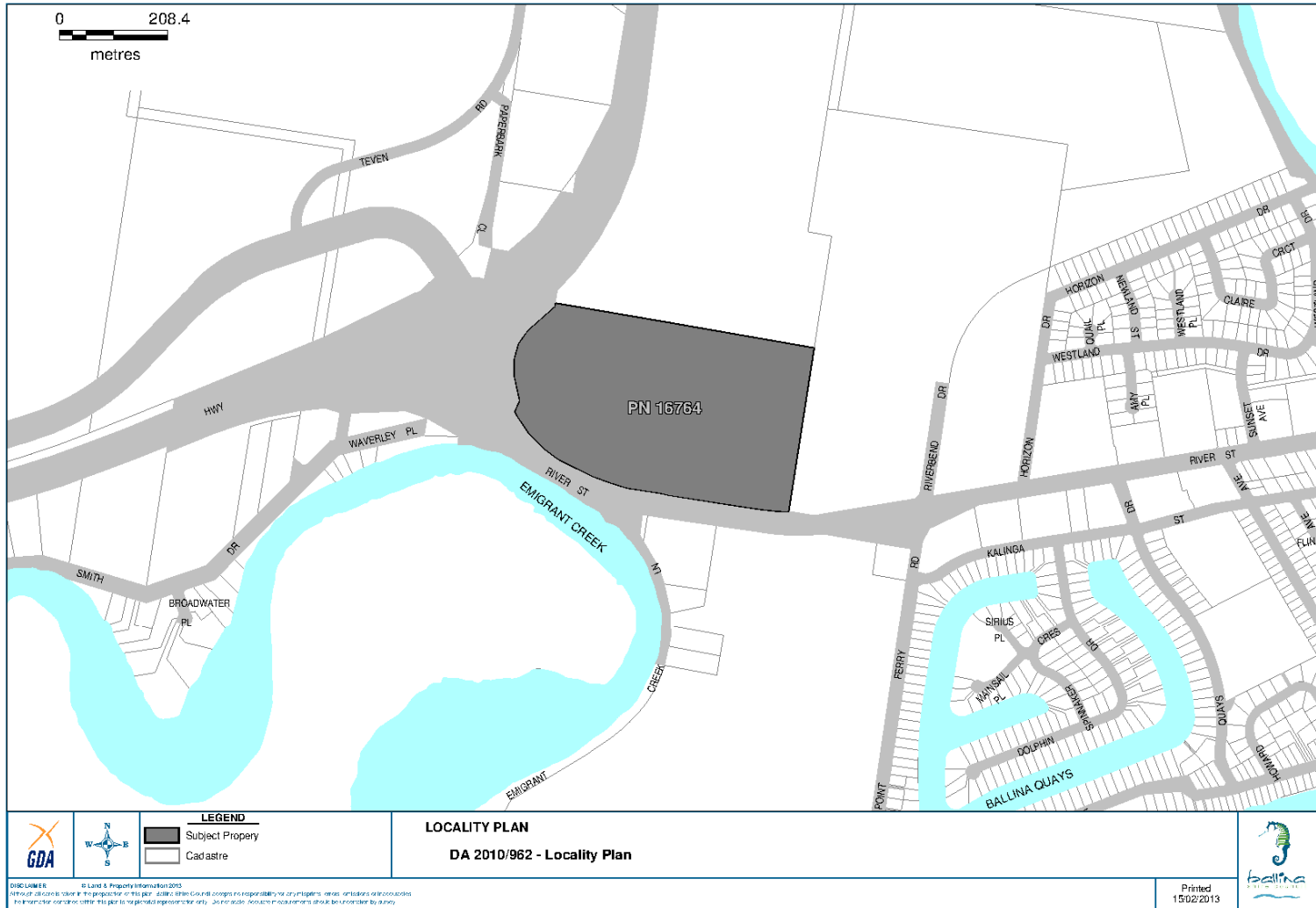


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**8. Regulatory Services Group Reports**

**8.1 DA 2010/962 - Highway Service Centre, Pacific Highway, Ballina**

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

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**Introduction**

Council first received a Development Application for the establishment of Highway Service Centre & Homemaker Centre on 20 April 2007 on the subject land. The application involved the following:

- Construction of a Highway Service Centre and associated Refreshment Rooms comprising approximately 2750m<sup>2</sup> of floor area and Showrooms (Bulky Goods Retailing Centre and Motor Showroom) comprising approximately 27000m<sup>2</sup> of retail floor space and associated Vehicular Accesses, Carparking, Advertising Structures, Landscaping, Earthworks, Infrastructure Works and Road Dedication.

The application was subsequently amended on numerous occasions. The last amendment was submitted to Council on the 13 November 2009 and was for the following:

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“To Undertake the Construction of a Highway Service Centre comprising Service Station, Fast Food Restaurants, Regional Expo Centre, Auto Repair Centre, Associated Vehicular Access (including construction and dedication of part of the Western Arterial Bypass), Car & Truck Parking, Infrastructure Works, Filling and Signage.”

This original multi-amended application was similar in landuse components to that which is currently before Council, however there were still a number of matters that had not been resolved to the satisfaction of either Council or the Roads & Traffic Authority (RTA) (in relation to the access arrangements from the Bypass) and hence the application was reported to the Ordinary Meeting of the Council of 26 August 2010 with a recommendation that the application be refused.

Prior to the Council meeting the proponent formally withdrew the application, and hence the Council did not consider the application.

The application currently before Council for consideration has incorporated and facilitates all outstanding matters that Council has been requesting since lodgement in 2007 including fill levels, floodway, building design, layout and landuse issues that are consistent with Council's and the Roads & Traffic Authority's (RTA) requirements.

Development consent is now sought under DA 2010/962 for the establishment of a Highway Service Centre (HSC), a two Lot subdivision to excise the HSC, creating a residue agricultural lot and the stockpiling of fill on the eastern Zone 2(a) portion of the site.

The stockpiling of the residue fill on proposed lot 2 is not supported, as the existing residentially zoned land is proposed to be zoned rural under the Draft LEP and hence there is no supportable reason for the placement of fill on the land. This will be further discussed within the body of the report.

The proposed HSC incorporates the following:

- Car & Truck Service Station and Fast Food Outlet (Building A);
- Truck Service Centre and Fast Food Outlet (Building B);
- Auto Repair Centre (Building C);
- Service Centre – Main Toilet Block, Tourist Information Booth and Fast Food Outlet (Building E); and
- Fast Food Restaurants. (Buildings F and G)

The development includes a parking area that caters for:

- Three hundred and ninety nine (399) spaces allocating 381 car spaces, 10 car spaces for the disabled and 8 spaces for car and trailer or caravan; and
- Twenty seven (27) heavy vehicle spaces allocating 10 spaces for Semi-trailers, 15 spaces for B-doubles and 2 spaces for coaches.

The development application also includes the following additional components:

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- The subdivision of the subject site into two (2) allotments, with the Highway Service Centre being excised from the residue of the agricultural property and the creation of a right of carriageway over the land and proposed floodway, so as to provide Lot 226 DP1121079 access to the existing Pacific Highway. (The proponent has indicated that they intend to create the separate parcels of land early in the development phase, to enable the sale of the residue rural lot); and
- The placement of any surplus fill upon the residential 2(a) zoned land to the east of the proposed HSC between the proposed flood channel and the eastern boundary of the lot. (This component of the proposal is not recommended for approval)

The recommendation requires the construction and commissioning of the floodway and the associated culverts prior to the placement of additional fill (to that which is already lawfully established) on the land. This is to ensure that appropriate flood controls are in-place on the subject land to minimise any potential flood impacts on the surrounding properties.

