



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, 40 Cherry Street, Ballina on **Thursday 23 May 2013 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 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.

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1. Australian National Anthem

The National Anthem will be performed by Emmanuel Anglican College.

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 Wednesday 24 April 2013 were distributed with the business paper.

A copy of the Minutes of the Extraordinary Meeting of Ballina Shire Council held on Tuesday 30 April 2013 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Wednesday 24 April 2013.

That Council confirms the Minutes of the Extraordinary Meeting of Ballina Shire Council held on Tuesday 30 April 2013.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil Items

8.1 DA 2012/369 - Erection of Store and Special Purpose Subdivision

8. Regulatory Services Group Report

8.1 DA 2012/369 - Erection of Store and Special Purpose Subdivision

Applicant	Mr M J Hickey & Ms M Harley
Property	Lot 60, DP 1067198, No. 13 Fig Tree Hill Drive, Lennox Head
Proposal	To Undertake the Erection of a General Store and Associated Residence and Special Purpose Subdivision.
Effect of Planning Instrument	The land is zoned No. 1(b) Rural (Secondary Agricultural Land) Zone under the provisions of the Ballina LEP 1987
Locality Plan	The subject land is depicted on the locality plan attached.

Introduction

Lot 60 DP 1067198 (the site), is an allotment formed in the rural residential subdivision of Bareena Farm, Fig Tree Hill Drive, Lennox Head (development applications 1983/206 and 1994/91). Lot 60 is a split parcel of land with one of the sections located to the west of the Fig Tree Hill Drive residential allotments comprising 5.807 hectares. This section of land is rural in nature consisting of grassland and small clusters of vegetation.

The second section of Lot 60 is located at the entrance of Fig Tree Hill Drive comprising 1,222m². This section is moderately to heavily vegetated and is the location of a former cattle dip site (Spoors dip site). Lot 60 in its entirety enjoys a single dwelling entitlement which has not been utilised to date.

This application proposes to subdivide the 5.807 hectare portion from the 1,222m² portion. The proposal maintains the dwelling entitlement on the larger 5.807 hectare portion of land. On the smaller 1,222m² portion a double storey building is proposed to be used as a general store on the ground floor and an associated dwelling on the upper floor.

Ten car parking spaces are proposed and they are to be accessed via an unnamed service road that forms an intersection with Fig Tree Hill Drive. For further detail refer to the **attached** plans.

The ground floor of the proposed building will consist of:

- General store with a floor area of 207m²
- 1 double garage (for the dwelling)
- Sealed driveway and car parking spaces x10
- 1 x accessible toilet and facilities and
- Landscaping and an outdoor 'patio' area for customers.

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Level 2 of the proposed building will consist of:

- Dwelling with a floor area of 180m² and comprising 3 bedrooms, 1 bathroom, 1 water closet and 1 ensuite.

Council has provided the applicant with the following opportunities for requested information:

- 19 December 2012, Council request further information including; Flora and Fauna Report, Contaminated Land Stage 1 Report, Land Use Conflict Risk Assessment (LUCRA), Noise Assessment Report. This information was requested to be provided by 28 January 2013.
- 25 January 2013, the applicant requests additional time to submit information requested. An extension was granted to 11 February 2013.
- 8 February 2013, the applicant requests a further extension of time to the 25 March 2013. An extension was granted to 25 March 2013.
- Information was received by Council regarding the application on 25 March 2013, 11 April 2013, 14 April 2013 and 5 May 2013, however the previously requested Contaminated Land Stage 1 Report, Land Use Conflict Risk Assessment (LUCRA) and Noise Assessment Report are not provided, and/or do not satisfy the requirements of current policy.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition in accordance with Council's Public Notification Policy. The application was on exhibition from 18 September 2012 to 15 October 2012 and received 41 submissions objecting to the proposed development. A copy of the submissions is attached. One confidential submission was received and this has been provided to Councillors only under separate cover. The main grounds of objection can be summarised as follows:

- The development is not in character with the locality
- Concerns relating to a development on a dip site
- Loss of residential amenity (noise) and increased traffic.

Further discussion on the above matters is contained in this report.

Applicable Planning Instruments

Savings provision relating to development applications

The site is zoned 1(b) – Rural Secondary Agricultural Land under BLEP 1987. Although BLEP 2012 was adopted by Ballina Shire on 4 February 2012 the savings provision of BLEP 2012 clause 1.8 apply to the assessment of the subject application as the application, was received on 7 August 2012.

Clause 1.8 states:

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

Notwithstanding this, the BLEP 2012 has been considered by reference in the assessment of this application in accordance with Section 79C of the Act.

Ballina Local Environmental Plan 1987 (BLEP 1987)

The subject land is zoned 1(b) – Rural Secondary Agricultural Land in the BLEP 1987.

Under the provisions of the BLEP 1987 a special purpose subdivision and a general store is permissible with consent. However, special purpose subdivided land must not be used for a dwelling-house. Therefore, the permissibility of the dwelling component of the general store is questionable (even if considered in conjunction with a general store). This matter is further discussed under Clause 11(5) Special Purpose Subdivision of this report.

The following definitions from the BLEP 1987 and the Model Provisions 1980 are pertinent to the subject application:

"General store" means a shop used for the sale by retail of general merchandise and which may include the facilities of a post office.

"Dwelling-house" means a building containing 1 but not more than 1 dwelling.

The objectives of the 1(b) – Rural Secondary Agricultural Land 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*

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.*

8.1 DA 2012/369 - Erection of Store and Special Purpose Subdivision

The proposed general store and the further subdivision of land to create two allotments (particularly one at 1,222m²) are generally not consistent with both the primary and secondary objectives of the zone and are more aligned with development associated in residential zones. Although the allotments along Fig Tree Hill Drive are more typical of a low density rural residential estate, (repealed from the BLEP 1987 in 1995), the surrounding lands (including the larger 5.807 hectare portion of this application) are more typical of primary rural land.

Clause 11 – Subdivision

Clause 11(2) of the BLEP states:

(2) Except as provided by subclause (3), the council may consent to the subdivision of land referred to in subclause (1) only where the area of each allotment to be created by the subdivision is not less than:

*(a) in the case of land within Zone No 1 (a1) or 7 (i)—20 hectares, and
(b) in the case of land within Zone No 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f) or 7 (l)—40 hectares.*

The proposed subdivision is to create two allotments; proposed Lot 102 consisting of 5.807 hectares and proposed Lot 101 consisting of 1,222m². Both lots are under the minimum lot size for the zoning (being 40 hectares). Therefore, the application required a State Environmental Planning Policy No 1—Development Standards application (SEPP 1). The SEPP 1 was referred to the Department of Planning and Infrastructure (DOPI) for concurrence. The DOPI granted concurrence and supplied the following comments:

“The Department's only role in this SEPP 1 application has been to assess the creation of the 5.8 hectare residue lot. The permissibility and merits of the special purposes subdivision, general store and associated dwelling are matters for the Council to consider and have not been considered by the Department.

Following consideration of the application, concurrence has been granted to vary the 40 hectare development standard contained in clause 11(2)(b) of the Council's planning instrument to permit creation of a residue lot with an area of 5.8 hectares. Concurrence was granted in this instance for the following reasons:

(a) to allow the Council to consider, on its merits, the development application for special purpose subdivision for a lawful purpose, which is permitted under clause 11(5) of Council's planning instrument and

(b) the two part-lots are small, and widely separated from each other. In the context of the surrounding subdivision, strict compliance with the 40 ha development standard in terms of the proposed 5.8 residue lot would be unreasonable.”

Further discussion regarding the SEPP 1 application can be found under the State Environmental Planning Policies section of this report.

Clause 11(5) Special Purpose Subdivision

Clause 11(5) of the BLEP 1987 states:

- (5) Where land within Zone No 1(b):*
- (a) is lawfully used for a purpose other than a dwelling-house, bed and breakfast establishment or agriculture; or*
 - (b) may lawfully be used for a purpose other than a dwelling-house, bed and breakfast establishment or agriculture by reason of a development consent granted in respect of that use,*

the council may consent to the excision of that land for that purpose.

A special purpose subdivision is being proposed under Clause 11(5)(b) of the BLEP 1987. The applicant requests approval for a general store which can be considered by this clause, however the general store also involves an upper storey residential dwelling-house, making part of the building a separate dwelling-house.

Therefore compliance with this clause is not achieved as the clause specifically states that the lot is to be lawfully used for a purpose other than a dwelling-house.

The floor area of the proposed dwelling-house is significant (216m² including the double garage) when compared to the floor area of the general store 207m² (i.e. approximately the same area).

Consequently, it is not considered that the proposed dwelling-house land use is ancillary or incidental to the general store land use, but rather needs to be considered as a separate land use in its own right.

Clause 17 - Limitation on building height

Clause 17 provides a general height restriction of 6.4 metres for buildings in Ballina Shire. The height of the proposed building is 5.48 metres. The proposed building will not significantly obstruct views from adjacent buildings.

Clause 36 - Development on land identified on Acid Sulfate Soils Planning Maps.

The proposed development is located on land identified with acid sulfate soils Class 5. It is not anticipated that the development would lower the watertable or result in the discharge of acid water.

Model Provisions 1980

Clause 28

- (1) A person shall not erect or use a building for the purposes of a general store on an allotment of land within a rural zone, where such allotment has a frontage to a main or arterial road or is less than 800 metres from any other allotment of land on which is erected a shop or a general store.*

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(2) A person shall not erect or use a building for the purposes of a general store in any zone referred to in subclause (1) of this clause closer to the alignment of a road other than the building line fixed in respect of any adjoining premises or, where no such building line has been fixed, closer to such alignment than the distance generally applying in respect of other premises having frontage to such road.

Clause 28 of the Model Provisions is a clause specifically included to address the development of general stores.

The proposed development does not have a frontage to a main or arterial road nor is it less than 800 metres from a shop or general store.

The proposed development complies with this clause.

North Coast Regional Environmental Plan (REP)

Clause 12 of the North Coast REP requires consideration of the potential impact of development on agricultural activities.

The proposed development would not cause a loss of prime crop or pasture land and is deemed to generally satisfy clause 12 of the REP.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 1—Development Standards (SEPP 1)

As previously outlined in this report, a SEPP 1 was submitted by the applicant to vary the 40 hectare development standard contained in clause 11(2)(b) of the BLEP 1987 to permit creation of proposed Lot 102 consisting of 5.807 hectares and proposed Lot 101 consisting of 1,222m².

Concurrence for the SEPP 1 objection was granted by the DOPI.

The DOPI specifically outlined that they only considered the creation of the 5.8 hectare residue lot. The permissibility and merits of the special purposes subdivision, general store and associated dwelling, are matters for Council to consider and these have not been considered by the DOPI.

SEPP 55 – Remediation of Land (SEPP 55)

SEPP 55 outlines that Council must not consent to any development unless it has considered whether the site is contaminated, and if it is contaminated, whether the site is suitable in its contaminated state or whether remediation is necessary for the proposed development.

As the subject site, (i.e. in close proximity to the proposed general store and dwelling) is identified as containing a former cattle dip site, (SPOORS dip site), the site would be considered as contaminated.

In accordance with the provisions of SEPP 55 the proponent must prove that the land is, or can be made, suitable for the proposed use.

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The applicant has provided archival documentation in regard to the dip site, however this has not satisfied the requirements of current state policy in regard to SEPP 55 and Council's Policy Management of Land Contamination.

Council's Environmental Health Section provided the following comments in relation to land contamination:

"The applicant to date has provided limited information relating to land contamination on the site. Information dated October 1993 from the Cattle Tick Dip Site Management Committee – NSW Agriculture to the previous owner of the subject site has been provided to Council. This information states that testing was undertaken on the subject site for arsenic and DDT in 1993 and that soil in the dip yard is to be avoided.

Before determining this application consideration must be given to the impact of the dip site and any other previous activities on site, in particular how the dip bath area is to be managed on site for any current and future uses of the site.

Council's Environmental Health Section provided information to the applicant on the 9 May 2012 as to the issues regarding land contamination and as to what information should accompany the development application for assessment.

The applicant was requested to submit a Stage 1 – Preliminary Investigation and a Stage 2 – Detailed Investigation at a minimum for consideration.

This information includes an assessment of the risks posed by the contaminants to health and the environment and therefore determine the action, if any, that is required to remediate the site for the purposes of the intended use.

Subsequently the development application did not contain adequate information on land contamination and hence the request for additional information.

The additional information on land contamination has not been provided to date and in the absence of this information Council cannot adequately determine the suitability of the subject site for the proposed use."

State Environmental Planning Policy (Rural Lands) 2008 – (Rural Lands SEPP)

The following matters are points of consideration required by the Rural Lands SEPP in determining development applications for rural subdivisions or rural dwellings:

(a) the existing uses and approved uses of land in the vicinity of the development

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- (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development*
- (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b)*
- (d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone*
- (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The above considerations have not been adequately addressed by the applicant and are elements that would be included in a Land Use Conflict Risk Assessment (LUCRA).

This is further discussed in the following section.

Ballina Shire Development Control Plan 2012

Chapter 2 – General and Environmental Considerations

Part 3.1 Land Use Conflicts

A LUCRA was requested from the applicant due to concerns with land use conflicts arising from the introduction of a retail use in a rural residential area.

These concerns included:

- Having a General Store in the vicinity of land used for grazing and rural residential living
- Increased traffic and noise emanating from the operation of the General Store
- Loss of rural residential amenity for those in the locality.

A LUCRA was not provided by a suitably qualified consultant however the applicant has provided the following comments:

“The proposed General Store is slightly less than 50 metres from the only boundary of a paddock that ever grazes livestock. All 270 degrees occupying the other 3 sides are of 2 dedicated roads and 1 residence set well back.

In the only paddock referred to, in which livestock might graze occasionally, I have only ever seen hobby horse riders practicing with their mounts but not closer than 100 m from the subject DA location, which is in thus harmony with such guideline.”

A Noise Assessment Report was also requested. The report was to address the following matters:

- All plant and equipment to be installed (including refrigeration and air-conditioning)
- The loading and unloading activities

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- Traffic noise generated and
- Hours of operation.

A Noise Assessment Report was not provided by a suitably qualified consultant, however, the applicant provided the following comments:

"... I am as yet unable to identify a suitably qualified consultant that would necessarily be acceptable to your officers, but will keep looking. Re: A noise assessment report the questions foreshadowed are, in the nature of a business model sense, too early to conclude on, since this DA necessitates the owner feeling his/her way in reaching, what would normally be, last stage conclusions, viz: internal equipment to match an accompanying budget.

These Reports you require at this stage in the DA tortuous process, feel as though the process is unreasonable.

You are requested to consider proceeding, at the least for the time being, without the reports considered to be needed immediately, by this paragraph."

Comment:

Without the requested reports it is difficult to accurately ascertain the potential acoustic impact on the closest residents to the proposed general store. The closest sensitive receiver (residential property) is approximately 20 metres from the proposed general store building, car park and patron seating.

Considering the existing external background noise in the locality is relatively low, the possible acoustic impact as a result of the development is considerable (particularly due to proposed outdoor seating, mechanical plant and vehicles associated with the general store). From past experience and similar applications, Council's Environmental Health Section concurs that negative acoustic impact is likely.

3.19 Car Parking and Access

Car parking requirements for retail premises are 1 space per 40m² of Gross Floor Area (GFA). The store's proposed GFA is 207m² equating to 6 car parking spaces for the store. The residency requires two spaces resulting in a total car parking requirement of eight car parking spaces. The application includes ten car parking spaces, one of which is disabled car space and therefore complies.

Chapter 7 – Rural Living and Activity

3.2 Rural Subdivision

3.2.3 Development Controls

- All subdivision applications must demonstrate that the relevant zone objectives set out in the BLEP will be achieved*
- Subdivision of land must not result in a significant diminution of the agricultural production potential of the land the subject of the application or land nearby or must result in a significant environmental benefit*

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- iii. Subdivision which achieves or promotes farm build-up must not provide an ability for additional allotments, or dwellings to be created in the future*
- iv. Subdivision design must not create a situation where the relative position of existing or proposed improvements and rural activities on the new lots is likely to result in land use conflict*
- v. The size and shape of the proposed new allotments and their setting must be suited to their intended use*
- vi. Vehicular access to and within the proposed allotments must be adequate having regard for the intended use of the land. The creation of allotments solely dependent on rights of carriageway for access provision is discouraged*
- vii. Applications for subdivision must provide an assessment of the need for harvesting and storage of surface or groundwater for use on the allotments and*
- viii. Applications for subdivision are to be supported with sufficient information detailing that all relevant infrastructure, including on-site sewage management systems, are able to be wholly contained within each proposed allotment.*

Comment:

The applicant has not specifically addressed all of these matters. As outlined previously in this report the proposed subdivision is at odds with the objectives of the BLEP 1987. In regards to point (iv) & (v) and as previously mentioned, land use conflict has been identified as a potential issue with the proposed development.

As the application is lacking in the provision of a Noise Assessment Report further assessment was not possible.

Ballina Local Environmental Plan 2012 (BLEP 2012)

Under the BLEP 2012, the site is zoned RU1 Primary Production. Unlike the BLEP 1987, “*general stores*” are not specifically defined in the BLEP 2012. The relevant definition for this land use is a “*retail premises*”.

Retail premises are prohibited on land zoned RU1 Primary Production for the purposes of the BLEP 2012.

The RU1 Primary Production zone objectives are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*
- *To enable development that is compatible with the rural and environmental nature of the land.*

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- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

The proposed general store and the further subdivision of land are not consistent with the objectives of RU1 Primary Production. The proposal is not considered consistent with the general character of the locality nor maintaining the rural character of the locality and both of the proposed allotments are well below the 40 hectare minimum outlined in clause 4.1 (being 1222m² and 5.807ha in area).

Further Matters

Built and natural environment

The development would have an impact on the streetscape as the site is currently well vegetated and in a prominent location at the bottom of and entrance to Fig Tree Hill Drive. It is considered that the building would also have an impact on the adjoining properties and add a commercial element to the estate.

The impact on the scenic or landscape quality of the locality would be minimal however, and any negative visual impact could be softened with landscaping.

Acoustic impact on neighbouring properties as a result of the development from refrigeration and air-conditioning units, loading and unloading activities and traffic is a potential significant impact. Without a Noise Assessment Report this is considered detrimental to the environment (refer also to Amenity/Noise section of this report).

A general store may be considered reasonable within the Fig Tree Hill Drive estate, considering it is a small scale low density residential estate rather than primary agricultural land. However the majority of the submissions from the residents within the estate objected to the proposal suggesting that introducing a retail element in the locality is not required and is out of character.

The BLEP 1987 does provide the opportunity for a general store within the zone, however it is the only permissible commercial land use within the zone.

The subject site is now zoned RU1 Primary Production under the BLEP 2012 and a general store (or similar development) is now not permissible in this zone. The applicant is clearly relying on the savings provisions of the BLEP 1987 for the permissibility of the general store, however Council must still consider if this land use can reasonably co-exist with the locality.

As is evident by this report, the application has not suitably demonstrated this despite such reliance on the savings provision for consideration in the first instance.

Access, Transport and Traffic

Proposed Lot 101 is on the corner of Fig Tree Hill Drive and an unnamed service road. Proposed Lot 102 fronts Fig Tree Hill Drive. Fig Tree Hill Drive is constructed to a suitable standard to service the proposed development whilst the unnamed service road would require upgrading. Council's Pedestrian Access and Mobility Plan (PAMP) does not identify Fig Tree Hill Drive as an area requiring a footpath. It is not anticipated that the general store would generate significant road activity as it is most likely that the store would be predominantly used by Fig Tree Hill Drive residents.

Concerns were raised as to the safety of pedestrians (particularly school children) as the development would increase road activity yet no footpaths are available or proposed in Fig Tree Hill Drive. As mentioned it is not anticipated that the general store would generate significant road activity as it is most likely that the store would be predominantly used by Fig Tree Hill Drive residents.

The applicant had the following comment in response to this point:

"Predominately, was a concern about TRAFFIC & SAFETY, yet more about the present and future intersection, in and out of Ross Lane, over and above that of added egress and ingress to Figtree Hill Drive occasioned by a General Store turn-off.

I agree that such a Ross Lane concern is AUTHENTIC. I can only address the latter as my letter above attempts to. There is frequent speeding up or down the main FTH internal road which I have observed, and they are not all hoons.

The concerns are from residents with school CHILDREN in mind, parents, grand parents, or simply caring residents, matters not. They express VALID concern. It can be mitigated by strict signage to a major extent.

The General Store is a timely excuse to vent frustration at a persistent concern, not yet addressed. Others, a minority, simply don't want any signs telling them how to behave."

Council's Development Engineers have outlined that if the development was approved, roadwork would be required to widen the intersection between Fig Tree Hill Drive and the service road bounding the subject site. There would, however be no widening of Fig Tree Hill Drive or footpaths as conditions of consent. Council's PAMP does not identify Fig Tree Hill Drive as an area requiring a footpath.

Amenity/Noise

Concerns were raised that the introduction of a commercial element into the locality would detract from the current rural residential amenity. The applicant provided the following in response:

"The store offers to minimise both traffic noise as it is with local vehicles at present revving up to charge up the hill about which there is complaint, by erection of overdue signage, hopefully installed by Council at this Applicant's cost.

8.1 DA 2012/369 - Erection of Store and Special Purpose Subdivision

The General Store will be unobtrusive and deliberately as quiet as possible.

Please consider the store management will be a family, with children or grandchildren, equally interested in living there in harmony with as many residents as are claiming to seek the same amenity."

As previously stated, without the requested reports it is difficult to accurately ascertain the extent of acoustic impact on the closest residents to the proposed general store. From past experience and similar cases Council's Environmental Health Section concurs that it is likely that the store would have a negative acoustic impact upon neighbouring properties.

Ecological Impact

The applicant has provided ecological assessments that have not identified any significant or endangered flora or fauna communities. Council's Environmental Scientist provided the following comment:

"Whilst, the Geolink report failed to identify the occurrence of Hairy Joint Grass (HJG) growing on Lot 60, these findings are inconsistent with the previous Landmark Ecological Services report. Consequently, if the subject development application is approved the applicant will be required to undertake additional HJG surveys. This requirement will be applied via a condition of consent.

In regards to the vegetated part of Lot 60, I accept the findings of the submitted (James Warren) report. Whilst, the vegetation on site contains a range of native rainforest trees, it would appear a significant amount of the vegetation has been planted over the last 20 to 30 years.

This vegetation is not endemic to the site and is of limited Conservation Significance. Consequently, I do not object to the removal of the subject vegetation. If the development application is approved Conditions of Consent relating to the manner in which vegetation removal is to be undertaken will be applied."

Conclusion

In determining a development application, a consent authority is to take into consideration both current and any proposed planning instruments. The application was lodged prior to the implementation of the BLEP 2012, however consideration needs to be given to the fact that a general store is now a prohibited use in land zoned RU1 Rural Landscape in the BLEP 2012.

Although the BLEP 1987 allows for the consideration of a general store with consent, a special purpose subdivision allotment must not be utilised for a dwelling-house.

As the application involves a special purpose subdivision for the general store and a dwelling-house (with a similar floor area to that of the general store) the proposal is not considered permissible under the BLEP 1987.

Despite these permissibility matters, without documentation from suitably qualified consultant(s) in regards to potential land use conflict, acoustic impact

8.1 DA 2012/369 - Erection of Store and Special Purpose Subdivision

and land contamination a comprehensive assessment cannot be undertaken to confirm if any impacts or the use of the site is reasonable as proposed.

These matters, coupled with the general lack of support for the proposed development, as indicated by submissions received, raises questions in regards to whether the development is in the best interest of the public.

A general store could provide employment and convenience that some would consider beneficial, however due to the close proximity of Lennox Head shops and retail services to the estate and the rural residential character of the locality, it is questionable that a general store is an appropriate land use for the site.

Options

- A. Approve:** The application could be approved with conditions, however this is not recommended due to permissibility issues, deficiencies of requested information and potential negative impacts.
- B. Refuse:** This is the recommended option for the various reasons outlined within this report.
- C. Defer:** The matter could be deferred until qualified reports are produced and negative impacts possibly mitigated. This is not recommended due to the already protracted element of the application, and opportunities given to the applicant regarding the remaining deficiencies and non compliance issues. This is also not recommended due to permissibility issues.

RECOMMENDATION

That Development Application 2012/369 be **REFUSED** for the following reasons:

1. The proposal has not suitably addressed relevant matters under Section 79C of the Environment Planning and Assessment Act 1979
2. The proposal is inconsistent with the objectives of Zone No. 1(b) – Rural (Secondary Agricultural Land) of the Ballina Local Environmental Plan 1987
3. A Special purpose subdivision under the provisions of the BLEP 1987 prohibits the creation of an allotment for a dwelling-house
4. A general store is a prohibited use in the current RU1 Rural Landscape zone of the BLEP 2012
5. The proposal is inconsistent with Council's 2012 Development Control Plan(s)
6. The proposal is not in the public interest.

Attachment(s)

1. DA 2012/369 Locality Plan
2. DA 2012/369 Site Plan
3. DA 2012/369 Architectural Plans
4. DA 2012/369 Submissions
5. Confidential Submission (Under separate cover)

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

Applicant	Paul Gray Architect Pty Limited
Property	Lot 1 DP 836234, No. 152 Newrybar Swamp Road, Lennox Head
Proposal	To undertake the erection of a further storage depot/shed for the purpose of the bulk storage of plant and equipment associated with the existing scaffold business including an additional vehicular access (and an additional two tip trucks not associated with the scaffold business).
Effect of Planning Instrument	The land is zoned 1(a2) – Rural (Coastal Lands Agriculture) under the provisions of the Ballina Local Environmental Plan 1987 – note the Ballina Local Environmental Plan 2012 is not directly relevant to the assessment of this application.
Locality Plan	The subject land is depicted on the locality plan attached.

Introduction

Council is in receipt of DA 2012/499 seeking consent for the construction of a further storage depot for the purpose of expanding and intensifying the bulk storage of plant and equipment associated with the existing scaffold business (and accommodating an additional two tip trucks not associated with the scaffold business) on the subject land.

In late 2006 Council approved the bulk store for the scaffold business (DA 2006/496) that currently exists on the site notwithstanding it was establishing an urban type industrial use in a rural locality.

The existing approved operations are located on a 3.1 hectare parcel of rural land and are substantial in scale being:

- A depot with a small site office, smaller sheds, three 6m x 2.4m shipping containers and a filled, concreted surfaced compound area of approximately 4,000m² (DA 2006/496)
- Two larger storage sheds being one 20m x 15m, i.e. 300m², one 20m x 8m, i.e. 160m² and associated common car park area for 10 vehicles (DA 2006/496)
- One large storage shed 10m x 15m, i.e. 150m² and a filled concreted surface compound area of approximately 1,400m² (DA 2009/47)
- An octagonal covered outdoor area with amenities and associated filled area of approximately 1,250m² (DA 2010/736)

The proposed DA 2012/499 seeks to expand the existing bulk storage area via an additional 400m² shed outbuilding and further filled and hardstand

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

curtilage of approximately 2,200m² to the east of the existing approved areas with an additional associated loop access driveway (refer attached plans).

If approved, this would result in increasing both the approved floor areas and filled open storage areas by approximately one third.

A site plan indicating the existing buildings, filled areas and the proposed shed outbuilding and area to be filled (and concreted) is attached. The site plan indicates some larger floor areas than that consented to and these possible discrepancies will be investigated separately to this report.

The exact location for the storage of the additional two tip trucks separate to the scaffold business has not been confirmed, however it is assumed that they will be stored within the proposed shed outbuilding or its immediate filled curtilage (if approved) along with scaffolding, trucks and ancillary equipment.

The area for the proposed development is the lower lying eastern portion of the site which is clear of vegetation.

The existing development has been extensively landscaped.

At its Ordinary Meeting of 28 March 2013 Council resolved:

"That DA 2012/499 be dealt with by the elected Council and not by delegated authority."

Consequently, this report is for determination of Council based on the submitted information.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

Both the originally submitted proposal for a 1,200m² storage shed (comprising 30 smaller individual sheds similar to self storage units) in the north-eastern corner of the site, and the third revision to the submitted plans that form part of this report were placed on public exhibition (over two separate periods).

Two submissions objecting to the proposal were received (copies attached).

Both of these were from the same person, with the first objection predominately relating to the separate unauthorised use of the site as a truck depot for the storage of approximately 25 heavy vehicles associated with the Ewingsdale to Lennox Head Highway upgrade works.

The second objection related directly to the revised proposed development and the objection was based on the following matters:

- Over development of the site
- Industrial uses of proposed storage depot
- History of industrial use without Council approval
- Traffic access and safety issues
- Pollution during extreme weather events
- Precedent effect for further development on this site
- Start of an attempt for an industrial enclave (by stages)
- This is the third revised plan which gives an insight into future “industrial park” plans
- The owner has previously leased out storage areas for other businesses not associated with the scaffold business without approval, therefore the storage shed is unlikely to be utilised for/by the scaffold business
- Traffic safety concerns
- Flooding and stormwater/pollution concerns

These matters will be considered throughout this report, however the matters relating to the storage of the heavy vehicles will not be considered in this report. The heavy vehicle issue has been appropriately dealt with in relation to the subject land.

Applicable Planning Instruments

Although the Ballina Local Environmental Plan 2012 (BLEP 2012) is currently in force, the application was lodged prior to the gazettal of the BLEP 2012.

The savings provisions of Clause 1.8A of the BLEP 2012 require this application to be determined as if the BLEP 2012 had not commenced. This report will only have regard for the relevant provisions of the Ballina Local Environmental Plan 1987 (BLEP 1987), however commentary will also be provided in relation to the BLEP 2012.

Report

The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979, and is recommended for refusal.

The proposed expansion of the existing storage depot (even if directly associated with the existing scaffold business) will not be compatible with the rural locality due to its industrial nature. The further substantial filling required for the storage shed, storage curtilage and additional access may also have direct adverse impacts on the flooding characteristics of the locality.

Consequently, the further expansion of the development on land zoned for agricultural purposes is not considered to be in the public interest as it has the potential to impact existing and/or future rural uses on other nearby land.

Zoning

Ballina Local Environmental Plan 1987 (BLEP 1987)

The zoning of the site under the BLEP 1987 is:
Zone No. 1 (a2) - Rural (Coastal Lands Agriculture)

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

Under the provisions of the BLEP 1987, Council may have regard for a 'bulk store' within the 1(a2) Zone, but only if it is satisfied that such a use is consistent with the objectives of the zone.

A "bulk store" is defined as:

"... a building or place used for the bulk storage of goods, where the goods stored or to be stored are not required for use in a shop or commercial premises on the same parcel of land or on adjoining land in the same ownership."

Council would generally have more cause to consider a 'rural industry' within the 1(a2) zone, which is defined as;

"...handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality."

The proposed extensions to the existing scaffold "bulk store" is not consistent with this definition as the scaffolding business does not relate to any rural purpose upon the site nor within the locality.

The primary objectives of the 1(a2) zone are –

(a) to regulate the subdivision and use of land within this zone to ensure that-

- (i) land actually used for purposeful agricultural production, particularly sugar cane; or*
- (ii) land having the potential for purposeful agricultural production, particularly sugar cane,*

is developed in a manner to optimise its production potential, as advised from time to time by the Department of Agriculture; and

Comment:

Notwithstanding the existing approved use on the site and the limited area of the allotment (being 3.1 hectares), the proposal is considered to be of a nature that is better suited to Industrial zoned land. Additionally, the proposed scaffolding expansion further limits and does not optimise the agricultural production potential of the land.

This is in direct conflict with the primary objectives (a)(i) and (ii) of the zone.

(b) to enable development which is ancillary to the agricultural use of land within the zone (particularly dwelling-houses, rural workers' dwellings and rural industries) where such facilities do not significantly reduce the production potential of the subject land or other land in the locality.

Comment:

The existing allotment was not created for agricultural uses but for rural residential purpose as a concessional allotment. The scaffolding storage and depot, and particularly its further proposed expansion is not ancillary to the agricultural use of the locality.

This is in direct conflict with the primary objective of the zone.

The secondary objective 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.

Comment:

The proposal does not maintain the rural character of the locality as it is inherently industrial in nature and would result in a consolidating and expanding incongruous land use in this rural environment.

When considered on its own, the bulk store will not likely result in the creation of unreasonable and uneconomic demands for the provision or extension of public amenities and services.

Notwithstanding this, as advised above, the proposed use is more typically located within urban/industrial locations.

The exceptions to these objectives are –

(a) development of land within the zone for public works and services, outside the parameters specified in the primary and secondary objectives, subject to the impact on agricultural resources being minimised, where practical; and

(b) development of land for extractive resource purposes.”

Comment:

These land use(s) are clearly not proposed and therefore these exceptions cannot be relied on. Consequently, whilst the establishment of a bulk store is permissible in the 1(a2) Zone, it is considered that the proposal is not consistent with the objectives of the zone on various grounds and therefore is inconsistent with clause 9(7) of the BLEP 1987.

Ballina Local Environmental Plan 2012 (BLEP 2012)

The subject site is located on land that is zoned RU2 – Rural Landscape under the BLEP 2012.

‘Bulk store’ is not a defined land use in the BLEP 2012. Under the BLEP 2012 provisions, the definition of the proposed development is ‘storage premises’ which is:

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.

And a 'depot' which is:

a building or place used for the storage (but not for sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.

Both a 'Storage premises' and 'depot' are listed as a permissible land use in the RU2 zone and can therefore be considered on the subject land in accordance with the provisions of the BLEP 2012 which require consideration against the objectives of the zone.

The objectives of the RU2 zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base
- To maintain the rural 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 or enhancement (or both) of the natural environment if 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 or uneconomic demands (or both) for the provision of public infrastructure.

For reasons outlined specifically in this report, and similar to the 1(a2) Zone objectives of the BLEP 1987, the proposal is inconsistent with the objectives of the RU2 zone (also being a rural zone).

North Coast Regional Environmental Plan (NCREP)

Clause 12 of Division 1 of the NCREP reads as follows:

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

The impacts of the proposed development on the use of adjoining or adjacent agricultural land have been considered in the assessment of this development proposal.

It is considered that while efforts can be made to minimise and mitigate against the amenity impacts of the proposal on adjoining and adjacent properties, the proposed development, in general, represents the expansion of an industrial land use that should not be supported on rural land and has the potential for land use conflicts to be generated. As will be demonstrated in this report, flood modeling has confirmed that the further proposed filling will create impacts on surrounding lands, primarily utilised for agriculture (sugar cane).

Therefore, although the proposal will not result in any substantial loss of prime crop or pasture land on the subject land, it could impact on such loss in the locality.

State Environmental Planning Policy (Rural Lands) 2008

The subject land, being within the 1(a2) Zone under the BLEP 1987 is subject to the provisions of this SEPP.

Clause 2 contains the aims of the SEPP which are:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The proposed development, involving the expansion of a bulk store for a scaffold business is not considered to be an orderly or economic use or development of rural lands for rural and related purposes.

Although Council has not received complaints regarding land use conflict (other than the recent unauthorised use as a truck depot), and the current activities can be minimised to reduce impacts, as the business grows on this site it is considered that this aspect of the development will become more difficult to regulate and curtail.

Other similar uses would be encouraged to locate on other smaller holdings in the area and this in combination would potentially result in unreasonable land use conflicts in the broader locality.

In consideration of the above, the proposed development cannot be considered to be consistent with the aims of this SEPP.

Clause 7 of the SEPP also contains a series of Rural Planning Principles as follows:

- a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

- b) 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,*
- c) 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,*
- d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- e) 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,*
- f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It needs to be considered whether or not the expansion of a bulk store (although already established) for a scaffolding business and associated hardstand area is a productive and sustainable economic activity in a rural area.

Concern is raised over the impacts the proposed development will have on the agricultural potential of the subject land and the cumulative impacts on surrounding low lying rural lands should this development be further expanded over time.

Council has set aside, through land use planning controls, certain areas of the Shire that it considers suitable for particular land uses. Thus it also needs to be considered whether or not the proposed development, would achieve a balance in meeting the social, economic and environmental interests of the community.

While these planning principles are broad, it can be generally considered that the expansion of a bulk store for the scaffold business, being essentially a light industrial land use, is not suitable in a rural area and cannot be consistent with these planning principles.

External Roads and Traffic

Newrybar Swamp Road is a 7.5 metre wide bitumen sealed rural road with no kerb. The traffic generation by this proposal alone is not expected to increase significantly with the shed proposing to store scaffolding equipment and two tip trucks (not associated with the scaffolding business).

The existing external road network is constructed to a suitable standard to service the proposed development.

Newrybar Swamp Road is currently used as a local road to service rural lands (dwellings), an indoor recreational facility, and haulage road for sand quarries, cane farms and a route for trucks transporting material for the Tintenbar to Ewingsdale highway upgrade works.

The driveway location on Newrybar Swamp Road is situated part way along a reverse curve. The sight lines are 90 metres each way. The sight lines have been maximised given the location of the driveway. This segment of Newrybar Swamp Road has a low traffic volume with respect to passenger vehicles and is primarily commercial vehicles.

The pavement surface is in good condition around the entrance and does not require upgrading.

Filling/Flood Impact

As requested by Council, the applicant undertook a flood assessment for the site with respect to filling and its impact on the floodplain as a whole. The flood assessment was conducted on the originally proposed plans (filling of the north eastern corner). Despite this, there was a base level of information relating to the site and its flood behaviour. During the preliminary assessment it became apparent that the location of the site was at a key point in the floodplain.

