



## 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 24 October 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. Development and Environmental Health Group Reports
9. Strategic and Community Facilities 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
  2. Acknowledgement of Country
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  6. Deputations
  7. Mayoral Minutes
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**1. Australian National Anthem**

The National Anthem will be performed by Xavier Catholic 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 Thursday 26 September 2013 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 26 September 2013.

**5. Declarations of Interest and Reportable Political Donations**

**6. Deputations**

**7. Mayoral Minutes**

## 8.1 Review of Determination DA 2011/105 - 1188 Teven Road, Alstonville

### 8. Development and Environmental Health Group Reports

#### 8.1 Review of Determination DA 2011/105 - 1188 Teven Road, Alstonville

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<b>Applicant</b>	Newton Denny Chapelle
<b>Property</b>	Lot 20 DP 1051208 No. 1188 Teven Road Alstonville
<b>Proposal</b>	Section 96AB Review of Refusal of Section 96 Application to modify DA 2011/105 for the Establishment of a Scaffold Business by Increasing the Hardstand Storage Area and provide a new driveway access onto Teven Road.
<b>Effect of Planning Instrument</b>	The land is zoned RU1 under the provisions of the Ballina LEP 2012
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

#### **Introduction**

Council at the meeting of 27 June 2013 resolved the following:

*That the Section 96 1(A) application be deferred particularly in relation to the deletion of Condition 1.5*

Council at the meeting of 22 August 2013 resolved the following:

*That the Section 96 1(A) application seeking to amend DA 2011/105 by the creation of an additional hard stand area to be used for the purpose of storage and the establishment of a new vehicular access onto Teven Road on Lot 20 DP 1051208, No 1188 Teven Road, Alstonville be **REFUSED** as it is prohibited by the provisions of the Ballina Local Environmental Plan 2012 and as per the contents of Option Two within the report.*

A copy of the report submitted to the August meeting is attached.

#### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

#### **Report**

Following Council's refusal of the Section 96 amendment application, the applicant has requested a review of this determination as legally allowed under the NSW Environmental Planning and Assessment Act.

## **8.1 Review of Determination DA 2011/105 - 1188 Teven Road, Alstonville**

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In support of this review application, the applicant has submitted additional information and made the following amendments to the previously determined application:

1. Deletion of the second driveway servicing the approved scaffolding business. The deletion of this additional driveway will reduce the gravel / hardstand area by 237 square metres or 5.3% of the overall land area for the lot; and
2. Providing scope for additional landscape plantings along the Teven Road boundary, which will increase the overall landscaped area by 237 square metres.

Copies of this request for review of determination proposed by Newton Denny Chapelle, dated 25 September 2013, and the amended site plans are attached to this Report.

### **Conclusion**

It is considered, that with the proposed amendments, the subject request to review the previous Section 96 determination be granted by way of approval. Council staff had a similar recommendation in the previous report.

### **RECOMMENDATION**

That in respect to this review of determination, Council adopts the recommendation as contained within the Council report of 22 August 2013 as attached, for APPROVAL subject to the following modifications:

1. Condition 1.1 be amended to incorporate the revised plans and to read as follows:  
  
Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, including plans prepared by Amy Campbell, Drawing Nos. A-01 (Site Plan) Revision D, dated 18 September 2013 and A-02 (Proposed Shed and Yard Plan) Revision D, dated 18 September 2013, and the plan prepared by Wide Span Sheds, Reference No PB 1102061-1 (Building Layout), dated 8 February 2011, as amended in red, except as modified by any condition in this consent
2. Deletion of recommendation four for the inclusion of a new condition 2.6A, given the amendment to remove the second driveway.

### **Attachment(s)**

1. DA 2011/105 Consultant Town Planner's report - Section 96AB - review of section 96 determination (refusal)
2. DA 2011/105 Plan - landscaping - proposed shed & yard
3. DA 2011/105 Plan - site
4. DA 2011/105 Submissions of support - Kelly Lowe & D. Smith
5. DA 2011/105 REPORT Council 22 August 2013 - Section 96 - Bulk Storage

## **8.2 Off Leash Dog Exercise Area - The Spit - Review**

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### **8.2 Off Leash Dog Exercise Area - The Spit - Review**

**Delivery Program** Environmental and Public Health

**Objective** To report on the outcome of the 12 month trial of 'The Spit' as an off-leash dog exercise area.

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#### **Background**

Council at its Ordinary Meeting on the 23 August 2012 considered a report regarding a review of the Companion Animals Management Plan (the Plan).

It was identified during that review of the Plan that a trial of The Spit as an off leash dog exercise area be undertaken for 12 months. The trial commenced in September 2012 and hence this report following completion of the 12 month trial.

#### **Key Issues**

- Contents of the Plan
- Community expectations
- Legislative requirements

#### **Information**

The Companion Animals Act 1998 identifies that local government is responsible for a range of issues regarding companion animals, dogs and cats. It is important for Council to seek to achieve an appropriate balance between regulatory and non-regulatory approaches to companion animal related activities in the Shire. The Plan outlines the Council's strategic approach to these matters.

The Plan also outlines the balance set by Council in the relationship between providing encouragement and support for the social benefits of pet ownership, and establishing and maintaining a strong commitment to protecting public amenity, safety and the environment. Council's Plan complies with the obligations placed on Council by the NSW Companion Animals Act.

One important aspect of the Council's Plan is to provide a clear commitment for the adequate provision of designated off-leash dog exercise areas. These are areas where companion animal owners can legally exercise their dogs without the restraint of having a dog on a leash.

Council currently has six off leash areas being:

- Seven Mile Beach, north of Lake Ainsworth, Lennox Head
- Compton Drive, East Ballina
- Gap Road, Alstonville
- Bicentennial Gardens, the northern area of the reserve, Ballina
- Ballina Heights Estate, eastern reserve area, Ballina Heights
- Headlands Drive Drainage Reserve, Skennars Head



## **8.2 Off Leash Dog Exercise Area - The Spit - Review**

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The majority of dog attacks and/or related incidents generally occur near the family home and involve a dog that has become dominant and protective of "their home area". This is particularly evident and a problem if dogs have been allowed to roam their local area freely and unrestrained, and where the whole street becomes "their territory".

It is important for the Council to provide off leash dog exercise areas where owners can take their dogs away from their home environments and allow their pets to socialise in mutually neutral areas.

Further to the information above regarding dog attacks, off leash areas are effective in ensuring animals are well exercised, which can assist in the following;

- Improved socialisation of dogs with people and other dogs
- Reduced aggressive behaviour of dogs
- Reduced stress and stress related activities, such as barking
- Reduced boredom of dogs
- Enhances mental stimulation
- Improved general well being of dogs.

Dogs that are not exercised are more likely to develop behavioural problems such as aggressive behaviour and excessive barking. Therefore, considering the advantages of off leash dog exercise areas, it was proposed that the Council designate The Spit as an off leash area on a trial basis, as there was not a designated area in this part of Ballina.

The Spit was previously designated as an on leash area, however in recent years has become increasingly utilised by dog owners and dogs off leash as it is a convenient and safe place for dogs. The Rangers monitor the area and have found it difficult to enforce the on leash restrictions due to the expansive nature of the locality and the multiple access points to it.

Many senior residents reside on the Ballina Island and can't always drive to the already nominated off leash areas in other parts of Ballina. They find The Spit to be an easily accessible site. Confirmation of The Spit as an off leash area on a permanent basis will foster opportunities for people to meet and interact, encourage people and dogs to exercise, and help Council achieve improved outcomes in responsible dog ownership.

At the beginning of the trial concerns were raised regarding the mix of users in this area and the potential for conflicts. However, during the trial period minimal complaints have been received by Council and the area appears to be self regulating with people generally respecting each other's rights. This has confirmed the general observations of the Council's rangers over time.

During the trial period Council has received support for the area to be designated permanently as an off leash area.

### Sustainability Considerations

- **Environment**  
Designated off leash areas assist with the protection of the natural and built environment through the introduction of places and the setting of clear guidelines for the balanced management of companion animals.
- **Social**  
Companion animal ownership brings both great benefits and significant adverse impacts for people living in the community. A balance needs to be created for all scenarios; where dogs and their owners are permitted and areas where dogs are not permitted therefore avoiding undesired interactions.
- **Economic**  
Nil

### Legal / Resource / Financial Implications

There are minimal financial considerations as the only costs are those associated with the installation of new signage for the area and subsequent enforcement within the overall ranger patrol rostering.

### Consultation

The original proposal for the 12 month trial was presented to the Ordinary Meeting of the Council held 23 August 2012. Signage has been installed at the subject location for the past 12 months indicating that the area was under a trial period as an off leash dog exercise area.

### Options

1. Council endorse The Spit as a permanent off leash dog exercise area and amend The Plan accordingly.
2. Council may resolve to suspend The Spit as an off leash dog exercise area.
3. Council may resolve to reinstate The Spit as an on leash dog exercise area.
4. Council may resolve to endorse The Spit as a dog prohibited area.

Overall the preferred approach is option one in that the trial has allowed the whole community to provide feedback and Council time to monitor the area and determine whether this is a suitable area for an off leash dog exercise area. The feedback has been very positive with minimal complaints and on that basis option one is the preferred approach.

**RECOMMENDATIONS**

1. That Council endorses The Spit as an off leash dog exercise area.
2. That Council install signage in The Spit area indicating that the area is an off leash dog exercise area. Signage is also to include information on being a responsible dog owner.
3. That Council amend the Companion Animals Management Plan to include The Spit as an off leash dog exercise area.
4. That Council continue to provide information to the community on responsible dog ownership.

**Attachment(s)**

Nil

### 8.3 Development Consent Statistics - September 2013

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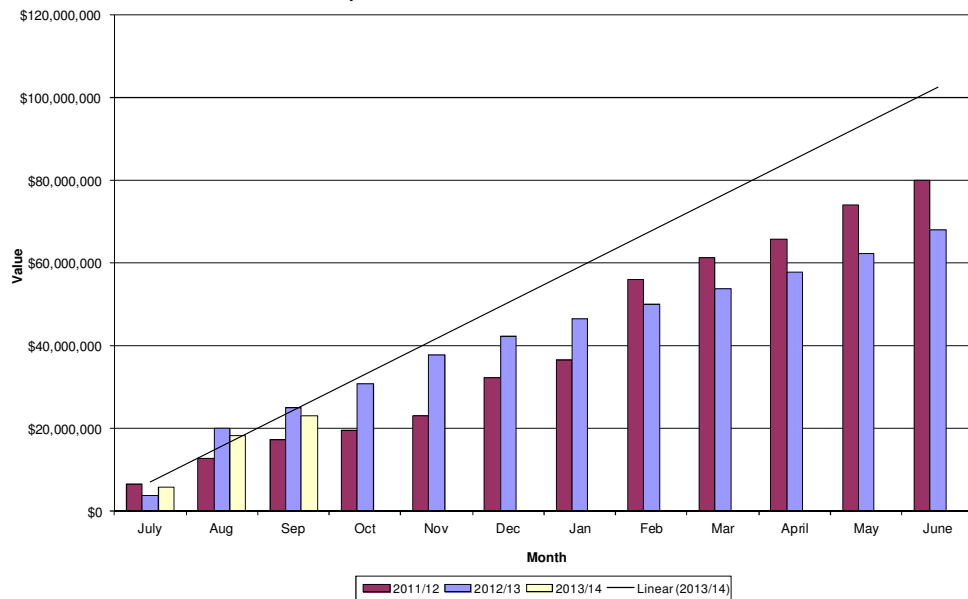
### 8.3 Development Consent Statistics - September 2013

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During the period of 1 September 2013 to 30 September 2013 the Development and Environmental Health Group issued development consents comprising of:

<b>Number of Applications</b>	<b>Value of Work</b>
27 Other Building Related	\$ 911,000
10 Dwelling/Duplexes/Residential Flat Buildings	\$ 3,777,000
5 General Developments	\$ 0
<b>Total Value</b>	<b>\$ 4,688,000</b>

The following chart details the cumulative consent figures for 2013/14 as compared to 2012/13 and 2011/12. A trend line has also been provided for 2013/14 to assist in the comparison.



### RECOMMENDATION

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

### Attachment(s)

Nil

#### 8.4 Development Applications - Works in Progress - October 2013

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#### 8.4 Development Applications - Works in Progress - October 2013

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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
2011/320	22/07/2011 (Application Amended 27/6/2013)	Ballina Shire Council	To change the method of extraction of an existing extractive industry "Ballina Airport Sandpit" from dry (excavation) to wet (dredging) and to change the end use of the pit from a landfill for dry/inert waste to the retention as a flooded pit as part of the rehabilitation works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	Awaiting Additional Information
2011/506	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, South Ballina	Being Assessed
2011/515	30/11/2011	Newton Denny Chapelle	Staged development - 5 x lot subdivision for future cluster housing development and construction of public road, No. 565-589 River Street, West Ballina	Awaiting Additional Information

**8.4 Development Applications - Works in Progress - October 2013**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
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 <sup>2</sup> to 773m <sup>2</sup> , 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	Awaiting Additional Information
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	Determination Pending
2013/194	3/06/2013	Ballina Shire Council	Lennox Head Shared Pathways - Lot 5 DP 241434, The Coast Road, Lennox Head	Awaiting Additional Information
2013/195	3/06/2013	Ballina Shire Council	Lennox Head Shared Pathways – Various Roads and Reserves between East Ballina and Lennox Head.	Awaiting Additional Information
2013/211	14/06/2013	Logan Architecture	Alterations and Additions to Existing Restaurant - 23 Compton Drive, East Ballina	Determination Pending
2013/258	15/07/2013	Newton	Alterations and	Determination

**8.4 Development Applications - Works in Progress - October 2013**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
		Denny Chapelle	Additions to an Existing Commercial Building Comprising the Construction of a new Takeaway Food and Drink Premises (23.5m <sup>2</sup> ), the Construction of a new Business Premises (133m <sup>2</sup> ) and a subsequent Three Lot Strata Subdivision - 88 Main Street, Alstonville	Pending
2013/302	16/08/2013	Newton Denny Chapelle	Proposed subdivision to Create 15 residential Lots and One Residue Lot and Associated Works - 85 Rifle Range Road, Wollongbar	Being Assessed
2013/325	02/09/2013	A & M Simpson	Removal of existing storage shed and erection of new storage shed and offices - 128 Newrybar Swamp Road, Tintenbar	Awaiting Additional Information
2013/328	03.09.2013	Ardill Payne & Partners	Proposed 3 Lot Subdivision - 14-18 Elkhorn Parade, Ballina	Referred to Government Department (NSW Rural Fire Service)
2013/340	10/09/2013	Michael Hajjar Surveying	Two Lot Industrial Subdivision - 54 North Creek Road, Ballina	Being Assessed
2013/341T	10/09/2013	M McCartney	To undertake vegetation management works - 11	Awaiting Additional Information

**8.4 Development Applications - Works in Progress - October 2013**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			Amber Drive, Lennox Head	
2013/343	12/09/2013	Ardill Payne & Partners	Alterations to Existing Business Identification Sign (Replace pylon sign at Ballina RSL) - 242-254 River Street, Ballina	Being Assessed
2013/354	18/09/2013	Ardill Payne & Partners	Erection of Second Dwelling to form a Detached Dual Occupancy and Strata Title Subdivision (Stage 1), Vegetation Removal and associated works - 35 Bridge Drive, Wardell	Being Assessed
2013/355	18/09/2013	Ardill Payne & Partners	To undertake site filling - 540 Pimlico Road, Pimlico	Being Assessed
2013/363	20/09/2013	LJ Hooker	To erect a business identification sign - Tamarind Drive, Ballina	Being Assessed
2013/364	20/09/0013	Northern Rivers Dirty Wheels Mountain Bike Club Inc	To establish a mountain bike facility and associated works - Bruxner Highway, Alstonville	On Exhibition
2013/369	25/09/2013	Nicole Samm	Alterations and Additions to an Existing Dwelling House and Establishment of a Bed and Breakfast Facility and Remedial Massage Business and	Awaiting Additional Information



**8.4 Development Applications - Works in Progress - October 2013**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			Erection of a Shed, Car Parking, Vehicular Access Upgrade and associated works - 21 Old Pacific Highway, Newrybar	
2013/370	25/09/2013	Peter Turner & Associates	Alterations and Additions to Existing Hotel - 19 Pacific Parade, Lennox Head	Being Assessed
2013/377	01/10/2013	Newton Denny Chapelle	To Undertake Site Filling of Sports Fields - 62 Horizon Drive, West Ballina	Being Assessed
2013/381	02/10/2013	Planners North	To Demolish the Existing Sundowner Motel and Restaurant and to Erect and Strata Title a Multi-level Mixed Commercial and Residential Building with an Overall Height of Approximately 23 metres. The Development Comprises Commercial Premises at Ground Level Fronting River Street and a Restaurant Fronting the River with 36 Residential Apartments above. The Proposal Seeks to Dedicate	On Exhibition

**8.4 Development Applications - Works in Progress - October 2013**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			Land for Foreshore Public Access, Retain Two Existing Trees, Comprising One Norfolk Island Pine and One Pandanus and Incorporate Two Levels of Car Parking Within the Building - 274 River Street, Ballina	
2013/382T	02/10/2013	C Enright	Removal of Vegetation - 54 Pine Avenue, East Ballina	Being Assessed
2013/387	03/10/2013	Allan P Corke P/L	Erection of Shade Structures within Existing Carpark - 95-105 Fox Street, Ballina	Being Assessed
2013/388T	03/10/2013	Lennox Head Tree Care (Mark Stevenson)	Removal of Vegetation - 12 Mellis Circuit, Alstonville	Being Assessed

## 8.4 Development Applications - Works in Progress - October 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	Referred to Government Departments
2013/162	17/05/2013	Ardill Payne	Extractive Industry (Sand Quarry) with a total extractable resource amount of 610,000m <sup>3</sup> (in situ) - Lot 32 DP 1151612, Newrybar Swamp Road, Lennox Head	Awaiting Additional Information
2013/286	5/08/2013	Ballina Shire Council	Establishment and Operation of a Biochar and Waste-to-Energy Facility - 167 Southern Cross Drive, Ballina	Referred to Government Departments

### Major Development (Determined by Minister)

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

### RECOMMENDATION

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

### Attachment(s)

Nil

## **9.1 LEP Amendment Requests and Planning Proposals - Update**

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### **9. Strategic and Community Facilities Group Reports**

#### **9.1 LEP Amendment Requests and Planning Proposals - Update**

**Delivery Program** Strategic Planning

**Objective** To advise Council of the status of the LEP amendment requests and planning proposals that are currently being processed.

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#### **Background**

It is important that the Council remains informed in respect to requests to amend the Ballina Local Environmental Plan (LEP) and planning proposals that are currently under assessment. This report provides an update on those matters for the information of Councillors and the community.

#### **Key Issues**

- Status of the various rezoning LEP amendment requests

#### **Information**

Table one provides an overview of the LEP amendment requests and planning proposals currently being considered and processed by Council.

With respect to terminology used in this report, the term planning proposal refers to the documentation prepared to describe a request to amend the Ballina Local Environmental Plan.

Requests are typically referred to as planning proposals once Council has prepared the required planning proposal documentation and the amendment request has been endorsed as a matter that may progress to public exhibition by the NSW State Government's Gateway LEP Panel.

**Table 1: Status of LEP amendment requests and planning proposals**

<b>Item</b>	<b>Name and Status</b>	<b>Summary and Notes</b>	<b>Completion Due</b>
Amdt 090	Stewart Farm (Stage 7 - JRPP)	Proposal for the rezoning of land immediately south of the existing Headlands Estate at Skennars Head for urban purposes. The rezoning includes 35 ha of residential zoned land and a small neighbourhood scale commercial centre. The Northern Region Joint Regional Planning Panel (JRPP), at its meeting held on 3 October 2013, recommended that this matter be finalised.	25/11/2013 (JRPP)

## 9.1 LEP Amendment Requests and Planning Proposals - Update

Item	Name and Status	Summary and Notes	Completion Due
Amdt 105	Cumalum Precinct A (Stage 7)	<p>Proposal for the rezoning of Cumalum Precinct A (northward of the existing Ballina Heights Estate) for urban purposes. Also includes open space and environmental protection outcomes.</p> <p>The Council has resolved to proceed to finalise the planning proposal subject to the proponents agreeing to allow a suitable period of time for Council's s94 plans and DCP to be updated to reflect the expected infrastructure and design outcomes for the area.</p> <p>The proponents have agreed to a suitable time period via a deed of agreement. Council has requested that the Department of Planning and Infrastructure (DP&amp;I) finalise the rezoning.</p>	19/04/2014
Amdt 105	Cumalum Precinct B (Stage 7)	<p>Proposal for the rezoning of Cumalum Precinct B (southward of Ross Lane) for urban purposes. Proposal includes a village centre (commercial area), open space and environmental protection outcomes in addition to a substantial residential area.</p> <p>The Council has resolved to proceed to request finalisation of this amendment by the Department of Planning and Infrastructure (DP&amp;I) once the voluntary planning agreement applicable to the proposal is registered to the titles of the relevant land parcels.</p> <p>Council has requested that the DP&amp;I finalise the rezoning for those parcels of land subject to the VPA where the VPA has been registered to the title of the land (and for those land parcels not subject to the VPA).</p>	22/11/2013
12/002	Robb Street, Alstonville (Stage 7 – discontinuation requested)	<p>Proposal for the rezoning of land adjacent to the Russellton Industrial Estate for industrial purposes to enable expansion of the Duraplas manufactured tank business.</p> <p>The Council has resolved to discontinue the planning proposal. Council's request for discontinuation has been conveyed to the DP&amp;I.</p>	25/09/2013
12/003	Bulky Goods Retailing Precinct, Ballina. Complete	<p>Proposal for the rezoning of land in the Southern Cross Industrial Estate, Ballina to facilitate establishment of a bulky goods retailing precinct.</p> <p>This planning proposal is complete. It was implemented as Amendment No.3 to the Ballina LEP 2012 on 27/09/2013.</p>	Complete

## 9.1 LEP Amendment Requests and Planning Proposals - Update

Item	Name and Status	Summary and Notes	Completion Due
12/004	Blue Seas Parade, Lennox Head. Complete	Proposal for the rezoning of a small area of land adjacent to the Coastal Grove Estate at Lennox Head for residential purposes.  This planning proposal is complete. It was implemented as Amendment No.2 to the Ballina LEP 2012 on 13/09/2013.	Complete
12/005	Burns Point Ferry Road, West Ballina (former Ferry Boat Motel site). Complete	Proposal for the rezoning of land adjacent to Burns Point Ferry Road for residential purposes.  This planning proposal is complete. It was implemented as Amendment No.4 to the Ballina LEP 2012 on 04/10/2013.	Complete
12/006	Special Events (Exempt Development). (Stage 4)	Proposal for the inclusion of provisions in the LEP to enable special events to be carried out as exempt development in certain circumstances (ie no development consent required).  Council is preparing material to address concerns raised by the NSW Rural Fire Service in relation to bushfire management.	22/03/2014
13/001	Subdivision Provisions. (Stage 7)	Proposal for the inclusion of provisions in the LEP to facilitate boundary adjustment subdivision, creation of residual lots, split-zoned lots and lots for environmental protection purposes in particular circumstances.  Council has requested that the DP&I proceed to finalise the amendment. Council is liaising with the DP&I and Parliamentary Counsel to finalise the proposed provisions.	02/02/2014
13/002	Dual Occupancy Lots, Lennox Head. Complete	Proposal for the application of R3 Medium Density zoning over several allotments of land at Lennox Head that are approved for 'dual occupancy' use. The present R2 Low Density zone does not enable this land use on the lots.  This planning proposal is complete. It was implemented as Amendment No.5 to the Ballina LEP 2012 on 11/10/2013.	Complete
13/003	Tara Downs, Lennox Head (Stage 4)	Proposal for the application of a residential zone over two allotments in Tara Downs Estate. Proposal also seeks to enable subdivision of the subject land parcels.  Technical information submitted by the proponent is currently under review.	23/03/2014
13/004	Crane Street (Fire Brigade property), Ballina. (Stage 7)	Proposal for the application of a commercial zone to a thin strip of land within the Ballina Fire Brigade property to rectify a zoning anomaly.  Council has requested that the DP&I proceed to finalise the amendment.	08/03/2014

## 9.1 LEP Amendment Requests and Planning Proposals - Update

Item	Name and Status	Summary and Notes	Completion Due
13/005	Southern Cross Industrial Estate Expansion, Ballina. (Stage 4)	Proposal for the rezoning of land northward of the existing Southern Cross Industrial Estate to enable a mixture of business and industrial land uses. The proponent (Council) is currently preparing technical material for assessment.	30/07/2014
13/006	Mt Moriah Subdivision, Plateau Drive, Wollongbar. (Stage 6)	Proposal for the rezoning of land to apply a low density residential zone to match the intended housing outcomes associated with an approved subdivision. This matter is the subject of a separate report elsewhere in this business agenda.	19/02/2014
13/007	Bagotville Quarry – Land Reclassification. (Stage 5)	Proposal to reclassify the Council-owned Bagotville quarry as operational land for the purpose of the Local Government Act. Planning proposal is currently on public exhibition. Public Hearing planned for December 2013.	13/03/2014
13/008	Reclassification – Council Owned Waterways. (Stage 5)	Proposal to reclassify the Banyanda Lake and Ballina Quays Canals as operational land for the purpose of the Local Government Act. Planning proposal is currently on public exhibition. Public Hearing planned for December 2013.	13/06/2014
#	Wollongbar Open Space. (Stage 2)	Proposal to change the distribution of open space and residential land use zones over Council-owned land in the Wollongbar Urban Expansion Area. This matter is the subject of a separate report elsewhere in this business agenda.	#
#	Bletchingly Street, Wollongbar. (Stage 1)	Proposal for the rezoning of land to apply a medium density residential zone to an existing low density zoned area at the eastern end of Bletchingly Street in Wollongbar. This matter is the subject of a separate report elsewhere in this business agenda.	#
#	Reservoir Hill Site, Lennox Head. (Stage 2)	Proposal for the rezoning of land to apply a residential zone to the land known as the Reservoir Hill site in Lennox Head. The Council has resolved to prepare a planning proposal, subject to address of several issues. Assessment of technical information being undertaken and further liaison with proponent required prior to preparation of a planning proposal.	#
#	General Amendments 1. (Stage 3)	Amendment to reinforce Council's intent in relation to DCP and exempt development provisions, correct a minor mapping error and update flood mapping. Documentation being prepared for submission to the DP&I Gateway for determination.	#

## 9.1 LEP Amendment Requests and Planning Proposals - Update

Item	Name and Status	Summary and Notes	Completion Due
#	Teven Road, West Ballina. (Stage 1)	Proposal to enable the establishment of freight transport facilities adjacent to Teven Road on the western side of the Ballina Bypass.  This matter is the subject of a separate report elsewhere in this business agenda.	#
#	Building Height Allowance Provision. (Stage 2)	Amendment to reinforce Council's intent in relation to the application of building height standards.  This matter is the subject of a separate report elsewhere in this business agenda.	#
#	Burns Point Ferry Road, West Ballina (Ballina Waterways). (Stage 1)	Proposal for the rezoning of land adjacent to Burns Point Ferry Road and River Street to enable a mixture of employment and residential land uses. The proposal includes implementation of a biobanking scheme over part of the land.  Council is awaiting from the proponent additional information regarding biobanking, site ecology and environmental zone application.	#

### **LEP Amendment Request/Planning Proposal Processing Stages**

1. Initial Concept - Proponent submits initial amendment concept for review and reporting to the Council.
2. Planning Proposal - Preparation of a planning proposal for Council's consideration (if the initial concept is supported by the Council).
3. Gateway Determination - DP&I determination as to whether the planning proposal may proceed (if the Council resolves to submit the planning proposal for determination).
4. Study Preparation - Relevant technical information to enable complete assessment compiled and considered. This step may also involve pre-exhibition public authority consultation.
5. Community consultation - Planning proposal and associated technical assessment material exhibited for public comment.
- 5a. Public Hearing - Public Hearing held, where required.
6. Submissions Assessment and Council Decision - Reporting of community consultation outcomes and Council decision regarding finalisation of the planning proposal.
7. Finalisation - DP&I finalisation (or Council finalisation under delegation) of the LEP amendment based on the planning proposal. Note: the Minister for Planning and Infrastructure may finalise, alter or terminate the amendment.