The proposed buildings associated with the HSC are to be constructed on land to be filled to a level consistent with the Q100 (+ climate change) level being 2.7 metres + 500mm AHD with a finished floor level of 3.2 metres AHD. This is consistent with Council's Flood Policy requirements.

The proposal also involves the creation of a floodway through the site linking the floodplain to the north with the proposed West Ballina Flood Relief culverts as identified in Council's Flood Plain Management Plan.

It is acknowledged that the establishment of the culverts under the old Pacific Highway does not involve land that is the subject of this DA. However, the culverts under the highway and the associated works are a crucial element in the overall proposal. The proponent has entered into discussions with the Department of Industry & Investment (being the approval authority for in-stream works and works upon crown land) in relation to obtaining all relevant approvals and permits to enable the construction of the Flood Culverts and associated in-stream works.

The report currently before Council for determination recommends that should Council resolve to favourably consider the application, a Deferred Commencement Condition (DCC) of consent (among others) be imposed requiring the proponent to obtain all relevant approvals from the various State Government Departments to enable the establishment of the culverts under the Highway at the southern end of the proposed floodway. This condition is to be complied with to the satisfaction of the Council prior to the consent being activated. The majority of the remaining DCC conditions and the consent conditions address the sequencing, layout and construction of the proposed development.

It should also be mentioned that the proponent has suggested that Council require the submission of a Construction Sequencing Plan (CSP) to address the matters relating to the control of the timing of the development. This CSP has been discussed in more detail later in this report.



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The proponent has indicated that the overall architectural design of the buildings has been considered as a cohesive development in its entirety rather than individually designed components that do not directly relate to each other. The buildings are laid out to create a development that encircles the bulk of the carparking provided on-site with the fuel servicing and truck related components located within the Northern portion of the site providing an element of separation. The overall layout and design of the proposal has been influenced by the guiding principles of Crime Prevention Through Environmental Design.

In general the buildings are to be constructed with painted precast concrete wall panels over an internal steel frame supporting a prefinished steel roof.

The proponent has deleted the Regional Expo building from the application and has included a small Tourist Information Booth within Service Centre Building E in its stead.

The RTA and the Ballina Bypass Alliance have issued their concurrence (email dated 12/4/11) for the connection of the HSC to the Ballina Bypass.

**The Site**

The subject site is located on the south-western outskirts of Ballina, adjacent to the existing Pacific Highway, approximately 6km west of the Ballina Town Centre.

The site is relatively flat, lying within an identified floodplain of the Richmond River. The subject site is adjoined to the;

- east by "Riverbend", a developed housing project for people over 50 years of age;
- to the north by land used for agricultural purposes; and
- to the west by RTA construction work associated with the proposed Pacific Highway Bypass. The existing Pacific Highway adjoins the site to the south.

Access to the site is proposed as follows:

- Left into the site from a newly constructed exit ramp from the southbound off ramp of the Pacific Highway Bypass interchange (north-west corner of the site). This entrance to the proposed Highway Service Centre (HSC) from the Ballina Highway Bypass includes two lanes which will provide for the separation of light and heavy vehicles; and
- Two lane round-about as an entry/exit to the existing Pacific Highway alignment (south-centre of the site), which facilitates a variety of traffic movements including access to the HSC, Emigrant Creek Lane and the Bruxner Highway & Pacific Highway Interchange.

The proponent has indicated that two (2) signs are proposed as part of the development, with these located near the entry/exit points to the HSC. These signs are intended to advertise the tenants and service offerings of the proposed development, and they have been sympathetically designed (as blades), with the proposed buildings. A number of the proposed buildings

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have been designed incorporating blades ('graphic signage panels') for advertising purposes.

The proposed buildings have been intentionally separated within the site not only to reduce the bulk of the development and facilitate movement in and around them, but also to provide opportunities for car parking to be provided in close proximity to each. Pedestrian linkages between elements of the HSC have been carefully located, in order to achieve efficient movement between premises and car parking, and these maximise safety.

The subject lands are not currently serviced with reticulated water, sewerage, electricity and telecommunication services. These services will need to be extended to the subject site.

#### **Reportable Political Donations**

Details of known reportable political donations are as follows:

Nil

#### **Public Exhibition**

The proposal was placed on public exhibition in accordance with Council requirements. Ten (10) submissions were received during the exhibition period. One (1) submission was in support of the proposal, two (2) submissions raised a number of matters of concern, and seven (7) submissions were received objecting to the proposal .

*Matters raised during the exhibition period are summarised as follows:*

- Traffic noise, and lighting impacts; *(Refer Traffic Noise and external lighting impacts section within the report)*
- Adverse flooding and drainage impacts; *(Refer Flood Prone Land section within the report)*
- Pedestrian access within the HSC; *(Refer Pedestrian Movement & Connection section within the report)*
- Development costs are underestimated; *(Applicant has submitted a revised cost of development {and paid additional DA fees} that more accurately reflect the actual cost of the development)*
- The proposal to fill the balance of the site should not be supported; *(Not recommended for approval as part of this DA)*
- Flood reports and Geotechnical reports should be peer reviewed; *(Flood reports have been prepared by Council's consultants, and the Geotechnical reports have been peer reviewed – refer Flood Prone Land and Geotechnical considerations section within the report.)*
- The proposal is inconsistent with applicable statutory provisions. *(Refer Section 79 C assessment section within the report)*

(Copies of all submissions are provided as an attachment for Councillors information.)

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**Government Department Response**

The NSW Industry & Investment have reviewed the proposal and provide the following comments;

The land surrounding the proposal is zoned rural and hence Council should be mindful of any potential conflicts with the adjoining landuses. The Department also acknowledges that the proposed floodway will discharge water into Emigrant Creek. In this regard the Department has no concerns with the quality of the water that will be discharged through the floodway, however the Department has had numerous discussions with the proponent in relation to obtaining all relevant licences to carry out works in the stream bank.

The Department acknowledges that the proposed in-stream works are not on the subject land and hence require approval independently from the Department. A recommendation within this report is that the consent be issued as a "deferred commencement consent" requiring the proponent to obtain all necessary approvals and licences from the relevant government authorities in relation to the works to establish the floodway, culverts and in-stream works on Crown Land, prior to the consent being formally established.

Planning NSW have issued concurrence for the creation of the below minimum area lots, however raised concern in relation to the proposed Regional Expo Centre (REC) component of the application. Their concerns are no longer relevant as the REC component of the development has been withdrawn and no longer is a part of this application.

The Roads & Traffic Authority have also issued their concurrence to the location of the Highway Service Centre within 90 metres of the Ballina Bypass and the Pacific Highway.

**Report**

The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979, and is recommended for approval. The proposed Highway Service Centre, is a significant employment generating development for the Shire, is beneficial to the community and region as a whole and is considered to be in the public interest as it will provide an established and highly visible entrance to Ballina, and meets the intention of the Minister's Section 117 Direction 5.4.

The application has been assessed against the corresponding heads of consideration contained in Section 79C of the Environmental Planning and Assessment Act 1979. Those matters requiring specific consideration of Council will be addressed in this report.

