



Notice of Ordinary Meeting

an Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Thursday 24 April 2014 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.

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 five 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.

Table of Contents

1.	Australian National Anthem	1
2.	Acknowledgement of Country	1
3.	Apologies.....	1
4.	Confirmation of Minutes.....	1
5.	Declarations of Interest and Reportable Political Donations.....	1
6.	Deputations	1
7.	Mayoral Minutes	1
8.	Development and Environmental Health Group Reports.....	2
8.1	DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina	2
8.2	DA 2011/506 - Section 96 - South Ballina Beach Caravan Park	77
8.3	DA 2012/452 - Section 96 - Men's Shed, Fishery Creek Road, Ballina	90
8.4	Development Consent Statistics - March 2014	96
8.5	Development Applications - Works in Progress - April 2014	97
9.	Strategic and Community Facilities Group Reports.....	102
9.1	LEP Amendment Request - 16 Tara Downs, Lennox Head	102
9.2	Cumbalum Precinct B Development Control Plan	106
9.3	Pacific Pines Development	118
9.4	Heritage and Culture Program - Update	130
10.	General Manager's Group Reports	134
10.1	Use of Council Seal	134
10.2	Investment Summary - March 2014	135
10.3	Councillor Attendance	140
10.4	Community Donations	142
10.5	Ballina Jockey Club - Ballina Race Day Cup 2014	144
10.6	Alstonville Community PreSchool	147
10.7	Council Owned Waterways - Structures	152
10.8	Section 94 Car Parking Contributions Plan	155
10.9	Local Infrastructure Renewal Scheme - Allocation of Funds	160
10.10	Waste Operations - Long Term Financial Plan	165
10.11	Legal Matters - Update	170
10.12	Policy (Review) - Pensioner Concessions - Rates and Charges	173
10.13	Policy (Review) - Commercial Activities on Public Land	177
10.14	Policy (Review) - Concealed Water Leaks	186
10.15	Delivery Program Review - 31 March 2014	192
10.16	Capital Expenditure Review - 31 March 2014	196
11.	Civil Services Group Reports	202
11.1	Procurement - Bus Shelter - Swift Street Interchange Upgrade	202
11.2	Water Service - 2 Ascot Place, Ballina	205
11.3	Local Traffic Committee Report - April 2014	209
11.4	Wastewater Treatment Plants Upgrade - Update	213
11.5	Policy (Review) - Private Structures on Public Land and Roads	219

12.	Public Question Time.....	222
13.	Notices of Motion.....	223
13.1	Notice of Motion - Pacific Highway Upgrade Woodburn to Wardell	223
13.2	Notice of Motion - Shared Pathway	224
13.3	Notice of Motion - Sailing Club Boat Ramp	225
14.	Advisory Committee Minutes	226
14.1	Finance Committee Minutes - 8 April 2014	226
15.	Reports from Councillors on Attendance on Council's behalf	234
15.1	Mayoral Meetings	234
16.	Questions Without Notice	235
17.	Confidential Session	236
17.1	Legal Matters - Cost Recovery - Fluoride Appeal	236

1. Australian National Anthem
 2. Acknowledgement of Country
 3. Apologies
 4. Confirmation of Minutes
 5. Declarations of Interest & Reportable Political Donations
 6. Deputations
 7. Mayoral Minutes
-

1. Australian National Anthem

The National Anthem will be performed by Sing Australia.

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 27 March 2014 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 March 2014.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil Items

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

8. Development and Environmental Health Group Reports

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Applicant	Planners North (on behalf of Reside@Ballina Pty Ltd)
Property	Lot 1 DP 499510 and Lot 10 DP 244352 No. 274 River Street, Ballina
Proposal	To undertake the following development: <ul style="list-style-type: none">• Demolition of the Existing Sundowner Motel and Restaurant;• Erection and Strata Title Subdivision of a Multi-Level Mixed Commercial and Residential Building (Shop Top Housing) with an Overall Height of 23.6m Australian Height Datum (AHD), comprising:<ul style="list-style-type: none">– Six Commercial Tenancies (Business and Retail Premises) at Ground Level facing River Street and the Richmond River,– A Restaurant at Ground Level facing the Richmond River,– 34 Residential Apartments (Dwellings) located on Levels Two to Six,– Two Levels of Car Parking and Site Access from Kerr Street;• The Dedication of Land for Foreshore Public Access, involving the Construction of a Public Walkway; and• Vegetation Management Works involving the Removal of One Norfolk Island Pine Tree
Effect of Planning Instrument	The land is zoned B3 Commercial Core under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council is in receipt of Development Application 2013/381 for Lot 1 DP 499510 and Lot 10 DP 244352, No. 274 River Street, Ballina, seeking consent for the Demolition of an Existing Motel and Restaurant and the subsequent Erection and Strata Title Subdivision of a Multi-Level Mixed Commercial and Residential Building with an Overall Height of 23.6m AHD involving the Dedication of Land for Foreshore Public Access (and the Construction of a Public Walkway therein) and the Removal of One Norfolk Island Pine tree.

This report seeks Council's determination of this development application. The key issues arising from the assessment of this application and requiring particular consideration in Council's determination of Development Application 2013/381 are:

- Compliance with the relevant statutory provisions (in particular building height – Ballina Local Environmental Plan 2012);
- Provision of adequate car parking and loading/unloading facilities;
- Appropriate public foreshore land dedication; and
- The issues raised in submissions as part of the exhibition/notification process.

Details of the proposal

Commercial Tenancies

The proposal involves the provision of six commercial tenancies, with a total area of 771m².

Five of the commercial tenancies will front River and Kerr Streets and will be set behind the existing Norfolk Pine Tree adjacent to River Street. The building is setback approximately 7.5 metres from the trunk of the tree (1.5 to two metres from the drip line), with a deck/elevated walkway and awning being 4.5 metres from the trunk of the tree.

A component of the commercial floor space (12.5 metre frontage) will be located on the front property boundary. Awnings (2.75 metre in width) are provided over the River and Kerr Street road reserves (and footpaths), however all steps and ramps will be provided on private property to provide access into the commercial tenancies.

The River and Kerr Street elevations of the commercial floor space are to consist solely of aluminium framed glazing.

The applicant has not nominated specific tenancy types (i.e. retail, commercial, office, café etc.).

The sixth commercial tenancy is to front the Richmond River (to the south and east) and has setbacks of minimum 16 metres (to the south) and 5.5 metres (to the east). An area of landscaped open space has been provided to the south of the tenancy, between the proposed building and the proposed public boardwalk. The applicant has not nominated this landscaped open space area for commercial use associated with this tenancy. Richmond River elevations of this tenancy are to consist solely of aluminium framed glazing.

Restaurant

A restaurant is to be provided as part of the development and this tenancy will front the Richmond River (both to the west and the south). The restaurant has an area of 201m² and has ground floor setbacks of eight metres (to the west) and 14 metres (to the south). The entry to this section of the development (which includes the restaurant and the lobby to access residential apartments) will have an awning which extends over the start of the boardwalk and the Kerr Street road reserve.

It was originally proposed that landscaping to the restaurant will include the provision of a private courtyard elevated 0.5 metres above the proposed public boardwalk to be utilised for outdoor dining and functions. However, as a result of changes made to the proposal, the applicant has not confirmed that this arrangement will continue.

Richmond River elevations of the restaurant are to consist solely of aluminium framed glazing.

Residential Apartments

The proposal involves the provision of 34 residential apartments (dwellings) comprising:

- Five x one bedroom apartments (located on Levels Two and Three of the building)
- 12 x two bedroom apartments (located on Levels Two to Six of the building)
- 17 x three bedroom apartments (located on Levels Two to Six of the building).

Four apartments (located on Levels Two, Three and Four of the building) have been designated as “Adaptable Housing” apartments – they have been designed such that they can be easily modified in the future to become accessible to both occupants and visitors with disabilities, if so required.

Each apartment has been provided with typical dwelling facilities [bedroom, bathroom, ensuite (excluding one bedroom apartments), kitchen, dining and living rooms etc.] and a balcony. Storage lockers are provided on each floor also. Apartments 13 and 14 (Level Three) have each been provided with a private unroofed grassed courtyard area.

All apartments are able to be accessed via the lobby off Kerr Street and the eastern section of the boardwalk.

A large north facing communal open space area for the residents has been provided on Level Three of the building. This area contains grassed, paved and deck areas, a pool, vegetable gardens and green arbour, a communal kitchen and barbeque area. The perimeter of this communal open space area is to be landscaped with two to three metre wide raised gardens.

A raised podium/courtyard garden area has been provided in the centre of Level Four of the building, which continues as an atrium through Levels Five and Six. The landscaping plans show that shade tolerant coastal rainforest plants including tall palms are to be planted in this area.

The elevations of the residential levels of the building are of contemporary design and comprise rendered block work, extensive glazing, vertical fixed screens, glass louvers and adjustable sliding shutters.

Two Levels of Car Parking and Site Access from Kerr Street

Car parking is to be provided on both the Ground Floor and Level Two of the development. 39 car parking spaces are to be provided on the ground floor (public accessible parking) and 66 car parking spaces are to be provided on Level Two (residents’ parking), being a total of 105 spaces overall.

Disabled car parking spaces have been provided on both levels (total of four spaces) and three x adaptable disabled parking spaces have been provided on Level Two.

Two driveways (seven metre wide combined entry/exit and six metre wide exit only) are to be provided off Kerr Street, in similar locations to that of the existing driveways.

On-street car parking is to be maintained along the Kerr Street frontage of the site, however is to be reconfigured to 60 degree parking. Plans provided with the application also show formalised parking being provided in the street adjacent to the River. The number of remarked on-street car parking spaces is 14 spaces.

Small Rigid Vehicles (SRVs) are proposed to service the commercial and restaurant areas via the ground level parking area. Garbage servicing is proposed via the street system with kerbside collection through a private waste collection company.

No provision has been made on site for servicing of the proposed development by Medium Rigid Vehicles (MRVs).

New footpath paving is proposed to be provided along both Kerr and River Streets.

Dedication of Land for Foreshore Public Access, involving the Construction of a Public Walkway

The plans for the development show a four metre wide timber boardwalk as being constructed along the river frontage of the land. The boardwalk area and the south eastern corner of the property, which contains an existing Pandanus tree, are proposed to be dedicated to Council. The total area of land is 541m².

The proposed boardwalk does include provision for a future pedestrian link to the site to the east.

The existing timber jetties along the southern and south eastern sections of the revetment wall are to be demolished.

Vegetation Management Works involving the Removal of One Norfolk Island Pine Tree

An existing Norfolk Island Pine Tree (25 metres in height) is proposed to be removed from the southern central area of the subject site. The application notes that a second Norfolk Island Pine Tree (25 metres in height), exists adjacent to the first tree, however its removal is 'exempt development' (as the tree is within three metres of an approved structure and under the general provisions of the Ballina Shire DCP 2012 may be removed without development consent).

The proposal is seeking to retain the existing Norfolk Island Pine tree (28m in height) adjacent to River Street. Landscaping plans for the development show this area to be a "Community Green Space", with an elevated walkway, timber bench seats, grassed and paved areas and bicycle parking. It is also noted on the plans that this space may provide for additional sculpture or art.

A Pandanus tree (three metres in height) is to be retained in the south eastern corner of the site and will be part of the land proposed to be dedicated to Council. The landscaping plans depict this area as being planted with low native groundcovers, with timber wharf seats on the edge of the timber boardwalk.

Description of the Subject Site

The subject site is located at the western entrance or 'gateway' to the Ballina Town Centre.

The site is relatively level and contains an existing motel development (Sundowner Motel) comprising 26 motel units, a restaurant/function room (By The River) with a floor area of 180m², a manager's residence and associated swimming pool and car parking area. The area of the subject site is 4,547m².

Three large Norfolk Island Pine Trees (ranging in height from 25 to 28 metres) are located on the site, the largest of which is located adjacent to the River Street frontage of the site. The other two Norfolk Island Pine Trees are located in the central/southern part of the site, adjacent to the restaurant/function room and south facing motel units.

The area of the site immediately adjacent to the Richmond River is undeveloped, comprising a grassed/lawn area. The site also contains a rock and concrete seawall along its southern, south-western and south-eastern boundaries.

It is noted that the subject site was included in a Major Project Approval (MP05_0009) granted by the former Department of Planning in June 2007. The land relevant to this approval spanned from west of the Ballina RSL car park to Kerr Street.

MP 05_0009 involved a staged mixed use (residential, tourist and retail) development comprising seven separate buildings, the tallest having a height of 19 metres (six storeys). The development included an 84 room hotel, 85 residential apartments (distributed over four buildings), an amenities building with a pool and gym and approximately 1200m² of ground floor retail space including a café adjacent to the Richmond River and basement car parking. The two buildings approved for the subject site (No. 274 River Street) were to be five storeys (hotel) and four to five storeys (residential apartments) in height.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition from 16 October to 31 October 2013. A total of 31 submissions were received, comprising 25 submission of support and six (including two letters from one resident) submissions raising concern or objecting to the proposed development.

The amended proposal was notified to those persons who made submissions raising concerns or objecting to the proposal from 3 March 2014 to 14 March 2014. It was advised as part of the re-notification process that previous submissions would still stand, unless otherwise stated. One additional submission was received as a result of the re-notification process.

The following issues of concern were raised within the submissions.

1. The height of the proposal is unacceptable.

Comment: An assessment of the height of the proposal is provided in the Ballina Local Environmental Plan 2012 section of this report.

2. The surrounding road network will not be able to handle the increase in traffic.

Comment: This matter has been considered by Council's Engineers who have concluded that the surrounding road network can handle the increase in traffic as generated by the proposed development. Refer to the Roads, Traffic, Access and Car Parking section of this report for further discussion.

3. Do we need more vacant retail premises?

Comment: The proposed commercial tenancies are appropriately located and permissible within the B3 Commercial Core Zone under the provisions of the Ballina Local Environmental Plan 2012. The commercial viability of the proposal is not a relevant planning consideration in the assessment of the application.

4. Solar impacts on surrounding properties.

Comment: The Ballina Shire Development Control Plan 2012 section of this report provides discussion in relation to solar impacts upon the property to the east of the site.

Issues have also been raised in relation to a motel development approved (but not yet constructed) to the west of the subject site, on the western side of Kerr Street. Given the location of the residential tower on the subject site (in the central/southern section of the site) and the distance between the residential tower and the approved motel site (some 30 or so metres), it is not considered that unreasonable solar access issues will occur for either the manager's residence within the motel development or the proposed motel units.

5. The proposal will remove all summer breeze from the approved motel development on the western side of Kerr Street.

Comment: It is considered that due to the separation between the two properties and the buildings located therein, as provided by Kerr Street (some 15 to 20 metres), it is unlikely that the proposal will impact unreasonably on summer breeze currently enjoyed by the property to the east.

6. Privacy impacts on surrounding properties.

Comment: Potential privacy impacts on the property to the east of the subject site has been discussed in the Ballina Shire Development Control Plan 2012 section of this report.

With respect to other surrounding properties and their existing or approved development (i.e. residential and tourist/motel uses), the communal open space area of Level Three of the proposed development has been designed such that residents will not be able to stand at the edge of the building and peer over to adjoining sites. This has been achieved through the provision of 2.5 to three metre wide planter boxes around the perimeter of this area.

The apartments have been designed to capture and focus on views of the Richmond River. In relation to balconies provided to the western facing apartments, these balconies are located adjacent to the Richmond River (and are set back from the property boundary), rather than facing actual properties. The balconies provided for north-west facing apartments are designed such that the main balcony area is provided on the northern elevation.

It is not considered that the proposal will result in unreasonable privacy impacts on surrounding properties.

7. Noise impacts on surrounding properties.

Comment: An assessment of the proposal has been undertaken by Council's Public and Environmental Section in relation to noise impacts resulting from the proposed development. Refer to the noise section of this report for discussion.

8. Camoola Ave should be made a one way street.

Comment: This matter has been previously considered by Council's Local Traffic Committee who are currently undertaking a 'mail box drop' of Camoola Street residents to determine what the best outcome should be.

9. Building mass and negative visual impact.

Comment: It is acknowledged that the size, scale and mass of the proposed development is different (significantly larger) to that of the existing motel and restaurant developments on the subject site.

In designing the proposal, it is considered that the architect has considered the existing scale of development to the north and west of the subject site, through the provision of a lower scale at both the northern and north-western areas of the site (appearing as a three storey building – two storeys and the communal open space area). The bulkier or larger area of the development has been concentrated in the centre and southern sections of the site, which

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

has given consideration to impacts surrounding properties, and to take advantage of the views to the Richmond River.

The mass of the building therefore is generally considered appropriate for the site. Refer to the Ballina Local Environmental Plan 2012 section of this report for discussion in relation to the height of the development.

From a visual perspective, it is considered that the proposed development presents as an attractive addition to the Ballina Town Centre and contains the appropriate components for a gateway site. The development has a scale which demonstrates that the subject site marks the entrance to the Ballina Town Centre (and has retained an important landscape element – Norfolk Island Pine tree).

The proposed development is of a contemporary built form and a range of materials and articulations have been utilised, including vertical fixed screens, glass louvres, adjustable sliding shutters, extensive balconies and a public artwork to reduce its bulk and scale. In this regard, it is considered that the proposed development will not have a negative visual impact.

10. Chemicals and ventilation from proposed car park and service area vents.

Comment: An assessment of this matter has been provided in the Venting of Level Two Car Parking Area section of this report.

11. View loss to surrounding properties.

Comment: It is acknowledged that existing views across the site will change as a result of the construction of the proposed development. In this regard, views that may be enjoyed from properties to the west of the site, to the east across this site, will change. For those properties that adjoin the Richmond River, these properties will still retain a view of the River, direct south and west, however this view will no longer extend east up to the RSL site and beyond as the proposed development will obstruct this view line.

From the location and orientation of properties to the west of the site, it is not considered that total view loss to the Richmond River will occur. All properties will maintain some view of the River. In this regard, it is not considered that the proposal will cause an unacceptable view loss to surrounding properties.

12. All pine trees should be retained.

Comment: An assessment in relation to the Norfolk Island Pine trees to be removed from the subject site has been provided in the Ballina Shire Development Control Plan 2012 section of this report.

13. Can the site area provide foundations capable of meeting all the criteria necessary to ensure its permanence?

Comment: This matter has been considered in Council's assessment of the proposed development and the geotechnical conditions of the site appear to be capable of supporting the proposed development. Further in depth consideration (and reporting) will be required in relation to this matter as part of the issue of a Construction Certificate by a Principal Certifying Authority (PCA) for the development.