The site is next to a culvert in Newrybar Swamp Road that drains water from the north west to the south east. This is a balancing culvert that helps stabilise flows in the area. The applicant's engineer reviewed the information and opted not to continue with flood modelling of the site, as the remaining eastern undeveloped portion of the applicant's land forms an overland flow corridor. Any filling in this location will have negative impacts on the surrounding floodplain. The impacts have not been modelled as part of this development application.

Whilst the flood model does not reflect the latest submitted plans of the development application it is reasonable to conclude that the proposed filling of land is within the flow corridor and any filling would negatively influence and impact flood levels in the area.

Until such time as more detailed flood information is provided and approved for both the site and the floodplain, this application as submitted cannot be supported.

Upon receipt of the flood modelling which was not supportive of the application, it was suggested that the application be withdrawn. Despite this, the applicant requested that the application proceed to determination.

Stormwater Management

A stormwater plan has not been provided, however the requirements of Development Control Plan 2 - Stormwater Management have been addressed. The applicant is proposing to treat and dispose of stormwater onsite. This is generally acceptable as the site is predominantly sand.

As previously outlined in the report, in its current state the site is very low and is susceptible to localised flooding during heavy rain events. Filling of the site needs to occur to stop the frequency of localised flooding. Additionally stormwater needs to be managed in such a way that it does not impact on the receiving water courses (the open drain adjoining the property and the union drain) and adjoining lands.

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

When considering the flooding information with the stormwater requirements there is a disparity between the two. In order to support this application the site needs to be filled but the site perhaps should not be filled due to the functioning of the road culvert and its proximity to the receiving drainage channel. The scale of the proposed filling would potentially impact the floodplain and change its behaviour.

If the development were to proceed the applicant would need to undertake a detailed flood analysis of the filling of the site.

Following this the applicant may need to model the whole floodplain and investigate mitigative options. In addition to any mitigation being listed the applicant may need to partially fund floodplain remediation works.

Any filling works would, however negate any potential impact on acid sulfate soils from stormwater drainage works.

Overdevelopment

Having regard for the existing approved development, the rural locality and the constraints of the site outlined in this report, it is considered reasonable to conclude that the proposed development is an overdevelopment of the site and that the existing development has exhausted or outgrown the site.

The further expansion of the bulk storage use is more suited to an established industrial area, rather than on this smaller, constrained agricultural holding.

Precedent for Further Development

The existing approvals on the site only relate to the use of the buildings and storage areas in association with the scaffold business.

Other commercial/industrial land uses or separate business ventures must not be conducted from the site without first obtaining appropriate approvals from Council, unless such a land use is consistent with the terms of "Exempt" development applicable at the time.

Although the originally submitted plans were more akin to a self storage facility, the plans now before Council are substantially different. Council cannot pre-empt any future intentions of the applicant and/or owner(s). It appears from the development application history of this site that the owners have developed the site in stages. This may have occurred as the scaffolding business grew, rather than some attempt to develop the site by stealth.

Council's records indicate that the only previous complaint(s) received regarding the separate leasing of areas and/or buildings to other businesses not associated with the scaffold business have been recent.

This unauthorised use of the site as a truck depot has been dealt with by Council separately and at the time of preparing this report the unauthorised use had ceased from the site.

8.2 DA 2012/499 - Expansion of Scaffold Business Storage Depot

The applicant has outlined and confirmed that the proposed shed and filled curtilage is proposed to be utilised by the existing scaffold business. Council must assess the application on this basis and without preconceived impressions that it will lead to something else.

If this application was approved and was not being operated in accordance with relevant conditions, Council could take appropriate compliance action as with any other matters within the Shire.

Notwithstanding the above, concern is raised with regard to the potential economic impacts where rural lands are optimised for the incursion of non-rural uses and how this may affect both local rural property values and the orderly take up and development of properly serviced industrial estates, particularly where rural lands may be seen as becoming available for non-rural land uses. This is likely to already be the case for this site and should not be further enhanced.

Consideration also needs to be given to whether the further expansion of this use in a rural zone is equitable, when other operators who seek to and/or are complying with the relevant land use controls may view this development as already having an unfair advantage.

Conclusion

Although Council has requested additional information from the applicant regarding the revised proposal, the applicant has not suitably addressed all of the relevant matters to allow Council to favourably assess the application.

It appears that the site has reached its capacity in relation to being a suitable area for the expansion of the scaffold business. Even if this was not the case, Council's Regulatory Services Group could not recommend any further expansion or intensification of the use due to the existing scale and incompatibility of such a land use in rural zoned lands.

This land use should be located within an approved and appropriately zoned Industrial Estate.

Further, from the flood modelling undertaken to date, it is evident that additional filling of this site may adversely impact surrounding lands and therefore, notwithstanding inconsistency with the zone objectives and other relevant legislation outlined within this report, the application cannot be supported on this ground alone.

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

Option 1

That Council REFUSE the development application, in consideration of the applicable zone objectives, the provisions of the North Coast Regional Environmental Plan, the provisions of State Environmental Planning Policy (Rural Land) 2008, the provisions of the Ballina Local Environmental Plan 2012, and the flood impacts the proposal may have on the locality, or

Option 2

That Council APPROVE the development application subject to standard conditions of consent for this type of development. Should Council elect to proceed with this option, it must be satisfied that the proposed development is consistent with the objectives of the 1(a2) – Rural (Coastal Lands Agriculture) Zone under the provisions of the Ballina Local Environmental Plan 1987, is consistent with provisions of Clause 12 of the North Coast Regional Environmental Plan, is consistent with the aims (Clause 2) and Rural Planning Principles (Clause 7) of State Environmental Planning Policy (Rural Land) 2008 and is consistent with the provisions of the Ballina Local Environmental Plan 2012 and that suitable flood protection conditions can be specified.

Option one is the recommended approach for the reasons outlined in this report.

RECOMMENDATION

That DA 2012/499 for the erection of a further storage depot/shed for the purpose of the bulk storage of plant and equipment associated with the existing scaffold business including an additional vehicular access (and an additional two tip trucks not associated with the scaffold business) on Lot 1 DP 836234, No. 152 Newrybar Swamp Road, Lennox Head be **REFUSED** for the following reasons:

1. The proposed development does not meet with and is inconsistent with the objectives of the 1(a2) – Rural (Coastal Lands Agricultural) Zone of the Ballina Local Environmental Plan 1987
2. The proposed development is inconsistent with provisions of the North Coast Regional Environmental Plan
3. The proposed development is inconsistent with the provisions of State Environmental Planning Policy (Rural Land) 2008
4. The proposed development is inconsistent with the provisions of the Ballina Local Environmental Plan 2012
5. The proposed development is inappropriately located in this rural locality and is likely to adversely impact on existing and surrounding land uses. The proposed expansion of the urban type “bulk store” and “depot” use has been identified as being incompatible with the rural locality and is better suited to an industrial zoning
6. The proposed development will create an adverse flood impact on the locality
7. The grant of consent would be contrary to the best public interest.

Attachment(s)

1. DA 2012/499 Locality Plan
2. DA 2012/499 Flood Modelling Data Overlay
3. DA 2012/499 Architectural Plans
4. DA 2012/499 Submissions

8.3 DA 2013/26 - 2 Henderson Place Lennox Head

8.3 DA 2013/26 - 2 Henderson Place Lennox Head

Applicant	D.F. Moore
Property	No. 2 Henderson Place Lennox Head
Proposal	Construction of two carports, replace existing garage and construction of front porch
Effect of Planning Instrument	The land is zoned R2, Low Density Residential under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

This application is for the carrying out of alterations and additions to an existing building comprising a residence and attached Dual Occupancy at the above property.

The Dual Occupancy was approved by Council in DA 1998/279 on 6 August 1998. The approved plans were for alterations and additions to an existing dwelling and indicate additional car parking being provided via a new single garage near the southern boundary combined with two other vehicle parking spaces; one being in front of the garage and one on the northern boundary. Both parking spaces were approved forward of the building line.

Subsequently the car space forward of the building line on the northern boundary was moved by being approved to be in front of the main building's garage.

The current proposed works comprise the construction of two new carports on the eastern elevation to provide weather protection to the two approved car spaces, the replacement of the roof cladding to the existing garage on the southern elevation, and a change in pitch to the roof to the front porch, on the northern elevation.

The construction of the new carports will involve Council approving a zero setback to Henderson Place, for the full width of the two carports, having a combined width of 12.4 metres.

The proposal was notified in writing to the adjoining owners with the owner of the premises to the immediate south of the property (No.1 Henderson Place) submitting an objection with respect to the proposed location and design of the proposed carports. No other objections have been received.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The proposal was notified in writing to eight adjoining residents of Henderson Place with one objection being received.

Applicable Planning Instruments

This application was lodged with Council on 1 February 2013.

At the time of lodgment, the Ballina Shire Council LEP (BLEP) 1987 was in force as was the 2007 Ballina Shire Combined Development Control Plan (DCP) Chapter 16 Lennox Head.

With the gazettal of the Ballina Shire LEP 2012 on 4 February 2013, this document and DCP 2012 became the principal planning documents.

However, as the 2007 DCP CH16 was in force at the time of lodgment, both that document and the new DCP 2012, Chapters 1 and 4 are to be considered with this application.

Report

The proposed Development Application seeks approval for the construction of two new carports on the eastern elevation, the replacement of the roof cladding to the existing garage on the southern elevation, and a change in pitch to the roof to the front porch, on the northern elevation.

The construction of the new carports will involve Council approving a zero setback to Henderson Place, for a substantial part of the land frontage to the eastern elevation.

The objection received relates to the construction of the proposed carports.

The following summary is provided regarding the points made by the objector:

Planning and General Control – Claims *“Council’s purpose is to strongly provide for quality residential neighbourhood development and ensure the development is compatible with the local environment..... This application is sadly void of any architectural enhancement of any kind”, and “ It is Council’s responsibility that they recognise any improper development and respond to the privacy and amenity of adjoining premises to avoid adverse impacts to that adjoining property”.*

Comment: This comment infers compliance with planning standards will achieve a good architectural outcome, which is not necessarily the case. However, the controls contained within both DCP 2012 and CH 16 attempt to address architectural design issues, particularly those controls relating to scale, bulk and coastal style design.

Development Control, Building Envelope & Setbacks – Claims *“The height and locality of any new development must comply with the provisions set out in the BLEP 2012”*

Comment: The BLEP permits an overall maximum building height of 8.5m and there are no height issues with this development, being well within the allowance.

The objector also raises the issue of setbacks and quotes DCP 2012, Chapter 4, specifically: *“Where the subject site has a frontage to a secondary street, below a plane measured over the land at 45 degrees from a point 1.8m above a parallel line measured 2.0m inside the secondary street boundary”, inferring “total structure obstruction and depleting the existing vista to the natural surroundings”*

Comment: Though not specifically referred to, this control relates more to the walls of structures and not necessarily carports, the setback for Carports is contained in Element H, under Controls – Garages and Carports.

Item (i) of Element H – *Controls Garages and Carports*, provides that “Garages and carports are to be setback at least 1m behind the building line or 5.5m from the property boundary, whichever the greater.

However, the same section of the DCP, Item (iv) provides a significant departure from that requirement, and details the circumstances that should exist where it is proposed to locate a carport forward of the building line, viz:

- No other suitable location is available behind the specified setback
- the carport is located a minimum of 900mm from the side boundary
- the frontage facing the street remains open and is not fitted with a door or enclosing device of any kind
- carport posts are setback a minimum of 2.0 metres from the street boundary
- the carport roof does not significantly impact on the streetscape
- the carport roof is not trafficable
- the carport does not exceed 33% of the width of the allotment frontage or 6m (whichever is the lesser) and
- any side and / or rear enclosure or screening is to include a minimum 50% visual permeability.

The carports proposed as part of this application meet all of the above standards with the exception of the 33% limitation on the width of the frontage, or 6m (whichever is the lesser) and the requirement for carport posts to be setback a minimum of 2.0 m from the street boundary (achievable through engineering design).

The combined width of the carports is 12.4 metres, with the maximum width of the carport permitted under DCP 2012 being 6m.

Regarding the roof lines, it is considered the carport roofs will not impact negatively upon the streetscape.

There is no reasonable room behind the building line on this site for the provision of additional garaging.

Architecture, Aesthetics and Light: The objector has again quoted the DCP controls relating to Garages and Carports (already referred to under item 2), and makes the point the carport roof *“Should not significantly impact on the streetscape”, therefore the architectural design of the structure is in conflict with the DCP, and the poor design of the carport results in any vehicle being parked within the Carport being only partially covered.*”

The objector further claims the poor aesthetics of the design are evidenced by the 3D perspectives provided as part of the objector’s submission.

Regarding overshadowing, the objector states the shadow diagram (plan dwg 05) indicates how the development at 2 Henderson Place directly blocks out the early morning sun at 8.30am on July 20, and the proposal to construct two new carports will totally overshadow their backyard morning sun throughout the whole of winter.

Comment:

Regarding the aesthetics of the development and in particular the carports, it is considered that the carport designs with conventional skillion roof design will enhance the appearance of the current front elevation of the existing building;

With respect to overshadowing, the requirements of Part 2 of Chapter 4 of the Ballina DCP 2012 provides that in respect to Solar Access:

- The windows of living areas of dwellings and private open space facing north, north-east or north-west must receive at least three hours of direct sunlight between 9.00am and 3.00 pm (Australian Eastern Standard Time) on 21 June (Winter Solstice).
- Where existing overshadowing by buildings and fences does not provide the required amount of direct sunlight to existing adjacent dwellings and their areas of private open space as required, new buildings must not result in an unreasonable reduction of existing direct sunlight to adjoining dwellings.

The proposal to construct two carports as shown on the plans is not considered likely to result in an unreasonable reduction of existing direct sunlight to the adjoining residence.

In support of the proposed development the applicant has provided the following comments:

- the development is compatible with the majority of new and renovated houses in Henderson Place
- the proposed carports have no walls or screens and are to provide cover for the parking of 4 vehicles, which will continue to be parked on the driveway regardless of the neighbour’s objection
- the objector’s view on design is a personal one and providing the design is compatible with other buildings in the area there should not be an issue

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- the changes in design will modernise the building and make the building more compatible with the newer buildings in Henderson Place
- the applicant stated they were prepared to re-consider a design involving a change in the slope angle of the roof of the carport closest to the objectors' property to slightly increase the early morning light to their front yard
- they believe the renovations as a whole have increased the amount of morning sun to the objector's front yard, and refer to streetscape view of property available on Google Earth (see photo plate)
- despite being satisfied with the aesthetics of the development, they have no objection to planting low height bushes along the dividing fence line thus blocking the neighbour's view of the carports, and not limiting morning sun.



History of the Assessment Process

The application was received at Council whilst the Ballina Shire Council Combined DCP was in place, prior to the formal introduction of DCP 2012.

The application considered under the Combined DCP would have been dealt with as a "variation to a building alignment" and dealt with on its merits, with it noted there are a number of examples of where carports have been approved across the Shire with reduced setbacks, however none likely with a width of 12.4 metres.

Due to an objection being lodged, the matter was referred to a Development Assessment Panel (DAP) meeting comprising two Building Surveyors and the Section Manager of Building Services.

The panel met on site on 25 March 2013 to assess the proposal.

The panel formed the view the applicant should be advised it was not prepared to recommend approval of the application until the following changes

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were made to the submitted plans. However, it was made clear to the applicant that the suggested modifications would not guarantee an approval.

1. The proposed carports were to be reduced in size from 7.023m and 6.675m to 5.0m in width, measured from post to post, with a nominal eaves overhang of 600mm;
2. The posts of the carport to the front of the existing garage were to be aligned with the southernmost wall of the garage, the post of the carport in front of the existing roller door was to be located approximately 2.0m clear of the existing masonry fence, necessary to maintain the line of sight at the corner of the fence. This requirement was a condition of a past Development Consent for the construction of the fence;
3. The roof lines be re-orientated and altered to a paired "skillion" design (as opposed to an opposed "butterfly design") to reduce the scale and bulk of the structures to the southern neighbour and improve solar access;
4. The posts of the carports were to be a minimum 2.0m clear of the front boundary as required under DCP 2012.

This information was conveyed to the applicant by letter dated 27 March 2013.

Amended plans were subsequently received by Council on 12 April 2013.

The changes to the plan were in accordance with the above recommendations of the panel with exception to point four above, with the posts of the proposed carport being positioned 1.8m clear of the front boundary instead of 2.0m.

When questioned, the applicant advised he had discussed the 2.0m setback with their consultant structural engineer who advised it would be possible to construct both the carport roof with posts positioned 2.0m from the boundary, but cautioned against locating the posts alone on a 2.0m setback, for structural reasons.

The panel re-convened on 30 April 2013 to discuss the proposed changes, where it was agreed to recommend approval of the amended proposal on the basis the new design would:

- improve the overall appearance of the development
- encourage residents of the premises to park their vehicles off street, potentially improving the safety of pedestrians and motorists
- reduce the scale and bulk appearance to the southern neighbor
- reduce the potential for early morning overshadowing to the neighbouring property to the south.

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DCP 2012, Element H (iv), does allow for the construction of carports forward of the building line, subject to the criteria as detailed in the DCP and noted earlier in this report. It is noted however, this proposal fails to meet two of the eight elements required of carports constructed forward of the building alignment.

Notwithstanding, the DAP was of the view the re-design meets the objectives of Element H (Vehicular access and Parking) in that:

- the proposal allows for adequate on site carparking for the development, being an approved dual occupancy with existing approved garaging and uncovered carparking
- the proposal allows for the carparking to the site to meet the Australian Standard 2890 for parking facilities
- the proposal allows for adequate space for vehicles to manoeuvre safely on site
- the proposal provides adequate site distances for vehicular entrance and departure, and for pedestrian movements within the footpath reserve
- the proposal will not detract from the streetscape amenity, and the character of the street will not be diminished.

Conclusion

This proposal involves carrying out works to an existing dual occupancy building and associated uncovered carparking.

With the adoption of the Ballina DCP 2012 on 4 February 2013, specifically the exemptions detailed in Element H of Chapter 4, Controls – Garages and Carports, it is possible to approve of Carports and Garages forward of the building line subject to the specific criteria detailed in the DCP being met.

The design before Council meets the majority, but not all of the design criteria required for a carport forward of the building line, however the DAP was of the view the proposal generally met the objectives of Element H.

The most significant departure from the requirements of DCP 2012 is the proposal to construct two carports having a zero setback, with a combined width of 12.4m, when the DCP stipulates that for such a reduced setback the maximum width of the carport should not exceed 6 metres.

The site is a corner allotment with approximately 46 metres of front boundary frontage and the structures do not appear to dominate the streetview. It is also considered the addition of the contemporary carport designs will improve the external appearance of the aged building.

The redesign of the proposal has minimized the impacts on the adjoining resident and there will be no significant overshadowing issues.

Options

1. Refuse the application as submitted. This option is not recommended because the proposal has substantial merit and, even if it is the view of the Council that, as submitted, the design needs to be further amended, the appropriate course would be to give the applicant guidance and time to amend the design.
2. Approve the application as amended with the carports having an overall total width of 12.4 metres as measured from eave to eave line. This is the course recommended because in the particular circumstances of the case, the amended design is contemporary, suits the streetscape and deals reasonably with the circumstances of the history of development that has occurred on the site over time.
3. Council advise the applicant to prepare amended plans reducing the overall combined width of the carports as measured from eave to eave line to 6.0m. It is considered that the amendments to the original proposal have reasonably addressed the designs issues raised in the assessment of the proposal.

RECOMMENDATION

That Development Application 2013/26 be **APPROVED** in accordance with the amended plans prepared by RDM Design and lodged with Council and in particular, Dwgs Nos 002a, 004a, 004b, 005a and 007a, issue B, dated 10 February 2013, subject to the application of Council's standard conditions that are relevant to the project.

Attachment(s)

1. DA 2013/26 - Locality Plan
2. DA 2013/26 - Site Plan
3. DA 2013/26 - Elevations
4. DA 2013/26 - Letter of Objection
5. DA 2013/26 - Applicant's Response to Objection
6. DA 2013/26 - Amended Site Plan
7. DA 2013/26 - Amended Elevations and Carport Dimensions Plan

8.4 Legal Proceedings - Land Use and Pollution Issues

8.4 Legal Proceedings - Land Use and Pollution Issues

Delivery Program Development Services

Objective To provide Council with an update on certain legal matters and to outline options to remedy identified breaches.

Background

This matter was previously reported to the December 2012 meeting and relates to waste dumping at properties in Pimlico and Alstonville as well as non compliance with development consent conditions at the Big Prawn site in Ballina.

As a further update on this on 5 December 2012, New South Wales Environment Protection Authority Officers (EPA) and Council's Compliance Officers inspected the Pimlico premises to verify the completion of Clean Up Action in accordance with the Clean Up Notice. The EPA has advised that the Clean Up Action undertaken by TCDE Pty Ltd on behalf of Jade Wesley ROSE and Fiona Jane ROSE had been completed to the satisfaction of the EPA.

On 16 January 2013, the EPA wrote to:

1. Mr Jade Wesley ROSE and advised him that he was guilty of the offence of unlawfully causing, permitting, using land as a waste facility and of carrying out unlicensed scheduled activities at the Pimlico premises in contravention of sections 48(2) and 144(1) of the *Protection of the Environment Operations Act 1997* (NSW) and
2. TCDE Pty Ltd and advised that company that they were guilty of the offence of unlawfully transporting waste to a place that cannot be used as a waste facility for that waste in contravention of section 143(1) of the *Protection of the Environment Operations Act 1997* (NSW).

With respect to Mr Jade Wesley ROSE and Lot 10 DP1137966, 540 Pimlico Road, Pimlico NSW ("the Pimlico premises"), the stored waste materials consisted of 15,600 litres of grease trap waste, 10,500 litres of waste oil and 3,000 litres of drilling or excavation mud unlawfully stored in containers within the Pimlico premises.

As part of the investigation process, the EPA took a large number of samples to ascertain whether any waste had been spilled within the Pimlico premises. These samples were subsequently analysed by the EPA and it is pleasing to note that those results were not able to demonstrate that any serious environmental harm had occurred.

8.4 Legal Proceedings - Land Use and Pollution Issues

When considering punitive action, the EPA must be able to prove that the offence has caused a “*significant environmental harm*” to the environment. This requirement is set in the precedent legal case of *Camilleri’s Stock Feeds Pty Ltd v Environment Protection Authority* (1993) 32 NSWLR 683, in which His Honour Mr Justice Kirby found that the seriousness of an offence and any environmental harm involving the breach of a licence is to be assessed when considering any punitive action.

The EPA has acknowledged that there was the ***potential*** for serious environmental harm to occur, should there be any failure to one or more of these containers, however the EPA could not prove that such environmental harm had, in fact, occurred. Similarly, the EPA was not able to prove that any serious environmental harm had occurred from the transportation and depositing of demolition waste from Lot 135 DP 872709, 507 River Street, West Ballina (“the Big Prawn Site”).

On this basis, the EPA chose to deal with these matters by way of:

1. Issuing two Penalty Infringement Notices, totalling \$2,250 to Mr Jade Wesley ROSE for the identified offences and
2. Issuing a Penalty Infringement Notice, totalling \$1,500 to TCDE Pty Ltd for the identified offence.

Council now needs to determine whether it wishes to take any action in relation to these matters.

Key Issues

- Breaches of the *Environmental Planning and Assessment Act 1979* (NSW) and *Protection of the Environment Operations Act 1997* (NSW) confirmed as part of EPA investigations
- Council is the appropriate Regulatory Authority to take action in relation to these breaches.

Information

There are a number of issues for Council to address, being:

1. *Unauthorised use of the Pimlico Premises as a Waste Facility under the Environmental Planning and Assessment Act 1979 (NSW).*

At the time that this matter came to Council’s attention, the Pimlico premises were zoned *1(a2) Rural (Coastal Lands Agriculture) Zone*, pursuant to the *Ballina Local Environmental Plan 1987* (BLEP 1987). With the recent gazettal of the *“Ballina Local Environmental Plan 2012* (BLEP 2012), the Pimlico premises are currently zoned *RU1 Primary Production Zone*.

Given the circumstances as outlined in more detail in the December 2012 report, the storage of waste materials, including but not limited to bricks, asphalt, concrete, plastic, steel, wire, glass, tile, plasterboard, pvc piping, timber, fines, grease trap waste, drilling or excavation mud, waste oils and suspected asbestos waste is not listed as a use that would be permissible without the prior consent of Council.

Further, this storage of waste materials or operation of a “*waste or resource management facility*” would be a prohibited land use within either the 1(a2) *Rural (Coastal Lands Agriculture) Zone*, which existed at the time of the breach and within the current *RU1 Primary Production Zone*.

On 9 January 2013, Council issued a Notice to Mr Jade Wesley ROSE and Mrs Fiona Jane ROSE to “Show Cause” why further legal action should not be taken against them for the unauthorised use of the Pimlico premises as a waste facility pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* (NSW).

On 31 January 2013, a response was received from Hosie and Partners, Solicitors, who have been engaged to represent Mr and Mrs ROSE. In their submission, Mr Jade Wesley ROSE and Mrs Fiona Jane ROSE have stated, inter alia:

“We advise that all materials were stored in the storage tanks and were kept for the purpose of transporting it to a lawful authority for proper disposal. The practice was to wait until the tanks were full and then to transport the tanks to an appropriate location. The aggregate road base and construction materials were for the purposes of constructing a driveway.

Our clients admit that they do not have the requisite development consents issued by Council to use the property as they have done. However, we are instructed that Mr and Mrs Rose’s intention was not to purposely contravene the relevant legislation or use the property contrary to zone No. 1 (a2) Rural (Coastal Lands Agriculture) Zone or use the property for commercial purposes. They simply used the property this way due to a lack of understanding of Council zoning and the development consent process”

Given the above investigation by the EPA and the subsequent outcome, there is sufficient evidence available to Council to confirm this unauthorised activity has taken place. Council is now in a position to take further action against Mr Jade Wesley ROSE, Mrs Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations for this unauthorised land use.

2. *Non Compliance with development consent conditions for the demolition of the Big Prawn site and the requirement to transport waste to an approved waste facility (dumping at the Pimlico premises).*

Given the circumstances as outlined in more detail in the December 2012 report, the transportation of the demolition waste to the Pimlico premises has identified breaches of development consents DA 2010/58 and DA 2011/458. Specifically, condition 3.3 of development consent DA 2010/58 states:

3.3 *No demolition, construction or the like waste is to be stored or stockpiled on the site and is to be transported and disposed of to an approved waste facility. If alternative disposal methods are sought, written approval is to be granted by Council prior to removal of material from the subject site. **It is an offence to transport waste to a place that can not lawfully be used as a waste facility.***

8.4 Legal Proceedings - Land Use and Pollution Issues

Similarly, condition 4.25 of development consent DA 2011/458 states:

4.25 Waste

*All construction and/or demolition waste is to be transported and disposed of to an approved waste facility or if alternative disposal methods are sought, that written approval is granted by Council. **It is an offence to transport waste to a place that can not lawfully be used as a waste facility.***

Under the provisions of section 76A, *Environmental Planning and Assessment Act 1979* (NSW), a person, (which includes a company), must both obtain development consent and comply with the conditions of that development consent for certain development. Specifically, section 76A states:

76A Development that needs consent

(1) General

*If an environmental planning instrument provides that specified development may not be carried out except with development consent, **a person must not carry the development out on land to which the provision applies unless:***

- (a) such a consent has been obtained and is in force, and*
- (b) the development is carried out in accordance with the consent and the instrument.** (Emphasis Added)*

With respect to the failure to comply with all development consent conditions of development consents DA 2010/58 and DA 2011/458, there are three companies that may be considered liable. These companies are:

1. Bunnings Group Ltd ACN 008 672 179 as the owner of the Big Prawn site and owner of the development currently underway
2. De Luca Corporation Pty Ltd, ACN 055 193 514 as the contractor responsible for overseeing the demolition of the existing service station and slab removal as well as the construction of the new development and
3. TCDE Pty Ltd ACN 156 410 589, Trading as Tweed Coast Demolition and Excavations Pty Ltd, ABN 45 156 410 589 as the sub contractor responsible for the demolition of the existing service station and slab removal.

To ascertain the person or company most responsible for the non compliance, Council has issued Notices to each party requiring that they "Show Cause" as to why legal action should not be taken against them as individual entities.

Written representations have been received from all companies outlining:

- Bunnings Group Ltd, has indicated that the company had no role whatsoever in the demolition and construction process and that they had contracted De Luca Corporation Pty Ltd, ACN 055 193 514 to undertake those activities in accordance with all requisite approvals
- De Luca Corporation Pty Ltd has advised, through their legal representative, that they are responsible for the building works only on site and not for the demolition works themselves. De Luca Corporation Pty Ltd have sub contracted these works to TCDE Pty Ltd ACN 156

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410 589, Trading as Tweed Coast Demolition and Excavations Pty Ltd, ABN 45 156 410 589; and

- TCDE Pty Ltd ACN 156 410 589, Trading as Tweed Coast Demolition and Excavations Pty Ltd, ABN 45 156 410 589 have advised that Mr Jade ROSE met with company representatives and was “assured that he had suitable approvals that would enable demolition waste to be deposited at the Pimlico site” (the Pimlico premises).

Currently there is insufficient evidence to commence any litigation action against either Bunnings Group Ltd or De Luca Corporation Pty Ltd for the non compliances with development consent conditions of DA 2010/58 and 2011/458.

Sufficient evidence does exist however for Council to take further action against TCDE Pty Ltd ACN 156 410 589, Trading as Tweed Coast Demolition and Excavations Pty Ltd, ABN 45 156 410 589 for this non compliance with development consents DA 2010/58 and 2011/458 with respect to the waste conditions.

3. *Unauthorised use of the Alstonville Premises as a Waste Facility under the Environmental Planning and Assessment Act 1979 (NSW).*

At the time that this matter came to Council’s attention, the Alstonville premises were zoned *1(a1) Rural (Plateau Lands Agriculture) Zone* under BLEP 1987. With the recent gazettal of the “*Ballina Local Environmental Plan 2012 (BLEP 2012)*”, the Alstonville premises are currently zoned *RU1 Primary Production Zone*.

Given the circumstances as outlined in more detail in the December 2012 report, the storage of waste materials, including but not limited to bricks, asphalt, concrete, plastic, steel, wire, glass, tile, plasterboard, pvc piping and timber is not listed as a use that would be permissible without the prior consent of Ballina Shire Council. Further, this storage of waste materials or operation of a “*waste or resource management facility*” would be a prohibited land use within either the *1(a1) Rural (Plateau Lands Agriculture) Zone*, which existed at the time of the breach and within the current *RU1 Primary Production Zone*.

On 19 December 2012, Council issued a Notice to the landowner, Mrs Karen Rose WIGGINS, to “Show Cause” why further legal action should not be taken against them for the unauthorised use of the Alstonville premises as a “*waste or resource management facility*” pursuant to the provisions of the *Environmental Planning and Assessment Act 1979 (NSW)*.

On 21 December 2012, a copy of an email to Damien Chapelle of Newton Denny Chapelle was received from Mrs Karen Rose WIGGINS. In this submission, Mrs Karen Rose WIGGINS states:

Firstly, on the matter of the contaminated fill on site, Josh had approached the demolition company responsible for disposing of waste from the Big Prawn site regarding the possibility of clean fill for our site (with future extension of the hard stand area in mind). We were advised the material we received was simply the broken up concrete slab from the retail complex on site and wasn't associated with the storage of any petrol or like products. Knowing Council's procedure on "clean fill" I did verbally request written assurance from the demolition company that the fill was free of any contaminants though such

8.4 Legal Proceedings - Land Use and Pollution Issues

assurance was never forthcoming (unfortunately the fill was already on site by that time). I also followed this up with a brief email (attached).

We don't believe the fill we have on site to be contaminated with petrochemicals per Council's assertion and I've contacted an acquaintance at SCU regarding the possibility of having the materials sampled and tested. I'll let you know when I hear from them but if it's found to be contaminated I expect we'll make arrangements with the demolition company to have it removed. If not, we'd hope to keep the fill on site for future use.

Given I had no intention of commencing any extension of the hard stand area for some time I had not thought it necessary to notify Council given the material was simply stored on site for future use and they would certainly have been advised before any kind of development commenced".

Given the above investigation by the EPA and the subsequent outcome, there is sufficient evidence available to Council to confirm this unauthorised activity has taken place. Council is now in a position to take further action against Mrs Karen Rose WIGGINS as the landowner for this unauthorised land use.

Council is also advised that on 11 April 2013, the landowners lodged a section 96 Application to permit additional filling of the Alstonville premises to incorporate an external holding yard, extend the hardstand area for the bulk store and to provide driveway access from Teven Road. This application is currently under assessment.

4. *Non Compliance with development consent conditions for the demolition of the Big Prawn site and the requirement to transport waste to an approved waste facility (dumping at the Alstonville premises).*

Given the circumstances as outlined in more detail in the December 2012 report and as outlined in point two, there is sufficient evidence available to Council to confirm this non-compliance with development consents DA 2010/58 and DA 2011/458 has taken place.

The transporting of this waste occurred at the same time as the waste was transported to the Pimlico premises and involves the same companies previously identified. Separate Notices were served on Bunnings Group Ltd and De Luca Corporation Pty Ltd who provided advice similar to that provided for the Pimlico premises. TCDE Pty Ltd ACN 156 410 589, also a recipient of a Notice have advised that Mr Josh Wiggins of Wiggins scaffolding met with company representatives and as *"Mr Wiggins had a DA to receive concrete material"*, six or seven loads of material was subsequently transported to the Alstonville premises.

Currently there is insufficient evidence to commence any litigation action against either Bunnings Group Ltd or De Luca Corporation Pty Ltd for the non compliances with development consent conditions of DA 2010/58 and 2011/458 for the transportation of the waste to the Alstonville premises.

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Sufficient evidence does exist however for Council to take further action against TCDE Pty Ltd ACN 156 410 589, Trading as Tweed Coast Demolition and Excavations Pty Ltd, ABN 45 156 410 589 for this non compliance with development consents DA 2010/58 and 2011/458 with respect to the waste conditions.

5. *Transportation of waste to a location not authorised to receive waste (the Alstonville premises) under the provisions of the Protection of the Environment Operations Act 1997 (NSW).*

Given the circumstances as outlined in more detail in the December 2012 report, the breaches identified as outlined in point four, indicate that there is sufficient evidence available to Council to confirm offences of:

- (i) unlawfully transporting waste to a place that cannot be used as a waste facility for that waste in contravention of sections 143(1) of the *Protection of the Environment Operations Act 1997 (NSW)*; and
- (ii) owner cause or permit the transporting of waste to a place that cannot be used as a waste facility for that waste in contravention of sections 144(1) of the *Protection of the Environment Operations Act 1997 (NSW)*.

Council is now in a position to commence legal proceedings against both Karen Rose WIGGINS, Joshua WIGGINS and TCDE Pty Ltd ACN 156 410 589, Trading as Tweed Coast Demolition and Excavations Pty Ltd, ABN 45 156 410 589 for the unauthorised transportation of waste and/or owner cause or permit the transportation of waste to a place that cannot be used as a waste facility.

6. *Licence to discharge waste into Ballina Shire Council's Sewage System.*

Following a review of all available information, Council's Water and Waste Section have conducted a review of the licence to discharge waste issued to Mr Jade Wesley ROSE owner/operator of Ballina Pumping Service and Northern Rivers Vacuum Excavations.

On 16 October 2012, Council issued Formal Notice to Mr Jade Wesley ROSE to "Show Cause" why this licence should not be cancelled.

Given the identified non compliances outlined within this report, Council's Water and Waste Section currently possesses evidence that Mr Jade Wesley ROSE is not complying with the licence issued by Ballina Shire Council with the concurrence of the NSW Office of Water.

Council's Water and Waste Section have advised that no further action is required to be taken for the non compliance with the Trade Waste Agreement as the enforcement action taken by the EPA is a sufficient deterrent and includes any action Council may have considered as part of this Report.

Sustainability Considerations

- **Environment**
The non compliances identified have had a serious impact on the environment, given the proximity of the activities at the Pimlico premises to cane drains and the Richmond River. Waste dumping within the Ballina Shire, if left unchecked will have a major impact on the local environment.
- **Social**
Not Applicable
- **Economic**
Not applicable

Legal / Resource / Financial Implications

Legal proceedings generally are costly and to minimise costs and to achieve an outcome to give effect to the Notices as served, Council has a number of options available.

Consultation

No consultation with any of Council's legal representatives has been undertaken at this time. There has been significant correspondence with the parties involved.

This report has been listed in open Council as all the information within the report is a matter of public record. If Councillor's wish to debate any potential legal matters, it may be necessary to resolve into confidential session.

Options

Council has a number of options as to what form of action, if any, is contemplated for the initial importation and dumping of the waste materials within the subject premises and for the non compliances with development consent conditions. These options are more fully outlined in the *Ballina Shire Council Enforcement Policy* adopted by Council on 26 November 2009 (hereinafter referred to as the "Enforcement Policy").

Council also has to give due consideration to the requirement for a general deterrent to other residents, both within the immediate vicinity and within the Ballina Shire as a whole, that unauthorised land uses and the depositing of waste building materials on land within the Ballina Shire is not acceptable.

Further should Council resolve to take minimal action for these unauthorised land uses and transportation and depositing of building waste and liquid trade waste it could create an undesirable precedent within the local area and may result in increased non compliance by the relevant industries.