**Ballina Local Environmental Plan 1987 (BLEP)**

The subject land is known as Lot 11 DP 1011575 and has multiple land-use zones affecting the site:

- Zone 1(a2) Rural – Coastal Lands Agriculture
- Zone 1(b) Rural – Secondary Agriculture Land
- Zone 2(a) Residential – Living Area
- Zone 9(a) – Main Road (Proposed)

The application before Council also involves the subdivision of Lot 11 into two lots being proposed Lot 1 containing the proposed HSC and proposed Lot 2 being the residue lot. Proposed Lot 2 is to contain the dwelling entitlement associated with the original land parcel.

The bulk of the proposed HSC development is contained within the 9(a) zone although some components of the HSC, being a small component of landscaping and a small section of road (to provide access to the adjoining Lot 226 DP 1121079) are located within the 1(a2) zone, and the spine road access from the Pacific Highway, the proposed floodway and flood culverts (On-site), a small portion of the HSC carpark and some landscaping are located within the 1(b) zoned land. Refer to attached layout plan and zoning map.

For the purposes of Clause 6 of the BLEP when assessing the permissibility of the proposed HSC, the development is best defined as follows:

- service station; and
- refreshment room;

**service station** means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, oil and other petroleum products whether or not the building or place is also used for any one or more of the following purposes:

- (a) the sale by retail of spare parts and accessories for motor vehicles,
- (b) washing and greasing of motor vehicles,
- (c) installation of accessories,
- (d) repairing and servicing of motor vehicles involving the use of hand tools (other than repairing and servicing which involves top overhaul of motors, body building, panel beating, spray painting, or suspension, transmission or chassis restoration).

**refreshment room** means a restaurant, cafe, tea room, eating house or the like.

The proposed establishment of a Highway Service Centre (HSC) on proposed Lot 1 is defined as comprising of a Service Station and Refreshment Room for the purpose of assessing the permissibility of the HSC against the provisions of Ballina Local Environmental Plan 1987

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**Clause 9 Zone objectives and development control table**

Clause 9(2)(c) provides that development that is identified as “advertised development” shall comply with sub clauses (3)-(5) of clause 9.

Clause 9(4) provides that a development application to which clause 9(2) (c) applies shall be accompanied by an environmental impact report addressing various matters. The SEE and its associated documents submitted with the development application satisfy the requirements of this clause.

Clause 9(7) provides that consent shall not be granted to development unless it is consistent with the objectives of the zone within which it is proposed. The consistency of the proposed development having regard to zoning is discussed under the zone headings below.

**9(a) – Roads (Main Roads Proposed)** - Building A – Petrol & Convenience store & fast food outlet; Building B - truck service centre, toilet block & fast food outlet; Building C - auto repair centre; Building E - service centre amenities block, tourist information booth and fast food outlet; Building F - fast food restaurant; Building G - fast food restaurant; Signs (including ‘graphic signage panels’; Floodway; Road). The land is identified to become RU2 Rural Landscape under the Draft Ballina Local Environmental Plan 2010;

The route of the Pacific Highway Bypass for Ballina has now been finalised, and that part of the site zoned 9(a) Roads (Main Roads Proposed) is no longer required for this purpose. In this regard the proposed development is not inconsistent with the zone objective as the land is no longer being required for a main road purpose.

A majority of the components of the proposed development are located within the 9(a) Roads (Main Roads Proposed) zone. The objective of the 9(a) Roads (Main Roads Proposed) zone may be seen as reserving land for the purposes of a main road. The RTA has indicated that the land currently zoned 9(a) was initially intended to be used for the purposes of establishing the Ballina Bypass. The RTA have advised Council in writing that they no longer require the subject land for the purposes of establishing the Ballina Bypass, hence the land will not be used for the purposes of a Main Road.

The objective of the 9(a) Main Road zone is:

*“The objective is to reserve those lands which are required for the purposes of main roads.”*

The 9(a) Main Road zone objective demonstrates that it has no other purpose other than to “reserve” land for a main road. It does not specify or restrict the types of development that may be carried out in the zone.

The proposed development is not inconsistent with the objective of the 9(a) Main Road zone, which “reserves” the land for a main road purpose. The proposed development does not change the zoning of the land, nor its identification for a main road purpose; in other words, the objective of the zone is not compromised by the land being no longer “reserved”.

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The ability to develop land within the current 9(a) Main Road zone (under LEP 1987) for a variety of landuses is further demonstrated by Clause 31, which provides:

*"31 Use of land pending acquisition*

*(1) Land to which clause 30 applies may be developed for any purpose, with the consent of the council, prior to its acquisition by the public authority concerned."*

Clause 31 permits development for "any purpose" within the 9(a) Main Road zone, with the consent of Council. The proposed development is therefore permissible on this basis.

It should also be mentioned that State Environmental Planning Policy (Infrastructure) 2007 identifies that Highway Service Centres may be established along National Highway corridors subject to the consent of the relevant Public Authorities.

**1(a2) – Rural (Coastal Lands Agriculture) –** (road, floodway) which is identified to become RU1 Primary Production under the Draft Ballina Local Environmental Plan 2010; and

The road component (which extends to the existing Pacific Highway), the landscaping and the floodway are considered to be part of the overall use characterised as development for the purposes of a Service Station & Refreshment room (Highway Service Centre).

Applicable aspects of the objectives are as follows:

- to enable development which is ancillary to the agricultural use of land, and which does not significantly reduce the production potential of the subject land or other land in the locality;
- maintains the rural character of the locality; and
- does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

The road, landscaping and floodway component of the proposed development is considered to be part of the overall use characterised as development for the purposes of a Service Station & Refreshment room (Highway Service Centre).

It is considered that the small portion of the road (approximately 10metres) within the 1(a2) zone is an extension from an internal circulation road within the Highway Service Centre (HSC) to enable the owner of the adjoining rural lot to obtain access to the land.

The small portion of road will not detract from the rural character of the locality, and in this instance the road is not of a design or appearance such that it could be considered a road out of character with a rural environment.

The service station/refreshment room being a permissible use in the zone is considered to be a reasonable use of the land.

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The service station/refreshment room will not create any unreasonable or uneconomic demands for the provision or extension of public amenities or services.

**1(b) Rural (Secondary Agricultural Land)** – (road, floodway and carpark) which is identified to become RU2 Rural Landscape under the Draft Ballina Local Environmental Plan 2010;

The proposed landuses are defined within the Ballina Local Environmental Plan as follows;

- Service station and refreshment room;
- Car repair station;
- Signs are defined as advertisements;
- Floodway is considered as ancillary to the proposed development; and
- Road is considered to be ancillary to the proposed use as a service station.

The objectives of the 1(b) Rural (Secondary Agricultural Land) Zone are as follows.

The regulation of the use of land:

- to encourage its productive use, and to enable development ancillary to agricultural uses; and,
- to permit a range of uses compatible with the rural character of the land.

To ensure development:

- maintains the rural character of the locality, and
- does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

The portion of the site zoned 1(b) Rural (Secondary Agricultural Land) comprises a small triangular piece of land, which is bound by the existing Pacific Highway to the south, and the 9(a) Roads (Main Roads Proposed) zone to the northwest and northeast. The proposed development includes the location of the spine road access from the Pacific Highway, a small component of car park and drainage facilities associated with the proposed Highway Service Centre within this zone. The use of the land for a road, carpark, landscaping and drainage basin is considered to be part of the overall use characterised as development for the purposes of a Service Station & Refreshment room (Highway Service Centre) which is permissible within the zone.

The Service Station & Refreshment room (Highway Service Centre) will not detract from the rural character of the locality, and in this instance the road is not of a design or appearance such that it could be considered a road and culvert/bridge out of character with a rural environment at the urban interface.