# Denotes proposal number and due date subject to Gateway determination.

The completion due date is a date for completion determined by the Department of Planning and Infrastructure.

### **RECOMMENDATION**

That Council notes the contents of this report concerning the status and approach regarding the current Local Environmental Plan amendment requests and planning proposals that are being processed.

### **Attachment(s)**

Nil



## **9.2 LEP Amendment Request - Teven Road Transport Facility**

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### **9.2 LEP Amendment Request - Teven Road Transport Facility**

**Delivery Program** Strategic Planning

**Objective** To outline a proposal for an LEP amendment to enable transport and logistics land uses on land at Teven Road, West Ballina and seek direction on the progress of the matter.

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#### **Background**

Council has received a request to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) from Newton Denny Chapelle on behalf of several landowners with holdings between Teven Road and the Ballina Bypass at West Ballina. A copy of the request is contained in Attachment One.

The request seeks an amendment to the Ballina LEP 2012 to enable transport and logistics land uses on the following land:

- Lot 3 DP 749680 (Date)
- Lot 2 DP 749680 (Boyes)
- Lot 5 DP 1031875 (Lynks Pty Ltd)
- Lot 229 DP 1121079 (Lynks Pty Ltd)
- Lot 228 DP 1121079 (Teven Park Pty Ltd)
- Lot 227 DP 1121079 (Zeallake Pty Ltd)
- Lot 12 DP 1011575 (Montina Pty Ltd)

A map showing the location of the listed land parcels is contained in the information submitted by Newton Denny Chapelle at Attachment One. The information submitted by Newton Denny Chapelle also includes an overview of the current uses of the subject land parcels.

The future use of the land located between Teven Road and the Ballina Bypass was considered by the Council during the preparation of the Ballina LEP 2012.

Council resolved to apply an RU2 Rural Landscape zone in that locality and this is the zone that presently applies to the subject land. The RU2 zone enables a variety of rural land uses, some of which require prior development consent.

The LEP amendment request does not seek a change to the applicable land use zone, but rather proposes the inclusion of freight transport facility and warehouse or distribution centre as permitted land uses on the specified land parcels (through use of the Additional Permitted Uses Schedule in the LEP).

This would have the effect of creating a defined precinct of RU2 zoned land where freight and logistics type land uses would be permitted with development consent.

This report provides an overview of the proposed amendment and seeks the Council's direction with respect to the further consideration of this matter.

### Key Issues

- Processing of LEP amendment request and preparation of a planning proposal
- Appropriateness of specifying particular land uses as permitted on certain parcels of land
- Need for additional areas for freight and logistics land uses
- Expansion of urban land uses west of the Ballina Bypass

### Information

The LEP amendment request is currently in initiation or concept stage. As such, staff have undertaken a preliminary assessment of the proposal to inform a decision on whether Council should progress to prepare a planning proposal suitable for submission to the Department of Planning and Infrastructure for Gateway determination.

In summary, the proposal seeks to enable transport and logistics land uses on seven parcels of rural zoned land through identification of freight transport facilities and warehouse or distribution centres land uses that would be permitted with consent on the subject land under Schedule 1 (Additional Permitted Uses) of the Ballina LEP 2012. These uses are currently prohibited on land within the prevailing zone.

As outlined above, the Council resolved to apply an RU2 Rural Landscape zone to the subject land under the Ballina LEP 2012. This zoning is consistent with Council's Ballina Shire Growth Management Strategy (GMS) and the Far North Coast Regional Strategy (FNCRS) in that the subject land is not identified as having potential for urban land uses (beyond the activities already being lawfully undertaken on the land).

The expansion of urban land uses to the west of the Ballina Bypass is of concern and is not advocated by any current local or State Government planning strategy applicable to Ballina Shire. However, given the type of use proposed and the specific characteristics of the subject land, the Council may determine that there is some justification to support the proposed transport and logistics outcome.

Further, the FNCRS identifies planning for industrial needs having regard for factors such as the growth of South East Queensland and improvements in transport infrastructure as an outcome of the strategy. The strategy also suggests that some types of industry could be located away from existing urban centres due to their type, nature and scale.

In considering the above, key issues that arise include:

- the extent to which additional area that permits establishment of freight transport and logistics land uses is needed in Ballina Shire;
- if additional areas are necessary, determining the optimal location and characteristics for the siting of such land uses; and
- the extent to which the specific characteristics of the subject land support its suitability for the location of freight transport and logistics land uses.

## 9.2 LEP Amendment Request - Teven Road Transport Facility

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As the proposal is in the concept phase, the information submitted by the proponent provides a general overview of the reasoning for the proposed LEP amendment. Whilst this information is noted, Council would be urged to seek independent advice addressing the issues identified above to provide a broader consideration of freight transport and logistics activities before determining whether to advance the current LEP amendment request. It is envisaged that Council may seek advice in a form similar to that previously provided to it in relation to the need for, and preferred location of, bulky goods retailing facilities in Ballina Shire.

If the Council receives further independent advice and then decides to initiate the planning proposal, it is likely that further technical information from the proponents will be required addressing matters such as flooding in the locality, geotechnical conditions within the respective land parcels, road network capacity and servicing and infrastructure availability.

### Sustainability Considerations

- **Environment**  
Should the LEP amendment request proceed, environmental considerations will be assessed in further detail
- **Social**  
Should the LEP amendment request proceed, social considerations will be assessed in further detail
- **Economic**  
The proposed LEP amendment has the potential to provide a significant economic stimulus in the shire. These potential positive impacts will be further examined should the LEP amendment proceed

### Legal / Resource / Financial Implications

There are no specific legal implications associated with this proposed LEP amendment at this time.

Independent advice in relation to the need for, and location of, freight transport and logistics land uses in Ballina Shire is expected to cost in the order of \$10,000. This cost can be met from within the existing Strategic and Community Facilities program budget.

Progress of this matter can be accommodated within the Strategic and Community Facilities Group work program.

### Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as this matter is in the initial concept phase.

However, should the proposal proceed, community consultation, public exhibition and agency engagement will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act*.

### Options

1. Initiate a planning proposal.

Council may proceed to prepare a planning proposal suitable for Gateway determination. Having regard for the matters raised in this report, the preparation of a planning proposal that enables freight transport and logistics land uses on the land parcels that are the subject of this LEP amendment request is not immediately recommended.

It is considered that further information regarding freight transport and logistics land uses and the specific attributes of the subject land is warranted. Such information would be sought from an independent third party and through further engagement with the proponent of the current request.

In the absence of additional information to address the key issues identified in this report, it is difficult to fully assess the potential benefits and disadvantages of the proposed LEP amendment.

Notwithstanding the above, it is open to the Council to proceed to the preparation of a planning proposal and incorporate consideration of the key issues into a later phase of the amendment process.

2. Defer consideration of the LEP amendment request.

The Council may defer consideration of the LEP amendment request in order to seek additional independent information in relation to the proposed rezoning. This is the recommended approach.

Under this approach, it is suggested that independent advice would be sought to provide Council with guidance in relation to the proposed land use on a shire-wide basis. The outcomes of this work would then inform further consideration of the proposed LEP amendment for the land on Teven Road at West Ballina.

This approach would provide for an improved basis and rationale for assessing the concept of enabling freight transport and logistics land uses in areas outside those presently zoned for these purposes.

Additional information in relation to freight and logistics land uses in Ballina Shire will likely be beneficial on a broader basis as this type of land use may be the subject of ongoing enquiry in the short to medium term.

Continued interest in this land use in Ballina Shire is likely due to population growth, proximity to South East Queensland and the enhancements to the Pacific Highway and access and transport corridors to the west.

Under this option, upon receipt of the additional information sought by Council, the LEP amendment request would be reported to the Council to determine whether the matter should proceed.

In the event that the independent advice clearly supports the subject proposal, the further reporting could include a planning proposal to enable the Council to progress the matter to Gateway determination at the time the matter is reconsidered.

## **9.2 LEP Amendment Request - Teven Road Transport Facility**

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3. Decline to initiate the LEP amendment request.

It is open to Council to decline the requested LEP amendment. Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request.

This course of action is not recommended given that it is difficult to fully evaluate the potential disadvantages of the proposal in the absence of additional information about freight and logistics land uses in relation to Ballina Shire.

### **RECOMMENDATIONS**

1. That the Council defer its decision concerning the request from Newton Denny Chapelle to amend the Ballina Local Environmental Plan 2012 to enable freight and logistics land uses on land located between Teven Road and the Ballina Bypass at West Ballina, pending the outcomes of item two below.
2. That Council obtain independent advice in relation to the current and projected need for, and preferred location of, freight and logistics land uses in Ballina Shire.

### **Attachment(s)**

1. LEP Amendment Request - Teven Road Freight and Logistics - Newton Denny Chapelle (August 2013)

### **9.3 LEP Amendment Request - Bletchingly Street, Wollongbar**

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### **9.3 LEP Amendment Request - Bletchingly Street, Wollongbar**

**Delivery Program** Strategic Planning

**Objective** To outline a proposal to amend the Ballina Local Environmental Plan 2012 so as to rezone Lot 1 DP 1038613, from R2 Low Density Residential to R3 Medium Density Residential

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#### **Background**

Council has received a request to amend the Ballina Local Environmental Plan 2012 (BLEP 2012) from MikeSvikisPlanning, on behalf of Gellatly Holdings Pty Ltd, in relation to Lot 1 DP 1038613, Bletchingly Street, Wollongbar.

The proposed amendment involves the rezoning of the land from R2 Low Density Residential to R3 Medium Density Residential zone. No changes to any other planning standards, such as minimum lot size are proposed. A copy of the proponent's amendment request is contained in Attachment One.

Lot 1 has an area of 1.097 ha. Part of the site contains the decommissioned Bowers Hill cattle tick dip site which was used for approximately 50 years to 1991. At least that part of the site which formed the dip site has been identified as being contaminated with Arsenic and DDT.

The land has previously been the subject of subdivision applications approved on a deferred commencement basis in 1995 and 2000 which provided for 13 residential lots on that part of the land subject to the rezoning proposal. The deferred commencement conditions related to requirements associated with the contaminated land status of part of the site.

This report provides an overview of the proposed rezoning and seeks Council's direction with respect to the further consideration of this matter.

#### **Key Issues**

- Processing of LEP amendment request and preparation of a planning proposal
- Appropriateness of an R3 zoning for this site.
- Timing for the address of key issues including land contamination.

#### **Information**

The LEP amendment request is currently in initiation or concept stage. As such, staff have undertaken a preliminary assessment of the proposal and associated technical issues to inform a decision on whether Council should progress to prepare a planning proposal suitable for submission to the Department of Planning and Infrastructure and Gateway determination.

### **9.3 LEP Amendment Request - Bletchingly Street, Wollongbar**

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The LEP amendment request proposes the rezoning of Lot 1 DP 1038613, Bletchingly Street, Wollongbar, from an R2 Low Density Residential to an R3 Medium Density Residential zone.

The proposal includes an indicative subdivision layout as a guide to the type of development that could occur on the land if rezoned (Attachment Two). As shown, the proponents currently envisage that the subdivision and development in accordance with an R3 zone will yield 20 dwelling units. These comprise of eight dwelling houses situated on conventional lots, three lots utilised for dual occupancy dwellings and one lot containing six multi dwelling units. The proponent has, however, indicated that if the land were to be fully developed in accordance with current multi unit housing controls then up to 35 dwellings could be developed on this site.

The proponent has suggested that dwelling density would be determined under a master plan. The proponent argues that the additional dwelling density sought by this proposal would make the full remediation of the Bewers Hill dip site financially viable and would ensure that this part of the site is finally remediated.

In considering the above, the subdivision layout should be viewed as indicative only and neither Council nor the proponent is bound by it through the rezoning process. If the land is rezoned to R3 then the maximum permitted density under Council's current DCP controls would be 1 dwelling unit per 300m<sup>2</sup> of site area.

The proposed rezoning is consistent with relevant principles contained in Council's Ballina Shire Growth Management Strategy (GMS). Specifically, the rezoning would meet the principles related to housing choice, facilitating opportunities for well designed higher density residential development and fostering housing affordability.

Council will be aware, however, that the primary area for future planned growth in Wollongbar is within the Wollongbar Urban Expansion Area (WUEA) which is located generally to the north east of Rifle Range Road. This area has scope to accommodate approximately 900 dwelling units within some 80 hectares of land. The residential zoned land within the WUEA is zoned R3 Medium Density Residential.

The proposal is also generally consistent with the strategic policy intent of the State Government's Far North Coast Regional Strategy (FNCRS). A summary of the key policy documents, as they relate to the subject proposal, is contained in Table 1.

**Table 1: Summary of Key Strategic Planning Policy Requirements  
Lot 1 DP 1038613, Bletchingly Street, Wollongbar**

<b>Planning Policy</b>	<b>Summary in relation to Bletchingly Street Site</b>
Far North Coast Regional Strategy	The subject land is located within the existing urban area of Wollongbar. The proposed rezoning for medium density residential is consistent with the nominated policy responses to encourage higher density residential development to improve housing choice and affordability.
Ballina Shire Growth Management Strategy (GMS)	The site, which is presently zoned R2 Low Density Residential, is located on the south eastern fringe of Wollongbar.  The proposal is consistent with the relevant growth management principles contained within the GMS. Specifically, the proposal is consistent with the principles related to housing choice, well designed higher density residential development and housing affordability.

Although the proposal is generally consistent with urban planning policy for the site and locality, there are considered to be a number of aspects of the LEP amendment request that require further examination prior to Council deciding to prepare a planning proposal. These matters include the following:

- Ability to integrate the proposed R3 zone and higher densities with existing adjoining R2 zone.
- Adequacy of economic justification related to higher density required to support land remediation costs.
- Adequacy of land contamination information and at what stage a more detailed investigation and remedial action plan (RAP) should be prepared.
- Whether sufficient justification exists for the rezoning of all or part of the site to R3.

Council's Manager of Health and Environment has reviewed the proponent's submission related to land contamination issues (1995 Report by Australian Soil and Concrete Testing Pty Ltd) and has advised that the information submitted does not strictly conform to what would be regarded as a "Preliminary Contamination Site Investigation". A site history and some testing results of part of the site have been submitted. On this basis, additional contamination assessment and reporting may be necessary as part of the consideration of the requested rezoning.

If Council sees merit in a rezoning proceeding to the preparation of a planning proposal and Gateway determination, it is suggested that Council seek additional site contamination assessment and reporting to inform the preparation of a planning proposal. This may comprise of sampling results, a remedial action plan, site audit information and/or justification as to why certain assessment and reporting is required in the circumstances.



### **Sustainability Considerations**

- **Environment**

The subject land is cleared farmland containing mainly grass species and with low environmental value. The land also contains the former cattle tick dip structures and associated soil contamination. Council could require the contamination issue to be further investigated prior to the planning proposal being prepared.

- **Social**

The social issues to be considered relate to the integration of a medium density residential site within an established predominantly low density neighborhood. There is however planning justification for an increased density related to housing choice and affordability considerations. These matters would be assessed in more detail if a planning proposal is prepared by Council and the matter proceeds to public exhibition.

- **Economic**

The proposal has the potential to resolve economic concerns that may have prevented the earlier development of the site in accordance with its R2 zoning. Development of the land will also result in net economic benefits during the remediation, subdivision and dwelling building phases. These matters would be further considered if a planning proposal is prepared by Council and the matter proceeds to public exhibition.

### **Legal / Resource / Financial Implications**

Council's processing guidelines and adopted fees and charges for LEP amendment requests would be applied to the further processing of this request. Processing may include engagement of independent third party experts to assess land contamination issues. All costs associated with the processing of the application would be funded by the applicant.

Processing of the amendment can be accommodated within the Strategic and Community Facilities Group work program.

### **Consultation**

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as this matter is in the initial concept phase.

However, should the proposal continue to proceed, community consultation, public exhibition and agency engagement will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act*.

**Options**

1. Initiate a planning proposal for the application of a medium density residential zone over Lot 1 DP 1038613, Bletchingly Street, Wollongbar.

The preparation of a planning proposal that applies a medium density residential zone over the subject land is recommended on the basis that medium density residential land uses would be generally consistent with the strategic planning policy for the site and locality. However, under this approach, further consideration would be given to the most suitable application of the R3 Medium Density Residential zone, i.e., whether the zone is suitable for all or part of the site

Further information would be sought from the proponent in relation to site contamination assessment and reporting with particular regard for the requirements of State Environmental Planning Policy No. 55 – Remediation of Land.

When the above matters are suitably addressed from a technical perspective, including the suggested residential zoning pattern and further information relating to land contamination, the planning proposal would be resubmitted to the Council for further consideration before the matter proceeds to the DP&I for review and Gateway determination.

In considering this option, it is important to note that Council may cease action on the proposed amendment upon review of the planning proposal or at any other time prior to its finalisation.

Option one is the recommended course of action.

2. Defer consideration of the LEP amendment request.

The Council may defer consideration of the LEP amendment request in order to seek additional information in relation to the proposed rezoning.

From staff's perspective, the level of information provided with the LEP amendment request is considered to be sufficient to enable progress to the preparation of a planning proposal, subject to the items identified in option 1 above being further addressed. Given this, and the consistency of the proposal with the applicable strategic planning framework, this option is not recommended.

3. Decline to initiate the LEP amendment request.

It is open to Council to decline the requested LEP amendment. Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request.

This course of action is not recommended given the consistency of the proposal with the applicable strategic planning framework, and that no absolute constraints to the proposed R3 Medium Density Residential zone having been identified at this time.

**RECOMMENDATIONS**

1. That Council prepare a planning proposal for the rezoning of Lot 1 DP 1038613, Bletchingly Street, Wollongbar to enable medium density residential development on the land.
2. That the preparation of the planning proposal include further consideration of:
  - land use zoning options associated with future residential development on the land and
  - land contamination assessment and reporting.

**Attachment(s)**

1. LEP Amendment Request - Bletchingly Street Site , Wollongbar - MikeSivikisPlanning
2. Proponent's Indicative Development Concept Plan

## **9.4 LEP Amendment - Building Height Allowance Provision**

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### **9.4 LEP Amendment - Building Height Allowance Provision**

**Delivery Program** Strategic Planning

**Objective** To advise the Council on the form and operation of the building height allowance clause in the Ballina LEP 2012 and seek direction on amendment to the provision.

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#### **Background**

The Ballina Local Environmental Plan 2012 (Ballina LEP 2012) was endorsed by Council for implementation in December 2011 [Minute No.151211/13] and commenced operation on 4 February 2013.

Council-endorsed Ballina LEP 2012 includes a clause that provides for an additional allowance for building height in recognition that land in flood prone areas may need to be filled above existing ground level (see detailed outline of the provision below) prior to its development. In essence, the clause provides for building height in flood prone areas to be measured from the finished ground level, post filling for flood mitigation, as opposed to existing ground level as established in the Standard LEP Instrument definitions.

Council decided that this provision should be incorporated into the plan so as not to unreasonably disadvantage landholders in relation to building height, where filling to meet Council's flood planning policy is required.

Staff have now identified that the final provision incorporated in the Ballina LEP 2012 upon its making is at variance to the Council-endorsed provision and may enable approaches that are inconsistent with the Council's intended building height planning policy.

This report provides an overview of the considerations associated with the building height allowance provision and seeks direction from the Council on the submission of a planning proposal to the Department of Planning and Infrastructure to amend the LEP.

#### **Key Issues**

- Inconsistency between Council's endorsed building height allowance provision and the content of the final Ballina LEP 2012
- Potential for the Council's intended building height standards to be impacted

### Information

The drafting of the Ballina LEP 2012 included consideration of a provision that was designed to allow building height in flood prone areas to be referenced from a defined fill height rather than existing ground level. The provision was incorporated into the LEP so that landholders who are required to fill land to meet Council's flood policy prior to development are not unreasonably disadvantaged in terms of overall building height. Box 1 provides an example circumstance for the application of the provision, as originally intended.

#### **Box 1: Example Application of LEP Based Building Height Standards**

*Scenario: An allotment of land on Ballina Island where existing ground level is 1.5m Australian Height Datum (AHD), Council's stipulated minimum flood fill level is 2.0m AHD and the maximum building height as per the LEP is 8.5m.*

*Under the Standard Instrument LEP (without Council's additional building height allowance clause), building height is measured from existing ground level, meaning the overall height of the building is not to exceed 1.5m AHD (ground level) plus 8.5m (maximum building height), equating to 10m AHD.*

*However, when taking into account minimum filling requirements, the height of the building is reduced to 8.0m to meet the 10m AHD standard as identified above (that is, 1.5m AHD (ground level) plus 0.5m for fill to reach 2.0m AHD, leaving 8.0m to remain within the 10m AHD standard for the lot). Essentially, the difference between required fill height and ground level must be absorbed into the building height in this case.*

*With the application of Council's building height allowance clause, as intended, the landholder would be allowed to increase the overall height referenced to AHD to 10.5m AHD as follows:*

*1.5m AHD (ground level) plus 0.5m for fill to reach 2.0m AHD, plus 8.5m (maximum building height), equating to 10.5m AHD.*

Fundamentally, Council's intent in incorporating a building height allowance provision was to enable building height to be measured from the ground level that would be established following filling to Council's stipulated minimum fill level for flood mitigation. This provision was designed as a common sense approach to building height in areas subject to flood mitigation by way of filling, with a principal aim being to allow construction of two storey dwellings on flood prone residential allotments within the LEP building height standard. A similar approach was proposed for commercial and industrial type buildings within those respective areas (though the maximum building heights differ).

However, there appears to be some ambiguity in the clause providing for the height allowance that has been adopted into the Ballina LEP 2012, which may lead to outcomes that are not consistent with the Council's intent (i.e. Council's envisaged building height standard may be exceeded in certain circumstances).

## 9.4 LEP Amendment - Building Height Allowance Provision

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Staff have reviewed the procedures associated with the finalisation of the Ballina LEP 2012 in relation to the drafting of the building height allowance clause. As outlined, the Council endorsed a building height allowance provision in December 2011. Staff subsequently corresponded with the Department of Planning and Infrastructure in September 2012 to clarify and confirm the Council's intent in relation to the clause.

In November 2012, Council was provided with an opportunity to review the consolidated Draft Ballina LEP 2012 as prepared by the Parliamentary Counsel Office. Although the wording of the building height allowance clause in the November draft differed from Council's original drafting, the provision was considered consistent with the Council's intent. At this point, staff considered the building height allowance clause to be settled.

It appears that between Council's November 2012 feedback to the Department and the finalisation of the plan, the building height allowance provision was altered, without this being formally flagged to Council. Copies of the key iterations of the provision are contained within the planning proposal contained in Attachment One.