Having given due consideration to the considerations for legal action as outlined in Part 3 of the Enforcement Policy and the need for a general deterrent as opposed to the impact on the private activities of a resident and ratepayer, further enforcement action is justifiable against:

8.4 Legal Proceedings - Land Use and Pollution Issues

1. Jade Wesley ROSE
2. Fiona Jane ROSE
3. Ballina Pumping Service and Northern Rivers Vacuum Excavations
4. TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations
5. Karen Rose WIGGINS and
6. Joshua WIGGINS

for the initial importation, transportation and dumping of waste materials within the Pimlico and Alstonville premises in September 2012 and for the non-compliance with development consent conditions for development consents DA 2010/58 and DA 2011/458.

Council currently has six options available in relation to this unauthorised land use and transportation of waste to premises not authorised to receive waste as identified within the Enforcement Policy.

Given that compliance has been forthcoming with the requirements of the Clean Up Notices and the resulting Penalty Infringement Notices as served by the EPA, Council's options are:

1. Accept the EPA Penalty Notices as completion of all Legal Proceedings.
2. Issue Formal Warnings.
3. Issue Penalty Infringement Notices.
4. Commence Local Court Criminal Prosecution Proceedings.
5. Commence Land and Environment Court Criminal Prosecution Proceedings.

Option One

Accept the EPA Penalty Infringement Notices as completion of matter. The reliance on actions by the EPA, including the issuing of Penalty Infringement Notices to some but not all parties concerned with this investigation is not considered to adequately address the actions of Jade Wesley ROSE, Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations, TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations, Karen Rose WIGGINS and Joshua WIGGINS in this matter.

Should the Council take this course, there would be no visible, substantial deterrent to any party, or to the general community at large, in relation to the unlawful dumping of waste materials

Option Two

Issue Formal Warnings. When viewed in isolation, the service of Formal Warnings to Jade Wesley ROSE, Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations, TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations, Karen Rose WIGGINS and Joshua WIGGINS is not considered to be a suitable and substantial deterrent for the compliance with the development consents as issued.

8.4 Legal Proceedings - Land Use and Pollution Issues

Option Three

Issue Penalty Infringement Notices. The total amount deposited within the Pimlico premises consisted of 1,031.72 tonnes of demolition waste along with 29,100 litres of mixed or assorted liquid waste with approximately 150 tonnes of demolition waste transported to the Alstonville premises.

Each transported load of waste to the subject premises was a separate offence that has the potential to have up to five Penalty Infringement Notices issued. Unfortunately, there is insufficient evidence available to Council to identify the numbers of vehicle movements to deposit all of the materials.

On this basis, these Penalty Notices could be written for the following persons and offences:

1. Jade Wesley ROSE
 - Development without development consent – individual – other (@\$1,500)
2. Fiona Jane ROSE
 - Development without development consent – individual – other (@\$1,500)
3. TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations
 - Development not accord consent – other – Corporation (@\$3,000 Pimlico Premises)
 - Development not accord consent – other – Corporation (@\$3,000 Alstonville Premises)
 - Transport more than 1 cubic metre or 2 tonnes of waste to unlawful waste facility – Corporation (@ \$5,000)
4. Karen Rose WIGGINS
 - Development not accord consent – other – Individual (@\$1,500 Alstonville Premises)
 - Cause permit transport of more than 1 cubic metre or 2 tonnes of waste to unlawful waste facility – Individual (@ \$1,500)
5. Joshua WIGGINS
 - Development not accord consent – other – Individual (@\$1,500 Alstonville Premises)
 - Cause permit transport of more than 1 cubic metre or 2 tonnes of waste to unlawful waste facility – Individual (@ \$1,500)

As joint owners of the Pimlico premises, it may not be possible to issue Penalty Infringement Notices to both Mr and Mrs Rose, or to Mr and Mrs Wiggins, as it may be considered “double dipping” for the one offence. Council may also choose to issue only some of the above Penalty Infringement Notices for the identified offences.

8.4 Legal Proceedings - Land Use and Pollution Issues

Options Four and Five

Options four and five recommend the commencement of criminal prosecution proceedings against Jade Wesley ROSE, Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations, TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations, Karen Rose WIGGINS and Joshua WIGGINS for:

- the initial importation, transportation and dumping of waste materials within the Pimlico and Alstonville premises in September 2012
- the use of the Alstonville and Pimlico premises as waste facilities without the prior consent of Council and
- the non-compliance with development consent conditions for development consents DA 2010/58, DA 2011/458 and DA 2011/105.

The major difference between these two options is the Court jurisdiction, with the Land and Environment Court being a division of the NSW Supreme Court and having the relevant standing.

In this jurisdiction, any criminal prosecution, if successful, would leave any party subject to a maximum penalty of \$1,100,000, whilst the local Court jurisdiction would only be able to impose a maximum penalty of \$110,000.

As outlined in the Enforcement Policy, Council would need to also consider the ability of any party to pay any penalty that maybe imposed by the relevant Court. As stated, monetary penalties issued by the Land and Environment Court can be substantial, and Council's main aim is to seek a general deterrent for this type of activity.

These options would adequately address the punishment requirements and on successful completion of the proceedings, would provide a general deterrent to the general public for the unlawful dumping of waste building materials and the local court action is recommended as being commensurate with the level of the offences.

Use of Multiple Options:

There is no legal impediment to Council utilising more than one of the above options to remedy this unlawful activity. When referring to actions within the Land and Environment Court, it is common practice, should sufficient evidence exist, for both criminal and civil proceedings to be commenced for an unlawful activity. Further, Council could utilise three or four options should circumstances require.

The use of multiple options is also consistent with the Enforcement Policy.

Council should also consider each party, namely Jade Wesley ROSE, Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations, TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations, Karen Rose WIGGINS and Joshua WIGGINS separately, when considering the level of enforcement action that is required.

8.4 Legal Proceedings - Land Use and Pollution Issues

In this particular instance, it is considered that the Council would be remiss if more than one option was not considered appropriate, given the need for contamination control, pecuniary penalty and remediation action that is or has been necessary in this matter.

Council also needs to ensure that the appropriate level of action is taken for the level of culpability of each individual offender.

1. Jade Wesley ROSE and Fiona Jane ROSE

Both are registered owners of the Pimlico premises and also are partners within both Ballina Pumping Service and Northern Rivers Vacuum Excavations and were involved with the storage of the waste materials within the Pimlico premises.

2. TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations

Tweed Coast Demolition and Excavations are a company involved in the demolition business and licensed by NSW WorkCover Authority.

3. Karen Rose WIGGINS and Joshua WIGGINS

Karen WIGGINS is the registered owner of the Alstonville premises and was involved with the storage of the waste materials within the Pimlico premises. Joshua WIGGINS was involved in the sourcing of the waste materials to be delivered to the Alstonville premises.

Any decision in relation to this report should be made consistent with previous resolutions.

In April 2012 Council considered a matter involving Verna Kathleen WALL and Chambers Constructions Pty Ltd. That report dealt with the transportation and resulting dumping of non contaminated and non hazardous waste totalling less than 200 tonnes. In that instance, Council was presented with multiple options and after due consideration, resolved:

1. *Option 4 (Local Court Prosecution) against Mrs Verna Kathleen Wall for the unlawful dumping of waste materials within the subject premises; and*
2. *Council endorse Option 3, two (2) Penalty Infringement Notices to Chambers Constructions Pty Ltd:*
 - *One Penalty Notice for Cause permit transport more than 1 cubic metre or 2 tonnes to unlawful waste facility – Corporation (@ \$5,000);*
 - *One Penalty Notice for Development not accord consent - other - Corporation (@ \$3,000) (Specific condition on DA 2010/313 requiring waste to be transported to an approved waste facility).*
3. *As an alternative to Recommendation 2 above and should sufficient evidence and circumstances permit, Council authorise additional legal action in the form of Option 4 (Local Court Prosecution) against Chambers Constructions Pty Ltd in the event that Council's legal representative is of the opinion that this Option is the more appropriate course of action; and*

8.4 Legal Proceedings - Land Use and Pollution Issues

4. *One Formal Warning for transport more than 1 cubic metre or 2 tonnes to unlawful waste facility - Individual (to be issued to the individual driver, Paul Werner Barrett, who transported the waste).*

On review of the WALL and Chambers Constructions matter, Council's solicitor recommended that Local Court prosecutions be preferred against both parties and Court Attendance Notices were prepared for the charges. The Magistrate found both parties guilty of the offences and issued fines totalling approximately \$18,000.

The total volume of the solid waste involved in the matters subject of this report are approximately five times larger than the WALL and Chambers Constructions matter and that this matter also included mixed or associated liquid waste.

Based on all the information available it is recommended that Council take the following enforcement actions:

1. Option Four (Local Court Prosecution) against Jade Wesley ROSE, Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations, either jointly or as separate entities, for the use of the Pimlico premises as a waste facility without the prior development consent of Ballina Shire Council.
2. Option Four (Local Court Prosecution) against TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations for the non compliance with DA 2010/58 and 2011/458 for the transporting and subsequent unlawful dumping of waste materials within the Pimlico and Alstonville premises
3. Option Three (two Penalty Infringement Notices) to Karen Jane WIGGINS:
 - One Penalty Notice for Cause permit transport more than 1 cubic metre or 2 tonnes to unlawful waste facility – Individual (@ \$1,500)
 - One Penalty Notice for Development without development consent - other – Individual (@ \$1,500) for the use of the premises as a waste facility without the prior development consent of Ballina Shire Council.
4. As an alternative to point three should sufficient evidence and circumstances permit, Council authorises additional legal action in the form of Option Four (Local Court Prosecution) against Karen Jane WIGGINS in the event that Council's legal representative is of the opinion that this option is the more appropriate course of action
5. Option Three (one Penalty Infringement Notice) to Joshua WIGGINS:
 - One Penalty Notice for Cause permit transport more than 1 cubic metre or 2 tonnes to unlawful waste facility – Individual (@ \$1,500); and

8.4 Legal Proceedings - Land Use and Pollution Issues

6. As an alternative to point five should sufficient evidence and circumstances permit, Council authorises additional legal action in the form of Option Four (Local Court Prosecution) against Joshua WIGGINS in the event that Council's legal representative is of the opinion that this option is the more appropriate course of action

The recommendations that follow support this approach.

RECOMMENDATIONS

That Council authorises the following actions in respect to the matters outlined within this report:

1. Local Court Prosecution against Jade Wesley ROSE, Fiona Jane ROSE, Ballina Pumping Service and Northern Rivers Vacuum Excavations, either jointly or as separate entities, for the use of the Pimlico premises as a waste facility without the prior development consent of Ballina Shire Council.
2. Local Court Prosecution against TCDE Pty Ltd, trading as Tweed Coast Demolition and Excavations for the non compliance with DA 2010/58 and 2011/458 for the transporting and subsequent unlawful dumping of waste materials within the Pimlico and Alstonville premises.
3. Two Penalty Infringement Notices to Karen Jane WIGGINS:
 - One Penalty Notice for Cause permit transport more than 1 cubic metre or 2 tonnes to unlawful waste facility – Individual (@ \$1,500)
 - One Penalty Notice for Development without development consent - other – Individual (@ \$1,500) for the use of the premises as a waste facility without the prior development consent of Ballina Shire Council.
4. As an alternative to point three should sufficient evidence and circumstances permit, Council authorises additional legal action in the form of a Local Court Prosecution against Karen Jane WIGGINS in the event that Council's legal representative is of the opinion that this option is the more appropriate course of action.
5. One Penalty Infringement Notice to Joshua WIGGINS for Cause permit transport more than 1 cubic metre or 2 tonnes to unlawful waste facility – Individual (@ \$1,500).
6. As an alternative to point five should sufficient evidence and circumstances permit, Council authorises additional legal action in the form of a Local Court Prosecution against Joshua WIGGINS in the event that Council's legal representative is of the opinion that this option is the more appropriate course of action.

Attachment(s)

Nil

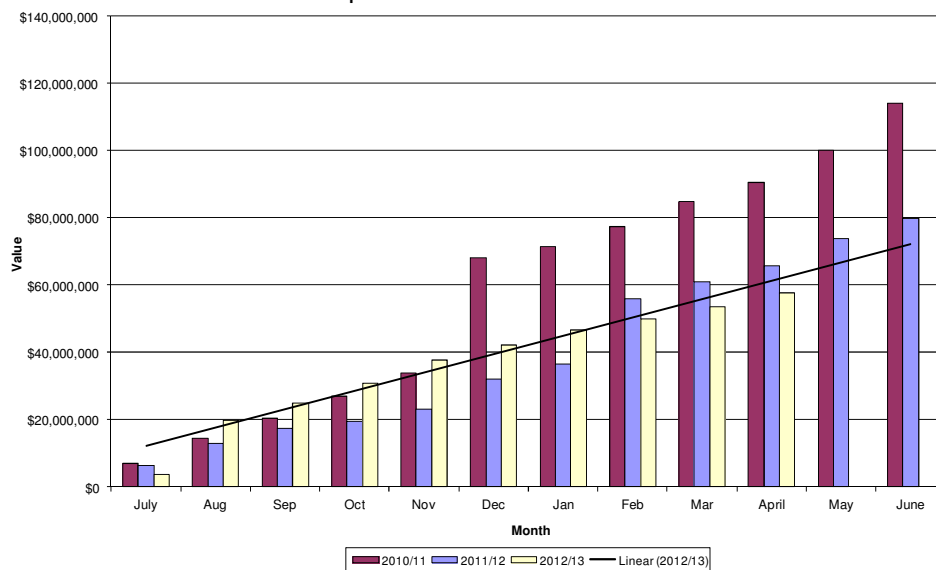
8.5 Development Consent Statistics - April 2013

8.5 Development Consent Statistics - April 2013

During the period of 1 April 2013 to 30 April 2013 the Regulatory Services Group issued Development Consent comprising of:

Number of Applications	Value of Work
27 Other Building Related	\$ 661,000
11 Dwelling/Duplexes/Residential Flat Buildings	\$ 3,290,000
3 General Developments	\$ 0
Total Value	\$ 3,951,000

The following chart details the cumulative consent figures for 2012/13 as compared to 2011/12 and 2010/11. A trend line has also been provided for 2012/13 to assist in the comparison.



RECOMMENDATION

That Council notes the contents of the report on development consent statistics for 1 April 2013 to 30 April 2013.

Attachment(s)

Nil

8.6 Development Applications - Works in Progress - May 2013

8.6 Development Applications - Works in Progress - May 2013

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
2011/166	15/04/2011 (Application Amended 8/11/2012 and further amended 19/4/2013)	SJ Connelly CPP Pty Ltd	Eight lot residential subdivision and 15 unit town house development and associated works - Condon Drive, East Ballina (North Angels Beach)	Awaiting Additional Information and referred to Government Departments (OEH)
2011/320	22/07/2011	Ballina Shire Council	To change the method of extraction of an existing extractive industry "Ballina Airport Sandpit" from dry (excavation) to wet (dredging) and to change the end use of the pit from a landfill for dry/inert waste to the retention as a flooded pit as part of the rehabilitation works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	Ecologist has conducted peer review of Flora & Fauna Assessment
2011/506	23/11/2011	C Lonergan	Regularise and expand existing caravan park from 55 Sites to 178 sites and construct new amenities block and recreation building, 440 South Ballina Beach Road,	Awaiting Additional Information

8.6 Development Applications - Works in Progress - May 2013

DA No.	Date Rec'd	Applicant	Proposal	Status
2011/515	30/11/2011	Newton Denny Chapelle	South Ballina Staged development - 5 x lot subdivision for future cluster housing development and construction of public road, No. 565-589 River Street, West Ballina	Being Assessed
2011/541	20/12/2011	Ballina Shire Council	Construction of a surf club storage building, 78 space carpark, bulk earthworks and landscape works; Cedar Crescent, Light House Parade & Compton, Drive East Ballina	Awaiting Additional Information
2012/291	23/07/2012	Newton Denny Chapelle	To undertake a staged 47 Lot Community Title residential subdivision with lots ranging in size from 303m ² to 773m ² , associated road, earth and infrastructure servicing works, creation of a public road and one 6.4 hectare Torrens Title residue lot - 565-589 River Street, West Ballina	Being Assessed
2012/357	30/08/2012	Newton Denny Chapelle	The subdivision of 4 lots into 5 lots and a road reserve - Hutley Drive & Henderson Drive, Lennox Head	Awaiting Additional Information and Referred to Government Departments

8.6 Development Applications - Works in Progress - May 2013

DA No.	Date Rec'd	Applicant	Proposal	Status
2012/481	15/11/2012 (Application Amended 15/4/2013)	RW Edols	Erection of a tourist facility including 8 villas and associated facilities and infrastructure and a dual occupancy dwelling - 259 Keith Hall Lane, Keith Hall	Awaiting Additional Information
2012/522	13/12/2012	Newton Denny Chapelle	Staged consent for a two lot subdivision to create 1 x 0.2 ha allotment (Proposed lot A – special purpose lot) and 1x 7.7 ha residue allotment and associated public road reserve and conceptual approval (subject to a future development application) for the development of an emergency services facility (NSW Rural Fire Service) and associated access road - Henderson Drive, Lennox Head	Awaiting Additional Information
2013/44	14/02/2013	Ardill Payne	To undertake vegetation clearing, site filling and stockpiling of soil – Lot 137 Barlows Rd, West Ballina	Awaiting Additional Information
2013/48	15/02/2013	Ardill Payne	To construct a motel, caretaker's	Determination Pending

8.6 Development Applications - Works in Progress - May 2013

DA No.	Date Rec'd	Applicant	Proposal	Status
			dwelling, in-ground swimming pool and signage – 276-278 River St and corner of Kerr St & Camoola Ave, Ballina	
2013/74	07/03/2013	GM Project Development & Management	To undertake additions to an existing bulk storage facility, involving the erection of 48 additional mini storage sheds and associated infrastructure - 33 Smith Drive, West Ballina	Determination Pending
2013/75	08/03/2013	Civiltech Consulting Engineers	Proposed site filling and rock retaining wall – 1 Camden St, 3 & 5 Camden Ln and 2 Skinner St, Ballina	Awaiting additional information
2013/80	14/03/2013	Ballina Region Community College Inc	To undertake the erection of one business identification sign - 494 Bruxner Highway, Alstonville	Awaiting Additional Information
2013/95	02/04/2013	AM & CJ Dougherty	To remove Four Trees - 33 Crane Street, Ballina	Determination Pending
2013/112	11/04/2013	Newton Denny Chapelle	Alterations and additions to the Federal Hotel and Colonial Arcade including construction of a permanent enclosed pavilion between the Hotel building and the Colonial Arcade, conversion of unit 2 of the Colonial Arcade to a café which will also	Awaiting Additional Information/ On Exhibition

8.6 Development Applications - Works in Progress - May 2013

DA No.	Date Rec'd	Applicant	Proposal	Status
			function as the kitchen for the Hotel, modifications to the layout of the car park and boundary adjustment subdivision - 75-77 Main Street, Alstonville	
2013/116	12/4/2013	Newton Denny Chapelle	Change of use of existing restaurant to funeral home with associated function room and alterations and additions, signage and boundary fencing - 21-25 Kalinga Street, West Ballina	On Exhibition
2013/118	15/04/2013	Richmond River Tyre Company	To undertake a change of use - 35 De-Havilland Crescent, Ballina	Being Assessed
2013/125	17/04/2013	Basix Services	Change of Use - Health Studio - 2/38 De-Havilland Crescent, Ballina	Being Assessed
2013/129	22/04/2013	William Brothers Service P/L	Extension to existing industrial building - 10 Robb Street, Alstonville	Being Assessed
2013/130	23/04/2013	Mr B E Cadwallader & Mrs S L Cadwallader	Erection of three Signs, including two illuminated signs - 6-7 Easton Place, East Ballina	On Exhibition

8.6 Development Applications - Works in Progress - May 2013

Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
2012/334	17/08/2012	Ballina Shire Council	The construction of Hutley Drive connection to the Pacific Pines Estate via a round-about, connection to Elevation Estate & vegetation clearance in SEPP 14 affected area – North Creek Road, Lennox Head	Awaiting Additional Information

Major Development (Determined by Minister)

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

RECOMMENDATION

That Council notes the contents of the report on the status of outstanding development applications for May 2013.

Attachment(s)

Nil

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

9. Strategic & Community Services Group Reports

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

Delivery Program Strategic Planning

Objective To present Council with a planning proposal in relation to land located at Lots 31 and 32 DP 837448, 31 and 32 Tara Downs, Lennox Head and to seek direction in relation to the further progress of the matter.

Background

Council received a request for the rezoning of Lots 31 and 32 DP 837448, being 31 and 32 Tara Downs, Lennox Head, on 13 March 2013 (Attachment 1). The request was submitted by the landowners, being Ms T Chambers and Mr B and Mrs J Stephenson. The proposed amendment involves the application of a low density residential zone over the two properties. The landowners are also seeking a change to Council's subdivision standards to enable subdivision of the land.

The subject land is identified in Appendix 1 of the planning proposal (Attachment 2). Lot 31 has a site area of 2,303m². Lot 32 has a site area of 2,888m². The subject lots are located at the northern end of Tara Downs on the eastern side of North Creek Road. The lots are separated by a six metre wide battleaxe handle servicing a larger rural lot at the rear that is also a right of carriageway for the subject lots. Each lot currently contains a single dwelling accessed from this adjoining right of carriageway.

Under the Ballina Local Environmental Plan (LEP) 2012 the subject land is zoned RU1 Primary Production (Appendix 1 of the planning proposal). Previously, under the Ballina LEP 1987, the subject land was zoned 1(b) Rural (Secondary Agricultural Land) zone (Appendix 1 of the planning proposal).

Ms Chambers made two submissions seeking the Council's support for the land to be rezoned for residential uses during the public exhibition periods for the Ballina LEP 2012. Both lots were identified as having the potential to be rezoned for residential purposes, subject to further satisfactory investigations and assessment. Considering the investigations to date regarding the subject land and the engagement by Ms Chambers as part of the LEP amendment process, it is considered appropriate to merge the first two steps of the preparation of an LEP amendment in this instance. This merge has resulted in the preparation of a planning proposal (Attachment 2) for the Council's consideration.

This report provides an overview of the planning proposal and seeks the Council's authorisation for the submission of the proposal to the NSW Department of Planning and Infrastructure (DP&I) for initial Gateway determination.

Key Issues

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

- Suitability of a residential zone in the subject circumstances
- Minimum lot size for each land parcel

Information

The LEP amendment request submitted by the landowners provides a brief overview of the planning background of the subject land. Minimal information has been submitted regarding key site issues include bushfire, drainage, vegetation and potential lot layouts for future subdivision.

Based on a preliminary review of the information submitted and site assessment, there does not appear to be any significant constraints that would render the application of a residential zone to the land unsuitable. It should also be noted that the land is located within a predominantly residential neighbourhood. Should the Council agree to initiate the rezoning process, the planning proposal will be forwarded to the DP&I for Gateway determination. If the DP&I issues an affirmative Gateway determination, additional information would be requested from the applicant in regard to key site issues.

Due to the need to further examine issues such as ecologically significant vegetation and bushfire susceptibility, the minimum lot size appropriate for the subject land is yet to be determined, although the applicants have requested minimum lot sizes of 800m², giving each lot the potential for further subdivision. In terms of subdivision, it is not yet possible to discern whether site constraints are of a nature that would prevent the erection of further dwellings on the land. A separate, but relevant additional issue is the consequences of allowing additional traffic to be generated within the adjacent local street system.

Additional information, following a positive Gateway determination, would be sought to enable the Council to determine the suitability of the land for subdivision and the minimum lot sizes appropriate for the subject parcels.

With respect to the strategic planning framework, the application of a residential zone to the land is generally consistent with both Council and State Government urban land release planning policy. More specifically, the following provides an overview of the proposed amendment with respect to historical and currently applicable planning documents.

Site History

The parent lot of the subject land, Lot 19 DP 715304, (3.032ha) was created in 1985 in conjunction with a 30 lot residential subdivision in Tara Downs. Upon the introduction of Ballina LEP 1987, the subject land was zoned 1(b) Rural (Secondary Agricultural Land) Zone.

In 1989, Lot 19 was further subdivided to create the subject Lots 31 and 32 in addition to Lot 33 located at the rear of the subject land. Lots 31 and 32 were approved under Development Consent No 1989/53 by virtue of the provisions of Clause 16 (Development of land on adjoining boundaries) of the LEP.

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

Considering the adjoining residential properties had minimum lot sizes of 600m², the creation of two lots greater than 2000m² was considered consistent with the provisions of Clause 16 at that time. The DA assessment also stated that “*the 1(b) zoning of the land is incontiguous and (the land) should be incorporated into future urban development*”, indicating that the land was identified as being suitable for a residential zoning during this DA process in 1989.

Far North Coast Regional Strategy (FNCRS)

The subject land is identified as being located within the existing urban footprint, despite the rural zoning. Accordingly, the application of a residential zone to the land is consistent with this strategy.

Ballina Shire Growth Management Strategy 2012 (GMS)

The subject land is not recognised as being within a strategic urban growth area under this strategy as the two lots, by virtue of their areas and configuration, are essentially residential in nature. The site is adjoined by R2 low density residential zoned land to the south (Tara Downs) and west (North Creek Road and Aspects Drive). Land to the immediate north is an unformed road and subject to Ballina LEP 1987, being land currently deferred from the provisions of the Ballina LEP 2012. Immediately adjoining this deferred land to the north is low density residential zoned land (Page Court and Palisade Way). A 2.513ha parcel of RU1 Primary Production zoned land is located immediately to the east of the subject site.

Surrounding existing residential lot sizes are in the vicinity of 1000m². The subject lots being 2303m² and 2888m², if zoned low density residential, may have the potential for subdivision creating lots of a comparable size to those surrounding, dependent upon additional information regarding potential site constraints such as ecologically significant vegetation and bushfire protection.

The land has not been identified for any other purpose within the GMS such as future employment lands, open space or the like. The land is, however, identified within the Lennox Head Structure Plan as being located within an existing developed area and/or urban zone. This plan is discussed below and is considered the appropriate framework for specific locality growth management. Therefore, the proposal is considered to be consistent with the GMS.

Lennox Head Structure Plan (LHSP)

The LHSP provides a framework for the development of new urban land release areas within the Lennox Head locality and includes the subject land. Whilst the subject land is not identified as a candidate release area, it is identified as being located within an existing urban area.

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

Ballina Local Environmental Plan 2012 (Ballina LEP 2012)

During the preparation of the Ballina LEP 2012, Ms Chambers of Lot 31 lodged a submission during both exhibition periods in support of the rezoning of the land to residential. The Council agreed to give further consideration to the matter following discussions with the owner adjoining, being Lot 32 (Environmental and Sustainability Committee meeting held in May 2011 recommendation adopted by Council – Minute No. 260511/23). Reporting on submissions to Council's December 2011 Ordinary Meeting stated that it was unlikely that progress of the matter would allow a zoning change prior to the implementation of the Ballina LEP 2012. Consequently, the subject LEP amendment request was lodged by the applicant in March 2013 following the commencement of Ballina LEP 2012.

The subject land is zoned RU1 Primary Production under the terms of the Ballina LEP 2012. Previously under the Ballina LEP 1987, the subject land was zoned 1(b) Rural (Secondary Agricultural Land) zone.

The RU1 Primary Production zone has a minimum allotment size of 40ha. The subject lots have respective site areas of 2303m² and 2888m². These lots are well below the minimum lot size for RU1 land and would not be considered suitable for sustaining an agricultural use, even with consolidation.

It is proposed to rezone the land as R2 low density residential (Appendix 1 of the planning proposal). The surrounding R2 Low Density Residential lots have minimum lot sizes of 600m². The applicant has proposed a minimum lot size over each lot of 800m² to facilitate functional sized parcels. The application does not include any potential subdivision layouts.

Both lots have narrow street frontages due to their location at the head of the cul de sac. However, each lot does have formal access via the adjoining right of carriageway separating the subject lots. The owners would need to furnish advice that additional traffic within the right of carriageway (generated from further subdivision and development) is both legally and practically acceptable to all parties benefitting from it.

Each lot is bushfire prone and located within high risk mosquito management areas. The subject land is encumbered by a drainage channel running in a north/south direction across both lots.

Lot 32 is within a nominated 100m buffer for an adjoining SEPP 26 littoral rainforest to the east. Both Lots 31 and 32 are located in proximity to ecologically sensitive vegetation on the northern side of the subject land. As both lots currently contain a single dwelling, an LEP amendment to change the zoning from RU1 to R2 while retaining the current lots sizes would have negligible impact upon existing vegetation. However, if the minimum lot size proposed for the subject lots was to be consistent with or similar to the surrounding locality, ie approximately 1000m², the impact upon potentially sensitive vegetation is unknown. This impact has the potential to be compounded by any bush fire protection measures required for future dwellings upon vacant lots.

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

While there are no major concerns raised in relation to the zoning change of the subject lots from rural to low density residential, the minimum lot sizes considered appropriate for each lot are yet to be determined. Considering the potential impacts on vegetation as a result of any subdivision of the subject lots, it is appropriate that additional information be required from the applicant if an affirmative Gateway determination is received from the DP&I. This information should address potential subdivision layouts and the consequences of such upon vegetation, including the potential for provision of bushfire protection measures for dwellings upon future vacant lots. This information would be assessed prior to any public exhibition of the proposal.

Sustainability Considerations

- **Environment**

The subject land is adjacent to and contains mature established vegetation. The significance of this vegetation would be assessed further if the planning proposal proceeds.

- **Social**

The proposed zoning does not raise any significant social implications as it relates to existing lots within an approved subdivision, surrounded by low density residential housing.

- **Economic**

There are no significant economic implications currently identified in relation to the proposed zoning.

Legal / Resource / Financial Implications

There are no significant resourcing or financial implications associated with the further processing of the LEP amendment. The next step in the process would be requesting additional information from the applicant prior to the forwarding of the planning proposal prepared by Council to the DP&I for its consideration.

Council's adopted fees and charges associated with LEP amendment requests would be applied to the further processing of the request.

Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as the matter is in the initial phases. However, should the matter continue to proceed, an affirmative Gateway determination will advise of consultation requirements with government agencies and the community. Community engagement would then occur following assessment of the required additional information and in accordance with the Gateway determination.

Options

1. Proceed with the planning proposal, for the application of an R2 low density residential zone to Lots 31 and 32 DP 837448, being 31 and 32 Tara Downs, Lennox Head.

9.1 LEP Amendment Request - 31 and 32 Tara Downs, Lennox Head

This approach would authorise the submission of the planning proposal contained in Attachment 2 to the DP&I for Gateway determination.

While it is considered that additional information is required to determine the appropriate minimum lot sizes, the land is generally considered to be suitable for low density residential zoning. The planning proposal submitted to the DP&I would identify the uncertainty regarding minimum lot sizes at this stage of the process and identify that the minimum lot sizes would be determined following the assessment of additional information.

This is the recommended approach.

2. Defer or amend the planning proposal.

This approach is not recommended given:

- the initial review of the characteristics of the land has indicated that the site is generally suitable for a low density residential land use zone; and
- the proposed LEP amendment is consistent with Council's land use planning framework for the locality.

3. Cease further action in relation to the planning proposal.

For the same reasons outlined in relation to Option two, this approach is not recommended.

RECOMMENDATIONS

1. That Council endorses the application of an R2 Low Density Residential zone as the basis for a planning proposal relating to Lots 31 and 32 DP 837448, being 31 and 32 Tara Downs, Lennox Head.
2. That the subdivision potential and associated minimum lot size for subdivision for Lots 31 and 32 DP 837448 be determined following assessment of additional technical information to be supplied by the respective property owners.
3. That Council submit the planning proposal relating to Lots 31 and 32 DP 837448 to the NSW Department of Planning & Infrastructure for review and Gateway determination.
4. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, Council staff carry out the procedural steps associated with the progress of the planning proposal, including requesting additional information and public exhibition.
5. That a further report be submitted to the Council in relation to this matter following mandatory community consultation.

Attachment(s)

1. Attachment 1 - LEP Amendment Request Ms T Chambers and Mr and Mrs Stephenson
2. Attachment 2 - Planning Proposal for Lots 31 and 32 DP 837448 Tara Downs Lennox Head

9.2 Planning Proposal - 60 Crane Street, Ballina

9.2 Planning Proposal - 60 Crane Street, Ballina

Delivery Program Strategic Planning

Objective To invite the Council to progress a planning proposal with respect to Lot 2 DP 506103, 60 Crane Street, Ballina.

Background

This report relates to Lot 2 DP 506103, located at 60 Crane Street, Ballina (refer to Map 1 within the planning proposal contained in Attachment 1). The subject land is currently owned by Fire & Rescue New South Wales, comprising part of the current Ballina Fire Station site.

Council staff recently had cause to be discussing with representatives of Fire and Rescue New South Wales, that organisation's infrastructure requirements for the future delivery of fire services within Ballina. Outcomes of these discussions were presented by way of report to the elected Council through its Commercial Services Committee meeting held on 26 February this year.

As part of these deliberations, Council identified a zoning anomaly relating to part of the land on which the current fire station is located, giving rise to the need for an amendment to the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) to rectify the zoning anomaly.

The Council, at its Ordinary Meeting held on 28 February 2013, resolved to prepare a planning proposal to address the zoning of Lot 2 DP 506103 (Minute No. 280213/30). The present report provides an overview of the planning proposal and seeks direction with respect to its progress.

Key Issues

- Commercial zoning
- Consistency with strategic planning intent

Information

Investigation into this matter has identified that the current zoning of the subject land (Lot 2 DP 506103) is a consequence of a mapping anomaly associated with the previous digitisation of the Ballina Local Environmental Plan 1987. Details of the anomaly are contained in the planning proposal (Attachment 1). Importantly, the current and historic use of the subject land is associated with the use of an adjoining land parcel that is zoned for commercial purposes.

9.2 Planning Proposal - 60 Crane Street, Ballina

As a consequence of the above, a planning proposal that would have the effect of rezoning the subject land from R3 Medium Density Residential zone to B3 Commercial Core zone, under the terms of the BLEP 2012 has been prepared (Attachment 1). The planning proposal seeks to apply the appropriate commercial zone to the land, consistent with the zoning of the adjacent land parcel with which its development history and use is associated.

It is noted that the planning proposal is consistent with the strategic planning context and history of the land, and the zoning anomaly outlined above is in need of rectification even though there is no development proposal currently pending in relation to the land.

The Council is invited to endorse the planning proposal for referral to the NSW Department of Planning and Infrastructure (DoP&I) for 'Gateway' determination. Following the Gateway determination (allowing the proposal to proceed), the planning proposal would be placed on public exhibition in accordance with the requirements of the Gateway determination and reported back to the Council for further consideration and/or endorsement.

Sustainability Considerations

- **Environment**

The rezoning of the land from medium density residential to commercial is, under the circumstances, a minor matter and as such it is not likely to have any significant implications from an environmental, social or economic perspective. The rezoning is consistent with the strategic planning intent and historic use of the land.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

The approach recommended in this report is consistent with Council's legal responsibilities as a local planning authority. The matters arising from this report can be attended to within existing resources.

Consultation

It is envisaged that following referral to the DoP&I Gateway panel, the planning proposal, if allowed to advance, will be placed on public exhibition in accordance with the Gateway determination.

Options

1. That Council advance the proposed rezoning and submit the planning proposal to the DoP&I for Gateway determination; or
2. That Council not commence the rezoning process.

9.2 Planning Proposal - 60 Crane Street, Ballina

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 extent to which the land's rezoning will be consistent with the planning context and development history of the land.

Essentially, the rezoning constitutes "housekeeping" to ensure consistency with the strategic intent of the subject land, and with community expectations, and to correct a mapping anomaly which has been detected within the Council's public records.

Due to the relatively minor nature of the proposal and its consistency with the planning context of the land, 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.

The primary disadvantage of the planning proposal not proceeding is the continuation of the inconsistency in zoning that applies to the land with respect to the adjoining parcel with which the existing use is associated.

Where Council proceeds to submit a planning proposal for Gateway determination, Council has the option of requesting delegation of certain plan making functions from the Department. Under these delegations, Council would perform some of the plan making functions that are otherwise completed by the Department.

Although there may be occasion where the application of the delegations is of benefit to Council, typically the exercise of the delegation shifts tasks to Council, shifts risk in the plan making process to Council and removes a Departmental review point (which has historically been beneficial in the LEP amendment process). Submission of a request to the Department to allow Council to exercise the delegations is not recommended in this instance.

RECOMMENDATIONS

1. That Council endorses the application of a B3 Commercial Core zone as the basis for a planning proposal applying to Lot 2 DP 506103, 60 Crane Street, Ballina (as shown in Map 1 of the planning proposal contained in Attachment 1).
2. That the Council submit the planning proposal relating to Lot 2 DP 506103, 60 Crane Street, Ballina to the NSW Department of Planning & Infrastructure for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, the procedural steps associated with progression of the planning proposal, including community consultation, be undertaken.
4. That a further report be presented to the Council in relation to this matter following mandatory community consultation.

9.2 Planning Proposal - 60 Crane Street, Ballina

Attachment(s)

1. Planning Proposal - 60 Crane Street, Ballina

9.3 Land Classification - Wardell & District War Memorial Hall

9.3 Land Classification - Wardell & District War Memorial Hall

Delivery Program Strategic Planning

Objective To seek direction from the Council regarding the finalisation of the classification of the land containing the Wardell & District War Memorial Hall.