The Service Station & Refreshment room (Highway Service Centre) being a permissible use in the zone is considered to be a reasonable land use.

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The Service Station & Refreshment room (Highway Service Centre) will not create any unreasonable or uneconomic demands for the provision or extension of public amenities or services.

Clause 9(7) enables Council to grant consent to the development if it is satisfied that the overall use of proposed Lot 1 for the purposes of a HSC is integral to the overall use of the subject land, and therefore part and parcel of the overall Service Station & Refreshment Room definition and complies with the objectives for the purposes of permissibility within the 9(a), 1(a2) & 1(b) zones.

In relation to the use of the residue lot being proposed Lot 2, the proponent has not indicated what the intended use is for the land however has clearly stated that it will have no relationship with the HSC on proposed Lot 1 other than a portion of the spine road access from the Pacific Highway to the HSC traverses the south western corner of the subject lot.

**Clause 11 Subdivision of land within Zone No. 1(a2) and 1(b)**

The proposal involves the subdivision of land in the 1(a2) Rural (Coastal Lands Agriculture) and 1(b) Rural (Secondary Agricultural Land) zones. The minimum lot size within the 1(a2) & 1(b) zones is 40ha. The proposal will create allotments of 7.3 hectares and 9.72 hectares in area.

The purpose of the subdivision is to accommodate the HSC on a separately created lot.

The residue lot will have no practical relationship to the allotment containing the HSC, with each physically separated by floodway and road.

A SEPP No.1 objection was lodged to seek a variation to this 40ha minimum standard. The Department of Planning granted its concurrence to this variation.

**Clause 15 Development adjoining arterial roads**

The existing Pacific Highway is classified as a main or arterial road. The proposed HSC will not constitute a traffic hazard nor unreasonably reduce the capacity and efficiency of the Pacific Highway.

The HSC is appropriately located adjacent to the Ballina Bypass and the Pacific Highway and is designed to predominantly cater for the needs of highway users.

**Clause 17 Height of buildings**

The proposed development exceeds the 6.4m height reference, and its highest points will be less than 13m.

It is considered that the height of the buildings are such that they will not affect the amenity of adjoining properties by overshadowing or loss of privacy, given the distances of these buildings from property boundaries, and will not result in views being obstructed from adjacent buildings or public spaces. Nor will the height of the proposed buildings in the development impact on the scenic or landscape quality of the locality, on the basis that there is a substantial setback of buildings to boundaries, and the generous landscaping is proposed within these setback areas.



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**Clause 36 Development on land identified on Acid Sulfate Soils Planning Maps**

This Clause has been adequately addressed within the reports accompanying the Development Application and the relevant section within this report and subsequent conditions of approval as recommended.

**Clause 37 Controls for advertising**

This Clause has been adequately addressed within the reports accompanying the Development Application and the relevant section within this report..

**Environmental Planning & Assessment Model Provisions 1980 Model Provisions (MP) Clause 5 (1) & (2) Consideration of certain applications**

Clauses 5(1) relates to the visual impact that the development will have on any waterway or main road, and Clause 5(2) relates to the approval of a service station and the associated traffic impacts. These have been adequately addressed within the body of this report and the reports accompanying the Development Application. The aesthetic impact of the development will not detract from the area when taking into account the adjacent Highway (ByPass infrastructure) and the rural cane land.

**MP Clause 9 Main Roads**

This Clause relates to the proposed works on the Pacific Highway to enable the construction of the flood culverts. This matter has been adequately addressed within the reports accompanying the Development Application and within the body of this report and recommended conditions of consent.

**MP Clause 19 Service Stations or Car Repair Stations**

The applicant has requested Council to consider varying the development standard to permit the proposed development to be located within 90 metres from a main road. Both the RTA and Planning NSW support the establishment of the HSC in its proposed location. The requested variation to the standard has been supported by the RTA on the grounds that the development covers a significant area; and the proposed access from the Ballina Bypass and the Pacific Highway will not adversely impact upon the operation of the two roads.

**MP Clause 30 Services**

Council's Civil Services Group have commented on the proposal and are satisfied that subject to complying with conditions of consent that the proposal can be adequately serviced with essential infrastructure.

**MP Clause 34 Flood Prone Land**

A comprehensive assessment has been undertaken for the subject site by BMT WBM Pty Ltd. This study uses the modelling framework adopted by Council for its overall flood planning strategy. BMT WBM Pty Ltd have commented on the revised design that is currently before Council for consideration and have commented as follows:

*The design proposal for the Highway Service Centre has considered the recommendations outlined in the Flood Impact Assessment for Lot1 DP238009, Ballina (ref:R16995.001.00.doc) report (January 2009). The proposal includes additional culverts (not assessed in January 2009) allowing access across the floodway. The design details of the additional culverts have not been specified in the drawings. If the flow capacity of these additional*

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*culverts match or exceed the capacity of the West Ballina Flood Relief culverts / floodway, the additional culverts will not cause significant additional flood impact. This will need to be discussed further with the proponent.*

*The primary outcome of the January 2009 assessment was that the development should allow for a floodway running through the site connecting into the West Ballina Flood Relief culverts. The proposed design has incorporated this recommendation. The assessment considered a fill level of RL2.6m (AHD), while the proposed development includes fill to RL3.2m (AHD). The higher fill level in the proposed design will not change the conclusions of the January 2009 assessment, because the assessed level of RL2.6m (AHD) is higher than the 100 year level.*

*The West Ballina Flood Relief culverts were modelled assuming 10 cells each 3.6m wide by 1.2m high, fitted with flood gates. This is consistent with the proposed design and is appropriately sized to receive flow from the 40m wide floodway.*

Council has recommended the imposition of relevant conditions of consent requiring compliance with the requirements of the BMT WBM Report.

#### **West Ballina Planning Study and Structure Plan**

Council adopted the West Ballina Planning Study and Structure Plan at its Extraordinary Meeting held on 17 March 2011. This Structure Plan was prepared to establish a strategic approach and guidance for future land use (both urban and non urban) in the plan study area.

The locality examined in the study and plan includes the land bounded by North Creek Canal, the Pacific Highway Ballina Bypass alignment and the two arms of the existing Pacific Highway. The Structure Plan identifies the following future land use framework for the locality;

#### *Area A - Highway Service Centre*

The land the subject of this development application is identified within the structure plan as having potential for the location of a highway service centre

#### **Draft Ballina Local Environment Plan**

The proposed zoning for the subject land under the Draft LEP is RU2 – Rural Landscape zone. The proposed development is also defined as a "Highway Service Centre" under the Draft BLEP.

**"highway service centre** means a building or place used as a facility to provide refreshments and vehicle services to highway users, and which may include any one or more of the following:

- (a) restaurants or take away food and drink premises,
- (b) service stations and facilities for emergency vehicle towing and repairs,
- (c) parking for vehicles,
- (d) rest areas and public amenities."

Clause 2.5 of the Draft LEP provides:

*"2.5 Additional permitted uses for particular land*

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*(1) Development on particular land that is described or referred to in Schedule 1 may be carried out:*

*(a) with consent, or*

*(b) if the Schedule so provides—without consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.*

*(2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan."*

Clause 8 of Schedule 1 of the Draft LEP provides:

*"Erection of a highway service centre at West Ballina*

*(1) This clause applies to land located directly adjacent to the Ballina Pacific Highway Bypass alignment at the Teven Road interchange.*

*(2) Development for the purpose of a highway service centre is permitted with consent."*

Part 2 Clause 2.5 and Clause 8 of Schedule 1 of the Draft LEP have the effect of making the proposed development (a highway service centre) permissible with development consent. This is regardless of any contrary provisions in the Land Use Table or any other provisions of the Draft LEP.