The potential for the clause which is in the Ballina LEP 2012 to be applied in a manner inconsistent with the Council's original intent, in terms of both the clause itself and overall building height standards, is considered to be significant enough to warrant immediate modification to the LEP. A planning proposal has been prepared to amend the LEP in this regard (Attachment One).

In summary, the planning proposal seeks to amend the LEP by either removing clause 4.3A *Exceptions to height of buildings* from the LEP in favour of addressing variations to height standards in flood prone areas due to filling via Council's Ballina Shire Development Control Plan 2012, or modifying the clause to provide improved clarity with respect to the Council's intent. If the planning proposal proceeds, it is intended that the above options for addressing the issue will be examined in further detail and be publicly exhibited prior to further reporting to the Council.

Importantly, in amending the LEP to remove the building height allowance clause, the LEP would still include a mechanism to enable variations to building height standards through the general exceptions to development standards provision which is a mandatory part of Standard Instrument LEPs. Council is able to define its policy approach to such variations via its DCP.

### Sustainability Considerations

- **Environment**

Council has established a building height standard in the Ballina LEP 2012 that significantly influences the nature and form of the built environment and its relationship with surrounding natural areas. The proposed LEP amendment seeks to reinforce the integrity of the intended standards.

- **Social**

As above

## 9.4 LEP Amendment - Building Height Allowance Provision

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- **Economic**

In addition to the above, building height influences land economics and the potential for site development. As outlined above, the proposed amendment seeks to reinforce the integrity of Council's intended building height standards.

### **Legal / Resource / Financial Implications**

There is no significant resourcing or financial implications associated with the proposed amendment. The processing of the amendment can be accommodated within the work program of the Strategic and Community Facilities Group.

The processing of the amendment does not involve specific legal implications beyond compliance with the *Environmental Planning and Assessment Act*.

However, there may be implications associated with the processing of development applications lodged with Council before the amendment is completed.

That is, a draft LEP amendment must be considered in the assessment process and the proposed changes may influence the determination of applications. Staff are aware of at least one application presently being processed by Council where the proponent proposes an interpretation of the building height allowance provision that differs from Council's original intent.

### **Consultation**

No community engagement has been undertaken to date on this matter. If the amendment receives an affirmative Gateway determination, the proposal will be subject to mandatory community engagement under the terms of the *Environmental Planning and Assessment Act*.

### **Options**

1. Proceed with the planning proposal

This approach would authorise the submission of the planning proposal contained in Attachment One to the Department of Planning and Infrastructure (DP&I) for Gateway determination.

If the planning proposal progresses, staff will also undertake more detailed assessment of the technical options for reinforcing the Council's intended building height policy.

Given the importance of ensuring the integrity of the Council's intended approach to building height under the LEP, this approach is recommended.

2. Defer or amend the planning proposal

This approach is not recommended due to the importance of removing ambiguity that may result in undesirable impacts in relation to the Council's intended building height planning provisions in the LEP.

## **9.4 LEP Amendment - Building Height Allowance Provision**

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If the Council is of the view that additional information about this matter is warranted, it is suggested that the optimal approach would be to enable the matter to proceed to Gateway determination and hold a Councillor briefing as the matter progresses.

Importantly, the Council is able to discontinue further action on the amendment at any time prior to the finalisation of the amendment, including post Gateway determination.

### **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 submit the planning proposal relating to the modification or repeal of Clause 4.3A Exceptions to height of buildings under the Ballina Local Environmental Plan 2012 (as contained in Attachment One) to the NSW Department of Planning & Infrastructure for review and Gateway determination.
2. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, Council staff will carry out the procedural steps associated with the progress of the planning proposal, including public exhibition.
3. That this matter be reported back for further consideration by the Council following the mandatory public exhibition period.

### **Attachment(s)**

1. Planning Proposal - Building Height Allowance Provision (Gateway)



## **9.5 Planning Proposal (BSCPP 13/006) - Plateau Drive, Wollongbar**

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### **9.5 Planning Proposal (BSCPP 13/006) - Plateau Drive, Wollongbar**

**Delivery Program** Strategic Planning

**Objective** To present options for the progressing of Planning Proposal BSCPP 13/006 relating to the Mt Moriah Subdivision, Wollongbar.

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#### **Background**

Planning Proposal BSCPP 13/006 relates to Lot 31 DP 1183600, Wollongbar. The land is owned by Mt Moriah Pty. Ltd. The location of the subject land is shown in figure one of the planning proposal documentation contained in Attachment one. As illustrated, the land is located adjacent to Plateau Drive within the Wollongbar Urban Expansion Area.

The subject land is currently partly zoned R3 Medium Density Residential under the terms of the Ballina Local Environmental Plan 2012 (BLEP 2012). The land also includes an area of land deferred from the BLEP 2012, having been proposed for zoning for environmental management (E3) purposes during the preparation of the BLEP 2012 (the open space lot). The area the subject of the deferred matter is currently zoned 7(d) Environmental Protection (Scenic/Escarpment) Zone under the Ballina LEP 1987. Existing zoning under the BLEP 2012 is shown in Part 4 of the planning proposal provided as Attachment one to this report.

The Ballina Shire Growth Management Strategy 2012 provides the strategic planning context for urban development in Ballina Shire. The development of the land, to which this matter relates, is consistent with Council's Growth Management Strategy.

The approved subdivision of Lot 31 DP 1183600 (DA 2009/633 as amended) comprises the following:

- 16 x low density lots (lots less than 1000m<sup>2</sup> in area)
- 11 x low density lots (lots greater than 1000m<sup>2</sup> in area)
- 3 x dual occupancy lots and
- one open space allotment.

The planning proposal seeks to acknowledge the consent by the application of residential zonings commensurate with the approval relating to the land, as outlined above.

In terms of residential land uses, the R2 Low Density Residential zone will permit only dwellings and secondary dwellings on the land, with prior development consent, whereas the current R3 Medium Density Residential zone permits a broader range of residential development types than intended under the development approval relating to the land.

The planning proposal also involves minor adjustment of zone boundaries to align with the configuration of the approved lot boundaries.

## **9.5 Planning Proposal (BSCPP 13/006) - Plateau Drive, Wollongbar**

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Council understands that the lodgement of a Subdivision Certificate application, that will enable the approved lots to be legally created, is imminent.

It is reasonable under the circumstances that this matter be addressed promptly in order for future residents to have certainty regarding the intended residential development outcomes for the land.

The Council, at its Ordinary Meeting held on 25 July 2013, considered a planning proposal prepared to address the zoning of Lot 31 DP 1183600, resolving [Minute No. 250713/12] as follows:

- 1. That Council endorses the application of an R2 Low Density Residential zone to land within the approved subdivision of Lot 31 DP 1183600 as the basis for a planning proposal (as shown in Map 1 of the planning proposal contained in Attachment 1).*
- 2. That the Council submit the planning proposal relating to various approved residential lots in the Wollongbar Expansion Area 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.*

The Department of Planning & Infrastructure (DP&I) issued a Gateway determination allowing the planning proposal to proceed on 14 August 2013, a copy of which is provided in Appendix Two of the attached planning proposal.

The planning proposal was publicly exhibited, in accordance with the Gateway determination for a minimum 14 days from 18 September 2013 to 2 October 2013. No submissions were received in response to the public exhibition.

The purpose of this report is to provide the Council with options for progression of the subject planning proposal.

### **Key Issues**

- Residential zoning
- Consistency with strategic planning intent

### **Information**

The planning proposal seeks to acknowledge the existing development consent for the subdivision of the land, by the application of appropriate residential zoning.

The proposal also involves a minor realignment of zone boundaries to better match the zoning to the approved lot boundaries.

## **9.5 Planning Proposal (BSCPP 13/006) - Plateau Drive, Wollongbar**

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In terms of residential land uses, the application of the R2 Low Density Residential zone will permit only dwellings and secondary dwellings on the respective allotments, with development consent, whereas the current R3 Medium Density Residential zone permits a broader range of residential development types than intended under the development consent relating to the land.

The Gateway determination directed the Council to consult with the NSW Rural Fire Service (RFS), prior to public exhibition. A response was received from the RFS, which is provided in appendix three of the attached planning proposal. Significantly, the RFS did not raise any objection to the planning proposal proceeding.

In addition to the residential zone change, Council had, in making its Gateway request, sought to apply an E3 Environmental Management zone to the whole of the 'open space' lot. However, the Gateway determination directed the Council to omit the application of the E3 zone until the conclusion of the Department of Planning & Infrastructure's current 'Review of environmental zones in Far North Coast'. Consequently, the application of the E3 zone to the open space lot may be considered through a separate planning proposal, in due course.

### **Sustainability Considerations**

- **Environment**

The rezoning of the land from medium density residential to low density residential 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 Council's strategic planning intent, and with the development consent that the Council has previously granted over 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 have been attended to within existing resources.

### **Consultation**

The planning proposal was exhibited for community comment for a minimum period of 14 days from 18 September 2013 to 2 October 2013. No submissions were received in response to the public exhibition.

Comment was sought from the NSW Rural Fire Service (RFS), in accordance with the Gateway determination, a copy of which is provided in Appendix Three of the attached planning proposal. The RFS did not raise any objections to the planning proposal proceeding.

**Options**

1. That Council refer the planning proposal to the NSW Department of Planning and Infrastructure for finalisation or
2. That Council discontinue the planning proposal.

Option one is the preferred course of action on the basis that it is consistent with planning context and development history of the land. Essentially, the rezoning constitutes “housekeeping” to ensure consistency with previous decisions of the Council in relation to the subdivision of the subject land, and with community expectations.

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 be finalised. The primary disadvantage of the planning proposal not proceeding is the continuation of the inconsistency in zoning with the approved subdivision.

Where Council proceeds to submit a planning proposal for Gateway determination, it has the option of requesting delegation of certain plan making functions from the Department.

Under these delegations, Council can perform some of the plan making functions that are otherwise completed by the Department. Despite declining to make such a request in this case, Council was provided with delegation to exercise plan finalisation functions in relation to the subject planning proposal.

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).

No specific benefit in the use of the delegation has been identified for this matter and, given that the matter relates directly to the landholdings of a current Ballina Shire Councillor, it is recommended that Council not exercise the delegation provided to it in this instance.

**RECOMMENDATIONS**

1. That Council endorses the application of the R2 Low Density Residential zone under the Ballina Local Environmental Plan 2012 to land within the approved subdivision of Lot 31 DP 1183600, Mt Moriah Subdivision, Wollongbar (excluding the open space allotment) as shown in Map one of the planning proposal contained in Attachment one.
2. That Council submit the planning proposal BSCPP 13/006 relating to Lot 31 DP 1183600, Mt Moriah Subdivision, Wollongbar to the NSW Department of Planning & Infrastructure to be finalised.
3. That Council advise the NSW Department of Planning & Infrastructure that it does not intend to exercise its delegations with respect to the finalisation of the planning proposal in this case.

**Attachment(s)**

1. Planning Proposal BSCPP13/006 - Mt Moriah Subdivision, Plateau Drive, Wollongbar (Final)

## 9.6 Growth Management Strategy - Health Care Precinct

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### 9.6 Growth Management Strategy - Health Care Precinct

**Delivery Program** Strategic Planning

**Objective** To advise the Council of the outcomes of a review of the potential for use of local planning provisions to promote a health care precinct in the vicinity of Ballina Hospital.

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#### **Background**

An investigation has recently been completed by staff into the feasibility of utilising local planning provisions to promote the establishment a health care precinct in the vicinity of Ballina Hospital. This investigation is in response to a Strategic Action identified within the Council's endorsed Ballina Shire Growth Management Strategy (GMS) 2012 for Ballina Island.

The GMS states that:

*'Ballina is the key location of community services and health facilities. The locality also has a high proportion of elderly residents, for whom access to health-care facilities is important. The clustering of health facilities has advantages with respect to transport efficiency and synergies between health practitioners'.*

The purpose of this report is to present the results of the health care precinct feasibility investigation to the Council and seek direction in relation to the conclusions made.

#### **Key Issues**

- Feasibility and practical effect of using the local planning framework to encourage a health precinct
- Implications for planning framework
- Land use implications, particularly in relation to the Ballina Central Business District (CBD).

#### **Information**

'Ballina Island' as a locality is identified within the Council's Growth Management Strategy as the main location for community services, centered on Ballina Hospital and associated facilities, such as community health. The 'Island' is also the main centre for commercial facilities and infrastructure, centered on River Street and Kerr Streets, Ballina.

The GMS has identified a future objective for 'Ballina Island' to be a key commercial and community centre, for activities including health and civic related services.

## 9.6 Growth Management Strategy - Health Care Precinct

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In response to this identified objective and the strategic action in the GMS to investigate a health care precinct adjacent to the Ballina Hospital, a review has been undertaken (Attachment One).

This review examines key issues and considerations associated with promoting a health care precinct through the use of local planning provisions in the vicinity of the Ballina Hospital.

A premise of this report and the attached preliminary review is the acknowledgment of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). This policy enables development for the purposes of a health service facility, with consent, on land within prescribed zones. A health services facility is defined as follows:

**health services facility** means a facility used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes the following:

- (a) day surgeries and medical centres,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) facilities for the transport of patients, including helipads and ambulance facilities,
- (e) hospitals.

The Ballina Hospital site in Cherry Street, and land to the north and east, is zoned R3 – Medium Density Residential under the provisions of the Ballina Local Environmental Plan (BLEP) 2012. The R3 – Medium Density Residential zone is a prescribed zone for health services facilities. Therefore, these facilities are currently permissible with consent in this zone.

Having regard for this permissibility, the purpose of the preliminary review and this report is to assist the Council to determine if it should seek to introduce additional planning provisions to encourage a health care precinct in the vicinity of the Ballina Hospital.

In summary, key issues examined within this report and preliminary review include:

- The consideration for health care facilities (HCFs) by nearby local councils within their respective local planning instruments and policies
- An analysis of current land uses surrounding Ballina Hospital and the availability of commercial land within the Ballina local government area
- The physical location of Ballina Hospital relative to the Ballina CBD
- The demand for, and benefits of, health care services adjacent to Ballina Hospital
- The current services offered by Ballina Hospital and the relationship between these services and the demand for health care facilities.

## 9.6 Growth Management Strategy - Health Care Precinct

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The analysis undertaken includes some key conclusions and preliminary findings, including the following:

- An assessment of zoned commercial land availability, sourced from the GMS, identifies that Ballina Shire currently has sufficient supplies to satisfy demand until approximately 2028 (based on the Ballina Shire Industrial and Commercial Land Use Review undertaken by GeoLINK on behalf of Council in 2008). Therefore, the active encouragement of additional commercial uses within Ballina, outside existing zoned areas planned for these uses, would be contrary to this finding.
- Ballina Hospital, due to its relatively small size and current range of services, may not have the demand for HCFs, such as specialist practitioners, being located immediately adjacent to the hospital. Therefore, there may not be a high demand for specialist consulting rooms in close proximity to the hospital. This is currently evidenced by the lack of associated practices nearby in comparison with Lismore Base Hospital, for example, being surrounded by a variety of specialist services directly related to this hospital.
- Practitioners may consider that the zoned Ballina business area is sufficiently close to the hospital for the purposes of convenience when determining the location of consulting rooms. This may already be a contributing factor to the location of a number of HCFs in Tamar Street. Therefore, practitioners may not consider locating immediately adjacent to the hospital as essential considering Tamar Street is less than 1km away.
- The current state of the economy and changing retailing trends have led to an apparent oversupply of commercial premises within the Ballina CBD at present. The CBD currently contains a number of vacant commercial properties. Any new businesses, including HCFs, may have bargaining power in regard to leasing arrangements in this economic climate. This may deter practitioners from attempting a costly setup of a new business in the precinct immediately adjacent to the hospital, simply due to proximity, when various existing vacant premises are located less than 1km away within the Ballina CBD.
- The land adjacent to Ballina Hospital is constrained due to current uses such as Ballina High School and the Ballina Bowling Club. It is considered unlikely that these established developments will relocate in the foreseeable future. Therefore, HCFs are currently limited to land to the north and east of the hospital site, as this land is medium density residential and subject to the ISEPP provisions for HCFs. Land directly to the west of Ballina Hospital is not appropriately zoned for HCFs, being R2 - Low Density Residential. The R2 zone is not a prescribed zone within the ISEPP and BLEP 2012 does not permit HCFs.
- As stated, the existing Tamar Street commercial area currently contains a number of health services. This area has the potential to attract other HCFs due to advantages associated with the grouping of similar services for existing and potential clients. This clustering may also result in HCFs preferring this location rather than in close proximity to the hospital.



### **Sustainability Considerations**

- **Environment**

The locality which is the subject of the investigation is highly developed urban land that contains a variety of uses, primarily low and medium density residential. The recommendations of this report will not have any adverse impacts upon the environmental status of this locality.

Notwithstanding this, should Council seek to pursue a consolidated precinct through its planning framework, issues such as flooding, traffic, parking, land use conflict and built form implications will require further and more detailed consideration.

- **Social**

The outcomes of this report have the potential to impact upon the social fabric of the Ballina Shire local government area. However, it is considered that the conclusions arising from the analysis undertaken will not have any significant social impacts.

- **Economic**

It is considered that the conclusions drawn from the preliminary analysis attached to this report will have positive economic outcomes by strengthening the Ballina central business district and providing clarity regarding future uses of the urban land surrounding the Ballina Hospital.

### **Legal / Resource / Financial Implications**

There is no significant resourcing or financial implications associated with adopting the conclusions recommended within this report. The review process undertaken to date has been carried out within the existing Strategic and Community Facilities Group work program.

### **Consultation**

Community consultation has not been undertaken at this stage.

### **Options**

1. Cease further consideration of planning provisions associated with the establishment of a health-care precinct adjacent to the Ballina Hospital for the time being.

This approach would result in the current provisions of the BLEP 2012 and Ballina Development Control Plan 2012 being maintained for the Ballina Hospital and land in that vicinity.

It should be noted that the provisions of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) will not be affected by any decision of the Council.

## **9.6 Growth Management Strategy - Health Care Precinct**

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This is the recommended outcome of this preliminary analysis, having regard for the existing supply and demand for commercial land in the Ballina Shire. This approach is also recommended having regard for the proximity of the zoned Ballina CBD to the hospital and the current range of services offered by this facility. It is considered unlikely, in the absence of any strong incentives by the Council, that health care facilities would be attracted to an alternative designated precinct in the current economic climate. This is due to the costs and uncertainty associated with such a venture when it is apparent the Ballina CBD has an oversupply of commercial premises available as an alternative.

It is for these reasons that this option is the recommended approach.

2. Undertake further, more detailed investigations and consultations concerning planning provisions associated with a health care precinct adjacent to the Ballina Hospital.

Options for further investigation of this matter might include engagement of specialist consultancy services and focussed discussion with key stakeholders to obtain a more comprehensive understanding of the health care sector and its projected needs.

This is not the recommended approach, at least for the time being. There does not appear to be any current concerted push from the health care sector for this type of Council commitment. Nor is there any budget allocation within the Council's Operational plan for these further investigations to be carried out. Should Council receive proposals for development of additional health care infrastructure, either as part of the Ballina Hospital or as a private independent venture, these can be assessed and determined on merit within the current planning framework.

### **RECOMMENDATIONS**

1. That Council notes the contents of this report regarding planning provisions associated with a health care precinct in the vicinity of the Ballina Hospital.
2. That the Council, for the time being, take no action to adjust its local planning framework to promote a health care precinct in the vicinity of the Ballina Hospital.

### **Attachment(s)**

1. Attachment 1 - Preliminary Review - Health-care Precinct Adjacent to the Ballina Hospital

## 9.7 NSW Government Coal Seam Gas Policy

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### 9.7 NSW Government Coal Seam Gas Policy

**Delivery Program** Strategic Planning

**Objective** To provide information on changes to the regulation of the Coal Seam Gas industry.

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#### **Background**

The NSW Government has recently introduced changes to the approval and regulatory processes associated with Coal Seam Gas (CSG) exploration and extraction within the State.

The recent regulatory changes introduced by the Government include the introduction of a two km exclusion zone around existing residential zoned areas, which came into effect on 4 October 2013. The Government has also announced that it intends to extend the exclusion zone to include planned future residential growth areas. Maps identifying future growth areas have been placed on exhibition by the Government for public comment until 8 November 2013.

The Government has also released maps of 'strategic agricultural lands' which identify areas that will be subject to higher levels of assessment in association with coal seam gas activities. These maps have also been placed on exhibition for public comment until 8 November 2013.

The purpose of this report is to briefly outline the exclusion zone policy and associated mapping. The report also suggests that Council make a submission to the public exhibition of mapping associated with CSG activities. This report does not seek to provide analysis of the merits of CSG activities or policy beyond the exclusion zone policy and mapping.

#### **Key Issues**

- Extractive resources
- Environmental safeguards
- Rural living
- Sustainable development

#### **Information**

##### *Regulatory Arrangements for CSG Activities*

The regulation of Coal Seam Gas activities is the role of the newly established Office of Coal Seam Gas (OCSG) which sits within NSW Trade & Investment portfolio.

## 9.7 NSW Government Coal Seam Gas Policy

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A range of mining related activities of 'minimal environmental impact' are identified as being exempt development, under the *Environmental Planning and Assessment Act 1979* and do not require the consent of any public authority.

These activities, undertaken on any land, include the installation and maintenance of monitoring equipment, monitoring and sampling with hand-held equipment, and accessing areas by vehicle that does not involve the construction of an access road.

There is also a range of low impact activities that can occur on approved mining leases that are identified as exempt development (sometimes with conditions) including landscaping, fencing etc, signage, the construction of car parking facilities, the demolition of buildings, the erection and use of a shed, the construction and use of vehicle wash facilities, construction and use of water storage tanks (up to 100,000 litres) and the construction and maintenance of mine safety structures.

CSG extraction activities, beyond the exploration and exempt activities outlined above, require development approval. Council understands that the Minister for Planning is the consent authority for CSG proposals, under the provisions of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 and State Environmental Planning Policy (State and Regional Development) 2011. It is understood that the Minister intends to delegate the consent authority function for CSG projects to the 'Planning Assessment Commission'.

Prior to the lodgment of a development application, CSG proposals located on or within two km of 'Strategic Agricultural Land' must pass through a Gateway Panel assessment process. The Gateway process is described as 'an upfront, scientific assessment of the impacts of State significant mining and CSG proposals by an independent expert panel'. The Gateway Panel will assess the project proposal and will have the option of either:

1. Issuing an unconditional Gateway Certificate if the panel determines that the proposal meets the criteria relating to agricultural and water impacts. The proposal can then proceed to the DA stage for a full merit assessment and public consultation process; or
2. Issuing a conditional Gateway Certificate if the panel determines that the proposal does not meet the criteria relating to agricultural and/or water impacts. The conditions of the Gateway Certificate would be tailored to address the panel's issues in relation to the potential impacts of the proposal on agricultural land and water. Conditions could include a requirement for additional environmental studies or physical amendments to the project to avoid or minimise impacts.

Proposals issued with a conditional Gateway Certificate will be able to proceed to the DA stage for a full merit assessment but, importantly, will be required to fully address the matters stipulated in the conditions of the Gateway Certificate.

For example, a proposal may need to be substantially revised to avoid or minimise impacts on Strategic Agricultural Land. Any conditions of a Gateway Certificate, as well as a cost benefit analysis if prepared by an applicant, will be specifically considered by the Planning Assessment Commission in its determination of the DA.

The role of the Gateway Panel is to identify issues that must be considered in more detail at the development assessment stage, rather than to 'rule-out' proposals at an early stage in response to community or environmental concerns. Gateway and DA determinations will consider advice from the Minister for Primary Industries regarding potential aquifer impacts in accordance with the new 'Aquifer Interference Policy' which 'sets out minimal impact considerations against which the NSW Office of Water will assess the potential impacts of all proposals'.

It is understood that the new regulatory arrangements outlined above relate only to applications for new mining leases and for the expansion of existing leases onto additional lands.

### *Information on Public Exhibition*

The Government's CSG exclusion zone currently applies to all land within two km of existing urban zoned lands. The exclusion zone has been extended to include some rural settlements ("villages"), where these are zoned R5 Large Lot Residential Zone under the local environmental plan that applies to the land. Local examples include Goonengerry in Byron Shire and Modanville in Lismore. The approach taken does not appear to recognise that a variety of zones can be used under the Standard LEP Instrument in relation to rural settlements. For example, Nimbin, in the Lismore local government area, is zoned RU5 Rural (Village) Zone under the terms of the *Lismore Local Environmental Plan 2012* and in the case of Ballina Shire, rural settlements have rural zones.

In the preparation of the *Ballina Local Environmental Plan 2012*, the Council elected to not apply the R5 Large Lot Residential Zone to rural settlements. However, a number of these rural settlements are of a scale and character that is consistent with the above local R5 zone exclusions. It is suggested that such similarity exists where these rural settlements have a commercial hub, or attractor, and a school, as in the case of Tintenbar and Newrybar.

Consequently, this report recommends that Council make a submission to the Government advocating that the rural settlements of Tintenbar and Newrybar be included in the CSG exclusion zones, to achieve consistency in the application of CSG exclusion areas in the region.

The NSW Government's public exhibition also includes mapping of planned future urban growth areas that the Government intends to include in the CSG exclusion areas. This relevant map for Ballina Shire is provided as Attachment One to this report. In the case of Ballina Shire the map identifies areas that align, generally, with Council's Strategic Urban Growth Areas, as identified in Council's Ballina Shire Growth Management Strategy 2012. As a consequence, a submission on this matter does not appear necessary.