Background

At its Ordinary Meeting held on 28 February 2013, the Council resolved to proceed with the acquisition (i.e. transfer) of the Wardell and District War Memorial Hall (Figure 1) into Council ownership and authorised the General Manager to undertake all actions necessary to deliver this outcome (Minute No. 280213/14). Part of the above resolution was to classify the land as “operational land” under the *Local Government Act 1993*, affording Council greater flexibility for the use and management of the property in the future.



Figure 1 – Location Map, Wardell & District War Memorial Hall (Not to scale)

In accordance with the requirements of the *Local Government Act 1993*, public notification of Council’s intent to classify the land containing the hall as operational land has been undertaken. The purpose of this report is to inform the Council of the outcome of the public notification process and to seek final direction as to how the land containing the Wardell & District War Memorial Hall should be classified upon acquisition.

Key Issues

- Classification of the land containing the Wardell & District War Memorial Hall

Information

In response to the February 2013 Council resolution, action has been taken by staff to facilitate the transfer of the Wardell and District War Memorial Hall, identified as Lot 1 DP 312334, into Council's ownership. In this regard, instructions have been issued to Council's solicitor in relation to the property transfer however the transfer has not yet been completed at the time of presenting this report.

In relation to the proposed classification of the land, public notice has been made in accordance with section 34 of the *Local Government Act 1993* (the Act) to enable the classification of the land as operational land upon acquisition.

Section 34 of the Act requires Council to give public notice of a proposed resolution to classify public land. The notice includes the terms of the proposed resolution, a description of the land concerned and allows a period of at least 28 days during which submissions may be received.

Public notification of the proposed classification was made in the Ballina Shire Advocate on 13 March 2013. The notice provided information concerning the Council's resolution, a description of the land and details of Council's intent to classify the land as operational upon acquisition. The notice stated that it is Council's intention to enable the property to continue to be used for its current purposes, supported by the establishment and operation of an active management committee comprising community representatives.

Council invited submissions on the matter up until 10 April 2013. No submissions were received.

Sustainability Considerations

- **Environment**
Not Applicable.
- **Social**
The proposed classification of the land containing the Wardell & District War Memorial Hall site as operational land under the provisions of the Act provides Council with greater flexibility in the management and ongoing use of the hall as a public facility.
- **Economic**
As above.

Legal / Resource / Financial Implications

As stated, the proposed classification of Lot 1 DP 312334, being the land containing the Wardell & District War Memorial Hall, as operational land is considered to provide greater flexibility for Council in the ongoing use and management of the site for public purposes.

Consultation

As outlined, public notice of the proposed classification of the land was provided on 13 March 2013. Members of the public were afforded the opportunity to make submissions up until 10 April 2013 in accordance with the requirements of the Act. No submissions were received.

Options

Under the provisions of the Act, public land under Council's ownership must be classified as either operational land or community land. As such, Council has two options in relation to the classification of the land containing the Wardell & District War Memorial Hall, upon acquisition.

1. Proceed to Classify the Land as Operational Land

Council may proceed to resolve to classify the land as operational land upon acquisition in accordance with the requirements of the Act. This is the recommended approach as it provides for greater flexibility in the use and future management of the land.

2. Classify the Land as Community Land

Council has the option to classify the land containing the Wardell & District War Memorial Hall as community land under the Act.

Land classified as community land is subject to a number of regulatory provisions under the Act, such as the requirement for a plan of management, limitations on lease activities and tenures, as well as imposing a number of other land use restrictions. The classification of the land as community land potentially impinges on its use in the future and as such, this option is not recommended in relation to this particular property.

3. Defer Consideration of the Matter

Council may defer its decision on the matter pending further information. This is not recommended given that the applicable notification procedures associated with the classification of the hall site as operational land have been completed and no submissions have been received.

Further, delay may impact the opportunity to classify the land as operational land as there is a three month time limit for such classification by Council resolution following the acquisition of the land. If this timeline is not met, an LEP amendment would be required to apply the operational classification. This is a more resource intensive and time consuming process.

RECOMMENDATIONS

1. That Council notes the contents of this report in relation to the public notification of the proposal to classify Lot 1 DP 312334 containing the Wardell and District War Memorial Hall as operational land.
2. That upon acquisition, Lot 1 DP 312334 containing the Wardell and District War Memorial Hall be classified as operational land in accordance with the provisions of the *Local Government Act 1993*.

Attachment(s)

Nil

9.4 Alstonville Farmers' Market

9.4 Alstonville Farmers' Market

Delivery Program Community Planning

Objective To update Council on the Alstonville Farmers' Market registration of interest process and seek Council's direction on the appointment of a market manager.

Background

Council, at its Ordinary Meeting held on 26 April 2012, resolved as follows [Minute No. 260412/33]:

- 1. That Council supports the concept of a weekly Alstonville farmers' market to be held on Saturday mornings between the hours of 6 am and 12 noon.*
- 2. That Council advise the proponent that the nominated location for the market, being the public car park located between Bugden Lane and Commercial Road in Alstonville, is considered appropriate, with a twelve month trial period.*
- 3. That Council call expressions of interest for the market management for the trial period.*

The purpose of this report is to update the Council in relation to the Alstonville Farmers' Market development approval and registration of interest (ROI) process and to seek direction on the appointment of a market operator for the trial period.

Key Issues

- Economic development opportunities
- Land use conflict
- Access and parking
- Application of Council's Market Policy

Information

Development Consent and Registration of Interest Process

Following the Council's April 2012 resolution, a development application was prepared by Ardill Payne and Partners on behalf of Council to seek consent for the operation of the proposed market. Development consent was subsequently granted, enabling the market to operate from within the car park site (see Attachment 1) based on a twelve month trial period.

Due to noise considerations, the development consent authorises the operation of this market between the hours of 7am and 2pm on Saturdays, which includes all set up and pack down activities, rather than the 6am to 12 noon period that was previously preferred by Council. The consent requires a parking survey to be conducted during the trial of the market to help assess any parking or congestion issues. The consent also requires that nearby

residents and businesses which may be impacted by the market to be notified prior to the first market commencing.

Once development consent for the operation of the market was obtained, a registration of interest (ROI) package was prepared for the management of the twelve month trial in accordance with Council's Market Policy. The ROI package was advertised in the local newspapers and closed on 12 December 2012. No registrations of interest were received in response to this advertisement. Significantly, the original proponent of the market concept did not lodge an ROI to operate it.

Discussion with Potential Operators

On the basis that no registrations were received during this process, Council met with the Westpac Life Saver Helicopter Service (WLSHS) in January 2013 to assess the interest of this organisation in managing the Alstonville Farmers' Market for the trial period. The decision to contact this not-for-profit group was based on the WLSHS's experience in managing other local markets, including the Ballina Twilight Market and the Lennox Head Community Market.

At this meeting WLSHS raised a number of factors that influenced their decision not to pursue management of the Alstonville Farmers' Market. These factors were identified based on their experience managing the Ballina Twilight Market and included:

- difficulty in attracting stallholders to the Ballina Twilight Market, possibly due to competition from other markets
- signage restrictions limiting the options for active promotion of the event around the Ballina Twilight Market site to encourage and remind people about the market
- continued low income generated by the Ballina Twilight Market limits the capacity of the market to deliver a satisfactory income for the current market manager.

Council is currently addressing the matter of events signage through the draft Community Events Signage Policy that was reported to the Council at its March 2013 Ordinary Meeting. This draft policy has recently been exhibited for community comment.

In February 2013, Mr Steve Cooke, a local resident with extensive experience in managing local markets, was referred to Council by the Alstonville and Wollongbar Chamber of Commerce. Mr Cooke subsequently met with staff to express his interest in operating the market in a private capacity and discuss a number of concerns he had about the viability of the market. Mr Cooke lodged an ROI to operate the market in March 2013.

Mr Cooke expressed concern with the approved layout of the market within the car park and suggested that a revised layout could improve amenity and pedestrian safety. A revised site layout was submitted with the proponent's ROI.

9.4 Alstonville Farmers' Market

Council's Regulatory Services Group has advised that this layout is acceptable within the terms of the current development consent as it falls generally within the approved area and number of stalls for the market.

A matter discussed with Mr Cooke has been the focus of the market on goods and merchandise that has been grown, produced or made locally to support local craftspeople and artisans as well as growers. Although the type of goods sold at the market are not specified in the consent, there is an expectation in the name of the market that it will be predominately food produce. The scope for stalls at this market to include some craft and art may, however, go some way to improving the viability of the markets, especially having regard for the apparent difficulty in attracting local food producers to the Ballina Twilight Markets.

During the period of discussion with Mr Cooke, the Alstonville Show Society expressed concern to Council about the impact of a new weekly market at the Bugden Lane Car Park on the monthly market that currently operates on the second Sunday of each month in the Alstonville Showgrounds under consent granted by Council for this purpose (DA 2001/667).

During recent discussions with representatives of the Show Society it was indicated that the number of stalls at this market has progressively reduced over time, perhaps due to competition from other markets in the area. The Alstonville Show Society would like to reinvigorate its market and subsequently sought a meeting with the proponent and Council to discuss these concerns.

Council met with members of the Alstonville Show Society, Mr Cooke and Alstonville and Wollongbar Chamber of Commerce in April 2013 to discuss market opportunities. The Alstonville Show Society indicated that the impact of the new weekly market on its monthly showground market could be reviewed following the twelve month trial period of the Alstonville Farmers Market. In the meantime, the Society will explore opportunities for Mr Cooke to work with it to reinvigorate the monthly showground market. On this basis it appears there is an opportunity for the two markets to operate in Alstonville, at least for the twelve month trial farmers' market period.

Registration of Interest Assessment

The ROI submitted by Mr Cooke has been reviewed in relation to the application criteria. The matters requiring further consideration by Council are outlined below.

Knowledge and experience in operating a market in accordance with Council's Market Policy and the applicable licence and development consent conditions.

The present ROI involves the management of the market by a private proponent, rather than by a community-based organisation. Council's Market Policy emphasises that a market operator will be a *not for profit group*. In the policy, a not for profit group is defined as "*an individual or group who returns any profits from the charging of market site fees to the running of the markets or to a nominated community group or charity. Preference will be given to Ballina Shire based organisations and then to organisations that operate within the region.*"

9.4 Alstonville Farmers' Market

Therefore the appointment of Mr Cooke as market manager will be inconsistent with Council's adopted Market Policy.

Council is asked to consider if it wishes to provide this opportunity to Mr Cooke when the appointment will vary from the requirements of its policy. It is suggested that, given the trial nature of this market, and that no other expressions of interest have been received, this approach is considered reasonable in the circumstances.

After the trial period, and if Council is supportive of the continuation of the market (in this location and at this time), approval could be sought for a more permanent market and market operation reviewed in light of this process. Provision of a market licence post the trial period will require advertising a fresh ROI and provide another opportunity for groups more aligned with the Council's Market Policy to nominate for the management of this market.

Extent of public benefit

Council's policy is predicated on allowing the use of Council owned land, for not-for-profit groups to manage such markets for the benefit of the broader community, including through the re-distribution of site/stallholder fees to community-based causes. Although Mr Cooke's ROI does not include the payment of a site rental or lease to the Council for the commercial use of Council land, the proponent does outline how this market may benefit the public. The potential benefits identified by the proponent include:

- A free charity stall with the sole right to operate a sausage sizzle and drinks fundraiser at the market. This opportunity would be shared among interested charities each week.
- Promotions such as bargaining chips and/or buskers' tokens that have an allocated currency and are given out free to market visitors to encourage support of buskers and stimulate trade between visitors, the market stallholders and retailers of Alstonville.
- The selling of produce and local crafts builds community activity, attracts visitors to the town and stimulates the local economy by increasing employment and encouraging consumers to support local business.

Whilst these are potentially public benefits associated with farmers' markets, Council is invited to consider whether these benefits outweigh the potential adverse impacts associated with the operation of the market (on neighbourhood amenity, parking, access etc). There may also be other costs associated with provision of utilities and site management. These factors should also be considered in terms of whether a variation to Council's Market Policy is warranted in this case.

Council could also consider other options to derive public benefits appropriate for this particular activity, such as application of a commercial or reduced rent, given the proposed commercial use of the site. Such a rent may be based on land value, similar to that used to collect fees for the commercial use of footpaths, or as otherwise nominated by the Council.

In determining the extent of public benefit of this market, the following points should be considered:

9.4 Alstonville Farmers' Market

- the ROI involves a private entity operating the market
- there is already a market operating in Alstonville, albeit not as frequently as proposed here and
- Council will spend ultimately around \$8,000 (not including staff time) to obtain approval and meet the required consent conditions for this market.

Overall, as Council is trying to encourage the establishment of a market in this locality, the application of a rental or licence fee to a private operator is not recommended for the trial period. However, it is recommended Council require as part of any licence offered to Mr Cooke, that all site management, operational and marketing costs be met by the operator (e.g. electricity, waste management, advertising etc). This recommendation seeks to balance the opportunity to establish the market with costs to the community.

Additional Criteria

The proponent has provided sufficient information demonstrating that he is able to operate the market in accordance with the additional criteria outlined below.

- Insurance
- Experience in, and/or commitment to, enhancing the social, cultural and economic wellbeing of residents and visitors
- Experience in, and/or commitment to, environmentally responsible operations and initiatives
- Knowledge of local market culture
- Knowledge and understanding of the principles and practices of risk and environmental management and work health and safety, and ability to apply them to market management.

On the basis of the above, the recommendation is to appoint Mr Cooke as market operator for a period of twelve months to coincide with the market trial period.

Sustainability Considerations

- **Environment**
Local markets can have positive environmental outcomes, particularly with respect to reducing 'food miles' associated with the transportation of produce.
- **Social**
Local markets can support the availability of fresh produce to the local community and provide opportunities for social interaction. Markets also present opportunities for community learning about regional food production.
- **Economic**
Local markets support the local economy by retaining income within the region. Markets located in proximity to existing commercial areas can also contribute to the business activity within these areas.

Legal / Resource / Financial Implications

Provided that the operator meets all management and operation costs, this market will be conducted at no cost to Council (beyond the costs associated with obtaining development consent and complying with conditions attached to the approval). As outlined above, Council may seek to apply a nominal licence fee in recognition of the private interest involved in the market operation, although this is not recommended.

Council has expended significant resources to progress this matter to date.

Consultation

The ROI for the operation and management of the market was advertised in the Ballina Advocate and the Northern Star newspapers and was open for a period of 28 days. The development application was also advertised for a period of 14 working days. During this time one submission objecting to the market was received. The development application was subsequently determined by way of the grant of consent, with conditions.

Options

1. It is open to the Council not to proceed with engagement of any party for the operation and management of an Alstonville Farmers' Market.

This is not recommended due to wider potential benefits markets can provide to the local community.

2. Council may elect to investigate other opportunities for the market to occur in partnership with a suitable not for profit organisation to oversee the management of the market.

The development consent for this market is for a trial period and expires twelve months from the date of the first market, provided it has commenced before October 2017. This timeframe allows for further opportunities for the market management to be explored.

Having been through the process of the ROI and no expressions being received, Council is able to continue to negotiate the market's management with suitable parties should a suitable not for profit organisation express interest in managing an Alstonville Farmers' Market.

Under this option, Council could authorise the General Manager to proceed to engage a suitable organisation as market manager for the twelve month trial period as specified in the development consent and in accordance with Council's Market Policy.

Significant resources and staff time have already been allocated to the process of selecting a market manager for this market. Further effort in seeking appropriate organisations would require additional resources. Given this, and the scope of options examined to date, this option is not recommended.

3. Council may appoint the current proponent as market manager for the twelve month trial period.

The current proponent, Mr Cooke, wishes to operate the market in a private capacity and although this is not consistent with Council's Market Policy, no organisation that fits the policy (being a not for profit community group) has expressed an interest in this opportunity.

The twelve month trial allows time to determine the longer-term viability of the market and for Council to more fully understand any issues that may arise during the trial period, such as impacts to neighbourhood amenity, commercial properties, the monthly showground market, parking etc. This trial will also provide an indication of the commercial return that the market generates.

Information gathered during the initial period will inform a further report to Council towards the end of the trial market evaluating its positive and negative impacts. This will assist the Council to determine whether to seek to continue the market beyond the trial period. That report may also provide some indication of appropriate commercial rent that may be expected should a private proponent submit a ROI for a market licence following the trial period.

Should Council decide to continue with an Alstonville Farmers' Market, the ROI for the extended market licence will provide an additional opportunity for not for profit organisations to express an interest in managing the market.

Given the proposed commercial use of the Council owned land, Council will need to consider the level of support that will be extended to the proponent should it proceed to appoint Mr Cooke as market manager for the trial period. Significant 'start-up' costs, especially in relation to insurance and marketing will be required to get a trial market off the ground.

In light of the up front costs for market establishment and the opportunities for wider public benefit presented in the ROI, it appears reasonable for Council to waive rental for the site for the trial period. However, it is recommended that such rent only be foregone where the market operator meets all operational, management and marketing costs.

Council may consider the extent of commercial rent for the site that would be appropriate if a market licence is extended beyond the trial period and granted to a private operator.

This option is recommended due to the trial nature of the market, limited interest from any not-for-profit organisations in operating the market and that Mr Cooke's ROI adequately addresses the relevant criteria (aside from Mr Cooke being a private operator).

RECOMMENDATIONS

1. That based on the outcomes from the registration of interest process, Council authorises the General Manager to appoint Mr Cooke as the market operator of the Alstonville Farmers' Market for a period of twelve months, effective from the date of the initial market.
2. The appointment of Mr Cooke is on the basis that the market operator will meet all operational, management and marketing costs associated with the Alstonville Farmers' Market for the duration of the twelve month trial period.
3. That Council waives any rental associated with the Alstonville Farmers' Market site for the initial twelve month trial period on the basis of the substantial establishment costs likely to be incurred by the approved market operator.
4. That Council receive a further report towards the end of the twelve month trial of the Alstonville Farmers' Market outlining the social, environmental and economic benefits and impacts of the market.

Attachment(s)

1. Site of proposed Alstonville Farmers' Market

10.1 Investment Summary - April 2013

10. General Manager's Group Reports

10.1 Investment Summary - April 2013

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 April 2013.

Council's investments are all in accordance with the Act, the Regulations and Council's Investments Policy. The balance of investments as at 30 April 2013 was \$84,493,000. This represents an increase from March of \$465,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 April 2013, was \$4,939,094.

Council's investments as at 30 April are at an average (weighted) rate of 4.27% which is 1.25% above the 90 Day Bank Bill Index of 2.99%.

The majority of the approximately \$84 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

Reserve Name	Internal/External Restriction	Approx % of Portfolio*
Water Fund (incl developer contributions)	External	14
Wastewater Fund (incl developer contributions)	External	14
Wastewater Fund (unexpended loan)	External	24
Section 94 Developer Contributions	External	9
Bonds and Deposits	External	2
Other External Restrictions	External	6
Land Development	Internal	9
Employee Leave Entitlements	Internal	2
Carry Forward Works	Internal	8
Miscellaneous Internal Reserves	Internal	11
Unrestricted		1
Total		100%

* Based on reserves held as at 30 June 2012

Key Issues

- Investment return
- Compliance with Investment Policy

10.1 Investment Summary - April 2013

Comment

The Reserve Bank Australia Board surprised many commentators by cutting the cash rate to 2.75% at its meeting of 7 May 2013. The accompanying statement was mostly similar to previous statements regarding the global economy, namely:

- Globally, growth is below trend this year, before picking up next year
- The United States continues on a path of moderate expansion
- China's growth is running at a more sustainable, but still robust, pace
- Japan has announced significant new policy initiatives aimed at strengthening demand and ending deflation
- The Euro area remains in recession.

Financial conditions internationally continue to be very accommodative, with risk spreads reduced, funding conditions for most financial institutions improved and borrowing costs for well-rated corporate and sovereigns exceptionally low.

For Australia, the Board noted that growth in the second half of 2012 was a bit below trend and that this had continued into the first half of 2013, the unemployment rate had increased a little but was still historically low and that inflation was well within the target range.

The final paragraph pulled this together with their reason for cutting the rate:

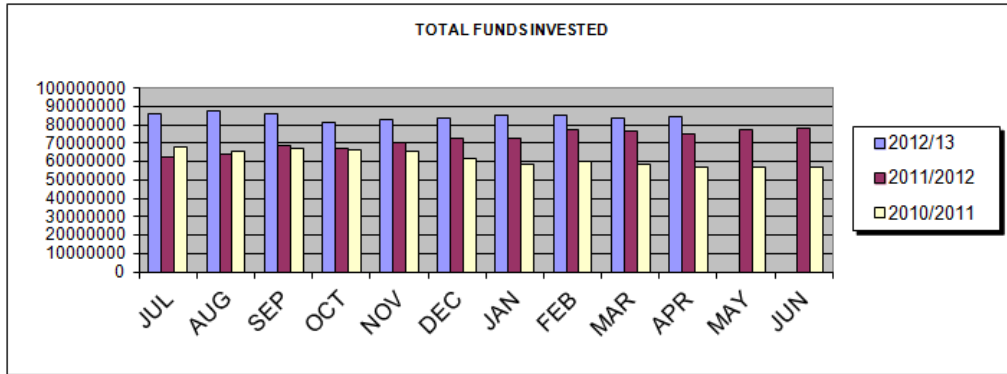
"The Board has previously noted that the inflation outlook would afford scope to ease further, should that be necessary to support demand. At today's meeting the Board decided to use some of that scope. It judged that a further decline in the cash rate was appropriate to encourage sustainable growth in the economy, consistent with achieving the inflation target."

A. Summary of investments by institution

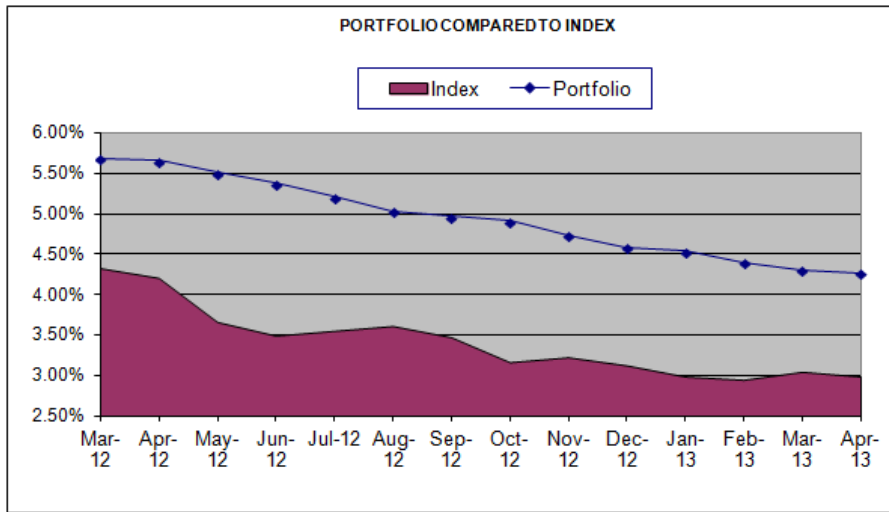
Funds Invested With	ADI Rating	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
Grandfathered Investments						
Deutsche Bank	A+	4,000	4,000	0	4.7	
Goldman Sachs	AA-	1,000	1,000	0	1.2	
Longreach Capital Markets 28*	AA+	1,000	1,000	0	1.2	
National Australia Bank	AA-	1,788	1,788	0	2.1	
National Wealth M'ment Holding	A	2,000	2,000	0	2.4	12%
Rated Institutions						
ANZ Bank	AA-	20	58	20	0.1	
Bank of Queensland	BBB+	7,000	7,000	10	8.3	
Bank of Western Australia	AA-	3,000	3,000	20	3.6	
Commonwealth Bank of Aust	AA-	6,590	5,797	20	6.9	
Defence Bank Ltd	BBB+	1,000	1,000	10	1.2	
Heritage Bank	BBB+	2,000	2,000	10	2.4	
Illawarra Mutual Bld Soc	BBB	4,000	4,000	10	4.7	
ING Bank Ltd	A	14,000	14,000	20	16.6	
Members Equity Bank	BBB	7,000	7,000	10	8.3	
National Australia Bank	AA-	10,000	13,000	20	15.4	
Newcastle Perm Bld Society	BBB+	2,000	2,000	10	2.4	
Rural Bank Ltd	A-	0	2,000	10	2.4	
Suncorp Metway Bank	A+	16,630	12,850	20	15.2	
Westpac Banking Corporation	AA-	1,000	1,000	20	1.2	88%
Unrated ADI's						
Total		84,028	84,493			100%

* Rating is on Capital only by Citigroup Pty Ltd

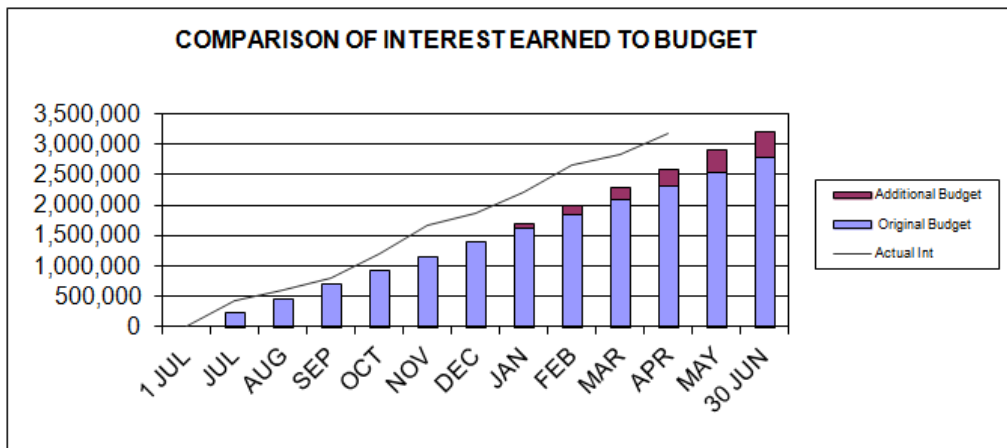
B. Monthly Comparison of Total Funds Invested



C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



10.1 Investment Summary - April 2013

E. Investments held as at 30 April 2013

Purchase Date	Issuer	Type	Rate%	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	3.99	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	3.99	23/04/14	2,000
20/09/04	National Australia Bank	FRN	4.17	Perpetual	1,788
12/04/06	Goldman Sachs	FRN	3.57	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	3.66	16/06/16	2,000
28/06/07	Longreach Series 28	FND	0.00	27/06/14	1,000
17/12/08	Commonwealth Bank of Australia	FRTD	4.23	17/12/13	1,000
17/12/08	Commonwealth Bank of Australia	TD	5.93	17/12/13	998
	Commonwealth Bank of Australia	FND	2.95	At Call	1,808
	ANZ Bank	FND	2.50	At call	58
24/01/12	ING Bank Ltd	FRTD	4.921	24/01/17	1,000
06/02/12	Westpac Bank	FRN	4.59	06/02/17	1,000
01/11/12	National Australia Bank	TD	4.51	01/05/13	2,000
05/11/12	ING Bank Ltd	TD	4.64	07/05/13	1,000
18/12/12	ING Bank Ltd	TD	4.75	18/06/13	3,000
02/01/13	Bank of Queensland	TD	4.70	02/05/13	1,000
21/01/13	Suncorp-Metway Bank	TD	4.40	22/07/13	4,000
25/01/13	Commonwealth Bank of Australia	TD	4.36	25/01/18	1,991
25/01/13	ING Bank Ltd	TD	4.44	24/07/13	2,000
29/01/13	Suncorp-Metway Bank	TD	4.40	29/07/13	2,000
29/01/13	Suncorp-Metway Bank	TD	4.40	29/04/13	1,630
30/01/13	ING Bank Ltd	TD	4.34	30/05/13	1,000
31/01/13	BankWest	TD	4.20	03/04/13	1,000
01/02/13	Illawarra Mutual Bld Society	TD	4.20	02/05/13	2,000
01/02/13	Illawarra Mutual Bld Society	TD	4.10	31/05/13	2,000
05/02/13	Members Equity Bank	TD	4.40	05/08/13	2,000
05/02/13	Heritage Bank	TD	4.55	07/05/13	2,000
06/02/13	Bank of Queensland	TD	4.30	06/05/13	2,000
07/02/13	Suncorp-Metway Bank	TD	4.35	10/05/13	2,000
11/02/13	ING Bank Ltd	TD	4.39	12/08/13	2,000
13/02/13	Newcastle Permanent Bld Society	TD	4.20	14/05/13	2,000
18/02/13	Members Equity Bank	TD	4.40	19/08/13	2,000
18/02/13	Defence Bank	TD	4.35	20/05/13	1,000
19/02/13	Members Equity Bank	TD	4.40	20/05/13	2,000
20/02/13	ING Bank Ltd	TD	4.29	20/06/13	1,000
25/02/13	Bank of Queensland	TD	4.40	25/07/13	3,000
27/02/13	Suncorp-Metway Bank	TD	4.20	28/05/13	2,000
28/02/13	Bank of Queensland	TD	4.40	28/08/13	1,000
06/03/13	Suncorp-Metway Bank	TD	4.20	02/09/13	2,000
06/03/13	ING Bank Ltd	TD	4.29	04/07/13	2,000
18/03/13	ING Bank Ltd	TD	4.40	16/09/13	1,000
25/03/13	BankWest	TD	4.15	27/05/13	2,000
02/04/13	Members Equity Bank	TD	4.45	01/07/13	1,000
03/04/13	BankWest	TD	4.15	02/07/13	1,000
10/04/13	National Australia Bank	TD	4.35	09/07/13	2,000
10/04/13	National Australia Bank	TD	4.42	10/10/13	2,000
17/04/13	National Australia Bank	TD	4.37	14/10/13	4,000
17/04/13	National Australia Bank	TD	4.25	15/08/13	1,000
24/04/13	Rural Bank Ltd	TD	4.40	21/10/13	2,000
29/04/13	National Australia Bank	TD	4.25	29/10/13	2,000
29/04/13	Suncorp-Metway Bank	TD	4.20	29/07/13	850
Totals:					84,493
TD=Term Deposit		FRN=Floating Rate Note		FND=Managed Fund	
ELN= Equity Linked Note		FRTD= Floating Rate Term Deposit			

RECOMMENDATION

That Council notes the record of banking and investments for April 2013.

10.2 Councillor Attendance

10.2 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). Cr Hordern is seeking approval to attend the LG Women's Summit in Sydney on 20 June 2013.

Key Issues

- Benefit and cost

Information

A program for the Summit is attached. Registration is \$460 per delegate. Flights, one night's accommodation and cab fares would be in addition.

Sustainability Considerations

- **Environment**
Environmental, social and economic matters may be discussed at this meeting.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

Funds are available within the Council's professional development budget to finance these expenses.

Consultation

Council's expenses policy states that these matters must be reported to Council for approval.

Options

Approve or not approve the travel and attendance for Cr Hordern. The recommendation is for approval.

RECOMMENDATION

That Council authorises the attendance of Cr Hordern at the LG Women's Summit to be held in Sydney on 20 June 2013.

Attachment(s)

1. Summit Program

10.3 Community Donations

10.3 Community Donations

Delivery Program Governance

Objective To invite Council to consider additional requests for financial assistance.

Background

Council approved a large number of donations at the July 2012 Ordinary Meeting for the 2012/13 financial year. Since that time additional requests have been received and generally applicants are advised to reapply next financial year to allow Council to assess all applications at the one time. However the donations policy does allow applications to be submitted to Council where there may be exceptional circumstances. The items listed in this report are considered to be the exceptional circumstances that require an elected Council determination.

Key Issues

- Nature of request
- Community benefit
- Funding available

Information

Club Lennox - Lennox Head Bowling Club

Club Lennox is the community group formed to raise funds to assist with the re-opening of the Lennox Head Bowling Club. They are seeking to hold fundraising events at the Lennox Head Cultural and Community Centre and are asking Council to consider donating the hire fees in order to decrease outgoings and improve the value of funds contributed towards the re-opening of the Club. An email from the fund raising co-ordinator is attached, along with an information sheet.

Community Facilities staff advise that they would not expect them to hold more than six events a year. A six hour booking for the Auditorium is \$125 being an approximate cost of \$750 per annum. It is likely they will only hold one or perhaps two meetings for the balance of the current financial year.

The Lennox Head Bowling Club is located on Council owned community land therefore there is some direct benefit to Council in seeing the facility up and running again.

10.3 Community Donations

NSW Public Works – DA 2011/359 – Ballina Aboriginal Child and Family Centre

A request has been received from NSW Public Works on behalf of the Department of Family and Community Services, the proponent of DA 2011/359, for Council to reconsider the Section 64 contributions as levied on the Child and Family Centre consent for Porter Park. The Department is of the view that they should be exempt from the charges (copy of letter attached.)

Council's Open Spaces, Community Facilities and Roads Section 94 Plans include the following standard clause:

The following developments or components of developments are exempted from the requirement to make a contribution under this plan:

- *development for drainage, utility, open space or community facilities purposes to be provided by State Government or the Council.*

The logic behind this clause, which is a standard inclusion in the Section 94 Plan templates that have been prepared by Newplan Consulting Pty. Ltd. for Council, is that where infrastructure is being provided directly for the community benefit, it is more appropriate to utilise those funds on the provision of that community infrastructure. Also legally Council has limited powers to enforce the payment of Section 94 charges on State Government developments for community infrastructure.

Based on this clause, as per the correspondence from NSW Public Works, no section 94 charges have been imposed on the Child and Family Centre. However Council's Section 64 Plans do not include such a clause and if the charge is to be waived the elected Council needs to make a determination on this issue.

As per the correspondence from NSW Public Works, Council's ability to actually enforce payment of the section 64 charges (and section 94 charges) is limited and as such it appears Council has little alternative but to approve the waiver. It is understood that if Council decides to pursue the payment of the charges then it is up to NSW Public works to write to the Minister for Planning, who can then exempt the development.

- **Environment**
Not Applicable
- **Social**
Donations can provide significant community benefits
- **Economic**
Not Applicable

10.3 Community Donations

Legal / Resource / Financial Implications

The current status of the donation budgets for 2012/13 is as follows:

Items	Budget	Allocated	Balance
Donations (General)	79,500	80,100	(600)
Donations (Halls)	28,500	28,500	0
Donations (DA Fees)	3,000	3,000	0
Net Amount Available (overdrawn)			(600)

Consultation

The annual donations program is subject to formal public exhibition and Council attempts to ensure that all donations are considered at the same time to ensure there is equity in the allocation process.

Options

The options are to approve or not approve the requests.

In respect to Club Lennox the preferred option is to approve the donation, primarily as there will be limited expenditure for the balance of 2012/13 and the fund raising is being directed towards a facility located on Council owned land. The likely expenditure of \$125 for the remainder of 2012/13 is minimal, and any fees waived in 2013/14 can be drawn from that year's donations budget.

It is also appropriate to place a limit on this contribution to ensure that the usage does not impact significantly on the overall operation of the centre. Therefore the recommendation is to cap the number of meetings at six, which fits in with a likely timeframe for Club Lennox to have the Lennox Head Bowling Club up and running again.

In respect to the Child and Family Centre, Council may have a preference for the State Government to pay for any impacts on our community but ultimately the Minister has the power to waive these charges. This proposal is similar to the Ballina Men's Shed where there was support for the waiver of Section 94 and Section 64 charges due to the community service being provided and on that basis the recommendation is to support the waiver of these charges.

If supported, this cost will not be recorded as a donation in the General Fund donations budget as it is essentially Council agreeing not to charge water and wastewater contributions for a State Government development.

RECOMMENDATIONS

1. That Council approves the donation of the meeting room hire fees to Club Lennox to assist with fund raising for the Lennox Head Bowling Club. This donation is limited to a maximum of six hiring events, with the donation to be funded from the 2012/13 and 2013/14 community donations budgets.
2. That Council approves the waiver of the Water and Wastewater (Sewer) Section 64 Developer Contribution charges for development consent 2011/359 due to this being a State Government facility provided for community infrastructure purposes (Child and Family Centre).

Attachment(s)

1. Email from Club Lennox
2. Supporting information from Club Lennox
3. Letter from NSW Public Works

10.4 Code of Conduct - Complaints Co-ordinator

10.4 Code of Conduct - Complaints Co-ordinator

Delivery Program Governance

Objective To amend the appointments for Complaints Co-ordinator and Alternate Complaints Co-ordinator positions under the Model Code of Conduct.

Background

Council, at its January 2013 Ordinary meeting, considered the Division of Local Government's Model Code of Conduct and the Procedures for the Administration of the Model Code. Copies of the documents were an attachment to the January report.

Part of the Council resolution appointed the positions of Manager – Human Resources and Risk as Complaints Co-ordinator and Manager – Finance and Governance as Alternate Complaints Co-ordinator. Clause 3.15 of the Procedures states as follows:

“The person appointed as complaints co-ordinator or alternate complaints co-ordinator must also be a nominated disclosures co-ordinator appointed for the purpose of receiving and managing reports of wrongdoing under the Public Interest Disclosures Act 1994”.

Council's Manager – Human Resources and Risk is the co-ordinator under the Public Interest Disclosures Act and a recent internal decision has been made to appoint Council's Records Co-ordinator as another co-ordinator under this Act. The reason for this is that due to the requirement to ensure that any public interest disclosures remain totally confidential the people with access to any complaint must be minimised. The Manager – Human Resources and Risk and the Records Co-ordinator typically need to work together to minimise access to documentation as part of the public disclosure review process.

