of the site for an existing industrial activity and employer in the locality.
5. Avoidance of Risk Land use conflicts, and risk to human health and life, avoided.	Complies. The proposal will result in the resolution of an existing land use conflict and provision is made for the incorporation of a landscaped buffer that will be established between the proposed industrial land and residual agricultural land.
6. Natural Resources Natural resource limits not exceeded/ environmental footprint minimised.	Does not comply. The subject land is identified as State Significant Farmland and as such the proposal is not considered the most efficient/suitable use of the land. The existing environmental buffer may also be considered a natural resource, the impacts on which should be minimised.
7. Environmental Protection Protect and enhance biodiversity, air quality, heritage, and waterway health.	Generally complies. The planning proposal will not result in unreasonable environmental impacts. It could be considered, however, that in its current status as an environmental zone for urban buffer purposes, the land contributes to the natural environment of the plateau in that it provides a highly valued natural/agricultural buffer between the urban areas of the villages of Alstonville and Wollongbar.
8. Quality and Equity in Services Quality health, education, legal, recreational, cultural and community development and other government services are accessible.	Not applicable.

Should Council resolve to proceed with the planning proposal it is important to note that the planning proposal is considered to be inconsistent with the Far North Coast Regional Strategy and its Sustainability Criteria, and as such may not to be supported by the Department of Planning and Infrastructure.

Ministerial Directions

The Department's publication "*A guide to preparing planning proposals*" states that the justification for a planning proposal should demonstrate consistency with any applicable Ministerial directions (made under section 117 of the *Environmental Planning and Assessment Act 1979*).

A number of Ministerial directions apply to the subject planning proposal. The compliance of the planning proposal with these directions is detailed in the table below.

Ministerial Direction & Details	Planning Proposal
<p>1. Employment and Resources 1.1 Business and Industrial Zones Applies when planning proposal affects land within an existing or proposed industrial zone (including the alteration of an industrial zone boundary). Requires that a planning proposal must:</p> <ul style="list-style-type: none"> a) <i>give effect to the objectives of this direction,</i> b) <i>retain the areas and locations of existing business and industrial zones,</i> c) <i>not reduce the total potential floor space area for employment uses and related public services in business zones,</i> d) <i>not reduce the total potential floor space area for industrial uses in industrial zones, and</i> e) <i>ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.</i> 	<p>The planning proposal is generally consistent with the objectives of this direction. The proposal, however, seeks to expand the existing Russellton Industrial Estate precinct into an area designated as urban buffer. The expansion of the Russellton Industrial Estate is not currently foreshadowed as part of any growth or expansion strategy for urban land.</p>
<p>1. Employment and Resources 1.5 Rural Lands In summary, this Direction provides that a Planning Proposal must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008. This Direction applies to both rural and environmental protection zones.</p>	<p>The planning proposal seeks to rezone an area currently zoned for environmental protection and as such the provisions of this Direction apply to the proposal.</p> <p>The Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008 are as follows:</p> <ul style="list-style-type: none"> a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</i> b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,</i> c) <i>recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,</i> d) <i>in planning for rural lands, to balance the social, economic and environmental interests of the community,</i> e) <i>the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,</i> f) <i>the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i> g) <i>the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</i> h) <i>ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</i> <p>The planning proposal is not consistent with the above Rural Planning Principles, particularly due to its inconsistency with the Far North Coast Regional Strategy. The</p>

Ministerial Direction & Details	Planning Proposal
	<p>Direction allows for a planning proposal to be inconsistent with the above only where it can be justified by a strategy which has been approved by the Department of Planning or is of minor significance. The planning proposal is not justified by a strategy endorsed by the Department and it is not considered to be of minor significance.</p>
<p>2. Environment and Heritage 2.1 Environmental Protection Zones A Planning Proposal shall include provisions that facilitate the protection and conservation of environmentally sensitive areas and shall not reduce the environmental protection standards that apply to the land.</p>	<p>The planning proposal seeks to rezone a portion of land zoned 7(i) – Environmental Protection (Urban Buffer) Zone under the provisions of the <i>Ballina Local Environmental Plan 1987</i>. The primary objective of the 7(i) – Environmental Protection (Urban Buffer) Zone is:</p> <p><i>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.</i></p> <p>Although The planning proposal seeks to rezone land within the buffer for industrial purposes which will not be seen by existing or likely future residents of the villages of Alstonville and Wollongbar or from a major road in the locality, it does not satisfy consistency provisions contained in section 6 of this Direction.</p>
<p>5. Regional Planning 5.1 Implementation of Regional Strategies This Direction provides that when a Council prepares a Draft LEP the Plan shall be consistent with a Regional Strategy released by the Minister for Planning.</p>	<p>The subject site is not identified in the Far North Coast Regional Strategy as a future urban release area and is not located within the identified Town and Village Growth Boundaries specified in the Strategy. The site is also identified in the Far North Coast Regional Strategy as State Significant Farmland and requires that:</p> <p><i>Local environmental plans will not zone land within the Environmental Assets and Rural Land area to permit urban purposes, other than rural residential development.</i></p> <p>In this regard The planning proposal is inconsistent with the requirements of this Direction. The planning proposal does not satisfy the requirements of section 5 of this Direction in that it is not considered to be of minor significance, is not considered to achieve the overall intent of the regional strategy and it is considered that it would undermine the achievement of the Strategy’s vision, land use strategy, policies, outcomes and actions.</p>
<p>5. Regional Planning 5.3 Farmland of State and Regional Significance on the NSW Far North Coast In summary, this Direction provides that a Draft LEP shall not rezone land identified as State Significant Farmland or Regionally Significant Farmland for urban or rural residential purposes, unless the Draft LEP is consistent with Section 4 of the Report titled “Northern Rivers Farmland Protection</p>	<p>The subject land is identified as being State Significant Farmland. This Direction requires that a planning proposal must not rezone land identified as State Significant Farmland for urban or residential purposes. A planning proposal may be inconsistent with the terms of this Direction only if it can be satisfied that The planning proposal is consistent with:</p> <p>a) the Far North Coast Regional Strategy, and</p>

Ministerial Direction & Details	Planning Proposal
<p>Project – Final Recommendations, February 2005”.</p>	<p>b) Section 4 of the report titled <i>Northern Rivers Farmland Protection Project – Final Recommendations, February 2005</i>, held by the Department of Planning.</p> <p>Section 4 of <i>Northern Rivers Farmland Protection Project – Final Recommendations, February 2005</i> provides as follows:</p> <p><i>State significant farmland cannot be considered for urban (including housing, retailing and other uses normally located within towns) or rural residential rezoning. The only exception is where the land is identified in a council settlement strategy which has been agreed to between December 1994 and December 2004 under clauses 20 or 38 of the North Coast Regional Environmental Plan (or placed on public exhibition by the end of 2004 and subsequently approved). Councils when preparing new settlement strategies cannot consider state significant farmland for inclusion.</i></p> <p>Having regard for the above, The planning proposal is not consistent with the requirements of this Direction.</p>

Should Council resolve to proceed with the planning proposal it is important to note that the planning proposal is considered to be inconsistent with several Ministerial directions as detailed above and as such may not be supported by the Department of Planning and Infrastructure.

Notwithstanding these issues, should Council resolve to proceed with this rezoning proposal, **Attachment 3** contains a planning proposal for submission to the Department to allow its determination in accordance with the Department’s gateway planning process.

Sustainability Considerations

- **Environment**
 The rezoning of the subject land is not expected to result in significant ecological impacts. It will, however, encroach into land set aside as urban buffer and that is identified as State Significant Farmland in a non-strategic ad hoc manner.
- **Social**
 Some social benefits can be expected through the making of the subject land available for the operations of a valued local industry and employer.
- **Economic**
 The rezoning will have the effect of allowing the continuation of the existing industrial activity both on and adjacent to the site which will likely result in positive economic benefits for both the proprietor of the industry and the owner of the subject land. The rezoning needs to be considered in the context of the overall supply of industrial land in the locality, including the nearby Council-owned industrial land that is yet to be developed and whether or not the rezoning of additional

industrial land in the locality at this time is a sustainable economic proposition.

Legal / Resource / Financial Implications

Should the planning proposal be supported by the Department of Planning and Infrastructure, the community consultation and implementation of the rezoning would have (minor) resource implications for Council's Strategic and Community Services Group.

Consultation

The presentation of this matter to the Council has involved consultation with the subject private parties and with the Department of Planning and Infrastructure.

Options

1. That Council continues to support the rezoning of part of Lot 1 DP 817406 for industrial purposes and that the attached planning proposal be submitted to the Department of Planning and Infrastructure for determination via the gateway planning system, notwithstanding the inconsistencies of the planning proposal with local planning policy and applicable planning instruments as detailed in this report; or
2. That with regard to the proposal to rezone Lot 1 DP 817406 for industrial purposes Council takes the following actions:
 - a. Discontinue its support for the rezoning of Lot 1 DP 817406 for the reasons outlined in this report; and
 - b. Advise the landowner (Stoville Pty Ltd) and the operator of the adjoining industry (JC & RM Fleming) that Council declines the request for the rezoning and will take no further action in relation to the rezoning of the land.

Option two is the recommended course of action due to the numerous inconsistencies with the Minister's directions.

It should be noted that should Council proceed with option two, it will likely result in a requirement for Council (and possibly other government agencies) to take action to enforce relevant environmental standards and conditions of development consent in relation to the operations of Duraplas (and other industrial activities in the Russellton Industrial Estate) and the unauthorized use of Lot 1 DP 817406 for storage purposes. In this regard, Duraplas has indicated that its business is not viable if it cannot operate 24 hours a day, seven days a week. Ensuring the compliance of industrial activity with environmental standards and conditions of development consent is an alternate means of addressing the existing land use conflict issues in the subject circumstances. Consequently, should option two be pursued, further options with regard to this matter, including possible compliance actions, may form the basis of further reporting to the elected Council by Council's Regulatory Services Group, in due course.