14. Request advice as to whether the units are to be strata titled or intended as holiday accommodation?

Comment: The residential apartments will be strata subdivided and used for long term residential use. The development application does not seek any type of tourist approval.

15. Building a high rise residential development reaching seven stories is not the answer for the site.

Comment: The application seeks consent for a six storey development not seven. Refer to the Ballina Local Environmental Plan 2012 section of this report for discussion on the height of the proposed development.

Report

The proposed development has been assessed under the heads of consideration in Section 79 (C) of the Environmental Planning and Assessment Act 1979. The following matters are of particular relevance in Council's determination of the Application.

Applicable Planning Instruments

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides that contamination and remediation are to be considered in the determination of development applications.

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
- (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
 - (d) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (e) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The applicant has provided the following information in the Statement of Environmental Effects (lodged with the development application) in relation to land contamination.

“Soil testing was undertaken in association with the previously approved State Government approval. No dip sites or other historical uses of a contaminating kind (ANZECC, 1992 & DUAP, EPA 1988) have ever been known to have been located on this land. The Director General’s report assessing the previous approved development concluded that conditions of approval were adequate to ensure that this issue could be dealt with in an appropriate manner.”

Further to this, the applicant has stated (via letter dated 5 November 2013) that they are relying on the Preliminary Assessment undertaken for the State Government Approval MP05_0009 (Ballina Gateway Project).

The Preliminary Assessment that the applicant is relying on was not submitted with the subject development application.

Council’s Public and Environmental Health Section have provided the following comments in relation to SEPP 55 and the proposed development.

"The site has been previously approved for a large-scale mixed use development, "The Ballina Gateway Project". The Preliminary Site Investigation prepared by Coffey's (as submitted with that application) is being relied upon for this development application. This investigation indicates that the subject site would appear to be suitable for the intended use (residential and commercial landuses), however additional land contamination investigation is required in relation to the subject site, and if necessary, a Remedial Action Plan will need to be developed.

It is also noted that the full extent of land contamination cannot be determined until the site is cleared of structures and further detailed sampling is required as part of a Detailed Site Investigation. This additional sampling would be required to occur in conjunction with the demolition phase of the development.

The preliminary investigation prepared for the Ballina Gateway Project established the existence of tributyltin (TBT) in sediments below the slipway activities. As limited information has been submitted to Council in relation to the revetment wall and there is insufficient data to assess the vertical and horizontal extent of the TBT, additional sampling and analysis is required to be undertaken and submitted to Council as part of the Detailed Site Investigation. If the proposed development is granted development consent, this investigation would be required to be submitted prior to the issue of a Construction Certificate."

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

An assessment of the proposal has been undertaken with respect to State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65).

Under the provisions of SEPP 65, the proposed development may be defined as a **residential flat building**, which means a building that comprises or includes:

- (a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.

Clause 4 of SEPP 65 provides that the proposed development, therefore, is required to be assessed in accordance with the provisions of this policy.

The submitted documentation for the proposal complies with the requirements of Part 4 of SEPP 65 (as stated in the Environmental Planning and Assessment Regulations 2000), which has included the provision of a Design Verification Statement prepared by the registered architect responsible for the preparation of the proposed development.

Clause 30 (2) of SEPP 65 states:

(2) In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained in accordance with subclause (1), and*
- (b) the design quality of the residential flat development when evaluated in accordance with the design quality principles, and*
- (c) the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*

Comment: Refer to assessment below in relation to the Design Quality Principles and the Residential Flat Code.

Part Two of SEPP 65 sets out the “Design Quality Principles” that provide a basis for evaluation of the merit of the design of the proposed development.

Design Quality Principles

- Principle One: Context

Comment: It is considered that the design of the proposed development has given consideration to the context of the site and surrounding locality.

The site is located at the western entrance of the Ballina Town Centre, and as such marks a change in building controls, from low rise residential development, to higher rise commercial, tourist, mixed use development. The design of the proposal has considered this change in the built form and has provided a lower scale built form facing the north western corner and River Street (similar to existing commercial/retail development within the western area of the Ballina Town Centre), with the higher form (residential tower) located in the central and southern part of the site.

The design has also recessed the north western corner of the development around an existing Norfolk Island Pine tree, which includes a landscaped courtyard. The architect has stated that this will assist in forming a landmark gateway to the townships commercial precinct. It is also considered that the retention of the Norfolk Island Pine tree in this location will soften and reduce the impacts of the built form of the development.

- Principle Two: Scale

Comment: The proposed development will have the appearance of both a three storey development (at the River Street frontage) and a six storey development (along the Richmond River and the southern section of Kerr Street). The three storey design, principally involves the provision of two levels (ground floor and Level Two) with a four metre high steel mesh screen above, screening part of the second storey car parking level and the residential communal open space area on Level Three. The scale of this part of the development is considered to be consistent with the controls for the Ballina Town Centre.

The six storey component (ground floor plus Levels Two to Six) is provided in the central and southern sections of the site and exceeds the height provisions within the Ballina Local Environmental Plan 2012 (further discussion with respect to scale and height are provided in that section of this report). The applicant has stated that the residential tower has been positioned in order to maximize views of the river and solar access for occupants.

- Principle Three: Built Form

Comment: The architect for the proposal has provided that the arrangement for the built form of the development has been determined by the following:

- Preservation of the Norfolk Island Pine tree at the front of the site and encompassing the commercial/retail tenancies around the tree;
- Provision of a podium level to conceal the Level Two car park and provide a raised communal open space area for residents;
- Provision of a residential tower with an atrium to maximise natural solar access, ventilation and views of the Richmond River; and
- Provision of a public/pedestrian boardwalk along the Richmond River.

- Principle Four: Density

Comment: The proposed development results in a total of six commercial tenancies and a restaurant on the ground floor and 34 residential apartments above. The architect for the development has indicated that this can be seen to be a fairly low density, that is appropriate and sustainable, meeting expectations for this precinct of the town. It is noted that if the entire site was designed to Council's controls (in terms of height), the density of development would be a lot higher than is proposed as part of this application.

- Principle Five: Resource, Energy and Water Efficiency

Comment: A BASIX report has been submitted for the development, which has addressed this principle. The architect has commented that the design of the development incorporates good passive solar design principles and nearly all of the spaces open into large outdoor living spaces with adjustable solar and wind control devices. These aspects of the proposed development have been shown on the development plans.

- Principle Six: Landscape

Comment: A landscape design and accompanying plans were lodged with the application. It is considered that the plans have addressed and had regard for the requirements of this principle, in that:

- The landscape design has integrated the built form with the proposed landscaping elements, including retained and proposed vegetation, new outdoor furniture etc.
- The treatment of the public space adjacent to River Street has allowed for the retention of the Norfolk Island Pine tree and created a focal point of this landscape item, whilst providing an area which can be utilised by both the public and employees of the commercial tenancies.

- The proposed communal open space area for the residential tower (on Level Three) incorporates a green perimeter (two to three metre wide raised gardens which provides a green edge to the area), picnic area, food propagation areas (raised gardens and an arbour), plus turfed, deck and tiled areas. These aspects seek to provide usability and social opportunity for future residents of the development.

- Principle Seven: Amenity

Comment: The proposal has generally been designed to optimise amenity for residents of the apartments, through appropriate room dimensions, access to sunlight, ventilation, visual and acoustic privacy, storage, layout and outlook. Four of the apartments have been designated as “Adaptable Housing” and as such will enable ease of access for all age groups and degrees of mobility.

- Principle Eight: Safety and security

Comment: A Crime Prevention Through Environmental Design (CPTED) report has been submitted with the application. Generally, the proposal has had due regard for the principles of CPTED. Refer to the Ballina Shire Development Control Plan 2012 section of this report for further discussion.

- Principle Nine: Social dimensions and housing affordability

Comment: The architect for the proposal has stated that the development includes a range of housing stock, from one bedroom (59m²) apartments to three bedroom (130m²) apartments. This range has been aimed at the retirement market and has been designed accordingly.

- Principle 10: Aesthetics

Comment: The proposed development is of a contemporary design. The architect has stated that the proposal was designed to respond to the subtropical coastal conditions, through the combination of different types of screening effects across the façade. It has also been stated by the architect that the unique mirrored pitch roof form is a significant design feature, which will form a backdrop to the Norfolk Island Pine tree (seen as centrepiece to the design).

Residential Flat Design Code

The proposal has been assessed against the provisions of the Residential Flat Design Code (produced by planningNSW in 2002). For the most part, the design of the proposal has responded to the “better design practice guidelines” and/or “rules of thumb” for each control listed in the code. It must be noted that the “better design practice guidelines” and/or “rules of thumb” are provided as recommendations – a guide for Council assessment and decision making, and are not stated as minimum requirements. Given the length of Residential Flat Design Code, these guidelines and rules of thumb are not reproduced as part of the report. Where the application has not met the guidelines/rules of thumb, a comment has been made in the comments section of the following table.

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal	Comment
Part One – Local Context		
Building Height	23.6m AHD	Refer to the Ballina Local Environmental Plan 2012 section of this report for discussion.
Building Depth	Maximum building depth is over 50m for Levels Three, Four, Five and Six	The purpose of this control is to provide for dual aspect apartments and to provide amenity through sun access and ventilation. 17 of the 34 apartments (50%) are single aspect, with five apartments facing east or north and 12 apartments facing west or south. A central atrium has been provided through Levels Four, Five and Six, which will provide some internal amenity to apartments. It must be noted however, that none of apartments have a real aspect to this atrium.
Street Setbacks	Residential component has a minimum four metre setback (to balconies) for Levels Three to Six for Kerr Street, for a maximum length of 16 metres. Courtyard landscaping on Level Three is zero to one metre from Kerr Street for approximately 53 metres.	Considered satisfactory and consistent with provisions of Ballina Shire DCP 2012.
Side and Rear Setbacks	<u>Side Setbacks</u> Courtyard landscaping on Level Three is 1.5 metres from eastern boundary for approximately 50 metres. Residential component on Levels Three to Six have a minimum four metre setback to eastern boundary. <u>Rear Setbacks</u> Residential component on Levels Two to Six have a minimum 11 metre setback to the Richmond River.	Considered satisfactory and consistent with provisions of Ballina Shire DCP 2012.
Part Two – Site Design		
Deep Soil Zones (DSZ)	Landscape plans show 18.8% or 859m ² of land is a DSZ. This area has been shown to include: – the communal open space area adjacent to the Norfolk Island Pine tree (including an elevated timber deck), – The area to the rear of the	Ballina Shire DCP 2012 requirement is for 15% of site area to be provided as DSZ. The applicant has stated that the areas where timber decking is provided will provide for vegetation growth (accommodating root systems of existing and future vegetation).

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal	Comment
Part One – Local Context		
	commercial tenancies facing the Richmond River, and – An area of land to be dedicated as a public walkway, including the timber boardwalk.	It is noted that Council staff are seeking the public walkway adjacent to the Richmond River to be of a concrete construction for maintenance purposes (refer to the Land Dedication section of this report for further detail). In this regard, that land may not be able to be included in the DSZ calculations.
Landscape Design	The original landscape design has demonstrated controls have been achieved.	Considered satisfactory, however revised landscaping plans will be required should the proposal be granted consent (can be applied as a condition of consent).
Open Space	<u>Communal Open Space</u> The proposal provides for a communal open space area on Level Three, being approximately 30% of site area. <u>Private Open Space</u> The proposal provides balconies for each apartment, which have a minimum dimension of four metres. In terms of area, each apartment has a balcony of a min. 25m ² area, except for Unit 15 which has a balcony of 20m ² area.	Communal open space complies with requirements of minimum 25-30% of site area. Private open space complies with minimum requirements, with exception of Unit 15. It is noted that Unit 15 is adjacent to the communal open space area on Level Three.
Orientation	11 units (32%) have less than three hours direct sunlight mid-winter (including five units that will have no solar access). Sliding shutters have been provided to each apartment which can be adjusted to deal with environmental conditions (sunlight, wind etc.)	The architect has argued that the lack of direct sunlight to these 11 units is ameliorated by all living and bedroom spaces having extensive glazing (providing a high level of daylight across the river front).
Planting on structure	Depth provided for communal open space is one metre, therefore can accommodate medium trees. Depth provided for atrium (in centre of Levels Four to Six) is 700mm, therefore can accommodate small trees.	Considered satisfactory, however revised landscaping plans will need to address the depth requirements of the code with respect to the type of vegetation to be planted in the atrium.
Stormwater management	On-site detention is to be provided. A rainwater tank is to be provided.	Considered satisfactory. Refer to the Ballina Shire Development Control Plan 2012 section of this report for further discussion.
Safety	Parking for different uses (ground floor is commercial and restaurant tenancies and Level Two is residential) has	Considered satisfactory. Refer to CPTED section of report for further discussion.

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal	Comment
Part One – Local Context		
	been separated. Direct access from car parking to apartment lobbies. Access is shared between residents and ground floor restaurant and commercial tenancy facing the Richmond River.	
Visual Privacy	All apartments have full internal visual privacy. External privacy concerns for the adjoining eastern residence at No. 272 River Street, as four apartments have an eastern aspect.	Considered satisfactory. The four apartments that enjoy an eastern aspect are all at least four metres (to their balcony) from the eastern boundary. Other than Unit 15's balcony, which has a 2.5 metre frontage to No. 272 River Street, the three remaining units have their narrowest part of the balcony (not main part) facing east.
Parking	Underground parking is not provided. Parking areas are screened from street view. Bicycle parking has been provided within the car parking area on the ground floor.	Considered satisfactory. Refer to Ballina Shire Development Control Plan 2012 section of this report for further discussion.
Vehicle Access	Driveway widths are six metres (exit only) and seven metres (entry/exit). Driveways are provided off Kerr Street, approximately six metres from entry into the lobby for the residential apartments.	Considered satisfactory. Refer to Ballina Shire Development Control Plan 2012 section of this report for further discussion.
Part Three – Building Design		
Apartment Layout	A variety of apartment mix, layout and size have been provided within the development. 60% of apartments are naturally cross ventilated. Storage facilities for apartments have been provided in accordance with applicable rates and areas. Nine apartments are 8.8 metres from glass line (or window) to back of kitchen. Apartments designated as “affordable housing” are 105m ² and exceed the minimum size requirement of 70m ² .	Considered satisfactory. Minor variation sought to eight metre requirement for depth of apartments (nine units have a depth of 8.8 metres). Architect has stated that use of light coloured internal finishes will ensure adequate daylight is achieved in the kitchen.
Ceiling heights	Ground level has a ceiling height of 3.4m.	Considered satisfactory.

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal	Comment
Part One – Local Context		
	Level Two has a ceiling height of 3.5 metres Levels Three, Four and Five have ceiling heights of 2.8 metres. Level Six has a ceiling height of 2.55 metres.	Level Six does not achieve the minimum 2.7 ceiling height, however all apartments on Level Six have large window areas to achieve the required sunlight levels.
Mixed Use	Commercial and restaurant uses have been provided on the ground floor, with residential uses provided on Levels Two to Six. An acoustic report has been provided which addresses noise between uses within the building.	Considered satisfactory. Refer to the Noise section of this report for further discussion.
Acoustic privacy	For the most part, the residential component of the development has been designed to minimise noise transmission between apartments.	Considered satisfactory. The development will be required to comply with the Building Code of Australia, in terms of construction and acoustic privacy between apartments.
Daylight access	23 apartments (68%) will have more than three hours of direct sunlight mid-winter. Five apartments are single aspect (south). Seven apartments are single aspect (west).	Considered satisfactory. Large amounts of glazing have been provided to all apartments, this should enable satisfactory solar access during winter to the single aspect (south and west) apartments.
Natural ventilation	The development does not meet the building depth provisions in relation to natural ventilation (should be 10 to 18 metres, development is 50 metres). The development does not meet the cross ventilation provisions (should be 60% of apartments, proposal has 50% of apartments). The majority of kitchens are not located adjacent to openable windows, however dining areas are.	The proposal does incorporate an atrium within Levels Four to Six that will provide some ventilation into the centre of the residential tower. The development does incorporate large expanses of openable glazing, which will assist with ventilation.
Energy Efficiency	A BASIX Certificate has been provided for all apartments. Five apartments have a southern aspect only.	Considered satisfactory. Large amounts of glazing have been provided to all apartments, this should enable satisfactory solar access during winter to the five south facing apartments.

Ballina Local Environmental Plan 2012

Under the provisions of the Ballina Local Environmental Plan (BLEP) 2012, the proposed development is defined as:

Shop Top Housing, which means, “one or more dwellings located above ground floor retail premises or business premises”.

Retail premises means “a building or place used for the purpose of selling items by retailing, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) Bulky goods premises,
 - (b) Cellar door premises,
 - (c) Food and drink premises,
 - (d) Garden centres
 - (e) Hardware and building supplies,
 - (f) Kiosks
 - (g) Landscaping material supplies,
 - (h) Markets,
 - (i) Plant nurseries,
 - (j) Roadside stalls,
 - (k) Rural supplies,
 - (l) Shops,
 - (m) Timber yards,
 - (n) Vehicles sales or hire premises,
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises”.

Business premises means “a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
 - (b) a service is provided directly to members of the public on a regular basis,
- and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital”.

Food and Drink Premises means “premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub.”

The subject land is zoned B3 Commercial Core. The only form of residential development permitted with development consent in the B3 zone is “Shop Top Housing”. Retail Premises and Business Premises are also permissible within the B3 zone.

The objectives of the B3 zone are:

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

The proposed development is considered to have had adequate regard for and is generally consistent with the objectives of the zone.

Clause 4.3 (Height of Buildings) and Clause 4.3A (Exceptions to height of buildings)

Clause 4.3 – Height of Buildings states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
 - (b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*
 - (c) *to protect significant views from public places.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map in relation to the subject property (and the Ballina Town Centre) provides for a maximum height of 18m.

Clause 4.3A – Exceptions to Height of Buildings of the BLEP 2012 states:

- (1) *The objective of this clause is to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas.*
- (2) *This clause applies to land identified as "Minimum fill level" on the Building Height Allowance Map.*
- (3) *The height of a building on land to which this clause applies is not to exceed the maximum height shown for that land on the Height of Buildings Map plus the minimum fill level shown for that land on the Building Height Allowance Map.*

In the Dictionary to the BLEP 2012, **building height** (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The minimum fill level shown for the subject land on the Building Height Allowance Map is 2.0m AHD. The intention of Clause 4.3A is for 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 provided within the BLEP 2012 so that landholders who are required to fill land to meet Council's flood policy are not unreasonably disadvantaged in terms of overall building height.