With this change in operational procedures, to comply with the Model Code of Conduct it is now necessary to amend the Alternate Complaints Co-ordinator from the Manager – Finance and Governance to the Records Co-ordinator.

Key Issues

- Concurrence with legislation and administrative procedures issued by the Division of Local Government

Information

As per the background section the position of Records Co-ordinator has been appointed as a co-ordinator under the Public Interest Disclosures Act. The reason for this is that the Records Co-ordinator is often required to be involved in Public Interest Disclosures due to the need to ensure all documents are treated as confidential and to ensure that access to those documents is limited to the staff directly involved in the investigation of any disclosure.

10.4 Code of Conduct - Complaints Co-ordinator

The Public Interest Disclosures Act is essentially the “whistleblower” legislation that entitles any staff member who makes a disclosure to total anonymity and protection from any person seeking to determine who made that disclosure.

The Manager – Human Resources and Risk and Records Co-ordinator are now the two staff in Council that manage public interest disclosures.

As the Model Code of Conduct requires the persons appointed as the Complaints Co-ordinator and Alternate Complaints Co-ordinator to be nominated disclosure co-ordinators it is necessary for Council resolve to appoint the Records Co-ordinator as the Alternative Complaints Co-ordinator, thereby replacing the Manager – Finance and Governance.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Code of Conduct relates the standards of conduct for Council officials, which includes councillors, council staff, administrators, council committee members, conduct reviewers and delegates of council.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The Local Government Act provides legislation that must be followed in respect to the Code of Conduct.

Consultation

This report is provided for public information.

Options

To ensure consistency with the Code of Conduct it is important to ensure that the appointments for the Complaints and Alternative Complaints Co-ordinators are also disclosure co-ordinators.

RECOMMENDATION

That Council confirms that for the purposes of the Code of Conduct that the Alternate Complaints Co-ordinator is Council’s Records Co-ordinator, who is a public disclosure co-ordinator, thereby replacing the Manager – Finance and Governance in this role.

10.5 Street Banner Signage and Associated Infrastructure

10.5 Street Banner Signage and Associated Infrastructure

Delivery Program Tourism

Objective To respond to a Council resolution asking for information on street banner infrastructure.

Background

Council resolved at the February Ordinary Meeting in 2013 to receive information on the practicalities of providing infrastructure that would allow banners to be promoted across the streets of the town centres (i.e. River Street – Ballina, Ballina Street – Lennox Head, Main Street – Alstonville) to assist in promoting the various activities/events occurring in the Shire. This report addresses that resolution.

Key Issues

- Options, cost and benefit

Information

There are a number of options for installing over the road signage in each location including:

River Street – Ballina

1. Utilise the existing line between Suncorp Bank and Rivers Store, which was previously used for banner signage. This line has not been used for a number of years due to the cost of installing signs (i.e. WHS, traffic control, cherry picker) with each installation costing approximately \$1,000. This line would need an updated engineering assessment as well as consultation and consent from property owners.
2. Install purpose built poles somewhere between Cherry and Moon Streets. This would have an impact on the streetscape and the estimated cost for contemporary purpose built poles is in excess of \$20,000. This is based on estimates received from Multipole and Hayman Industries.

Given this section of the street has been upgraded, has eight existing flag poles and a set of traffic lights, it is not the best option to install another infrastructure element into the already congested streetscape.

3. Install purpose built poles in River Street between Moon and Grant Streets or between Cherry and Martin Streets. Both are valid options as per point two above, with the cost being the relatively the same in each location.

10.5 Street Banner Signage and Associated Infrastructure

Ballina Street – Lennox Head

Advice from Council engineers is that the existing buildings are set too low to attach lines across the street, therefore purpose built poles would need to be installed as per the options for River Street with costs being in excess of \$20,000.

Main Street – Alstonville

Advice from Council engineers is the existing buildings are too low to attach lines across the street. Therefore the options are to:

1. Install purpose built poles on the approach to the main street (near Geoff Watt Oval)
2. Install purpose built poles in the main street.

Both options are viable with cost being the main impediment.

From a management perspective purpose built poles is the best option as these poles minimise the cost each time a sign is displayed. However there is a significant one-off installation cost. Also any signs must be able to handle any extreme wind conditions.

In respect to cost there may be some disbelief in the estimate of \$20,000 provided for this report. However as mentioned discussions were held with two suppliers to ensure the figures were accurate.

In summary any structure must be sturdy enough to handle the various weather conditions that can arise, it must be set in a location to minimise any inconvenience to the public and it must allow the banners to be hung with minimal work health and safety risk and minimal impact on traffic.

The following is an extract from an email from one supplier:

Further to your phone call last week, I advise that an indicative price for a set of 'entry statement' banner poles would be in the order of \$18k.

This would cover the price for: Design and fabrication for a set of two banner poles to support an 'across the road' banner

I have assumed 8m high structures, 14m span, 8m x 1m banner and a winch operated lowering system.

This price would exclude installation, footing construction and the banner.

Regards,

Senior Design Engineer

Sustainability Considerations

- **Environment**
Not applicable.

10.5 Street Banner Signage and Associated Infrastructure

- **Social**
Events promote social activities and inclusion.
- **Economic**
Events provide economic benefits to the community.

Legal / Resource / Financial Implications

There is a significant one-off installation cost for the required infrastructure. These costs have not been included in the draft 2013/14 budget.

Consultation

Cost estimates were received from two organisations: Multipole and Hayman Industries.

Options

1. Install purpose built poles in the main streets of Ballina, Lennox Head and Alstonville. This is not a viable option due to the significant one-off installation costs. The proposal could be deferred for consideration as part of the 2014/15 budget.

2. Install purpose built poles in River Street, Ballina only.

Should Council wish to allocate a budget for street banner infrastructure, one set of poles in River Street only is the preferred option. Consideration should also be given to the significant costs to be outlaid for community groups in the design, printing and installation of such banners.

3. Utilise the existing line between Suncorp Bank and Rivers Store, which was previously used for banner signage.

This line would need an updated engineering assessment and the property owners would also need to provide approval. Given this section of the street has been upgraded, has eight existing banner poles and a set of traffic lights, this is not the preferred option.

4. That Council not support the installation of street banner infrastructure due to the significant one-off installation costs and the difficulty in measuring the cost / benefit of this type of infrastructure.

Overall, as Council has not allocated any funding to this project to date, the preference is to reconsider funding as part of the 2014/15 budget. This then ensures the works are considered in conjunction with all the various other priorities for Council.

RECOMMENDATIONS

1. That Council notes the contents of this report in respect to the provision of road street banner infrastructure.
2. That Council consider funding for this infrastructure as part of the 2014/15 budget deliberations.

Attachment(s)

Nil

10.6 Ballina Naval and Maritime Musuem - Improved Profile

10.6 Ballina Naval and Maritime Musuem - Improved Profile

Delivery Program Tourism

Objective To respond to a Council resolution asking for options to increase numbers at the Ballina Naval Museum and recognition of the Las Balsas raft.

Background

At the Council Ordinary meeting on 28 March 2013, a Notice of Motion was tabled that resulted in the following resolution:

1. *That Council receive a report looking at various ways to increase the visitor numbers at the Ballina Naval and Maritime Museum after consultation with major tourist operators, tourist bodies and business chambers*
2. *That this report consider various options to raise the profile and recognition of the Las Balsas raft.*
3. *Council acknowledge the unique opportunity the Las Balsas raft can play in increasing tourism to Ballina and the flow on economic benefits that this will bring.*

The report that follows canvases these issues.

Key Issues

- Return on investment
- Equity to tourism operators

Information

According to Destination NSW, cultural tourism is defined as '*cultural or heritage visitors that participate in at least one of the following activities; attend theatre, concerts or performing arts, visit museum or art galleries.....*'.

The Naval Museum and Las Balsas raft are considered to be cultural / heritage tourism and as such are considered to be a niche market or special interest tourism.

The top activities undertaken in the Ballina Local Government Area (four year annual average to December 2012, *Tourism Research Australia*): are as follows:

1. eat out at restaurants (52.7%)
2. visit friends and relatives (48.5%)
3. go to the beach (35.9%)
4. general sight seeing (26.5%)
5. go shopping (24.3%)
6. pubs, clubs, discos (22.6%)

10.6 Ballina Naval and Maritime Museum - Improved Profile

The museum experience records a 5.4% result.

Visitation to the Ballina Naval and Maritime Museum is currently at approximately 10,000 visitors per annum. The Ballina Local Government Area receives around 630,000 visitors per year which means that the Museum is currently recording around 1.6% of visitors.

To put this into context with other maritime museums in Australia:

- Darling Harbour Maritime Museum attracts 334,300 visitors per annum (11/12) with Sydney visitation being 30.4 Million (1% of visitors)
- QLD Maritime Museum attracts 35,000 visitors per annum (11/12) with Brisbane visitation being six Million (0.6% of visitors). Visitors to the QLD museum tend to be war veterans that served on the ships exhibited and school groups on educational tours
- Northern Rivers Community Gallery attracted 17,800 visitors in 2011/12.

Judging from the above statistics, it appears that the Ballina Naval and Maritime Museum are performing reasonably well based on the number of visitors and comparing like experiences.

Staff from the Ballina Visitor Information Centre recently met with representatives from the Ballina Naval and Maritime Museum and discussed the following opportunities in terms of raising the profile and increasing visitor numbers. The below points were discussed:

- Targeting new markets segments (group tours, school groups, probus groups)
- Opportunities for internships / work experience students
- The provision of workshops which engage the local community
- Advertising opportunities (to visitor markets rather than in destination)
- Product development opportunities (new displays, interactive exhibits)

Reports from the Ballina Naval and Maritime Museum on ways in which visitors find out about the Museum include:

- Word of mouth
- Repeat Visitors
- Passing by / Ballina Visitor Information Centre

The above information demonstrates that the Museum has high awareness within the Ballina Shire community however needs to do more promotion in visitor source markets. This can be difficult when financial resources and the demand for this type of experience is limited.

With domestic tourism across NSW losing market share in the past few years, the NSW Visitor Economy Taskforce Report (VET) recently set NSW a goal of doubling visitor expenditure by 2020. The VET Report emphasised the need to attract priority markets with limited resources with only those markets and campaigns that can demonstrate strong demand building capabilities and measures being funded.

10.6 Ballina Naval and Maritime Museum - Improved Profile

In short, marketing just one niche product or experience to visitors will not be funded by Destination NSW.

Feedback from the Regional Tourism Organization (RTO), North Coast Destination Network (NCDN) stated "...are not confident that you (Council) would receive State or Regional funds for this project (Las Balsas) and NCDN is not sure if it would be a major return on investment of limited Council funds to double expenditure by 2020."

Feedback from the Ballina Chamber of Commerce and Industry is of a similar nature to the NCDN, where investment in one niche market may be limiting.

"To achieve the sort of recognition required to attract visitation to the museum/raft from outside of the area it is likely that significant investment would be required not only in promoting the asset but improving the housing of the raft itself and developing more sophisticated marketing collateral. Rather than considering this issue in isolation the Chamber suggests that Council include this as a point of discussion in a much broader discussion about the future vision for Ballina Shire as a destination. Is Las Balsa our unique selling point or is there something else we can develop to hang our hat on in terms of attracting visitation? ...the Las Balsa is undoubtedly a valuable asset which if driven correctly could be a key economic driver BUT there are plenty of other less niche strategies that Council could invest in with the objective of increased visitation and spend."

In response to the Ballina Chamber's point regarding Council's vision for Ballina as a destination Council recently participated in industry workshops co-ordinated by North Coast Destination Network as part of the consultation process in developing a Destination Management Plan (DMP) for the North Coast region.

The Ballina workshop was attended by eight organisation representatives. The notes from this workshop will be incorporated into the development of a Ballina Shire Destination Management Plan which is a key Operational Plan goal for Tourism staff for 2013/14.

A Destination Management Plan (DMP) is essentially a business plan that will articulate information and present learnings and actions to allow stakeholders and Council to manage and invest in tourism (visitor economy) in the Ballina Shire. Preliminary steps have been undertaken in developing a Ballina Shire Destination Management Plan, with the view to have a comprehensive Ballina Shire product audit and analysis completed by August 2013.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Visitors are an important part of the social fabric of the Ballina Shire, and the Ballina Naval and Maritime Museum is an important product in the tourism offering.

10.6 Ballina Naval and Maritime Museum - Improved Profile

- **Economic**

Tourism is an economic driver for the Shire. There are economic benefits in attracting visitors to the Ballina Naval and Maritime Museum. However this needs to be considered in the broader tourism framework and the resources available.

Legal / Resource / Financial Implications

There are resource limitations when it comes to promoting tourism and raising the profile of a particular niche tourism product.

Consultation

Consultation was undertaken with a number of agencies and the broader tourism industry, including and item in the Tourism Sections May E-Newsletter, meeting with Ballina Naval and Maritime Museum, discussion and feedback from the regional tourism body North Coast Destination Network (NCDN) and the Ballina Chamber of Commerce.

Options

Council has the option of increasing its funding to the marketing and promotion of the Ballina Naval Museum and Las Balsas raft, albeit that the funding will need to be offset by reductions in other Council programs.

Alternatively Council has the option of continuing to work on a collaborative basis with the Naval Museum volunteers to incrementally improve the tourism product at that location and steadily grow the attendance numbers.

In summary what is clear from this report is that the cost benefit of Council pursuing a niche market such as the Museum and the Las Balsas Raft has an extremely limited upside and would attract little in the way of broader tourism funding.

Therefore Council should continue to focus its limited tourism dollars on outcomes that appeal to a wider audience and the current development of the Destination Management Plan will assist Council in ensuring that any dollars expended are able to attract the best return to the broader community. Despite this recommendation, Council will continue to support the Naval Museum volunteers as has and continues to occur.

RECOMMENDATION

That Council notes the contents of this report in respect to the marketing and promotion of the Ballina Naval and Maritime Museum and Las Balsas Raft.

Attachment(s)

Nil

10.7 Lance Ferris Wharf, Ballina - Commercial Use

10.7 Lance Ferris Wharf, Ballina - Commercial Use

Delivery Program Commercial Services

Objective To seek Council direction in respect to an application to sell fresh seafood direct to the public from a fishing trawler moored at the Lance Ferris Wharf.

Background

Ms Denise Piper is the owner of licensed fishing trawler, the 'Kiama', which operates out of Ballina. Ms Piper has applied to Council for consent to sell her catch, which comprises of prawns and whole fish, direct to the public from the Lance Ferris Wharf located off Fawcett Park, Ballina.

Ms Piper advises that she is a member of the Ballina Fishermens Co-operative, and she has a Restricted Registered Fish Receiver License (RRFRL) issued by the Department of Primary Industries. The RRFRL authorises her to sell her own catches of fish, direct to wholesalers, retailers, exporters, the public and other fish receivers in accordance with the Fisheries Management Act 1994.

The trawler 'Kiama' operates out of Ballina for four months each year and for up to seven days a week during that period, weather and ocean conditions permitting. For this reason, and as Ms Piper's proposal is to tie-up to the wharf after a night's trawling and sell her catch from daylight for a period of two-three hours, she contends minimal disruption to the public use of the wharf will result.

No processing of the catch will occur at the wharf as prawns are cooked while the trawler is at sea, and fish will be sold whole. When daily trading ceases at the wharf, the trawler will be relocated to its Ballina Boat Harbour mooring, and any unsold seafood will be processed through the Ballina Fishermens Co-operative.

The report that now follows canvasses the merits of this proposal.

Key Issues

- Use of a public wharf for commercial activity
- Potential conflict with other vessels requiring mooring at the wharf
- Potential early morning noise
- Equity with other operators.

Information

Ms Piper's proposal was forwarded to the Department of Primary Industries (DPI) for their consideration. The DPI is the statutory body responsible for the bed of the Richmond River (the wharf is affixed to the river bed and embankment).

10.7 Lance Ferris Wharf, Ballina - Commercial Use

The DPI confirms that the Lance Ferris Wharf is authorised by Crown Lands under an umbrella licence (many structures under the one licence) to Ballina Shire Council.

Council is charged the statutory minimum annual license fee (\$444) by the Crown on the basis that these facilities are only available for public use. The existing license to Council does not provide for a sub-license and the wharf is not located within an area administered by Council as Reserve Trust Manager, hence, there are no actions or responsibilities of the Reserve Trust in this matter.

The DPI accordingly advises the matter is one for Council to consider. The DPI further advises that should Council decide to proceed with the proposal, Crown Lands would be willing to consider an additional licence for the wharf.

The additional Crown license, if granted, would enable Council to then consider the granting of a sub-license for the sale of fresh seafood from the wharf, with the terms and conditions of any sub-license being matters for Council's determination.

Furthermore, the License Fee applicable to an additional license would need to be considered by the Crown having regard to the proposed commercial use of the wharf.

In other words, a licence fee to market would be determined and, as in the past with other commercial leases/licences on Crown land, the Crown will likely require Council to remit 50% of the gross income received.

The permissibility issue is complex and will require further detailed assessment from Council's Regulatory Services Group staff. There are no known immediate impediments but further research is needed. If the retail sale of fresh seafood from a trawler is deemed a permissible activity upon the wharf, the consent of Council will be required.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The proposed sale of fresh seafood direct to the public from the back of a fishing trawler is a unique point of sale and one that has the potential to attract people from Ballina, surrounding areas, and tourists alike.
- **Economic**
Having regard to the likely requirement to remit 50% of the gross licence fee income to the Crown, the potential economic return to Council is considered uncertain and unlikely to be significant.

Legal / Resource / Financial Implications

From the advice provided by the DPI and subject to the permissibility of the proposed activity, and development consent, and having regard to the RRFRL held by Ms Piper, there appear to be no legal impediments to the proposal.

Consultation

The proposal has been discussed with, and advice obtained from, the Department of Primary Industries.

Discussions have also been held with the Ballina Fisherman's Co-operative. The strong advice from the Co-operative is that they do not support this proposal and this type of activity could impact on their business and other private businesses that they supply in the Ballina town centre. There may well also be issues with Ms Piper remaining a member of the Co-operative if this proposal proceeds.

Options

1. Council may decide to not proceed with the application on the basis of the use of a public wharf for commercial activity; the potential conflict of a license being granted and other vessels requiring overnight or casual mooring facilities; potential early morning noise issues; and based on the negative feedback from the Ballina Fisherman's Co-operative.
2. Council may consent to the matter being progressed subject to the proposal being permissible and the Crown granting an additional license for the wharf that would then permit Council to consider entering into a sub-licence with the applicant, or other interested party.

The concept of selling freshly caught seafood straight off the trawler direct to the public provides a unique point of sale. It has appeal both from a consumer point of view and, notwithstanding the proposed early hours of trade, as a potential attraction to encourage visitation to Ballina, and the possible positive spin-off to other Ballina retail businesses (e.g. cafes and restaurants for breakfast trade). The proposal also has potential as a tourist attraction.

However against this is the possible negative impact on other business operators and the lack of support from the Fishermen's Co-operative.

Should Council resolve to proceed and confirm the permissibility of the proposal, and upon the granting of the necessary additional license agreement for the wharf by the DPI, the appropriate way to proceed would be to advertise the proposal by way of an expression of interest, or tender. There is precedence in that regard in that the original lease for the Shellys on the Beach Café was advertised by tender after the original proponent's suggestion was accepted by the Council of the day.

Overall, taking into account the various issues identified in this report, the preferred option is not to support this type of commercial venture from the Lance Ferris Wharf. This wharf has been provided for general use by the community and any commercial use could reduce the level of community use.

The objections raised by Fishermen's Co-operative are noted and as a Council preferably we should be supporting businesses that are operating with all the standard approvals and infrastructure in place (i.e. town centres).

However it is recognized that there is some tourism potential in this proposal and if Council was interested in supporting such a concept the alternative recommendation would be as follows.

10.7 Lance Ferris Wharf, Ballina - Commercial Use

1. *That Council provides in principle support to the proposal to sell fresh seafood from a trawler located at the Lance Ferris Wharf, Fawcett Park, Ballina.*
2. *That subject to there being confirmation that the proposed activity is permissible from a planning perspective, that an application be submitted to the Department of Primary Industries for the granting of an additional license agreement to Council for the Lance Ferris Wharf to enable the granting of a sub-license to a potential commercial operation from the wharf.*
3. *That subject to point two being satisfied the opportunity to sell fresh seafood from the back of a licensed fishing trawler direct to the public, be advertised by way of expression of interest with the results of that advertising process to be submitted to Council for determination.*

RECOMMENDATIONS

That Council not support the proposal to sell fresh seafood from a trawler located at the Lance Ferris Wharf, Fawcett Park, Ballina as:

- a) the wharf was established for community use
- b) there may be negative impacts on other approved business operators operating from commercial premises in this locality and
- c) the lack of support from the Ballina Fishermen's Co-operative which is the lead organisation for commercial fishermen in the Ballina Shire.

Attachment(s)

Nil

10.8 Independent Local Government Review Panel - Future Directions

10.8 Independent Local Government Review Panel - Future Directions

Delivery Program Governance

Objective To advise Council of the Future Directions Report from the Independent Local Government Review Panel and to determine whether Council wishes to lodge a submission to the report.

Background

The NSW Government formed an Independent Local Government Review Panel (ILGRP) in March 2012 to take a closer look at local government finances, service delivery, local government boundaries and local decision-making models with the aim being to ensure that local government in NSW is well positioned for the future.

The Panel Chairman is Professor Graham Sansom, Director of the Australian Centre for Excellence in Local Government. Other members of the Panel are Ms Jude Munro AO and Mr Glenn Inglis, both of whom have extensive experience as local government leaders.

Following extensive consultation over the past 12 months the Panel has now released a document titled "Future Directions for NSW Local Government - Twenty Essential Steps - April 2013" which provides a series of draft local government reform proposals for consultation.

The Panel is now seeking submissions on this document with submissions due by 28 June 2013.

The purpose of this report is to provide an overview of the twenty recommendations in the report and to determine whether Council wishes to make a formal submission.

Key Issues

- 20 Recommendations
- Possible impacts on Council and local government in general

Information

The Division of Local Government's website (www.dlg.nsw.gov.au) has an entire section dedicated to the ILGRP and that information provides a good overview of the reasons for the review and the actions taken to date.

In respect to the Future Directions report, a copy of which is included as a separate attachment to this report, the recommendations are summarised on page five of the report, based on seven main headings.

This report examines each of the recommendations as per those headings.

Sustainability and Finance

10.8 Independent Local Government Review Panel - Future Directions

The four recommendations listed under this heading relate to improved financial management practices, an improved rating system including a streamlining of rate pegging, an improved redistribution of grant funding and options to bring down loan borrowing costs.

All of these recommendations are considered to be sound with the major criticism to date being that the Panel has not recommended the total removal of rate pegging. The point has been made many times that NSW is the only State that has rate pegging.

It is clear from discussions with Panel members that they are of the opinion that the State Government will not remove rate pegging therefore they have recommended a compromise position, where councils will be allowed to increase rates by up to 3% more than the annual rate pegging limit, subject to certain conditions being met. These conditions are a lot less onerous than the existing rate pegging special variation process.

This concept is supported albeit that the total removal of rate pegging remains the preference for many people involved in local government.

Infrastructure

The four recommendations in this section focus on maintaining the Local Infrastructure Renewal Scheme (discounted loan scheme) for five years and improving the way in which councils manage infrastructure.

These recommendations are also supported with many councils already initiating the actions listed in the report.

Productivity and Improvement

The three recommendations focus on actions to better measure and improve service delivery and to reduce the compliance burden on councils. This is also supported as it should help councils improve their performance over time and better benchmark service delivery.

Better Governance

The first recommendation in this section is to mandate professional development for councillors. It appears that councils will be able to develop their own programs and there is no objection to this, albeit that it is uncertain what will happen if a councillor does not attend mandatory training.

A popularly elected Mayor is also recommended for councils with a population of 20,000 or more and with Ballina Shire Council already following this process this represents no change.

Consideration is also being given to additional governance options, primarily for very large councils. Examples mentioned include "civic cabinet" models and a mix of ward and "at large" councillors. There could be debate about the merits of these options, although they do not appear to have any impact on Ballina Shire Council.

10.8 Independent Local Government Review Panel - Future Directions

The final recommendation examines options to improve council – mayor – general manager relations, primarily by clarifying the roles even further. No matter what actions are taken in this area ultimately it will be a matter of people working together to seek the best outcomes for the community. Any efforts to provide greater clarity are supported.

Structural Reform

The six recommendations in this section have caused the most angst to date. A large number of amalgamations are recommended with the total number of councils decreasing from 152 to approximately 90. In our region Kyogle has been recommended for amalgamation with Richmond Valley and / or Lismore.

Typically people in local government support amalgamation so long as it is not their council! There is little doubt that there are opportunities for amalgamation in NSW particularly where you still have doughnut councils surrounding city councils. The numerous councils in Sydney has also been mentioned many times and that is addressed within the report.

It is not the purpose of this report to comment on all the recommended amalgamations but one point that could be considered is that the recommendation for Kyogle does raise the issue of Evans Head / Woodburn and the nexus with Ballina Shire.

When considering amalgamations a key criterion often used is to ensure there are communities of interest. There is a reasonable concern that the nexus between an amalgamated Kyogle and Richmond Valley or Lismore Council would represent a substantial distance between the western areas and the coast. Therefore the ability to form communities of interest would be limited.

From a location and access perspective it would appear to make more sense to have the coastal areas of Richmond Valley consolidated with Ballina Shire, as Ballina is already dealing with issues such as beach management, surf lifesaving etc that would be similar in both locations. This would provide some economies and consistency in certain coastal matters.

Council has previously been approached by representatives from Evans Head to consider approaching the Minister for Local Government in respect to a move to Ballina Shire, however that was not supported by the then Council. Due to the largely political nature of amalgamation proposals this concept is not recommended in this report however it is something that could be considered if the Kyogle amalgamation proposal does proceed.

The one recommendation in this section that has the potential to impact on Ballina Shire Council is the proposed 20 “new look” multi purpose county councils. Details of this recommendation are outlined in section 13 of the report and key points include:

- The county councils would be located in identified regional centres
- They would have, as a minimum, ten core functions including regional planning, regional advocacy, road network planning, waste management, regional economic development, library services, management of or high technical support for water utilities and high level corporate services
- They would replace existing special purpose county councils

10.8 Independent Local Government Review Panel - Future Directions

- Membership should comprise the Mayors, with the Mayor of the regional centre being the chair
- The General Manager of the regional centre would be the General Manager for the county council
- Lismore was identified as the regional centre for this region, with Clarence Valley being included in the Coffs Harbour region

One of the major concerns with this proposal was the mention of water utilities. It is well recognised that if general purpose councils lose control of their water and wastewater functions this will have a significant detrimental impact on the financial viability of those councils.

Tweed Shire Council reacted very strongly to this proposal with a media release criticising the concept of a regional county council, particularly located in Lismore.

Since the initial report was released discussions with Mr Graham Sansom has emphasised that the Panel is open to differing ideas on the county council model and he has suggested that the NOROC councils work together to formulate a model that would work for this region. There has been consensus amongst the Mayors and General Managers to undertake this process.

The point the Panel wishes to make is they want to see regional organisations such as NOROC more structured to ensure that there is a regional body representing the councils. It is not the aim of the Panel to weaken general purpose councils but rather strengthen them through adequate regional representation.

In examining the proposed county council model for this region key points are:

- There are already three county councils in this region
- There is merit in reducing the bureaucracy by consolidating these councils into one organisation
- If there is consolidation, steps need to be taken to ensure that existing functions are not lost in the larger organisation
- The existing county councils all have different footprints with no county council having all north coast councils as members
- There must be merit in having all the councils in this region involved in matters that cross over local government boundaries. Issues such as weed management, flood control, river quality are all topics that could benefit from a more co-ordinated regional approach. However even with a regional approach the real issue will remain the funding of key projects and activities.

It is recommended that Council make a submission on this issue, essentially stating that more detail needs to be provided on how this regional county council would operate and the need to ensure that the financial viability of general purpose councils is not weakened by the regional organisation.

The NOROC General Managers are working together to identify options that could support this regional county council model, to the satisfaction of all member councils, and it may well be possible to incorporate any constructive ideas from this discussion into Council's formal response.

Western NSW

The one recommendation in this section relates to councils in the far west of NSW and this has no relevance to Ballina Shire Council.

Implementation

The four recommendations in this section outline options to implement the recommendations in the report and on the surface those recommendations appear reasonable.

Sustainability Considerations

- **Environment**
A key driver of the Panel's review is to provide improved environmental, social and economic outcomes to local communities.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

There are no direct implications from the contents of this report, albeit that the Panel's recommendations may have far reaching impacts for local government in NSW.

Consultation

The Panel has consulted widely to date and the opportunity is there now for Council to make a submission by 28 June 2013.

Options

The options available are to note the contents of the report and not make a submission, include in the recommendation points that Council would like to see included in any submission or defer the matter to a workshop to allow further discussion to assist in the formulation of a submission.

Council should take a constructive approach to any response as we need to continue to modernise councils and our service delivery methods to ensure that services can be improved or at least maintained over time.

The report from the Panel covers a wide range of issues and the preference at this point in time is to list any key points Councillors would like to include in a submission with the knowledge that the NOROC councils are also working together over the next two months to examine options to improve the proposed county council model.

10.8 Independent Local Government Review Panel - Future Directions

Subject to any additional issues that Councillors would like to see included in Ballina's formal submission it is recommended that our response to the report, at this point in time, state that:

- a) Council is broadly supportive of the recommendations in the report
- b) Council's preference remains the total removal of rate pegging, but we accept that if this is not politically possible then the revised model is a reasonable step forward
- c) There are concerns in respect to the proposed county council model for this region and that further discussions should be held with the NOROC councils prior to any final decision being made on the proposed county council for this region.

RECOMMENDATIONS

That Council make a formal submission in respect to the Future Directions for NSW Local Government report prepared by the Independent Local Government Review Panel, with our submission stating as a minimum that:

- a) We are broadly supportive of the recommendations within the report
- b) Our preference remains for the total removal of rate pegging, however we accept that if this is not politically acceptable the amended model is considered satisfactory
- c) We have a number of concerns in respect to the operation of the proposed regional county council model and as such are committed to working with the other NOROC councils to develop a model that would be effective and suitable for this region.

Attachment(s)

- 1. Future Directions Report (Under separate cover)

10.9 Ballina Gallery Cafe - Alterations

10.9 Ballina Gallery Cafe - Alterations

Delivery Program Commercial Services

Objective To seek Council's concurrence to undertake alterations to open Gallery 1 to the deck and garden area and vary the sub-lease to Ballina Gallery Cafe.

Background

Mr & Mrs Hamblin currently hold a sub-lease over the Ballina Gallery Café, the lease terms and conditions for which are summarised as follows:

Term	5 + 5 years
Commencement Date	12 January 2009
Current Rental	\$25,020 p.a. + GST
Rent Reviews	Annual CPI Reviews Review to market upon exercise of option to renew sub-lease
Premises	Kitchen, deck area, Gallery 1 and yard area (see copy of plan attached hereto)
Special Conditions	The Sub-Lessee has the use of the Gallery rooms for up to 20 functions per year where such use does not conflict with exhibitions The Sub-Lessee has exclusive catering rights to functions held in the Gallery

The Hamblin's (the Sub-Lessee) and the Gallery staff have developed an excellent working relationship and spirit of co-operation over the past four years.

The Gallery Café generally utilises the deck area and grassed forecourt or yard area to the north of the building as well as Gallery 1. The major issue with Gallery 1 is very poor acoustics and the fact that it lacks integration with the rest of the Café. When in use and fully seated, the poor acoustics in Gallery 1 also creates issues for the rest of the Gallery.

Gallery staff have also advised that remedial works are required to control airflow between the Café and Gallery 1 and the rest of the Gallery and reduce "wind tunnelling" effects. Gallery 1 was intended to provide a weather protected area for Café patrons, however the Hamblin's claim that the poor acoustics in fact deter patrons from using it.

Over the past two years the prolonged periods of wet weather experienced from January through to July have had an adverse affect of the Gallery Café's business. The Hamblin's have proposed alterations to Gallery 1 that they believe will improve the viability of their business. This proposal forms the subject of this report.

10.9 Ballina Gallery Cafe - Alterations

Key Issues

- Ongoing viability of the Gallery Café
- The cost of proposed building alterations and funding for same

Information

The alterations proposed for Gallery 1 to open it up out on to the north facing deck include:

- Removal of three windows on the north wall
- Demolish brickwork walls around windows
- Install bi-fold doors similar to the existing external doors to the café
- Undertake make good works as required
- Undertake electrical works as required
- Install the appropriate material in Gallery 1 to improve acoustics
- Undertake works to reduce “wind tunnelling” through the Gallery
- Install new steps and handrail from deck to grassed area
- Install small awning over door openings to provide weather protection to timber floors

It is also proposed to construct two low rise walls, approximately 500mm high, on the eastern and western boundaries of the grassed area forecourt area to better define the Café’s area and improve its presentation (refer to plan attached).

Council staff have obtained cost estimates to undertake these works which are in the order of \$55,000 + GST, inclusive of professional fees and development application fees.

It is proposed that once these works are completed Gallery 1 would continue to be used for exhibiting art works.

Council has negotiated a formula or proposal with the Hamblin’s to fund these works as follows:

- a) Council funds the cost of the works to a maximum of \$60,000 + GST (This allows \$5,000 for contingencies)
- b) The cost of the works is amortised over a period of ten years at an interest rate of 5.00% p.a.
- c) The amortised cost of \$7,770 p.a. is added to the current rental of rental \$25,020 p.a. and indexed annually to CPI movements
- d) The current sub-lease with the Hamblins is varied by adding an additional option period of five years to the current term; i.e. five plus five years from 12 January, 2014
- e) All other lease terms and conditions to generally remain as per the current sub-lease agreement.

In summary the cost of \$60,000 would be repaid with interest over a maximum term of ten years, if not sooner once CPI adjustments are taken into account.

The Gallery Co-ordinator has also requested that consideration be given to undertaking the following works:

10.9 Ballina Gallery Cafe - Alterations

- Installation of a new reception desk in the foyer (allowing an existing second entry into Gallery one to be utilised - this second entry is currently blocked by the existing reception desk – a copy of sketch and concept plans are attached) and
- Preparation of a new landscape plan eastern and southern external areas of the Gallery

These works are considered to be outside the responsibilities of the Sub-Lessee and the Sub-Lessee should not be expected to directly fund the cost of such works.

However that is not to say that if Council is undertaking alteration works then these other works should be considered to determine whether any efficiencies can be gained. Gallery staff consider that the full potential of the works to the northern wall of Gallery 1, would be realised by a redesign of the gallery reception desk.

In respect to the new reception desk this redesign will improve:

- the flow of visitors through the building
- architecturally, the physical connection between the Café and the Gallery
- the functionality of the reception desk for both aspects of customer service (i.e. meet/greet and sales)
- the use of wall and floor space in the foyer for shop stock and 'welcome statements' in the form of artwork display and
- the display area for gallery shop items

The Gallery Co-ordinator is confident that these relatively minor works could greatly improve the total integration with the gallery and the café resulting in an even more pleasant experience for customers / visitors to both facilities. A conservative estimate for this work is up to \$20,000.

As to the landscape plan this is a separate project, as against building alterations, and funding for that work should be considered as part of future budgets or through Gallery fund raising activities. Gallery staff have, on two occasions, applied for grant funding to assist with this project. To date these applications have been unsuccessful however staff continue to seek grant opportunities.

Legal / Resource / Financial Implications

Funds to cover the cost of proposed works could be funded from Council's Commercial Opportunities Reserve and repaid to same. The current balance of that reserve is approximately \$2.3 million although significant funds still need to be drawn from the reserve for the Wollongbar Sports Fields Project and Council is continuing to consider options for the redevelopment of the Wigmore Arcade.

Consultation

Council staff have undertaken negotiations with the Hamblin's (the Sub-Lessee) to vary the current sub-lease agreement as generally outlined above.

10.9 Ballina Gallery Cafe - Alterations

Consultation has also occurred with the Gallery Co-ordinator.

Options

Council can resolve to not approve the proposal to fund and undertake alterations to Gallery 1. The Council may not see these works as a priority or they may wish to receive a higher return on the investment.

Council can resolve to approve the proposal to fund and undertake alterations to Gallery 1 as generally outlined above, and capped at a cost of \$60,000 + GST, and vary the current sub-lease agreement as follows:

Term	An additional option term of five years commencing on 12 January, 2019 be added to the current sub-lease term.
Rental	The cost of the alteration works be amortised over a term over ten years at an annual interest rate of 5.00% p.a. and added to the current base rental of \$25,020 p.a.
Other	All other sub-lease terms and conditions to remain generally unchanged.

This option has merit as it will provide the flexibility and protection against adverse weather necessary for the Gallery Café to conduct and grow its business. The improvement in the growth and certainty of rental cashflow derived from the Gallery Café will, in the long term, provide additional funds to assist in running the Northern Rivers Community Gallery.

This request to better protect Gallery Café against adverse weather is no different to similar requests from the lessees of Shelly's on the Beach and the Fawcett Street Café to undertake building alteration works to provide weather protection.

The other important point with this option is that it is standard practice of the NSW State Government to take 50% of the lease rental. Therefore as the additional lease is more a loan repayment the project should only proceed if the State Government agrees not to charge Council for 50% of that additional amount.