The North Coast Regional Strategy identifies the need for well placed Highway Service Centres (with limited defined uses) located along the Pacific Highway corridor that service the growing needs of tourist traffic in locations such as is proposed. Planning NSW via a Section 117D Minister's Direction and the RTA via the Infrastructure SEPP have defined the specific components that a Highway Service Centre is to contain the following:

Segregated fuel plazas for light and heavy vehicles; Segregated parking for light and heavy vehicles (25 heavy vehicle spaces as minimum); Service Station; Shop servicing the travelling public; Restaurant/s (sit down); Food and drink outlets (fast food); Amenities (toilets, baby change room, showers); Waste disposal facilities; Public telephone/s; Tourist information booth and Public obligation free rest area facility.

The proposed HSC contains these facilities and hence complies with the above requirements.

#### **Regional Environmental Plans**

##### **North Coast Regional Environmental Plan (REP)**

The proposal is generally consistent with clause 30 objectives of the NCREP in relation to coastal planning. The proposal will not unreasonably detract from the visual quality of the coastal environment due to its physical separation, and the proposed development is located on a parcel of land for a landuse that is compatible with the Ballina Bypass and the Teven Interchange.

In accordance with clause 32B – Development control (coastal lands) of the NCREP, the proposed development will not impede public access to the foreshore (confined to specific points) and will not cause significant overshadowing of any open space areas.

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In relation to Clauses 49 and 81 of the NCREP (i.e. buildings over 14 metres in height), the proposed HSC buildings are not more than 14 metres in height, and are not considered to have a detrimental impact on the scenic locality due to the nature of the developed landscape in this locality. The design and development's proposed bulk and scale would fit with the adjacent highway structures.

**State Environmental Planning Policies (SEPP)**

**SEPP 1 – Variations to Development Standards**

The subject application requires the concurrence of the following government Departments:

- Planning NSW in relation to the proposed subdivision to create a below minimum lot size parcel of rural (residue) land; and
- Roads Traffic Authority (RTA) to permit the establishment of a service station within 90 metres of a classified road.

The proponent lodged an objection pursuant to State Environmental Planning Policy No 1 – Development Standards, in order to address the fact that the proposed allotments will be less than 40 hectares in area and the proposed HSC is to be located within 90 metres of a classified road.

The proponent states that the development standard is considered both unnecessary and unreasonable in the circumstances for the following reasons:

- a) the site contains only a small portion of land zoned 1(a2) Rural (Coastal Lands Agriculture) along its north western edge and a small portion zoned 1(b) Rural (Secondary Agricultural Land) along its southern boundary. Each area is small in size and isolated by property boundaries and other zones, and are not of practical size, so as to accommodate viable agricultural practices; and
- b) the site is now (strategically) acknowledged as the desired location for a highway service centre and the small portions of land zoned 1(a2) Rural (Coastal Lands Agriculture) and 1(b) Rural (Secondary Agricultural Land) are adjacent to the proposed non-rural land uses (the HSC, Ballina Highway Bypass and existing Pacific Highway).

The proposed subdivision will not hinder the attainment of the objectives of the Environmental Planning and Assessment Act 1979, in that the proposal is providing a facility that if developed will provide a necessary service (food, tourist, fuel and motor repairs) to motorists using both the Pacific Highway Bypass and existing Pacific Highway, thereby promoting the social welfare of the wider community, as well as providing an economic boost to the more immediate (Ballina) community.

Planning NSW by letter dated 22 December 2010 granted concurrence to the creation of a lot of land that is below the 40 ha minimum area for the purposes of establishing a Highway Service Centre, Such is consistent with the Department's Highway Service Centre policy and meets the intention of the Minister's Section 117 direction 5.4.

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The RTA has issued its concurrence to the establishment of a Highway Service Centre within 90 metres of a classified road as the minor variation does not adversely impact upon the operation of the relevant classified roads.

Council has assessed the SEPP 1 requested variations to the development standards in relation to the creation of a parcel of rural land below the minimum 40ha lot size and the location of the HSC within 90 metres of a classified road and is satisfied that the objectives of the relevant zones are attained despite the breach of standards.

**SEPP 33 – Hazardous and Offensive Development**

A Multi-Level Risk Assessment (MLRA) has been completed for the proposed development by Myros Design Pty Ltd. Plotting frequency against occurrence it can be seen that risk to the local community is negligible for the proposed development.

The Preliminary Hazard Analysis (PHA) confirmed that the proposed development will satisfy the requirements of the Workcover NSW Authority and be in accordance with the Department of Planning Guidelines for the installation of LPG on automotive retail outlets, now incorporated in AS/NZS 1596:2008.

**SEPP 55 – Contaminated Land**

A Preliminary Contaminated Lands Assessment has been conducted. The assessment indicates that contamination is expected to be confined to shallow soil given the presence of the impermeable clay at shallow depths, which is therefore expected to protect groundwater. Nevertheless the results of the Contamination Assessment (Precise Environmental 2007) indicates that there is no requirement for remediation of contaminants as they are below the adopted trigger levels (for commercial/industrial use) for the proposed land use, however further site assessment for contamination should be undertaken if a more sensitive land use is proposed.

**SEPP 64 – Advertising & Signage.**

The proposed signage consists of two (2) pylon signs 12.5 metres high (with a message board being 2.5 metres above ground) and 3.0 metres wide. The signs are in keeping with the specific requirements as stipulated within the Clause 8 of SEPP 64. The signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and (b) and satisfies the assessment criteria specified. In particular the proposed signage:

- is in keeping with the bulk and height of the proposed buildings on site;
- is in keeping with the character of the surrounding locality;
- does not detract from the amenity or visual quality of any environmentally sensitive area;
- does not protrude above surrounding buildings;
- will be illuminated by in facing lights reducing glare; and
- will not impact upon traffic safety for highway users.

The RTA have issued concurrence in accordance with Clause 18 of SEPP 64 in relation to the proposed advertising signage.

**SEPP 71 – Coastal Protection**

The development will not contravene any aims of SEPP 71, as the proposed HSC is not located within close proximity to the coastal foreshore. However while it is located in close proximity to the Emigrant Creek, it is unlikely to have an adverse impact upon the creek system.

The development will not adversely affect any significant scenic qualities of the existing coastline.

The building footprints do not contain any known threatened species and will not have any significant adverse impacts on any known existing wildlife corridors.

The development will not create any conflict between land based and water-based coastal activities.

The locality has no known significant heritage or archaeological significance in relation to shipwrecks.

The development will not have any identifiable impact to water quality of existing coastal waterbodies, particularly Emigrant Creek.

Consequently, as also identified for the purposes of the NCREP, no significant cumulative impacts on the environment can be identified.

**Ballina Shire Combined Development Control Plan (DCP)**

A number of chapters (and Policy Statements) within the Ballina Shire Combined Development Control Plan (BSCDCP) have specific relevance to the proposed development.

***Chapter 1 (Policy Statement 2) - Car Parking and Access***

Council's Civil Services Group have assessed the development in relation to compliance with the parking and access requirements of BSCDCP and raise no objection to the proposal subject to the imposition of a number of conditions of consent.

***Comments arising from the Local Traffic Development Committee Meeting of 14 March 2011***

The application was referred to the Local Development Traffic Committee. This application was also considered at a regional level.