RECOMMENDATIONS

That Council ceases further action in relation to the planning proposal for the rezoning of part of Lot 1 DP 817406 on the basis that the proposal is inconsistent with local and state planning policies and statutory requirements.

Attachment(s)

1. Copy of Planning Proposal submitted by applicant (Geolink)
2. Locality Plan
3. Planning Proposal for submission to the Department of Planning and Infrastructure

9.4 Planning Proposal - 160-190 North Creek Road, Lennox Head

9.4 Planning Proposal - 160-190 North Creek Road, Lennox Head

Delivery Program Strategic Planning

Objective To present Council with a draft Planning Proposal in relation to land located at 160-190 North Creek Road, Lennox Head. To invite the Council to consider options for progressing the proposed rezoning of the land.

Background

This report relates to land located at 160-190 North Creek Road, Lennox Head.



The subject land is currently zoned 1(d) Rural (Urban Investigation) Zone under the provisions of the Ballina Local Environmental Plan 1987 (Ballina LEP 1987) (refer to **Attachment 1**). Under the provisions of the draft Ballina Local Environmental Plan 2011 (draft LEP 2011), the proposed RU2 Rural Landscape Zone has been applied to the subject land (refer to **Attachment 2**). Council has applied this zone under the standard instrument as there is no equivalent zone to the 1(d) Rural (Urban Investigation) Zone. The subject land is however identified for urban investigation in local and regional planning strategies including the Ballina Urban Land Release Strategy (ULRS – 2000) and the Far North Coast Regional Strategy (FNCRS – 2006).

It is proposed to rezone the subject land to apply the R3 Medium Density Zone pursuant to the draft Ballina LEP 2011 (refer to **Attachment 3**).

The subject land has a total area of 3.23 ha and comprises four separate lots. Land ownership within the subject area is summarised in the following table.

9.4 Planning Proposal - 160-190 North Creek Road, Lennox Head

Owner	Land Parcel	Area (Ha)
Mr K Howard	Lot 2 DP 241585, No. 160 North Creek Road, Lennox Head	0.81 ha
Mr D and Mrs L Walsh	Lot 3 DP 241585, No. 170 North Creek Road, Lennox Head	0.81 ha
Mr P and Mrs D Fahey	Lot 4 DP 241585, No. 180 North Creek Road, Lennox Head	0.81 ha
Mr A Lewis and Mrs D Zorse	Lot 6 DP 598177, No. 190 North Creek Road, Lennox Head	0.8 ha
Total		3.23 ha

A submission was made on behalf of the land owners to the exhibition of the draft Local Environmental Plan 2010 requesting that the subject land be rezoned for residential purposes as part of the new shire-wide LEP.

Council's Environmental and Sustainability Committee considered the submissions received in response to the public exhibition of the draft LEP at its meeting held on 17 and 19 May 2011. Council then resolved to adopt the recommendations of the Committee at its Ordinary Meeting held on the 26 May 2011 (refer to **Attachment 4**). At this time, Council declined to rezone the land as part of that process, but advised that it would consider the rezoning of the subject land as a 'standalone' rezoning process.

In recognition of the information submitted to Council on behalf of the land owners in response to the exhibition of the draft LEP, Council subsequently acknowledged that an LEP amendment request associated with the subject land could be commenced at the planning proposal preparation phase in accordance with its 'Planning Proposals and LEP Amendments: Process Guidelines'.

Council's key requirements were that at least four of the four property owners agree to the LEP amendment request. Accordingly, land owner authorities have been obtained from the owners of Lots 2, 3 & 4 DP 241585, whilst the owners of Lot 6 DP 598177 have declined to be involved in the process at this time.

In considering an amendment request, Council also required that relevant site assessments and planning for the subject land be undertaken on an integrated basis, taking into consideration the four lots into a single LEP amendment request. The planning proposal and supporting documentation has been generally prepared in accordance with this requirement. The full rezoning request, as submitted by the applicant is available on request from Council's Strategic and Community Services Group.

Council is invited to consider the option to progress this matter to the next stage of the LEP amendment process, which will be to lodge the planning proposal with the NSW Department of Planning and Infrastructure.

Key Issues

- Environmental Impacts
- Vehicular Access

Information

Key stages and dates in the planning process

Following the Council's resolution to initiate a 'stand alone' rezoning process at its meeting held on 26 May 2011, a planning proposal has been prepared by Council for the subject land (**Attachment 5**) based on the technical documents prepared on behalf of the land owners by Newton Denny Chapelle to support their rezoning request.

The LEP amendment request prepared on behalf of the applicant has demonstrated that the site is relatively unconstrained and appears capable of supporting low and medium density residential land uses. The proposal provides various conceptual subdivision options to enable an assessment of the potential impacts associated with future residential uses on the site. These are considered appropriate in these early phases of the planning process.

Should Council resolve to advance the rezoning proposal, details will be forwarded to the NSW Department of Planning and Infrastructure and the State Government LEP Panel for review prior to proceeding to the initial gateway determination stage, which effectively commences the rezoning process.

Environmental Impacts

A preliminary site contamination assessment was prepared to support the LEP amendment request. A review of this assessment indicates that additional information will be required to ensure that there will be no increased risk to human health or environment from contamination if development proceeds. As three of the four subject lots already contain dwellings and are surrounded by residential zoned land, the risk of contamination is considered to be low. On this basis, it is anticipated that the following additional information in relation to site contamination will be requested following the gateway determination (if the matter proceeds) and prior to any public exhibition:

- A detailed site history, and
- Soil sampling and analysis of the area to the west of the dwellings on Lots 2, 3 & 4 of DP 241585, and
- Soil sampling and analysis of Lot 6 DP 598177.

Future development of the site is likely to result in the removal of a small stand of mature Norfolk Island Pine trees, comprising approximately 5- 6 trees. The removal of these trees may be required to accommodate a suitable subdivision design and associated infrastructure. It is considered appropriate that this matter be considered as part of the exhibition process and at the development application stage.

Vehicular access

Council's enquiries have indicated that a single access point onto North Creek Road will be required to access a future subdivision of the subject land. Given that North Creek Road is an important collector road for the Lennox Head locality, consideration of an appropriate access point was identified as a potential constraint to the release of the subject land for residential uses. A number of road configuration and intersection options were identified in the LEP amendment request. The conceptual location of an intersection to the south of the subject land onto North Creek Road is considered acceptable at this stage and will be more suitably investigated at the development application stage.

Sustainability Considerations

- **Environment**

Development of the subject land would have minimal implications for the natural environment of the site and the locality. As previously noted, the site is located within an existing residential neighbourhood and three of the four lots already contain dwellings. The draft plan will address mitigation and amelioration strategies for the potential environmental impacts of future development.

- **Social**

The rezoning of land for residential land uses is likely to have a positive social impact. In particular, the development of the land for housing will assist in meeting regional dwelling targets. It is noted that the release of the subject land for urban purposes is consistent with both Council's and Government's endorsed urban land release strategies.

- **Economic**

The rezoning of the subject land will contribute to the economic development of the locality generated by the development of the land for urban purposes. Additionally, as the rezoning will result in an 'infill' development outcome, efficiencies are likely in relation to infrastructure provision.

Legal / Resource / Financial Implications

The rezoning investigations, Council staff time and Council's consultancy services involved in the processing of the rezoning request, are undertaken at the proponent's cost, in accordance with Council's adopted Fees and Charges schedule.

Consultation

Should Council resolve to initiate the proposed rezoning through to the next stage of the process, the planning proposal will be forwarded to the Department of Planning and Infrastructure for comments.

It should be noted, under the plan making provisions of the Act, the Department will advise Council as to the circumstances around the public exhibition procedures for the planning proposal, along with the requirement for any additional technical studies that may need to be undertaken.

Options

1. That Council advance the proposed rezoning and submit the planning proposal to the NSW Department of Planning and Infrastructure; or
2. That Council not commence the rezoning process; or
3. That Council request the modification of the planning proposal and subsequent reconsideration of the matter.

Option one is the preferred course of action on the basis that it will progress the planning proposal to the next step in the rezoning process which is to enable a review 'in principle' by the NSW Department of Planning and Infrastructure and gateway determination to proceed. Such action is based on the information supplied by the proponent and the extent to which the land's rezoning will be consistent with both local and State strategic planning policies.

The information provided in association with the LEP amendment request is considered satisfactory in regard to determining the site capacity to support future 'infill' residential land uses. Accordingly, it is recommended that the planning proposal be forwarded to the Department of Planning and Infrastructure to commence the rezoning process.

It is noted that the Department may or may not accede to this request.

RECOMMENDATIONS

1. That Council submit the planning proposal relating to properties described as No's. 160-190 North Creek Road, Lennox Head to the NSW Department of Planning for review and gateway determination.
2. That upon an affirmative response being received from the Department, Council staff will carry out the procedural steps associated with the planning proposal.
3. That a further report be submitted to Council in relation to this matter following the mandatory community consultation.

Attachment(s)

1. Ballina Local Environmental Plan 1987 - Zone Plan
2. Draft Ballina Local Environmental Plan 2011 - Zone Plan
3. Proposed zones - Draft Ballina Local Environmental Plan 2011
4. Excerpt of Minutes of Council's Ordinary Meeting held 26 May 2011
5. Draft Planning Proposal

10.1 Use of Council Seal

10. General Manager's Group Reports

10.1 Use of Council Seal

RECOMMENDATIONS

That Council affix the Common Seal to the following documents.