The final option is for Council to allow an extra \$20,000 to this project to improve the overall operation of the gallery. With renovation works to the building already occurring it does make sense to have any essential works completed at the one time.

Overall it is considered that the \$60,000 will substantially improve the operation of a Council controlled asset, it is being largely paid for by an increased lease fee, and there will be economic benefits to the broader community through Ballina providing improved dining experiences, with weather protection in place.

As to the Gallery reception / foyer area this work could be funded from the Commercial Opportunities Reserve, with minimal impact on that reserve. The Northern Rivers Community Gallery is a success story for Council and with there being limited other cultural experiences of this nature in the Shire, it is recommended that Council allocate the additional funding for the reception / foyer related works.

RECOMMENDATIONS

1. Council authorises the General Manager to proceed with the proposed refurbishment works for the Ballina Gallery Cafe as identified by the Sub-lessee and as outlined in this report (i.e. alterations to Gallery 1) subject to points two and three below.
2. The works in point one are subject to the Sub-lessee varying the existing lease agreement as per the revised terms and conditions outlined within this report.
3. The works in point one are also subject to the NSW State Government agreeing not to charge Council 50% of the additional rent as this amount is actually a loan repayment to Council for the cost of the works undertaken.
4. That Council approves a maximum of \$60,000 in funding from the Commercial Opportunities Reserve to undertake the Sub-lessee's refurbishment works.
5. That Council also approves a maximum of \$20,000 in funding from the Commercial Opportunities Reserve to undertake refurbishment works to the reception and foyer area of the Northern Rivers Community Gallery to improve the overall functionality of the gallery.
6. Council authorises the Council seal to be attached to the sub-lease documentation and any other related documents.

Attachment(s)

1. Plan of kitchen, deck area, Gallery 1 and yard area
2. Proposed Sketch Plan and Concept Plans - Reception area

10.10 Lease - Community Land, 21 Compton Drive, East Ballina.

10.10 Lease - Community Land, 21 Compton Drive, East Ballina.

Delivery Program Commercial Services

Objective For Council to consider the submission(s) to the proposed lease of a parcel of land, classified as community land, situated at Lot 1 DP 781542, 21 Compton Drive, East Ballina.

Background

The matter of the proposed lease of Lot 1 DP 781542 was considered by the Commercial Services Committee on 26 March, 2013 with the following recommendation of the Committee adopted by Council on 28 March:

- 1. That Council approves the publication notification process as per Section 47(1) (2) of the Local Government Act 1993 to the lease of Lot 1 DP 781542 for the purposes of a restaurant/café as per the information outlined in this report.*
- 2. That Council approves a lease of approximately 32.6m², being the encroachment area, of the Compton Drive road reserve fronting Lot 1, with the terms of the lease to be based on Council's standard conditions and the rental based on an assessment of the market valuation.*
- 3. That Council approves a lease of approximately 100m², being the encroachment area, of the Compton Drive road reserve fronting Lot 3 DP 525783 and rental based on an assessment of the market valuation.*
- 4. That the use of the common seal of Ballina Shire Council be granted to affix to the Deed of Lease or any other associated legal documents pertaining to the lease of Lot 1 DP 781542, the lease of the encroachments upon the Compton Drive road reserve fronting Lot 1 DP 781542, and/or the lease of the encroachments upon the Compton Drive road reserve fronting Lot 3 DP 525783.*
- 5. That Council receive a further report on the merits of reclassifying Lot 1 DP 781542 from community to operational land.*
- 6. That any valuations be based on a commercial valuation.*

This report deals with item one of the adopted resolution following the exhibition of the proposed lease.

The land in question is Council owned community land adjacent to the café / restaurant near Shaws Bay.

Key Issues

- Objection received
- Merits of the objection

10.10 Lease - Community Land, 21 Compton Drive, East Ballina.

Information

In accordance with the adopted resolution of Council, the proposal to lease the subject area of community land was initially advertised on 6 April, 2013. However, subsequent to this exhibition an amended lease application (copy **attached** to this report) was received asking for a lease term of five years only. The statutory notice was then amended and re-advertised on Saturday 20 April, with the closing date for written submissions extended to Monday 20 May, 2013.

As at the time of writing this report, one submission by way of objection was received from Mr H T (Bert) Carter a resident of Cedar Crescent, East Ballina. This report has been prepared prior to the closing date and any further submissions received will be distributed to Councillors prior to the Council meeting.

Mr Carter had earlier written to Council (26 April, 2013) posing questions pertaining to the proposed lease, and those questions were addressed within a response dated 1 May, 2013. A copy of both Mr Carter's letter of 26 April, and Council's response is **attached** to this report.

Subsequent to the issue of the response to Mr Carter's letter of 26 April, he made a submission by way of objection to the lease proposal, dated 13 May, 2013, a copy of which is **attached** to this report. Mr Carter's five points of objection are summarised and responded to as follows:

1. The proposed use of the land does not comply with the permitted use as stated in Council's Plan of Management, being 'Public Reserve or community use'.

Response: Advice provided to Mr Carter on 1 May, 2013, included not only that the Principal Generic Plan of Management (PoM) pertaining to Lot 1 DP 781542 identifies the use of the site for a public reserve or general community use, but also, and importantly: 'The Special Provisions contained within Section 6 of the PoM outlines that the scale and intensity of permitted future uses for the site as "same scale as current usage". Further, the PoM references the 'Current Use' of the land as '... the lease area adjoining Shaws Bay Café for its use'.

2. No indication that the previous Building Approval complied with the then current regulations.

Response: Building Application 49/96 for the cool room and storage area upon Lot 1 DP 781542, received consent via Building Permit on 23 August 1995. Advice was provided to Mr Carter that the previously constructed cool room and storage area was approved pursuant to a Building Application. The regulatory process undertaken at that time would have ensured that the 'then current regulations' were complied with.

3. No drawings have been provided on the site notice showing the proposed buildings, other uses and landscaping. Further such details were not submitted with the Development Application.

Response: Mr Carter was advised that the public notification provisions for the proposed lease of an area of community land (S47(1)(a)(b)(c)(d), S47(2) and

10.10 Lease - Community Land, 21 Compton Drive, East Ballina.

S47A of the Local Government Act 1993) do not include an obligation to include drawings or plans of the proposed development upon the land should the lease be granted. Accordingly, the reason there are no current plans for the proposed cool room and storage area are twofold, (a) there is no requirement for plans or drawings for the public notification process for the lease of an area of community land; and (b) importantly, there are no plans or drawings as the applicant for the lease has not lodged a development application at this time.

It is understood that depending upon the outcome of the application under consideration, a development application may be submitted in June.

Mr Carter was further advised that the applicant may (otherwise) rely upon the previous Building Application consent applying to Lot 1 (subject to landowners consent). If that occurs, the applicant would need to construct the cool room and storage area in accordance with the (previously) approved plans and conditions.

4. The high profile nature of the site requires special aesthetic attention.

Response: Mr Carter was advised that matters regarding the design of the proposed cool room and storage area, and landscaping requirements, will be addressed within the development application and assessment process, also that the applicant may rely upon the previous Building Application, and conditions.

5. It is most likely that a further lease will be applied for. Approval of the proposal would consolidate the precedent argument which may not be valid.

Response: Mr Carter was advised that the application before Council is for a lease term of five years.

Having regard to the foregoing it is considered that all of Mr Carter's points of objection dated 13 May, 2013, were appropriately addressed within Council's response of 1 May to his original letter of 26 April.

Pursuant to S47A of the Local Government Act 1993, and as confirmed by staff of the Division of Local Government, as the application before Council is for a lease term of five years, the matter is one for Council's determination after consideration of submissions received. For lease terms over five years, if there is an objection, Council must first make a determination to proceed and then the matter is forwarded to the Minister for Local Government.

Sustainability Considerations

- **Environment**

Due to the use of the land since 1995 for the purposes now applied for, there are no environmental issues of note.

10.10 Lease - Community Land, 21 Compton Drive, East Ballina.

- **Social**

The land has been used since 1995 as a site for a cool room and storage area in conjunction with the restaurant on the adjoining freehold land. The restaurant is seen as an important adjunct to the social fabric of the area.

- **Economic**

If granted, the lease rental will be based on a commercial valuation.

Legal / Resource / Financial Implications

There are no legal impediments to the grant of the proposed lease.

Consultation

Public notice of the proposed lease was provided in full accordance with S47 of the Local Government Act 1993.

Options

1. Council can resolve to not grant a lease over Lot 1 DP 781542.

This option is not recommended having regard to the previous lease of Lot 1 for the purpose of a cool room and storage area for the adjoining restaurant on Lot 3 DP 525783, and the significant site restrictions of Lot 3.

2. Council can resolve to grant a five year lease of Lot 1 DP 781542 to the applicant.

This is the preferred option having regard to the prior history of the 158.1m² site for the location of a cool room and storage area associated with the restaurant situated on the adjoining Lot 3. Further, the Principal Generic Plan of Management (PoM) pertaining to Lot 1 DP 781542 includes Special Provisions within Section 6 that outlines that the scale and intensity of permitted future uses for the site as "same scale as current usage". Further, the PoM references the 'Current Use' of the land as '... the lease area adjoining Shaws Bay Café for its use' (Shaws Bay Café was a former trading name of the restaurant/café on Lot 3).

RECOMMENDATIONS

1. That Council, having considered the submission received by way of objection to the leasing proposal for lease of Lot 1 DP 781542, approves the granting of this lease to the applicants, Ricky Tinwo Lau and Ling Kwok, for a term of five years at a rent to be based upon a commercial valuation.
2. Council approves the use of the Common Seal on the Deed of Lease and any other associated legal documentation.

Attachment(s)

1. Amended Lease Application
2. Submission Letter 26 April 2013 - Carter
3. Council's Response to Submission Letter
4. Submission by way of Objection - Carter

10.11 Land Sale - Southern Cross Industrial Estate

10.11 Land Sale - Southern Cross Industrial Estate

Delivery Program Commercial Services

Objective To obtain Council approval to sell a property at the Southern Cross Industrial Estate.

Background

Council owns a 6,402m² portion of land on the corner of Stinson Street and De-Havilland Crescent in the Southern Cross Industrial Estate. This is a residue lot left over from the subdivisions to create the APN and ARC lots. Refer to site map attached.

Council has received an offer to purchase a portion of this portion of land comprising an area of approximately 2,429m². The offer was made by Nasmyth Pty Ltd. Details of the offer are contained in the confidential report elsewhere in this meeting.

Key Issues

- Sale of surplus operational land

Information

At the Commercial Services Meeting of 23 July, 2012 Council resolved to sell Lot 95 DP 1184435 to Nasmyth Pty Ltd for \$533,215 + GST on a dollar per square metre rate of \$235/m². The sale proceeded to contract and settled. Nasmyth Pty Ltd has since constructed factory units and storage units on the site.

Prior to that sale Council sold Nasmyth Pty Ltd a 1,660m² site in Cessna Crescent for \$423,300 + GST in December 2010, based upon a rate of \$255/m².

The subject site has been on the market for sale at an asking price of \$250/m² for the past two to three years. No other offers have been received during this time.

The agreed price, as per the confidential report, is considered fair and reasonable in the current market. Nasmyth Pty Ltd has an excellent track record of acquiring and developing Council land.

Sustainability Considerations

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

10.11 Land Sale - Southern Cross Industrial Estate

- **Economic**

The sale of industrial land assists Council in financing community infrastructure. There also economic benefits from private individuals investing in business infrastructure.

Legal / Resource / Financial Implications

The subject land is classified as operational land pursuant to the Local Government Act 1993. There is no impediment to the sale of the land as proposed.

In respect to finance 50% of the proceeds of the revenue from the residual ARC land is to be transferred to the Community Infrastructure Reserve to finance future community infrastructure projects.

Consultation

This report has been listed in open Council to inform the community of the proposed sale. The sale price is listed in the confidential report to allow Council to negotiate a commercial sale price.

Options

The purpose of this report is to obtain Council approval to sell the subject site. The proposed selling price is subject to a separate report.

In respect to the sale of the land the options are to approve or not approve the sale. The recommendation is to approve the sale.

RECOMMENDATIONS

1. That Council approves the sale of approximately 2,429m² of Southern Cross industrial land, as detailed within this report, with the sale price to be determined as per the separate report elsewhere in this agenda.
2. That Council authorises the Council seal to be attached to the contract for sale and any other related documents.

Attachment(s)

1. Site Plan

10.12 Lease Proposal - 139 River Street, Ballina

10.12 Lease Proposal - 139 River Street, Ballina

Delivery Program Commercial Services

Objective To seek Council's concurrence to lease 139 River Street, Ballina, a shop forming part of the Wigmore Arcade Complex.

Background

139 River Street, a 121.2m² shop forming part of the Wigmore Arcade Complex has been occupied on a casual leasing basis by Mr Richard Beckers, who has been operating a surf shop out of the Premises since October, 2012. Refer to a copy of the Wigmore Arcade leasing plan as attached for the exact location of this shop.

Mr Beckers leased the Premises on a casual basis on the understanding that if another prospective tenant made an offer to lease the Premises under a formal lease, he could match the offer or vacate the Premises.

Mr Beckers was unable to match the offer Council recently received for 139 River Street and has since relocated his business to 149 River Street, another shop in the Wigmore Arcade Complex formerly occupied by the Ballina Jewel Centre. He has taken up a casual lease on a month to month basis at a nominated rental from 1 May, 2013.

This is a smaller shop, 83.6m², that Mr Beckers has taken on a trial basis with the intention that if new retail lines he proposes to introduce in spring are successful he may commit to a long term lease at a higher rental.

North Coast Commercial Real Estate has now introduced a prospective long term tenant for 139 River Street. This lease proposal forms the subject of this report.

Key Issues

- The subject Premises, 139 River Street, are not secured by a long term lease and are in need of upgrade works to achieve a reasonable market rental
- Leasing the subject Premises to the prospective tenant will not compromise the current design proposal to renovate and refurbish the arcade component of the Wigmore Arcade Complex.

Information

The prospective tenant wishes to take up premises in the Wigmore Arcade Complex as they consider it a superior retail location with better access to parking and potential for improvement if the proposed renovation and refurbishment works proceed.

10.12 Lease Proposal - 139 River Street, Ballina

The lease terms and conditions negotiated with the prospective tenant are contained in the confidential report elsewhere in this agenda.

Upgrade works are required as the prospective tenant does not require the mezzanine floors in the Premises which are difficult to access and present potential WHS issues. The removal of these structures will in turn involve substantial works to the ceiling which may contain asbestos. It is proposed that demolition works be undertaken, and installation of a new ceiling and lighting, plaster set and repaint all internal walls. Quotes have been obtained for these works which indicate a cost of \$45,420 + GST. The air-conditioning system servicing the Premises is functional.

It is also proposed that if renovation and refurbishment of the arcade component of Wigmore Arcade Complex proceeds, the shops on River Street each be given a toilet or improved access to a toilet in close proximity. Self contained shops have strong appeal to retailers as such premises offer increased security and reduce the loss of time in staff leaving premises to visit amenities.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
The Wigmore Arcade has been a significant source of revenue for Council over many years. It is also pleasing to see a major tenant indicating interested in 139 River Street, along with acknowledging the benefits that may be gained from a redevelopment of the Arcade.

Legal / Resource / Financial Implications

The Wigmore Arcade Complex is classified as operational under the Local Government ACT 1993 and as such Council is able to enter into a lease over the subject Premises. Funds will need to be sourced from the Commercial Opportunities Reserve to finance the refurbishment works.

Consultation

Negotiations to lease the subject Premises have been undertaken and concluded with the prospective tenant.

Options

The purpose of this report is to obtain Council approval to lease the subject Premises to the prospective tenant. The leasing details are subject to a separate confidential report. In respect to the leasing of the subject Premises the options are to approve or not approve the proposed lease. The recommendation is to approve the proposed lease.

RECOMMENDATIONS

1. That Council approves the lease of 139 River Street, Ballina as outlined within this report, subject to the terms and conditions to be determined as per the confidential report elsewhere in this agenda.
2. That Council authorises the Council seal to be attached to the lease documentation and any other related documents.
3. That Council approves a maximum of \$50,000 in funding from the Commercial Opportunities Reserve to undertake the refurbishment works as outlined within this report.

Attachment(s)

1. Wigmore Arcade Complex Leasing Plan

10.13 Financial Review - Quarter Ended 31 March 2013

10.13 Financial Review - Quarter Ended 31 March 2013

Delivery Program Financial Management

Objective To provide a review the 2012/13 Council budget for the quarter ended March 2013.

Background

In accordance with the Local Government Act the responsible accounting officer of a council must, not later than two months after the end of each quarter, prepare and submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year. The report that follows provides this review for the third quarter of 2012/13.

Key Issues

- Variations to the budget and financial performance of council

Information

The purpose of this report is to provide information on known budget variances as at 31 March 2013. The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Division of Local Government (DLG).

To comply with these guidelines an Operating Statement, Capital Budget, Cash and Investment Statement, Key Performance Indicators, Contractors, Consultants, Legal Information and certification by the Responsible Accounting Officer are required. Commentary on the variations recommended is then provided after the tables. A brief overview of the information provided in the report is as follows:

Section One - Operating Income and Expense

These tables provide the operating revenues and expenses for the Funds (General, Water and Wastewater). The information is useful in determining whether a Fund is operating at a surplus or deficit (before and after depreciation). The operating performance for each major activity within the General Fund is also able to be monitored by matching income and expenses.

Section Two - Capital Budget

These tables outline the capital expenditure budgets.

Section Three - Cash and Investment Statement

These tables provide details on the projected movements in reserve balances.

Section Four - Key Performance Indicators

The ratios provide an indication of the financial health of the organisation.

10.13 Financial Review - Quarter Ended 31 March 2013

Section Five - Contractors/Consultants/Legal Expenses

This information provides details of specific expenses incurred and contracts entered as required by the DLG.

Certification

This is a Statement by the Responsible Accounting Officer as to whether the current year's estimated financial performance is or is not satisfactory.

For the tables, the ORIGINAL budget plus / minus changes previously approved by Council equals the REVISED Budget figure. REVISED Budget plus / minus recommended changes for this quarter equals the PROJECTED Year End Budget figure for the year. Actual figures to 31 March are also included in the final column as a comparison to the PROJECTED Budget.

General Fund

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

Section One - General Fund – Operating Revenues and Expenses

Operating Income	Original Budget 000's	September Budget 000's	December Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for Approval 000's	March Budget 000's	Actual to March 000's
Strategic Services								
Strategic Planning	383	406	306		306	16	322	64
Community Services	195	230	260		260	53	313	269
Community Gallery	59	59	63		63	8	71	66
Sub Total	637	695	629	0	629	77	706	399
Regulatory Services								
Development Services	312	322	322		322	(14)	308	235
Building Services	670	670	635		635	0	635	475
Public and Env Health	191	191	194		194	0	194	183
Admin and Public Order	78	87	90		90	39	129	118
Sub Total	1,251	1,270	1,241	0	1,241	25	1,266	1,011
Civil Services								
Asset Management	163	200	316		316	23	339	302
Stormwater and Env Prot	290	293	303		303	0	303	295
Roads and Bridges	0	1,534	1,582		1,582	4,975	6,557	6,498
Ancillary Transport Services	713	729	749		749	(126)	623	472
Roads and Maritime Services	1,050	1,010	760		760	0	760	574
Open Space and Reserves	762	769	768		768	34	802	515
Fleet Mgmt and Workshop	4,022	4,022	4,022		4,022	(300)	3,722	2,886
Rural Fire Service	263	263	263		263	0	263	155
Quarries and Sandpit	324	324	325		325	61	386	350
Swimming Pools	291	291	291		291	25	316	302
Landfill Management	6,927	6,677	6,717		6,717	115	6,832	5,043
Waste-Domestic	6,925	6,985	7,045		7,045	(62)	6,983	6,876
Sub Total	21,730	23,097	23,141	0	23,141	4,745	27,886	24,268
General Manager's Group								
Administrative Services	33	33	28		28	(5)	23	16
Financial Services	20,658	18,814	18,834		18,834	33	18,867	18,702
Regional Library	95	115	115		115	0	115	116
Information Services	4	4	5		5	0	5	3
Human Resources and Risk	104	136	181		181	73	254	213
Tourism	36	92	92		92	45	137	136
Property Management	2,743	2,655	2,729		2,729	304	3,033	2,297
Ballina Byron Airport	3,786	4,260	4,080		4,080	20	4,100	2,906
Sub Total	27,459	26,109	26,064	0	26,064	470	26,534	24,389
Total Operating Income	51,077	51,171	51,075	0	51,075	5,317	56,392	50,067

10.13 Financial Review - Quarter Ended 31 March 2013

Section One - General Fund – Operating Income and Expenses (cont'd)

Operating Expenses (excluding depreciation)	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Strategic Services								
Strategic Planning	966	1,249	1,265		1,265	0	1,265	749
Community Services	712	761	806		806	50	856	627
Community Gallery	174	172	176		176	8	184	136
Sub Total	1,852	2,182	2,247	0	2,247	58	2,305	1,512
Regulatory Services								
Development Services	1,313	1,303	1,299		1,299	(78)	1,221	653
Building Services	780	780	780		780	5	785	594
Public and Env Health	701	707	707		707	(15)	692	499
Admin and Public Order	1,053	1,068	1,068		1,068	(27)	1,041	764
Sub Total	3,847	3,858	3,854	0	3,854	(115)	3,739	2,510
Civil Services								
Asset Management	2,922	3,185	3,194		3,194	100	3,294	2,431
Stormwater and Env Prot	655	907	1,034		1,034	99	1,133	508
Roads and Bridges	4,915	3,902	4,038		4,038	(6)	4,032	3,706
Ancillary Transport Services	1,572	1,736	1,719		1,719	(125)	1,594	1,231
Roads and Traffic Authority	1,050	1,087	837		837	0	837	612
Open Space and Reserves	3,652	3,973	4,026		4,026	20	4,046	2,899
Fleet Mgmt and Workshop	2,863	2,759	2,759		2,759	(240)	2,519	1,927
Rural Fire Service	413	460	448		448	(10)	438	294
Quarries and Sandpit	55	104	104		104	0	104	39
Swimming Pools	696	686	686		686	27	713	623
Waste-Landfill/Commercial	5,633	5,398	5,407		5,407	49	5,456	4,139
Waste - Domestic	6,399	6,209	6,209		6,209	231	6,440	4,889
Sub Total	30,825	30,406	30,461	0	30,461	145	30,606	23,298
General Manager's Group								
Governance	1,198	1,214	1,239		1,239	(29)	1,210	969
Administrative Services	785	763	755		755	(5)	750	558
Financial Services	(3,105)	(3,095)	(3,089)		(3,089)	0	(3,089)	(2,666)
Regional Library	1,324	1,408	1,408		1,408	6	1,414	1,338
Information Services	1,356	1,346	1,346		1,346	10	1,356	1,205
Human Resources and Risk	1,684	1,723	1,625		1,625	105	1,730	1,007
Tourism	650	703	698		698	67	765	553
Property Management	1,747	1,799	1,766		1,766	644	2,410	1,462
Ballina Byron Airport	2,741	2,971	3,004		3,004	96	3,100	2,349
Sub Total	8,380	8,832	8,752	0	8,752	894	9,646	6,775
Total Operating Expenses	44,904	45,278	45,314	0	45,314	982	46,296	34,095
Net Operating Result Before Depreciation	6,173	5,893	5,761	0	5,761	4,335	10,096	15,972
Depreciation Expense	14,343	14,343	14,343	0	14,343	0	14,343	
Net Operating Result Continuing Operations	(8,170)	(8,450)	(8,582)	0	(8,582)	4,335	(4,247)	15,972

General Fund Working Capital Forecast

Item	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Working Capital	(106)	6	(100)		(100)		(100)	

Comments - General Fund

The **forecast operating surplus** (before depreciation) is \$10.1 million which is a substantial improvement in comparison to December. The major change is the receipt of \$4.9 million from the RMS for the handover of the old Pacific Highway. These funds are to be used to maintain the former highway for the next 10 years.

Apart from this single transaction the result has deteriorated by \$565,000. There are numerous budget movements proposed however the largest movement is a reduction to the surplus due to the manner in which Council is now treating the refund of developer contributions for the Building Better Regional Cities (BBRC) Grant (see comment below) which has introduced an operating expense of \$600,000 into the budget.

The estimated **unrestricted working capital** movement remains the same as previous quarters being negative \$100,000. Whilst there have been many changes to estimates every effort has been made to counter any negative changes with positives; i.e. wherever possible a funding source has been identified for new or increased expenses, whether it is reduced expense, additional income or the use of reserves.

In various sections of the budget there have been reductions to forecast salaries expense. The adjustments reflect trending to date for salaries in those sections and counter an increase to the budget for forecast leave expense which resides in the Human Resources and Risk Management section of the budget. Staff have been encouraged to take leave and in comparison to forecasts leaves are up and salaries are down.

Building Better Regional Cities (BBRC) Grant

New budgets have been introduced to reflect the refunds due under the BBRC grants. As Council is aware two grants have been accepted, one for the Wollongbar Expansion Area and the other for Ballina Heights Estate. The arrangements include the refund of \$25,000 per lot from developer contributions to eligible purchasers.

In total, over the course of several years, Council will be reimbursing \$5.4 million dollars. Based on the legal advice outlined in the report to the Extraordinary meeting on 30 April 2013 on the Ballina Heights Drive project developer contributions reimbursed are being transferred to an internal reserve and then refunded effectively as a donation.

The annual donation expense has been estimated based on anticipated land sales and will be introduced to the current and future budgets. In 2012/13 it is estimated that 24 lots will be sold that are eligible for the scheme at a cost of \$600,000. This expense will occur in General Fund and be sourced from a combination of water, wastewater and general fund developer contributions.

It is also estimated that the legal costs and property valuations associated with administering the donation arrangements will be in the order of \$900 per lot (approximately \$200,000 in total for the life of the project).

These costs will be sourced from the capital budgets raised to complete the works at each estate.

General Fund - Operating Revenues

Strategic and Community Services

Rezoning fees: \$16,000 has been received to progress rezoning applications.

Community Services grants: three grants have been received for crime prevention (\$5,000), heritage (\$35,000) and Northern Rivers car pool (\$11,000). Equivalent expenditure budgets have been raised in respect to these projects.

Regulatory Services Group

Development Services

Fees income: actual income to date is trending below budget and the forecast has been reduced by \$14,000.

Regulatory Control Services

Fines income: revenue from parking and sundry fines has exceeded forecast and \$30,000 has been added to the budget.

Companion animals: income from registrations has been increased by \$10,000 which is almost double the original forecast.

Civil Services Group

Asset Management

State Emergency Services equipment: surplus equipment has been sold and funds (\$8,000) have been placed in to a reserve for future SES use.

Road Safety Grants: project money received (\$3,000) from the Roads and Maritime Services (RMS) to enable road safety projects

Third Party Modelling: \$6,000 has been received for flood modelling. Council does work on behalf of clients and an expense budget to the same value has been raised.

Roads and Bridges

Trust Fund: \$41,000 has been released from trust and brought to account as general revenue. This money has been held in relation to specific minor road works and these tasks have been completed.

Flood Grants: there have been three different events so far this financial year. Council has incurred considerable expense in relation to these events (over \$600,000) and to date comparatively small amounts of income have been received.

In the last quarter grant income to \$48,000 was received and equivalent expenditure budgets have been raised.

10.13 Financial Review - Quarter Ended 31 March 2013

Council is in the process of finalising the main claims for financial assistance and hopefully approval for reimbursement will be obtained before the end of the financial year. If this approval is not forthcoming it will have significant implications for our end year carry forward program as the expenditure will need to be funded from internal reserves until the grant funding is approved.

Ballina Bypass Handover: income from the RMS has been received of \$4,887,000 to enable maintenance of the former highway. This money has been put into reserve.

Ancillary Transport Services

Grant Income: \$30,000 has been received for speed management work at Back Channel Road Wardell. An equivalent expense budget has been raised.

Private Works – North Creek Road / Tamarind Drive Roundabout (Ferngrove Estate): An account adjustment of \$110,000 (\$58,000 in General Fund) has occurred in respect to works carried out by Council on this roundabout which formed part of the Ferngrove Estate.

A summary of what has been a complicated and long running affair is that Council undertook two distinct construction projects being construction of the roundabout and the related water and sewer infrastructure.

The roundabout works were completed as private works and duly paid. Security held for the works was acquitted following completion of the roundabout. The water and sewer works, which involved a combination of Council and private works continued for some time after the roundabout was completed.

There was no formal agreement in respect to the estimated cost for these works, largely due to the difficulty in determining the nature of private versus Council works.

When the water and sewer works were completed Council's Finance Section raised invoices in the understanding that all costs plus profit were due and payable. Ultimately an amount of \$58,000 remained unpaid with the Ferngrove developers disputing that this amount was actually owed and the request for payment by Council was unreasonable.

The developer then went into liquidation and advice from the receiver was that unsecured debtors would not be paid. Regardless of ongoing negotiations it was evident that Council would not receive any further funds and it is necessary to reverse this amount off the outstanding debtors.

Even with the unpaid amounts reversed in respect to total direct costs incurred for the roundabout and water/wastewater works (over \$1.1 million) Council achieved a profit of approximately 12%, along with delivering the related infrastructure at no cost to the community.

Private Works General: Very little work is being carried out this year and \$100,000 has been taken off forecast income and expense.

10.13 Financial Review - Quarter Ended 31 March 2013

Open Spaces and Reserves

Vegetation Management: grant income received for project based work as follows; Big Scrub Killen Falls \$4,000, Bitou Bush \$10,000; Chickiba Wetlands \$20,000. Equivalent expenditure budgets have also been raised.

Quarries and Sandpit

Royalties/Lease: anticipated fees from quarry leases were understated and \$11,000 has been added to the budget. Income from royalties has accelerated over recent months and the forecast has been increased by \$50,000. The additional revenue anticipated has been transferred to reserve.

Fleet Management and Workshop

Operating Income: revenue from plant hire is trending 10% below forecast and the budget has been reduced by \$300,000. This adjustment is due to a combination of wet weather and new plant not yet being received.

Swimming Pools

Operating income: forecast income from Ballina has been increased by \$23,000. The forecast for Alstonville Pool has been increased by \$2,000.

Landfill and Resource Management (LRM)

Operating income: there is a net increase to forecast revenue of \$115,000. The main adjustments that make up this change are:

- sales of recyclable paper and metal are not meeting expectations and forecast income has been reduced by \$40,000
- self haul gate fees are trending well below forecast and \$140,000 has been taken off the budget. Following this amendment the forecast is quite similar to income received last financial year
- gate fees for construction and demolition waste are also down on expectations and \$100,000 has been taken from this budget
- gate fees paid by Council for our own projects are well in excess of forecast and \$100,000 has been added to the budget. It is understood that works relating to the town centres have impacted on the level of activity
- gate fees paid by Domestic Waste Management (DWM) are trending well in excess of forecast and \$300,000 has been added to this budget. This increase is attributable to the mid year fee increase that was applied to DWM.

It has been necessary to substantially reduce the forecast income from self haul so it has proven to be quite important that the fee for DWM was increased part way through the year.

In respect to the State imposed waste levy it is understood that Council will receive a reimbursement in 2012/13 although this is likely to be the final year that a reimbursement will be received.

Domestic Waste Management

Operating income: there has been a net decrease to forecast income of \$62,000. This mainly relates to plant income which will not achieve forecast and has been reduced by \$100,000 (plant expense has been reduced by the same figure) and forecast income from funds invested has been increased by \$24,000.

General Manager's Group

Financial Services

Ordinary Rates/Pension Rebates: Adjustments to forecast income from rates and deductions relating to pension rebates have resulted in a net increase to forecast income of \$18,000.

Interest on Investments: Returns from funds invested are trending slightly higher than forecast so the budget has been increased by \$5,000.

Interest on Unpaid Rates: Based on trending forecast income has been increased by \$10,000 to \$108,000.

Information Services

Miscellaneous costs: Expense has exceeded available budget and has been increased by \$10,000. As we rely more heavily on various forms of electronic devices, both in type and number, costs increase.

Human Resources and Risk Management

Insurances: A reimbursement of \$32,000 from Statewide (property insurance) has been received. The income has been applied to fixing leaks in the roof of the Customer Service Centre.

Contribution to Training: Council receives an annual contribution to staff training funded by the Department of Employment and Training. The contribution varies depending on the amount and type of training carried out. The forecast has been increased by \$31,000 to \$48,000.

Long Service Leave Contribution: \$10,000 has been received from other councils as staff transfer to Ballina and they bring their leave entitlements. These funds have been transferred to reserve.

Tourism

Grant income: Grants have been received from Destination NSW (\$35,000) and the Department of Trade (\$8,000) to further tourism promotion in the Shire.

Property Management

Property Rentals: Minor adjustments to various property rentals have resulted in a forecast increase to income of \$17,000. The majority of this adjustment relates to properties at 74 and 78 Tamar Street and the income from these properties is transferred to section 94 car parking reserve.

Building Better Regional Cities: Forecast operating income, transferred from General Fund developer contribution plans is \$286,000. These funds, together with capital income from water/wastewater contributions plans will be used for refunds to home buyers estimated at \$600,000 in the current financial year.

Ballina Byron Airport

Operating income: Various adjustments to income are proposed with a net increase of \$20,000 anticipated. Reduced income is forecast in respect to landing fees and interest on loan funds invested (capital expense has exceeded original forecasts). Increased income is expected from car parking fees and fines, shuttle bus rental and lease agreements.

General Fund - Operating Expenses

Strategic and Community Services

Strategic Services

Sustainability Plan: A contingency budget of \$20,000 was established to promote sustainability plan projects. This budget was deleted following the raising of a budget in the depot area for energy efficient lighting.

Rezoning applications: Budgets for rezonings at Blue Seas Parade (\$6,000) and North Creek (\$7,000) have been increased following the receipt of income from the applicants.

Community Services

Refer to comment in revenue section of this report regarding grant income received and equivalent expenditure being raised.

Regulatory Services

Development Services

Operating expense: Salaries are trending below forecast and the budget has been reduced by \$30,000. The advertising budget has been reduced by \$14,000 and legal costs have been reduced by \$35,000.

The budget for legal expenses has been relocated to Building Services.

Building services

Operating expenses: Salaries are trending below forecast and the budget has been reduced by \$30,000 whilst budgets for administration (\$6,000) and legal expenses (\$35,000) have been increased.

Public and Environmental Health

Operating expenses: Salaries are trending below forecast and the budget has been reduced by \$15,000.

Regulatory Administration

Operating expenses: Salaries are trending below forecast and the budget has been reduced by \$20,000.

Regulatory Control Services

Ranger expenses: Salaries are trending below forecast and the budget has been reduced by \$10,000.

Civil Services

Asset Management

Administration centre: Maintenance and operations budget for the centre has been increased by \$32,000 which is courtesy of a payment received from Council's insurer (credited to Human resources section) that is intended to enable repairs to be carried out to the building. The main focus is to fix leaks because the insurer is reluctant to cover any further damage caused by leaks to the administration building.

The cost of electricity has exceeded forecast and \$35,000 has been added to the budget. Despite consumption being down the overall cost has increased significantly.

Depot: The cost of electricity has exceeded forecast and \$10,000 has been added to the budget.

Civil administration: Conferences and general operating costs have exceeded budget and \$14,000 has been added to the budget.

Stormwater

Drainage maintenance: A number of failures have been experienced over recent months which require remedial action. To enable the maintenance to occur \$100,000 has been transferred from the capital project at Coogee Street to maintenance expense.

Roads and Bridges

Interest on loans - Ballina Heights Drive (BHD): The budget anticipated a loan repayment of \$141,000 for borrowings associated with BHD. The loan repayment comprised \$87,000 interest (operating expense) and \$54,000 principal repayment. The loan has not been taken out and the budget for the repayment has been transferred to BHD capital expense.

Storm damage Open Spaces: Council has incurred considerable expense related to storm damage and this expense has all been costed to the roads section of the budget. It has been determined that \$33,000 of the expense that relates to the Open Spaces section of the budget is not claimable.

Therefore budgets of \$33,000 have been transferred from Open Spaces (decrease to Open Spaces budgets) to Roads (increase to Roads budgets) to cover their share of costs that will ultimately not be covered by grant income.

10.13 Financial Review - Quarter Ended 31 March 2013

Storm damage: New budgets raised to \$48,000 in respect to grant income received.

Ancillary Transport

Street lighting: Forecast lighting expense has been reduced by \$50,000 based on revised forecasts. The lighting replacement program has been completed and savings of \$50,000 will be transferred to property reserves to repay the internal loan taken out to facilitate the program.

Back Channel Road: New budget of \$30,000 for speed management works funded by grant income.

Private works: Anticipated expense has reduced by \$100,000 as very little activity is taking place.

Directional signage: Budget of \$25,000 relocated from Ancillary Road Services to the Tourism section of the budget.

Open Space and Reserves

Vandalism expenses: Budget reduced by \$37,000 based on trending and \$17,000 has been transferred to Roads relating to storm damage costs and \$20,000 transferred to Sports Grounds as this budget is struggling to meet actual costs to date.

Amphitheatre / Cleaning Contract: Budgets reduced by \$14,000 and transferred to Roads regarding storm damage.

Vegetation management: Refer to revenue section of the report. New budgets raised of \$34,000 regarding grant based projects.

Sporting fields: The budget has been increased by \$20,000 as operational expenses are trending higher than available budget.