## 9.7 NSW Government Coal Seam Gas Policy

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As noted above, proposals for CSG activities on land identified as 'Strategic Agricultural Land' or within two km of such land, are to be the subject of a higher level of regulatory oversight than proposals located outside these areas.

The maps identifying such land in Ballina Shire are provided as Attachment Two.

The maps of 'Strategic Agricultural Land' released on public exhibition appear, in the case of Ballina Shire, to include land identified in the Northern Rivers Farmland Protection Project (NRFPP) mapping as 'State Significant Farmland'. These areas generally align with the higher quality agricultural lands on the Alstonville Plateau.

It is noted, however, that areas of high quality soils in the northern sector of the shire and coastal cane areas in the southern parts of the shire, that are mapped as 'Regionally Significant Farmland' in the NRFPP, are not identified in the CSG strategic agricultural land mapping.

The reason for excluding areas identified as Regionally Significant Farmland in the NRFPP, from the CSG strategic agricultural land mapping, is not clear. Given that the purpose of the NRFPP mapping was to identify State and regionally significant agricultural resources, it is considered to be reasonable that all such land be identified, as such, for the purpose of regulating CSG activities.

Having regard for the above, this report recommends that Council make a submission to the NSW State Government advocating that the Strategic Agricultural Land maps include all State and Regionally Significant Farmland as identified in the Northern Rivers Farmland Protection Project.

A draft submission addressing the items above is provided as Attachment Three.

### **Sustainability Considerations**

- **Environment**  
Coal seam gas activities have the potential to adversely impact on the natural environment.
- **Social**  
Coal seam gas activities have the potential to have positive social impacts, associated with employment and associated economic activity, and negative impacts associated with the potential for social divisions to arise within the community.
- **Economic**  
Coal seam gas activities have the potential to result in positive economic impacts associated with employment growth, and potential negative economic impacts should adverse environmental outcomes occur, or other established businesses, including agriculture and horticulture, be compromised.

**Legal / Resource / Financial Implications**

The presentation of a submission to the NSW State Government in relation to this matter can be accommodated within existing resources.

**Consultation**

The subject of this report relates to a matter being publicly exhibited by the NSW Government.

**Options**

Council has several options with respect to this matter:

1. Council may decline to make a submission to the Coal Seam Gas information currently on public exhibition.

As outlined above, it is suggested that responding to several aspects of the exhibition material is in the interests of Ballina Shire ratepayers. Consequently, this option is not recommended.

2. Council may resolve to make a submission to the Coal Seam Gas information, with respect to the matters outlined in this report.

As outlined above, it is noted that commenting on several aspects of the information on exhibition, as proposed in the draft submission attached to this report, would be in the interests of Ballina Shire ratepayers. Consequently, this option forms the basis for the recommendation.

If desirable to the Council, the attached submission can be amended to identify additional points or reflect an alternative position.

3. Convene a Councillor briefing on CSG.

Given the nature of the submission proposed, a Councillor briefing on submission content is not recommended. However, regardless of Council's decision in relation to making a submission on the matter raised in this report, Council may elect to seek further information relating to CSG policy in NSW. If this is seen as being desirable, it is suggested that staff could invite suitable representatives from State Government regulatory authorities to provide Councillors with a briefing on key issues and information relating to CSG in Northern NSW.

It is noted Councillors have previously had a briefing of this type. However, it was some time ago (during the term of the previous Council) and circumstances relating to the industry have changed considerably since that time.

**RECOMMENDATIONS**

1. That Council notes the contents of this report in relation to Coal Seam Gas Policy in NSW.
2. That the Council make a submission in response to the current public exhibition relating to Coal Seam Gas Policy in NSW, as contained in the attachment to this report, addressing the following issues:
  - The inclusion of the rural settlements of Tintenbar and Newrybar within the proposed CSG exclusion zones; and
  - Identification of all State and Regionally Significant Farmland, as identified in the Northern Rivers Farmland Protection Project, as 'Strategic Agricultural Land' for the purpose of CSG regulations.

**Attachment(s)**

1. CSG Exhibition Map - Planned Future Growth Areas
2. CSG Exhibition Maps - Strategic Agricultural Land Maps
3. Draft Council submission to CSG exhibition



## **9.8 Aboriginal Community Committee**

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### **9.8 Aboriginal Community Committee**

**Delivery Program** Community Facilities and Services

**Objective** To invite the Council to consider a further nomination for membership of the Ballina Shire Aboriginal Community Committee.

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#### **Background**

Council's Aboriginal Community Committee has recently been established, with the Committee's inaugural meeting held on 5 September this year.

The Council, at its Ordinary Meeting held on 26 September resolved to appoint representatives from Bunjum Aboriginal Cooperative Limited as members of this Committee.

A further application for Committee membership has recently been received from Bullinah Aboriginal Health Service. This report now invites the Council to consider the further nomination.

#### **Key Issues**

- Committee membership
- Governance practices

#### **Information**

Mr Mark Moore, Chief Executive Officer of Bullinah Aboriginal Health Service, has invited Council to consider appointing representatives of his organisation to the Committee. Ms Denise Duroux, as a member of the Service's Board of Directors, would be the nominated member for the Committee with Mr Moore being the alternate member.

Council should be encouraged by the level of community interest being shown in this important initiative, and approval of the further nominations is recommended.

At the most recent Ordinary Meeting of the Council, some Councillors expressed a view that perhaps a limit to the number of members of this Committee may need to be considered. This was on the basis that the Committee may become 'unwieldy' if membership continues to increase. This is the prerogative of the Council as it is with all of the Council's committees.

From a staff perspective, no issues with respect to the administration of the Committee have arisen at this point in time. Placing a "cap" on membership numbers is therefore not recommended.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable

## **9.8 Aboriginal Community Committee**

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- **Social**

The Committee will be an important conduit between the Council and the shire's Aboriginal community. Benefits will include the provision of Aboriginal perspectives in relation to Council's key policy documents and improved consultation and engagement methods.

- **Economic**

Not Applicable

### **Legal / Resource / Financial Implications**

The Committee will operate within the available resources of Council.

### **Consultation**

Consultation is not relevant to this particular matter.

### **Options**

The Council may either approve or decline the Committee membership application.

Approval is recommended.

### **RECOMMENDATION**

That Council approves the application from Bullinah Aboriginal Health Service for membership of the Ballina Shire Council Aboriginal Community Committee, with Ms Denise Duroux being the principal representative of that organisation and Mr Mark Moore being the alternate member.

### **Attachment(s)**

Nil

## 10.1 Use of Council Seal

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### 10. General Manager's Group Reports

#### 10.1 Use of Council Seal

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#### RECOMMENDATION

That Council affix the Common Seal to the following document.

US13/22	<p>Deed of Agreement – CURA A</p> <p>Explanation: The DOA obliges the landholders of Precinct A of the Cumbalum Urban Release Area to not lodge development applications until a development contributions plan is in place or until six months has elapsed from the rezoning of the land. The agreement seeks to allow sufficient time to ensure that the appropriate planning and contribution plan arrangements are in place, prior to the assessment of development applications for the development of the land.</p>
US13/23	<p>Council to The State of New South Wales (Minister for Police) – Five year Lease for the telecommunications aerial array and equipment hut at the East Ballina water reservoir site off Norm Sharpe Lookout, Suvla Street, East Ballina – Council land classified as ‘community land’ – Part Lot 1 DP 632176.</p> <p>Explanation: The site has been occupied by the NSW Police for 42 years since 1871 for their radio communications equipment, and the current five year licence agreement expired on 30 June 2013. The proposed new five year term is from 1 July 2013 to 30 June 2018. The NSW Police will pay a rental of \$2,815.66 (excl gst) during the first year of the term and increased annually by CPI.</p>
US13/24	<p>Funding Agreement – Local Infrastructure Renewal Scheme (LIRS) Round Two – Division of Local Government - Ballina Heights Drive \$1.3 million</p> <p>Explanation: Council applied for \$1.3 million under the LIRS round two to assist with the construction of Ballina Heights Drive. The round two LIRS program provides an interest subsidy of 3% on any loan. The value of that subsidy in Council's LIRS loan agreement is approximately \$200,000.</p> <p>Since the LIRS application was lodged, at the start of this year, Council has accepted a tender for the construction of Ballina Heights Drive and also reviewed the project budget to the extent that a loan of only \$727,000 is now needed.</p> <p>Also there are some indications that this project may well come in under budget and ideally Council could be in a position where minimal or no loan funds are needed.</p>

## 10.1 Use of Council Seal

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<p>This then raises the question as to whether or not Council should be accepting this LIRS Round Two funding.</p> <p>It had been hoped to provide a budget update on the Ballina Heights Drive Project, along with other major projects such as Wollongbar Sports Fields, prior to this Ordinary meeting. However those discussions will now need to be held during November.</p> <p>As there is a funding shortfall for Wollongbar Sports Fields, along with potentially available loan funds from Ballina Heights Drive, Council may well be able to review the mixture of funding sources available to assist in delivering all our current major infrastructure priorities.</p> <p>Also Council could reduce the use of Section 94 road contributions that we have allocated to Ballina Heights Drive, increase the loan funding to this project and then use the existing Road Contributions on another Section 94 Roads project (i.e. the roundabout at the corner of River and Moon Streets)</p> <p>Council can currently obtain interest rates of approximately 5.6% for loans and with a 3% subsidy this makes the availability of this funding attractive from a cash management perspective. Especially when we are currently obtaining an average interest rate of 4% on our investment portfolio.</p> <p>The issue with any loan is to have the capacity to pay the principal and interest payments. Based on a net interest rate of around 3% the annual repayments for this loan will be approximately \$150,000. When the loan funding was to be used for Ballina Heights Drive the repayments were going to be offset by a reduction in the overall roads budget. If the loan is not allocated to roads another budget will need to be reduced to offset the loan repayments.</p> <p>The Division of Local Government requires the acceptance of the LIRS subsidy by the end of October. Council does not have to take up this offer. Council's Finance Manager has highlighted that it is poor financial management practice to take up a loan without knowing exactly how it is to be funded or what works it will finance. This is correct however in this case Council also has access to funds with minimal interest costs.</p> <p>Council managed to not take up loans approaching almost \$2 million in value during 2012/13 due to an improved operating result and savings in project costs and with our loan liability having increased significantly in recent years we need to minimise further loans where possible. The acceptance of this LIRS funding will still ensure that our overall debt ratio for General Fund is within acceptable limits, albeit that we are at the upper end of those limits. Currently this agreement is listed in this seal report for signing, albeit that Councillors should consider this matter carefully before approving the use of the Council seal.</p>
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## 10.2 Investment Summary - September 2013

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### 10.2 Investment Summary - September 2013

**Delivery Program** Governance and Finance

**Objective** To provide Council and the community with details of how Council's surplus funds are invested.

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#### 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 September 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 September 2013 was \$84,115,000. This represents an increase from August of \$807,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 September 2013, was \$610,267.

Council's investments as at 30 September are at an average (weighted) rate of 4.02% which is 1.44% above the 90 Day Bank Bill Index of 2.58%.

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	12
Wastewater Fund (incl developer contributions)	External	34
Section 94 Developer Contributions	External	6
Bonds and Deposits	External	1
Other External Restrictions	External	16
Land Development	Internal	8
Employee Leave Entitlements	Internal	2
Carry Forward Works	Internal	12
Miscellaneous Internal Reserves	Internal	8
Unrestricted		1
<b>Total</b>		<b>100%</b>

\* Based on reserves held as at 30 June 2013

#### Key Issues

- Investment return
- Compliance with Investment Policy

## 10.2 Investment Summary - September 2013

### Information

The RBA again left the cash rate on hold at its October meeting.

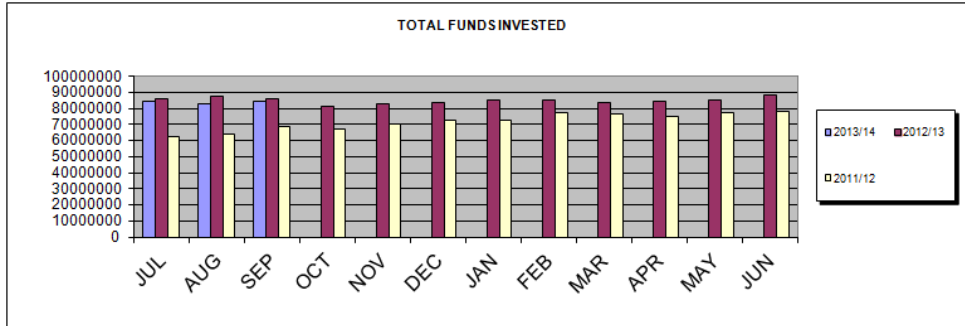
The following points are evident from the accompanying statement:

Global growth:	A bit below average this year, with reasonable prospects of a pick up next year. Commodity prices have declined from their peaks, but generally remain at high levels by historical standards. Inflation in most countries remains well contained.
Financial markets:	Financial conditions remain very accommodative, changes in the outlook for US monetary policy have increased volatility in financial markets, but long term interest rates remain very low and there is ample funding available for creditworthy borrowers.
Domestic economy:	The economy has been growing a bit below trend over the past year. This is expected to continue in the new term as the economy adjusts to lower levels of mining investment. The unemployment rate has edged higher. There has been an improvement in indicators of household and business sentiment recently, though it is too soon to judge how persistent this will be.
Inflation:	Even with the Australian dollar's decline, the RBA remains fairly happy to re-affirm the prospects that inflation will remain at the medium term target levels for the next few years.

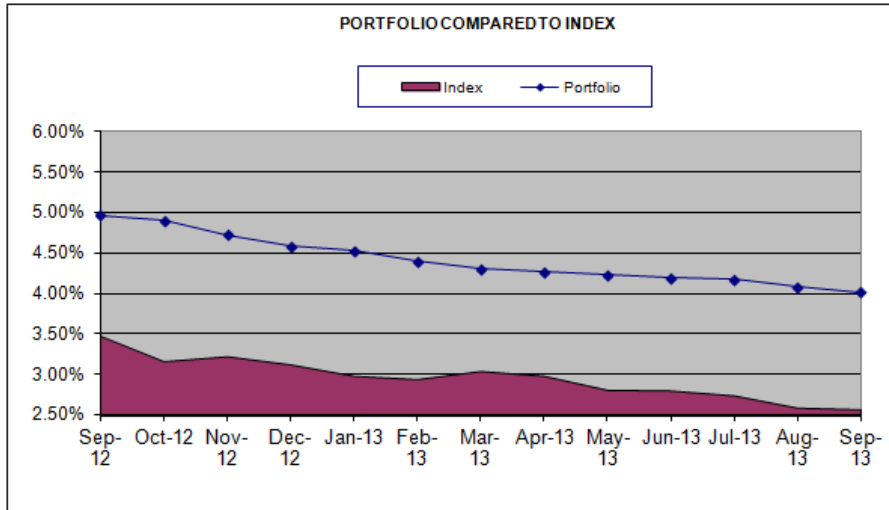
### A. Summary of investments by institution

Funds Invested With	ADI Rating	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
<b>Grandfathered Investments</b>						
Deutsche Bank	A+	4,000	4,000	0	4.8	
Goldman Sachs	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	10%
<b>Rated Institutions</b>						
Bank of Queensland	BBB+	8,000	8,000	10	9.5	
Commonwealth Bank of Aust	AA-	7,520	5,327	20	7.3	
Defence Bank Ltd	BBB+	3,000	3,000	10	3.6	
Greater Building Society	BBB	2,000	2,000	10	2.4	
Heritage Bank	BBB+	3,000	5,000	10	5.9	
Illawarra Mutual Bld Soc	BBB	2,000	2,000	10	2.4	
ING Bank Ltd	A	15,000	15,000	20	17.8	
Members Equity Bank	BBB	8,000	8,000	10	9.5	
National Australia Bank	AA-	13,000	13,000	20	15.5	
Newcastle Perm Bld Society	BBB+	2,000	2,000	10	2.4	
Rural Bank Ltd	A-	4,000	4,000	10	4.8	
Suncorp Metway Bank	A+	4,000	7,000	20	8.3	
Westpac Banking Corporation	AA-	1,000	1,000	20	1.2	90%
<b>Unrated ADI's</b>				\$1m	0.0	
<b>Total</b>		<b>83,308</b>	<b>84,115</b>			<b>100%</b>

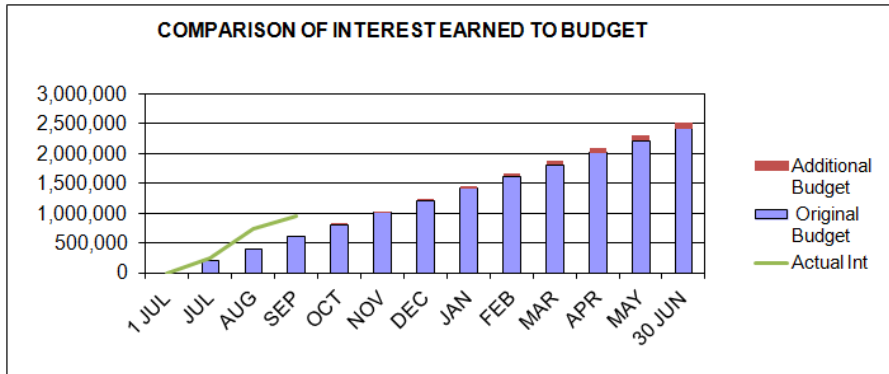
**B. Monthly Comparison of Total Funds Invested**



**C. Comparison of Portfolio Investment Rate to 90 Day BBSW**



**D. Progressive Total of Interest Earned to Budget**



## 10.2 Investment Summary - September 2013

### E. Investments held as at 30 September 2013

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
23/04/04	Deutsche Bank	FRN	3.74%	23/04/14	2,000	1,991
23/04/04	Deutsche Bank	FRN	3.74%	23/04/14	2,000	1,991
20/09/04	National Australia Bank (ASX Listed)	FRN	3.87%	Perpetual	1,788	1,314
12/04/06	Goldman Sachs	FRN	3.27%	12/04/16	1,000	987
16/06/06	National Wealth M'ment Holdings	FRN	3.21%	16/06/16	2,000	1,909
17/12/08	Commonwealth Bank Of Australia	FRN	3.78%	17/12/13	1,000	1,002
17/12/08	Commonwealth Bank Of Australia	FRTD	5.93%	17/12/13	999	1,006
at call	Commonwealth Bank Of Australia	FND	2.70%	at call	1,337	1,337
24/01/12	ING Bank Ltd	FRTD	4.68%	24/01/17	1,000	1,000
06/02/12	Westpac Bank	FRN	4.24%	06/02/17	1,000	1,038
25/01/13	Commonwealth Bank Of Australia	TD	4.36%	25/01/18	1,991	2,008
10/04/13	National Australia Bank	TD	4.42%	10/10/13	2,000	2,000
17/04/13	National Australia Bank	TD	4.37%	14/10/13	4,000	4,000
24/04/13	Rural Bank Ltd	TD	4.40%	21/10/13	2,000	2,000
29/04/13	National Australia Bank	TD	4.25%	29/10/13	2,000	2,000
01/05/13	National Australia Bank	TD	4.20%	01/11/13	2,000	2,000
02/05/13	Illawarra Mutual Bld Society	TD	4.20%	29/10/13	2,000	2,000
07/05/13	ING Bank Ltd	TD	4.32%	07/11/13	1,000	1,000
07/05/13	Heritage Bank	TD	4.30%	07/05/14	3,000	3,000
20/05/13	Defence Bank	TD	4.45%	20/05/14	1,000	1,000
28/05/13	Suncorp-Metway Bank	TD	4.15%	25/11/13	2,000	2,000
30/05/13	ING Bank Ltd	TD	4.27%	26/11/13	1,000	1,000
05/06/13	National Australia Bank	FRTD	3.86%	05/06/15	2,000	2,000
07/06/13	Greater Bld Society	FRN	4.02%	07/06/16	2,000	1,997
20/06/13	ING Bank Ltd	TD	4.21%	20/01/14	1,000	1,000
04/07/13	ING Bank Ltd	TD	4.14%	30/01/14	2,000	2,000
22/07/13	Defence Bank	TD	4.15%	22/11/13	2,000	2,000
24/07/13	ING Bank Ltd	TD	4.00%	20/01/14	1,000	1,000
25/07/13	Bank of Queensland	TD	4.10%	22/11/13	3,000	3,000
30/07/13	Members Equity Bank	TD	4.20%	28/10/13	1,000	1,000
30/07/13	ING Bank Ltd	FRTD	4.17%	30/07/14	2,000	2,000
31/07/13	Bank of Queensland	TD	4.10%	29/10/13	1,000	1,000
05/08/13	Members Equity Bank	TD	4.20%	04/11/13	2,000	2,000
08/08/13	Bank of Queensland	TD	4.00%	06/11/13	3,000	3,000
08/08/13	Newcastle Permanent Bld Society	TD	3.81%	06/11/13	2,000	2,000
12/08/13	ING Bank Ltd	TD	3.94%	10/02/14	2,000	2,000
12/08/13	Heritage Bank	TD	4.10%	10/02/14	2,000	2,000
15/08/13	National Australia Bank	TD	3.79%	13/11/13	1,000	1,000
19/08/13	Members Equity Bank	TD	3.95%	17/02/14	2,000	2,000
19/08/13	Members Equity Bank	TD	3.95%	17/12/13	2,000	2,000
28/08/13	Bank of Queensland	TD	4.00%	26/11/13	1,000	1,000
02/09/13	Suncorp-Metway Bank	TD	3.85%	03/03/14	3,000	3,000
05/09/13	Suncorp-Metway Bank	TD	3.75%	05/03/14	2,000	2,000
16/09/13	ING Bank Ltd	TD	3.71%	17/03/14	1,000	1,000
16/09/13	ING Bank Ltd	TD	3.72%	14/04/14	3,000	3,000
16/09/13	Members Equity Bank	TD	3.95%	14/01/14	1,000	1,000
25/09/13	Rural Bank Ltd	TD	3.80%	23/01/14	2,000	2,000
	<b>Totals</b>				<b>84,115</b>	<b>83,580</b>
	FND = Managed Fund	FRN = Floating Rate Note				
	TD = Term Deposit	FRTD = Floating Rate Term Deposit				



**RECOMMENDATION**

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

**Attachment(s)**

Nil

### **10.3 Code of Conduct - Reporting**

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#### **10.3 Code of Conduct - Reporting**

**Delivery Program** Administration

**Objective** To comply with Council's Code of Conduct and directions from the Division of Local Government.

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#### **Background**

The Division of Local Government's new Model Code of Conduct, which Council has adopted without change, requires a report to be submitted annually on Code of Conduct complaints. The report must be submitted to the council within three months of the end of September and must include the following details

- total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to 31 August
- number of code of conduct complaints referred to a conduct reviewer
- number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
- number of code of conduct complaints investigated by a conduct reviewer,
- number of code of conduct complaints investigated by a conduct review committee
- without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures
- number of matters reviewed by the Division and, without identifying particular matters, the outcome of the reviews and
- total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.

This report satisfies these requirements.

#### **Key Issues**

- Number and nature of complaints

#### **Information**

The last report Council considered in respect to this matter was for the 12 month period 1 July 2011 to 30 June 2012.

As the Code now requires councils to report from September to August this report has been prepared for the period 1 July 2012 to 31 August 2013, which is a longer period than normal, to cover the period from July to August 2012.

In future all reports will be for the period 1 September to 31 August.

The details of the complaints managed for the period of this report are as follows.

### 10.3 Code of Conduct - Reporting

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*Number of code of conduct complaints made about councillors and the general manager*

One regarding a Councillor's behaviour – This resulted in a follow up complaint by the complainant following an initial review of the first complaint by the General Manager.

*Number of code of conduct complaints referred to a conduct reviewer*

One

*Number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints*

One – In respect to outcomes there were two aspects to the complaint with the preliminary assessment confirming that:

- a) the Councillor was disrespectful to the complainant regarding a verbal statement that they made – the Councillor was then asked to provide an unqualified apology – That apology was provided.
- b) The second part related to an initial apology from the Councillor, which was written and included supporting comments as to why the Councillor made the original statement – The complainant then complained about the contents of this correspondence – The conduct reviewer determined that the Councillor was entitled to make their supporting comments and the complainant had over-reacted to those comments – No further action was required.

*Number of code of conduct complaints investigated by a conduct reviewer*

Nil

*Number of code of conduct complaints investigated by a conduct review committee*

Nil

*Outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee*

N/A

*Number of matters reviewed by the Division and, without identifying particular matters, the outcome of the reviews*

N/A

*Cost of dealing with code of conduct complaints made about councillors and the general manager including staff costs*

Total cost - Approximately \$650

The one matter forwarded to a conduct reviewer resulted in a direct invoice to Council of \$134.20.

### **10.3 Code of Conduct - Reporting**

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In respect to staff time both the General Manager and Manager – Human Resources and Risk dealt with this complaint and it is estimated that this time equated to approximately \$500.

In summary there was only one formal Code of Conduct complaint in respect to the Councillors and the General Manager for the 14 month period from 1 July 2012 to 31 August 2013. That complaint was initially reviewed by the General Manager resulting in a response and apology from the Councillor. This initial response was not accepted by the complainant, which resulted in a follow up complaint, and the matter was then referred to a member of Council's Conduct Review Panel.