The Committee considered a report provided addressing the issue of carparking access, layout and the traffic control at exit point onto Old Pacific Highway (River Street).

The Committee raised concern in relation to the proposed access entry/exit from the Old Pacific Highway being via a signalised intersection or a roundabout. The RTA, Council and the proponent have agreed that the most suitable form of intersection treatment was the establishment of a roundabout.

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In relation to the development overall, the RTA and the Ballina Bypass Alliance (BBA) have raised no concerns that could not be addressed via conditions of consent.

**Chapter 1 (Policy Statement 6) - Landscaping Guidelines**

The proponent has indicated that landscaping along the western and southern edges will play a key role in the design of the proposed development. It is to be used to help create a precinct that reflects the significance of the site as a 'gateway' into the township of Ballina, providing motorists with a sense of 'entry'.

The proposed landscaping is to:

- comprise local indigenous species to provide a visual reflection of Ballina and its surrounding landscapes;
- distinguish key vehicular routes with the HSC;
- provide shade to outdoor spaces and car parking areas and to soften built form;
- provide separation to vehicle routes and parking areas while maintaining sightlines for vehicles and pedestrians (acknowledging the need to promote safety and security);
- comprise a limited amount of species so as to create a strong and distinct character;
- comprise plants that are hardy, have longevity and have low water requirements;
- adopt a planting layout and selection of species that is appropriate to the function of the site and maintains sightlines for both vehicular and pedestrian circulation; and
- recognise that different areas of the HSC have different functions – with landscape responses to reinforce these differences.

The proposal complies with Council's requirements in relation to the proposed landscaping of the subject development.

**Chapter 1 (Policy Statement 11) - Flood Levels**

The proposal complies with Council required minimum fill and floor levels. These will be subject to compliance with numerous conditions of consent.

**Chapter 14-Advertising Structures**

In relation to advertising structures associated with the development proposal, the proponent has indicated that two signs are proposed as part of the development (as well as a number of 'graphic signage panels' integrated into the design of individual buildings). These are to be located in the north western and south western portions of the site. The sign structures have been designed sympathetically with the proposed buildings, and their purpose will be to provide for advertisements which provide a simple, clear message conveying the particulars of tenants present within the development.

Council's assessment has concluded that the proposed signs will not impact on the semi rural character of the locality, given they are to be located within the site and form part of the development; will adjoin busy roads having a strong visual presence; will not block views or vistas; will reduce the need for multiple (individual) signs for tenants; and, will not unduly distract users of the existing Pacific Highway or Ballina Highway Bypass.

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The proposed signs are not incompatible with the “desired future character” of the locality; given that the surrounding lands are used for highway associated uses.

The proposed signs will be “multiple identification signs”, identifying a number of tenants within the development, and providing a coordinated approach to signs for the site.

No assessment objection is raised to the proposed advertising signage subject to compliance with particular conditions of consent.

The RTA has given its concurrence to the proposed signage in accordance with the requirements of SEPP No. 64.

**Chapter 18 (Rural Land)**

**Zone Objectives** – Adequately addressed within the body of this report.

**Agricultural Production Potential** – Existing Lot 22 and proposed lot 2 have the potential to be used for agricultural purposes. It should be mentioned that Council's Draft LEP proposes to zone this lot as RU2 (deleting the existing Residential 2(a) zoned portion of the lot) and hence the land can be reasonably be used for agricultural pursuits. It is considered that the establishment of the HSC will not adversely impact upon the agricultural use of the surrounding land.

**Farm Build-up** - Not applicable.

**Land Use Conflict**- Clause 3.1 aims to minimise potential impacts from different land uses. Limited land-use conflict will occur between the HSC and the agricultural use of proposed lot 2 and the adjacent agricultural lot to the north. The proposed development is well separated from the adjoining uses both physically and with proposed landscaping and the construction of the proposed floodway separating the proposed lots .

**Allotment Size and Shape**- Satisfactory for the proposed land uses.

**Vehicular Access** - Each proposed allotment will have road access via the road proposed in the south of the site, which connects to the existing Pacific Highway.

**Services** - Reticulated services are available to both allotments.

**Water Use** – Council is satisfied that the proponent has adequately addressed this issue within the documents supporting the development application.

**Boundary Adjustment** – N/A

**Roads & Traffic**

Council's Civil Services Group and the RTA have assessed and commented on the proposal and raise no objection to the development proposal subject to the imposition of a number of conditions of consent.



***Pedestrian Movement & Connection***

Pedestrian access is provided within the proposed carpark with safe controlled access to all the facilities.

In relation to external pedestrian and cyclist movements, it is recommended that Council require the construction of the following footpath networks;

- A footpath from the interior of their site to the existing network at Emanuel Anglican College. The footpath is to be a 2m wide shared path.
- Pedestrian linkages at the new intersection to allow pedestrian movements to the west and to the north. The intersection needs to be designed accordingly such that circulation is not an issue and so that pedestrians have good sight lines and minimal walking distances.

***Site access, internal driveways and parking design***

The site can be accessed from two locations. The first is a dedicated slip lane off the Ballina Bypass and the second is via a new four way intersection at the Pacific Highway boat ramp. It should be mentioned that the current speed limit of 60kmph along the existing Pacific Highway will not be changed as a result of the proposed development

The Roads and Traffic Authority (RTA), has given written approval in relation to the concept proposal for access to the Ballina Bypass shown on plan B 1009/02/P01 prepared by Cardno dated April 2009.

The RTA further stated that access to the existing Pacific Highway should be via a roundabout designed to AUSTROADS rural roundabout dimensions. This roundabout will need to be designed to ensure unimpeded access to Emigrant Creek Road, the Service Centre access and the existing Pacific Highway.

The roundabout is to be located at the boat ramp to allow easy access to the boat ramp and residences on the southern side of the intersection. The intersection location has been determined so as not to constrict traffic and cause congestion.

The proposed HSC includes the construction of a 399 space sealed carpark within the centre of the site, catering for both heavy and light vehicles.

The HSC will have an internal road network that will service the site and facilitate property access to the north. The internal road network has been designed to separate on-site movements of trucks, coaches and cars. Each of these movements is separated from one another. Trucks can enter the site from the north (Bypass exit) refuel, park and then exit the site by proceeding down the spine road to the proposed roundabout intersection on the existing Pacific Highway. Trucks can also enter from the proposed roundabout on the existing Pacific Highway, traverse the spine road and manoeuvre to refuel/park. The exit is the same as for entry.

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Bus circulation has been designed for access from the Pacific Highway (Bypass) and via the spine road from the old Pacific Highway. Buses then have the opportunity to circulate within the HSC hardstand areas and set down passengers in designated locations.

Cars may enter the site from the north directly off the Bypass or from the proposed roundabout on the existing Pacific Highway and can access the site via the secondary spine road.

Some loading areas will obscure parking spaces whilst unloading is occurring. While this has previously occurred in conjunction with other applications in the Shire, these developments have adopted a Vehicle Management Plan (VMP). A VMP shall be required for the site and shall include provisions identifying responsible parties, driver expectations, delivery times, punitive repercussions, unloading practices and parking management.

Council's Civil Services Group have assessed the proposed traffic and parking requirements and are satisfied that the application can be supported subject to the imposition of a number of conditions of consent.

#### ***Provision for Service and Delivery Vehicles***

Included in the proposed HSC development is adequate service and delivery areas to cater for the proposed uses of the site.

It is also proposed to provide waste receptacle areas for each of the buildings. The design of these areas adequately caters for access to the relevant areas via a large rigid vehicle.