Under the provisions of the BLEP 2012, the maximum building height allowable for the site would be 18m, measured from the minimum fill level of 2.0m AHD. This would give a development an overall maximum height of 20m AHD.

The amended proposed building now has a maximum building height of 21.6m (i.e. to the top of the roof). From a filled ground level of 2.0m AHD (Building Height Allowance Map), the overall height of the building therefore will be 23.6m AHD.

[Note: the original proposal provided for a height of 23 metres, on top of the 2.0m minimum fill level, with an overall height of approximately 25m AHD.]

The applicant has advised that in order to achieve the revised building height for the development, the floor to ceiling heights for each level of the building have been reduced.

The amended proposal exceeds the maximum building height standard by 3.6 metres.

The applicant's rationale for the building height of the proposed development is two fold:

- Their interpretation of Clause 4.3A of the BLEP 2012, accounting for 1.8m (i.e. 21.8m AHD); and
- Their interpretation of Clause 5.6, allowing for the remaining 1.8m. Refer to Attachment 11.

Council staff have obtained legal advice in relation to the proposal and the building height clauses of the BLEP 2012. The advice has confirmed Council's interpretation of Clauses 4.3 and 4.3A.

It has been acknowledged by Council, through the preparation of a Planning Proposal, that there is potential ambiguity in these clauses and that this may lead to outcomes that are not consistent with the Council's intent (i.e. the Council's envisaged building height standard may be exceeded in certain circumstances). This has been as a result of changes made by the Parliamentary Counsel Office to Clause 4.3A prior to the finalisation and gazettal of the BLEP 2012.

Planning Proposal 13/010 Building Height Allowance Provision seeks to rectify and address these issues (as reported to Council's Ordinary Meeting on 27 February 2014). This planning proposal was prepared by Council (and subsequently placed on public exhibition) after the lodgement of DA 2013/381. In this regard, the subject development application was prepared on the basis of the current wording of Clauses 4.3A and the Building Height Allowance Maps.

Planning Proposal 13/010 seeks to modify the provisions of Clause 4.3A in the following manner:

- (2) *This clause applies to land identified as "Minimum Level Australian Height Datum (AHD)" on the Building Height Allowance Map.*
- (3) *The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map.*

The legend of the Building Height Allowance Maps is proposed to be modified to include a reference to AHD (Australian Height Datum) when referring to minimum fill levels.

It is noted that Planning Proposal 13/010 is currently with Parliamentary Counsel for finalisation. In this regard, the making of this plan is imminent and certain. Council needs to consider the weight that it puts on this Planning Proposal in determining this application.

The applicant has provided the following arguments (via letter dated 21 February 2014) in support of their proposal:

"Council recently placed on exhibition a Planning Proposal relating to the Building Height Allowance provision set out at Clause 4.3A of the Ballina Local Environmental Plan 2012 (BLEP 2012). The Planning Proposal describes the intent of Clause 4.3A. Clearly the clause as currently drafted is very much at odds with that intent. The Building Height Allowance Map referenced by Clause 4.3A does not refer to its level as being a level to Australian Height Datum, but instead refers to it as being a minimum "fill" level measured in metres.

Under the BLEP 2012 the term "fill" means "the depositing of soil, rock or other similar extractive material...". Thus, the statutory meaning under BLEP 2012 of the sentence "The height of a building.....is not to exceed the maximum height shown....on the Height of Buildings Map plus the minimum fill level shown....on the Building Height Allowance Map" is that a building height cannot exceed the sum of the height and allowance map provisions above the existing surface level.

We respectfully submit that this proponent should not be penalised as a consequence of what is said to be poor legal drafting by the Parliamentary Counsel in relating to Clauses 4.3 and 4.3A. We request that the application should be processed on the basis of the clauses as drafted, not the 'intent' as described in the Planning Proposal.

In the event that Council seeks to apply its intended meaning to Clauses 4.3 & 4.3A rather than the strict reading of the clauses, we have attached herewith as Annexure B a request for exception to development standards 4.3 & 4.3A pursuant to Clause 4.6 of the Ballina Local Environmental Plan 2012."

Clause 4.6 – Exceptions to development standards

Clause 4.6 states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

The Clause 4.6 variation request is not for the entire 3.6m exceedance, but only for a 1.8m portion, which represents both part of Level Six of the building and part of the Roof that is not considered to be an Architectural Roof Feature. The remaining 1.8 metres, comprising the upper portion of the roof, is addressed in relation to Clause 5.6 of the BLEP 2012.

The applicant has provided the following statement in support of the height standard variation:

“First and foremost as previously addressed in this submission, we respectfully submit that the current strict reading of Clauses 4.3 and 4.3A results in a building height limit for the site of 20m. Council has recently exhibited a Planning Proposal relating to the building height provisions set out at Clause 4.3A of the BLEP 2012, to address the wording of the Clause to reflect Council’s intent.

It is our view that this application should not be penalised as a consequence of what is said to be poor legal drafting by the Parliamentary Counsel in relation to the provisions of Clauses 4.3 & 4.3A.

Notwithstanding the above, we submit that in any case the consideration of the subject application as if a height limit of 18.2m applies to the land, still enables the Council to conclude that the proposed variation warrants support. In this regard, we turn to the objectives of Clause 4.3 Building Height.

In relation to objective (a) of Clause 4.3, it is submitted that the height of the building is compatible with the bulk, scale and character of the locality. The height of the proposed building as amended is not dissimilar to that of existing buildings within the Ballina Town Centre. Further, the building design incorporates a design which reflects the maximum permitted over only one part of the site. That is, the planning controls would permit a building of a similar height across the entire site. The building design seeks to deliver Council’s planning objectives in relation to the creation of a landmark site at the entry to town whilst maintaining a building of a compatible bulk, scale and character with existing surrounding development.

In relation to objective (b) of Clause 4.3, the proposed portion of the building above the maximum height of 18.2m advised by Council will not result in significant adverse impacts on the existing or future amenity of adjoining properties, or the scenic or landscape quality of the locality. That part of the building above the 18.2m contributes to the streetscape and reduces the impact of the building on the visual amenity of the area when considered in comparison to say a building with a flat roof form.

This building is not inconsistent with the protection of significant view for public places. The development incorporates the dedication of a public walkway adjacent to the Richmond River which will indeed provide increased opportunities for the public in this regard.

Further as noted above, the proposed variation sought is also minor in numeric terms. A variation of less than 10% is proposed over less than 50% of the site.

It is submitted that strict compliance with the development standard is both unreasonable and unnecessary in this particular case.”

The variation that is sought is 1.8m, which represents 10% of the development standard of 18m.

It must be noted that Council has assumed concurrence from Planning and Infrastructure (P&I) NSW (in accordance with Planning Circular 08/003) to determine the variation to the development standards within Clauses 4.3 and 4.3A.

With regard to the criteria in Clause 4.6 of the BLEP 2012, consideration must be had of the following:

Subclause (4)(a)(i)

- The subject site is not considered to contain any real physical constraints that would impact upon its development potential. The site is relatively flat and has a good aspect with views to the Richmond River. The existence of two large Norfolk Island Pines in the rear section of the site may be considered as constraints; however these trees are proposed to be removed (with one not requiring development consent due to its proximity to existing development on the site). The lot size and configuration also do not unreasonably constrain development. In this regard, there is no real impediment in designing a development that complies with the development standards within Clauses 4.3 and 4.3A.
- In reviewing the development plans, it would appear that for the proposed development to comply with the 20m AHD height limit requirement, the top storey (Level Six) of the building would need to be deleted. This would then mean that the entire building including the roof would be within the 20m AHD height limit.
- To date, Council has consistently kept to and applied the building heights as included within the planning instruments applying to the Shire (Ballina LEP 1987 and Ballina LEP 2012). The current building height development standards were developed through extensive consultation as part of the new BLEP 2012, with consideration given to roof heights, to ensure all built elements could be contained within the 18m standard, and still being able to provide a five storey building.
- The degree of variation (1.8m) is not overly discernible in terms of viewing the proposed development.
- Council has acknowledged that there is potential ambiguity in relation to the wording of Clause 4.3A and as such has prepared a planning proposal to address this issue. In this regard, the current wording is proposed to be amended to more accurately reflect Council's intent and provide certainty in its interpretation. In this regard, a consistent height limit will be able to be applied across the Ballina Town Centre and is unlikely that a precedent would be set.
- Each future development would be considered on its merits and there is the availability of using a Clause 4.6 variation to argue a case for non-compliance with the building height limits within Clauses 4.3 and 4.3A. The avenues for misinterpretation would not be available for future developers/consultants.

- In terms of the height of other buildings within the Ballina Town Centre, a mixed use development spanning across the current site and properties to the east (up to the Ballina RSL car park) was approved by the Department of Planning in 2007 (Major Project 05_0009 – Ballina Gateway Project). This development comprised seven separate buildings, the tallest having a height of 19m (six storeys), as measured from the ground level to the ceiling of the top most floor.

At the time of approval, ground level was taken as being filled ground level, with Council's requirement being 1.8m minimum fill level (resulting in the height as being 20.8m AHD to the ceiling). As a comparison to the development proposed via DA 2013/381, the development plans show the proposed building to have a height of 18.55m, as measured from the 1.8m natural ground level to the ceiling of the topmost floor (resulting in the height being 20.35m AHD to the ceiling).

At the time of the assessment of MP 05_0009, Council's submission to the NSW Department of Planning expressed its opposition to the height exceedance, being approximately three metres.

Subclause (4)(a)(ii)

- The underlying objectives of Clauses 4.3 and 4.3A, being:

*“(a) ensure that the height of buildings is compatible with the bulk, scale and character of the locality,
(b) to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,
(c) to protect significant views from public places”.*

and

“to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas”.

It must be noted that the applicant's interpretation does not allow for a consistent point of reference for the measurement of building height in flood prone areas.

- The underlying objectives of the B3 Commercial Core Zone (as previously stated within this report).

The points made by the applicant to justify the proposed Clause 4.6 variation to the building height standard are noted. It is considered, however, that a development may be designed over the site that is compliant with the building height standard of 18m (on top of the 2.0m AHD minimum fill level) and also to have had due regard for the objectives of both Clauses 4.3 and 4.3A. The additional 1.8m for which the variation has been lodged, will enable the developer to obtain an additional floor within the building, being seven additional apartments. Clearly, this is a commercial decision for the developers, which will have flow on effects to the housing market within Ballina.

It is considered that for the principal reason whereby the variation may warrant support is in relation to the interpretation of the current wording of Clause 4.3A. The current wording of the clause has been interpreted (and therefore provided an expectation) in this case such that a development can be constructed on the site to a height, beyond the intent of the clause.

As previously stated the Planning Proposal (13/010 Building Height Allowance Provision) rectifying these issues is currently with Parliamentary Counsel for finalisation. As a result of the revisions to Clause 4.3A, it is not envisaged that there would be opportunities for a misinterpretation of the clause and therefore a consistent height limit would be able to be applied across the Ballina Town Centre. In this regard, it is not considered that the support of this Clause 4.6 variation to the building height standard would set a precedent. Whilst due consideration is given to Planning Proposal 13/010 in the assessment of this application, the development application was lodged prior to the preparation of this Planning Proposal.

In view of the abovementioned points, it is considered that a variation to Clause 4.6 can be substantiated in the circumstances of this case.

Clause 5.6 – Architectural Roof Feature

The applicant has sought to utilise the provisions of Clause 5.6 in relation to the design of the roof of the residential tower.

Clause 5.6 states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that architectural roof features to which this clause applies are decorative elements only,*
 - (b) *to ensure that the majority of roof features are contained within the prescribed building height.*
- (2) *Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.*
- (3) *Development consent must not be granted to any such development unless the consent authority is satisfied that:*
 - (a) *the architectural roof feature:*
 - (i) *comprises a decorative element on the uppermost portion of a building, and*
 - (ii) *is not an Advertising structures, and*
 - (iii) *does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) *will cause minimal overshadowing, and*
 - (b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

The applicant has sought to utilise the provisions of this clause with respect to the upper portion of the roof (1.8m) that exceeds the building height limit within Clauses 4.3 & 4.3A. The applicant has presented development plans that illustrate those areas of the roof that exceed the building height limit that are considered as architectural roof features. Inter-related with this is the applicant's reliance on the ambiguity with Clauses 4.3 & 4.3A, with the height limit relied on by the applicant as 21.8m AHD (being 20m on top of natural ground level of 1.8m).

The proposed roof design is explained by the applicant as "*a feature roof form which is a key design element in identifying and land marking the residential component of the site. This aesthetic device comprises an elegant, lightweight capitol overhanging whilst simultaneously protecting the residence from the intense sun and rain. The proposed roof 'wings' define the main entrance of the residential portion of the development and add interest to the building and the streetscape in general*".

In terms of an overall height exceedance for the architectural roof features, this equates to 1.8m, when utilising the applicant's interpretation of the provisions of Clauses 4.3 and 4.3A. The applicant has provided a floor plan of the roof demonstrating the height exceedance and the area of the roof to be considered an architectural roof feature. The overall area has been illustrated as 10.9%.

From the plans submitted the "identified architectural roof features" are shown to be decorative elements on the upper most portion of the building, are not advertising structures, do not include floor space area, are not capable of being modified to include floor space area and will cause minimal overshadowing (given their location within the building's roof form). The plans also show that all equipment for servicing the building is contained in or supported by the roof feature and are fully integrated into the design of the roof feature.

If, in Council's assessment and determination of this development, it is not agreed that this 1.8m height exceedance is an architectural roof feature, then a variation to the building height standard of 3.6m would be applicable, resulting in a 20% of the 18m building height development standard.

Clause 5.5 – Development within the coastal zone

The subject site is located within the coastal zone.

Clause 5.5 states:

(1) *The objectives of this clause are as follows:*

- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
- (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) *protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*

- (ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
- (iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and*
- (iv) recognise and accommodate coastal processes and climate change, and*
- (v) protect amenity and scenic quality, and*
- (vi) protect and preserve rock platforms, beach environments and beach amenity, and*
- (vii) protect and preserve native coastal vegetation, and*
- (viii) protect and preserve the marine environment, and*
- (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
- (xi) protect Aboriginal cultural places, values and customs, and*
- (xii) protect and preserve items of heritage, archaeological or historical significance.*

Comment: The proposed development is generally considered to have had regard for the above objectives.

(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:

- (a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) maintaining existing public access and, where possible, improving that access, and*
 - (ii) identifying opportunities for new public access, and*

Comment: The subject site adjoins the Richmond River, and as such is adjacent to a river foreshore as opposed to a coastal foreshore (as is defined in SEPP 71).

At present there is no public access along the River frontage of the site. The proposal provides for a four metre wide boardwalk to be constructed along the River frontage of the site, with this land being proposed to be dedicated to Council.

It must be noted that the area of land to be dedicated for public access proposed as part of this application is not as generous as that approved via Major Project 05_0009 (Ballina Gateway Project). It must also be noted that the proposed building is setback from the boardwalk:

- a minimum of 10 metres at ground floor for southern elevation and zero metres for the eastern and western elevations;
- a minimum of seven metres at Levels Two to Six for the southern elevation and four metres for the eastern and western elevations.

It is considered that the proposed development will provide a better outcome than existing developments to the east of the site (i.e. Ramada Hotel, Pelican Moorings etc.) where the built form of some of these developments adjoins the public boardwalk/walkway.

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and

(ii) the location, and

(iii) the bulk, scale, size and overall built form design of any building or work involved, and

Comment: The type of development proposed is considered satisfactory in relation to the subject site and surrounding locality. The provisions of the BLEP 2012 and the Ballina Shire DCP 2012 have identified that the subject site is suitable for redevelopment for multi-storey commercial, residential and tourist development.

In terms of the location of the building on the site, the proposal is considered satisfactory, however it would have been preferable for a greater setback to be provided to the River, with reference to the provision of a larger area for public access. It is acknowledged however, that the site is being developed in isolation, compared to the previous multi storey development approved for the site (MP 05_0009) and the current developers are seeking to maximise their return with respect to the proposed development.

If an increased setback were to be provided to the southern frontage of the site, this may have resulted in the tallest elements of the building being located further north within the site, which may result in impacts on surrounding dwellings to the east and west of the site.

A development at the subject site would be required to have a strong physical presence and be of a good design, which is required for the entry into the Town Centre. It is considered that the development achieves this, and provides a positive interface from the lower storey residential development to the west of the site, to the Town Centre, whereby larger scale and taller buildings are permissible (two storeys at River Street elevation).

The building is larger and bulkier in the southern section of the site and exceeds the height limits in accordance with Council's interpretations of Clauses 4.3 & 4.3A. If the building were reduced by 1.8m in height, it would result in a compliant building, however the bulk, scale and size of the building would only be of minor difference.

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

(i) any significant overshadowing of the coastal foreshore, and

(ii) any loss of views from a public place to the coastal foreshore, and

Comment: The site is not adjacent to a coastal foreshore. However, it is noted that some overshadowing will occur to the Richmond River foreshore. The overshadowing however, will be less than that of existing developments in the eastern area of the Ballina Town Centre, given their built form adjoins the boardwalk/walkway. It is acknowledged that any building compliant with Council's height limit would cause overshadowing of the River foreshore.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

Comment: The site is not adjacent to the coast.

(e) how biodiversity and ecosystems, including:

(i) native coastal vegetation and existing wildlife corridors, and

(ii) rock platforms, and

(iii) water quality of coastal waterbodies, and

(iv) native fauna and native flora, and their habitats, can be conserved, and

Comment: The proposal does involve the removal of one Norfolk Island Pine tree in the southern section of the site. It is noted that a second Norfolk Island Pine tree is to be removed, however the consent of Council is not required for such. Further discussion in relation to the removal of the Norfolk Island Pine trees are provided in the Ballina Shire Development Control Plan 2012 section of this report.

It is also noted that the existing Norfolk Island Pine tree adjacent to the River Street frontage and an existing Pandanus tree adjacent to the Richmond River frontage are to be retained.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

Comment: The subject site is part of the Ballina Town Centre, which has been identified as being suitable for multi storey commercial, residential and tourist development. It is expected that land to the east of the site will, in time, be redeveloped in a similar manner to that being proposed as part of this application.

The cumulative impacts of such development have been expected and anticipated for this area of the Shire and generally should not be negative, subject to compliance with the provisions of Council's planning instruments. Where overdevelopment of a site is proposed, negative cumulative impacts may occur.

(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:

(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and

- (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
- (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
- (d) *the proposed development will not:*
 - (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

Comment: Refer to comments above regarding public access.