US12/12	<p>Council as Reserve Trust Manager of the Old Library Reserve Trust (Reserve D540014), Temporary Licence Agreement and Agreement for Sub-Lease to Paradise FM Community Radio Association Incorporated for occupancy of part Crown Reserve D540014, being situated upon Lot 2 DP 1153927. Paradise FM occupy part of Lot 2 DP 1153927, being part of the Old Ballina Shire Library building.</p> <p>Explanation: Ballina Shire Council has formally applied to the Crown to become head lessee of Lot 2 DP 1153927 which is the site of the old Ballina Library on Cherry Street. When the Deed of Lease is executed, the intent is for Council as the then head lessee, to enter into a sub-leasing arrangement with Paradise FM Community Radio Association Incorporated. The Temporary Licence Agreement and Agreement to Sub-Lease permit Paradise FM to remain on site and operational pending formalisation of the head lease.</p>
US12/13	<p>Ballina Shire Council as Reserve Trust Manager of the Ballina Kingsford Smith Reserve Trust - Licence Agreement to Ballina Hockey Club Incorporated for clubhouse and sports fields on Part Reserve 82164, being part Lot 7064 DP 1118043, comprising approximately 9331 square metres for a period of ten years from 1 February 2012 to 31 January 2022.</p> <p>Explanation: Ballina Shire Council has negotiated a ten year licence with the Crown for the Ballina Hockey Club Incorporated.</p>

Attachment(s)

Nil

10.2 Investment Summary - April 2012

10.2 Investment Summary - April 2012

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 March 2012.

Council's investments are all in accordance with the Act, the Regulations and Council's Investments Policy.

The balance of investments as at 31 March 2012 was \$76,884,000. This represents a decrease from February of \$517,000. The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 March 2012, was \$1,078,936.

Council's investments as at 31 March are at an average (weighted) rate of 5.66% which is 1.21% above the 90 Day Bank Bill Index of 4.45%.

The majority of the approximately \$77 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

1) Reserve Name	2) Internal/External 3) Restriction	4) Approx % of Portfolio*
5) Water Fund (incl. developer contributions)	6) External	7) 19
8) Sewer Fund (incl. developer contributions)	9) External	10) 23
11) Section 94 Developer Contributions	12) External	13) 11
14) Bonds and Deposits	15) External	16) 4
17) Domestic Waste Mgmt / Stormwater Charges	18) External	19) 2
20) Other External Restrictions	21) External	22) 6
23) Land Development	24) Internal	25) 8
26) Employee Leave Entitlements	27) Internal	28) 3
29) Carry Forward Works	30) Internal	31) 12
32) Miscellaneous Internal Reserves	33) Internal	34) 11
35) Unrestricted	36)	37) 1
38) Total	39)	40) 100%

* Based on reserves held as at 30 June 2011

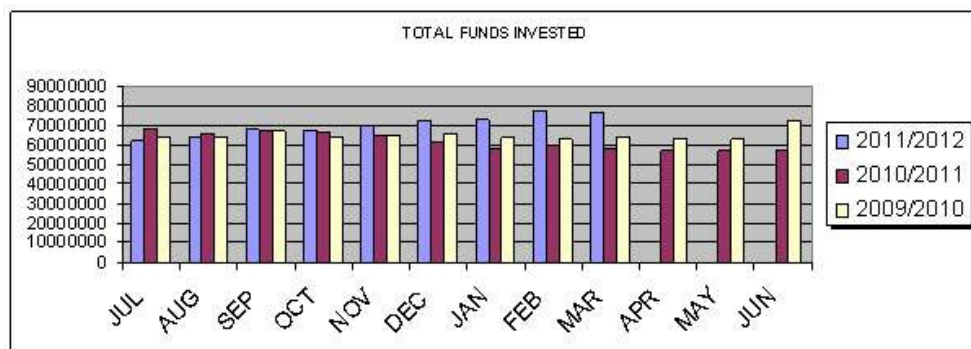
10.2 Investment Summary - April 2012

Information

A. Summary of Investments by Institution

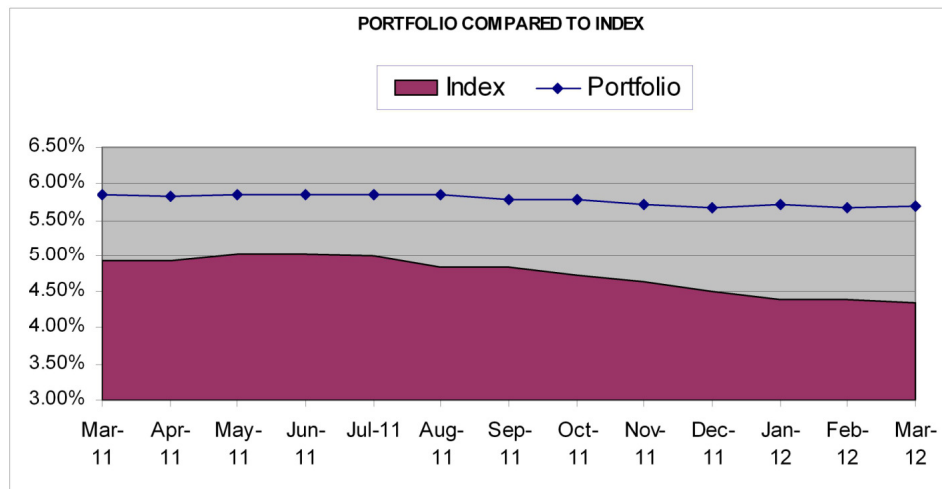
Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
Grandfathered Investments							
ANZ Bank	AA-	No	2,000	2,000	0	2.6	
Bendigo Bank Ltd	BBB	No	1,000	1,000	0	1.3	
Deutsche Bank	A+	No	4,000	4,000	0	5.2	
Goldman Sachs	AA-	No	1,000	1,000	0	1.3	
Heritage Building Society	BBB-	No	1,000	1,000	0	1.3	
HSBC Australia	AA-	No	1,000	1,000	0	1.3	
Local Govt Fin Service	A	No	5,000	0	0	0	
Longreach Capital Markets 28	AA+	No	1,000	1,000	0	1.3	
Morgan Stanley	A	No	2,000	2,000	0	2.6	
National Australia Bank	AA-	No	1,788	1,788	0	2.3	
National Wealth M'ment Holding	A	No	2,000	2,000	0	2.6	22%
Rated Institutions							
ANZ Bank	AA-	No	32	8	20	0	
Bank of Queensland	BBB+	No	6,000	5,000	10	6.5	
Bank of Western Australia	AA-	No	6,000	6,000	20	7.8	
Commonwealth Bank of Aust	AA-	No	6,581	6,088	20	7.9	
Credit Union Australia	BBB	No	1,000	1,000	10	1.3	
Illawarra Mutual Bld Soc	BBB	No	4,000	4,000	10	5.2	
ING Bank Ltd	A	No	7,000	12,000	20	15.6	
Members Equity Bank	BBB	No	2,000	2,000	10	2.6	
National Australia Bank	AA-	No	10,000	11,000	20	14.3	
Newcastle Permanent Bld Soc	BBB+	No	1,000	1,000	10	1.3	
Suncorp Metway Bank	A+	No	10,000	10,000	20	12.9	
Westpac Bank	AA-	No	1,000	1,000	20	1.3	77%
Unrated ADI's							
Defence Force Credit Union		No	1,000	1,000	\$1m	1.3	1%
Total			77,401	76,884			100%

B. Monthly Comparison of Total Funds Invested

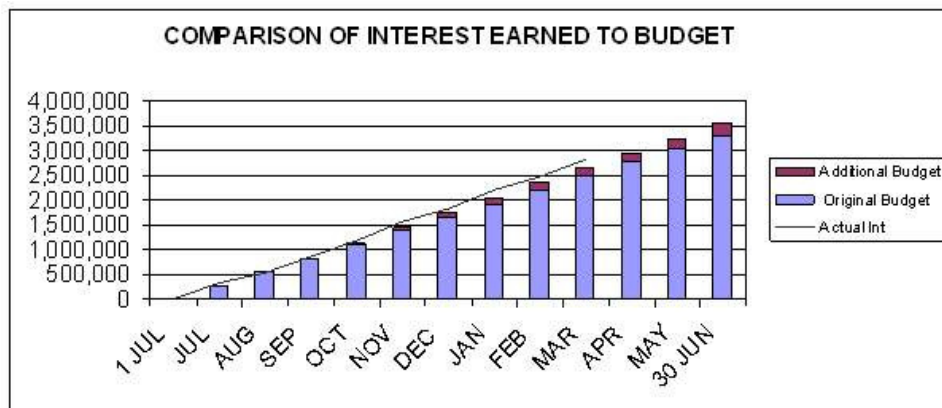


NB: It is pointed out that of the total funds invested approximately \$12 million relates to loan funds borrowed for the waste water capital works program - the agreed draw down of the loan is exceeding the rate at which we are spending the money.

C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



The RBA has left the cash rate unchanged at 4.25% at its meeting on 3 April 2012. In a speech given by Guy Debelle (Asst Governor, RBA) on the 22 March, Mr Debelle explained the increase in Bank funding costs and how this impacted on lending costs. Part of that speech is reproduced below.

"For close to a decade prior to the global financial crisis, banks' overall cost of funds followed the cash rate closely, as risk premia in markets were low and stable. Accordingly, interest rates on business and housing variable-rate loans tended to adjust in line with the cash rate. Nevertheless, over this period there was a gradual decline in the spread between average interest rates paid on loans and the cash rate. For example, the spread between the average mortgage rate paid and the cash rate declined from 275 basis points in 1996 to around 125 basis points in 2007. Since the onset of the financial crisis, banks have increased the spread between lending rates and the cash rate for all loan types. The increases have varied across the different types of loans, partly reflecting differences in the reassessment of the riskiness of those loans and expectations regarding loss rates. The spread is now back up to about 250 basis points. But the primary factor driving the increase in the spread between lending rates and the cash rate has been the increase in the relative costs of funding. Financial institutions have increased their lending rates in the face of the increase in costs to maintain their net interest margins within the

10.2 Investment Summary - April 2012

range observed in recent years. In turn, this has been with the aim of maintaining profitability.”