#### ***Parking Numbers***

Council's parking requirements are described in Combined Development Control Plan Chapter 1 – Urban Land, Policy Statement No 2, Car Parking and Access (DCP).

The proposed carparking area identified within the HSC development complies with Council's DCP, requiring the provision of 392 spaces on-site.

The following requirements apply:

Council Requirement		Proposed Gross Floor Areas	Required Number of Parking Spaces
Use	Rate		
Petrol and fast food	15 spaces per 100m <sup>2</sup> gross floor area.	678 m <sup>2</sup>	<b>101.7</b>
Auto Repair	6 spaces per bay	6 bays	<b>36</b>
Building E Restaurant	15 spaces per 100m <sup>2</sup> gross floor area.	732 m <sup>2</sup>	<b>109.8</b>
Building F Restaurant	15 spaces per 100m <sup>2</sup> gross floor area.	437 m <sup>2</sup>	<b>65.6</b>
Building G Restaurant	15 spaces per 100m <sup>2</sup> gross floor area.	524 m <sup>2</sup>	<b>78.6</b>
		Total required	<b>392</b>

The applicant is proposing 399 car parks for the site. This represents a surplus of 7 car parks.

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The applicant is proposing 10 disabled car parks. This number of car parks is acceptable. The applicant has not specified whether these car parks are covered. It is recommended that it be conditioned that these car parks are covered.

Council's Civil Services Group has assessed the proposed parking requirements and are satisfied that the application can be supported subject to the imposition of a number of conditions of consent.

**Geotechnical considerations**

The geotechnical constraints of the site have been investigated and reports submitted within the SEE. The SEE contains recommendations made in order to address any potential impact arising from geotechnical instability. It is proposed to preload the subject site with fill to attain stable levels that will enable the development to proceed.

Council has referred the relevant reports within the SEE to Robert Carr & Associates (RCA) Australia for peer review.

RCA Australia have commented on the geotechnical assessment and the subsequent engineering components in relation to the preloading of the site and have stated that they have no objections to the development proceeding subject to the imposition of a number of performance based requirements being imposed as conditions of consent.

**Water and Sewer Servicing**

***Water***

West Ballina is supplied from Pine Avenue Reservoir. A 200mm water main follows the existing Pacific Highway along the southern boundary of Lot 11 DP101575.

The property can be served with a new service connected to the existing 200mm main. Only one service connection per lot is possible. A hydraulic design of the domestic and fire water services will need to be provided by the proponent.

***Sewer***

The West Ballina Sewerage Catchment is currently pumped to the Lennox Head STW. Sufficient capacity is available in the Pacific Highway Pump Station for additional demand. Gravity sewer is not available to the HSC development. A Pressure Sewer System has been provided for the Smith Drive Industrial Area with a pressure main running along the southern side of the existing Pacific Highway and along Kalinga Street to the Pacific Highway Pump Station. No allowance was made for the HSC development to connect to this pressure main in the design of the pressure sewer system.

As this development cannot be served by gravity sewer and has not been included in the current Smith Drive Pressure Sewer System the HSC development will be required to connect to the sewer by constructing its own pump station and rising main to the West Ballina Pump Station at its own cost.

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The Cardno Report- Ballina Highway Service Centre – Water Supply and Sewerage Analysis November 2010, Job No B1009-003 has calculated the demand for the BHSC development at 26.7ET (Equivalent Tenements)

Council has reviewed the demands using rates from the Water Directorate Section 64 Determinations of Equivalent Tenements Guidelines May 2009, and based on the floor areas provided by Cardno, has determined that the calculated demand that the development generates has been under-estimated and the actual total Demand for the proposed development is 65ET. It has been recommended that Council condition the development based upon the revised figure of 65 ET demand.

**Stormwater and Drainage**

The proposed development will result in extensive areas of impervious material, and given the proximity of Emigrant Creek, measures to control the quality and quantity of stormwater runoff from the site are proposed. This includes the use of on-site detention in the form of rainwater tanks detaining runoff from roofed areas, and a detention basin incorporated into the stormwater drainage network, located in the southern part of the site. Vegetated bio-retention swales are also proposed throughout the site to treat stormwater.

All surface water drainage, including waste collection, treatment and disposal, on the covered forecourt area must be designed to incorporate the requirements of NSW EPA Environmental Guidelines: Surface Water Management on the Covered Forecourt Areas of Service Stations.

The plans and specifications of all proposed stormwater management controls will be required to be submitted to Council for approval as part of the Construction Certificate.

**Flora and Fauna**

Council's Environmental Scientist has reviewed the proposed development in relation to impacts upon flora and fauna and has provided the following comments:

"Whilst it is unknown whether Grass Owls do forage at the site, given that the development is located at the western end of Lot 11 any impact to the specie's foraging patterns are expected to be minimal. The above conclusion is made for the following reasons;

- If Grass Owls forage on Lot 11 it is likely they access the site by flying over the Pacific Highway through a 140m wide vegetated gap between the existing developments (Sunmaid Caravan Park and Riverbend developments). This flyway is to be retained.
- Under the draft BLEP a 300m wide agricultural zoned (RU2) corridor which adjoins the abovementioned flyway is to be retained between the service centre and the existing Riverbend development.
- The proposed Conditions of Consent for this development prevent the filling of this land, thus it will be utilised for agricultural pursuits in turn preserving potential foraging habitat.

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- 56ha of the specie's preferred foraging and roosting habitat occurs on the adjacent Lot 4 Burns Point Ferry Road. Under the draft BLEP, Lot 4 is to be zoned RU2, however, this proposed zoning is under review, to further reflect the existing ecological attributes of the site.

Consequently, based on the above reasoning it is concluded that the proposed development will not have a significant adverse impact on the local Grass Owl population. Given the above assessment the development application is supported with no specific Conditions of Consent considered warranted in relation to ecology."

In relation to the removal of a number of mangroves within the proposed flood channel, the Department of Industry & Investment have stated that any harm or damage to marine vegetation in association with the floodway works will be assessed within the scope of the permit to be issued by Department.

**Noise**

Modelling of predicted traffic impacts from existing and proposed road networks over the development site has been undertaken.

Council's Environmental Health Section has reviewed the application and commented on the proposal and are of the opinion that no adverse impact from road traffic noise is expected at commercial buildings adjacent to the proposed Ballina Bypass.

Construction activities are unlikely to result in noise levels greater than 5 dB(A) above background with the operation of the existing Pacific Highway during daytime hours. Noise generating activities will be adequately controlled by recommended conditions of consent.

Operational noise from proposed activities will be generally limited to various service dock and carparking activity in locations as shown on the development plan. Noise from carparking will generally relate to both staff and general public carparking provided.

It is proposed that the service centre will operate 24 hours, 7 days a week, while the auto and truck repair centres will principally operate within conventional business hours: i.e. Monday to Friday 8.30 am to 5.00pm and Saturday 8.30am to 12:00pm.

In conclusion, traffic, construction, and industrial/operational noise impacts for the proposed development can be adequately managed through conditional approval.

**Land Use Conflicts**

Potential Land use Conflicts exist between the proposed development and the residents of Ballina Waterfront Village and Tourist Park and Riverbend Development. Proposed filling and increase in background noise levels are matters of potential Land use Conflict. The latest noise assessment for the proposed development, Acoustic Assessment Update Ballina Highway Service Centre (Cardno v3 21 January 2011) confirms that both the construction and operation of the development will not impact on existing sensitive receptors due to the contribution of traffic noise to the existing acoustic environment and that predicted from the Pacific Highway in the year 2026.