Rural Fire and Emergency Services

Contribution to Rural Fire Service: Council receives quarterly accounts to pay a contribution to this service. The fourth quarter account has now been received and a saving in comparison to budget of \$10,000 has been realised.

Fleet Management and Workshop

Operating expense: Forecast plant costs have been reduced by \$240,000 which partially offsets the reduced income forecast of \$300,000.

Swimming Pools

Operating expenses: Budgets for rates expense (\$10,000) and lifesaving contractors (\$10,000) at Ballina Pool have exceeded budget and increases are necessary.

A new budget of \$5,000 has been raised at Alstonville Pool for storm damage to buildings.

Landfill and Resource Management

Operating Expense: Numerous budgets have been adjusted and there has been a net increase to expense of \$49,000. There were increases to budgets for wages, transfer station costs, leachate treatment, State levy and green waste processing and transport. Budgets that have been decreased include baling costs, fire control, solid waste testing, transport of demolition waste and special event clean up.

Domestic Waste Management (DWM)

Operating Expense: There has been a net increase to forecast expense of \$231,000. The significant changes are:

- internal gate fees paid are estimated to be \$300,000 more than budget due to the mid year price increase
- green waste collection contract is trending to \$700,000 which is \$100,000 more than forecast
- forecast collection costs of mixed kerbside waste have been reduced by \$70,000.

The net change to the outlook for DWM has deteriorated by almost \$300,000. However the revised cash surplus is still a healthy \$408,000 which is adequate for this business which has legislative constraints on making an excessive profit. This change reflects Council's decision to increase gate fees for DWM midway during the year.

General Manager's Group

Governance

Operating Expense: Salaries are trending below forecast and the budget has been reduced by \$20,000. A budget of \$15,000 for university scholarships has been reduced by \$10,000 as there will only be one student recipient this financial year.

Human Resources and Risk Management

Superannuation: This budget will vary depending on staff numbers and grades as well as resignations and replacements. Based on trending the budget is in excess of requirements and has been reduced by \$65,000.

Staff leave: This is a difficult budget to predict accurately and over recent years it has been increasing as staff are encouraged to reduce leave balances. An additional \$130,000 has been added to the budget of \$2.13 million.

Oncost income: Charges for administration, supervision, leave etc are charged on grant based jobs and private works. The 'income' side of this transaction is credited to the Human Resources section of the budget. Unfortunately there has not been a great deal of both private works and Roads and Maritime Services work carried out.

Consequently forecast oncost income is below par and budgets have been reduced by a total of \$40,000.

10.13 Financial Review - Quarter Ended 31 March 2013

Tourism

Grant projects: See revenue section of the report. Budgets of \$43,000 have been raised funded from grant income.

Directional signage: Budget of \$25,000 relocated from Ancillary Road Services to Tourism section of the budget.

Property Management

Property maintenance: Maintenance expenditure on commercial, community and crown properties has exceeded budget by \$44,000. The additional funding has been sourced from a combination of Council and Crown property reserves. This expenditure reflects essential maintenance works.

Building Better Regional Cities: Forecast operating expense, transferred from developer contribution plans is \$600,000. This is the estimated amount to be refunded to home buyers in the current financial year.

Ballina Byron Airport

Operating Expense: Numerous adjustments have been done to forecast operating expense with a net outcome of \$96,000 increase. Adjustments include increases to forecast salaries, building maintenance, electricity and promotion budgets.

A brief summary of the revised Airport financial forecast is that operating profit has reduced by \$76,000 to \$1,000,000.

Capital income and expense have not changed. Capital grant income of \$3,500,000 has been expended on the apron extension and loan funds to \$7,300,000 are anticipated to contribute a further \$2,664,000 towards the apron extension. Unexpended loan funds will be carried forward for the runway overlay.

The revised position of the Airport Reserve is that at the start of this year it was negative \$455,000 and the current forecast is that the balance will improve to a negative of \$220,000.

Water Operations

This next section of the report deals with Council's water operations.

Section One - Water Statement of Operating Income and Expenses (\$'000)

Item	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Income	8,572	8,692	9,042		9,042	269	9,311	7,768
Operating Exps (excl. dep)	8,529	8,624	8,629		8,629	137	8,766	6,905
Net Operating Result Before Depreciation	43	68	413	0	413	132	545	863
Depreciation Expense	2,300	2,300	4,600		4,600		4,600	4,600
Net Operating Result from Continuing Operations	(2,257)	(2,232)	(4,187)	0	(4,187)	132	(4,055)	(3,737)

10.13 Financial Review - Quarter Ended 31 March 2013

Forecast operating revenues have increased by \$269,000 and expense by \$137,000, improving the forecast operating result by \$132,000.

Adjustments to income budgets include:

- consumption income is trending above the forecast \$5.2 million and has been increased by \$200,000. The trend suggests that water consumption will be the highest in recent years.
- combined adjustments for annual access charges and pensioner adjustments amount to an increase to forecast income of \$60,000.

Adjustments to expense budgets include:

- transfer of funds (\$48,000) from section 64 to General Fund to finance donations to home buyers under the BBRC grant
- mains operations and maintenance (\$50,000) expense is trending high.
- forecast treatment plant expense has been increased by \$15,000

The forecast **operating surplus** of \$545,000 (exclusive of depreciation) remains modest but continues the trend of improvement over the course of the year. This improvement is essentially due to the high trending of consumption income.

Wastewater Operations

This next section of the report deals with Council's Wastewater operations.

Section One – Wastewater Statement of Operating Income and Expenses (\$'000)

Item	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Income	12,823	12,823	13,213		13,213	211	13,424	12,566
Operating Exps (excl. dep)	11,257	11,517	11,597		11,597	250	11,847	8,785
Net Operating Result Before Depreciation	1,566	1,306	1,616	0	1,616	(39)	1,577	3,781
Depreciation Expense	4,411	4,411	4,411		4,411		4,411	4,411
Net Operating Result from Continuing Operations	(2,845)	(3,105)	(2,795)	0	(2,795)	(39)	(2,834)	(630)

Forecast revenue has increased by \$211,000 and expense by \$250,000 resulting in a decrease of \$39,000 to the forecast operating result.

The main changes to forecast Wastewater income are:

- interest income on funds invested has been raised by \$140,000. The majority of the funds invested are borrowed to facilitate the capital works program. The capital works program has been reduced substantially.
- income from non residential usage charges is trending higher than forecast and \$25,000 has been added to the budget.

10.13 Financial Review - Quarter Ended 31 March 2013

Adjustments to expenses include:

- salaries are down on forecast by \$130,000
- BBRC contribution is estimated at \$237,000
- energy costs for pumping stations are up by \$100,000
- pumping stations maintenance is down by \$70,000
- treatment plant operations trending high to \$30,000.

The forecast **operating result** is a surplus of \$1.6 million excluding depreciation. As from 2013/14 the true impact of the \$63 million loan will take effect and a cash surplus of around \$2.5 million is required to repay the capital portion of the loan. The forward financial plan assumes that it will be two or three years before this level of surplus is achieved with the difference coming from reserves in the early years.

Section Two - Capital Expenditure

This next section of the report looks at capital expenditure.

General Fund - Capital Budget - Source and Application of Funds (\$'000)

General Fund Capital works	Original Budget 2012/13 \$'000	September Budget \$'000	December Budget \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for Approval \$'000	March Budget \$'000	Actual to March \$'000
General Fund Capital Funding								
General revenue	3,077	3,005	3,009		3,009	(127)	2,882	2,872
Reserves	9,124	12,530	14,815		14,815	(232)	14,583	14,583
Loans	7,200	11,581	12,056		12,056	(1,200)	10,856	10,856
Section 94 contributions	194	2,349	2,583		2,583	(25)	2,558	2,558
Grants and contributions	11,950	12,376	8,903		8,903	404	9,307	7,544
Total Funding	31,545	41,841	41,366	0	41,366	(1,180)	40,186	38,413
General Fund Capital Expense								
<i>Strategic and Community Services</i>								
Community Art Gallery	0	12	18		18	0	18	11
<i>General Manager's Group</i>								
Administration & Information Services	25	25	25		25	5	30	20
Property Management (Commercial)	710	874	768	115	883	(415)	468	224
Property Management (Community)	7,508	10,452	10,506		10,506	(335)	10,171	5,710
Camping Ground	0	10	10		10	0	10	12
Ballina Airport	3,752	5,725	5,784		5,784	0	5,784	5,713
<i>Regulatory Services</i>								
Animal shelter	340	616	616		616	0	616	96
<i>Civil Services</i>								
Asset Management	150	258	306	67	373	0	373	193
Stormwater	665	695	677		677	(100)	577	120
Roads and Bridges	9,066	11,864	12,926		12,926	(993)	11,933	8,721
Ancillary Transport Services	915	1,301	1,271		1,271	32	1,303	619
Town Beautification	2,300	3,492	3,542		3,542	149	3,691	2,799
Water Transport and Wharves	0	162	162		162	109	271	220
Open Space -Parks and Reserves	279	348	348		348	0	348	105
Open Space - Sporting Fields	310	331	331		331	0	331	137
Cemeteries	0	30	30		30	0	30	19
Fleet and Plant	900	900	2,996		2,996	0	2,996	839
Waste Management	4,625	4,746	1,050		1,050	0	1,050	245
Total Capital expense	31,545	41,841	41,366	182	41,548	(1,548)	40,000	25,792

General Fund - Capital Budget

Funding for capital works has reduced from the December quarter by \$1.5 million. Details of the major adjustments to the program follow.

General Manager's Group

Property Management (Commercial): The budget to progress Russellton Industrial Estate has been reduced by \$580,000 leaving \$30,000 for preliminary costs. New budgets have been raised for Wollongbar Residential Estate preliminary costs (\$100,000) and Wigmore Arcade design (\$50,000).

The property reserves will benefit from the net reduction to works.

Property Management (Community): A budget of \$400,000 for the Lennox Head Surf club has been reduced by \$350,000 with the balance going back into reserve.

Expense on the Lennox Head fire shed has exceeded budget and a further \$15,000 has been added to the budget financed from property reserves.

Civil Services

Stormwater: Budget of \$100,000 was relocated from Coogee Street drainage (Stormwater) to Stormwater operating expense to enable essential repairs to be effected.

Roads and Bridges: Changes to the roads capital budget are summarised below.

Project	Budget amendment	Comment
Ballina Heights Drive	Decrease by \$1,084,000	Significant works will commence next financial year. Proposed loan funding to \$1 million is not required and preliminary expenses will be financed this year to \$141,000 from general revenues.
Martin Street	Decrease by \$30,000	Savings to budget transferred to Ancillary Transport Services.
Ross Lane seg 40	Decrease by \$110,000	Funding from RMS less than anticipated.
Rifle Range Road	Increase by \$228,000	Additional funding received from RMS
Net change	Decrease by \$996,000	

Wardell Town Beautification: Additional budget of \$149,000 in grant income received for the boat ramp.

Water Transport: New budgets have been raised for Cawarra Street carpark/boat ramp to \$55,000 (funded 50% from grant and 50% from roads capital) and Emigrant Creek pontoon \$35,000 (funded from grant).

Works at the ferry (air-conditioning and ramp refurbishment) have received an additional budget of \$20,000 funded from the Ferry Reserve.

**Section Two - Water - Capital Budget
Source and Application of Funds (\$'000)**

General Fund Capital works	Original Budget 2012/13 \$'000	September Budget \$'000	December Budget \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for Approval \$'000	March Budget \$'000	Actual to March \$'000
Water Capital Funding								
Reserves	450	500	525		525	100	625	625
Section 64 contributions	7,170	7,227	2,180		2,180	(1,066)	1,114	1,114
Grants & Contributions	0	0	125		125	28	153	48
Total Funding	7,620	7,727	2,830	0	2,830	(938)	1,892	1,787
Water Capital Expense								
Water storage	3,500	3,500	2,000		2,000	(886)	1,114	176
Pump Stations	360	360	180		180	(180)	0	0
Trunk mains	3,310	3,367	0		0	0	0	0
Other	450	500	650		650	128	778	204
Total Capital expense	7,620	7,727	2,830	0	2,830	(938)	1,892	380

The water program has been reduced by \$938,000. A budget of \$2 million for a reservoir has been reduced by \$886,000. A budget of \$180,000 for Basalt Court pump station is not required this financial year and the budget for plant acquisitions has been increased by \$128,000.

**Section Two - Wastewater - Capital Budget
Source and Application of Funds (\$'000)**

General Fund Capital works	Original Budget 2012/13 \$'000	September Budget \$'000	December Budget \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for Approval \$'000	March Budget \$'000	Actual to March \$'000
Sewer Capital Funding								
Reserves	15,626	21,822	18,930		18,930	(9,683)	9,247	9,247
Grants	0	0	10		10	(3)	7	7
Loans	17,800	17,800	17,800		17,800	0	17,800	14,096
Total Funding	33,426	39,622	36,740	0	36,740	(9,686)	27,054	23,350
Sewer Capital Expense								
Treatment Plants	21,971	24,840	26,790		26,790	(9,407)	17,383	13,224
Recycled Irrigation	2,900	3,594	3,274		3,274	(2,507)	767	185
Pump Stations	2,156	2,464	858		858	(341)	517	359
Trunk Mains	3,007	4,350	3,934		3,934	2,985	6,919	2,528
Other	3,392	4,374	1,884		1,884	(416)	1,468	167
Total Capital expense	33,426	39,622	36,740	0	36,740	(9,686)	27,054	16,463

The wastewater capital program has been reduced by approximately \$9.7 million. This information was advised to Council as part of the modelling for the long term financial plan considered in the March / April Finance Committee meetings.

The changes affect most jobs within the program and are the result of an evaluation of the entire program. In some instances the works have been pushed out to later years, some budgets have been reduced and in other instances deemed not required.

Section Three - Investments

The next table shows details of the projected cash and investments.

10.13 Financial Review - Quarter Ended 31 March 2013

Cash and Investments

	Original Budget 2012/13 \$'000	September Budget \$'000	Revised Budget December \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for approval Mar \$'000	Revised Budget March \$'000
Unrestricted	1,097	997	997	0	997	0	997
Externally Restricted							
- Section 94	7,503	5,283	4,808		4,808	(250)	4,558
- Domestic Waste M'tment	395	981	1,041		1,041	(292)	749
- Unexpended Grants/loans	(505)	6,693	6,616		6,616	(2)	6,614
- Other	150	189	172		172	(7)	165
- Section 64 Water	1,537	1,690	6,418		6,418	992	7,410
- Water	1,407	1,955	2,275		2,275	106	2,381
- Section 64 Sewer	5,820	5,940	5,730		5,730	(277)	5,453
- Sewer	10,520	6,025	9,227		9,227	9,920	19,147
Total Externally Restricted	26,827	28,756	36,287		36,287	10,190	46,477
Internally Restricted							
- Employee Leave Entitlements	1,463	1,715	1,695		1,695	10	1,705
- Plant Replacement	925	1,192	96		96	(60)	36
- Quarries	1,534	1,549	1,633		1,633	61	1,694
- Properties activities	4,397	3,728	4,198		4,198	814	5,012
- Properties Refurbishment	1,582	1,154	1,168		1,168	262	1,430
- Management Plans & Studies	471	558	327		327	5	332
- Cemeteries	59	120	120		120	0	120
- Landfill Management	1,961	1,831	1,381		1,381	67	1,448
- Civil Works	1,259	3,151	2,047		2,047	4,870	6,917
- Other	110	155	116		116	15	131
Total Internally Restricted	13,761	15,153	12,781	0	12,781	6,044	18,825
Total Restricted	40,588	43,909	49,068	0	49,068	16,234	65,302
Total Cash and Investments	41,685	44,906	50,065	0	50,065	16,234	66,299

The unrestricted cash figure is not inclusive of transactions that would normally be included when calculating working capital; i.e. it is exclusive of movements in items such as debtors and creditors. The available cash figure is taken from note six of the financial statements as at 30 June 2012. Council does not track movements in available cash on a quarterly basis.

Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for March 2013, funds invested amounted to \$84,028,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 31 March 2013 to the amount of \$1,101,584.

10.13 Financial Review - Quarter Ended 31 March 2013

4. Actual year to date cash and investments amount to \$85,130,584 as at 31 March 2013. This amount includes cash at bank of \$1,101,584 and funds invested of \$84,028,000 which has been reconciled to bank statements and investment reports.

Bank Reconciliation Summary as at 31 March 2013

Balance as per Bank Statement	989,778
Less Unpresented Cheques	118,812
Sub Total	870,966
Plus Outstanding not Credited	246,632
Sub Total	1,117,598
Less Amounts Deposited at end of month not in ledger	16,014
Balance as per ledger	1,101,584

Comment on Cash and Investment Position

The forecast reserves position has increased from approximately \$50 million to \$66 million. In this movement there has been an increase in external reserves of \$10 million and an increase in internal reserves of \$6 million. Details of the major changes are summarised below.

Section 94 Reserves: Forecast reserves decreased mainly due to the BBRC grant scheme where funds of \$314,000 are forecast to be reimbursed in 2012/13. Improvements to the forecast include an additional \$25,000 in capital income and the removal of a \$25,000 transfer from reserve in respect to Ballina Heights Drive.

Domestic Waste Management: Decrease in reserve due to reduced operating surplus.

Water Operations: Increases to forecast reserves are due to amendments to the capital works program, the BBRC donations and a forecast increase in operating surplus.

Wastewater Operations: Increases to forecast reserves reflect amendments to the capital works program, the BBRC donations and a forecast decrease in operating surplus.

Plant Replacement: Decrease in reserve due to reduced operating surplus.

Quarry Reserve: increase in reserve due to increased operating surplus.

Property Activities: The main adjustments are the sale of industrial land at Southern Cross Estate of \$505,000 (increase to reserve), reduction to capital works at Russellton Estate \$580,000 (increase to reserve), Fawcett Café works \$115,000 (reduction to the reserve), Wollongbar residential Estate preliminary expenses \$100,000 (reduction to the reserve).

Properties Refurbishment: Net increase to the reserve mainly relates to \$350,000 not required for Lennox Head Surf Club this financial year (increase to reserve), Wigmore Arcade refurbishment \$50,000 (reduction to reserve) and miscellaneous properties maintenance \$28,000 (reduction to reserve).

Landfill and Resource Management: Increase in reserve due to increased operating surplus.

10.13 Financial Review - Quarter Ended 31 March 2013

Civil works: increase to reserve relates to funds received from the RMS relating to the Ballina Bypass handover.

Section Four - Key Performance Indicators

The next section of the report takes selected financial benchmarks that have been adopted by Council and compares the 30 June 2011 and 2012 ratios with the forecast at March to 30 June 2013. The performance indicators that have been selected have a short term focus which suits the quarterly review, which also tends to focus on the short term.

To forecast performance indicators numerous assumptions must be made so it is far from an exact science. It is also the case that, with many of the indicators, a fairly large change to the current budget is required to materially change the ratio forecast. Hence the ratio forecast each quarter is likely to be similar and therefore similar comments remain appropriate.

The actual and forecast performance indicators measured against the benchmark provide an important insight into the financial well-being of the organisation.

The indicators should be used to assist financial policy and strategy.

Key Performance Indicators - General Fund

1. Unrestricted Current Ratio - Unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >1.5:1 (The benchmark is taken from the T Corp benchmarks)

2010/11	2011/12	2012/13
Actual	Actual	Estimate
2.75	2.9	2.1
Pass	Pass	Pass

Comment

The forecast for this ratio in December was 1.5 and it has increased to 2.1 since that time. This is because approximately \$5 million was received from RMS and placed into reserve. Whilst the application of these funds is marked for road maintenance, they are unrestricted cash that will improve the result of this ratio.

2. Debt Service Ratio – Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions (as per note 13). The purpose of this measure is to test whether Council has excessive debt servicing costs relative to revenue.

10.13 Financial Review - Quarter Ended 31 March 2013

Benchmark: <12%

2010/11	2011/12	2012/13
Actual	Actual	Estimate
6.70	6.0	8.0
Pass	Pass	Pass

Comment

The ratio is comfortably in the pass mark range however the forecast is that it will rise as borrowings in 2012/13 begin to take effect. It has been assumed that some of the 2012/13 loans will not affect the ratio this financial year as repayments will not occur until the following year.

There is an improved outlook in comparison to December as forecast loan repayments for Ballina Heights Drive will not occur, at least this financial year. Also proposed borrowings for Plant and Ballina Town Centre (totalling \$1.5 million) will not be taken out this year which will improve the outlook for this ratio.

By the end of 2013/14 it is estimated that the ratio will be around the 11% mark as the full effect of the 2012/13 loans come into play.

The indicator is suggesting the current borrowing program will result in Council being close to the maximum borrowings deemed desirable by the benchmark.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is to measure whether the Council is sustainable in terms of its operating result.

Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12	2012/13
Actual	Actual	Estimated
(4)	(12)	(8.5)
Pass	Fail	Pass

Comment

The forecast is for a loss of approximately 8.5%. Again this is a dramatic improvement from the December forecast due to the fact that the RMS grant of approximately \$5 million is treated as operating income. This takes the forecast from a fail to a pass in comparison to the benchmark.

This income does tend to distort the real situation because it is such a significant one off event and the forecast for future years is not as promising. However the funds are available for core Council responsibilities and it is a pleasing outcome.

10.13 Financial Review - Quarter Ended 31 March 2013

4. Available Working Funds (General Fund Only) - Total of cash, investments, receivables and inventory assets less total payables, liabilities, externally restricted receivables, internally and externally restricted investments and real estate inventory. The benchmark is set at \$3 million which is based on percentages of income and expenses. The purpose of this measure is to show Council's short term ability to cover financial shocks whether they are reductions in anticipated revenues or unplanned additional expenditure.

Benchmark: \$3,000,000

2010/11	2011/12	2012/13
Actual	Actual	Estimate
\$2.8m	\$3.5m	\$3.4m
Fail	Pass	Pass

Comment

The available working funds benchmark has been achieved and based on current forecasts the position will be similar to the start of the year.

Benchmark Indicators - Water

1. Unrestricted current ratio - Unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >1.5:1 (The benchmark is taken from T Corp benchmarks)

2011/12	2012/13
Actual	Estimate
34	32
Pass	Pass

Comments

The Fund is in a very strong position from the balance sheet perspective with almost no debt. The forecast has improved marginally from December given that capital works have been removed from the 2012/13 program which elevates the forecast cash reserves.

The Fund does have strong reserves however it is noted that the majority of the reserves are section 64 funds. The Water refurbishment reserve is adequate.

2. Debt Service Ratio - Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions (as per Note 13). The purpose of this percentage is to measure whether Council has excessive debt servicing costs, relative to operating revenue.

10.13 Financial Review - Quarter Ended 31 March 2013

Benchmark: < 12

2010/11	2011/12	2012/13
Actual	Actual	Estimate
0.05	0.00	0.00
Pass	Pass	Pass

Comments

The Fund is virtually debt free so passes this benchmark with ease.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage measures whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12	2013/13
Actual	Actual	Estimate
(24.26)	(22)	(20)
Fail	Fail	Fail

Comments

The operating position of Water Fund has improved slightly from the December forecast however the outlook remains unsatisfactory. A loss of \$1.8 million is forecast which is consistent with recent years. Long term sustainability and inter generational equity are issues for Council to consider. The strategy must be to improve the operating performance of this Fund to at least achieve the benchmark of negative 10.

Benchmark Indicators - Wastewater

1. Unrestricted current ratio - Unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >1.5:1 (The benchmark is taken from T Corp benchmarks)

2010/11	2011/12	2012/13
Actual	Actual	Estimate
9.7	8.2	5
Pass	Pass	Pass

Comments

The ratio is predicted to fall as cash reserves are expended on the upgrade program. The forecast has improved from December as some \$10 million has been removed from the capital works program which improves the cash on hand forecast.

10.13 Financial Review - Quarter Ended 31 March 2013

The outlook is that the ratio will decline closer to the benchmark once the current portion of the loan facility is recognised and unexpended loan funds are applied to capital works and to sustain the operating position.

2. Debt Service Ratio - Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions. (as per Note 13). The purpose of this percentage is a measure of whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: <12

2010/11	2011/12	2012/13
Actual	Actual	Estimate
9.40	21	33
Pass	Fail	Fail

Comments

The ratio is indicating that the amount of recurrent income tied up repaying debt is excessive. However whilst the ratio is very poor the financial plan takes the debt and associated repayments into account.

The real strength of Wastewater Fund is the guaranteed income source from annual charges and the fact that the charging structure is at Council's discretion. This means that major capital works can be financed with a high level of confidence.

The ratio is likely to be unsatisfactory for some years and gradually improve as the operating income increases to repay debt and improve the operating balance ratio..

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

2010/11	2011/12	2012/13
Actual	Actual	Estimate
(11)	(22)	(22)
Fail	Fail	Fail

Comments

An operating loss of \$2.8 million is forecast. The short term goal is to achieve an operating surplus, exclusive of depreciation, that will fund impending loan repayments. Over time it will be important to improve the operating position to achieve benchmark.

10.13 Financial Review - Quarter Ended 31 March 2013

Contractors

The table below provides details of contracts entered into in the March quarter. Contracts below \$50,000 are not included.

Contractor Name	Purpose	Amount \$	Start Date	Duration of Contract	Incl in Budget Y/N
North Coast Ad Agency	Graphic Design VIC	75,000	Feb 13	1 year	y
Civica P/L	Assets system	201,000	6/3/13	1 year	y
Cardno QLD P/L	Wollongbar fields	226,000	14/3/13	9 months	y
Geolink P/L	Coastguard tower	150,000	22/4/13	14 months	y
Bond Management P/L	ALEC Management	665,000	1/4/2013	5 years	y
Murphy McCarthy Assoc	Recycled water dist	11,053,000	26/11/13	9 months	y

Legal Expenses

The table below summarises the expense incurred to the end of March on legal fees. For the purposes of the report legal fees have been included where there is a dispute situation. This includes for example recovery of rates not paid but excludes processing of infringement notices (no dispute at this point) and amounts paid to legal firms that may be related to the creation of a lease or sale of land.

	Expenditure YTD	Included in Budget Y/N?
Legal Fees	136,000	Y

Statement

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 31/3/2013 indicates that Council's projected financial position at 30 June 2013 will be satisfactory* at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

* The satisfactory position is based on the short term (twelve month) outlook. Council is forecasting operating losses, inclusive of depreciation and exclusive of capital grants, on both a consolidated and fund basis into the foreseeable future. From a long term perspective Council needs to work towards an operating surplus.

Signed Peter Morgan, Responsible Accounting Officer

Sustainability Considerations

- **Environment**

This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.

- **Social**
See above
- **Economic**
See above

Legal / Resource / Financial Implications

This report informs Council of actual financial results to date in comparison to budget. Where legal ramifications are envisaged they are detailed within the information section of this report.

Consultation

This report has been prepared to inform the community of budget variations.

Options

Council may approve the budget amendments proposed, make changes or not approve any changes. It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

RECOMMENDATION

That Council notes the contents of the 31 March 2013 Quarterly Budget Review and approves the changes identified within this report.

Attachment(s)

Nil

10.14 Capital Expenditure - Quarterly Update

10.14 Capital Expenditure - Quarterly Update

Delivery Program Financial Management

Objective To provide a quarterly update on the status of Council's capital works program.

Background

Council has a major capital works program included in the annual Operational Plan and due to the scale and magnitude of the program it is important that updates are provided on a regular basis. The current practice is to provide a quarterly status report on all the major capital works included in the plan. This status report provides details on key milestone dates, along with a comparison between budget and actual expenditure.

This report is to 30 April 2013 and represents the third report for the 2012/13 financial year.

Key Issues

- Status of works

Information

To assist in understanding the status of the capital works the attachments to this report provide information on the following items:

- Estimate 2012/13 - Represents the budget as per Council's adopted Operational Plan
- Carry Forwards - Represents budgets carried forward from the previous financial year that were approved by Council at the August 2012 Ordinary meeting
- Approved Variations – Other variations previously approved by Council resolution through a Quarterly Budget Review or a separate report on a particular project
- New Variations – Represents further changes to the budgets. This is in addition to the March Review adjustments reported elsewhere in this business paper, primarily as this report is prepared to the end of April and represents the latest available information. Only relatively minor adjustments have been identified as part of this report.
- Latest Estimate - Sum of the original budget plus budget changes (Approved and New)
- Expenditure to Date - Expenditure to date of report (i.e. 30 April 2013 in this case)
- % Expended - Percentage of budget expended to date
- Milestone Dates - Represents target dates for completion of the major milestones
- Status - Allows additional comments to be provided, where necessary

10.14 Capital Expenditure - Quarterly Update

The attachments are split into the main sections within the Council undertaking the works: i.e. Open Spaces, Engineering Works, Operations Support, Commercial Services, Water, Waste and Wastewater.

Points of note in respect to the attachments are as follows.

Open Spaces

The major works to be completed this year are the Pat Morton Headland Toilets, Missingham Park Shade Structure, Saunders Oval extension and improved lighting for Kingsford Smith Oval.

The Kingsford Smith and Missingham Park projects are complete and the Pat Morton and Saunders Oval works are well advanced. This means all projects should be completed this financial year.

Engineering Works

Drainage

As previously reported there are concerns that failures for drainage are increasing and the Civil Services Group are undertaking more detailed assessment of certain areas to determine the condition of the drainage infrastructure. \$100,000 has been transferred from this capital works budget to finance additional maintenance works this year and the overall funding for drainage remains an area of Council's operations that ideally should be provided with increased funding.

The maintenance budget has been increased by 11% for 2013/14 with large increases included in future years in Council's long term financial plan.

Urban and Rural Roads

The majority of the projects are either complete or well advanced with total expenditure for the year at almost \$9 million.

Shared Paths and Footpaths

The major delay in this program relates to the Coastal Shared Path with planning applications for the approval process due to be submitted this week. Based on this timeframe planning consent is unlikely until 2013/14 which means there will be no more major construction works undertaken this financial year. The budgets have not, as yet, been transferred to 2013/14 as expenditure is still being incurred on the approval process.

Operations Support

An energy audit is required prior to commencing the energy efficient lighting project at the depot therefore it is recommended that this funding of \$57,000 be transferred to 2013/14.

In respect to new plant, the replacement program remains behind schedule due to long lead times that follow the placement of an order.

10.14 Capital Expenditure - Quarterly Update

Commercial Services

The majority of the projects in this program are underway or complete with the Ballina Surf Club (total project cost of \$5.5m) and the Airport Apron Extension (total of \$5.5m) being the larger projects.

Water, Waste and Wastewater

For Water, Council let the tender for the construction of the Ballina Heights Reservoir at the November 2012 Ordinary meeting, with that work now underway. Biochar represents the major project for Waste, with significant research still to be undertaken before Council makes a final determination as to whether it will proceed with the project. Wastewater expenditure continues to be significant due to the Ballina and Lennox Head Wastewater Treatment plant upgrade contract, along with the contract for the recycled water infrastructure, which is also now well underway.

As per the following table there is once again an extremely high level of capital expenditure forecast and being incurred for 2012/13.

Capital Works Summary – 30 April 2013 (\$'000)

Section	Budget (%)	Expended (%)	Percentage
Open Spaces	708,200	277,000	39
Engineering Works	17,744,200	12,642,500	71
Operations Support	4,118,100	1,318,800	32
Commercial Services	16,433,000	12,218,700	74
Water	1,892,000	456,200	24
Waste	1,050,000	329,500	31
Wastewater	27,054,100	17,164,300	63
Total	68,999,600	44,407,000	64

Sustainability Considerations

- **Environment**
Many of the works listed have positive environmental outcomes
- **Social**
Certain items provide significant social benefits (i.e. surf club)
- **Economic**
Improved infrastructure can benefit the local economy.

Legal / Resource / Financial Implications

This report is largely for information with some minor budget amendments also recommended.

Consultation

This report is presented for public information.

10.14 Capital Expenditure - Quarterly Update

Options

This report is largely for information purposes along with confirming some limited budget changes based on the latest available information. This means the options are to approve or not approve those changes with the recommendation being to approve the changes.

RECOMMENDATIONS

1. That Council notes the contents of the Capital Expenditure - Quarterly Update report for the period ended 30 April 2013.
2. That Council approves the budget changes as identified in the "New Variations" column as per the attachments to this report.

Attachment(s)

1. Capital Expenditure - General Fund - Open Spaces (one page - A3 attachment)
2. Capital Expenditure - General Fund - Engineering Works (two pages - A3 attachment)
3. Capital Expenditure - General Fund - Operations Support (two pages - A3 attachment)
4. Capital Expenditure - General Fund - Commercial Services (one page - A3 attachment)
5. Capital Expenditure - Water and Waste Operations (one page - A3 attachment)
6. Capital Expenditure - Wastewater Operations (two pages - A3 attachment)

11.1 Sports and Events Centre - Update

11. Civil Services Group Reports

11.1 Sports and Events Centre - Update

Delivery Program Operational Support (Engineering)

Objective To determine the next step Council's wishes to take in respect to the planning for the proposed Sports and Events Centre.

Background

Council has considered several reports relating to the location and configuration of the proposed sports and events centre. At the Facilities Committee meeting held 18 July 2012, Council resolved as follows:

1. *That Council confirms the minutes of the Facilities Committee meeting held 18 July 2012 and that the preferred recommendation in the minutes be superseded as follows.*
2. *That this current Council confirms that its preferred concept for the proposed Ballina Sports and Events Centre is the construction of a new facility at Kingsford Smith Oval integrated with the Ballina Seagulls Rugby League Club House.*
 - 1)
3. *The preferred concept design for this facility, based on likely construction costs and Council's limited funding sources, is the two court design (option 2B in the PDT report), with the design allowing for the addition of one or two more courts.*
4. *That prior to PDT commencing the master plan design work for the Kingsford Smith Precinct, as approved by Council at the June Ordinary meeting, that Council staff facilitate an engagement with the Councillors elected following the September 2012 elections, that will confirm the major capital projects, along with possible funding sources, for that term of Council. This engagement will then allow the newly elected Council to confirm their priorities for the 2012 to 2016 term.*
5. *That Council conduct preliminary site investigations, such as soil testing, on the suitability of the old depot site for community and / or recreational facilities. A budget of \$15,000 is to be allocated to this work, with that funding sourced from Council's waste reserves, as the old depot site was originally used for waste disposal purposes.*

In accordance with point five extensive testing of the old depot was undertaken and a detailed report was provided to the Finance Committee meeting held in March 2013. Although the report identified that no gross contamination concentrations were detected that would preclude consideration of the site for an indoor sporting facility, it did note that further assessment and consideration of other matters was required to determine the suitability of the site for redevelopment as an indoor sporting facility.

11.1 Sports and Events Centre - Update

The other matters include subsidence, landfill waste management (including cap integrity), groundwater quality, potential gas and leachate generation, infrastructure positioning and site access.

In March 2013, Council also resolved to consider a further potential site in the Ferngrove Estate and PDT Architects were asked to undertake a desktop review of this site together with the Kingsford Smith and old depot sites.

The Council was recently provided a briefing on the outcomes of these investigations which are summarised in the attached report by PDT consultants. The report again confirms Kingsford Smith site as the preferred location for the proposed sports and events centre.

This report now invites Council to consider the PDT report outcomes and make a decision regarding the next step in the development of this project.

Key Issues

- Possible locations for the proposed centre
- Preparation of a master plan for Kingsford Smith Reserve

Information

The footprint required for this project means there is a connection between the various building design options for the proposed centre and the possible site options. The reviews by PTD Architects have recommended Kingsford Smith Reserve as the preferred location and one that has enough flexibility for Council to give further consideration to the building design options.

As per the July 2012 resolution Council has previously resolved to extend the scope of works with PDT Architects to undertake a master plan for Kingsford Smith reserve and the surrounding precinct.

These works were suspended in July 2012 pending the Council elections in September 2012 and the need to brief the new Council on all the various options relating to the proposed sports and events centre.

With regards to undertaking the master plan for Kingsford Smith Reserve, although PDT has previously indicated the possibility of locating the centre adjacent to the rugby league club facilities, the master plan approach would provide an opportunity to consider other locations within Kingsford Smith reserve and how existing and new facilities could be integrated.

Council has also resolved, at the March 2013 Ordinary meeting, for the Mayor to meet with the local member, Mr Don Page, in respect to the availability of the Old Depot Site.

In response to this Council has written to Mr Page however as yet the meeting has not been convened. It is fair to say that Council's correspondence asked for matters to be clarified before that meeting is held to ensure that the meeting is productive and it is understood that Mr Page's office is still trying to clarify those matters.

11.1 Sports and Events Centre - Update

A copy of Council's correspondence and Mr Page's interim response is attached for information.

Sustainability Considerations

- **Environment**
A master plan will consider the environmental issues associated with the project and assist in mitigating against environmental issues.
- **Social**
The objective of this project is to support social cohesion through the provision of new amenities.
- **Economic**
The provision of services through modern infrastructure facilities can assist in economic development.

Legal / Resource / Financial Implications

Master planning for the Kingsford Smith precinct will require additional funding of \$18,000 in respect to the existing contract with PDT. Funding is available within the Sports and Events Centre budget for this work.

Consultation

PDT Architects has previously consulted with the general public. The master plan process provides a further opportunity to consult with key stakeholders and the broader community.

Options

The confirmation of a preferred site location for the proposed sports and events centre will allow Council to focus on developing a preferred building design. In the attached report PDT has shown how various designs for the centre may be sited on the various sites.