This information provides a snapshot into the reasons why the banks have been reluctant to drop rates to the same extent as the official cash rate and why the margin between the lending rate and the investment rate is so large.

E. Investments held as at 31 March 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	5.61	Perpetual	1,788
08/08/05	Morgan Stanley	FRN	4.88	08/08/12	2,000
12/04/06	Goldman Sachs	FRN	4.98	12/04/16	1,000
16/06/06	National Wealth M'tment Holdings	FRN	5.05	16/06/16	2,000
28/06/07	Longreach Series 28	FND	0.00	27/06/14	1,000
21/09/07	Bendigo Bank	FRN	5.63	21/09/12	1,000
18/10/07	Heritage Bank	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	6.66	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	3,092
20/07/11	ANZ Bank	FND	3.70	At call	8
04/10/12	Defence Force Credit Union	TD	6.00	02/04/12	1,000
05/12/11	National Australia Bank	TD	6.10	05/04/12	2,000
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
09/01/12	Suncorp-Metway	TD	5.98	08/05/12	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
01/02/12	ING Bank Ltd	TD	5.96	30/07/12	1,000
06/02/12	Westpac Bank	FRN	5.94	06/02/17	1,000
07/02/12	Illawarra Mutual Bld Society	TD	5.85	07/05/12	2,000
09/02/12	Suncorp-Metway Bank	TD	5.95	09/05/12	2,000
14/02/12	BankWest	TD	5.95	14/05/12	2,000
22/02/12	ING Bank Ltd	TD	6.04	20/08/12	4,000
27/02/12	Members Equity Bank	TD	5.95	28/05/12	1,000
28/02/12	Suncorp-Metway Bank	TD	5.97	27/06/12	1,000
01/03/12	ING Bank Ltd	TD	6.00	28/08/12	1,000
06/03/12	Bank of Queensland	TD	6.00	06/06/12	1,000
14/03/12	National Australia Bank	TD	5.89	11/09/12	1,000
22/03/12	ING Bank Ltd	TD	5.95	23/07/12	5,000
27/03/12	BankWest	TD	5.85	26/06/12	3,000
29/03/12	National Australia Bank	TD	6.00	30/07/12	3,000
Totals:					76,884
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 March 2012.

Attachment(s)

Nil

10.3 Councillor Attendance

10.3 Councillor Attendance

Delivery Program Governance

Objective To provide Councillors with professional development.

Background

The Councillor Expenses and Facilities Policy requires Council approval for attendance by councillors, excluding the Mayor, at conferences outside the region (Richmond, Tweed, Clarence).

The purpose of this report is to seek Councillor interest in attending the 2012 Shires Association Conference at the Sofitel Wentworth Hotel, Sydney, scheduled for 4 - 6 June 2012.

Council's seven motions submitted to the "A" Division Conference in February on the following items will be submitted to the Shires Association Conference by the Division:

- Container Deposit Legislation
- Standard LEP Instrument - Amendments
- Rating of Multiple Occupancy Developments
- Rentals for Local Government on Crown lands
- Single Use Plastic Bags
- Water Safety Information
- Working with Children Checks

Key Issues

- Benefit of the conferences and cost
- Any additional notices of motion

Information

The theme of the 2012 Shires Association conference is "Keeping the Local in Local Government". The registration fee is \$693. Airfares, accommodation, cab fares and some meals would be in addition to this cost. Council is entitled to one voting delegate (normally the Mayor). A copy of the draft conference program is attached.

Sustainability Considerations

- **Environment**
Environmental, social and economic issues are likely to be considered at the conference.
- **Social**
As above

10.3 Councillor Attendance

- **Economic**
As above

Legal / Resource / Financial Implications

Funds are available within the Council's professional development budget to finance this expense.

Consultation

Provided for public information.

Options

Approve or not approve the travel. Typically Council sends delegates to the Shires conference.

RECOMMENDATION

That Council approves the attendance of its nominated delegates to the Shires Association Annual Conference to be held in Sydney from 4 - 6 June 2012.

Attachment(s)

1. Draft Conference Program

10.4 Community Donations

10.4 Community Donations

Delivery Program Governance

Objective To invite Council to consider additional donation requests.

Background

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

Five such requests are considered in this report and copies of the letters are attached.

Key Issues

- Nature of request
- Community benefit
- Funding available

Information

Details of the new requests are as follows:

Ballina Junior Rugby Club

The Ballina Junior Rugby Club have asked for the fees involved in hiring Council's 16 portable shade structures to be waived for the upcoming Country Championships 5 and 6 May 2012.

The fee per shade structure for a maximum of three days is \$55, making a total of \$880 for 16 structures.

The club have a team of volunteers who can collect and return the structures to minimise Council staff time.

Statewide Eyesight Preschooler Screening (StEPS)

StEPS are offering vision screening to year four children and require a room in the shire for use as a clinic. They have asked if Council would waive the fees to hire a room at the Kentwell Community Centre on 22 June and 24 July 2012.

The cost of the room for 22 June is \$92.50 and the proposed cost for the room 24 July would be \$114.75 being a total of \$207.25.

10.4 Community Donations

Marine Rescue NSW

The unit has requested the use of a low loader to transport their rescue vessel to Sailfish in Russelton industrial estate for repairs. They would require the low loader for approximately 2 hours each way. Staff have advised the cost of the hire is \$180/hr being a total of \$720.

Rous Public School

The school has requested the use of Council's mobile light tower for their annual bonfire to be held 28 July 2012. Staff have advised the cost will be approximately \$250.

Athletics Australia (on behalf of Jay Meaney)

Jay Meaney, 17 years of age, a Ballina resident has been selected to represent Australia at the Junior World Athletics in Barcelona in July 2012.

The team levy to cover the expenses of airfare, transport, accommodation and uniform expenses is \$3,500. Athletics Australia and Jay have indicated they would appreciate any financial assistance that may be available.

Under the 'Donations - Australian Representation' Policy Council provides \$400 (indexed by CPI each year – approximately \$420 in current dollars)) for applicants representing Australia overseas.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Deliver significant economic/community benefits to the Ballina Shire.
- **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	559
Donations (DA Fees)	2,000	4,162	(2,162)
Net Amount Available			841

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 these applications.

10.4 Community Donations

Options

The options are to approve or decline one or more of the requests. Donations are a matter for Councillors to determine and the recommendations provide for approval or refusal.

RECOMMENDATIONS

1. That Council approve / refuse the donation application for the Ballina Junior Rugby Club as detailed within this report.
2. That Council approve / refuse the donation application for the Statewide Eyesight Preschooler Screening (StEPS) as detailed within this report.
3. That Council approve / refuse the donation application for Marine Rescue NSW as detailed within this report.
4. That Council approve / refuse the donation application for Rous Public School as detailed within this report.
5. That Council approve / refuse the donation application (approximately \$420) from Athletics Australia, for Jay Meaney, as detailed within this report.

Attachment(s)

1. Letter from Ballina Junior Rugby Club
2. Letter from Rous Public School
3. Letter from Jay Meaney & Athletics Australia
4. Letter from Marine Rescue NSW
5. Letter from StEPS

10.5 Water Billing - Write-Offs

10.5 Water Billing - Write-Offs

Delivery Program Financial Management

Objective To obtain approval from Council to write off water consumption charges on properties that had water leaks undetected during quarterly billing processes due to erroneous water meter readings provided by Council's contractor.

Background

Council established that around one thousand properties were affected by under estimated water meter readings provided by our water meter reading contractor between the September 2010 and September 2011 quarterly water billing periods.

Following correct readings being provided in December 2011, Council wrote to affected customers. In most cases, affected customers received a higher than usual account in January 2012 to compensate for underestimated accounts issued previously due to erroneous readings. These customers were provided with extended interest free periods to pay the higher than usual charges.

It has been established that nine accounts affected by under estimated water meter readings also had concealed water leaks during the same period. As a result, these leaks were not identified by a high reading being recorded for their property. Therefore, the customer was not alerted by Council that a water leak at their property required attention.

It is an unusual situation in that the responsibility for detecting and correcting leaks does rest with the property owner. However in this circumstance it would be reasonable to assume that most customers would only become aware of a concealed leak when they receive a high water meter reading via their quarterly account. It is also mentioned that Council does audit the readings and phone property owners that appear to have a very high reading recorded. This is a courtesy service that is only extended to very high readings.

Therefore, given that no warning was provided, it is considered that Council's Concealed Water Leaks policy is not adequate for these nine customers. It is recommended that it is appropriate to write off water consumption charges for these subject properties that have been assessed as being above average for the property.

Clause 131 of the Local Government (General) Regulation 2005 (LGGR) and section 607 of the Local Government Act 1993 (LGA), outline procedures that councils must follow to write off certain rates, charges, and interest. Essentially, write offs not covered by specific sections of the LGA must be carried out by Council resolution, unless the General Manager has been provided with delegated authority by the council.

10.5 Water Billing - Write-Offs

The existing delegated authority for the General Manager provides authority to write off debts to a maximum of \$1,000 per debt.

The General Manager has also provided the Rating and Customer Service Coordinator delegated authority to write off interest amounts, pursuant to section 567 of the LGA, up to the value of \$100 per assessment.

Due to the unusual circumstances surrounding this particular matter, all amounts proposed to be written off have been included in this report, regardless of their value.

Key Issues

- Write-off amount

Information

The value of water consumption charges proposed to be written off for the accounts listed below has been calculated on a case by case basis. The number of erroneous readings was not consistent between each affected property.

Average quarterly consumption history was utilised to estimate the proportion of water that was lost as a result of the leak. Without correct quarterly water meter reading data available, it was not possible to isolate the exact quarterly billing period in which the leak commenced.