Effluent is to be disposed of via Council's reticulated system.

Stormwater management has been addressed by the applicant, refer to the Ballina Shire Development Control Plan 2012 section of this report for further discussion.

In terms of coastal hazards, no significant impacts have been identified. Refer to the Ballina Shire Development Control Plan 2012 section of this report for discussion on flooding.

Clause 5.9 – Preservation of trees or vegetation

The proposal involves the removal of one Norfolk Island Pine tree.

Clause 5.9 (2) and (3) state:

- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. *A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

- (3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*
 - (a) *development consent, or*
 - (b) *a permit granted by the Council.*

Chapter 2b of the Ballina Shire DCP 2012 contains provisions whereby consent must be sought for the removal of vegetation within the Ballina Shire. Refer to the Ballina Shire Development Control Plan 2012 section of this report for discussion on the removal of the Norfolk Island Pine tree.

Clause 7.1 – Acid Sulfate Soils

The subject land is shown as Class 2 on the Acid Sulfate Soils Map.

The applicant has provided the following information in relation to the proposal and Acid Sulfate Soils disturbance.

“The Engineering Services Report prepared by Newton Denny Chapelle addresses the issue of acid sulfate soils on the site. The report notes that the subject land is identified as containing potential acid sulfate soils Class 2, where works below the ground surface will trigger the requirement for an acid sulfate soils assessment to be undertaken. The report notes that the anticipated disturbance of acid sulfate soils will be minimal, being limited to the stripping of surface soils, excavation for the basement/wine storage areas and localised trench excavations to allow the installation of stormwater and sewer infrastructure as well as piers footings. The reports concludes that a Construction Management Plan will be lodged with a Construction Certificate and include the implementation strategies, monitoring, auditing and reporting criteria for the management of acid sulfate soils”.

It is noted that the proposal has been amended to remove the basement/wine storage areas. In this regard, it is expected that only stripping of surface soils and localised trench excavations (for installation of stormwater and sewer infrastructure) will occur.

Council’s Public and Environmental Health Section have reviewed the submitted documentation and have advised that additional information will be required to be submitted to Council as part of the Construction Certificate process in the event that development consent is granted to the proposal. Conditions are able to be imposed on the development requiring the submission of this information.

Clause 7.2 – Flood Planning

The subject site is identified as being within a Flood Planning Area on the Flood Planning Map.

Clause 7.2 (3) states:

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The proposal seeks to provide a minimum fill level of 2m AHD, with habitable floors designed at 500mm above the minimum fill level of 2.0m AHD.

Refer to the Ballina Shire Development Control Plan 2012 section of this report for discussion on the flood hazard of the land.

The proposal has included the installation of a “slot in split system flood barrier” to ensure that a level of flood protection is provided. Given the existing street levels of 1.8m, the flood barrier system has been designed to be a minimum of 900mm height (to protect the ground level car parking area to a height in excess of RL 2.5m AHD). Council’s Civil Services Group have not raised an objection to the installation of this additional system, which will provide additional flood protection for the car parking area.

The adjoining property to the east does not fall towards the subject site. As such, filling will not cause drainage problems for the adjoining property and dish gutters will not be required along the eastern boundary.”

The provisions of Clause 7.2 (3) have been considered in the assessment of this application and it is concluded that the proposal will not create flooding issues for surrounding properties or reduce the stability of the riverbank. The proposal is unlikely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Clause 7.7 – Essential Services

Clause 7.7 (2) states:

- (2) *Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:*
- (a) the supply of water,*
 - (b) the supply of electricity,*
 - (c) the disposal and management of sewage,*
 - (d) stormwater drainage or on-site conservation,*
 - (e) suitable vehicular access,*
 - (f) telecommunication services.*

The proposed development is able to be adequately serviced in accordance with the requirements of this clause.

Draft Environmental Planning Instruments

Planning Proposal 13/010 Building Height Allowance Provision

Planning Proposal 13/010 Building Height Allowance Provision (Ballina Local Environmental Plan 2012 – Draft Amendment No. 13) is a matter for consideration (under Section 79C of the Environmental Planning & Assessment Act 1979) in Council’s assessment of the proposed development.

Refer to the Ballina Local Environmental Plan 2012 section of this report (specifically Clauses 4.3 and 4.3A and 4.6) for discussion on Planning Proposal 13/010 and the proposed development.

Ballina Shire Development Control Plan 2012

Chapter 2 – General and Environmental Considerations

Clause 3.4 – Potentially Contaminated Land

As stated in the SEPP 55 section of this report, the applicant is relying on the preliminary contamination assessment undertaken for the Ballina Gateway Project (MP05_0009).

Council's Public and Environmental Health Section have advised a detailed assessment will be required to be undertaken by the applicant. In the event that the application is granted consent, this assessment will be required to be submitted as part the construction certificate process (to be imposed as a condition of consent).

Clause 3.7 – Waste Management

A Site Waste Minimisation and Management Plan (SWMMP) has been prepared for the proposal, in accordance with the requirements of Clause 3.7. This plan has not addressed construction waste, which has been proposed to be addressed as part of the construction certificate process.

Council's Public and Environmental Health Section have reviewed the submitted SWMMP and have not raised any concerns with the document. In the event that the application is granted consent, the applicant will be required to address construction waste issues as part of the construction certificate process (to be imposed as a condition of consent).

Clause 3.9 – Stormwater Management

As part of the application, the applicant has included an Engineering Services Report (prepared by Newton Denny Chapelle) which addresses stormwater management for the proposal.

This report has been reviewed by Council's Civil Services Group. The following comments have been received:

"The stormwater report is considered to be generally acceptable. The report suggests 74% of the existing site is impervious, which equates to 1182m² of pervious area. This is consistent with the pervious area of the site as shown on the aerial photos.

The stormwater report also states that the new building will consist of 1568m² landscaped area with an additional 859m² of ground level deep soil landscaped area. Based on the plans, the 859m² is correct, however the landscaped area figure appears to be closer to 1000m² (when based on the submitted plans). This equates to a total pervious area of approximately 1859m² or 69% of the site being impervious.

Whilst the vegetated landscaped area on Level Three (i.e. part of the communal open space area) is not a deep soil zone, it will provide a degree of permeability and reduce runoff from the site. It is therefore anticipated that the combination of these areas will result in an equivalent pervious area to the existing site. As a result, there will be no increase in the stormwater flows from the site and therefore, no technical requirement to provide detention. Despite

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

this, the application proposes to provide a 40,000L reuse tank at the site, connected to the toilets, laundry and external plumbing.

At some stage in the future, Council intends to extend the reticulated recycled water network to the site for the connection of toilets and external plumbing.

In relation to water quality, the application proposes:

- to connect the car parking area drainage to a Humeceptor or Cleanwater oil/water treatment system*
- to direct roof water to the water reuse tank, and*
- to direct the terrace areas to the landscaped areas.*

The music model for the site confirms that the proposed design complies with the water quality targets of Clause 3.9. The proposed design is therefore acceptable”.

Clause 3.10 – Sediment and Erosion Control

The applicant has advised that conventional erosion and sediment controls will be implemented in accordance with Landcom’s “*Soils and Construction, Volume 1 – Managing Urban Stormwater: Soils and Construction*” (i.e. the Blue Book).

Council’s Public and Environmental Health Section have sought to impose conditions in relation to sediment and erosion control, should the proposal be granted development consent.

Clause 3.11 – Provision of Services

As advised in the Ballina Local Environmental Plan 2012 section of this report, the proposed development is able to be connected to all required services (water, electricity, sewage, stormwater and drainage, road access and telecommunications). Council staff have not raised any particular issue in relation to the servicing of the proposed development and would seek to impose conditions in relation to the required servicing, should the proposal be granted development consent.

Clause 3.15 – Crime Prevention Through Environmental Design

The application was accompanied by a Crime Prevention Through Environmental Design (CPTED) report, prepared by Davis Sommerville and Leith Architects. The report has provided consideration for the CPTED principles, being surveillance, access control, territorial reinforcement (ownership) and space management.

The report has concluded:

“The design of this mixed use development Reside Living at Ballina, has incorporated treatments to ensure that the CPTED principles have been thoroughly considered.

The main features to increase the safety of the users of the development include:

- natural surveillance of public spaces, in particular the car park,*
- clearly defined access control, and*

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

- *an overall understanding of public versus private ownership to facilitate public investment in care of the whole building, therefore decreasing the probability of vandalism.*

The premises will have an onsite manager who will maintain the upkeep of the building and ensure it remains well looked after and cared for, maintaining items such as lighting and landscaping, which has a significant impact on the safety of the development.”

The application was referred to the Crime Prevention Officer, Richmond Local Area Command of the NSW Police for assessment.

The following recommendations were received.

- Ground floor roller shutter to be secured at all times to strict unauthorised vehicular access. Residents to have security pass/key that enables access into restricted areas.
- Clear signage regarding public and private areas to be placed on all prudent areas.
- The foyer entrance to be located and secured at all times. A security buzzer with facial identification to be installed so residents can identify visitors before allowing access.
- The bin areas on the ground floor is not in a suitable location. *A garbage area surrounded by blank walls provides an entrapment opportunity.* If a different area can't be identified, lattice or some other type of transparent material should be used to enhance casual surveillance into the area.
- Provide even/uniform illumination of car parks and pedestrian routes from car park to commercial areas at all times.
- Lighting of the boardwalk at all times (lighting must not spill to surrounding areas).
- Monitored security alarms installed in all business premises with key holder's information passed onto local police upon new leases/ownerships.

A number of conditions have also been provided by the Crime Prevention Officer with respect to the installation and use of CCTV.

The applicant has provided the following response in relation to the comments from the Crime Prevention Officer:

“It is considered that the recommendations can generally be dealt with via appropriate conditions of consent. However, it is noted in relation to the bin area on the ground floor that the majority of residential refuse will be disposed of via the proposed garbage chutes. Only tenants and staff will be provided with access to this area which will be controlled via appropriate security measures such as a code or swipe card. It is considered that this will adequately address the concerns of NSW Police in relation to opportunities for entrapment.”

The above comments from the applicant are noted. However, it is considered that the security measures proposed by the applicant do not address the concerns raised by the Crime Prevention Officer. The bin area will be accessible to all residential apartments and the ground floor tenancies (commercial and restaurant) facing the Richmond River (resulting in potentially up to 100 persons accessing this area). It is considered appropriate for conditions to be imposed, on any consent granted, requiring the use of a transparent material to enhance casual surveillance into the bin area.

Clause 3.16 – Public Art

The proposal has included a public art printed screen, to be attached to the western elevation of the building. This public art screen has been located to obscure the car parking areas and to be highly visible from Kerr Street and traffic travelling east along River Street.

The public art screen, as is shown on the development plans:

- is to be located above ground. The applicant has advised that the reason for this is to ensure it will not be easily vandalised or damaged.
- is to be 9.8 metres long by 5.9 metres high.
- will be permanent but will have the ability to be renewed as a means of revitalising the streetscape.

The applicant has advised that a competition will be held to select the artwork with community representatives, including a voting panel. It has also be advised that maintenance will be part of the whole building management schedule and that the building Owner's Corporation Management plan will include maintenance of the screen.

The proposed public art printed screen (and the information supplied by the applicant) is considered to satisfy the requirements of Clause 3.16.

Clause 3.18 – Protection of Foreshore and Public Open Space Areas

The controls within this clause of Chapter 2 that are relevant to the proposal are:

- Public access to public open space and foreshore areas is to be maximised,
- Buildings are to be located to provide an outlook to public open space and foreshore areas, without appearing to privatise that space,
- Development is to be designed to minimise adverse impacts on views to and from public open space (having regard to public spaces not private property),
- Development should be designed to maximise opportunities for casual surveillance of public open space,
- Development is to be screened utilising landscaping or existing landscape elements.

The proposed development is seeking to provide a new public access along the frontage of the Richmond River in the form of a four metre wide boardwalk. The boardwalk area and the south eastern corner of the property, which contains an existing Pandanus tree, are proposed to be dedicated to Council. The total area of land is 541m².

Currently, public access is not provided to this area of the subject site.

It is noted that the area of land proposed to be dedicated to Council for public access is less than that required as part of the approval for the Ballina Gateway Project. Refer to comments in the Land Dedication and Public Access section of this report for further discussion.

The proposed development provides for an outlook to the Richmond River foreshore and public boardwalk. The proposed landscape treatment to this area will result in this area appearing and functioning as public space.

The outlook from the proposed ground floor restaurant and commercial tenancy and also from the residential apartments on Levels Two to Six will provide adequate casual surveillance to the foreshore and public boardwalk area.

A landscaping plan was lodged with the application, which provided concept details of the treatment of the foreshore area. A Pandanus tree (three metres in height) is to be retained in the south eastern corner of the site and will be part of the land proposed to be dedicated to Council. The landscaping plans depict this area as being planted with low native groundcovers, with timber wharf seats on the edge of the timber boardwalk.

Further details will be required to be lodged for Council's assessment as part of the Construction Certificate process (should the proposal be granted consent). It is noted that Council's Civil Services Group will require the public access to be constructed as a concrete path (for maintenance reasons). This is requirement is to be imposed as a condition of consent.

The controls in Clause 3.18 also refer to overshadowing of beach areas and adjacent open space. It is noted that the subject land is not adjoining the beach and as such these provisions are not directly applicable. The applicant has provided information in relation to overshadowing of the Richmond River as a result of the proposed building, which states that "*a building built to Council's height control casts a shadow of approximately 44 metres on June 21. Any structure on the land is likely to overshadow the proposed dedicated public access and foreshore area given the location of the subject site*".

Clause 3.19 – Car Parking and Access

A car parking and access assessment of the proposal has been undertaken by Council's Civil Services Group. This assessment relates to the controls within Chapters 2, 4, 6 and 6a of the Ballina Shire DCP 2012 Refer to the Roads, Traffic, Access and Car Parking section of this report.

Chapter 2a – Vegetation Management

The subject site contains three large Norfolk Island Pine trees.

The first tree is located at the front of the site, adjacent to River Street. This tree is to be retained and incorporated into the development (as described previously in this report).

The second and third trees are located in the central/southern section of the site. These trees are both approximately 25 metres in height.

Under the provisions of the Ballina Shire DCP 2012, vegetation management works are described as *any activity or work that affects vegetation and includes the undertaking of any of the following actions with regard to vegetation: burning, clearing, cutting down, destroying, felling, injuring, killing, logging, lopping, poisoning, pruning, removing, ringbarking, slashing, thinning, topping, digging up or uprooting.*

Clause 3.1.2 of Chapter 2a states:

3.1.2 Development Control

Development consent is required for vegetation management works on land located within an urban zone when the vegetation management works will affect:

- a) Any tree (either native or non-native) with a height of six metres or greater;*
- b) Any tree of the species *Pandanus tectorius* (Screw Pine) with a height of three metres or greater and located in the localities of East Ballina, Lennox Head or Skennars Head;*
- c) Any vegetation located on land identified as Significant Urban Bushland on the Significant Urban Bushland Map; and*
- d) Any tree with a height of three metres or greater on land containing an Item of Environmental Heritage as specified in Schedule 5 of the Ballina Local Environmental Plan 2012.*

The proposed development involves the removal of one Norfolk Island Pine tree, in the central/southern section of the site, that has a height of approximately 25 metres.

Clause 3.3 – Exemptions of Chapter 2a provides that development consent is not required for vegetation management works that “*involve vegetation where the trunk of the tree or base of the vegetation at ground level is within three metres of the nearest external edge of an existing permanent approved structure located within the same property and is not on land identified as containing an item of environmental heritage*”.

The western Norfolk Island Pine tree located in the central/southern section of the site is located within three metres of the approved restaurant building. The applicant is relying on the above provisions to enable removal of this tree without the need for development consent.

Council staff have undertaken an inspection of the site with respect to the location of the western Norfolk Island Pine tree. The inspection has confirmed that this tree is located within three metres of the restaurant building. As such the above provisions are able to be relied on in terms of removal of the western Norfolk Island Pine tree.

The eastern Norfolk Island Pine tree in the central/southern area of the site has been nominated for removal as part of this application. A tree report was lodged with the application (prepared by Northern Tree Care). This report states:

“This tree is a mature aged tree in good condition. It is growing in the footprint of the proposed new development. The tree is protected by Council’s Development Control Plan 2012. The tree conflicts with the requirements of the proposed development. It is considered that the development is more important than the tree. Planning approval should be sought for the removal of the tree.”

Clause 4.2.1 of Chapter 2a states:

Section 4.2.1 – Urban Zones

In determining an application under this Chapter for vegetation management works on land within urban zones, an assessment has been undertaken having regard for the following:

- a) whether the tree or other vegetation contributes to the aesthetic qualities of the locality and comprises an important component of the skyline;*

Comment: The subject tree does contribute to the aesthetic qualities of the locality and comprises an important component of the skyline. The Norfolk Island Pine trees located on the subject site are clearly visible in the landscape, being the tallest trees in the western area of the Ballina Town Centre.

- b) whether the tree or other vegetation makes a significant contribution to the amenity and character of the locality;*

Comment: The subject tree does make a significant contribution to the amenity and character of the locality. The three Norfolk Island Pine trees located at the subject site define and signify the western entry to the Ballina Town Centre. This is particularly due to their dominating height, in what currently is a flat, low level urban/riverside landscape. It is acknowledged that the three Norfolk Island Pine trees on the subject site provide a higher contribution to the amenity and character of this area of the Ballina Town Centre, than one tree on its own.

- c) whether the tree or other vegetation is important from a cultural and/or heritage perspective;*

Comment: Chapter 2a of the Ballina Shire DCP 2012 and the Ballina Local Environmental Plan 2012 do not provide any specific provision in relation to the subject site or the protection of Norfolk Island Pine Trees.