In reviewing the contents of this report the options available to Council are:

1. Acknowledge that Kingsford Smith Reserve could be the preferred location for the proposed sports and events centre and authorise a master plan process to commence to fully investigate the site. Kingsford Smith Reserve is currently a major sporting area for the Ballina Shire and the development of the sports and events centre will further enhance that area.

Should Council endorse this approach it is recommended that Council engage PDT Architects to undertake the master plan works due to their existing knowledge of the project.

11.1 Sports and Events Centre - Update

2. Council not proceed with the master plan process and await the outcomes of the meeting with Mr Don Page.

This is not recommended primarily as it is considered beneficial for Council to fully investigate the use of Kingsford Smith through a master plan process as that process will better inform Council on the options available for Kingsford Smith. This in turn will assist with Council's future decision making for this project.

Finally it is not recommended that Council make a decision on the preferred design of the sports and events centre prior to this master plan process commencing, as feedback from the process will assist Council in determining what may be the most suitable facility for this location.

RECOMMENDATION

That Council authorises PDT Architects to prepare a master plan for the Kingsford Smith Reserve and surrounding precinct inclusive of the proposed Sports and Events Centre.

Attachment(s)

1. PDT - Site Options Review -30 April 2013
2. Letter to Don Page MP
3. Response from Don Page MP

11.2 Lennox Headland - Landscape Design

11.2 Lennox Headland - Landscape Design

Delivery Program Engineering Works

Objective To review landscape options for the Lennox Headland.

Background

Council has completed the construction of the shared path between Lennox Village and the Lennox Headland. At the time of construction, concerns were raised by some members of the community about aspects of the design, in particular the path works at Pat Morton Lookout. In response to these concerns, Council elected to modify the design to terminate the shared path at the western end of the lookout.

In making this decision, one of the factors considered was the ability of the grass to withstand the effects of the pedestrian traffic. These concerns remain after there has now been an opportunity for the performance of the grass to be assessed. Furthermore, the finish for the interface between the car park and the walkway area was not considered satisfactory.

Some of the concerns received by Council asked that a landscape plan be prepared for the site. Initially the position of staff was a landscape plan was not necessary on the basis no further works were planned for the site. However Council recently engaged Mr David Tooby, a landscape architect from King and Campbell to complete some project work and an opportunity was taken to visit the site and seek an opinion from Mr Tooby.

While it was confirmed a landscape design process was not preferred at this point in time, Mr Tooby provided some suggestions for our consideration. After consultation with Councillors it was agreed for Mr Tooby to prepare a design note to document those suggestions. A copy of the design note is attached to this report. The design note has been previously circulated to Councillors in the weekly bulletin.

The purpose of this report is to consider some feedback in response to the design note and seek Council's decision regarding the way forward.

Key Issues

- Environmentally sensitive design
- Amenity and access to an important location

Information

Letters were sent out to members of the community who had previously expressed their concerns regarding the design. These letters invited comment on the design note and the responses received are attached. In addition to the letters, the General Manager and Group Manager Civil Services attended a meeting of the Lennox Head Residents Association to discuss the available options.

11.2 Lennox Headland - Landscape Design

In summary there are four main issues that emerge from the feedback from Council and these are discussed below.

1. Seating

The appears general consensus in support of the design note proposal regarding seating.

2. Landscape Design

Some submissions still call for a landscape design to be completed for the path and headland area. These submissions suggest a design is required to address inconsistency in finish and other details. At this point in time, it is suggested that it is not necessary to develop a plan for the reason discussed above. Staff have however noted the concerns and will examine opportunities to change finish or design elements for the existing projects where that is appropriate.

3. Connectivity with the Proposed Coastline Shared Path

The Lennox Head Residents Association has indicated that they would prefer to comment when the design of the shared path from the south is confirmed. The concept design for the shared path approved by Council only shows the path extending to the southern portion of the car park area. The detail design is currently being undertaken and will be the subject of a workshop with Councillors shortly.

In the opinion of staff it is not necessary to defer a decision about the extension of the path on the northern side, however equally there is no issue in waiting for the design process for the other project to become further advanced.

4. Retain the Grass versus extend the path

The feedback appears to confirm the shape changes suggested by Mr Tooby, including the finish of the edge of the car park and the lowering of the path. However the feedback does not support the extension of the path using concrete.

The submissions generally state that the grass was sufficient before it was disturbed by Council and the replacement grass has not been sufficiently maintained. It is the opinion of staff that the pedestrian use of the area has significantly increased since the path was constructed. In part the evidence for this is the wear on the undisturbed grass leading up to the stairs accessing the top of the headland. The grass cannot be watered so it needs to be a species that does not require maintenance after establishment.

Staff have invited commentators to suggest alternate species and the only response to date suggests a return to *“the original grasses there were a mix of many types but included buffalo and kikuyu”*. If the Council is inclined to continue to preserve with grass, staff could undertake further investigations, however it is noted that both Mr Tooby and Council’s technical officers have recommended the site needs other treatments than grass.

Sustainability Considerations

- **Environment**

It is recognised that this site has significant natural environmental importance and balancing the amenity and safety for those wanting access to the site with the environment is a challenge.

- **Social**

The coastline shared path concept has been considered important by the Council for its ability to support social and recreational outcomes for the community, including access to the natural environment.

- **Economic**

The shared path project is considered to have potential to attract visitors to Ballina Shire.

Legal / Resource / Financial Implications

The proposed works, if approved, can be completed within the existing budget allocation for the shared path project.

Consultation

The consultation process undertaken to date is discussed above. One of the options for Council to consider is to place the design note on public exhibition to enable further comment by the community.

Options

If the commentary in the above report is accepted, the only outstanding matter is the question of extending the path or not. The first question Council needs to determine is whether or not it wishes to make a decision based on the feedback from those known to Council with an interest in this matter, or whether a public exhibition is preferred, or whether Council wishes to make an alternative decision based on a perception as to what the broader community's opinion is in respect to this issue.

If the Council is inclined to support the retention of the grass then it is suggested public exhibition is not needed.

The decision to place concrete would be final, whereas the grass option can be reviewed after further trial periods. Furthermore, the Lennox Head Residents Association has expressed a view that it would prefer to wait and comment further when the detail design is undertaken for the shared path to the south.

There is no specific urgency, to finalise this matter and it is recommended that Council endorse the King and Campbell design note, except for the recommended path option.

11.2 Lennox Headland - Landscape Design

If Council supports the retention of grass it is further recommended that staff investigate and trial alternate grass species at the site. It is also recommended the detail design process for the coastline shared path to the south of the lookout area give consideration to the design note so that if in future the path is extended the designs are integrated.

RECOMMENDATIONS

1. That Council endorses the King and Campbell design note prepared for the Lennox Headland, excluding the recommended option for the shared path.
2. That Council authorises the General Manager to take the necessary steps to implement the adopted design note, excluding the extension of the shared path.
3. That the detailed design process for the Coastline Shared Path project give consideration to the King and Campbell recommendation for the shared path in case it is necessary to extend this path in the future.
4. That the General Manager arrange for a review of suitable grass species for the existing grassed path to determine the most suitable species.

Attachment(s)

1. Landscape Plans
2. Submission - Lennox Head Landcare
3. Submission - David Walker
4. Submission - Tim Harrison
5. Submission - Sharne Wolff
6. Submission - Susi Codi
7. Submission - Jane Leete

11.3 Waste Water Treatment Plants Upgrade - Update

11.3 Waste Water Treatment Plants Upgrade - Update

Delivery Program Wastewater

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

Background

At the February 2011 meeting Council considered a report detailing the tender assessment for a contract for the upgrade of the Ballina and Lennox Head Treatment Plants.

At that meeting, Council resolved to accept the tender of Haslin Constructions Pty Ltd for RFT/Contract Number 0902774 being for the Design and construction of an MBR Waste Water Treatment Plant (WWTP) at Ballina, and a Recycled Water Plant at Lennox Head WWTP for an amount of \$45,437,315 including GST.

Given the size of this contract, progress reports have been provided to Council on a quarterly basis to ensure Council is able to monitor the project.

Key Issues

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

Information

Work Completed for the Reporting Period

- The new MBR wastewater treatment plant is now in service, with all incoming sewage being treated in the new plant;
- The operation of the plant is being fine-tuned by the Contractor, with this component of the works to be soon handed over to BSC;
- The chemical storage areas and UV systems are complete, and being tested prior to being placed in service;
- The old plant has been decommissioned and demolished;
- The majority of site underground pipes have been installed;
- Civil works are continuing on the internal access roads;
- Civil works on the sludge buildings is complete, with the steel frames of the buildings being erected;
- The ebb-tide and recycled reservoirs construction has commenced with the concrete walls being poured;
- Training of BSC operating and maintenance staff is occurring.

For the Lennox Head site, the following is reported.

- The new ocean discharge UV is currently being commissioned;
- New foundations and concrete flooring have been constructed in the existing building;

11.3 Waste Water Treatment Plants Upgrade - Update

- The new mechanical and electrical components of the recycled water plant have been installed in the building (with the exception of the membranes), the joining pipework completed;
- Electrical cabling and connection works are currently occurring – power to the new switchboards has been achieved;
- The RW concrete reservoir is fully completed;
- The foul water pump station is complete;
- The chemical storage area concrete bunds, roofing structure, tanks pumps and pipework have been constructed and installed – electrical connections are now complete, with commissioning programmed at the end of May;
- The emergency generators have been installed, but are not yet commissioned.

Cost of Work Completed

\$42,118,478 inclusive of GST. For the last report, the amount was \$38,620,573.

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
15	Additional Ballina Is main diversion and valving	\$21,225.82
16	Future RO return main and electrical conduits	\$28,941.14
17	Relocation of grease waste facility sampler and associated equipment	\$38,081.12
18	Supply and install PRV in existing RW system	\$26,199.71
19	Administration building security upgrade	\$16,988.40
20	Delay costs associated with the Effluent streams Modification variation	\$319,200.00
21	Access ladders for Pump Stations/Tanks	\$30,286.30
22	Automatic Greasing system for Belt Press	\$17,659.95
	Total	\$3,030,189.66

This means no variations have been awarded in the reporting period.

11.3 Waste Water Treatment Plants Upgrade - Update

At times Council is criticised for its capacity to project manage major capital works. It is worth noting the variation record for this project. If the amounts for the effluent stream modifications are excluded (the basis for this exclusion is discussed as follows), the variation sum is \$435,501 or 1% of expenditure to date.

For a project of this duration, complexity and the amount of civil works involved, this result to date is outstanding and reflects well on the project management, design and specification, contract documentation, contract administration and contractor performance.

For this analysis the effluent stream modifications have been excluded on the basis that this was a design amendment that was unresolved with Government prior to the award of the contract. It was therefore known in advance and there was an option to defer awarding the tender and incorporating the work in the contract price.

Progress to Schedule

The current Contract completion date is 20 September 2013. Progress is currently to schedule, however it is noted that with further extensions due to inclement weather likely, a completion date for the supply of recycled water is expected to be toward the end of October 2013.

The program was for the new Ballina plant to be constructed in two stages. Firstly the new WWTP component needs to be constructed and placed in service followed by decommissioning and demolition of the old works so that the remainder of the new works can be completed. The second component includes the sludge handling facilities, along with the recycled water reservoir and pump station, the ebb-tide discharge reservoir, remaining road and site civil and electrical works.

Since the last report the milestone for the new plant to be in service and the old plant demolished has been achieved.

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 an alternative source of high grade recycled water which will limit the need to upgrade alternative means of water supply thus putting back the 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.

11.3 Waste Water Treatment Plants Upgrade - Update

Legal / Resource / Financial Implications

For the Haslin Constructions contract, there have been 22 approved variations to date for a sum of \$3,030,189.66. As detailed above there was a significant variation required for the changes to the effluent streams.

It is anticipated that further variations will be within the contingency for this contract and no variation would currently be required to the budget.

Consultation

This report is provided for the public record.

Options

This report is for information only.

RECOMMENDATION

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

11.4 Tender - Construction of Animal Pound

11.4 Tender - Construction of Animal Pound

Delivery Program Operational Support (Engineering)

Objective To award a tender for the construction of a new Ballina Animal Pound.

Background

In 2011, the Commercial Services Committee considered a report regarding the sale of the Ballina Animal Pound to the Northern Rivers Animal Services (NRAS) and the construction of a new pound facility.

The report identified the current pound did not meet contemporary animal welfare or work, health and safety (WHS) standards and overall provides a poor level of service. The purpose of the sale of the existing pound to the NRAS was to take advantage of the benefits of the two facilities being adjacent to each other. NRAS is a community group which provides the opportunity for suitable impounded animals to be adopted.

The options for Council included the refurbishment of the existing facility or selling the site and constructing a new facility on land contained within the No. 1 Council Works Depot. Selling the current pound was preferred as the sale proceeds provided additional funds towards the project and there was very little in the existing pound that would have been retained under the refurbishment option. Location within the depot allowed for an increase in site area without site purchase costs being incurred.

At the October 2011 Ordinary meeting Council approved the sale of the existing pound to the Northern Rivers Animal Service (NRAS) and provided a budget of \$630,000 for the construction of the new facility. The outcomes of the design and tender process confirm that this budget is insufficient for the project. This report examines both the tender assessment and financial aspects of the project.

Key Issues

- Award a contract in accordance with the Local Government (General) Regulation 2005
- Engage a suitably qualified and experienced contractor to construct the project
- Meet Code of Practice requirements for managing housing of animals in pound and WHS requirements.
- Identify a source of funds for the project.

11.4 Tender - Construction of Animal Pound

Information

Project Design Information

A brief was prepared for the preparation of concept plans and a development application for the project. Following a "Request for Quotation Process" RFT 625, a contract was then executed with Therian Pty Ltd.

A revised NSW State Government "Code of Practice for the Management of Dogs and Cats in Animal Shelters and Pounds" is being prepared and significant changes are anticipated in the standards required for animal facilities. The design incorporates requirements currently in place in Victoria on the basis that it is likely these standards will be incorporated into the new code.

The concept design was undertaken and required the use of Architectural, Acoustic, Hydraulic, Planning, Geotechnical and Animal Facility consultants. Development consent was granted (DA 2012/155), subject to 103 conditions on 12 July 2012.

The consent required filling of the site. To provide certainty regarding the cost of this portion of the work and to utilise excess spoil recovered from other Council work sites, the site was filled and geotechnical certification received for this work.

Prior to engaging the consultants to proceed with the preparation of final design plans and specifications, a Quantity Surveyor was engaged to confirm the cost of the work to ensure that it was within budget estimates based on the drawings that formed the development application.

The estimate received from the Quantity Surveyor was significantly higher than the project budget of \$615,000 and the lead consultant was instructed to investigate savings in an effort to deliver the project within the allocated funds.

The extent of savings required could only be achieved by allowing for the building to be undertaken in stages and by reducing the building area. The design was still required to meet the Code of Practice, functional and WHS requirements

Based on these revisions it appeared that projected construction costs were in the order of the budget and staff proceeded to tender.

Tender Pricing Outcome

Four tenders were received, ranging from \$668,700 + GST to \$778,610 + GST, (not including contingencies, pc items, site works etc) meaning the costs are significantly in excess of the funds available for the works.

A further review of the design and pricing confirmed that building design is of suitable, yet basic quality, meets contemporary standards, and does not contain any features that can be removed with an acceptable compromise to the building function.

11.4 Tender - Construction of Animal Pound

The construction costs reflect the level of detail required by contemporary animal housing standards which aim to limit the risks of cross infection between kennels, the need to prevent external noise from the facility, the need to satisfactorily deal with waste disposal, comply with environmental standards, fencing, security, parking etc.

The standard of the building proposed is considered the minimum necessary to meet Council's needs into the future and project a professional appearance for dealing with Council's customers and provide current technology for staff using the building.

It has also been designed and has an approval to allow extension in the future as the projected needs for animal housing increase.

The value of the tenders received would indicate that this is today's commercial cost to construct an animal pound of this capacity, to contemporary standards in the current building climate, and if Council wishes to replace the facility the level of budget will need to change.

If the preferred tender is accepted the total project cost, with supervision, contingencies, consent and site works cost will become \$1,016,000, requiring an increase in budget of approximately \$370,000. These costs are summarized below

Ballina Animal Pound- Estimated Project Costs

ITEM	TOTAL (\$)
Site filling, tree removal, preconstruction	91,000
Design + tender Costs	43,478
Development Approval costs	16,240
Site Services and Landscaping	28,000
Building Tender	668,700
Site contract supervision	22,000
PC items	96,750
Contingencies (5%)	50,000
Total Project Cost	1,016,168
Work funded in 2011-12 year	29,400
2012/13 Budget	615,600
Additional funds required	\$371,168

Tender Assessment

Tenders were advertised on 26 March 2013 for the construction of the Ballina Animal Pound, RFT 666. At the close of the tender period on 17 April 2013 four submissions were received as follows.

Tenderer	Amount (\$)
Greg Clark Building Pty Ltd	668,700
Woollam Constructions	770,114
Boulus Constructions Pty Ltd	775,665
Ware Building Pty Limited	778,611

11.4 Tender - Construction of Animal Pound

The tender evaluation panel assessed each of the tenders against the above criteria and a summary of the rankings follows:

Evaluation Criteria	Greg Clark	Woollam Constructions	Boulus Constructions	Ware Building
Total Price	70.0%	59.4%	58.8%	58.5%
Capability & Experience	7.1%	8.0%	6.6%	8.3%
Construction Program	5.5%	6.0%	2.0%	7.3%
Quality, Safety & Environmental	5.0%	9.0%	9.0%	8.7%
Total	87.6%	82.4%	76.4%	82.7%

Subject to the discussion below regarding financial implications, the panel was in a position to recommend Greg Clark Building as the preferred tender.

Sustainability Considerations

- **Environment**
The project will provide better environmental outcomes regarding energy efficiency and water conservation from the facility.
- **Social**
The sale of the existing site to the Northern Rivers Animal Service will provide a facility to allow an important community need for rehoming of unwanted animals to occur
- **Economic**
The proposed new facility will increase efficiency in the management of stray animals

Legal / Resource / Financial Implications

Council has entered into a contract with the Northern Rivers Animal Service for the sale of the existing pound. The NRAS has met its obligations to date and has had a design prepared and development application lodged for the existing site for construction of a new re-housing facility.

The contract requires Council to receive an Occupation Certificate by 20 December 2013 or the contract may be rescinded by either party.

To accept the tender, Council will have to allocate an additional \$370,000 funds to the project.

The options to fund a sum of this magnitude include loan funding, deferral of existing projects from the budget and the use of reserves. Loan funding is not preferred because there is no available source of funds to meet the loan repayments over the next ten or more years that the loan is taken out.

The deferral of projects currently in the draft Delivery Plan is a reasonable option. This approach would see the Animal Shelter project taking priority over other works. This would mean that selected projects would be deferred for 12 months and this could include works in relation to roads, footpaths, stormwater, property, community infrastructure and open spaces.

11.4 Tender - Construction of Animal Pound

In looking at the use of reserves it is the Property Reserves that present the most likely opportunity to source \$370,000. The combined balance of these reserves is predicted to be \$3.7 million at the end of 2013/14 which includes a negative balance in the community infrastructure reserve of \$1.3 million (the Industrial Land Reserve and the Commercial Opportunities Reserve internally fund the negative balance in the Community Infrastructure reserve).

However this balance is predicated on land sales occurring and insurance reimbursement claims being received. Also these reserves are essentially committed to other projects prioritised by Council and it would mean placing this project in front of projects such as the Maritime Rescue Tower, Lennox Head Surf Club and the Swimming Pools upgrades.

It is considered that either deferring works in the Draft Delivery Plan or using property reserves is manageable financially however in both instances it does mean that existing projects will be delayed. Establishing the highest priorities to receive funding is a difficult task. Council has a legal responsibility to provide a modern Animal Shelter that meets all necessary requirements. For this reason it is considered that the project should be financed.

The suggested option is to finance the project from property reserves, specifically the Industrial Land Reserve. The balances for the property reserves include numerous assumptions however it is considered that if the Marine rescue tower expenditure is deferred until forecast income from land sales and insurance claims is received there is sufficient tolerance in the reserves to fund the \$370,000.

Consultation

A public tender process was undertaken.

Options

Under the Local Government (General) Regulation 2005 Council must either accept the tender that “appears to be the most advantageous” or decline to accept any of the tenders, and hence two options are available for Councils consideration.

Option one would be for Council to decline to accept any of the tenders, which would result in the proposed project being abandoned and the sale of the existing pound to the NRAS cancelled.

This will have the disadvantage of retaining substandard animal housing conditions in the existing pound, being non compliant with the new Code of Practice and reducing the effectiveness of the animal rehousing initiatives proposed by the NRAS.

Option two is to accept the tender from Greg Clark Building Pty Ltd to proceed with the construction of the facility as proposed. Whilst it will require alterations to the 2012/13 and 2013/14 budget, it will provide a contemporary animal pound that provides animal housing in accordance with the draft Code of Practice, WHS standards and will meet Council’s needs into the future and allow complimentary animal re-homing services to be provided by the NRAS from the adjoining site. This is the recommended option.

11.4 Tender - Construction of Animal Pound

Option three is to terminate the tender for sale of the existing pound and renovate the existing facility. This has previously been considered and discounted due to the major scale of works required and similar scope of works to that proposed in the new building. As approximately \$130,000 has already been spent on design, site preparation and development assessment for the new site, and no income from the site sale would be recovered this option is not considered financially viable and is not recommended.

The clear message in respect to the current State Government review of local government is that councils should focus on core service delivery. The construction of a replacement animal pound represents a core service for Council and on that basis the recommendation is to accept the tender and allocate the additional funding to the project.

RECOMMENDATIONS

1. That Council accepts the tender RFT/ Contract 666 for the construction of a new Ballina Animal Pound from Greg Clark Building Pty Ltd for an amount of \$668,700 plus GST.
2. That Council allocates \$370,000 from the Industrial Land reserve to the Animal Shelter project to allow the project to be completed.
3. That Council authorises the General Manager to attach the seal to the finalised contract.

Attachment(s)

Nil

11.5 Ballina Recycled Water Trunk Main - Power Drive Section

11.5 Ballina Recycled Water Trunk Main - Power Drive Section

Delivery Program Water Services

Objective To award a contract for the construction of a Recycled Water Trunk Main along the Power Drive.

Background

Council is constructing the Ballina and Lennox Head Recycled Water Scheme. Part of the scheme is the construction of a 300 mm diameter trunk main between the Ballina Recycled Water Treatment Plant and the storage reservoir at Cumbalum A. The construction of the majority of this main is currently being undertaken under a contract awarded to MMA Civil Pty Ltd. Another section of the main along the Ballina Heights Drive has recently been awarded to Gary Deane Constructions Pty Ltd. The remaining section to be constructed is the section along Power Drive at Ballina Heights. Power Drive is a private development road being constructed on behalf of development interests by Morgans Earthworks.

The purpose of this report is to consider the procurement of the section of main within the Power Drive road alignment.

Key Issues

- Award the contract in accordance with the Local Government Act 1993
- Engage suitably qualified and experienced contractors that, having regard to the circumstances, provide value for money to Council.

Information

The recycled water trunk main alignment between the Ballina Recycled Water Treatment Plant and the Cumbalum A Reservoir site occurs primarily on Council owned or controlled land. There are some sections over private property that has required landowner approvals or other mechanisms to secure access to undertake the construction works. The section of Power Drive presented a unique case whereby the land is privately owned, and at the time of developing procurement strategies for the construction contract for the recycled water scheme, there were approvals and plans with that landowner to construct Power Drive. In that circumstance, Council elected to remove the section of the recycled water main along Power Drive from the contract and award a separate contract for that work.

In late 2012, the developer of Ballina Heights Estate, awarded the construction of Power Drive to Morgans Earthworks. These works have been issued with construction certification by Council and includes earthworks, road, landscaping, stormwater, sewerage, drinking and recycled water infrastructure.

To achieve economies of scale and design integration, Council commissioned the detailed design of the water main with the designer of the road, Ardill Payne and Partners.

11.5 Ballina Recycled Water Trunk Main - Power Drive Section

Similar to design, there are benefits and cost savings by constructing the water main as part of the subdivision works. In response to this in October 2012, Council sought and received an estimate from Morgans to undertake the supply and construction of the recycled water trunk main based on a preliminary design.

The design was then further developed and Council undertook to procure the majority of materials (pipe and fittings) which occurred in early 2013. Direct materials procurement was considered the best advantage for Council. Following completion of the detailed design, a quote document was issued to Morgans to undertake the construction of the pipeline with Council supplying most of the materials. The quotation to undertake the work is \$144,194.24.

As Morgans are the appointed contractor for the development work and as per above, there should be advantages to Council in directly appointing them, it is preferred to call tenders for the Council work. In these circumstances it is important however to consider other information for Council to be satisfied that the price represents value for money.

Value for Money Assessment

Council has two concurrent projects in place that are comparable in scope to the Power Drive Recycled Water Main construction. MMA Civil Pty Ltd are undertaking most of the recycled water trunk main construction and Gary Deane Constructions Pty have recently been awarded the construction of the recycled water trunk main as part of the Ballina Heights Drive road construction. The quote provided by Morgans is comparable to these competitively obtained quotations as shown in the following table (prices are inclusive of GST):

Item	Morgan Earthworks Pty Ltd	MMA Civil Pty Ltd	Gary Deane Constructions Pty Ltd
Recycled Water Trunk Main length	663 m – Power Drive	2841 m – Bicentennial Park to Deadmans Creek Road	900 m – Ballina Heights Drive
Council Materials Supply Cost	\$72,437.20	N/A	N/A
Contractor Installation	\$132,437.44 (1)	N/A	N/A
Supply and Installation	N/A	\$683,500.00	\$287,100.00
Equivalent supply and install rate (\$/m)	\$309.01	\$240.58	\$319.00

Notes

(1) Price comparison does not include preliminaries, testing and disinfection and works as executed survey.

From the above, it is fair say that that the rates provided by Morgan Earthworks are comparable and competitive.

Sustainability Considerations

- **Environment**

The construction of the recycled water main is part of the Ballina Recycled Water Scheme and Council's Urban Water Management Strategy. The construction of these works will be managed by a construction environmental management plan.

- **Social**

This project will provide an improvement of water security for residents and therefore support social and development needs.

- **Economic**

This project is critical for the future orderly development of a major planned urban land release area.

Legal / Resource / Financial Implications

This report is provided to assist the Council meet its statutory requirements for procurement. A budget is available for these works.

The Local Government Act 1993 (Section 55) and Local Government Regulation (General) 2005 (Section 163), require that a contract involving an estimated expenditure or receipt of an amount of \$150,000 should be publically tendered (inclusive of GST).

The tender amount is under this limit, however it is reasonably foreseeable that with variations the expenditure could exceed the allowable limit. Regardless, to promote good governance, rather than using a technical approach to interpreting the intention of the statute, it is preferred to treat this assessment in accordance with the tendering provisions.

Section 55, at (3(i)) also says that a contract may be awarded without a tendering process *'where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.'*

As noted, to use a different contractor will increase the costs of these works on the basis that the landholder has already commenced a major construction project. The integration with other earthworks, site establishment, contract supervision and administration and other matters will provide potential savings when compared to other tenderers.

In the alternative, Council would have to engage a contractor to work on the site at the same time, which has a number of risks, or return at a later time. Returning later is unsatisfactory as this will disturb the final finish of the developer's work and increase costs with rehabilitation and lost economies of scale.

Consultation

The project managers for the developer have been consulted and approve Council's engagement of Morgans to construct the recycled water main concurrent with the Power Drive Road Construction.

11.5 Ballina Recycled Water Trunk Main - Power Drive Section

Options

1. Award the contract in accordance with the extenuating circumstance provisions of the Local Government Act as described above.
2. Council can resolve to have the works tendered. This procurement pathway will require negotiating an agreement with the landowner and contractor (Morgans) to determine the timing and nature of gaining access and approval for a contractor to undertake the works.

For the reasons stated in the report, option one is recommended.

RECOMMENDATIONS

1. That Council, in accordance with Section 55 (3)(i) of the Local Government Act (1993), resolves to accept the quotation from Morgan Earthworks Pty Ltd for \$144,194.24 (incl GST) to undertake the construction of the Power Drive Recycled Water Trunk Main.
2. Council records that the reason for not tendering the above contract is because the contractor is already engaged by others on the site and with the economies of scale it is highly unlikely other competitive tenders would be available. Council also records the price for the works has been assessed for value for money as documented within this report.

Attachment(s)

Nil

11.6 Ballina Waste to Energy Project - Procurement Strategy

11.6 Ballina Waste to Energy Project - Procurement Strategy

Delivery Program Waste Services

Objective To consider adoption of a procurement strategy

Background

For some time Council has been developing the Ballina Waste to Energy Project. The objective of this project is to build a slow pyrolysis unit at the Waste Management Facility that will produce commercial quantities of biochar and electricity. The project is supported by a grant from the Federal Government's Regional Development Fund.

The project has a number of unique aspects, risks and represents a major investment for Council. This means it is important that a comprehensive project management framework is in place. Councillors have recently been provided with a briefing regarding the project management framework.

An important component of this framework is the documentation of a procurement strategy. The purpose of this report is for Council to endorse the procurement strategy prepared for the project.

Key Issues

- Probity
- Best Value for Money

Information

Project management framework and other activities

In recent months a number of steps have been taken to develop a project management framework and other project development activities have been commenced. Some of these are briefly discussed below.

A Project Execution Plan has been prepared. This plan addresses matters such as the project management structure, resources, reporting, milestones and generally guides the direction of the project management team.

A Communications Strategy has been prepared. This strategy ensures key stakeholders have been identified, their communication needs assessed and an action plan is in place to support these needs.

A Risk Management Plan is also in place. This document, and the risk register in particular, is updated regularly.

As noted, a draft procurement strategy is the subject of this report for consideration by Council.

11.6 Ballina Waste to Energy Project - Procurement Strategy

A consultant has been briefed and is well advanced in developing the required Environmental Impact Statement. Community feedback from the exhibition phase (Council acting as the proponent not the regulator) was very positive. The final chapters of the EIS are being reviewed by staff and we expect to lodge the application at the end of May.

A legal agreement with Lismore City Council, as a potential partner in the project, is in final draft form. This agreement is being prepared for presentation to Council in the near future.

A legal agreement with a technology partner is also well advanced. This agreement will be the subject of a formal briefing to Council. The procurement strategy and this legal agreement are interrelated.

A Project Reference Group has been established. The purpose of this group is to engage with and seek advice from industry and government agency representatives with an interest in the project.

The NSW Government has recently published a draft Waste to Energy Policy. This policy does not support the needs of this project and in response to this a submission has been forwarded to the Government.

A scope of works for a Concept Design Report has been developed and issued to our proposed technology service provider. Their response is due at the time of writing this report. The program seeks to finalise this report in July. This report is considered the most appropriate level of information as the next key milestone for Council to assess its position in investing in this project.

A draft revision of the Business Plan has been prepared. This document is being reviewed by staff and will be presented to Council in the near future. This document will need to be further updated following the completion of the Concept Design Report. It is also considered important that the Business Plan be independently reviewed. Professionals with the capacity to complete such a review have been sourced and will be selected and briefed shortly.

Procurement Strategy

Attached to this report is a report setting out the process undertaken to review the procurement options for this project. A summary of the recommendations was discussed with Councillors at the recent briefing.

It is intended for the attached report to speak for itself and not be further analysed here other than the following brief comments.

The review considered the issues associated with the direct sourcing of the technology services from Pacific Pyrolysis. In the circumstances, this direct sourcing is considered appropriate and best value for money for Council. The actual details of this will be further examined in a separate report to Council in respect of the proposed agreement between Council and Pacific Pyrolysis.

The report refers to core technology and balance of plant. Core technology is the component that requires specific design expertise in relation to slow pyrolysis for this intended purpose. Balance of plant refers to the components that are typically already available to be purchased or constructed from other sources. The majority of the costs of the project are with the balance of plant.

11.6 Ballina Waste to Energy Project - Procurement Strategy

The recommended arrangements for the balance of plant procurement are standard processes now available within public administration procurement. As discussed in the report, Early Tender Involvement is proposed for this balance of plant design and construction. This process assists in bringing together prospective tenderers to examine risk allocation, design, build ability, innovation and other issues in a manner that not only assists in the selection of the contractor but also provide opportunities to meet or enhance the project objectives and outcomes.

The fabrication of core technology is to be undertaken by a standard tender process managed by Council. The responsibility for incorporating core technology into the plant will reside in the contract for balance of plant. The design of the core technology will be the contractual responsibility of Pacific Pyrolysis, if Council endorses the proposed agreement with them.

This means the fabrication of core technology and the design and construction of balance of plant will be subject to a full market based assessment, leaving only the design of core technology within the scope of works for the agreement with Pacific Pyrolysis.

Procurement selection is critical to managing risk, achieving value for money and ensuring the project meets its objectives. The purpose of presenting the procurement strategy to Council is to demonstrate, that a complete process has been conducted to ensure the design of the approach to procurement is the most appropriate in the circumstances.

Sustainability Considerations

- **Environment**
The project will be assessed through an EIS. The project objectives support innovative environmental outcomes.
- **Social**
The project aims to assist the Council manage the community's organic waste.
- **Economic**
One of the objectives of this project is to stimulate economic development by the creation of a commercial market for biochar.

Legal / Resource / Financial Implications

The purpose of preparing a procurement strategy is to ensure Council is able to meet its' statutory obligations.

Consultation

Consultation is not required in relation to the procurement strategy. Other aspects of the project involve community and stakeholder engagement.

Options

The Council can either;

11.6 Ballina Waste to Energy Project - Procurement Strategy

1. Adopt the draft procurement strategy
2. Amend the draft procurement strategy
3. Decline to adopt the procurement strategy

It is emphasised that adoption of the procurement strategy does not mean Council is making a binding or final commitment in respect of the procurement methods or providers for this project. Separate, formal decisions, made in accordance with the Local Government Act, will need to be taken in respect of those matters by the Council, as it progresses through the proposed stages in the strategy. This includes decisions in respect of the technology service provider and expression of interest and tender processes for the core plant, balance of plant and contract documentation.

Therefore it is not essential that Council adopts the strategy, however it is recommended as it is useful for the Council to confirm a preferred direction for the execution of this project. Not only is a direction confirmed, adopting the strategy provides an opportunity to stage the decision making and include the Council directly in the governance of the project.

As the strategy was prepared with specialist advice and through a work group process with key Council staff, if the Council is inclined to amend the strategy, it would be the recommendation of staff to defer a decision to enable the Council's proposed amended direction to be workshopped with access to appropriate advice to assist.

RECOMMENDATIONS

That Council endorses the Procurement Strategy, as attached to this report for the Ballina Waste to Energy Project.

Attachment(s)

1. Procurement Report (Under separate cover)

12. Public Question Time

12. Public Question Time

13. Notices of Motion

13. Notices of Motion

Nil Items

14. Advisory Committee Minutes

14. Advisory Committee Minutes

Nil Items

15.1 Mayoral Meetings

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

15.1 Mayoral Meetings

Councillor David Wright

Activities since the April 2013 Ordinary meeting:

<u>Date</u>	<u>Function</u>
25/4/13	ANZAC DAY – Alstonville
27/4/13	'Bless'm All' – Players' Theatre
29/4/13	Workshop on Emergency Management/Town Centre
30/4/13	Reserve Trust Meeting/Extraordinary Meeting
1/5/13	Far North Coast Weeds Presentation/Regional Action Plans
2/5/13	Presentation Sports and Events Centre
3/5/13	NOROC – Ballina
4/5/13	Naval Association - RSL Memorial Park – wreath laying/dinner at RSL Bowling Club
7/5/13	Alstonville Chamber of Commerce
8/5/13	RRCC Meeting – Lismore
8/5/13	Meeting Graham Sampson – Independent Local Government Review Panel
8/5/13	Port of Ballina Briefing/Draft Operational Plan and Delivery briefing
9/5/13	'C' Ward Meeting – Crawford House
10/5/13	Meeting Ballina Rotary
11/5/13	Surf Lifesaving Club Presentation – Ballina RSL
13/5/13	Income Diversification Presentation/Biochar Presentation
14/5/13	Local Government Act Workshop – Lennox Head
14/5/13	'A' Ward Meeting – Council Chambers
14/5/13	Community meeting – Alstonville Pre School
17/5/13	Unveiling of Alstonville and Wollongbar entry signs
17/5/13	Boral presentation – Inspection Teven Quarry
17/5/13	Ballina Surf Club – Ballina RSL
17/5/13	BACCI Opening
20/5/13	'B' Ward Meeting – Council Chambers
21/5/13	Ballina Men's Shed – Richmond Room
22/5/13	RRCC Meeting - Lismore
23/5/13	May Council Meeting

RECOMMENDATION

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

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 Land Sale Price - Southern Cross Industrial Estate

Council is in the process of negotiating the sale of industrial land at Southern Cross Estate and the report contains details of proposed selling prices.

17.2 Lease Terms and Conditions - 139 River Street, Ballina

Council is in the process of negotiating lease terms and conditions for a Council owned shop at Wigmore Arcade and this report contains details of the terms and conditions.

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 Land Sale Price - Southern Cross Industrial Estate

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 Council is in the process of negotiating a sale for the property in question and without the ability to have these discussions in confidential session Council may not be in a position to maximise the return on the sale of this land to the community.

17.2 Lease Terms and Conditions - 139 River Street, Ballina

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 because it would put Council at a competitive disadvantage in attempting to maximise the commercial return to the community for this property.