Council contacted the nine affected customers immediately after receiving correct December 2011 water meter reading data that showed significantly higher water consumption than usual. They were advised that it was suspected that they had a water leak at the property that needed immediate attention. Generally the property owner would need to engage the services of a qualified plumber.

The following table provides proposed water consumption charges that require Council approval to be written off whilst each customer is required to pay for consumption based on an assessed average. Detailed calculations used to ascertain the write off listed for each property have been recorded on Councils electronic document management system. It is intended to include these write offs in a claim against our water meter reading contractor for losses resulting from the supply of understated water meter readings between September 2010 and September 2011.

Amounts to be Written Off – Erroneous Contractor Readings

Assessment Number	Amount (\$)	Property Owner/s and Location
145282	1,787.93	NSW Aboriginal Housing 102 Fox Street Ballina
177302	1,305.17	Mr GM & Mrs AJ O'Neill 27 Ross Street Ballina
283315	1,018.77	Mr D & Mrs S Furlan 76 Wardell Road Alstonville.
282254	893.82	Mr TL & Mrs J Davey 75A Teven Road Alstonville
286208	532.87	Mr CD Scarp 11 Campbell Avenue Wollongbar
279706	511.82	Mrs MJ Ryks 1/3 South Street Alstonville
403004	492.65	Mr KC Hallett 1/27 Cerreto Circuit Wollongbar
286834	388.29	Mr BH Dobbie 46 Cerreto Circuit Wollongbar.
264890	257.47	Mr & Mrs JC Aslin 2 Cawley Close Alstonville
Total	7,188.79	

Sustainability Considerations

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

Legal / Resource / Financial Implications

These write offs will be included in a claim against our water meter reading contractor.

Consultation

Discussions have been held with affected property owners.

Options

Council may decide whether to approve the write offs or not. The recommendation is to approve the write offs for the reasons outlined within the report.

RECOMMENDATIONS

That Council approves the total write off of \$7,188.79 in water consumption charges pursuant to clause 131 of the Local Government (General) Regulation 2005, as outlined within this report.

Attachment(s)

Nil

10.6 Tender - Provision of Trainee / Apprenticeship Services

10.6 Tender - Provision of Trainee / Apprenticeship Services

Delivery Program Human Resources

Objective To obtain Council approval to award the tender for Trainee/Apprenticeship Services

Background

Tenders were advertised in February 2012 for the Provision of Trainee/Apprenticeship Services for a three year period. At the close of the tender period on 13 March 2012, seven submissions were received. This report provides the outcomes from the tender evaluation process.

Key Issues

- Award the tender in accordance with the Local Government (General) Regulations 2005.

Information

At the close of the tender period, submissions were received from the following companies

NSW Business Chamber t/as SkillsRoad
MEGT (Australia) Ltd
On Q Human Resources
Northern Rivers Training Group
Migas
North Coast Recruitment
HGT Australia Limited t/as Novaskill

All tenderers have met the requirements of the Request for Tender documentation and are considered conforming tenders

The tender evaluation panel consisted of the Manager Risk and Human Resources, Human Resources Officer and the Projects and Contracts Co-ordinator. The tender documentation defined four areas by which each tender submission would be evaluated, Price, Capability, Knowledge of the Industry and Experience & Past Performance. The evaluation panel rankings of the tender submissions are as follows:

Tenderer	Tender Score	Ranking
NSW Business Chamber t/as SkillsRoad	60.1%	4
MEGT (Australia) Ltd	47.5%	5
Migas	84.5%	2
On Q Human Resources	40.0%	7
North Coast Recruitment	42.7%	6
Northern Rivers Training Group	74.7%	3
HGT Australia Limited t/as Novaskill	87.8%	1

Novaskill has ranked first in the tender evaluation and the preferred tenderer.

Novaskill is the current provider of Trainee/Apprenticeship Services to Ballina Shire Council and have provided an excellent level of service over the past three years.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The engagement of trainees/apprentices by Council will increase the available skill set in the Shire.
- **Economic**
The engagement of trainees/apprentices assists in the delivery of services to the Shire.

Legal / Resource / Financial Implications

This report is provided to assist Council meet its statutory requirements in regard to tendering and procurement.

Consultation

A public tender process has been conducted.

Options

Under the Local Government (General) Regulations 2005 Council must either accept the tender that “appears to be the most advantageous” or decline to accept any of the tenders.

Accordingly

1. Council may determine not to accept any of the tenders received and invite fresh tenders or alternatively negotiate for the works with any or all of the tenderers or
2. Council may award the contract HGT Australia Limited t/as Novaskill to undertake the supply provision of Trainee/Apprenticeship Services for the Ballina Shire council.

Option one is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005. The tenders as submitted would indicate a fair test of the market and that a fair price has been achieved representing good value to Council.

Option two is recommended as the preferred option as the tender assessment indicates that a reliable market has been established and the assessment by the evaluation panel has determined the preferred tenderer.

10.6 Tender - Provision of Trainee / Apprenticeship Services

HGT Australia Limited t/as Novaskill is a very experienced provider of these services and has been providing these services to Council for the past three years.

RECOMMENDATIONS

1. That Council accepts the tender for the provision of trainee/apprenticeship services from HGT Australia Limited t/as Novaskill for a three year period.
2. That Council authorises the General Manager to attach the Council seal to the contract documents.

Attachment(s)

Nil

11. Civil Services Group Reports

11.1 Local Traffic Committee Report - April 2012

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 April 2012.

Background

The Local Traffic Committee (LTC) met on 11 April 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) **Gazettal of B-Double Route - Alstonville**

The old Bruxner Highway was gazetted as a B Double route by the then RTA. The Alstonville Bypass, as the new State Highway has been gazetted as a B Double route.

The RMS approached Council seeking for Council to regazette the old Bruxner Highway as a B Double route. Information regarding this was circulated to Councillors via the weekly bulletin. The Council's position on B Doubles has been not to approve any routes on local roads except for access to Southern Cross and Russellton Industrial Estates. Given this position, the RMS was advised that Council would not apply a new gazettal to the old Bruxner Highway.

The RMS has again approached Council and this time is requesting a gazettal that would only operate in the event of emergency closures of the bypass. From a technical perspective, the LTC accepts that the route is suitable for that purpose. However, the Committee was advised by the Council representative that the community perspective may not concur with the technical assessment as the community had previously expressed concerns when the RTA established the original gazettal.

The options for Council are to decline or approve of the request. If the request is declined, in the event of an emergency closure of the bypass, B double configurations will have the following options;

- Pull over and wait for the bypass to be cleared
- Uncouple and run as a single configuration. This option will suit trucks whose destination is in close proximity to the bypass.
- Use an alternate route (if advised of the incident early enough.

It is recommended that Council support the request. It is expected that the need to operate the diversion will be rare, and the technical assessment is that the vehicles can satisfactorily maneuver through the alternate route.

Whilst there are other options available to trucks in the event of an emergency and no approval to use the alternate route, these options do add to the management requirements in response to an event and result in the additional risks associated with trucks being parked up on the bypass or other roads for an extended period.

b) 4.6m High Vehicle Routes - Ballina Region

The Committee reviewed a request from the RMS regarding 4.6m high vehicle routes in the Ballina region.

The RMS is currently updating its systems and two anomalies need to be corrected. The first being there is no connection from Angels Beach Drive to Kerr Street and the second being Ross Lane.

The Committee was unanimous in its position to advise Council of its endorsement to extend the 4.6m high route on Bangalow Road from Angels Beach Drive to Kerr Street and also the extension of the 4.6m high route for the full length of Ross Lane from The Coast Road to the Pacific Highway.

c) Parking - William Street, Lennox Head

The Committee reviewed an issue regarding parallel parking in William Street Lennox Head.

The Committee was unanimous in its position to advise Council of its concurrence to the Council's proposal to remove the parallel parking signage in William Street

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 Council, in response to a request from the RMS, agree to gazette a B-Double route through Alstonville/Wollongbar as an alternate route for times when the Alstonville Bypass is closed due to an emergency.
2. That the Council endorse the proposal to extend the 4.6m high route on Bangalow Road from Angels Beach Drive to Kerr Street.
3. That the Council endorse the proposal to extend the 4.6m high route for the full length of Ross Lane from The Coast Road to the Pacific Highway.
4. That the Council note the Committee's concurrence in respect of Council's request to remove the parallel signage in William Street, Lennox Head.

11.2 Policy (Final) Building Over Council Assets

11.2 Policy (Final) Building Over Council Assets

Delivery Program Governance

Objective To adopt the Buildings Over Council Assets Policy.

Background

Council at the 24 November 2011 Council meeting resolved to place on public exhibition a draft review of the Buildings Over Council Assets Policy.

The purpose of this report is to provide Council with the results of the public exhibition, which occurred during December 2011. During the exhibition period one submission was received in relation to the policy. A copy of the submission is attached to this report.

The previous report to Council provided the basis of the need for this policy. A copy this report can be provided to Councillors upon a request.

Key Issues

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

Information

The draft policy document was exhibited for a period of 28 days to allow for public comment. The exhibition was notified via Council's website and by way of advertisement in the local newspaper. Copies of the document were made available at Council's Community Access Points. The policy was also exhibited through Council's new electronic newsletter Community Connect eNews, with a link to an online feedback form.

As indicated above one submission was received. The submission raises a number of points, however, in general terms, the concerns refer to the reasonableness of the restrictions the policy may impose upon properties when a property owner proposes to build on or near underground Council assets.

The submission goes to the very issue that was considered by staff in reviewing the policy. That is resolving the tension between providing for the protection of Council's assets without unreasonably constraining the rights of property owners to develop to their preference, subject of course to the provisions of the planning scheme. This question is discussed below.

11.2 Policy (Final) Building Over Council Assets

The intent of the policy is unchanged from the previous policy in that it establishes building restrictions to ensure Council has suitable access to public underground assets should it be necessary. The practice of imposing building restrictions adjacent to underground assets has been standard Council procedure for many years and well before the adoption of the 2008 policy. There have been many applications over past years which were rejected or required modification to comply with the policy requirements.