- d) whether the growth habit (crown or root) or mature size of the tree or other vegetation is undesirable in a given situation (e.g. under power lines, on top of or under retaining walls or banks, over sewer lines, close to roads or driveways etc.) such that it unreasonably interferes with infrastructure or sight distances;*

Comment: The growth habit or size of the subject tree may be undesirable in the context of maximising development on the subject site. It is acknowledged that a tree protection area would be required around the tree (if it were to be retained) in order to both protect the tree and limit damage to nearby development.

e) *whether the tree or other vegetation is causing damage to public or private utilities and services including kerb and guttering and the aesthetic value of the tree or other vegetation is not greater than the effect of damage caused by the tree;*

Comment: It is not known whether the subject tree is currently causing damage to any utilities or services. This is not the reason for removal of the tree.

f) *whether the tree or other vegetation is interfering with, or may interfere with, the efficiency of a solar or communication appliance;*

Comment: The tree is not currently interfering with the efficiency of a solar or communication appliance. This is not the reason for removal of the tree.

g) *whether the tree or other vegetation is in an overcrowded situation where the overcrowding is detrimental to tree growth and the judicious removal of tree(s) will result in improved growth of other trees;*

Comment: The subject tree is not in an overcrowded situation.

h) *whether the species and/or growth form of the tree or other vegetation is ecologically significant in the local or regional context and its ability in providing habitat for native fauna; and*

Comment: The subject tree possibly provides habitat for native fauna and birdlife. It is not considered the tree is significant from an ecological perspective.

i) *whether, based on supporting documentation submitted with the application, the tree or other vegetation is dying or diseased and its safe useful life expectancy is diminished.*

Comment: The submitted tree report does not identify that the subject tree is dying or diseased or that its safe useful life expectancy is diminished.

The applicant has provided the following comments in support of the removal of the eastern Norfolk Island Pine tree:

"It is submitted that given the existing planning controls applying to the site including the permitted height limit, the proposed removal of the Norfolk Island Pine tree will not result in significant impacts on the visual amenity of the area. The construction of a building meeting the requirements of the LEP and DCP in relation to this site would effectively obscure the trees as viewed from the entry to the Town Centre.

It is also submitted that as the removal of the second Norfolk Island Pine tree is exempt from requiring development consent, the retention of a single tree is this part of the site will do little to enhance the overall design of the development. It is proposed to retain the Norfolk Island Pine tree adjacent to River Street and the design of the proposed building will potentially improve the health of this existing tree. Further, the existing Pandanus tree located in the south east corner of the site, in the area proposed to be dedicated for public access, will also contribute to the amenity of the site.

Whilst the Norfolk Island Pine tree proposed to be removed presently contributes to the aesthetic qualities for the locality, this contribution is made in the context of the existing single storey development on the site. It is noted that the building height controls and the identified objectives for the establishment of a landmark building on this site would diminish the aesthetic contribution of the tree in this regard. Similarly, as previously noted, the contribution presently made by the tree is also made in the context of its siting adjacent to a second Norfolk Island Pine tree which is not affected by the requirement to obtain development consent for its removal.

It is our view that the contribution of a single tree in this location is less significant”.

In the assessment of this aspect of the proposal, Council staff requested that the applicant provide copies of the preliminary concept plans for the site. These plans involved the retention of the two Norfolk Island Pine trees in the central/southern section of the site and included:

- basement level parking,
- ground floor commercial uses, with car parking and a restaurant provided around the two Norfolk Island Pine trees (note: car parking is provided adjacent to the riverfront),
- Level Two as containing residential apartments and a landscaped podium surrounding the two Norfolk Island Pine trees,
- Levels Three to Six containing residential apartments.
- The bulk and height of the built form provided in the northern section of the site.

The applicant has stated that “for a variety of reasons this scheme was not pursued by the Proponent and accordingly this material is provided to you for your information but should not be regarded as forming part of the Development Application material”.

It is acknowledged that the proponents have undertaken investigations, prior to the preparation and design of the subject proposal, to retain the two Norfolk Island Pine trees within the central/southern section of the site as part of their intended development of the site. For reasons not specified to Council, these investigations have not been pursued beyond a preliminary concept design. Nevertheless, the proponent has chosen to pursue the current proposal and Council must decide whether the erection of the subject development outweighs the removal of one Norfolk Pine tree.

Chapter 2b – Floodplain Management

As previously discussed within this report, the subject land has been identified as being affected by flooding.

The applicant has stated in their application that “*the proposed development has been designed to meet the minimum fill and floor levels identified in the BLEP 2012. The car parking area has been provided with proprietary demountable flood barriers which can be installed during flood events.*”

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

The current Ballina LEP 2012 provisions provide that the minimum fill level shown for the subject land on the Building Height Allowance Map is 2.0m AHD. In this regard, the proposal has been designed based on this requirement. The minimum fill level of 2.0m has been shown on the development plans, with a minimum floor level of 0.5m above that level, being 2.5m AHD.

The Flood Planning Maps within Chapter 2b of the Ballina Shire DCP 2012 show that a small section of the northern part of the subject site (approximately 10%) is required to be filled to 2.0m AHD, with the remaining majority (approximately 90%) of the site required to be filled to 2.1m AHD. Council's Civil Services Group has advised that in the circumstances of the subject property, the 2.1m AHD requirement should be applied. This is at odds with the Building Height Allowance Map within the BLEP 2012 (as discussed above).

The minimum floor level specified by the provisions of Chapter 2b is the minimum fill level (of 2.1m AHD) plus 0.5m AHD, which results in a 2.6m AHD minimum floor level.

Council's Strategic and Community Facilities Group are aware of the inconsistencies between the flood mapping within the BLEP 2012 and the Ballina Shire DCP 2012. This matter is currently under review and is likely to result in an update to the mapping within the BLEP 2012.

It is noted that the statutory document that Council is required to assess the proposal against is the BLEP 2012 and that under Section 79C of the Environmental Planning and Assessment Act 1979, Council is required to be more flexible in applying the provisions of the Ballina Shire DCP 2012 (and allow reasonable alternative solutions that achieve the objectives of standards that are not complied with).

However, the most recent information that Council has in relation to flooding and filling of the land to reduce flood hazards is that contained within Chapter 2b of the Ballina Shire DCP 2012. As previously stated, this is a minimum fill level of 2.1m AHD and a minimum floor level of 2.6m AHD. Given the potential implications of flooding and climate change in the future, it would appear appropriate and responsible for Council to impose or require compliance with these levels via a consent condition requiring a minimum fill level of 2.1m AHD and a minimum floor level of 2.6m AHD.

In relation to the previous discussion in this report regarding the building height of the proposal, a condition requiring an additional 0.1m of fill and 0.1m floor height (resulting in a minimum fill level of 2.1m AHD and a minimum floor level of 2.6m AHD), will mean that the building will exceed the height limit by a further 0.1m. In the circumstances of this case (including the discussion regarding building height within the Ballina Local Environmental Plan 2012 section of this report) and the inconsistencies between the flood mapping within the BLEP 2012 and the Ballina Shire DCP 2012 for the site, the additional 0.1m is not considered to be an issue of great consequence for the development.

Council's Civil Services Group have reviewed the use of the proposed flood barrier technology for the car parking area and have supported its use for this area of the development. It is noted that the flood barrier may provide some immunity to the building also.

Chapter 4 – Residential and Tourist Development

The following table provides an assessment of the proposal against the relevant applicable controls of Chapter 4.

Control	Proposal & Assessment/Comment
<p>A. <i>Element - Building Height</i> (to comply with provisions of BLEP 2012)</p>	<p>Overall building height of 23.6m AHD. Refer to previous comments in the Ballina Local Environmental Plan 2012 section of this report</p>
<p>G. <i>Element - Landscaping and Open Space</i></p>	<p>Refer to assessment and comments provided below.</p>
<p>H. <i>Element - Vehicular Access and Parking</i></p>	<p>Refer to the Roads, Traffic, Access and Parking section of this report for discussion and assessment against these provisions.</p>
<p>I. <i>Element - Overlooking and Privacy</i></p> <ul style="list-style-type: none"> • Windows in habitable rooms (other than bedrooms) must have a privacy screen if less than three metres from a side or rear boundary. • A balcony must have a privacy screen if setback less than three metres from a side or rear boundary (and has an area more than three m²). • Direct views between habitable rooms (other than bedrooms) shall be screened where: <ul style="list-style-type: none"> ○ First floor windows are within a nine metre radius from any part of the window of an adjacent dwelling on the same site, and ○ Other floor windows are within a 12 metre radius of an adjacent dwelling on the same site, and ○ Direct views from habitable rooms (excluding bedrooms) of dwellings into the principal area of private open space of other dwellings on the same site shall be screened or obscured where they are within a 12 metre radius. • Roof top terraces and associated structures shall be designed such that their size and location does not unreasonably impact upon the privacy of adjoining dwellings. • Awnings and coverings on roof top terraces must be within the applicable height limits and must not obstruct views from surrounding 	<p>No habitable rooms or balconies are within three metres of the eastern property boundary.</p> <p>The proposal has been designed such that there is no direct view from any habitable rooms into any adjoining apartments on the same site.</p> <p>Adjustable shutters have also been provided as part of the design of each apartment, to assist with any privacy issues within (or external to) the development.</p> <p>The proposed communal open space area to be located on Level Three does not comprise a roof top terrace. It is well below the applicable height limit for the site and is not anticipated to obstruct views from surrounding properties.</p> <p>It is noted that there is potential for overlooking into the rear yard of the property to the east of the site. In designing this aspect of the proposal, the architect has set the communal space area 1.5 metres off the eastern property boundary, with three metre wide planter beds provided adjacent, giving an overall setback of 4.5 metres to actual space where residents can stand.</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<p>properties.</p> <ul style="list-style-type: none"> Roof terraces are to be appropriately located and screened to prevent direct views into habitable rooms or private open space on adjoining dwellings. 	
<p><i>J. Element - Solar Access</i></p> <ul style="list-style-type: none"> Dwellings are to be orientated with the main indoor and outdoor living spaces and major window areas facing towards the north and east. Windows of living area of dwellings and private open space facing north, north east or north west must receive at least three hours of direct sunlight between 9:00am and 3:00pm on 21 June. New buildings must maintain at least three hours of direct sunlight to the windows of living areas that face north, north east or north west for existing adjacent dwellings and their areas of private open space between 9:00am and 3:00pm on 21 June. Building are to be designed, where practicable, to include a north or west facing roof where a solar hot water system or collector can be installed. New buildings must not result in overshadowing of beaches or adjacent public foreshore open space before 3.00pm on 21 June or 6:30pm on 21 December. 	<p>The proposal has provided for 11 apartments to have main indoor and outdoor living spaces and major window areas facing towards the north and east. For these apartments at least three hours of direct sunlight will be achieved to the required areas mid-winter</p> <p>The applicant has stated for those apartments that are not oriented north and east, the southern river views will compensate for any perceived loss of amenity.</p> <p>It is noted for the west and south-west facing apartments (total of 12 apartments), these apartments will also enjoy three hours of direct sunlight into the required areas mid-winter.</p> <p>Six apartments face east and south-east and will receive some direct sunlight into the required areas, but it will be less than three hours.</p> <p>The remaining five apartments face south and will not enjoy any direct sunlight into the required areas mid-winter.</p> <p>In relation to the existing dwelling house located at No. 272 River Street (to the east of the subject property), shadow diagrams have been provided by the applicant. Refer to Attachment 12. This plan shows that some overshadowing of living area windows will occur from at least 12 noon onwards mid-winter and that for the most part the dwelling will have at least three hours of direct sunlight at this time.</p> <p>The proposal has provided for north and west facing roof areas.</p> <p>The subject site is not located adjacent to a beach or its foreshore. However, is located adjacent to the Richmond River and the proposal has been noted by the applicant to overshadow the River and its foreshore (including new public boardwalk). The applicant has stated that all buildings in this riverfront location result in similar impacts upon the River and adjacent foreshore.</p>
<p>L. Element - Roof Pitch</p>	<p>The proposal will have a combination of</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<ul style="list-style-type: none"> • Roofs of dwellings are to have a minimum pitch of five degrees; and • Council may consider a variation to this control to maintain views or to correspond with adjoining building design that is consistent with the character of the locality. 	<p>roof pitches – the dominant angle is 10 degrees, with a five degree section to lower the roof on the western façade. These roofs are the most noticeable from River and Kerr Street.</p> <p>On the east façade, the roof pitch is three degrees. The applicant has stated that this is required to reduce the bulk of the building on the adjoining property and reduce overshadowing.</p> <p>A variation to the five degree roof pitch requirement for the eastern roof is therefore sought by the applicant. No objections are raised in relation to variation, given the roof design will reduce impacts upon the neighbouring eastern property.</p>
<p>M. Element - Adaptable Housing</p> <ul style="list-style-type: none"> • At least 10% of all dwellings must be designed in accordance with the Australian Adaptable Housing Standard (AS 4299-1995) • Car parking and garages allocated to Adaptable Housing Dwellings must comply with the dimensions in AS 4299-1995. 	<p>Four apartments (Units four, nine, 14 and 17) have been designed as Adaptable Housing under AS 4299-1995.</p> <p>The car parking spaces for these apartments have been designed to the more recent AS 2890.6 2009 (refer to the Roads, Traffic, Access and Car Parking section of this report for further discussion).</p>

Landscaping and Open Space

The following controls within Chapter 4 are relevant to the proposal in relation to landscaped open space.

- To be considered as private open space, balconies must contain a minimum area of 25m² and a minimum width of 2.5 metres.

Comment: Each apartment is to be provided with a balcony complying with these requirements, with the exception of Unit 15. Unit 15 is to have balcony with an area of 20m², with only 11m² of the balcony area complying with the minimum width of 2.5 metres. It is noted that Unit 15 is a one bedroom apartment located on Level Three of the building, adjacent to the communal open space area.

The balcony is provided on the eastern elevation of the building and has been demonstrated as having an area adequate to contain outdoor furniture. In the circumstances of the case, the proposed balcony area for Unit 15 is accepted.

- Private open space must be directly accessible from a living area.

Comment: The balcony for each apartment complies with this requirement.

- Where practicable, private open space is to be located to the north or east of the dwelling and is required to have appropriate orientation and provisions to allow for winter sun and summer shade.

Comment: Approximately half of the apartments are oriented to the west and/or south only and in this regard, there is no opportunity to provide for eastern or northern facing balconies for these apartments.

It is noted that adjustable shutters have been provided to all balconies to provide for summer shade, where required.

- Landscaped open space comprising landscaped areas and private open space is to be provided for each dwelling in accordance with the following table.

Dwelling Size	Minimum landscaped open space area per dwelling
<60m ² total dwelling GFA	50m ²
60-85m ² total dwelling GFA	70m ²
>85m ² total dwelling GFA	90m ²

Note: Landscaped open space may comprise both private open space (e.g. balconies) and landscaped areas (part of the site used for growing plants, grasses and trees but does not include any building, structure or hard paved area).

Comment: The total area of landscaped open space required for the development is 2,880m², being for four apartments with area of <60m² GFA (200m²), one apartment with an area of 60-85m² GFA (70m²) and 29 apartments with an area >85m² GFA (2,610m²).

The total area of private open space (balconies) provided for the apartments is 1,199m² (excluding Unit 15, given it does not meet the minimum area requirements).

This results in a requirement of 1,681m² of landscaped area to be provided as part of the development.

The applicant has stated that a total of 3,204m² of landscaped open space (comprising 1,199m² of private open space and 2005m² of landscaped area) has been incorporated into the development.

The calculation of 2,005m² of landscaped area includes both lawn/paved areas (approximate area of 370m²) adjacent to the restaurant and commercial tenancy facing the Richmond River. It is expected that these area will undoubtedly be utilised by the ground floor commercial/restaurant tenancies, rather than be available for use by residents of the development.

The applicant has provided the following discussion in relation to their calculations for the provision of landscaped area for the development:

“The provision of landscaping and open space for shop top housing is not specifically addressed in Chapter 4 (as it details requirements for residential and tourist development), however the proposal has been designed to address these provisions in order to provide for generous private open space and landscaped areas.

The provisions of the DCP relate to the provision of part of a site for growing plants and grasses and do not require the landscaped area to be allocated to a particular land use. It is submitted that the proposed development fully complies with the provisions of the DCP in relation to landscaped area.”

It is noted that the applicant has not provided exact calculations as to which areas of the development have been included as landscaped areas. It would appear that the timber boardwalk (to be located within the land to be dedicated to Council) has been included in these calculations.

The proposed development is non-compliant with the landscaped area provisions of Chapter 4 by at least 50m². In the overall scheme of the development, this variation is relatively minor and given the generously sized balconies for the apartments, the large communal open space area provided on Level Three and the land dedication (and public walkway provided therein), it is considered the proposal has been provided with adequate landscaped open space.

- At least 75% of the landscaped open space area must be covered by pervious surfaces that are defined as landscaped areas, such as lawn or landscaping.

Comment: A total of 2,160m² of the landscaped open space area for the development (i.e. 75% of 2,880m²) would be required to be covered by pervious surfaces. The proposal does not comply with this requirement and the applicant has provided the following information in support of their case.

“We submit that the provision of the DCP requiring 75% of the landscaped open space to be covered by pervious surfaces such as lawn or landscaping is not reasonable to apply to mixed use developments, such as that proposed, in a commercial, business core zone. The total landscaped open space area comprising landscaped area and private open space generated by the development is some 2,880m² (as amended). Should 75% of this area comprise pervious surfaces, this would equate to some 2,160m² (as amended) or 47% of the site area. This provision is not consistent or compatible with the height and density provisions of Council's planning controls as they apply to the Ballina Town Centre. It is respectfully submitted that the intent of the provision is that 75% of the landscaped open space be covered by pervious

surfaces and that the landscaped open space calculation includes the subtraction of complying private open space areas.

Notwithstanding our view that the intention of the provision is not to provide for 50% of the site area as grass or lawn, it is submitted that the development is consistent with the objectives of 3.1.3 Element G which seeks to ensure that dwellings are provided with private open space which is useable and meets the needs of the occupant, ensures that landscaped areas are an integral component of residential development proposals, preserves and retains existing and mature native vegetation where ever practical, maximises the liveability and amenity of dwellings, and supports landscape design that incorporates a planting of landscape species indigenous to the part of the shire in which they are being planted. As detailed in the Statement of Environmental Effects the proposal provides for generous common and private landscaped areas for residents of the building.

In the circumstances of the subject proposal, it is considered that an adequate level of pervious surfaces have been provided.

- Development applications for multi dwelling housing, residential flat buildings or tourist and visitor accommodation are to be supported by landscaping plans detailing all proposed private open space areas and landscaped areas.

Comment: Landscaping plans were lodged with the application. These plans have not been amended since the lodgement of the original proposal. Revised plans will be required as part of the Construction Certificate process should Council grant development consent to the proposal.

From the assessment provided above, the proposal is considered to generally comply with the requirements of Chapter 4 that are relevant to the development. There are some non-compliances identified, in relation to solar access, roof pitch and landscaped open space. It is not considered that a variation to these provisions are fatal to the design of the proposal, given the development type (shop top housing), its location (in the Ballina Town Centre on the Richmond River) and the various positive aspects of the proposal, including the generous communal landscaped area for residents and the design's integration with the River, providing views for at least 85% of the residential apartments.