The Panel member conducted a preliminary review of the complaint and asked that the Councillor unreservedly apologise, which then happened and dismissed the second part of the complaint regarding other written statements made by the Councillor.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The Code of Conduct exists to ensure there are appropriate standards of behaviour.
- **Economic**  
Not Applicable

#### **Legal / Resource / Financial Implications**

The Council's Code of Conduct, which is based on the Division of Local Government's Model Code of Conduct, requires a report to be submitted annually on Code of Conduct complaints. This report satisfies that legal requirement.

#### **Consultation**

This report is provided for information.

#### **Options**

This report is for information purposes only.

#### **RECOMMENDATION**

That Council notes the contents of this report on Code of Conduct complaints for the period 1 July 2012 to 31 August 2013.

#### **Attachment(s)**

Nil

## **10.4 Disclosure of Interest Returns**

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### **10.4 Disclosure of Interest Returns**

**Delivery Program** Administration

**Objective** To comply with the provisions of the Local Government Act relating to the tabling of disclosure of interest returns.

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#### **Background**

Section 449 (3) of the Local Government Act requires Councillors and designated persons to complete a pecuniary interests return within three months of the end of the financial year.

Section 450A (2) (b) then requires the General Manager to table those returns at the first available Council meeting following the completion of the three month period.

This report complies with the above sections of the Local Government Act for the period 1 July 2012 to 30 June 2013.

#### **Key Issues**

- Ensuring compliance with the Local Government Act.

#### **Information**

Returns are to be tabled by Councillors and designated persons. Section 441 of the Local Government Act defines designated persons as the General Manager, Senior Staff and other positions or members of committees that exercise functions that could give rise to a conflict of interest.

To manage the determination of designated positions an internal procedure has been adopted by staff to ensure that:

- all senior staff
- all staff involved in the determination of development applications
- all staff exercising delegations in respect to rezoning requests
- all staff with a purchasing authority above \$55,000 and
- all staff who have secondary employment approvals excluding those that relate to one off events that are for a relatively short term. Examples include elections, festivals etc.

complete the returns.

No committee members, other than Councillors, are required to complete returns, as all Council's committees, other than those consisting entirely of Councillors, have no delegated authority.

The completed returns and the register will be tabled at the meeting for the information of the public.

## 10.4 Disclosure of Interest Returns

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### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The disclosure of interest returns help to improve transparency in the decision making process.
- **Economic**  
Not Applicable

### **Legal / Resource / Financial Implications**

Council must comply with the Local Government Act.

### **Consultation**

Provided for the information of the public.

### **Options**

The purpose of this report is for noting the information presented.

### **RECOMMENDATION**

That Council notes the contents of the report on the disclosure of interest returns for the period 1 July 2012 to 30 June 2013.

### **Attachment(s)**

Nil

## 10.5 Community Donations

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### 10.5 Community Donations

**Delivery Program** Governance

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

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#### **Background**

Council approved a large number of donations at the July 2013 Ordinary Meeting for the 2013/14 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 application referred to in this report is deemed to represent exceptional circumstances.

#### **Key Issues**

- Community benefit and funding available

#### **Information**

##### ***Westpac Life Saver Rescue Helicopter (Lennox Head Community Market)***

In April 2013 Council resolved to undertake a formal consultation process with key stakeholders and the broader community to investigate the option to relocate the regular Lennox Head Community Market to a site closer to the town centre.

As a result of this consultation it was resolved at Council's August 2013 meeting that the markets be permanently relocated from Lake Ainsworth to the Lennox Head Cultural and Community Centre.

Currently the Market Co-ordinators (Westpac Life Saver Rescue Helicopter) are paying approximately \$400 per annum. They have been advised by community facilities staff that the costs incurred for each market for using the Lennox Head Community Centre will be \$325. Taking into account one market per month and occasionally two the overall costs will be in excess of \$4,500 per annum.

A letter is attached to this report from the Market Co-ordinators asking for the fees to be donated.

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

## 10.5 Community Donations

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### Legal / Resource / Financial Implications

The current status of the donation budgets for 2013/14 is as follows:

<b>Items</b>	<b>Budget</b>	<b>Allocated</b>	<b>Balance</b>
Donations (General)	65,000	61,292	3,708
Donations (Halls)	40,000	40,854	(854)
Donations (DA Fees)	4,000	600	3,400
<b>Net Amount Available</b>			<b>6,254</b>

### 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 request. Both options are provided as the allocation of donations is a matter for the elected Council.

In respect to approval as the markets are planned to be relocated from 29 December 2013 the approximate cost for the balance of 2013/14 will be \$2,925 (nine markets).

## RECOMMENDATIONS

### Option A - Approval

That Council approves the donation of the hire charges for the Lennox Head Community Centre, for the Westpac Lifesaver Rescue Helicopter Service in operating the Lennox Head Markets, for the balance of 2013/14, as Council's decision to relocate the markets has placed this additional cost on the market operators.

### Option B – Not Approve

That Council not approve the request from Westpac Lifesaver Rescue Helicopter Service as the fees set for the Lennox Head Community Centre already provide a significant subsidy to community based groups.

### Attachment(s)

1. Westpac Life Saver Rescue Helicopter (Lennox Head Markets)



## **10.6 Flat Rock Tent Park - Fees and Charges 2014/15**

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### **10.6 Flat Rock Tent Park - Fees and Charges 2014/15**

**Delivery Program** Commercial Services

**Objective** To obtain approval to exhibit the draft fees and charges for the Council operated tent park for the period 1 February 2014 to 31 January 2015

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#### **Background**

The NSW Local Government Act requires councils to formally advertise and adopt their fees and charges prior to implementation. The majority of Council's fees are set each June as part of the annual Operational Plan.

With Flat Rock Tent Park it is important that our customers are informed, well in advance, as to the fees for their next holiday during the following year and also meet important industry media advertising publications.

This report has been prepared to obtain Council approval to advertise next year's Tent Park fees. The period the fees are applicable for is 1 February 2014 to 31 January 2015 for tourist sites.

#### **Key Issues**

- Variations in fees
- Conditions attached to the fees

#### **Information**

A copy of the proposed fees is included as an attachment to this report. The attachment provides a comparison between the existing and the proposed fees.

The proposed fees have been formulated taking into account factors such as park facilities and standards, feedback from park managers and customers, industry comparisons and the latest consumer price index (CPI).

In summary the only changes have been to extra adults, the unpowered peak site and administration charges on refunds.

Changes to the booking and administration processes now include full payment when online reservations are made online, which is required to comply with the reservation system.

#### **Legal / Resource / Financial Implications**

Council is legally required to exhibit and adopt its fees.

#### **Consultation**

The fees are to be exhibited for public comment.

## **10.6 Flat Rock Tent Park - Fees and Charges 2014/15**

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### **Options**

The options are to either adopt the recommendation to advertise the proposed fees as presented or amend the fees.

The preferred approach is to exhibit the fees, as any changes are consistent with industry trends and competitors.

### **RECOMMENDATION**

That Council authorises the exhibition of the draft Tent Park Fees for 1 February 2014 to 31 January 2015, as attached to this report, for public comment.

### **Attachment(s)**

1. Draft Fees & Charges 2014/15

## **10.7 Policy (Draft) - Christmas to New Year Office Arrangements**

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### **10.7 Policy (Draft) - Christmas to New Year Office Arrangements**

**Delivery Program** Human Resources and Risk Management

**Objective** To determine how Council wishes to manage the opening and closing of Council Offices during the Christmas to New Year period.

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#### **Background**

An industrial report was provided to Council's December 2012 Ordinary meeting which included information regarding the practice surrounding the closure of the main administration centre between Christmas and New Year. The report identified an absence of a Council policy and a lack of accountability for the decisions surrounding the annual determination as to whether to keep open or close the administration centre.

Council salary staff had been notified that the previous practice of granting the days between Christmas and New Year (that were not public holidays), in recognition of unpaid overtime worked during the year, would not continue beyond 2013 due to a lack of accountability and transparency.

In February 2013 the Development and Environmental Professionals Association (depa) lodged a dispute to the Industrial Relations Commission of NSW (Matter IRC 120 of 2013) regarding the non provision of the three days concessional leave between Christmas and New Year. The two other Unions party to the Local Government State Award 2010 also joined this dispute.

The report that now follows provides the outcomes from that dispute along with seeking Council approval to formulate a policy to clarify Council's position.

#### **Key Issues**

- Industrial legislation
- Equity and accountability
- Consistency in approach with determining operational arrangements

#### **Information**

In respect to the Industrial Relations dispute Council's General Manager and Manager Risk and Human Resources attended the compulsory conciliation hearings in March and June this year.

Briefly the Union's position was that the three extra days paid leave was an automatic entitlement for staff as it was Council custom and practice over many years and could not be taken away.

From a senior management perspective the Council's position was that the three days had been reviewed every year and as with any matter that is constantly reviewed, the practice could be ceased.

## **10.7 Policy (Draft) - Christmas to New Year Office Arrangements**

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In order to resolve this dispute an agreement was reached between all parties that provided an accountable and transparent outcome which met both Council and the relevant union requirements.

Under the negotiated agreement Council salaried staff (i.e. office based staff employed on a 35 hour week (or part thereof) as compared to field based staff who are employed on a 38 hour week)) are able to work additional time, aside from time when they are directed to work by Council, outside normal hours and have this time verified and approved on a fortnightly basis, to utilise for the days, which are not public holidays, during the Christmas to New Year period.

The first 30 minutes accrued each week is not entitled to be claimed against the Christmas / New Year period to avoid the situation where someone may be claiming a few minutes a day, which in effect may be just the time needed to pack up and leave the office. Also the minimum block of time allowed to be claimed is 10 minutes.

Once the 21 hours required for the Christmas / New Year period (i.e. three days at seven hours) is accumulated salaried staff are also not entitled to claim additional accrued hours. This system does not over ride any award conditions where staff may be able to accrue additional time through other arrangements.

The negotiated agreement also makes provision for Council to decide to keep the office open and for any accumulated time in this instance to be utilised by staff by March the following year. Staff members who do not wish to work additional time can access their own leave entitlements during any forced shut down periods, as per the Award provisions.

In summary this agreement means that if the Council offices close between Christmas and New Year there will be complete accountability for staff who claim the time off as extra hours worked, whereas any other staff will need to use their own leave. This means staff have control over whether they wish to work the time up to take it off, or prefer just to access their annual leave.

This entire process highlighted the need for Council to have a policy to clarify how the Christmas / New Year period is to be managed and the attachment to this report is draft policy for consideration by Council.

The policy clarifies that it is the responsibility of the General Manager to determine whether a facility remains open or closed during the Christmas to New Year period. However in making such a decision the General Manager must ensure that customer standards are met and also must ensure that appropriate leave or concessional leave arrangements are in place.

### **Sustainability Considerations**

- **Environment**  
Not Applicable

## **10.7 Policy (Draft) - Christmas to New Year Office Arrangements**

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- **Social**

A key aspect of the policy is that customer service / social requirements are to be carefully considered by the General Manager as part of determining whether a Council facility should remain open or close during the Christmas and New Year period.

- **Economic**

The policy provides increased accountability for employee costs which are a major cost (and asset) for the organisation.

### **Legal / Resource / Financial Implications**

The management of staff and general operations of the Council is the responsibility of the General Manager. The senior management team are each responsible for ensuring that Council is able to meet its customer service and other corporate objectives for their specific areas of control.

The industrial agreement developed with the Unions has resolved the current dispute surrounding staff leave during the Christmas and New Year period and has enabled an accountable and transparent system that supports the ability to open or close Council's community facilities.

### **Consultation**

Council employees were consulted during the development of the industrial agreement. The agreement provides the ability for an annual determination to be made as to whether Council facilities should open or close during the Christmas to New Year period.

### **Options**

The options available are to adopt the policy as presented or amend. The policy clarifies the arrangements for Christmas to New Year and also ensures that a transparent and accountable system is now in place for that period. This being the case the recommendation is to adopt the policy as presented.

Even though this is more a staff related policy, the recommendation is also to exhibit the policy for public comment. If no submissions are received from the public exhibition process, then no further actions are required.

### **RECOMMENDATIONS**

1. That Council adopts the Christmas and New Year Office Arrangements Policy as attached to this report.
2. That this policy be placed on exhibition for community comment, with the policy to be reported back to the Council for further consideration if any submissions are received. If no submissions are received then no further action is required.

### **Attachment(s)**

1. Policy (Draft) - Christmas and New Year Office Arrangements

## **10.8 Policy (Draft) - Community Groups - Allocation of Land and Buildings**

### **10.8 Policy (Draft) - Community Groups - Allocation of Land and Buildings**

**Delivery Program** Community Planning

**Objective** To consider policy options for the allocation of Council owned or controlled land to community groups.

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#### **Background**

At the July 2012 Ordinary meeting Council resolved to provide the local branch of the Men's Shed group, a lease term of 20 years, at \$1 per annum, for the Council owned property at 44 Fishery Creek Road, Ballina. As an adjunct to this resolution Council also resolved as follows:

*That Council receive a report on policy options regarding allocation of public land to community groups.*

This report now responds to that resolution.

#### **Key Issues**

- Development of reasonable criteria for allocation of Council owned land
- Difficulty in determining a standard process to be followed for allocating Council owned land

#### **Information**

All councils face requests from community groups wanting to use council owned or controlled land to deliver their community objectives. In recent times Ballina Shire Council has had to deal with the following requests:

- Department of Community Services – site for Child and Family Centre
- Ballina Mens Shed – site for permanent base
- Alstonville Pre-school – site for new pre-school

Generally the process followed in each of these cases has been:

- a) Determine whether there is initial Council support
- b) If yes, an examination of sites is conducted, with a preferred site identified
- c) If a preferred site is identified and Council resolves to proceed, a statutory notification process is followed, if required (i.e. community land).

The difficulties that Council faces in dealing with applications for use of Council land include:

- a) It is often very difficult for Council to say no, in a political environment, to what is typically a very worthy cause, even though there may be other options for that land / building, or other agencies who could provide similar support
- b) There are concerns about equity in the allocation of land and buildings as there may well be other community groups interested in utilising Council assets, but they have never considered approaching Council for the use

## **10.8 Policy (Draft) - Community Groups - Allocation of Land and Buildings**

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- c) Often there are time constraints as Council is seen as the last resort by some groups, which then restricts Council's ability to follow due process and canvass all options, as well as inviting expressions of interest from other groups.

The reason there has been a delay in providing a formal report back to Council on the July 2012 resolution is the difficulty in trying to formulate a policy that actually has some substance to assist in this decision making process.

In looking at policy options there are considered to be two matters that could form the basis for a Council policy; being

- 1) Eligibility of groups to apply for use of Council land
- 2) The process to be following in assessing the application for use.

The attachment to this report provides a draft policy for consideration by Council. The policy addresses point one by clarifying the types of groups who may be eligible applicants, being locally based not for profit organisations.

Point two is addressed through the use of a flow chart outlining the steps to be followed. An important step in the flow chart is liaison with the local State and Federal Members to assess whether or not there are other government owned assets that may address the needs of the applicant.

The draft policy is a document that may evolve over time as it is tested against applications, however on balance it is considered a starting point to assist in assessing applications, as and when they arise.

### **Sustainability Considerations**

- **Environment**  
Environmental constraints can play a major part in the allocation of land
- **Social**  
The community groups considered as part of this policy would be providing significant social benefits to the broader community
- **Economic**  
There can be significant financial impacts through Council allocating land to community groups in that any potential income generated from the sale of surplus land may be forgone.

### **Legal / Resource / Financial Implications**

As this relates to a policy consideration there are no direct legal / resource / financial implications, albeit that if the policy is adopted there will be implications in assessing future applications.

## **10.8 Policy (Draft) - Community Groups - Allocation of Land and Buildings**

### **Consultation**

It is proposed to exhibit the policy for public comment. The policy itself also contains public consultation processes.

### **Options**

The options are to endorse the draft policy for exhibition, amend the document prior to exhibition or not endorse the creation of the policy.

On balance there is considered to be some, albeit limited, merit in Council having a policy for the allocation of Council owned or controlled land and buildings and the recommendation is to exhibit the policy for public comment. It is also recommended that if no submissions are received from the exhibition process, the policy be adopted.

The reason that there is considered to be limited merit in the policy is that each situation where Council is required to provide land is typically unique with its own sense of parameters. Therefore the contents of the policy are fairly bland, albeit that they do help to set the basic ground rules for determining the allocation of Council land to other groups.

### **RECOMMENDATION**

That Council approves the exhibition of the draft Community Groups – Allocation of Land and Buildings Policy, as attached to this report. Any submissions received are to be resubmitted back to Council and if no submissions are received then the policy is considered to be adopted.

### **Attachment(s)**

1. Policy (Draft) - Community Groups - Allocation of Land and Buildings



## **10.9 Policy (Review) - Community Consultation**

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### **10.9 Policy (Review) - Community Consultation**

**Delivery Program** Governance and Finance

**Objective** To review the Council's Community Consultation Policy.

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#### **Background**

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements, and that they are effectively achieving the outcomes envisaged. The purpose of this report is to review the Council's Community Consultation policy.

Council first adopted this policy in 24 September 2009.

The purpose of the policy is to:

- Identify appropriate levels of community engagement
- Establish guidelines for community engagement strategies
- Ensure the guidelines are implemented consistently by Council officers and external consultants engaged by Council
- Ensure that decision-making processes adequately and accurately report outcomes of community engagement processes and
- Comply with relevant legislative requirements and other Council policies.

Principally, the policy outlines Council's community engagement framework and provides guidance with respect to consultation options for use when preparing community engagement/consultation strategies for Council projects and programs.

#### **Key Issues**

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

#### **Information**

It is noted that the NSW State Government is in the process of rewriting the *Local Government Act 1993* and *Environmental Planning and Assessment Act 1979*. It is anticipated that changes to these Acts may have implications for Council's community consultation obligations and practices. Consequently, Council's Community Consultation Policy may require further review should such changes be implemented by the State Government.

Whilst noting the above, the current review of this policy has identified only minor changes required at this stage, as follows:

## **10.9 Policy (Review) - Community Consultation**

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- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.

The changes have been marked in yellow in the revised policy document contained in Attachment One.

Otherwise the policy is still considered to be contemporary and reflects current legislation, therefore no further changes are recommended. A copy of the amended policy is attached to the report.

### **Sustainability Considerations**

- **Environment**

The community consultation policy provides opportunities for community input into Council's decision making processes relating to the environment.

- **Social**

The community consultation policy provides opportunities for community input into Council's decision-making processes relating to social matters.

- **Economic**

The community consultation policy provides opportunities for community input into Council's decision-making processes relating to economic matters.

### **Legal / Resource / Financial Implications**

The review, public exhibition and implementation of this policy can be accommodated within existing resources.

The implementation of this policy is consistent with Council's current legal responsibilities, and is also considered to entail sound governance practice in terms of the Council's engagement with our community.

The Division of Local Government also recommends that councils have a documented community consultation policy.

### **Consultation**

As the changes are only minor it is recommended that the Council adopt the policy as presented. However, the document will also be exhibited for public comment. If any submissions are received they will be reported back to the Council. If no submissions are received, no further reporting will be presented to the Council.

### **Options**

Council may accept or amend the proposed changes to the policy. The changes included are largely "house keeping" in nature, and therefore it is recommended that the policy be adopted as presented.

## **10.9 Policy (Review) - Community Consultation**

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It is also recommended that if no submissions are received from the public exhibition process, the policy be adopted with no further actions required.

### **RECOMMENDATIONS**

1. That the Council adopt the amended Community Consultation Policy, as attached to this report.
2. That this policy be placed on exhibition for community comment, with the policy to be reported back to the Council for further consideration if any submissions are received. If no submissions are received then no further action is required.

### **Attachment(s)**

1. Policy (Review) - Policy C14 Community Consultation

## 10.10 Ballina Cup 2014

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### 10.10 Ballina Cup 2014

**Delivery Program** Governance and Finance

**Objective** To obtain direction from Council as to how it wishes to manage any application for a public holiday for the 2014 Ballina Cup.

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#### **Background**

Each year Council, following an approach by the Ballina Jockey Club, has traditionally applied to the NSW Treasury for a half-day public holiday for the Ballina Cup. A copy of the latest correspondence from NSW Treasury outlining this process is included as the first attachment to this report.

In 2012 the applicable legislation changed and the half-day public holiday is now granted under the Public Holidays Act 2010 and not the Bank and Banks Holidays Act (now repealed). This change has increased the number of employees now eligible for the public holiday. Due to this change the advice from the NSW Treasury is that councils may now apply for a half-day public holiday or a local event day.

A number of concerns were expressed in respect to the 2012 and 2013 Cups due to teachers now being eligible for the public holiday and schools having to close in the afternoon.

The Ballina Jockey Club has also announced that the racetrack will have a multi million dollar upgrade during 2014 which may impact on the running of the 2014 Ballina Cup. At this stage the Jockey Club is advising that they will have more details in late November or early December, once tenders are awarded for the track upgrade.

Considering all of this background information the purpose of the report that follows is to outline the options available for Council in respect to the 2014 Cup day holiday and to determine how Council wishes to progress the various options.

#### **Key Issues**

- Options and impact

#### **Information**

Assuming that the 2014 Cup Day proceeds there are a number of options available to Council.

These include:

#### **Local Half Day Public Holiday**

- Banks required to close unless they hold a special approval to open
- Shops are free to open without restriction
- All employees are entitled to be absent from work
- Employees who work are entitled to penalty rates

### **Local Half Day Event Day**

- Does not preclude banks or shops from opening
- Does not automatically mean employers are compelled to treat the day as a public holiday
- Entitlements to paid time off work or penalty rates will only apply where they have been agreed at the workplace, usually in the form of an enterprise agreement.

Council debated this point of difference in 2012 and the resolution was to apply for a local half day public holiday. Essentially the economic benefits of supporting the Ballina Cup were considered to offset the negative impacts on businesses and schools.

In respect to schools one of the major concerns is that bus timetables are still running as normal on cup day, however teachers are not working from noon onwards. Council wrote to the NSW State Government in respect to this issue in 2012 and the advice back was that normal bus services would not change. One of the key points made in the response was that bus services often cross local council boundaries and even though it may be a public holiday in Ballina Shire, schools and businesses are operating as per normal in the adjoining council areas.

This adjoining council area point is an important point in that a large number of residents may work elsewhere (i.e. Lismore) and if they have school age children who need supervision, those residents will either need to take the afternoon off work, or make alternative arrangements to supervise their children.

In respect to the impact on businesses the major concern being raised is that due to the half day being declared a public holiday, businesses have to pay penalty rates if they are open.

### **Quarter Day Public Holiday**

One of the major benefits of having a Cup day is to promote activity in the town centres in the evening after the races and the feedback, from some operators, is that penalty rates are almost not making this worthwhile.

In response to this issue the Australia Hotels Association has written to Council (refer to second attachment) asking that Council support a public holiday from noon to 6pm (quarter day public holiday). This idea has merit and Council staff contacted the State Government to determine whether this was a viable option. Pleasingly Council can apply for such a public holiday (quarter day).

### **Thursday or Friday**

Another issue that has been raised is that the recent change from Thursday to Friday has actually impacted detrimentally on businesses. The reasoning behind this is that Friday night is normally a good night for cafés and restaurants, whereas Thursdays are not as busy. The preferred option for some café / restaurant operators is to retain the traditional Thursday Cup as this then provides an extra night of good trading, whereas the Friday is absorbed into what is already a busy evening

Also once the cost of the public holiday rates are then added, some cafes / restaurants etc are then struggling or reluctant to open Friday night due to the need to pay the public holiday rates, which means they are losing significant revenue from what is normally a good night to trade.

The other side to this argument is that Friday is seen as an opportunity for visitors to make a weekend of it in Ballina; albeit that potentially local people who do not attend the races could also be taking the opportunity to go away for a long weekend.

The only empirical evidence available is from the Ballina Jockey Club who advises that attendance numbers in 2013 were approximately 4,000, up from 3,000 in 2012 and up from 2,000 in 2011 when it was on a Thursday. They have also advised Friday is their preferred option as it provides for higher betting turnover as there are less competing races State wide. They also envisage that once the track is upgraded that the Cup Day may form part of a racing carnival for Ballina that will extend into the weekend and possibly other week days.

### **Sustainability Considerations**

- **Environment**  
Not applicable
- **Social**  
The Ballina Cup is a major part of the social calendar for the Ballina Shire. There is also a social impact by schools having to close for the half day.
- **Economic**  
There are economics benefits gained from the staging of an event such as the Ballina Cup through promotional activities and increased visitors. There is also a significant cost to businesses in closing for the afternoon.

### **Legal / Resource / Financial Implications**

NSW Treasury invites councils to apply for approval for the half-day to meet their legislative responsibilities. Council's response is due back by Friday 29 November 2013 to allow all the State wide holidays to be published by the Government.

Due to the uncertainties over the actual running of the Cup Day, due to the planned upgrade of the race track, NSW Treasury has verbally advised that Council can apply for the exact date during 2014. The minimum timeframe they require is around two months from time of application to gazettal. However, it will assist them if we advise before 29 November what type of holiday / event we intend to apply for during 2014.

### Consultation

Council is required to consult with various organisations such as schools and the Chambers of Commerce to make a decision in respect to the preferred option. Correspondence has been forwarded to all the major schools in the Shire and the Chambers as part of this process.

The responses received to date are included as attachments to this report.

In summary those responses are:

- Schools – Provided a mix response with some not supportive and some partially supportive of possibly the quarter day public holiday
- Chambers – Alstonville supportive of a local event day and Ballina supportive of a quarter day public holiday
- Business – The one submission from Mi Thai in Lennox Head was reluctantly supportive of the quarter day (or five hours only) public holiday. The Australian Hotels submission is mentioned earlier.