In adopting the 2008 policy, the Council decided that the previous practice could be improved to provide owners with increased opportunities and reduce disputes with Council. Furthermore, in response to this, Section Five, *Minor Variations for Building Structure over or adjacent to Underground Assets*, was included in the policy. This section is reproduced below.

Minor exceptions may be made to this policy to allow certain limited, light demountable structures to be build adjacent to or over Council's assets where it can be demonstrated that the operation and maintenance of these assets will not be hindered. Where an applicant feels that the underground mains will unreasonably limit their design then discussions should be held with Council staff to explore options before submitting a proposal.

Consideration may be given to approving a strictly limited range of light demountable structures located over an underground asset if, and only if, it is not practical to build the structure elsewhere on the block. Any proposal seeking exemption would be considered in the light of the options for locating the structure on other parts of the site and the type of structure proposed.

The type of structures that may be considered are limited to light timber or metal carports, pergolas and awnings that are bolted together and readily removed, car parking areas, fences and gardens. Properly designed interlocking retaining walls that cross the easement at right angles to the pipeline are also permissible. No other structures will be permitted. Any structure approved under this section of the policy cannot be altered (eg by enclosing the carports with walls to make a garage) without the approval of Council.

The types of structures that may be refused approval include (but not limited to) carports, pergolas and awnings that have been permanently fixed (eg using nails, welds etc), garages, all garden sheds, aviaries, ferneries, glass houses, pools and sporting facilities (eg tennis courts using artificial surfaces) etc.

Where this policy unreasonably restricts the ability to develop in an appropriate manner for that area (eg commercial areas) then proposals will be investigated on an individual basis in line with the objectives of this policy.

In making this inclusion in 2008, staff were mindful that the previous practice had been working well and new technologies were emerging that should reduce the amount of excavation Council is required to undertake to address issues with mains. It was also intended for the clause to provide some direction about the types of structures that could be considered that would solve some of the issues faced by land owners.

11.2 Policy (Final) Building Over Council Assets

However, the experience of the last few years is that the above section has not been as beneficial as planned. The listing of acceptable and non-acceptable structures was not extensive and has been difficult to interpret by staff and property owners. The revised policy draft included an amendment to provide clarity by focussing on the objectives of the policy rather than attempting to unsatisfactorily construct a non exhaustive list of exemptions or considerations.

In the exhibited policy all of section five was deleted, except for the last paragraph. This paragraph is included above, however it is noted here that it allows a merit based assessment where it is considered the policy unreasonably restricts the ability to develop in an appropriate manner.

It is now also proposed to amend the draft by including the following as an addition to section five (to be inserted after the current paragraph within the section).

Applicants dissatisfied with a decision of a Council officer made under this section, may appeal, in writing to the General Manager. In response, the General Manager will complete a review, and where practical, be advised by a different officer to the person who completed the initial assessment. The General Manager's decision represents the Council's final consideration of the appeal.

It is considered important to provide an appeal process in this policy given the tension described above between the Council's interests and the property owner's interests. The last sentence aims to ensure a consistent approach is made by the organisation and highlights that the policy decision of the Council is confirmed and staff should determine these matters at the individual property level. Without such a clause, invariably all unfavourable review decisions will be followed by a request to refer the matter to the full Council.

It is acknowledged that these changes will not resolve the issue from the perspective of the submission. However as noted above, the policy objectives have been in place for a very long time and have been proven to be important. Therefore it was not the intention of the 2008 policy or this review to change the direction of policy objectives, rather the documents intended to improve the administration aspects.

The only other changes to the draft policy were some minor alterations made on page 6 to provide clarification when interpreting diagram 3.

A copy of the amended draft is included as the final attachment to this report.

Sustainability Considerations

- **Environment**
Access to and maintenance of Council's assets is important to ensure the protection of the environment.
- **Social**
The development of private property is a right of an individual, subject to compliance with broader community expectations.

11.2 Policy (Final) Building Over Council Assets

- **Economic**
Not Applicable.

Legal / Resource / Financial Implications

The implementation of this policy is to ensure that Council's assets are protected.

Consultation

The draft policy was placed on public exhibition during December 2011 for a period of 28 days during which one submission was received. The submission raises numerous concerns which generally refer to the reasonableness of the restrictions the policy may impose upon properties when proposing to build on or near underground Council assets.

Options

The challenge for this policy has always been to balance the Council's access requirements for maintenance of essential infrastructure and providing the maximum opportunities for land owners to develop their property to the extent possible from the planning scheme. It is also challenging to have a policy that adequately deals with all of the different types of individual development aspirations and the variety of demands for maintenance before the Council.

As indicated above, it has been the experience of staff that under the current policy it is difficult to consistently determine applications, and for these decisions to be confirmed with clarity to residents based on the provisions in the policy. In addition to this, from allowing more of these developments, there is a risk of issues emerging in future when Council is required to rely on the conditions in an approval to remove or adjust the private development to allow access to the underground assets.

It is however recognised that Council has certain statutory powers available to it to access infrastructure, and in many cases access may not be required for many years, or at all and new technology has reduced the amount of excavations required.

Therefore the question within the options to Council are whether the Council is satisfied that the current approach to protecting its assets is preferred, or whether it would prefer to accept greater risks to enable more opportunity for land owners to develop according to their preference.

Having determined that question the following options are available to Council.

1. Council can adopt the policy as exhibited.
2. Council can amend the draft to include the previous policy position as set out in the former Section Five, with the other minor changes proposed.
3. Council can determine not to adopt a policy and indicate a different direction for the development of the policy.

11.2 Policy (Final) Building Over Council Assets

Based on the experience of staff, and that the policy does provide a merit based opportunity for exceptional circumstances, with an appeal process included, Option One is recommended. The recommendation includes the addition of the paragraph indicated in the above report regarding the appeal process.

RECOMMENDATIONS

That Council adopt the Building Over Council Assets Policy as attached to this report, subject to the addition of the following paragraph in Section Five;

Applicants dissatisfied with a decision of a Council officer made under this section, may appeal, in writing to the General Manager. In response, the General Manager will complete a review, and where practical, be advised by a different officer to the person who completed the initial assessment. The General Manager's decision represents the Council's final consideration of the appeal.

Attachment(s)

1. Copy of Submission - Headford
2. Draft Policy

11.3 Waste Management - Memorandum of Understanding

11.3 Waste Management - Memorandum of Understanding

Delivery Program Waste Services

Objective To seek Councils approval to renew the Waste Management MOU with Lismore City Council.

Background

In 2010 Council resolved to enter a Memorandum of Understanding (MoU) with Lismore City Council in respect of the delivery of waste management services. A copy of the MoU is attached to this report. The MoU has recently expired and this report seeks Council's consideration for an extension of the arrangement.

Key Issues

- Review Memorandum of Understanding.

Information

The MoU does not bind the Council to any specific program outcomes or financial contributions. Nevertheless the existence of the MoU has been very useful to motivate and facilitate regular communications between the two councils.

Through the MoU period, staff identified a number of opportunities to investigate. The analysis resulted in several initiatives being implemented including:

- A joint tender for Green Waste Shredding
- A joint tender for Recyclable Processing
- Lismore processing Ballina green waste
- Operational arrangements reviewed to identify resource sharing opportunities

More recently the councils have been discussing the following opportunities:

- Provision of Joint Waste Minimisation Education Program
- Development of Materials Recovery Facility by Lismore
- Development of Pyrolysis Facility at Ballina
- Develop a shared strategic program for the expenditure of the Waste and Sustainability Improvement Payments

Whilst it is possible for these objectives to be achieved without a MoU, the establishment of the MoU has provided some authority and impetus to the discussions. The process has assisted in increasing the accountability for staff to deliver and report against the objectives of the MoU.

Since the introduction of the MoU, the services offered by both councils have become more aligned. The effect of this is that it increases the opportunities

11.3 Waste Management - Memorandum of Understanding

for resource sharing and other joint initiatives. For example, the consistency between the programs will allow shared education messages. Not only does this improve economies of scale, as both councils rely on the same media sources, the distribution of information to the community is more effective.

As recently discussed at a workshop with Councillors, Council continues to pursue regional solutions to waste management issues. For example, Council is currently supporting, through NOROC, the development of a Regional Waste Management Strategy. The Council has also continued to be an active participant in the North East Waste Forum (NEWF). The MoU is considered to support those processes for the following reason.

It is much simpler to pursue resource sharing through a partnership with a single neighbouring council when compared to a regional approach. The MoU with Lismore however supports regional outcomes as it demonstrates to the region the possibilities that arise from joint initiatives. For example, following the success of the joint tenders, other Councils have expressed an interest in participating in the renewal process or future similar programs. Certainly the existence of the MoU has not impeded Ballina Council's ability to influence regional outcomes.

The communication amongst council officers regarding the MoU is positive and staff consider that the MoU has also delivered some successful outcomes. For these reasons, the recommendation to this report is to renew the MoU for a further two year period.

Sustainability Considerations

- **Environment**
Council's strategy for best practice waste management aims to protect the environment to the maximum extent possible.
- **Social**
Waste management is a service to the community and assists in preserving public health and household amenity.
- **Economic**
An efficient and effective waste management service contributes to economic development.

Legal / Resource / Financial Implications

There are no resource or financial implications associated with the MoU. Programs developed under the MoU derive funds and resources from existing budget allocations. Where the Delivery Plan is not able to accommodate a program, reporting to Council is available to advance the idea.

Consultation

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

Options

For the reasons set out in the above report, it is recommended that Council again commits to the MoU. It is also open for the Council to decline to renew the MoU.

RECOMMENDATIONS

That Council renew the Waste Management Memorandum of Understanding with Lismore City Council for a period of two years and that the Mayor and General Manager be authorised to attach and sign the Council seal to the documentation.