Chapter 6 – Commercial Development

The following table provides an assessment of the proposal against the relevant applicable controls of Chapter 6.

Control	Proposal & Assessment/Comment
<p>A. <i>Element - Building Height</i> (to comply with provisions of BLEP 2012)</p>	<p>Overall building height of 23.6m AHD. Refer to previous comments in the Ballina Local Environmental Plan 2012 section of this report</p>
<p>C. <i>Element - Roof Form</i></p> <ul style="list-style-type: none"> • Roof forms are to be varied where practical and shall include the use of skillions, gables and hips • Roofs are to have a minimum pitch of five degrees, unless, in the opinion of Council, it is considered necessary to maintain views or to fulfil a particular building design. • Parapets and flat roofs should be avoided. • Roof forms shall be consistent with or complementary to existing surrounding developments. • Lift over runs and other visually prominent infrastructure shall, as far as practicable, be concealed within roof structures. • All roof plant is to be represented on development application plans and elevations. • Roofing colours, materials and finishes shall have a low reflectivity index. 	<p>A variety of roof forms have been used within the proposed roof design, including skillions, hips and small parapets (to conceal flatter roofs over decks). These are considered to be generally consistent with other roof forms in the locality.</p> <p>As stated previously in this report, the proposal will have a combination of roof pitches – the dominant angle is 10 degrees, with a five degree section to lower the roof on the western façade. These roofs are the most noticeable from River and Kerr Street. On the east façade, the roof pitch is three degrees. The applicant has stated that this is required to reduce the bulk of the building on the adjoining property and reduce overshadowing.</p> <p>Lift over runs have been concealed behind screens on the roof plant area.</p> <p>Roof materials are proposed to be colorbond, with low reflectivity. Conditions are able to be imposed on any consent granted in relation to this requirement.</p>
<p>D. <i>Element - Building Setbacks</i></p> <ul style="list-style-type: none"> • Building lines or setbacks shall comply with the detailed requirements established for each precinct outlined in Chapters 6a – 6d. 	<p>Refer to discussion in Chapter 6a section of this report.</p>
<p>F. <i>Element - Awnings</i></p> <ul style="list-style-type: none"> • Awnings providing continuous shelter from the weather are to be provided for the full extent of an active street frontage. • Awnings are to: <ul style="list-style-type: none"> – be horizontal or near horizontal with a pitch not exceeding 10% – provide a minimum 3.2 metres and maximum 4.2 metres clearance from the finished ground level at the property boundary – provide a minimum width of 2.5 metres (unless constrained by narrow pavements, street trees, infrastructure or the like) – be set back at least one metre from the kerb. 	<p>Continuous awnings have been provided for all active street frontages – Kerr and River Streets.</p> <p>The proposed awnings comply with the required pitch, clearance, width and setback requirements.</p> <p>The proposed awnings are of consistent height and depth and are to be constructed of precast concrete.</p> <p>The proposed awnings wrap around the River/Kerr Street corner and follows the building line with a recessed section to retain the Norfolk Island Pine tree.</p> <p>Conditions can be applied to any</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<ul style="list-style-type: none"> • All contiguous awnings must be of consistent height and depth and of complementary design and materials. • New awnings shall be designed to be consistent with and complementary to existing adjoining awning structures and be integrated into the building design. • Awnings shall wrap around street corners and contribute to the articulation and focal design of corner buildings. • Under awning lighting shall comply with Australian Standard 1158 – Lighting for roads and public spaces. 	<p>consent granted with respect to under awning lighting.</p>
<p><i>G. Element - Landscaping</i></p> <ul style="list-style-type: none"> • Development applications for new buildings in a business zone must be supported by a landscape plan that details the following, where applicable: <ul style="list-style-type: none"> – existing vegetation; – existing vegetation proposed to be removed; – proposed general planting and landscape treatment for all public, private and car parking areas of the site; – design details of hard landscaping elements and major earthworks (cut and fill) and any mounding; – street trees; – existing and proposed street furniture including proposed signage; and • A species list comprising native vegetation that is consistent with the Ballina Shire Urban Garden Guide is to be provided as part of the landscape plan. 	<p>The landscaping plan submitted with the original application addressed all requirements as listed and was generally considered satisfactory.</p> <p>The amended proposal has not included an update to the original landscape plan. It will be required as a condition of any consent granted that an updated plan be submitted as part of the Construction Certificate process.</p>
<p><i>H. Element - Gateways and Landmark Sites</i></p> <ul style="list-style-type: none"> • The design of buildings on corner sites or at the ends of a business/commercial zone shall emphasise the corner as a focal point through design elements such as: <ul style="list-style-type: none"> – increased wall heights. – splayed corner details. – expression of junction of building planes. – contrasting building materials. • Shopfronts are to wrap around corners and entrances shall be located centrally to the corner. 	<p>The applicant has stated that a key landmark of this development is the preserved Norfolk Island Pine tree and the new landscaping treatment, which is framed by lower rise commercial space at the corner of the site.</p> <p>Increased wall heights have not been utilised, so as to make the existing Norfolk Island Pine a more dominant feature (and the provision of a communal open space area on Level Three).</p> <p>Shop fronts wrap around the River/Kerr Street corner. Entrances to commercial tenancies will be provided close to the corner.</p>
<p><i>I. Element - Vehicular Access and Parking</i></p>	<p>Refer to the Roads, Traffic, Access and Parking section of this report for discussion and assessment against</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<p><i>J. Element – Waste Storage Facilities</i></p> <ul style="list-style-type: none"> • Waste storage facilities are to be physically and visually integrated into the design of the development at ground or basement level and are to be of a size appropriate to the scale of the development. • Waste storage facilities shall meet the following design requirements: <ul style="list-style-type: none"> – located behind the building line or setback and screened from the street or a public place. – accessed from a rear lane or secondary street frontage wherever possible. – easily accessible for all tenancies/occupancies in the building. – can be adequately serviced by waste collection vehicles, having regard for safety and ease of manoeuvring. – has water and drainage facilities for cleaning and maintenance, where necessary. – does not immediately adjoin habitable rooms or outdoor seating/recreation areas. – shall be appropriately screened and oriented when located adjacent to sensitive adjoining land uses. • Where storage and handling of putrescible (organic) or food waste is anticipated, waste storage areas must incorporate an appropriate roofed and screened area that is connected to the sewer system. 	<p>these provisions.</p> <p>Waste storage facilities have been located in the ground floor car parking area.</p> <p>The waste storage facilities are considered to meet the design requirements.</p> <p>In terms of the waste storage facilities being serviced by waste collection vehicles, refer to the Loading/Unloading section of this report for discussion.</p> <p>The applicant has advised that in terms of organic or food waste for the residential apartments, there will be composting units installed within the Level Three Communal Open Space Area.</p> <p>Council is able to impose conditions in relation to trade waste for the proposed restaurant.</p>
<p><i>K. Element - Pedestrian Entries and Access</i></p> <ul style="list-style-type: none"> • Development is to comply with Australian Standard 1428 – Design for Access and Mobility. • Secure and convenient parking and storage areas for bicycles are to be provided close to the entrance of the development. 	<p>The applicant has stated that the proposal has been designed to comply with AS1428.</p> <p>Bicycle storage has been provided in the ground floor car parking area in two locations, with potential for further storage in the communal green space at the front of the site (around the Norfolk Island Pine tree).</p>
<p><i>L. Element - Energy Efficiency</i></p> <ul style="list-style-type: none"> • Any residential accommodation component of new commercial buildings is to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX) and State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development. • All non-residential development is to 	<p>A BASIX Certificate has been submitted for all apartments. It is noted that this certificate will need to be updated to reflect the amended proposal. This is able to be achieved via a condition of consent, should the proposal be approved.</p> <p>Council's Building Services Section have advised that a condition will</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<p>comply with the Building Code of Australia Class 5 to 9 energy efficiency provisions.</p> <ul style="list-style-type: none"> • Mechanical space heating and cooling is to be designed to target only those spaces which require heating or cooling, not the whole building. • Development is to be designed to reduce reliance on artificial lighting. 	<p>imposed on any consent granted requiring compliance with the Building Code of Australia.</p> <p>The applicant has advised that mechanical ventilation will be targeted to specific spaces.</p> <p>An atrium has been provided in the centre of the residential tower, to provide light into this area.</p>
<p><i>M. Element - Water Efficiency</i></p> <ul style="list-style-type: none"> • Development must incorporate the following <ul style="list-style-type: none"> - Use at least AAA rated shower roses, taps and appliances. - Use of dual flush toilets; six litres or less for a full flush and three litres or less for a half flush. - Use of waterless urinals. - Install sensor operated taps, or automatic shut-off taps, especially in public areas. 	<p>These controls can be imposed as conditions of consent, should the proposal be granted approval.</p>
<i>Mixed Use Development</i>	
<p><i>A. Element - Building Design</i></p> <ul style="list-style-type: none"> • Development shall be designed to locate loading bays, waste storage/collection areas and any other noise and odour generating aspects of buildings away from residential areas. • Vehicular circulation areas must be legible and differentiate between the commercial service requirements, such as loading areas, and residential access. • Residential components are to be provided with direct access to street level with entrances clearly distinguishable from entries to commercial premises. • Secure entries are to be provided to all entrances to private areas, including car parks and internal courtyards. • All car parking required for the residential component of a development, including any required visitor car parking, must be provided on site. Section 94 Contributions for car parking spaces will not be accepted for any residential component of a development. • Car parking provided for the residential component of the development is to be clearly delineated and provided separate to general customer parking. • All car parking spaces required for the commercial component of the development are to be accessible car parking. Car parking spaces provided for the residential component of the 	<p>Loading bays, waste storage areas have been located away from adjoining residential uses. Refer to the loading/unloading section of this report in relation for additional discussion.</p> <p>Designated residential car parking spaces have been provided on Level Two, with commercial servicing to the development occurring on the Ground Floor.</p> <p>The residential apartments have a shared access (with the ground floor tenancies facing the Richmond River) off Kerr Street and is recognisable as the residential access point to the development.</p> <p>Secure entry has been provided to the ramp entry to the Level Two car parking area.</p> <p>Car parking for the residential apartments is provided in the Level Two car parking area.</p> <p>The car parking spaces provided on the ground floor are to be accessible car parking (and a condition can be imposed on any consent granting requiring such).</p> <p>Council's Public and Environmental</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<p>development may be in the form of secured parking.</p> <ul style="list-style-type: none"> • Acoustic separation is to be provided wherever possible between loud commercial uses, such as cafes and restaurants, and residential uses. This may be achieved by utilising intermediate quiet-use barriers such as offices. • Mechanical plant is to be located on the roof or visually and acoustically isolated from residential uses. • To allow for their adaptive use, mixed use buildings are to incorporate the following flexible design requirements: <ul style="list-style-type: none"> – buildings are to have a simple and efficient structural grid. – the number of internal apartment structural walls are to be minimised. – ceiling heights for the ground and first floors are to be 3.6 metres. • The shop top housing component of any mixed use development is to comply with the provisions of Chapter 4 – Residential Development. 	<p>Health Section have undertaken an assessment of the proposal with respect to noise and have not raised any concerns in relation to the proposed acoustic separation.</p> <p>All mechanical plant is to be located on the roof.</p> <p>Adaptive reuse of the building would appear possible in accordance with the flexible design requirements.</p> <p>The proposal has been assessed against the provisions of Chapter 4 – Residential Development.</p>

From the assessment provided above, the proposal is considered to generally comply with the requirements of Chapter 6 that are relevant to the development.

Chapter 6a – Commercial Development Ballina Town Centre

The following table provides an assessment of the proposal against the relevant applicable controls of Chapter 6a.

Control	Proposal & Assessment/Comment
<p><i>Structure Plan</i></p> <ul style="list-style-type: none"> • New development within the Ballina Town Centre will need to consider applicable elements nominated in the Structure Plan. 	<p>For the most part, the proposal has had due regard for the elements within the Structure Plan.</p> <p>It is noted that the Structure Plan has designated the River frontage of the site as “desired open space”, with a width of approximately 40 metres. The proposal seeks to provide only four metres of public open space. Refer to the Land Dedication section of this report for further discussion.</p>
<p><i>Riverside West Precinct</i></p> <p><u>Desired Future Character</u></p> <p>A mix of higher and lower scale buildings create an appropriate interface with the riverfront, War Memorial Park and new foreshore public open space. Buildings in this precinct have a distinct base, middle and top and display horizontal patterns, significant articulation, the use of lightweight elements and carefully</p>	<p>The proposed development is considered to be generally consistent with the desired future character for the Riverside West Precinct.</p> <p>The height of the proposal is slightly less than the height of the Norfolk Island Pine trees on the site.</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
designed rooftops. Established mature trees have been protected to provide reference for building height.	
<u>Front setbacks (including balconies)</u> River Street: <ul style="list-style-type: none"> • Zero setback (i.e. build to frontage – building articulation and balconies included) up to and including the third storey. • Four metre setback for storeys above the third storey. 	The proposal complies with the required setbacks.
<u>Side setbacks (including balconies)</u> <ul style="list-style-type: none"> • Merit based and in accordance with BCA standards. 	Side setbacks for the development are considered appropriate and no issues have been raised by Council's Building Services Section with respect to BCA standards.
<u>Building Depth</u> <ul style="list-style-type: none"> • Commercial - determined on the merit of the development. • Residential - Residential storeys are to have a maximum depth of 18 metres, glass line to glass line and 24 metres including balconies. 	Commercial – considered appropriate in the context of the development. Residential – the proposal does not comply with this requirement, with the development having a maximum depth of 50 metres. The applicant has advised that the building elevation has been broken down into distinct elements via the use of: <ul style="list-style-type: none"> ○ fixed mesh screens to provide for creeper vines ○ adjustable sliding shutters ○ the architectural roof feature.
<u>Balconies</u> <ul style="list-style-type: none"> • Balconies must have a minimum depth of two metres and a maximum depth of three metres. 	All balconies meet the minimum depth requirements. However, some balconies exceed the maximum depth requirement. No objection is raised to this exceedance.
<u>Floor to Ceiling Heights</u> <ul style="list-style-type: none"> • Ground floor – Minimum of 3.6 metres. • Other storeys – Minimum of 2.7 metres. 	The amended proposal does not comply with the floor to ceiling heights for the ground floor, being 3.4 metres. Level Six also has been amended such that it does not comply with the floor to ceiling heights required, being 2.550m. It is noted that the floor to ceiling heights were reduced in order to reduce the overall building height of the proposal.
<u>Public Open Space</u> <ul style="list-style-type: none"> • A section of the foreshore located between War Memorial Park and Kerr Street is to be dedicated to Council for public open space in accordance with the requirements of the Ballina Town Centre Structure Plan. 	Refer to the Land Dedication section of this report for further discussion
<u>Deep Soil Zone</u> <ul style="list-style-type: none"> • A deep soil zone comprising 15% of the total site area and containing a minimum width of six metres to enable sufficient root zone for larger trees is to be provided. 	Landscape plans show 18.8% or 859m ² of land is a DSZ. This area has been shown to include: <ul style="list-style-type: none"> – the communal open space area adjacent to the Norfolk Island Pine tree (including an elevated timber deck),

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<ul style="list-style-type: none"> No structures, works or excavations that may restrict vegetation growth are permitted in the deep soil zone (including, but not limited to car parking, hard paving, patios, decks and drying areas). 	<ul style="list-style-type: none"> The area to the rear of the commercial tenancies facing the Richmond River, and An area of land to be dedicated as a public walkway, including the timber boardwalk. <p>The applicant has stated that the areas where timber decking is provided will provide for vegetation growth (accommodating root systems of existing and future vegetation).</p> <p>It is noted that Council staff are seeking the public walkway adjacent to the Richmond River to be of a concrete construction for maintenance purposes (refer to the Land Dedication section of this report for further detail). In this regard, that land may not be able to be included in the DSZ calculations.</p> <p>In accordance with the recommendations from the Local Traffic Development Committee (minimum 2.5 metre wide public footpath), this would result in the loss of 137.5m². The approximate area of DSZ provided would be 721.5m² or 15.8%, which is compliant with the minimum requirement of 15%.</p>
<i>Western Entrance Precinct</i>	
<p><u>Desired Future Character</u> The Western Entrance Precinct provides a sense of arrival to the Town Centre with the built form addressing the highly prominent Kerr and River Street corner. Buildings are designed to give definition to this corner. Transitions in building form are provided to surrounding residential areas, the Highway Strip Precinct and the Town Centre Core Precinct.</p> <p>Ground floor uses include a mix of commercial uses, such as take-away outlets, convenience shopping and household services for nearby residents. These commercial uses are supported by a north-south rear lane which aids circular and pedestrian access. The lane also provides a transition in the scale of built form to the lower rise Town Centre Core. Upper floors accommodate a mix of apartment sizes.</p>	<p>The proposed development is considered to be generally consistent with the desired future character for the Western Entrance Precinct.</p> <p>The built form of the proposed development, including the retention of the Norfolk Island Pine tree, is considered to provide definition to the corner of the site.</p> <p>The design of the development is such that it provides a transition from the low scale residential development to the west to a higher scale, as is permitted for development in the Ballina Town Centre.</p> <p>The ground floor of the proposal includes commercial tenancies and the upper floors comprise residential uses with a mix of apartment sizes.</p>
<p><u>Front setbacks (including balconies)</u> River Street:</p> <ul style="list-style-type: none"> Zero setback (i.e. build to frontage – building articulation and balconies 	<p>The proposal complies with the required setbacks.</p>

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Control	Proposal & Assessment/Comment
<p>included) up to and including the third storey.</p> <ul style="list-style-type: none"> • Four metre setback for storeys above the third storey. 	
<p><u>Side setbacks (including balconies)</u></p> <ul style="list-style-type: none"> • Zero metres, except Kerr Street (east side between Winton Lane and Tamar Street) which must be subject to a six metre setback to the eastern boundary 	<p>The proposal complies with the required setbacks.</p>
<p><u>Building Depth</u></p> <ul style="list-style-type: none"> • Commercial - determined on the merit of the development. • Residential - Residential storeys are to have a maximum depth of 18 metres, glass line to glass line and 24 metres including balconies. 	<p>Commercial – considered appropriate in the context of the development.</p> <p>Residential – the proposal does not comply with this requirement, with the development having a maximum depth of 50 metres. The applicant has advised that the building elevation has been broken down into distinct elements via the use of:</p> <ul style="list-style-type: none"> ○ fixed mesh screens to provide for creeper vines ○ adjustable sliding shutters ○ the architectural roof feature.
<p><u>Balconies</u></p> <p>Balconies must have a minimum depth of two metres and a maximum depth of three metres.</p>	<p>All balconies meet the minimum depth requirements. However, some balconies exceed the maximum depth requirement. No objection is raised to this exceedance.</p>
<p><u>Floor to Ceiling Heights</u></p> <ul style="list-style-type: none"> • Ground floor – Minimum of 3.6 metres. • Other storeys – Minimum of 2.7 metres. 	<p>The amended proposal does not comply with the floor to ceiling heights for the ground floor, being 3.4 metres.</p> <p>Level Six also has been amended such that it does not comply with the floor to ceiling heights required, being 2.550m.</p> <p>It is noted that the floor to ceiling heights were reduced in order to reduce the overall building height of the proposal.</p>
<p><u>Housing Choice</u></p> <ul style="list-style-type: none"> • Where residential dwellings are proposed, a mix of studio, one bedroom, two bedroom and three bedroom apartments is required. • Studio and one bedroom apartments must not be greater than 25% and not less than 10% of the total mix of apartments within each development. • Three bedroom apartments are not to be more than 75% of the total mix of apartments within each development. 	<p>The proposal contains five (15%) x one bedroom apartments, 12 (35%) x two bedroom apartments and 17 (50%) x three bedroom apartments.</p>
<p><u>Deep Soil Zone</u></p> <ul style="list-style-type: none"> • A deep soil zone comprising 15% of the total site area and containing a minimum width of six metres to enable sufficient root zone for larger trees is to be provided. 	<p>The proposal is considered to comply with this requirement.</p> <p>Refer to discussion provided above.</p>

Control	Proposal & Assessment/Comment
<ul style="list-style-type: none"> No structures, works or excavations that may restrict vegetation growth are permitted in the deep soil zone (including, but not limited to car parking, hard paving, patios, decks and drying areas). 	
<p><u>Part 5 Car Parking</u></p>	<p>Refer to the Roads, Traffic, Access and Car Parking section of this report for assessment and discussion.</p>

From the assessment provided above, the proposal is considered to generally comply with the requirements of Chapter 6a that are relevant to the development.