In addition to the submissions there was feedback from some members of the C Ward Committee who expressed a preference for the Cup Day to be moved back to a normal week day (i.e. Thursday) due to Fridays being the busiest trade days for many businesses.

### Options

The options and issues to be considered are:

- to approve a part day Public Holiday or Local Event Day
- if it is approved as a Public Holiday restrict it between the hours of noon and 6pm
- whether or not the optimum day for the Cup is a Thursday or Friday.

Even though the Ballina Jockey Club has been through some tough financial times recently, largely due to lengthy periods of wet weather, the recent announcement that the track will be upgraded to an all weather surface has the potential to provide a major boost to the racing industry in Ballina. It is hoped that this will increase the number of trainers located in Ballina and at the same time the all weather track should attract increased numbers for races from south-eastern Queensland and northern NSW.

With this commitment being shown by NSW Racing and NSW Country Racing it is recommended that Council demonstrate the same level of support by endorsing a public holiday, albeit for the hours between noon and 6pm. The quarter day holiday is considered to be a reasonable middle ground that will help businesses who wish to trade in the evening.

In respect to the preferred day (Thursday or Friday) there are good reasons to support either option, with the Ballina Jockey Club having a strong preference for the Friday. On this basis, and again recognising that there is a multi million dollar investment planned for the race track, the recommendation is to support the Ballina Jockey Club's preference.

At this point in time, we don't have to determine an exact date for the event and this allows Council to indicate its preference and provide that feedback to the Jockey Club. The Jockey Club can then consider that feedback before advising us of their preferred date for 2014 and if that date is consistent with the Council's position the notification can be forwarded to NSW Treasury.

If the response from the Ballina Jockey Club is inconsistent with Council's position a further report can be submitted to Council.

### **RECOMMENDATIONS**

1. That Council confirms it supports for the declaration of a part half-day public holiday between the hours of noon and 6 pm throughout the Ballina Shire for the 2014 Ballina Cup.
2. That Council confirms it support for the part day public holiday to be held on a Friday as this represents the most viable option for the Ballina Jockey Club.
3. That Council advise the Ballina Jockey Club of our preference and if the exact date, once determined by the Jockey Club, is consistent with points one and two, Council authorises the General Manager to write to NSW Treasury confirming that date. If the preferred date from the Jockey Club is inconsistent with points one and two a further report will need to be submitted to allow Council to confirm the exact date.

### **Attachment(s)**

1. Letter from NSW Treasury
2. Submission from Australian Hotels Association
3. Submissions from Schools
4. Submissions from Ballina and Alstonville/Wollongbar Chambers of Commerce
5. Submission from a restaurant owner



## 10.11 Ballina Breakwall - North Wall

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### 10.11 Ballina Breakwall - North Wall

**Delivery Program** Commercial Services

**Objective** To obtain Council approve to undertake maintenance responsibilities for the Ballina Breakwall - North Wall as part of an agreement with the NSW Department of Trade and Investment - Crown Lands.

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#### **Background**

The NSW State Government, through the Department of Trade and Investment – Crown Lands, undertook works earlier this year on the Ballina Breakwall - North Wall to provide additional support to the existing infrastructure. Unfortunately those works, being rather large concrete blocks, turned what was an excellent spot for walking and sightseeing into an unsightly structure with limited viewing options.

As a result of this work Council resolved at the April 2013 Ordinary meeting as follows:

- 1. That Ballina Shire Council contact the local State Member for Ballina and Minister for the North Coast, Mr Don Page and the Minister for Lands to clearly state our disappointment with the visual impact and outlook resulting from the recent replenishment work on the Richmond River North Breakwall.*
- 2. We ask that a viewing area be provided at the end of the breakwall.*

Following various representations Council has now received a response from Crown Lands and the purpose of this report to consider the contents of that response. A copy of the response is included as an attachment to this report.

#### **Key Issues**

- Suitability of the proposed works
- Council liability and responsibility

#### **Information**

In response to Council's representations Crown Lands has proposed to "raise the crest level of the northern breakwater at Ballina to improve conditions for site seeing at the end of the wall".

Crown Lands is not prepared to provide a viewing platform as per the April 2013 Council resolution however they are prepared to raise the existing level of the path.

Discussions with representatives from Crown Lands have confirmed that they consider this to be the most effective, practical and safe solution to the problem they created. As per their correspondence they are prepared to fund the works, estimated at \$120,000, and subject to Council approval, they are ready to start those works almost immediately.

## **10.11 Ballina Breakwall - North Wall**

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As the State Government does wish to see some form of partnership with Council for this project, albeit that the problem was created in the first place by their works, they also wish to see Council provide minor maintenance on an on-going basis.

In respect to what minor maintenance means, discussions with Crown Lands indicate they are referring to litter removal and small top ups of gravel for minor wash outs. As they do not have staff located in Ballina to undertake these works they are hoping that these services can be provided by Council, as part of our on-going works programs.

So long as the expectation is that minor maintenance only reflects the works described above, it is considered that Council could provide such a service, within existing staff resources.

Council's Risk Section would like to see some form of agreement in place between Council and Crown Lands in case there was an accident arising from any minor works we undertook (eg if we put down gravel and someone slipped and fell). Therefore, as part of the progress of this matter, it is recommended that we pursue a legal agreement or indemnity from Crown Lands in case of any accident.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
North Wall is a popular walking and site seeing location.
- **Economic**  
North Wall provides (or did provide) an attractive location for visitors to the Ballina Shire.

### **Legal / Resource / Financial Implications**

There is some resource and legal implications arising from this report and the objective of any further negotiations will be to minimise those impacts.

### **Consultation**

Council has made a number of representations to the State Government in respect to the original works.

**Options**

The options are to agree to the proposal or to lobby for further improvements.

On balance it is considered that Council has done well to have the State Government respond to the concerns raised and the allocation of \$120,000 to help rectify the situation is a significant contribution. Crown Lands is keen to progress these works immediately and if Council wishes to pursue further improvements, or an alternative solution, the risk is that the works will be delayed or at worst case may never eventuate.

Overall the recommendation is to support the works as proposed by Crown Lands, with the second and third recommendations aiming to clearly define the minor maintenance works program for Council, along with minimising any insurance risks.

**RECOMMENDATIONS**

1. That Council confirms its support for the works on the Ballina Breakwall – North Wall, as proposed by NSW Trade and Investment – Crown Lands, in their correspondence attached to this report.
2. That Council accepts that as part of this agreement we will take responsibility for minor maintenance works on North Wall, with minor maintenance being defined as litter removal and small top ups of gravel.
3. In agreeing to these minor maintenance works the General Manager is to make all efforts possible to ensure those works are clearly defined in any agreement with Crown Lands, along with minimising any insurance risk from Council undertaking the works.

**Attachment(s)**

1. Response from Trade and Investment - Crown Lands

## **10.12 Lennox Head Bowling Club - Lease Update**

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### **10.12 Lennox Head Bowling Club - Lease Update**

**Delivery Program** Community Facilities and Services

**Objective** To seek further direction from Council in respect to the contents of the lease for the Lennox Head Bowling Club.

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#### **Background**

At the September 2013 Ordinary meeting Council considered a report on the possible reduction of the current rental for the Lennox Head Bowling Club, if the existing lease transferred from Ramsgate Pty. Ltd. to Club Lennox, a locally based community group.

As a result of this report Council resolved as follows:

1. *That the General Manager advise Club Lennox that if they are successful in re-opening the Lennox Head Bowling Club Council provides in principle support for a concession of the market value for the land as follows.*

*Year 1 – 20%, Year 2 – 30% and Year 3 - 50%)*

2. *That Council ensures that the lease includes security over the poker machine licences.*
3. *That Council write to Ramsgate seeking compensation (of the difference between the concession amount) for the first two years of the lease period.*

In respect to points two and three Council has now received responses from Club Lennox and Ramsgate and this report seeks further direction from Council based on information provided in the responses.

#### **Key Issues**

- Security
- Urgency of negotiations

#### **Information**

In respect to point three of the September resolution Council wrote to Ramsgate Pty. Ltd and their response is included as attachment one to this report.

In summary Ramsgate wish to transfer all responsibilities of the lease to Club Lennox and are not prepared to consider meeting any other commitments.

They have also made it very clear that Club Lennox cannot operate the facility unless Council has accepted that the responsibilities of the lease have been transferred to Club Lennox.

In respect to point two of the September resolution, the second attachment to this report is the response from Club Lennox.

## **10.12 Lennox Head Bowling Club - Lease Update**

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As per that email their preference is to have no caveat or as a fallback a maximum of ten on the poker machines.

It is uncertain as to what is the value of a poker machine licence with some people mentioning a figure of \$15,000 per licence although that this is dependent on the market and where the licences are being sold.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Cub Lennox is attempting to re-open the bowling club with a far stronger emphasis on a broad community involvement.
- **Economic**  
Council has already accepted a rental concession that will result in a loss of current revenue to Council.

### **Legal / Resource / Financial Implications**

Any transfer of the existing leases will need to be reviewed by Council's legal advisors.

### **Consultation**

Consultation has taken place with Ramsgate and Club Lennox since the September Ordinary meeting.

### **Options**

Council can retain its current resolution or consider other options. The strong advice from Club Lennox is that they need the lease issues sorted immediately to allow them the opportunity to be up and operating by Christmas.

It is acknowledged that Council wishes to protect the community's interests however there is little doubt that if Club Lennox does not take on the responsibilities of Ramsgate, then the building will remain vacant and deteriorate.

Certainly there is a risk with the viability of Club Lennox but ultimately Council needs to accept that every effort possible is being made by a group of volunteers to have this community based facility up and running as soon as possible.

## **10.12 Lennox Head Bowling Club - Lease Update**

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Based on these comments the preferred approach is to authorize the transfer of the lease (and licence) from Ramsgate to Club Lennox, based on the subsidised rent conditions as resolved at the September meeting, with there also being a caveat on the lease, to the benefit of Council, in respect to 10 poker machine licences.

The recommendation that follows supports this approach.

### **RECOMMENDATIONS**

1. That Council approves the transfer of the existing lease and licence for the Lennox Head Bowling Club from Ramsgate Pty. Ltd. to Club Lennox Ltd, subject to the following amendments:
  - a) Revised rental based on the terms resolved by Council at the September 2013 Ordinary meeting
  - b) A caveat or other appropriate legal restriction being placed over 10 poker machine licences to the benefit of Council.
2. That Council approves the Council seal to be attached to any legal documents associated with this transfer.

### **Attachment(s)**

1. Letter from Ramsgate re de-amalgamation agreement
2. Email from Club Lennox re poker machines

## 10.13 Legal Matters - Update

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### 10.13 Legal Matters - Update

**Delivery Program** Governance

**Objective** To provide an update on legal matters involving Council.

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#### Background

As a public authority Council is regularly involved in legal matters. This report provides an update on matters that have been subject to court action or may result in court action and represents the first report for the 2013/14 financial year.

#### Key Issues

- Type and cost of litigation

#### Information

This report provides an opportunity to examine legal matters in which the Council is, or has been, involved, with reference being to the current or previous financial year. The report has been provided in open Council to ensure the information is available to the public. Details of the current case(s) are as follows:

Solicitor for Council	Parties	Case Description	Original Cost Estimate	Costs Paid to Date
Blake Dawson	Oshlack v Ballina Shire Council & Ors	Land & Environment Court - ref. no. 2010/40570 - Challenge to approval of Marom Creek fluoridation plant - Rous Council and Lismore also joined in this case - Class Four	\$100,000	\$176,200
<b>Comments</b> <p>Mr Oshlack appealed the process followed by Rous, Lismore and Ballina councils in approving fluoridation. Rous Council engaged Blake Dawson Solicitors and Ballina Council agreed for that firm to also represent Ballina Council with costs to be shared. Lismore City Council engaged a separate firm to act as their solicitors and only tendered a submitting appearance. The decision of the Court was eventually published on 16 May 2012 with the appeal being dismissed and Rous and Ballina Councils being awarded costs.</p> <p>The time limitation for appeal of the original decision expired on Thursday 16 August, with Mr Oshlack lodging an appeal. The appeal process commenced with the appellant and the respondents (Council and Rous Water) appearing in a directions hearing in mid October 2012. The directions hearing determined that the appellant was to file and serve his written submissions by 17 October 2012. As respondents our submission was required by 21 November 2012. The matter was listed for call over, for the purpose of allocating a hearing date, on 4 December 2012. The actual hearing date was in May 2013 with the judgment announced during June 2013.</p> <p>Ballina Shire Council and Rous Water were successful in defending the appeal and both councils were awarded costs. Any future actions in respect to the recovery of costs will be guided by our solicitors.</p> <p>It has also recently been reported in the media that Mr Oshlack will not be pursuing any further appeal.</p> <p>The NSW Department of Health allowed Council and Rous Water to fund the costs of the appeal from the interest earned on the original project's capital grant.</p>				

## 10.13 Legal Matters - Update

### Legal / Resource / Financial Implications

This next section of this report provides an update on the legal costs for 2013/14 along with a comparison to the previous five financial years.

Description	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
<b>Planning Legals</b>						
Avalon	86,000	0	0	0	0	0
Bryson and Blake	33,000	57,000	0	0	0	0
Greenwood Grove	53,000	44,000	7,000	0	0	0
Lennox Head Apartments	0	26,000	0	0	0	0
Ramada	0	51,000	364,000	2,000	0	0
Rich and Rich	0	16,000	1,000	0	0	0
Simpson	125,000	0	0	0	0	0
Stockpile – Temporary	0	0	66,000	0	0	0
Advice - Riverside Suites	95,000	35,000	4,000	7,000	0	0
Advice - North Angels	0	7,000	4,000	0	0	0
Advice - Service Centre	0	0	37,000	0	0	0
Advice - Demolition	0	0	0	0	6,000	0
Advice – Verna Wall	0	0	0	0	12,000	0
Advice – 84 Kerr St	0	0	0	0	11,000	0
Advice – Grinberg	0	0	0	6,000	7,000	0
Advice / Insurance - Misc	44,000	43,000	24,000	53,000	22,000	6,000
<b>Sub Total</b>	<b>436,000</b>	<b>279,000</b>	<b>507,000</b>	<b>68,000</b>	<b>58,000</b>	<b>6,000</b>
<b>Property Legals</b>						
Ballina Surf Club – Land Claim	0	0	0	49,000	14,000	15,000
Gunundi	139,000	23,000	3,000	0	0	0
Homeworld	215,000	110,000	4,000	0	0	0
Lennox Head Comm Ctre	0	0	0	55,000	73,000	
<b>Sub Total</b>	<b>354,000</b>	<b>133,000</b>	<b>7,000</b>	<b>104,000</b>	<b>87,000</b>	<b>15,000</b>
<b>Water Legals</b>						
Oshlack – Fluoride	0	0	159,000	13,000	4,000	0
<b>Total Expenses</b>	<b>790,000</b>	<b>412,000</b>	<b>673,000</b>	<b>185,000</b>	<b>149,000</b>	<b>21,000</b>
<b>Expenses Recouped</b>						
Freedon	52,000	0	0	0	0	0
Jacobson / McMillan	103,000	0	0	0	0	0
Stubberfield	0	29,000	29,000	0	0	0
Gunundi	0	0	71,000	0	0	0
Homeworld	0	0	190,000	0	0	0
Ramada	0	0	8,000	0	0	0
Greenwood Grove	0	0	15,000	0	0	0
Stockpile Temporary	0	0	37,000	7,000	0	0
Miscellaneous	6,000	0	3,000	1,000	19,000	0
<b>Total Income</b>	<b>161,000</b>	<b>0</b>	<b>353,000</b>	<b>8,000</b>	<b>19,000</b>	<b>0</b>
<b>Net Cost</b>	<b>629,000</b>	<b>412,000</b>	<b>320,000</b>	<b>177,000</b>	<b>130,000</b>	<b>21,000</b>
<b>Fund Summary – Net</b>						
General Fund	629,000	412,000	161,000	164,000	126,000	21,000
Water Fund	0	0	159,000	13,000	4,000	0

The expenditure budget summary for 2013/14 is as per the following table.

Item	Budget	Actual	Balance
Planning Legals	100,000	6,000	94,000
Ballina Surf Club	15,000	15,000	0
<b>Total General Fund</b>	<b>115,000</b>	<b>21,000</b>	<b>94,000</b>
Water	0	0	0
<b>Total Budget</b>	<b>182,000</b>	<b>135,100</b>	<b>46,900</b>



## **10.13 Legal Matters - Update**

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With the judgment on the Oshlack case, the one remaining major legal matter, which is more an insurance claim, is the Lennox Head Cultural and Community Centre (LHCCC) professional indemnity claim.

In respect to this claim, arbitration proceedings re-commenced in June 2013, with the Arbitrator giving orders for the directors of GHP (the architect) to produce relevant documentation to the case, with the next hearing date set down for 18 July 2013. On 2 July 2013 Maddocks (Council's solicitor) received an "Offer to Settle".

That offer was not considered adequate and following discussions with Maddocks a counter offer was made. This offer has not been accepted and Maddocks are now liaising with the insurer's solicitor to determine a preferred settlement position or alternatively the next legal steps to be taken.

A confidential report will be submitted to Council once further advice from Maddocks is received.

### **Consultation**

This report is provided in open Council to ensure the community is informed on legal matters involving Council.

### **Options**

This report is provided for information purposes.

### **RECOMMENDATION**

That Council notes the contents of this legal matters update.

### **Attachment(s)**

Nil

## **10.14 Car Parking Contributions Plan**

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### **10.14 Car Parking Contributions Plan**

**Delivery Program** Governance and Finance

**Objective** To approve the exhibition of an updated Section 94 Car Parking Contributions Plan.

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#### **Background**

Council has Section 94 Car Parking Contributions Plans in place for the Ballina and Lennox Head town centres. Both of these plans were approved in 2004 and are due for review. In recent years Council has also purchased a property in Alstonville to assist with car parking and a new Section 94 Plan is required for that locality to assist Council recoup its expenditure on this property.

An updated Section 94 Car Parking Contributions Plan has now been prepared that provides a consolidated plan for Ballina, Lennox Head and Alstonville. A copy of that document is attached and the purpose of this report is to obtain Council approval to exhibit the draft Plan for public comment.

#### **Key Issues**

- Works program in plan
- Charges

#### **Information**

GLN Planning Pty. Ltd., previously Newplan Pty. Ltd., has assisted Council in recent years to undertake reviews of our Roads, Open Spaces and Community Facilities and Heavy Vehicles Section 94 Plans.

GLN has now completed a review of our Car Parking contributions plans and a copy of the consolidated plan for Ballina, Lennox Head and Alstonville is included as an attachment to this report.

Section 94 Car Parking Contribution Plans allow developers of commercial properties, in defined areas, to pay cash contributions, at a set charge, where they are unable to provide the necessary car parking on their commercial developments.

It often may not be practical to provide the necessary car parking on the property being developed and, at times, a better planning outcome can be for the consent authority (i.e. a council) to collect cash contributions to provide centralised car parking facilities.

## **10.14 Car Parking Contributions Plan**

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Car parking contributions plans are primarily relevant for town centres as the parking to be provided is readily accessible to the property being developed. The development can often provide some car parking on the actual property and then provide cash contributions for any shortfall in the car parking they are required to provide. The most recent example of this was the “Little Woolies” development where the developer was required to pay cash contributions equivalent to 34 car parks.

In respect to the attached Section 94 plan there are essentially three separate plans within the one document; for Ballina, Lennox Head and Alstonville.

For each of those areas there is a contribution rate per car parking space, a defined works program and an identified area within which the Plan operates.

Details for each locality are as follows.

### **Ballina Central Business District**

The locality for this plan is shown in Figure 1-1 (page three of the plan), which is the area zoned business in our LEP for the Ballina town centre. Commercial properties that redevelop within this defined area are eligible to make cash contributions under this Plan.

A summary of the works program that will need to be delivered by Council for Ballina is included in Table 3-1 (page 26). Briefly that works program involves:

- construction of car parking, including ancillary facilities such as public toilets, on the two properties Council has recently purchased at 74 and 78 Tamar Street – Even though this work is already underway Council is entitled to recoup the cost of that work from this Plan
- acquisition of an additional property in Tamar Street along with the construction of car parks on that property. The property has not been defined in the Plan and as per 74 and 78 Tamar Street it will be a matter of Council locating a property on the market, when there are sufficient funds in the Plan, to allow the property to be acquired
- development of the already approved and acted upon consent for the multistory car park on the existing Wigmore Car Park. This is the design that has previously been approved by Council and as the original consent has been acted on the consent remains valid in perpetuity.

This Section 94 Plan operates by identifying the cost of the works program and then dividing that cost by the number of car parks to be provided as part of the works.

As per Table 3-1 the current value of the works program is \$7,990,000 with 340 spaces to be provided. This equates to a car parking contribution rate of \$23,500 per space as per Table 1-1 (page two). This is actually less than the current contribution rate of \$27,319.

The contribution rate is indexed each year to ensure that the monies collected keep pace with development costs.

## **10.14 Car Parking Contributions Plan**

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Importantly this Car Parking Contributions Plan, as per the existing Plan, does not require any apportionment to Council (i.e. contribution to the works from Council). This means any works undertaken are 100% funded by the developer contributions collected.

Many of our other Section 94 Plans such as Roads, Open Spaces and Community Facilities require a contribution from Council to the works as the facilities are typically used by both existing and future populations.

For Car Parking, as there is a direct nexus between the shortfall in car parks being provided by the developer on the property being developed and the number of car parks needed, Council is able to levy 100% of the cost of the required car parking to the developer.

### **Lennox Head**

The locality for this plan is shown in Figure 1-2 (page three of the plan), which again is the commercial centre of Lennox Head from Rutherford Street to the Lennox Point Hotel.

The works program for Lennox Head is included in Table 3-2 (page 27).

Briefly that works program is as follows:

- Park Lane Redevelopment – In recently reconstructing Park Lane Council provided an additional 19 car parking spaces. The provision of these additional spaces was included in the existing Lennox Head Car Parking Plan and to date Council has only recouped the cost of 10.89 of those spaces from the Plan. This means we are still entitled to recoup the balance under this new Plan (i.e. 8.11 spaces)
- 3 Byron Street – This is Council freehold land on which the Lennox Head Rural Fire Shed is currently located. This Plan recognises that Council will need to acquire additional land to relocate the fire shed and once that shed is relocated 3 Byron Street can be fully allocated to car parking. The Plan allows Council to recoup the cost of the additional land required for the fire shed, along with the cost of relocating and constructing the new shed.

As per Table 3-2 the current value of the works program is \$463,977 with 29 spaces to be provided. This equates to a car parking contribution rate of \$15,999 per space as identified in Table 1-1 (page two). This is actually less than the current contribution rate of \$18,246.

This Plan only allows for 29 spaces to be provided in Lennox Head, as the existing plan, which was adopted in 2004 has only seen contributions paid to date equating to approximately 11 spaces.

This highlights the overall slow rate of commercial development in Lennox Head, along with the fact that many developments have chosen to provide their car parking on site; often through underground car parking.

## **10.14 Car Parking Contributions Plan**

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The previous Plan was also far more stringent in respect to the need for developments to provide car parking on site whereas this Plan is silent on this issue, meaning that developers can choose to provide parking on site or alternatively pay cash contributions as per the Plan.

Generally the thinking behind this current Plan is that due to the close proximity of Park Lane and 3 Byron Street to the entire commercial precinct the Plan does not need to place any restrictions on the number of cash contributions that can be made for a development. Rather it will be a matter for the planning consent to determine the right balance of on and off site car parking.

This does raise some concerns that the relatively small number of car parks in the Plan (i.e. 29) could be exhausted quickly however if that does happen it will then be a matter for Council to develop a new plan with a new works program. That new works program would most likely reflect the acquisition of another property for the provision of extra car parking.

By structuring the new Plan in this manner Council is trying to create greater flexibility for developers to proceed with redevelopments, which often may be constrained by relatively small sized lots in the commercial centre of Lennox Head.

### **Alstonville**

The locality for this plan is shown in Figure 1-3 (page four of the plan). The works program for Alstonville is included in Table 3-3 (page 29).

Briefly that works program is as follows:

- 9 Commercial Road – This is land Council has previously purchased for car parking. The Plan allows Council to recoup the indexed cost of that purchase along with the car parking construction costs
- 13 and 15 Commercial Road – Council has had plans in place for a number of years for portions of these properties to be dedicated to Council as part of any redevelopment, to allow the construction of a complete car park, as shown in Figure 3-7. This Plan formalises those arrangements.

As per Table 3-3 the current value of this works program is \$1,014,589 with 60 net additional car spaces. This equates to a car parking contribution rate of \$16,910 per space as identified in Table 1-1 (page two). There is currently no Section 94 Car Parking Plan for Alstonville.

Similar to Lennox Head the creation of this Plan could potentially assist with the redevelopment of commercial properties particularly where the potential development may be constrained by small sized lots.

### **Sustainability Considerations**

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

## 10.14 Car Parking Contributions Plan

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- **Economic**

The provision of adequate car parking is an important factor in the functioning of town and village centres, especially in regional areas where public transport is limited.

### **Legal / Resource / Financial Implications**

The Car Parking Contributions Plan is designed to generate income to assist with the provision of car parking spaces. Importantly the Car Parking Plan has no apportionment to Council.

### **Consultation**

There has been significant internal consultation in preparing the Plan and the recommendation is to exhibit the document for public comment.