Attachment(s)

1. Memorandum of Understanding between Lismore City Council and Ballina Shire Council

11.4 Urban Water Management Strategy - Review

11.4 Urban Water Management Strategy - Review

Delivery Program Wastewater

Objective To report outcomes of the Councillor workshop to review the Urban Water Management Strategy Update Report.

Background

It is timely for the Council to develop an update of its Urban Water Management Strategy (UWMS). To assist with this, a report was recently prepared by specialist advisors that reviewed the current UWMS in terms of its compliance with contemporary management practice, government policy and legislation. The review also analysed the new data and information that has been developed through the programs to implement the strategy.

A copy of the report was provided to all Councillors and a workshop was held enabling the principal author of the report and staff to discuss with Council the study findings.

The purpose of this is to note that the report has been completed and to discuss the next stage of the project which is to develop the update of the UWMS.

Key Issues

- Report on a review of the Council's UWMS
- Advance a project to prepare an update of the UWMS.

Information

The UWMS has been further developed since its adoption in 2003 and is currently in an active phase of implementation. The objectives of the technical review were to:

1. Review the relevance, validity and contemporary nature of the current UWMS taking account of:
 - a. the latest water, environmental and other policies and guidelines of Local, State and Federal governments
 - b. related technical advances in the water industry and environmental sciences
 - c. current trends in urban water management and
 - d. social or financial issues that may have emerged since the original strategy was released
2. Identify any areas that the review team believes require further detailed consideration to either confirm the current long-term strategy or the need for strategic adjustments.

11.4 Urban Water Management Strategy - Review

The review involved the examination of relevant new policies, guidelines and legislation since 2003, discussions with key government agencies, review of studies related to the development and implementation of the UWMS program and an analysis of the achievements of the use of recycled water so far.

The review made a number of conclusions and recommendations. An extract from the report's executive summary is provided below. This extract is a list of the conclusions. The specific recommendations arising from these conclusions are found in Section 11.0 (page 36) of the report.

1. Despite there having been significant governmental reform within the water industry since the 2003 UWMS was adopted, the current strategy remains contemporary and compliant with statutory requirements and best practice. This supports Councils leading edge approach to the UWMS during its initial development from 2000-2003.
2. The current strategy is generally aligned with community aspirations for urban water as expressed in the 2007 Social Research Study. Opportunities for improved alignment are identified in this review for future consideration.
3. BSC is on track to achieve 15% reduction in per capita water demands since 2002 with a reduction of up to 30% in dry years as a result of the combination of water savings and urban reuse. This can be further enhanced by inclusion of washing machines in the urban dual reticulation (UDR) program.
4. The BSC water distribution system exhibits a high level of water losses compared with other best practice local water utilities (LWUs).
5. Population growth rates for Ballina Shire are now predicted to be much lower than assumed in the development of the UWMS and Master Plan. The slower growth means it will take longer to achieve water reuse milestones. There is thus a strong case to extend the Ballina-Lennox Head reuse targets from 2026 to 2036.
6. The slower population growth rate also impacts the affordability of the UWMS. There are advantages in Council focusing first on consolidating its current works program before commencing further initiatives. No detailed evaluation of additional reuse options is suggested before 2017, with the feasibility of new reuse opportunities being assessed as these emerge for further consideration at that time.
7. The UWMS 80% reuse target in dry weather for the Ballina-Lennox Head system is difficult to achieve in Ballina's high rainfall climate. When fully developed, the current urban dual reticulation and urban open space (UOS) irrigation initiatives will achieve the 80% reuse target about 45 days per year on average.

Additional reuse options will be needed to achieve 80% dry weather reuse more frequently as proposed in the Master Plan. The option of purchasing land and constructing storages for regeneration of vegetation is proving more costly and potentially less viable than originally anticipated.

11.4 Urban Water Management Strategy - Review

A project to supplement the water supply system by using recycled water to replace environmental flows at Emigrant Creek Dam will produce greater reuse and more water supply benefits than projects to expand irrigation use. This option is also more aligned with current community aspirations and anticipated agency views.

8. It is too early to determine the likely benefits of using recycled water in the production of feedstock for biochar pyrolysis to sequester carbon and improve agricultural soils in the local area. Apart from this there are no new technologies or practices, not considered in the development of the UWMS, which appear at this stage to offer significant advantages.
9. There is no firm strategy at this stage for environmental impact monitoring of the modified release of treated wastewater to North Creek Canal or at Skennars Head. This strategy is important in demonstrating the long-term sustainability of these releases and requires a best practice approach to determining the scope of an effective and affordable monitoring program.
10. There is a need to continue to develop and implement an effective community communication and education program, with community involvement being considered at appropriate UWMS development milestones.
11. There is a need to re-document the UWMS. Council should consider whether some form of community or stakeholder involvement is necessary given the recommendations of this review.
12. There is a need to renew the current Waste Water and Water Strategic Business Plans following Council's consideration of the findings and recommendations in this report.

Overall, Council is well placed to follow the recommendations and to commence the development of a revised UWMS document. Staff have commenced this process and it is proposed that internal resources will be applied to deliver the major portion of the work.

Sustainability Considerations

- **Environment**
A whole of cycle approach to water management is essential to support the sustainable use of water.
- **Social**
The proper management of water services contribute to public health and amenity.
- **Economic**
The efficient and effective delivery of water services assists economic development.

Legal / Resource / Financial Implications

There are no legal, resource or financial implications associated with this report.

Consultation

It is proposed that the UWMS Technical Review will be made available on Council's website. The project to prepare a new urban water policy will include community consultation.

Options

As the review is a technical report, it is not necessary for Council to adopt the report. Council is however asked to note that the work has been undertaken and will be published on Council's website.

Further, Council is advised to note that the findings in the review will be used to inform the preparation of an update of the UWMS. This work is expected to proceed over the course of the next few months. As this update will be a new policy for Council, it will require further engage with the elected Council, community consultation and then reporting to Council prior to adoption.

RECOMMENDATION

That Council notes the contents of this report in respect to the Technical Review of the Ballina Shire Urban Water Management Strategy.

Attachment(s)

Nil

11.5 Ballina & Lennox Head Wastewater Treatment Plants Contract

11.5 Ballina & Lennox Head Wastewater Treatment Plants Contract

Delivery Program Wastewater

Objective To provide an update on progress on the upgrade of the Ballina and Lennox Head Wastewater Treatment Plants.

Background

At the February 2011 meeting Council resolved to accept the tender of Haslin Constructions Pty Ltd for RFT/Contract Number 0902774 being for the design and construction of a Membrane Bio Reactor (MBR) at the Waste Water Treatment Plant (WWTP) at Ballina, and upgrades at the Lennox Head WWTP including a Recycled Water Plant, new UV disinfection unit and chemical dosing to reduce phosphorous, for an amount of \$45,437,315 including GST.

Given the size of this contract, quarterly progress reports are being presented to ensure Council is able to monitor the progress of the project.

Key Issues

- To inform Council of the progress of the works within the Contract.

Information

Key Work Items Completed or Progressed for Reporting Period

- The detailed design of the main structures, mechanical and electrical equipment is nearing completion, with the exception of the finalisation of the recycled water streams.
- The construction of the MBR, Aeration and Anoxic tanks has been completed, with the fit-out of mechanical equipment now commenced
- The concrete construction of the permeate tank has been completed
- The concrete construction for the inlet works have been completed
- The civil works and concrete flooring for the blower room and switch room have been completed, with the structural steel in place, and the block walls commenced
- Development consent for the buildings has been obtained
- Civil works on the chemical storage areas has commenced
- One of the existing sludge lagoons has been decommissioned and civil works commenced to convert it to an aerobic digester for the new plant
- Electrical switchboard construction is well advanced, with Council inspecting the works in the factory
- Electrical conduit installation has commenced.

The contractor has also now established on the Lennox Head site, with the following site works completed:

- The existing UV has been installed in a temporary location until the new UV is constructed

11.5 Ballina & Lennox Head Wastewater Treatment Plants Contract

- The internals of the existing UV building has been cleared, additional piling installed, new drainage installed, and electrical conduits installed. The building is ready for a new concrete slab and foundations
- The recycled water reservoir foundations have been completed, and the concrete construction commenced
- Development consent for the buildings has been obtained
- Civil works for the chemical storage area has commenced.

Cost of Work Completed

\$19,689,820 inclusive of GST.

Approved Variations

	Details	Cost (incl. of GST)
1	Modifications to inlet works to divert all flows through the manual bar screen to the storm detention pond.	\$17,532.90
2	Supply and Install an Isolating Valve to the existing bund in the Chemical Delivery area.	\$677.60
3	Supply Biofilter in lieu of Deodorising Bed	- \$51,615.00
4	Deletion of additional Amenities Building at the Lennox Head RWP location	- \$24,603.48
5	Concept Design for revised Effluent Streams due to requirement of NOW	\$33,250.80
6	Currency Fluctuation (as per Contract Conditions)	- \$39,311.00
7	Re-inclusion of Telemetry requirements for the sites	\$51,515.75
8	Back-up Level sensor for the Inlet Works	\$9,168.17
9	Disabled Access due to change in BCA	\$173,212.60
10	10. Install Electrical conduits and Cable pit for PS controls At Lennox	\$8,765.86
11	DA Certificate requirements	\$16,976.30
12	LP Sewer Connection to WWTP	\$10,502.80
13	Effluent Streams Modifications	\$2,275,488.02
14	Supply temporary Ferric tank and Convert existing Ferric tank to Alum	\$50,045.90
	Total	\$2,531,607.22

(Negative amounts are as a result of net savings to Council)

Item 13 is a major variation and this is discussed below.

Progress to Schedule

Progress is on schedule with the contractors having applied for and had twenty wet weather days approved to date. The Extraordinary Issues noted below have the potential to delay components of the works, and a revised completion date may need to be negotiated.