Roads, Traffic, Access and Car Parking

The following comments have been provided by Council's Civil Services Group in relation to roads, traffic, access and car parking for the proposed development (with reference to Chapters 2, 4, 6 and 6a of the Ballina Shire DCP 2012).

External Roads and Traffic

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

The applicant's revised proposal includes new line marking arrangements along the Kerr Street frontage of the site, which would result in the provision of eight car parking spaces and one disabled car parking space. The proposed design will reduce the number of car parking spaces at the southern end of Kerr Street from seven to five. In total, the proposed alterations would provide one additional car parking space within Kerr Street and is therefore considered acceptable.

Pedestrian and Cyclist Requirements

There is an existing footpath along the full length of the River Street frontage of the site. The developer will be required to provide a shared path along the full length of the site's Kerr Street frontage. This is able to be imposed as a condition of any consent granted.

Local Development Traffic Committee

The application was referred to the Local Development Traffic Committee meeting held on 11 December 2014. The Committee provided comments such that they:

- supported the original proposal for a single six metre wide driveway access;
- concurred with the requirement to provide car parking in accordance with the minimum rates specified within Council's DCP;
- concurred with the recommendation that an on-site loading bay be provided to accommodate medium rigid vehicles;
- recommended that the disabled car parking spaces for the adaptable housing units be in accordance with AS2890.6 2009; and
- recommended that a 2.5 metre wide public footpath be provided along the river frontage with signage requiring cyclists to dismount.

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Note: an amended proposal was received from the applicant in February 2014. The amended proposal has not been referred to the Local Development Traffic Committee for further comment.

Site Access, Internal Driveways and Parking Design

The proposal consists of both residential and commercial uses. Residential uses are classified as Class 1 under Australian Standard (AS) 2890.1 whilst commercial are classified as Class 3. Class 1 car parking spaces are required to be a minimum of 2.4m wide by 5.4m long whilst Class 3 spaces are required to be 2.6m wide by 5.4m long.

The car parking for the commercial tenancies is to be provided on the ground floor and complies with the minimum dimension requirements as specified above. The car parking for the residential apartments is to be provided on Level Two and complies with the minimum dimension requirements specified above.

The applicant has submitted a revised driveway design with two driveways consisting of an entry exit at the southern end of Kerr Street and an exit only to the north of this access. The revised design complies with the requirements of AS2890.1.

The access driveway proposed to be located at the southern end of Kerr Street is located over an existing kerb inlet pit. The applicant has proposed that the pit be modified to accommodate the construction of the driveway. This is considered acceptable and the modification works must be completed by the applicant.

There are sufficient sight distances at both access driveway points given the locality and speed of traffic.

Car Parking

In terms of parking numbers and the requirements of the Ballina Shire DCP 2012 (Chapters 2, 4, 6 and 6a – refer to note below), the total number of spaces generated by the development are shown in the table below.

Council requirement		Proposed Gross Floor Areas/No. of Dwellings	Required No. of Parking Spaces
Use	Rate		
Dwellings (residential apartments)	2 spaces per dwelling	34 dwellings	68 spaces
Commercial	One space per 25m ² ground floor and One space per 40m ² first floor	771m ²	30.8 spaces
Restaurant	One space per 25m ² ground floor and one space per 40m ² first floor	201m ²	8 spaces
		Total Required	107 spaces

8.1 DA 2013/381 - Shop Top Housing (Reside Living), River Street, Ballina

Note: Chapter 2 – General and Environmental Considerations of the Ballina Shire DCP 2012 provides the car parking rate for a dwelling as two spaces per dwelling. The proposal has been assessed at the car parking rate for dwellings, rather than for the multi-unit housing or residential flat developments. The reasons for this are:

- the Ballina Shire DCP 2012 does not currently include car parking rates for shop top housing,
- the definition of shop top housing is “one or more dwellings located above ground floor retail premises or business premises”,
- multi-unit housing and residential flat developments are prohibited in the B3 Commercial Core Zone.

Chapter 6a – Commercial Development Ballina Town Centre provides the car parking rate for commercial and restaurant uses as one space per 25m² ground floor and one space per 40m² first floor.

The proposal provides a total of 105 car parking spaces. The engineering consultants for the proposal (Newton Denny Chapelle) have allowed for a ‘joint use parking credit for the residential component and after-hours peak’, which has enabled a reduction of two spaces.

Newton Denny Chapelle have argued that:

- the application involves a fine dining restaurant that will service the residential demands of the shop top housing apartments;
- the peak use of the restaurant will be in the evening, where the commercial parking areas would be available for shared use by the restaurant at those times;
- Council has previously recognised a complementary/joint use of restaurants and residential/tourist accommodation and have allowed a discount of the parking demands for those developments.

It should be noted that this has been applied by Council in the instances of restaurants/tourist accommodation given that it is likely that tourists will use the on-site restaurant. There are no known instances in the Ballina Shire where this has been applied to restaurants/residential apartments.

The proposal also includes stacked car parking spaces, being:

- Four stacked spaces on the ground floor level, which have been designated as staff parking (spaces 22-29). Clause 3.19 states that stacked parking is not permitted for commercial developments; however consideration may be given where a dedicated parking attendant is on site at all times. The application has not referenced a parking attendant for the ground floor car parking area.
- Nine stacked car parking spaces on Level Two, designated for use by the residential apartments within the development. H. Element Vehicular Access and Parking within Clause 3.1.3 of Chapter 4 – Residential and Tourist Development provides that stacked car parking spaces are permissible for dwellings.

The car parking design also includes one small car space, nominated on the plans as parking space number 32 on the ground floor. Given the number of car parking spaces within the development, the allocation of one space as a small space is acceptable. The proposed space complies with the minimum requirements of section 2.4 of AS2890.1 for a small car parking space.

As the four 'commercial' stacked car parking spaces are not permissible under the provisions of Clause 3.19, the proposal has technically provided a total of 101 complying car parking spaces. The proposed design does not, therefore, comply with the minimum car parking requirement of 107 spaces as specified within the Ballina Shire DCP 2012. The subject site is located within the Ballina Town Centre and is therefore able to provide the additional six spaces via Section 94 Developer Contributions under the Ballina CBD Car Parking Contribution Plan.

It should also be noted that the car parking assessment for the proposed development does not include any external alfresco dining in relation to the proposed restaurant (or other commercial tenancy adjacent to the Richmond River). These areas would generate car parking spaces in addition to the 107 car parking spaces required. Conditions should be applied to any consent granted to restrict external alfresco dining at the site as part of the subject proposal. Should a future operator of the restaurant (or commercial tenancy) seek to undertake external alfresco dining, it will be a requirement that a development application be submitted and payment of contributions for associated car parking, roads, water and sewer will be required as part of an approval for that application.

The Engineering Services Report (as amended) prepared by Newton Denny Chapelle has indicated that the proposed design would require modification at Construction Certificate stage to relocate columns to ensure that all car parking spaces comply with the column location spacing requirements of AS2890.1 2004. Conditions are able to be imposed of any consent granted in relation to this requirement.

Conditions can also be imposed to require that:

- the car parking spaces on the ground level be nominated as common property for the commercial tenancies under the strata plan.
- no boom gates, roller doors or other controls be installed at the ground level car park entry and that all spaces within the ground floor car parking area remain open and available to residents, customers and visitors at all times.

Disabled Car Parking Spaces

The original application proposed to provide four disabled car parking spaces in accordance with the Adaptable Housing Standard AS 4299.1995. Whilst AS 4299.1995 nominates a complying disabled parking space as being 3.8 metres in width, AS 2890.6 2009 supersedes AS 4299.1995, resulting in off-street disabled car parking spaces requiring a total width of 4.8 metres (consisting of the parking space and shared area).

The applicant was advised that the car parking design required modification to provide disabled spaces for the adaptable housing apartments that comply with AS 2890.6 2009. The amended proposal includes four disabled spaces that comply with the minimum dimension requirements of AS 2890.6 2009.

The only other possible non-compliance with AS 2890.6 relates to the headroom provisions. Multi-storey developments often have limited headroom clearance due to service pipes, etc. Conditions should be applied to any consent granted to requiring that a minimum height clearance of 2.5 metres be maintained from the entry driveway through to the disabled car parking spaces.

The standard residential apartments within the facility are not required to provide any disabled car parking spaces.

In relation to the commercial tenancies of the proposed development, two disabled car parking spaces have been provided on the ground floor. These disabled car parking spaces comply with the dimension requirements of AS 2890.6.2009.

Table D3.5 of the Building Code of Australia (BCA), "Car parking spaces for people with disabilities", requires the provision of one disabled car parking space per 50 car parking spaces or part thereof for the commercial components of the development. The proposed design therefore complies with the BCA requirements.

The development therefore complies with the requirements of the BCA, the adaptable housing code and AS 2890.6 2009.

Bicycle and Scooter Parking

Bicycle racks have been proposed on the ground floor capable of servicing a minimum of ten bicycles. This is considered acceptable.

Loading/Unloading Activities

A loading bay space for a Small Rigid Vehicle (SRV) is provided within the ground floor car parking area, which complies with the minimum size requirement of AS2890.1. SRVs will be able to enter the site in a forward direction, safely manoeuvre and unload within the loading bay and then leave the site in a forward direction.

Council staff have written to the applicant on several occasions regarding the provision of on-site loading/unloading facilities for Medium Rigid Vehicles (MRVs). Due to the nature of the development (six commercial tenancies, a restaurant and 34 residential apartments), it is to be expected that MRVs will visit the site.

Clause 3.1.3, I. Element – Vehicular Access and Parking in Chapter 6 – Commercial Development of the Ballina Shire DCP 2012 states that "Service areas and loading bays should be designed to cater for the vehicles and servicing operations anticipated to occur in a particular development. Designs shall comply with Australian Standard 2890.2 Part 2 Off street commercial vehicle facilities."

The Australian Standard for off-street commercial vehicle facilities, AS2890.2, states that the design of service areas shall include provision for the largest design vehicle likely to use the facility, and provision for any specialist vehicles for which provision must be made.

The applicant and Newton Denny Chapelle have insisted that servicing of MRVs is not required for this development and that a Loading/Unloading Management Plan restricting service vehicle operations at the site to SRVs will be appropriate. Council staff have advised the applicant that this proposal is unrealistic, impractical and unenforceable, particularly in relation to waste collection and furniture delivery and removalists. As a result these activities would then occur within the adjoining street system.

Given the River Street frontage of the site is signposted as a "No Stopping" zone, any service vehicles would therefore seek to load/unload adjacent to the Kerr Street frontage of the site. It is considered that this will create safety risks for service vehicle drivers and the general public, as loading/unloading would occur on-street adjacent to traffic and pedestrians. There will also be amenity issues due to traffic obstruction/delays and noise where service vehicles double park, when the shoulder parking is already occupied by other vehicles.

The applicant has provided the following additional comments in relation to concerns raised by Council staff regarding the servicing of the development by MRVs.

"Council officers will recall that the Development Application as originally submitted provided for the servicing of the commercial uses on site via Small Rigid Vehicle (SRV) within the proposed car park, catering for an anticipated 85% of service vehicle deliveries. The initial proposal also provided for Medium Rigid Vehicle (MRV) deliveries via a designated shared space within the road reserve. This concept was not accepted by Council officers.

In response to this advice Newton Denny Chapelle provided for the management of service delivery vehicles via a Loading/Unloading Management Plan.

As previously submitted, Newton Denny Chapelle are of the view that the servicing of the commercial tenancies including the restaurant can be adequately addressed via the provision of a SRV space within the site in conjunction with a management plan for loading/unloading. The issue that is arising is interpretation of an applicable standard.

Previous responses by Newton Denny Chapelle in letter dated 20th February 2014 clearly show that the development planning controls seek an 'adequate' level of service vehicle management. As this is a subjective description, our proposal has relied upon a traffic survey of service vehicles of a similar facility to gauge likely demands. It was noted in the survey of servicing vehicles that larger vehicles were infrequent and by implementing a management plan for to curtail such vehicles is a reasonable and feasible approach. It is clarified that no specialist service vehicles are proposed for regular delivers to the site and that as the design vehicle is that of a Small Rigid Vehicle, the proposal fully complies with meeting the AS2890.2 requirements inclusive of height clearances to 3.5 metres.

In relation to the garbage servicing of the development, as outlined in the Waste Management Plan submitted with the Development Application, waste collection will occur kerb side so there is not requirement for the car park to cater for a garbage truck. In relation to the provision of a loading space for removal vehicles to cater for people moving in and out of the proposed units, we submit that this requirement is overly onerous, has not been imposed on similar residential developments within the Shire, and is inconsistent with the requirements of the DCP.

Notwithstanding this, the vehicle servicing management plan proposed for the site is able to incorporate a specific "traffic control plan for removalist trucks larger than SRV size" should Council wishes to implement controls upon such infrequent deliveries/pick-ups".

Three options exist in relation to the provision of servicing for MRVs for the development and Council will need to consider carefully which option is the most appropriate in the circumstances of the subject development:

1. Loading/unloading facilities for MRVs provided within the development site.

This would require the design of the proposal to be modified, which may involve:

- raising of the floor to ceiling heights for the ground floor car parking area. This would result in an increased overall building height for the development.
- the provision of a loading bay on site parallel to Kerr Street (similar to a Porte Cochere arrangement). This would result in a redesign to the western façade of the development, which may be potentially unattractive for this "gateway" site, and would impact upon the circulation of the ground floor and Level Two car parking areas requiring major redesign.

2. A designated loading bay provided in the street system of Kerr Street (between the two driveways) for MRVs (including garbage collection).

This could be imposed as a condition of consent, however the location of designated loading bays within the road reserve is not a typical arrangement for the servicing of commercial/residential developments. This has not been previously approved by Council for other developments in the Shire and may set a precedent or expectation for other commercial/tourist/residential developments in the Ballina Town Centre (and other towns). Also, the proponent would need to pay a contribution for the car parking spaces lost as a result of providing this designated loading bay within the street system.

3. Utilisation of the street system (i.e. no designated loading bay). As discussed above, this will create safety risks for service vehicle drivers and the general public (loading/unloading would occur on-street adjacent to traffic and pedestrians) and amenity issues (traffic obstruction\delays and noise where service vehicles double park, when the shoulder parking is already occupied by other vehicles). Also, Council's Parking Officers issue fines for "double parking" elsewhere in the Shire and in the event that no designated MRV loading bay be provided (either on-site or on-

street), an environment would be created where Council fines could be issued.

This option is the least supported of the three provided.

Noise

As part of the range of technical documentation submitted to support the proposal, the applicant has lodged an Environmental Noise Impact Report (ENIR), prepared by CRG Acoustical Consultants (dated 27 September 2013).

The ENIR has provided an assessment in relation to:

- the impacts of road traffic noise upon the proposed residential apartments;
- the impacts of off-site commercial activities to the east and north of the site upon the proposed on-site residential apartments;
- the impacts of on-site commercial activity noise emissions (i.e. vehicle activities, patron noise, deliveries, waste collection and mechanical plant) upon surrounding off-site residential properties and the proposed on-site residential apartments; and
- the impacts of on-site construction activity noise upon surrounding properties.

The ENIR concludes that based on the adopted noise limit criterion, overall the proposed development will generally be within acceptable levels of Council's requirements, subject to acoustic treatments (as recommended in the ENIR) being integrated into the design, construction and operation of the development.

These recommendations are as follows:

- In relation to road traffic noise impacts upon the proposed residential apartments – building shell treatments in order to achieve the required indoor noise levels.
- In relation to on-site and off-site commercial noise activity impacts:
 - Limitation of hours of operation for the proposed restaurant between 7am and midnight;
 - Limitation of hours of operation of some of the commercial tenancies;
 - No amplified sound to be undertaken unless a specific assessment is conducted;
 - Use of the on-site communal open space area on Level Three of the development to be restricted between 7am and 10pm;
 - Waste collection and deliveries to the site to be restricted between 7am and 6pm;
 - Acoustic louvres to be installed on the eastern wall of the ground floor and Level Two car parking areas;
 - Construction of a 1.8 metre high solid balustrade along the northern perimeter of the Level Three communal recreational area.
 - Apartments located within close proximity to the restaurant tenancy to have 6.38mm laminate glass in acoustic grade operable frames;

- Car park and delivery hard stand areas to be finished with surfaces that prevent tyre squeal;
- Drainage grating over trafficable areas to be well secured to prevent rattling; and
- Mechanical plant to be designed and installed to comply with low level noise criteria.
- In relation to on-site construction activity:
 - Limitations on hours of construction;
 - Limitations on the arrival and queuing of trucks and equipment;
 - Restrictions on the use of alarm bells/paging systems;
 - Siting of equipment to ensure minimal impact on noise sensitive dwellings; and
 - The establishment of management plans/processes to handle complaints arising from construction.