Council's Strategic Planning Section has also provided the following comment in respect to the nexus between the Car Parking Contributions Plan and the Council's Development Control Plan.

*The Ballina Shire Development Control Plan 2012 incorporates a number of provisions that relate to car parking requirements. In particular, the way in which provision of car parking credits is calculated and opportunity for off site car parking in relation to new development is documented in the DCP at present. Whilst these provisions will continue to operate if the s94 Car Parking Contributions plan is implemented, it is considered prudent that these provisions be reviewed having regard for the new s94 plan (if adopted). However, it should be noted that no urgency for such a review has been identified at present. That is, the existing provisions will remain relevant and functional. Therefore, it is recommended that this review be undertaken as part of a planned overall review of the DCP that is scheduled to commence in December 2013 (being a 12 month review of the DCP).*

Therefore the implications of the new Car Parking Contributions Plan will be considered in the next review of the Development Control Plan.

### **Options**

The options are to approve the exhibition of the draft Plan or amend the document. The Plan outlines strategies for the provision of additional car parking in Ballina, Lennox Head and Alstonville and the recommendation is to exhibit the document to seek feedback on those strategies.

### **RECOMMENDATION**

That Council approves the public exhibition of the draft Ballina Shire Car Parking Contributions Plan 2013 as attached to this report.

### **Attachment(s)**

1. Newplan- Ballina Car Parking - Section 94 Car Parking Contributions Plan (Under separate cover)

## **10.15 Annual Financial Statements - 2012/13**

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### **10.15 Annual Financial Statements - 2012/13**

**Delivery Program** Governance and Finance

**Objective** To obtain Council approval to exhibit the 2012/13 Financial Reports for public comment and to sign the certified statements for both the General Purpose and Special Purpose Statements.

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#### **Background**

Council must prepare financial statements for each financial year that are in accordance with:

- The Local Government Act 1993 (as amended) and Regulations
- The Australian Accounting Standards and professional pronouncements
- The Local Government Code of Accounting Practice and Financial Reporting
- The Local Government Asset Accounting Manual.
- NSW Government Policy Statement "*Application of National Competition Policy to Local Government*"
- Division of Local Government guidelines "*Pricing & Costing for Council Businesses: A Guide to Competitive Neutrality*".
- The NSW Department of Environment, Climate Change and Water guidelines.

Once completed and audited Council must resolve to exhibit the statements for public comment. Council must then consider the statements again (typically at the November ordinary meeting of council), together with submissions, and formally resolve to adopt the statements.

This report seeks Council approval to exhibit the annual financial statements.

#### **Key Issues**

- Financial results
- Council must be satisfied that the statements present a true and fair picture of the Council's financial position as at 30 June 2013.

#### **Information**

The Annual Financial Statements for the year ended 30 June 2013 have been completed and audited. A copy of the statements, together with the Auditor's Reports, are enclosed with this business paper for all Councillors. A copy of the statements is available for the public at the Customer Service Centre and Council's website.

The purpose of this report is to obtain Council's approval for the exhibition of the financial statements and to provide Councillors with an opportunity to discuss the information contained within the documents.

## 10.15 Annual Financial Statements - 2012/13

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Council must also provide approval for the Mayor, one other Councillor, the General Manager and the Responsible Accounting Officer to sign the statements confirming that, in the opinion of Council, the financial statements are fair and accurate. Copies of the two statements to be signed are attached to the end of this report.

Once the financial statements are approved the statements must be advertised for public comment. The statements must then be adopted at a meeting of Council not more than five weeks after the meeting where approval was provided to advertise.

Subject to Council approval to advertise at this meeting, the statements will be advertised and then presented, with any public comments received, to the meeting scheduled for Thursday 28 November 2013.

Council's auditor, Mr Kevin Franey, of Thomas Noble and Russell, will be present at the October meeting to provide an overview of the audit report and to answer questions regarding the Annual Financial Statements. The presentation is scheduled for 11am.

The documents enclosed with the business paper can be broken down into four main sections:

Part A	Auditor's Reports
Part B	General Purpose Financial Statements
Part C	Special Purpose Financial Statements
Part D	Special Schedules

Brief explanations for each of these items are as follows:

### **Part A – Auditor's Reports**

This includes the auditor's report on the general purpose financial reports and the special purpose financial reports. The auditors have listed the reports as drafts as the reports are considered draft until Council confirms its approval of the financial statements.

The Auditor has issued an 'unqualified report', which means that they are of the opinion that the financial reports represent a fair and accurate assessment of Council's financial position.

### **Part B – General Purpose Financial Statements**

These statements provide the consolidated operating result for 2012/13 and the consolidated financial position of Council as at 30 June 2013. The notes included with the statements provide details on income and expenditure, assets and liabilities. The notes also highlight the cash position of Council and identify which funds are externally restricted.

### **Part C – Special Purpose Financial Statements**

These statements are prepared as a result of National Competition Policy and relate to those aspects of Council's operations that are considered to be business activities.



**Part D – Special Schedules**

These schedules are prepared primarily for the Australian Bureau of Statistics and are used to gather information for comparative purposes.

**Sustainability Considerations**

- **Environment**  
This report encompasses Council's finances in total and as such has implications for environmental, social and economic outcomes.
- **Social**  
As above
- **Economic**  
As above

**Legal / Resource / Financial Implications**

Council is legally obliged to adopt the financial statements.

**Consultation**

No specific community consultation has been taken in respect to this report however the intent is to advertise the Draft Statements for public comment.

**Options**

Council may approve to exhibit or not exhibit the documents. As Council's auditor has approved the statements it is recommended that Council authorise approval.

**RECOMMENDATIONS**

1. That Council approves the signing of the statements that confirm the Annual Financial Statements are fair and accurate, by the Mayor, one Councillor, the General Manager and the Responsible Accounting Officer.
2. That Council authorises the exhibition of the Annual Financial Statements and Auditor's Reports for the year ended 30 June 2013, as attached to this report, for public comment.

**Attachment(s)**

1. Annual Financial Statements 2012/13 (Under separate cover)

## **10.16 Delivery Program and Operational Plan - 30 September Review**

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### **10.16 Delivery Program and Operational Plan - 30 September Review**

**Delivery Program** Governance and Finance

**Objective** To provide an update on the implementation of the adopted Delivery Program and Operational Plan.

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#### **Background**

Under the Integrated Planning and Reporting requirements Section 404 (5) of the Local Government Act states as follows:

#### ***Delivery Program***

*"The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months".*

Even though Council is only required to receive six monthly progress reports the preferred practice has been to receive more timely quarterly reports. This report represents the first review of the 2013/14 - 2016/17 Delivery Program and the 2013/14 Operational Plan, with the information contained in the report based on work undertaken up to 30 September 2013.

The review information is included as a separate attachment to this report and the attachment provides an overview of all the programs included in the Delivery Program and Operational Plan, with comments provided by the relevant group and section manager.

In reviewing this information it is important to recognise that many of the benchmarks are based on the full 12 months, whereas the information included is only for three months of the year. Therefore a program can still be on track even though on a pro-rata basis it may appear behind, as a large part of the actions or work may be undertaken during the remainder of the year.

For reference purposes copies of the current Delivery Program and Operational Plan are available on Council's web site and also accessible by Councillors on their ipads.

#### **Key Issues**

- Compare actual results against the adopted goals and priorities

#### **Information**

The Delivery Program and Operational Plan are the two key corporate documents that establish Council's goals and priorities for the term of the Council and the current financial year. The attachment to this report provides a comprehensive overview of the actions being progressed, with the information also being linked to Council's Community Strategic Plan (CSP) Objectives.

## 10.16 Delivery Program and Operational Plan - 30 September Review

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The attachment has two main sections being:

- Program Actions - This section provides a comment on the status of all the major actions in the Operational Plan
- Service Delivery Targets - This section provides details on the key indicators within the Operational Plan.

Generally many of the actions are on track and the report highlights the wide range of activities undertaken by Council.

In respect to the Operational Plan there are a total of 89 major actions listed in the Plan and the following two tables provide an overview of the status of those actions on a number and percentage basis.

### Program Actions Overview - By Number of Tasks

Group / Status	GM	DEH	Civil	SCF	Total
Green	21	8	29	24	82
Amber	1	0	4	2	7
Red	0	0	0	0	0
<b>Total</b>	<b>22</b>	<b>8</b>	<b>33</b>	<b>26</b>	<b>89</b>

### Program Actions Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	95	100	88	92	92
Amber	5	0	12	8	8
Red	0	0	0	0	0
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

It is fair to say that many of the actions are showing as green (on track) as it is relatively early in the year and at this point in time there should be adequate time to ensure the projects are finished on time. Items not being shown as green include:

- Ballina and Alstonville Swimming Pools (page 5) – NO funding has been allocated to advance these projects.
- Indoor Facility for Ballina (page 5)- this is showing as amber as there still remain many unknowns in respect to the project and the Council is clearly split on the preferred option
- Review branding of Southern Cross and Russellton Industrial Estates - page 9) – Based on the existing workload for the Commercial Services Unit and the lack of any budget for this project limited progress is likely to be made during 2013/14
- Floodplain and Stormwater Management Plans (page 13) – Progress for both these projects remains slow due to either the technical nature of the work or the limited funding available
- Improve overall health of the Richmond River (page 14) – Council is limited in respect to the actions it can take, however we have allocated \$120,000 to Southern Cross University for their blackwater research.
- Provide recycled water to dual reticulated properties (page 15) – This project is behind schedule due to salinity concerns with the recycled water.

Pleasingly manner of the other 89 actions listed are underway and progressing well.

## 10.16 Delivery Program and Operational Plan - 30 September Review

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In respect to the Service Delivery Targets there is also a total of 89 targets identified in the Operational Plan and the following two tables provide an overview of how Council is performing against those targets, again on a number and percentage basis.

### Service Delivery Targets Overview - By Number of Activities

Group / Status	GM	DEH	Civil	SCF	Total
Green	19	18	23	11	71
Amber	4	1	4	1	10
Red	1	2	1	1	5
Unknown or N/A	0	0	3	0	3
<b>Total Tasks</b>	<b>24</b>	<b>21</b>	<b>31</b>	<b>13</b>	<b>89</b>

### Service Delivery Targets Overview - By Percentage

Group / Status	GM	Regulatory	Civil	SCF	Total
Green	79	86	74	85	79
Amber	17	5	13	8	11
Red	4	9	3	7	6
Unknown or N/A	0	0	10	0	4
<b>Percentage Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

In respect to these services most are on track as per the agreed targets with the only variances of note being:

- Asset Management – Percentage of DA referrals completed within 21 days – 41% (target > 70%) (page 24) – This is the Development Engineering assessment section of Council and it remains a key area where improvements need to be made either in processes or the addition of extra resources to meet the agreed benchmark.
- Commercial Services (airport and property – page 25) – There are amber indicators for some targets reflecting the commercial nature of those services.
- Environmental and Public Health (page 27) – The major concern is the slow progress being made on the on site effluent system inspections. Unfortunately this reflects the difficulty of the task and the fact that there is only one employee allocated to the project.
- Human Resources and Risk Management (page 28) – Two major workers compensation claims continue to increase our total compensation hours.
- Water and Wastewater (page 31) – A number of the indicators are tracking below the target figures, however this tends to somewhat reflect what are ambitious targets

In summary this is only a brief snapshot of Council's performance and it is early in the year and subject to further change.

### Business Rate Differential

Council resolved to support an application to the NSW State Government, through IPART, for an additional business rate of 8% at the June 2013 Ordinary meeting. This application relates to the 2014/15 financial year and the additional revenue forecast from that increase was included in our long term financial plan.

## **10.16 Delivery Program and Operational Plan - 30 September Review**

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Council staff have been working with the Alstonville, Ballina and Lennox Head Chambers of Commerce to commence the consultation with the business owners who will be liable for this charge. The current time frame is that correspondence will be forwarded to all business owners in early November with feedback to Council and the Chambers due by early December.

Following the collation of this feedback a report will be presented to the January 2014 Ordinary meeting to determine whether Council wishes to formally apply to IPART for the variation. All applications to IPART for 2014/15 must be submitted by 24 February 2014, with the decision then announced in mid June.

In discussions with IPART they have advised that the application process now makes it mandatory for councils to have the details of any application included in both their adopted long term financial plan and Delivery Program.

In respect to our documents the information was included in our long term financial plan however there is no specific reference to this proposal in our Delivery Program. This being the case it is recommended that Council approve the exhibition of an amendment to our Delivery Program to make reference to this special variation. Any exhibition to the Delivery Program must be for a minimum of 28 days.

This amendment can be exhibited at the same time the consultation with the property owners is occurring with the report to the January 2014 Ordinary meeting then including formal adoption of the revised Delivery Program, assuming Council resolves to proceed with the application.

### **Sustainability Considerations**

- **Environment**  
There is a range of environmental, social and economic outcomes identified in the Delivery Program and Operational Plan.
- **Social**  
As above.
- **Economic**  
As above.

### **Legal / Resource / Financial Implications**

The Delivery Program and Operational Plan identifies the allocation of Council's resources and finances.

### **Consultation**

The purpose of this report is to provide the community with information on how Council is performing in respect to the Delivery Program and Operational Plan.

## **10.16 Delivery Program and Operational Plan - 30 September Review**

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### **Options**

This report provides an overview of the performance of Council to the end of September 2013. It is still relatively early in the financial year and no major issues have been identified to date.

The only change proposed is the exhibition of an amendment to our Delivery Program to incorporate a reference to the proposed application for a variation to our rate income for business properties.

### **RECOMMENDATIONS**

1. That Council notes the contents of the 30 September 2013 review of the Delivery Program and Operational Plan.
2. That Council approves the exhibition of an amendment to our Delivery Program to include references to the proposal to apply for an 8% variation to our rate income from business properties for business promotion and development activities.

### **Attachment(s)**

1. Delivery Program and Operational Plan - 30 September 2013 (Under separate cover)

## **10.17 Capital Expenditure - Quarterly Update**

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### **10.17 Capital Expenditure - Quarterly Update**

**Delivery Program** Governance and Finance

**Objective** To provide a quarterly status report on the delivery of the capital works included in the 2013/14 Operational Plan.

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#### **Background**

Council has a major capital expenditure 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 comprehensive 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 for the first quarter of the 2013/14 financial year (i.e. to 30 September 2013).

#### **Key Issues**

- Status of works

#### **Information**

To assist in understanding the likely delivery timeframes for the capital works the attachments to this report provide information on the following items:

- Original Budget - represents the budget as per Council's adopted Operational Plan
- Carry Forward - represents budgets carried forward from the previous financial year that were approved by Council at the August 2013 Ordinary meeting
- Approved Variations - Variations previously approved by Council resolution either through a Quarterly Budget Review or a separate report on a particular project. As the September budget review is included elsewhere in this agenda items recommended in that review have been included in this column on the assumption they will be approved.
- New Variations – Represents further changes recommended on top of the September quarterly review.
- Latest Estimate - Sum of the original budget plus budget changes
- Expenditure to Date - Expenditure to date of report
- % 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.

The attachments are split into the main functional sections within Council undertaking the works: i.e. Open Spaces, Engineering Works, Operations Support, Commercial Services, Water, Wastewater and Waste.

## **10.17 Capital Expenditure - Quarterly Update**

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Points of interest in respect to the attachments are as follows.

### ***Open Spaces***

The major works to be completed this year relate to:

- Porter Park – consultation process underway to confirm works
- Play Equipment (various) – Procurement process well advanced
- Fripp Oval and Skennars Head – Drainage – Quotations for this work are being assessed. Pleasingly the preliminary quotations for Fripp Oval, which was the original priority for 2013/14, are well under budget which has allowed some of the original funding to be transferred to Skennars Head, which brings this project forward from 2014/15. The balance of the funds has been used to purchase an aerator to assist with the maintenance of the sports fields as this equipment was previously hired by Council
- Wollongbar Sports Fields – Council has received regular updates on this project.

### ***Engineering Works***

#### *Drainage*

The drainage program remains under review as on-going failures in systems result in staff having to reallocate the available funding to those urgent works.

#### *Urban and Rural Roads*

Main priorities at the moment are the Compton Drive re-alignment and associated car park for the Ballina Surf Club, with the construction of Ballina Heights Drive also progressing well.

The new variation figure for the Ballina Surf Club car park, of \$190,000 resulting in a total budget of \$400,000 represents the latest cost estimate as presented to the Commercial Services Committee meeting held 15 October 2013, with the minutes for that meeting included elsewhere in this business paper.

#### *Ancillary Transport Services*

The new variations column includes the reversal of the \$378,000 allocated for the Wardell Town Centre board walk project. The total cost of this project is in excess of \$500,000 and the project cannot proceed until the additional funds are allocated or grant funds are obtained. Therefore the funds are being transferred back to an internal reserve until those additional funds are available.



## **10.17 Capital Expenditure - Quarterly Update**

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The other variation is an additional \$35,000 for the Ballina Town Centre. This funding is the estimate to undertake tree management works on the northern side of River Street (Moon to Cherry) to enlarge the existing garden beds, install root barriers, trace roots and relay pavers, reposition furniture and mulch and plant. The southern side works cost \$45,000 but the root intrusion was for more extensive on that side.

The \$35,000 is being funded from a Civil Works Contingency Reserve and was not included in the September Quarter Financial Review report earlier in this agenda.

### *Shared Paths and Footpaths*

Planning consent needs to be obtained to allow the majority of the shared path projects to be advanced. As reported in the September financial review report earlier in this business paper, the NSW State Government has provided a grant of \$300,000 to be matched by Council to construct the segment of the coastal shared path from North Angels Beach to Headlands Drive.

The September review includes an internal reallocation of Council funds of \$300,000 to match that grant and the figures in the Engineering Works attachment reaffirm that allocation.

It has been continually stated that once planning consents are obtained Councillors will then need to determine how the funding available for the shared path is to be allocated, as there is a diverse range of opinion as to which segments should have the highest priority. When (and if) the planning consents are issued it will also be necessary to examine the consents to determine the actual cost of the works to meet any conditions associated with those consents.

The State Government, in approving this funding of \$300,000, has recognised that North Angels Beach to Headlands Drive, should be one of the least problematic segments in obtaining planning consent and undertaking the works and this section does provide an important connection from Ballina to the Headlands Estate.

Even though the Council funding has been allocated to this segment in the September review, no works will be undertaken until Council confirms its priorities following the receipt of any planning consents.

### ***Operations Support***

The two major projects in this section being the Ballina Sports and Leisure Centre and the Marine Rescue Tower are still in the concept or design phases.

The majority of the funding for the Marine Rescue Tower has been pushed back to 2014/15 as reported to the Commercial Services Committee meeting held 15 October 2013. Similarly the major pool works have been deferred to 2014/15 in our long term financial plan as they are dependent on land sales and those sales currently appear unlikely for 2013/14.

## **10.17 Capital Expenditure - Quarterly Update**

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### ***Commercial Services***

The capital works for the airport are largely underway with the new variations column including a number of reallocations for the existing funding, to reflect the latest estimates for those works.

The insurance payment of \$75,000 has been included for the Fawcett Street café to provide the actual total budget for these works.

The changes in the new variations column for the Russellton Industrial Estate, Wollongbar Urban Expansion Area and the Ballina Surf Club represent the revised cash flows as reported to the 15 October Commercial Services Committee meeting.

### **Water, Waste and Wastewater**

The major expenditure for these programs relates to the Treatment Plant Upgrade contract for Ballina and Lennox Head being delivered by Haslin Pty. Ltd and the dual reticulation construction contract being delivered by MMA. Pty. Ltd.

In respect to Waste, the current budget includes \$705,000 for the Biochar project with this project still in the feasibility stage.

### **Sustainability Considerations**

- **Environment**  
Many of the works listed provide 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**

The report provides financial information on the capital works program.

### **Consultation**

This report is presented for public information.

### **Options**

As per the following table there is once again an extremely high level of capital expenditure forecast for 2013/14.

**Capital Works Summary – 30 September 2013 (\$'000)**

<b>Section</b>	<b>Budget (%)</b>	<b>Expended (%)</b>	<b>Percentage</b>
Open Spaces	5,124,000	233,700	5
Engineering Works	20,961,900	2,614,800	12
Operations Support	4,006,800	616,400	15
Commercial Services	9,020,300	1,073,600	12
Water	3,280,300	194,700	6
Waste	1,314,800	69,000	5
Wastewater	12,893,200	1,370,800	11
<b>Total</b>	<b>56,601,300</b>	<b>6,173,000</b>	<b>11</b>

With 25% of the year gone and only 11% of the budget expended there are concerns that some of the planned works will not be completed this year. However, in saying this, a number of procurement activities have either been completed or are well advanced which is now allowing a high level of works to be currently undertaken by either internal labour or contractors. Further updates on the status of the various works will be presented to Council as the year progresses.

In respect to budget changes, the only items listed in this report that have not been previously identified in the September Quarter Financial Review report, or the minutes of the Commercial Services Committee meeting held 15 October 2013, are the internal adjustments for the Ballina airport, the deferral of the Wardell Board Walk, \$35,000 for the Ballina town Centre and the recognition of the insurance claim monies for the Fawcett Park Cafe. The recommendations that follow include approval to amend the budgets to reflect this latest available information.

**RECOMMENDATIONS**

1. That Council notes the contents of this report on the status of the capital works program
2. That Council approves the inclusion of the latest financial information, as per the attachments to this report, in our long term financial plan.

**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 (one page - 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 Tender - Provision for Asphalt**

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### **11. Civil Services Group Reports**

#### **11.1 Tender - Provision for Asphalt**

**Delivery Program**      Engineering Works

**Objective**              To provide Council with the results of Tender RFT 689 for the Provision of Asphalt Pavement Repairs, Seals and Asphalt Overlays

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#### **Background**

This tender is for rehabilitation work on the old Pacific Highway (Kerr Street and Tamarind Drive), north of Ballina, and resurfacing on Byron Bay Road, at Broken Head.

Tenders were advertised for the Provision of Asphalt Pavement Repairs, Seals and Asphalt Overlays, closing on 8 October 2013. The seals that are to be used are bitumen seals applied to the existing road surface before the application of an asphalt overlay. They are applied where it is necessary to seal cracks in the existing bitumen seal.

The following tenders were received:

- Boral Asphalt
- Clark Asphalt P/L
- Tropic Asphalts P/L

This report outlines the tender assessment and the preferred tenderer.

#### **Key Issues**

- Engage a suitably qualified and experienced contractor to undertake the works.
- Award the contract in accordance with the Local Government (General) Regulations 2005.

#### **Information**

On completion of the Ballina Bypass, Roads & Maritime Services (RMS) handed Council responsibility for the sections of the Pacific Highway that were replaced by the bypass. As previously reported to Council, under the handover agreement, RMS provided a lump sum to Council to cover the estimated cost of maintenance of the old highway for a period of ten years. This tender covers the pavement patching and resurfacing on Kerr Street and Tamarind Drive which was included in the lump sum. The estimated cost of this work at handover was approximately \$2.2m.

The tender also includes resurfacing work on Byron Bay Road at Broken Head, which is funded by an RMS Road Safety grant. The location of this work has been the site of a number of recent accidents, including a fatality in 2012. The total amount of the grant is \$637,000, which includes heavy patching, resurfacing and associated signs and line marking.

## 11.1 Tender - Provision for Asphalt

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The tender documents separated the works into three separable portions. Each portion is a discrete project which has individual characteristics. The portions are:

1. Separable Portion A – Kerr Street and Bangalow Road. Because of the high traffic volumes and commercial activity at this location, the work will be done at night.
2. Separable Portion B – Tamarind Drive, from North Creek Road to Deadmans Creek Road. This work will be undertaken during the day, commencing at 9.00am to allow for morning peak traffic.
3. Separable Portion C – Byron Bay Road at the Byron Shire boundary  
This work will be undertaken during the day, commencing at 9.00am to allow for morning peak traffic.

Having separable portions enables Council to accept tenders from different contractors for each portion.

The tenders received are listed below. All tenderers have satisfactorily undertaken similar work for Council previously.

### Separable Portion A

1. Tropic Asphalts P/L	\$537,250
2. Boral Asphalt	\$661,420
3. Clark Asphalt P/L	No Tender

### Separable Portion B

1. Clark Asphalt P/L	\$1,246,738
2. Boral Asphalt	\$1,343,874
3. Tropic Asphalts P/L	\$1,808,421

.

### Separable Portion C

1. Boral Asphalt	\$392,700
2. Tropic Asphalts P/L	\$599,600
3. Clark Asphalt	No Tender

The tender from Tropic Asphalts P/L includes a condition that it is “based on establishing and commissioning a mobile asphalt batch plant in the area”.

During the post tender review, the company advised Council that, due to the cost of establishing a mobile asphalt plant, its rates depend on being awarded the tender for all separable portions. If that is not the case, they have advised that they will not proceed with the tender.

## 11.1 Tender - Provision for Asphalt

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Tropic Asphalts P/L is not the lowest tenderer for Separable Portions B and C. Therefore, based on the above advice, the company will not proceed with the tender and the tenders from Boral Asphalt become the only tenders received for Separable Portions B and C.

The total tendered amount for Separable Portions A and B, excluding Tropic Asphalts P/L, is \$1,908,158 and the amount available from the RMS handover lump sum is \$2,230,925.

For Separable Portion C, the resurfacing and heavy patching component of the RMS Road Safety grant is \$463,000.

### **Sustainability Considerations**

- **Environment**  
All contractors are required to operate in accordance with an environmental management plan.
- **Social**  
This tender assists in the maintenance of the road network and thereby support the community's transport needs.
- **Economic**  
This tender provides competitive prices for materials used in the maintenance of the road network, an essential asset for economic development.