Major Variation

The last two reports to Council have identified NSW Office of Water (NOW) requirements for the approval of the recycled water scheme meant design changes were required. The previous reports summarized the reasons behind this decision and the options considered by staff in response to the regulator's position. Ultimately it was not possible to avoid the additional work and staff have progressed the process to assess the price variation. As noted above the variation is significant and will cost \$2,275,488.02.

A number of options were considered by Council to determine the most appropriate and best value method of procuring the revised arrangements, however, it is considered that the only feasible procurement option that will give the most advantageous outcome was to negotiate a variation to the current Contract for the following reasons:

- It is essential to ensure that the validation and verification to the regulatory authority (NOW's) requirements occurs prior to the supply of RW into the Urban Dual Reticulation (UDR) /Urban Open Space (UOS) distribution systems. Without approval BSC would not be able to supply recycled water to the community. Tendering post the completion of the current contract is considered problematic for a range of operational and contractual reasons.
- The design and construction contract has been let to Haslin Constructions. The variation is an improvement to the design of the plant identified during the risk analysis process, taking into account the regulatory authority's advice to ensure the validation and verification process of the process can be completed.
- The design of the plant is part of the Haslin Constructions contract. It could be considered a breach of contract for the Principal (BSC) to obtain additional tenders for the completion of these works, exposing BSC to the risk of Contractual claims and damages.
- Any additional procurement costs would be avoided, and it is best value for money in the long term to alter the design to the preferred arrangement and to complete the detailed design and construction of the works as such.

As this would be a substantial variation to the contract, a Direct Negotiation Protocol was established and followed, resulting in the agreed variation amount. In addition to the assessment of the pricing undertaken by staff and representatives of the Council, a quantity surveyor was engaged to assess the value for money.

A claim for Delay Costs was also forwarded by the Contractor due to this variation. This has been rejected, however it is understood that the contractor may escalate a review of decision.

Whilst this variation is a significant amount of money, it is still anticipated at this time that any further variations would be within the remaining contingency for this contract and no change will be required to the budget. This assessment is based on the fact the major civil works are "out of the ground" (therefore there is a reduced risk of latent conditions), design work is now essentially complete, and the project is well established and progressed.

Sustainability Considerations

- **Environment**

Timely construction of the contract works will ensure the WWTP's in Ballina and Lennox Head have adequate capacity and the environment is protected from the risk of overflows. The upgrade of the facilities and reuse of effluent will assist in improving discharge qualities and the water quality in the estuaries.

- **Social**

The upgrade of the WWTP's will accommodate growth and provide a source of high quality recycled water which will reduce demand by substituting directly for drinking water thus limiting the need to upgrade alternative means of water supply. This will defer the need for costly upgrades such as dams and desalination.

- **Economic**

The construction of the WWTPs will allow capacity in the network to further develop the Ballina and Lennox Head areas in a timely manner.

Legal / Resource / Financial Implications

There have been fourteen approved variations to date on the Haslin Constructions contract, for a total variation of \$2,531,607.22. As detailed above there was a need for a significant variation as a result of regulatory requirements from NOW to allow Council to get an approval to distribute recycled water to our customers. It is still anticipated at this time that any further variations would be within the remaining contingency for this contract and no change will be required to the budget.

Consultation

As the report is update information regarding an existing contract, consultation is not applicable for the preparation of this report.

Options

This report is for information only.

RECOMMENDATIONS

That Council notes the contents of the progress report on the upgrade of the Ballina and Lennox Head Waste Water Treatment Plants.

Attachment(s)

Nil

12. Public Question Time

12. Public Question Time

13.1 Notice of Motion - Land Sale, Lennox Head - Allocation of Proceeds of Sale

13. Notices of Motion

13.1 Notice of Motion - Land Sale, Lennox Head - Allocation of Proceeds of Sale

Councillor Cr Moore
 Cr Silver
 Cr Wright

I move

That the funds raised through the sale of 2-4 Ross Street, Lennox Head land sale resolution 230212/12 be allocated to the future re-development of the Alstonville and Lennox Head Surf Club.

Councillor Comments

As I see it the reality is the land is being sold, it has come before Council now on 2 occasions and on both it was resolved to sell.

Therefore the debate is no longer whether to sell; but where the funds achieved can be directed.

As discussed at the last Council meeting, my motion is aimed at tagging these funds for the Alstonville & Lennox Head Surf club; which is both worthy of support and achieves much for the community. It is well known this surf club has overwhelming support and patronage from locals across the shire and from visitors to the precinct. The club membership draws from across the shire. The fact it is named Alstonville & Lennox Head Surf club is testament of the across community place the club holds.

For these reasons I believe my motion sits well with the principles of shire wide community facilities funding and in this case acknowledges the precinct from where the funds are generated.

COUNCILLOR RECOMMENDATIONS

That the funds raised through the sale of 2-4 Ross Street, Lennox Head land sale resolution 230212/12 be allocated to the future re-development of the Alstonville and Lennox Head Surf Club.

Attachment(s)

Nil

13.2 Notice of Motion - 2 to 4 Ross Street, Lennox Head

13.2 Notice of Motion - 2 to 4 Ross Street, Lennox Head

Councillor

Cr Cadwallader

I move

That Council receive a report on the history of the acquisition of the land at Ross Street, Lennox Head to provide absolute certainty to the community as to why the land was purchased and the costs of acquisition.

COUNCILLOR RECOMMENDATION

That Council receive a report on the history of the acquisition of the land at Ross Street, Lennox Head to provide absolute certainty to the community as to why the land was purchased and the costs of acquisition.

Attachment(s)

Nil

13.3 Notice of Motion - Long Term Future of Pipsis

13.3 Notice of Motion - Long Term Future of Pipsis

Councillor

Cr Cadwallader

I move

That Council write to the NSW Minister for Primary Industries, the Honourable Katrina Hodgkinson MP, the member for Ballina Local Government Minister Don Page, Executive Director, Fisheries NSW, Dr Geoff Allan to ensure that no harvesting of pipsis on any Ballina beaches is recommenced and allowed until each individual beach has undergone a complete review and report, including but not limited to:

A population survey to assess the total population, size and age distribution

A long-term management plan to safeguard:

- i) the long-term biological viability of the pipi populations.
- ii) the long term commercially viability of the pipi fishery

COUNCILLOR RECOMMENDATION

That Council write to the NSW Minister for Primary Industries, the Honourable Katrina Hodgkinson MP, the member for Ballina Local Government Minister Don Page, Executive Director, Fisheries NSW, Dr Geoff Allan to ensure that no harvesting of pipsis on any Ballina beaches is recommenced and allowed until each individual beach has undergone a complete review and report, including but not limited to:

A population survey to assess the total population, size and age distribution

A long-term management plan to safeguard:

- i) the long-term biological viability of the pipi populations.
- ii) the long term commercially viability of the pipi fishery

Attachment(s)

Nil

14.1 Finance Committee Minutes - 23 April 2012

14. Advisory Committee Minutes

14.1 Finance Committee Minutes - 23 April 2012

The Minutes will be distributed prior to the meeting.

RECOMMENDATIONS

That Council confirms the minutes of the Finance Committee meeting held 23 April 2012 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

15.1 Mayoral Meetings

15. Reports from Councillors on Attendance on Council's behalf

15.1 Mayoral Meetings

Councillor Phillip Silver

Activities since the March 2012 Ordinary meeting:

<u>Date</u>	<u>Function</u>
23/3/12	ABC Radio, Land Sale, Lennox Head
26/3/12	Ballina Public School visit to Council
29/3/12	Lighthouse Day Care talk at Richmond Room
30/3/12	Ball State University visit to Council
31/3/12	Book Launch in Alstonville
4/4/12	Rotary Group study exchange at Council
4/4/12	Rotary Dinner in Alstonville
5/4/12	RTRL Mayors' meeting with Minister in Ballina
5/4/12	Deputation Monivae Place residents with staff at Council
5/4/12	Deputation quarries with staff at Council
8/4/12	Demonstration, Land Sale at Lennox Head
9/4/12	Prime TV, Land Sale, Lennox Head
10/4/12	Citizenship ceremony at Council
11/4/12	HWNS Museum opening in Alstonville
12/4/12	Deputation, Pat Morton safety, with staff at Council
16/4/12	Ballina Hospital meeting with Executive Officer at Council
17/4/12	Aviation Access Working Group in Sydney
18/4/12	Rous Water Ordinary meeting in Lismore
20/4/12	Ballina Arts Society dinner in Ballina
22/4/12	Book Launch in Alstonville
23/4/12	RSL Life Care March in Ballina
24/4/12	Ballina High School student meeting at Council
25/4/12	Anzac Day in Ballina

RECOMMENDATIONS

That Council notes the contents of the report on Mayoral meetings.

Attachment(s)

Nil

16. Questions Without Notice

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 reports recommended for consideration in confidential session follows:

17.1 Legal Action - Unauthorised Dumping and Landfill

This report contains information relating to as the report is recommending commencement of legal proceedings against a ratepayer..

17.2 Tender - Internal Advertising Services - Airport Terminal

This report contains information relating to as information provided by tenderers is considered commercial in confidence until such time as the tender is awarded..

17.3 Farmers Market Proposal, Bugden Lane, Alstonville

This report contains information relating to as the information being supplied is of a commercial nature..

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 Legal Action - Unauthorised Dumping and Landfill

Reason for Confidentiality

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

- e) information that would, if disclosed, prejudice the maintenance of law; and
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as the report is recommending commencement of legal proceedings against a ratepayer..

17.2 Tender - Internal Advertising Services - Airport Terminal

Reason for Confidentiality

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

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

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as information provided by tenderers is considered commercial in confidence until such time as the tender is awarded..

17.3 Farmers Market Proposal, Bugden Lane, Alstonville

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 the information being supplied is of a commercial nature..