**External Lighting Impacts**

There are concerns with the impact of external flood lighting and heavy vehicle lighting on the Riverbend development and Ballina Waterfront Village and Tourist Park. All external lighting to be installed and operated on site shall comply with Australian Standard AS 4282:1997 "Control of the Ostrusive Effects of Outdoor Lighting". Details demonstrating compliance with these requirements are to be submitted and approved by Council prior to the release of the Construction Certificate.

In addition the applicant is to engage a suitably qualified person to assess the impacts of lights from heavy vehicles entering the proposed Ballina Highway Centre on residents within the Riverbend development and Ballina Waterfront Village and Tourist Park. A report which details any potential lighting impacts and resultant mitigation measures is to be submitted to Council for approval prior to issue of Construction Certificate.

**Acid Sulfate Soil Management**

Council's Environmental Health section has commented on the proposal and has provided the following comments:

*A plan showing the location of the ASS treatment pads, and surface water monitoring points will be required prior to provision of a construction certificate.*

*The proposed floodway construction has not been considered in the Acid Sulphate Soil Investigation (Precise Environmental 2007). While it is acknowledged that that it is unlikely that shallow earth earthworks for the construction of the proposed floodway will disturb potential acid sulphate soils, these activities will require management to treat the existing acidity which is present in the upper soil profile.*

*Council will be imposing a condition of consent requiring the applicant to submit a revised Acid Sulfate Soil Management Plan to include assessment and treatment of excavations associated with the proposed floodway.*

**Crime Prevention**

The proposal was referred to the NSW Police Crime Prevention Officer who carried out an assessment using Crime Prevention through Environmental Design Principals.

NSW Police raise no objections to the proposed development subject to the imposition of a number of conditions of consent.

**Coastal Hazard & Sea Level Change/Rise**

Council Civil Services Group has reviewed the documentation submitted with the proposed development in relation to flooding and sea level change and has provided the following comments:

*"The cumulative flood impact assessment for the development predicts a maximum of 7mm increase immediately upstream of the development for an existing 1:100 year event, and 17 mm increase immediately upstream of the development for a 2100 year (climate change) 1:100 year event. The*

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*cumulative flood impact assessment results, using the integrated flood model, remain below the current Council policy of less than 50 mm impact.”*

**Proposed Conditions of Consent**

A copy of the initial Draft Conditions of consent were forwarded to the proponent for comment due to the complexity and size of the proposed development. This was considered to be an appropriate time to for the proponent to raise any issues with the initial draft conditions. Following this consultation with the proponent the draft conditions were reviewed and the conditions of consent finalised as recommended at the end of this report.

Council assessment identified the need for certain off-site works to be commenced in a chronological sequence prior to the on-site works proceeding.

These works included the following: (which should be completed prior to any additional material being imported to the site with regard to filling of the site)

- Construction and commissioning of the floodway culvert bank under the Pacific Highway and associated road works;
- Construction and commissioning of the temporary access to the site on the Pacific Highway; and
- Establishment of the floodway on the site.

Consequently, the report recommends the granting of a Deferred Commencement Consent whereby a number of deferred commencement conditions must be met, before the consent becomes operational.

Draft Condition No. 1.1 requires the proponent to obtain all necessary approvals from the relevant Public Authorities in relation to the construction of Off-site works associated with the establishment of the flood culverts under the Pacific Highway.

The requirement to submit a Construction Sequencing Plan within DCC No. 1.2 will establish the timing of certain aspects of the On-site and Off-site works and enable Council to ensure that works are done in the required order. The proponent recommended that the CSP would address Council's requirements in relation to the scheduling and completion of certain On-site and Off-site works.

The remainder of the Deferred Commencement Conditions are considered to be of such importance that Council needs to approve them prior to the consent being activated.

It is the opinion of the assessment officers that rather than require the applicant to submit the additional details outlined within the conditions prior to the matter being reported to Council, that the additional information could be adequately dealt with as Deferred Commencement Conditions. This approach gives the proponent certainty in relation to the approval of the Development Application.

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***Roads Contribution Levies.***

The proponent has requested Council to delete the roads contribution associated with the condition for the payment of Section 94 levies for the proposed development.

The grounds for this request were predicated upon the contention that the majority of the traffic generated by the HSC will access and exit the site via the Ballina Bypass. No justification in the form of a traffic study was submitted in support of this contention. Without a specific traffic study being done, Council is not in a position to support this request. Council's Roads Contributions Plan 2010 does however discount the contribution payable for commercial development based on trip generation from outside the Shire.

It is acknowledged there is potential for reassessing the Section 94 roads contribution component, based on shared trips, however the proponent has not provided Council with specific traffic information to enable a discount to be applied.

The proponent has also stated that the substantial off-site works being the establishment of a set of flood culverts under the Pacific Highway, the associated floodway and the construction of a roundabout on the Pacific Highway (to enable access to the site) has a public benefit and this should also be taken into account when calculating the appropriate levies.

Council cannot take these public benefit matters into account unless the proponent has formally applied to Council to do so. To date no application has been received and such an application should be accompanied by a report justifying the extent of public benefit applied for.

Based on the above, it is considered that the proposed Section 94 Roads Contributions are applicable.

Whilst Council's assessment officers are of the opinion that the roads contribution component of the levies payable by the proponent is a significant proportion of the levies payable the proponent has a number of options available to request Council to review the contributions condition either as a Review of Determination under Section 82A of the Environmental Planning and Assessment Act 1979 (as amended), as a Section 96 amendment to the consent, or as a request to Council to defer consideration of the application until the applicant has submitted further justification in the form of traffic reports etc. supporting their contentions that the roads contributions for the proposed development have been calculated incorrectly.

**Additional Matter**

By way of letter dated 23 May 2011 the RTA have advised the Mayor that they are considering utilising the current Ballina Bypass construction management site adjacent to the Bruxner/Pacific Highway interchange for future use as a heavy vehicle parking area. This has no direct bearing on the Highway Service Centre application, however a copy of the RTA's letter is attached for the information of Council.



**Conclusion**

The application before Council for determination is one which has a significant history in relation to the previous application submitted to Council that was subsequently withdrawn prior to determination. The current application addresses all statutory and policy requirements and warrants the support of the Council.

Further the proponents, via a number of amendments to the originally submitted plans, have addressed previous concerns raised by Council's Technical Officers and/or objectors.

The proposed development is consistent with Council's current requirements and any impact is considered reasonable in the circumstances for a Highway Service Centre in the proposed location subject to compliance with specific recommended conditions of consent.

**RECOMMENDATIONS**

That development application DA 2010/962 to Undertake the Construction of a Highway Service Centre comprising Service Station, associated Fast Food Restaurants, Auto Repair Centre, associated Vehicular Accesses (including a round-about intersection on the existing Pacific Highway alignment), Car and Truck Parking, Infrastructure Works, Filling, Landscaping, Earthworks and Advertising Structures upon Lot 11 DP 1011575, Pacific Highway (now known as No. 565-589 River Street, West Ballina) and a Two (2) Lot Subdivision (Lot 1 – Highway Service Centre & Lot 2 – Agricultural Residue be **issued Deferred Commencement Consent** subject to the imposition of relevant planning, engineering and building construction conditions.

**Attachment(s)**

1. Locality Plan
2. Site Plan
3. Elevation Plan
4. Submissions
5. Draft Conditions of Consent
6. Letter from RTA

ATTACHMENT NO. 1.