### **Legal / Resource / Financial Implications**

This report aims to assist Council to meet its statutory and other legal obligations. Purchases made utilising this tender will be costed against applicable project and program budgets.

The tender results are less than the estimates.

### **Consultation**

A public tender process was conducted.

### **Options**

Under the Local Government (General) Regulations 2005, Council must either accept the tender that "appears the most advantageous" or decline to accept any tender.

It is recommended that Council accept the lowest priced tender received for each separable portion, except that from Tropic Asphalts P/L, for Separable Portion A, for the reasons outlined in the report.

**RECOMMENDATIONS**

1. That, in relation to Tender RFT 689, Council accepts the tender from Boral Asphalt P/L, in the amount of \$661,420, for the Provision of Asphalt Pavement Repairs and Asphalt Overlays on Kerr Street and Bangalow Road (Separable Portion A).
2. That, in relation to Tender RFT 689, Council accepts the tender from Clark Asphalt P/L, in the amount of \$1,246,738, for the Provision of Asphalt Pavement Repairs, Seals & Asphalt Overlay on Tamarind Drive (Separable Portion B).
3. That, in relation to Tender RFT 689, Council accepts the tender from Boral Asphalt P/L, in the amount of \$392,700, for the Provision of Asphalt Pavement Repairs and Asphalt Overlays on Byron Bay Road (Separable Portion C)
4. That Council authorises the Council seal to be attached to the contract documents for the approved tenders for Tender RFT 689.

**Attachment(s)**

Nil

## **11.2 Playground Upgrade and Renewal Program**

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### **11.2 Playground Upgrade and Renewal Program**

**Delivery Program** Open Spaces and Reserves

**Objective** To seek Council's response to a draft playground upgrade and renewal program.

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#### **Background**

For many of its assets, Council has adopted upgrade programs. This approach represents good governance as it establishes an assessment process to determine the priority for projects, considers what can be achieved for the available budget and allows Councillors and staff to respond to requests from the community.

Upgrade programs are incorporated into Council's Delivery and Operational Plans. However the annual budget adoption process remains available for Council to review the annual allocation of work and make any desired adjustments.

Examples of upgrade plans include the Pedestrian Access and Mobility Plan (PAMP), the Streetlighting Upgrade Program, and Road Pavement Renewal Program.

In 2007 a "Play Equipment Installation Program" was adopted by Council. This program was in response to an earlier need to remove many of the old playgrounds that had been constructed from "Koppers Logs". This type of construction did not meet the Australian Standard and at many locations the equipment was splitting exposing splinters and nails.

The removal and replacement of these playgrounds originally commenced in 2002 and the 2007 plan is now essentially fully implemented. However, many of the items that were installed only have an economic life of around ten years, subject to adequate maintenance and the impact of climatic conditions. This means many of these assets, based on a condition assessment, already require replacement or will in the near future. Furthermore, an assessment has been undertaken in regards to the future demands for playground equipment in the Shire and this has identified some needs for additional equipment to be installed.

The purpose of this report is to present to Council a new plan for the renewal and upgrade of its playground equipment.

#### **Key Issues**

- Plan priorities



## 11.2 Playground Upgrade and Renewal Program

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### Information

Attached to this report is a document entitled "Play Equipment Report". This report discusses the findings of an inspection program undertaken of the Shire's playgrounds.

This inspection has determined the future renewal needs for the existing assets. Also demand for new equipment installations is reported.

The report indicates that there are 59 parks in Ballina Shire that have been identified as appropriate for play equipment. The report discusses the criteria for this assessment, including a hierarchical classification system for the parks.

In summary, the report recommends the following expenditure is required for the playgrounds. The locations and details for each project are set out in the appendices to the report.

Timeframe for Replacement Works	Total Funding Liability
Parks that require play equipment	\$255,000
Parks requiring attention within the next 5 years	\$621,000
Parks requiring replacement in the next 5 -10 years	\$664,000
Parks requiring replacement in the next 10 - 15 years	\$1,015,000
<b>Total Funding Liability : 2013 – 2028</b>	<b>\$2,555,000</b>

The report also includes, at appendix six, a four year capital works program. The program has been designed based on the available funds, which for 2013/14 is \$144,000.

As recently reported to Council, an additional staff member has been employed in the Open Spaces Section. One of the reasons for engaging this resource is to enable playground maintenance work to be completed by a two person crew. This change is anticipated to provide economies of scale and other efficiencies to reduce the costs of the ongoing maintenance.

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
Playgrounds are essential for the health and social well being of the community.
- **Economic**  
Playgrounds are essential for the presentation of the Shire as desirable place for residents and visitors.

### Legal / Resource / Financial Implications

The proposed upgrade program has been established having regard to the available funds.

## **11.2 Playground Upgrade and Renewal Program**

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The report notes that based on the age and condition of the assets, it would be preferred if additional funds could be made available for the maintenance and renewal of these assets.

### **Consultation**

The recommendation to this report is for this plan to be placed on public exhibition.

### **Options**

The options for Council are as follows.

1. Place on exhibition the plan as presented.
2. Take no further action.
3. Amend the plan prior to public exhibition.
4. Adopt the plan as presented or amended.

Based on the technical assessment of staff, and the importance of community input, it is recommended the plan, as attached to this report, be placed on public exhibition.

### **RECOMMENDATIONS**

1. That Council approves the public exhibition of the draft Play Equipment Report, attached to this report.
2. That the Four Year Capital Works Program, being appendix six to the attached report, also be placed on public exhibition.
3. If no responses are received to the public exhibition the Play Equipment Report 2013 and the Four Year Capital Works Program, are considered to be adopted by Council without further reporting.

### **Attachment(s)**

1. Ballina Shire Play Equipment Report 2013

### **11.3 Developer Funded Infrastructure - Payment**

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#### **11.3 Developer Funded Infrastructure - Payment**

**Delivery Program** Water and Wastewater

**Objective** To obtain Council approval to make a payment to a third party for infrastructure works delivered in accordance with Council's Section 64 Development Servicing Plans.

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#### **Background**

On 26 June 2003 Council granted consent, with conditions, for the applicant (Ardill Payne and Partners) to "To undertake a Torrens Title subdivision to create 189 urban (residential) allotments being Stages 5-8 of the Ballina Heights Estate."

Condition of this consent stated "*...that a credit entitlement exists for spare sewer infrastructure capacity installed, over and above that required for the Ballina Heights Estate equivalent tenement calculation for the 753 lots as nominated in the Master Plan. Such credit entitlements exist for rising mains and spare pump station capacity. The method of calculation of the quantum of the credit entitlement is to be determined in consultation with Ardill Payne & Partners during the documentation of the near future Section 64 Developer Charges for Ballina Shire. No credit payment offset can be made by Council until the Section 64 Plan is adopted.*"

This condition provides two guiding principals:

- Payment to the applicant from Council for "over and above" infrastructure, and
- Establishing a relationship between the payment and the Developer Servicing Plan (2004)

The sewage infrastructure has now been completed and this report recommends that payment be made to Ardill Payne and Partners for the additional capacity as per the condition of consent.

#### **Key Issues**

- Equity to ensure that the developer is neither advantaged or disadvantaged due to this arrangement
- Transparency

#### **Information**

The infrastructure built by the Ballina Heights Developers allowed for sewerage conveyance for around 1,800 lots, which is approximately 800 more than that required for the Ballina Heights Estate.

The infrastructure that provides the additional capacity that can be used to service CURA A developments, is:

### 11.3 Developer Funded Infrastructure - Payment

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- Pump Station 2402, which pumps from Cumbalum Way to Lindsay Avenue
- Pump Station 2404, which pumps from Unara Parkway to Lindsay Avenue
- Pump Station 2401, which pumps from Lindsay Avenue to the Waste Water Treatment Plant.

This includes the relevant:

- Pumps and switchboards
- Pump wells
- Emergency storages (dry weather overflow)
- Rising mains
- Gravity mains (2403 only)

Following the completion of these works Ardill Payne and Partners (APP) and Council developed a process to confirm the reimbursement amount. This included the following.

- Ardill Payne and Partners (APP), on behalf of the developer, submitted their initial claim. The basis of the claim includes an apportionment on population projections and construction cost (copy of correspondence attached)
- APP initially provided a claim for reimbursement based on a population and construction cost split of 44% of the total \$2,063,934 for the relevant sewerage infrastructure. APP was then asked to reconsider their claim for reimbursement based on an assessment of the cost to provide infrastructure over and above that which would have been required for their development only. This new submission was assessed by Council staff and after an iterative process a final claim amount was prepared by APP. This process increased the value of the claim by approximately \$12,000 however it is considered that the revised assessment represents a process which is more closely aligned with the condition of consent for the development. The final claim amount is now \$929,598.
- The process by which the final claim amount was agreed upon was then checked by a second technical officer not involved in the process. This check confirmed the assessment outcome which has now been reviewed by the Group Manager Civil Services.

#### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
The up front construction of sewerage infrastructure for later stages of the development allowed for economies of scale during construction and would be expected to reduce the cost of servicing those properties.

### **11.3 Developer Funded Infrastructure - Payment**

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#### **Legal / Resource / Financial Implications**

Council currently has \$907,800 allocated for this purpose in the wastewater budget.

#### **Consultation**

The process of determining the final amount was developed in consultation with Ardill Payne and Partners and subsequently represents an 'agreed amount' between Council staff and Ardill Payne and Partners.

The process for determining the agreed amount has been reviewed by a Council staff member not involved in the process to ensure transparencies and has also been review by Council finance staff to check the validity of any financial assumptions in the claim.

#### **Options**

Council has the option of approving this claim or asking for a further review of the claim and the supporting information.

From a staff perspective there have been adequate checks and balances to support the claim and typically such a payment may have been authorized at a staff level. However due to the magnitude of the payment and the on-going discussions around CURA A it was thought appropriate to submit the information for Council to approval.

#### **RECOMMENDATION**

That Council, based on the contents of this report, approves the payment of \$929,598, being the reimbursement of the costs for the additional sewerage capacity provided by the Ballina Heights Developers, for the Ballina Heights Estate.

#### **Attachment(s)**

1. Letter from Ardill Payne & Partners

## **11.4 Development Servicing Plans - Adoption**

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### **11.4 Development Servicing Plans - Adoption**

**Delivery Program** Water and Wastewater

**Objective** To report on the response from the public exhibition of the updated Development Servicing Plans.

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#### **Background**

Council has completed a public exhibition period for the Development Servicing Plans (DSPs) for Water Supply and Sewerage Services pursuant to Section 64 of the Local Government Act (1993) and in accordance with the NSW Guidelines for Development Servicing Plans for Water Supply and Sewerage Services.

During the exhibition period two submissions were lodged with Council, one for each plan from Ardill Payne and Partners (APP). A copy of each submission is included as attachments one and two to this report.

The purpose of this report is to review the submissions and to consider endorsing the plans for lodgment with the NSW Office of Water.

The DSPs are extensive documents and have not been reproduced for the purposes of this report. Copies were provided with the report to the June 2013 Ordinary meeting and those documents are accessible on our website and also available on Councillor IPADs.

#### **Key Issues**

- Submission feedback

#### **Information**

The submissions received by Council for the DSPs fit into the following categories.

- Errors in the documentation
- Uncertainty about Council's Approach
- Concern with the potential for Council to over collect Developer Charges where the existing infrastructure was supplied by the developer (Ballina Heights sewerage)

Council technical staff have met with APP technical staff to discuss the issues raised in their submission. In this meeting an agreed understanding was formed concerning each of the issues raised, with the exception of one matter.

The third attachment to this report provides a summary of the issues where there was agreement.

The matter where there is still not agreement relates to the size, operation and cost allocation of PS3, a major sewerage transfer pump station in Cumabalum which services much of the development in this area.

## **11.4 Development Servicing Plans - Adoption**

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The description of this pump station and the surrounding existing assets in the DSP is inconsistent with APP's understanding of the servicing strategy for this area.

Rather than trying to outline the various technical details of this matter within this report, the preference of staff is to work with APP to clarify the operation of this pump station and the accuracy of existing infrastructure shown. Hopefully this will lead to a mutual understanding of the servicing strategy in this area.

It is likely that regardless of the outcome of those discussions, the impact on the Developer Charge will be immaterial. Adjustments to the plan later are possible and it is preferred to advance this project now to the next stage by making the required lodgment with the NSW Office of Water.

### **Sustainability Considerations**

- **Environment**  
The DSPs support the provision of infrastructure required to mitigate the impacts to the environment from population growth.
- **Social**  
The DSPs support the provision of infrastructure and services necessary to support desired social outcomes for the community.
- **Economic**  
DSPs are part of the framework to ensure the efficient delivery of infrastructure in response to population growth demands.

### **Legal / Resource / Financial Implications**

The Developer Charges are necessary to ensure that developers appropriately fund the construction of infrastructure that services development.

### **Consultation**

The DSPs were placed on public exhibition for a period that complies with the State Government Guidelines.

Council staff have recently become aware that one element of the consultation period has not complied with the Guidelines, namely that prior notice of the consultation period be provided to prescribed Developer Industry bodies. It is noted however, during the consultation period Council directly contacted developers and consultants that work with and within Ballina Shire, notifying them of the exhibition.

As there was only one firm making submission to the plan, it is possible that the issue of notifying prescribed Developer Industry Bodies may not prevent registration by the Office of Water.

## **11.4 Development Servicing Plans - Adoption**

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Staff are satisfied that those developers with an interest in this matter were sufficiently aware of the opportunity to review the plans and make a submission.

On this basis, it is recommended that Council endorse the plans and make the submission to the NSW Office of Water. If the Office requires further consultation then this can be undertaken and if necessary Council can reconsider its position in respect of the plans if further submissions are received.

Elements in these plans will change in the future and review processes are in place to accommodate required changes over time. These are complex documents dealing with some level of uncertainty and subjective opinions. For this reason, and having regard to the amount work and consultation undertaken to date, it is preferred for Council to adopt the plans at this point in time and monitor their operation.

### **Options**

1. That Council endorse the DPSs for registration with NSW Office of Water, subject to this endorsement including any amendments that arise from the finalisation with APP of the servicing strategy for the Cumbalum precinct. If, in the unlikely event this makes material changes to the contributions, staff will resubmit the plans to Council.
2. Prepare a further report to Council following the changes.

Option one is the preferred approach.

### **RECOMMENDATION**

That Council endorses the Developer Servicing Plans for registration with NSW Office of Water, subject to the inclusion of the amendments described in the third attachment to this report, along with a review and finalisation of the servicing strategy for the Cumbalum precinct, as outlined within this report.

### **Attachment(s)**

1. Wastewater Services - Ardill Payne & Partners
2. Water Services - Ardill Payne & Partners
3. Submission Summary and Council Response



12. Public Question Time

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**12. Public Question Time**

### **13.1 Notice of Motion - Protecting Council's Open Space**

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## **13. Notices of Motion**

### **13.1 Notice of Motion - Protecting Council's Open Space**

**Councillor** Cr Jeff Johnson

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I move that

1. Council notes with concern that over the last decade the amount of public open space held by local councils across NSW is reported to have fallen by 18.3%
2. A report be prepared by staff that looks at:
  - (a) Any change in the amount of public open space under Council control since 2001/02;
  - (b) Pressures on Council owned public open space; and
  - (c) A strategy for Council to maintain and increase the amount of public open space under its control.

#### **Councillor Comment**

In just the last 10 years the amount of open public open space held by local councils across NSW has reduced by almost 20%.

The most recent '[Measuring Local Government Performance Report](#)' (October 2013) by the NSW Government has reported that this loss of public open space may be due to increased population growth and financial pressures on councils.

I'm concerned that even though the Ballina Shire's population is expected to increase significantly over the next 20 years, Council doesn't appear to have a plan to increase the amount of public open space. Quite the contrary, public open space appears to be under-valued when compared to Council's other land holdings.

This motion seeks information about the decline/increase in public open space in the Ballina Shire and whether Council needs to have a plan/strategy for ensuring that as our population increases the amount of public open space also increases.

#### **Staff Comment**

This information is sourced from the Division of Local Government's (DLG) comparative information on NSW Local Government report for 2011/12, which was recently issued and is available on the Division's website ([www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)).

### 13.1 Notice of Motion - Protecting Council's Open Space

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The actual wording from page 12 of that document relating to this matter is as follows:

*Over this 10 year period, the amount of open space under councils' control has fallen by over 18%. This may be due, to some degree, to population growth and the resulting need for additional infrastructure at the expense of public open space, or alternatively it may be due to councils employing more sophisticated land management systems resulting in more accurate data.*

The DLG advise that the data for this comment was sourced from the Grants Commission returns prepared by councils. The definition of open space for that return is defined as:

*"URBAN OPEN SPACE" comprises all land WITHIN URBAN AREAS held in public ownership for present and/or intended future use as open space including parks, playing fields, bushland reserves, vantage points, and neighbourhood and trunk floodways.*

The DLG advises that the figures sourced from the Grants Commission for Ballina Shire Council for the purposes of compiling the comparative information report were as follows:

2001/02 – 754 hectares  
2011/12 – 716 hectares

A brief review of Council's Grant Commissions returns for the period in question provided the following results.

Year	01/02	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
Hectares	754	780	684	694	696	707	707	707	716

As per these figures between 2004/05 and 2005/06 there was a loss of almost 100 hectares in urban open space. Council's Geographic Information Systems (GIS) staff compile this information for the Grants Commission return and the advice from the GIS staff is that the change between 2004/05 and 2005/06 reflects a more accurate recording of this information with better GIS information available.

The GIS staff base their assessment of this information on the LEP zoning information and a quick examination of Council's Land Register by our Strategic Planning staff has identified that the actual land in the Shire that meets the above definition of open space is closer to 877 hectares. The reason for this is that a large number of open space areas actually don't have an open space zoning (i.e. many parks that form part of residential estates are zoned residential).

These figures highlight that the information produced by the DLG in this year's comparative data publication should be taken with some scepticism which is why they included the following comment in the report; i.e. *"or alternatively it may be due to councils employing more sophisticated land management systems resulting in more accurate data.*

### **13.1 Notice of Motion - Protecting Council's Open Space**

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Council does actually have a plan to increase the urban open space under its control through our adopted Section 94 Open Spaces Developer Contributions Plan. That plan, which forms part of the Ballina Shire Developer Contributions Plan 2008, outlines the various standards that Council requires for the dedication of open space.

In recent years land acquisitions such as the Wollongbar and Skennars Head Sports Fields, the expansion of existing areas such as Saunders Ovals and small park dedications in new residential areas such as Elevation (Lennox Head), North Angels (Ballina) and Ferngrove (Ballina) have all occurred due to the requirement for developers to either make a cash contribution or provide land as per our Section 94 Plans.

The real issue that Council faces is the political pressure to place community infrastructure on existing open space areas. The major examples of this during the last ten years include Porter Park (child care centre) and Treelands Reserve (community centre).

The report earlier in this agenda on the allocation of land to community groups tries to place some boundaries around this issue, but ultimately it will be a matter for the elected Council to determine whether they wish to allocate any open space to an alternative use.

#### **COUNCILLOR RECOMMENDATIONS**

1. Council notes with concern that over the last decade the amount of public open space held by local councils across NSW is reported to have fallen by 18.3%
2. A report be prepared by staff that looks at:
  - (a) Any change in the amount of public open space under Council control since 2001/02;
  - (b) Pressures on Council owned public open space; and
  - (c) A strategy for Council to maintain and increase the amount of public open space under its control.

#### **Attachment(s)**

Nil

## **14.1 Commercial Services Committee Minutes - 15 October 2013**

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### **14. Advisory Committee Minutes**

#### **14.1 Commercial Services Committee Minutes - 15 October 2013**

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##### **Attendance**

Crs David Wright (Mayor - in the chair), Jeff Johnson (arrived at 4.02 pm), Sharon Cadwallader, Keith Johnson, Susan Meehan, Ken Johnston, Paul Worth and Ben Smith.

Paul Hickey (General Manager), John Truman (Civil Services Group Manager), Rod Willis (Development and Environmental Health Group Manager), Steve Barnier (Strategic and Community Facilities Group Manager), Paul Tsikleas (Commercial Services Manager) and Sandra Bailey (Secretary) were in attendance.

There was one person in the gallery at this time.

#### **1. Apologies**

An apology was received from Cr Robyn Hordern.

##### **Absent**

Cr Keith Williams  
Cr Jeff Johnson

#### **RECOMMENDATION**

(Cr Ben Smith/Cr Paul Worth)

That such apology be accepted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson, Cr Keith Williams and Cr Robyn Hordern

#### **2. Declarations of Interest**

**Cr Paul Worth** – declared an interest in Item 4.2 – Residential Land Development – Wollongbar. (Nature of Interest: non pecuniary – he is the owner of land in the Wollongbar Urban Expansion Area). He will be remaining in the meeting while the matter is discussed and voting.

Cr Jeff Johnson arrived at the meeting at 4.02 pm.

#### **3. Deputations**

Nil

**4. Committee Reports**

**4.1 Tintenbar Quarry - Sale**

A **Motion** was moved by Cr Ben Smith and seconded by Cr Paul Worth

1. That Council approves the sale of the property (Lot 3 DP 532703 and Lot 1 DP 597343) by offering it for sale to each of the three adjoining property owners at the value assessed by the independent valuer, or greater.
2. The property is to be sold to the highest bidder, however if the independent valuation is not reached, any offers received are to be submitted to Council for final determination of the sale.
3. Council authorises the seal to be attached to the contract for sale for the property.

An **Amendment** was moved by Cr Jeff Johnson  
That Council offer the land for sale on the open market.

The **Amendment LAPSED**.

The **Motion** was **CARRIED**.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson

ABSENT. DID NOT VOTE - Cr Keith Williams and Cr Robyn Hordern

**RECOMMENDATION**

(Cr Ben Smith/Cr Paul Worth)

1. That Council approves the sale of the property (Lot 3 DP 532703 and Lot 1 DP 597343) by offering it for sale to each of the three adjoining property owners at the value assessed by the independent valuer, or greater.
2. The property is to be sold to the highest bidder, however if the independent valuation is not reached, any offers received are to be submitted to Council for final determination of the sale.
3. Council authorises the seal to be attached to the contract for sale for the property.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson

ABSENT. DID NOT VOTE - Cr Keith Williams and Cr Robyn Hordern

**4.2 Residential Land Development - Wollongbar**

**RECOMMENDATION**

(Cr Susan Meehan/Cr Sharon Cadwallader)

1. That, subject to gaining development consent, Council approves the development of stage one of the Wollongbar Urban Expansion development, as outlined in this report, comprising 15 serviced residential lots.
2. That Council take immediate steps to clear the land.
3. That the lot layout be reviewed in respect to the impact of the teak tree on the three current lots.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Johnson, Cr Susan Meehan, Cr Paul Worth and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson and Cr Ken Johnston

ABSENT. DID NOT VOTE - Cr Keith Williams and Cr Robyn Hordern

**4.3 Property Reserves - Future Cash Flows**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That Council approves the updated cash flows for the Council property reserves, as per attachments five to eight for inclusion in Council's long term financial plan.
2. That Council confirms that this includes an updated budget and funding source for the Ballina Surf Club.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth and Cr Ben Smith

AGAINST VOTE - Cr Jeff Johnson

ABSENT. DID NOT VOTE - Cr Keith Williams and Cr Robyn Hordern

**MEETING CLOSURE**

5.23 pm

**RECOMMENDATIONS**

That Council confirms the minutes of the Commercial Services Committee meeting held 15 October 2013 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

## 15.1 Mayoral Meetings

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

#### 15.1 Mayoral Meetings

**Councillor** David Wright

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Activities since the September 2013 Ordinary meeting:

<u>Date</u>	<u>Function</u>
27/9/13	Big Loo Line Up – Alstonville
28/9/13	Ballina Boat and Leisure Show
1/10/13	Visit Elizabeth McGregor – TAFE
2/10/13	Council Inspection of Dog Pounds
3/10/13	Meeting – Sister City link with Hiroshima
3/10/13	Port Ballina Taskforce
4/10/13	Meeting General Manager Richmond River County Council
4/10/13	Ability inc Advocacy Service Lennox Head - Welcome
4/10/13	Ballina Coastal Country Music Festival – Welcome
5/10/13	Alstonville Farmers' Market
5/10/13	Ballina Coastal Country Music Festival
6/10/13	Ballina Coastal Country music festival
6/10/13	Rotary Duck Race
9/10/13	Councillor Briefing – Maritime Naval Museum
10/10/13	Reserve Trust Meeting
10/10/13	Councillor Briefing – Coastal Recreational Pathway
12/10/13	Wollongbar School Fete
12/10/13	Alstonville Farmers' Market
14/10/13	Scope Quiet achievers Award
15/10/13	Commercial Services Committee
15/10/13	Councillor Briefing – Kingsford Smith Reserve Master Plan
16/10/13	Meeting re Duraplas
16/10/13	Wardell Progress Association
17/10/13	JRPP – Briefings
18/10/13	Las Balsas Meeting
18/10/13	Business Excellence Awards – Sponsors' Run Through
19/10/13	2013 Business Excellence Awards
21/10/13	Public Citizenship
23/10/13	NSW Grants Commission Visit
24/10/13	Rotary World Polio Day
24/10/13	October Council Meeting

#### **RECOMMENDATION**

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

#### **Attachment(s)**

Nil



16. Questions Without Notice

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**16. Questions Without Notice**

17. Confidential Session

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**17. Confidential Session**

Nil Items