Council's Public and Environmental Health section have reviewed the ENIR in relation to the monitoring undertaken, the assessment of noise impacts and recommendations provided to address noise issues. In the event the proposal is granted development consent, conditions are to be imposed to address noise issues arising as part of the construction and operational phases of the development, including the recommendations as provided in the ENIR.

The noise report has stated the following in relation to the approved motel development to be located on the western side of Kerr Street:

"An acoustic assessment report for the proposed motel has been compiled by Ambience Audio Services (dated 13 February 2013) and includes significant levels of acoustic building shell treatments to mitigate road traffic noise to inside motel rooms. These acoustic treatments at the motel development will mitigate noise emissions from the subject site development and therefore, additional acoustic treatments to the subject site would not be warranted if the offsite motel development is constructed".

Council's Public and Environmental Health section have reviewed the noise report in relation to the concerns raised in the submission and have not provided any comments contrary to that included within the ENIR prepared by CRG Acoustical Consultants.

Land Dedication

As stated in the description of the proposal, the land to be dedicated to Council as part of the subject application consists of a minimum 3.7 to four metre wide strip of land plus the south eastern corner of the site containing an existing Pandanus tree. This will act as a pedestrian linkage along the foreshore area. The total area of land is 541m².

Revetment Wall

As minimal information was provided in the Statement of Environmental Effects (SEE) with respect to the existing revetment wall and the proposed dedication of land for public purposes, Council staff requested details as to the structural adequacy of the revetment wall and land contamination assessment.

The applicant has stated (via letter dated 5 November 2013) “in order to evaluate structural adequacy, we firstly need from Council guidance in relation to the revetment wall requirements. In the past, different revetment wall treatments have been adopted by Council adjacent to the Richmond River and it seems to us that Council is evolving its view in relation to the most appropriate approach to revetment walling in this location. Rather than second guessing Council’s opinion as to the appropriate revetment walling in the subject circumstances, our client’s preferred position is to obtain Development Consent Conditions from Council which specify its revetment wall treatment requirements and then the proponent will undertake the requisite studies as to structural adequacy and the like”.

Council staff have reviewed this response and as a result of the unforthcoming information are able to impose conditions on the development (in the event that it is granted development consent) requiring:

- The preparation and completion of a Detailed Site Investigation in accordance with SEPP 55 and OEG guidelines for Consultants reporting on contaminated sites for the subject site (including the land to be dedicated to Council) and the revetment wall.
- Completion of a geotechnical assessment to investigate how the stability of the riverfront will be maintained during and after construction of the development, which must address:
 - A pre-construction survey of the riverbank frontage of the site,
 - The loads associated with the required site filling and proposed new building,
 - The settlement likely to occur as a result of the development,
 - The flood forces associated with a probable maximum flood event,
 - The retaining wall/revetment wall structure requirements to ensure riverbank stability.
- Submission of a design from a certified practising Engineer for a retaining wall/revetment structure along the Richmond River frontage that meets the following minimum requirements:
 - The retaining wall/revetment structure must provide a minimum anticipated service life of 50 years,
 - The retaining wall/revetment structure must extend to a minimum height of RL 2.1m AHD,
 - The retaining wall/revetment structure must adequately support the proposed adjoining building and site filling,
 - The retaining wall/revetment structure must be able to withstand the hydraulic flood forces associated with a probable maximum flood event.

Public Access

The applicant has maintained their position of dedicating a minimum 3.7 to four metre wide strip of land plus the south eastern corner of the site containing an existing Pandanus tree for public access. The applicant has stated (via letter dated 5 November 2013) that “Council has no provisions in its DCP/S94 plan statutory planning regime to require the dedication of land adjacent to the coastal foreshore. Despite this, the proponent seeks to dedicate free of cost and construct free of cost, a boardwalk consistent with like facilities in the Town Centre. The proposed provides for a comprehensive

free of cost provision of public access to the foreshore. This is more than a mere 'enhancement of public access' as no public access currently exists at this time, nor is likely to in the future pursuant to any Contribution Plan made by the Council."

In terms of the treatment of the public walkway within this dedicated area of land, the Local Traffic Development Committee (at their meeting held on 11 December 2013) recommended that a public footpath be constructed at a minimum width of 2.5 metres (within the four metre wide dedicated area) with signage indicating that cyclists must dismount. Council's Civil Services Group have advised that the path is to be constructed of concrete (for maintenance reasons). The applicant has maintained that their proposal is for a timber boardwalk.

A decision will need to be made by the Council as to whether the proposal is adequate/appropriate, in the circumstances of the case, that being:

- The site is being developed on its own. In this regard, is the previous land dedication approved as part of the Gateway Development (being a 14 metre wide corridor along the southern boundary of the properties and a 5.57 metre wide corridor along the western boundary of the subject site (to the Richmond River/Kerr Street corner) a relevant consideration? Should this be required of the applicant and what will that mean for the design of the development?

In terms of the Ballina Gateway Project, the subject site was only part of the entire development. An increase in the area of land to be dedicated for the subject proposal will result in either a reduced building footprint (if the building is reduced in size to still provide private open space adjacent to the ground floor tenancies) or the location of the building on the new property boundary (resulting in a potentially similar appearance to those buildings abutting public open space in the eastern end of the Ballina Town Centre).

- Whilst only four metres of land is being dedicated along the southern frontage of the site, the proposed building has a 14 metre setback (at ground floor) and an 11 metre setback (at Level Two) to the River. Will this setback contribute to the amenity of the river frontage of the site?

It is considered that the setbacks provided to the southern elevation of the building will contribute to the amenity of the river frontage of the site. Whilst they will be in private ownership, there is potential for these areas to be enjoyed by visitors to the restaurant and commercial tenancies (only as designated open space as part of the subject application). Also this area is to be landscaped, which will provide a softening of the built form in this section of the site.

- The Ballina Shire DCP 2012 does not prescribe a specific width or land area to be dedicated along the riverfront. However, Section 4.5 (Controls applying to the Riverside West Precinct) of Chapter 6a states "a section of the foreshore located between War Memorial Park and Kerr Street is to be dedicated to Council for public open space in accordance with the requirements of the Ballina Town Centre Structure Plan". The Ballina

Town Centre Structure Plan shows the southern 40 or so metres of the subject land as being “desired public open space”.

The applicant’s arguments in relation to the provisions of the Ballina Shire DCP 2012 and the acquisition of this land are noted. There are no current provisions whereby Council can require the dedication of land adjacent to the coastal foreshore via a Section 94 plan.

Venting of Level Two Car Parking Area

The design of the eastern elevation of the proposed development is such that it directly vents exhaust fumes to the adjoining allotment. Refer to Attachment 10.

Council staff requested the applicant (via letter dated 6 December 2013) provide advice in relation to impacts upon the adjoining allotment, with regard to its current residential occupation and at such time as it developed in the future (and any impacts this may have on the car parking areas of the proposed development).

The information provided by the applicant in February 2014 advises that “*The car parking area is ventilated to the adjoining objector property. However, the amount of traffic generated within the car parking area would be minuscule compared to the volume and proximity of traffic traversing River Street immediately adjacent to the premises. The Building Code of Australia governs the situation in relation to ventilation and the proposed development is designed in accordance with that Standard. With respect to chemicals, cleaning products are regulated by State and Federal Statutes. No novel or unusual cleaning products are proposed in relation to the maintenance of the car parking precinct.*”

Subsequent to the receipt of the above advice, Council staff requested further information from the applicant, as the material provided did not satisfactorily address ventilation for the car parking area at such time as the property to the east is developed. In particular, concerns were raised with respect to:

- the impacts any future development on the adjoining eastern allotment may have on the ventilation system for the car parking areas of the subject development (i.e. does the ventilation system have a reliance on the eastern vents, in terms of compliance with the BCA?); and
- whether the operation of the car parking areas of the subject development will restrict the future development potential of the adjoining eastern allotment. Any future development on this allotment should have a reasonable expectation to build to the side boundary and therefore it is likely that the vents will be in direct conflict with this ‘development potential’.

The applicant provided the following advice in their letter dated 3 April 2014:

“We note Council officer’s concerns in relation to the future development of the property to the east in regard to the provision of ventilation for the car parking on the boundary. It is submitted that the proposed development is not required to make provision for construction to the boundary on the adjacent property. There is not approved Development Application over this land and the design of the proposed building to the boundary and provision of ventilation on the boundary is consistent with all requirements of Council’s Development Control Plan in this regard.

In terms of planning principles it is not considered that the potential future development of an adjacent site should be given such weight in the subject circumstances as to require a redesign of the proposed building. It is also noted that this issue was not raised by the adjoining landowner in their submission to the Development Application.”

In terms of satisfying the provisions of the Building Code of Australia, it is considered that there are options whereby the proposal can provide either passive ventilation (comprising venting to either the northern or western elevations or the roof of the car parking area – into the perimeter of the communal open space area) or mechanical ventilation. If the proposal is granted development consent, it is recommended that conditions be imposed in relation to this matter to protect the development rights of the adjoining property and also to reduce the potential for conflicts between landowners at such time as the property to the east is redeveloped.

Conclusion

The proposed development has been assessed and consideration has been given to all the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979, including the provisions of the Ballina Local Environmental Plan 2012, Planning Proposal 13/010, the Ballina Shire Development Control Plan 2012 and submissions made in response to the exhibition and notification of the proposed development.

The key issues for consideration in the determination of this development application are:

- Building height;
- Adequate loading/unloading facilities;
- Provision of adequate car parking;
- Dedication of foreshore open space;
- The removal of Norfolk Island Pine trees; and
- The issues raised in the submissions as part of the exhibition and notification processes.

The height of the proposed development has been identified as non-compliant with the building height controls within the Ballina Local Environmental Plan 2012. This non-compliance has been stated as being 1.8m, or 10% of the building height development standard (18m). The applicant has argued that the current wording of Clause 4.3A permits an additional 2 metres to be added to the 18 metre height limit for the site, on top of the existing ground level (1.8m AHD). The applicant has therefore indicated that the proposal has been designed to this “maximum height” of 20 metres, on top of existing ground level. In addition to this, the proposal contains an Architectural Roof Feature

of an additional height of 1.8m. Overall, the proposal will have a building height of 23.6m AHD.

Council has acknowledged that there is ambiguity in the wording of Clause 4.3A and has taken steps to rectify this issue through the preparation of Planning Proposal 13/010. This proposal has amended the wording of the clause to more accurately reflect Council's intent with respect to building height for flood affected land and to provide certainty in its interpretation. Planning Proposal 13/010 is with Parliamentary Counsel for finalisation and therefore the making of this plan is imminent and certain.

Despite the range of matters to be considered in varying the building height development standard, Council staff are of the opinion that the principal reason whereby the variation may be supported is due to the potential uncertainty in the interpretation of Clause 4.3A. The use or reliance on the other matters as reasons to vary the building height development standard would potentially create precedence and may result in subsequent proponents attempting to use the same arguments for variances to building height for their developments. This would erode the building height standards as set for the Ballina Town Centre.

The loading and unloading facilities for the proposed development have been assessed as being inadequate by Council's Civil Services Group. It has been maintained by Council staff since the lodgement of the application that the proposed development is required to be serviced by the largest vehicle likely to use the facility, being Medium Rigid Vehicles (MRVs) and that this servicing is required to occur on site, rather than within Council's street system. The applicant and their traffic consultants, have argued that an adequate level of servicing can occur via the provision of a Small Rigid Vehicle (SRV) space within the site in conjunction with a management plan for loading/unloading.

Three options have been presented in the report in relation to the provision of servicing for MRVs for the proposed development. The first option presented (a dedicated MRV facility provided on site) will result in a major redesign of the proposal. In this regard, the proposal as presented would need to be amended and considered for determination at a later stage. The second option presented (a dedicated MRV facility located within the Kerr Street road reserve) could be imposed as a condition of consent, however this is not a typical arrangement for servicing of commercial/residential developments and may set a precedent or expectation for other like developments. There are financial implications for the proponent through payment for lost car parking spaces in Kerr Street. The third option presented (no MRV facility at all) will result in utilisation of the street system and therefore safety risks and inconvenience to road users. There are financial implications for both MRV drivers and Council (resourcing) through the issue of fines on a regular basis.

Council's Civil Services Group have comprehensively assessed the parking requirements of the proposed development. As stated in the report, the proposal has not provided the required number of car parking spaces for the commercial component of the development and as such Section 94 Developer Contributions will be required to be paid for the six spaces as part of any consent granted.

The land proposed to be dedicated to Council has not undergone rigorous contamination or structural adequacy testing as part of the subject application. Council staff consider that these matters are able to be satisfactorily addressed via consent conditions, however the Council will need to be satisfied that this is an acceptable outcome, given this land is to become a public asset (or liability?).

The area of land to be dedicated to Council in terms of public access has also been addressed in this report, with reference provided to the Ballina Town Centre Structure Plan in Chapter 6a of the Ballina Shire Development Control Plan 2012 and the State Government Approval for the Ballina Gateway Project. It is acknowledged that under the Structure Plan, a wider area of land was envisaged to be dedicated to Council as public open space. However, there is presently no mechanism to require such to occur.

Under the Ballina Gateway Project, a 14m wide tract of land was required to be dedicated to Council (with the public boardwalk to be erected over the Richmond River). However, this proposal is only seeking to develop one site within the land subject to the Gateway development. The four metre wide land dedication will be complemented by the setbacks provided to the proposed building (14 metres at ground floor level and 11 metres at Level Two). It is considered that this area of undeveloped land will contribute positively to the amenity of the River front and will not result in the dominating presence of the built form at the eastern end of the Ballina Town Centre.

The removal of the western (and eastern) Norfolk Island Pine tree in the central/southern section of the subject site is somewhat inevitable in the redevelopment of the land. A key consideration for Council in assessing the removal of the tree is whether the contribution of this single Norfolk Pine tree is of such significance that it outweighs the approval of the proposed development. It is considered that this is not the case.

The issues raised in the submissions have been addressed within this report. The issues regarding the impacts of the proposal on solar access and privacy of adjoining and nearby properties have been particularly assessed. It is considered that the proposal will not unreasonably result in a loss of solar access or privacy for those adjoining and nearby properties.

It is considered that the proposed development will allow for a range of positive outcomes, including:

- The provision of public access along the Richmond River frontage of the site;
- The dedication of 541m² of public foreshore open space to Council;
- The provision of active frontages to River and Kerr Streets;
- The provision of new retail, restaurant and business opportunities along River Street and the Richmond River, with potential to boost the local economy;
- The provisions of medium density permanent residential accommodation within the Ballina Town Centre; and
- The provision of a well-designed, architecturally distinctive, contemporary building that has had due regard for the context of the site and the locality and will reinforce the site as the Gateway to the Ballina Town Centre.

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

Option One

That Council approve the development application subject to standard conditions of consent for this type of development and those specifically outlined within this report. Should Council choose to proceed with this option, it must be satisfied that the proposal is consistent with the provisions of the relevant Environmental Planning Instruments (EPIs), draft EPIs, Ballina Shire Development Control Plan 2012, and is worthy of variation to development standards and development controls where requested and/or identified.

Option Two

That Council refuse the development application, in consideration that the proposed development does not comply with the building height development standard for the site, does not provide adequate loading/unloading facilities for Medium Rigid Vehicles and the variations sought in relation to the identified controls within the Ballina Shire Development Control Plan 2012 are not supported.

Option Three

That Council defer determination of the proposal until such time as the proposal is amended to comply with the applicable building height development standard for the site and has provided adequate loading/unloading facilities for Medium Rigid Vehicles.

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

RECOMMENDATIONS

That DA 2013/381 to undertake the following development:

- Demolition of the Existing Sundowner Motel and Restaurant;
- Erection and Strata Title Subdivision of a Multi-Level Mixed Commercial and Residential Building (Shop Top Housing) with an Overall Height of 23.6m Australian Height Datum (AHD), comprising:
 - Six Commercial Tenancies (Business and Retail Premises) at Ground Level facing River Street and the Richmond River,
 - A Restaurant at Ground Level facing the Richmond River,
 - 34 Residential Apartments (Dwellings) located on Levels Two to Six,
 - Two Levels of Car Parking and Site Access from Kerr Street;
- The Dedication of Land for Foreshore Public Access, involving the Construction of a Public Walkway; and
- Vegetation Management Works involving the Removal of One Norfolk Island Pine Tree,

at Lot 1 DP 499510 and Lot 10 DP 244352, No. 274 River Street, Ballina be **APPROVED** subject to the imposition of the attached recommended non-standard conditions.

Attachment(s)

1. Locality Plan
2. Ground Floor Plan
3. Levels Two to Six
4. Roof Plan
5. Northern Elevation
6. Southern Elevation
7. Western Elevation 1
8. Western Elevation 2
9. Eastern Elevation 1
10. Eastern Elevation 2
11. Section Through
12. Shadow Diagram (No. 272 River Street)
13. Photomontage of proposed development
14. Submissions
15. Draft Conditions of Consent

8.2 DA 2011/506 - Section 96 - South Ballina Beach Caravan Park

8.2 DA 2011/506 - Section 96 - South Ballina Beach Caravan Park

Applicant	Chris Lonergan – Town Planner
Property	Lot 1712 DP 597523 & Lot 1 DP 1186674, No. 440 South Ballina Beach Road, South Ballina
Proposal	The Modification Application seeks to modify the Consent by amending the following conditions: Condition 8 – which prevents the kiosk and associated deck area from being used as a refreshment room for people who are not guests staying at the premises Condition 11 – which prohibits guests from keeping dogs on-site (and other matters) and Condition 34 – which requires the applicant to pay developer contributions in respect of the development.
Effect of Planning Instrument	The land is zoned 7(f) – Environmental Protection (Coastal Lands) under the provisions of the Ballina LEP 1987
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council at its Ordinary Meeting of 28 November 2013 resolved to grant consent to DA 2011/506 to expand the use of the existing Caravan Park known as “South Ballina Beach Holiday Village” or “Ballina Beach Village” by:

1. an additional 65 short term caravan sites
2. adding 58 camping sites
3. regularising the additional office and deck area including internal configuration changes to the reception/kiosk building by deletion of the manager’s residence and its relocation to an on-site cabin; and
4. constructing a 200m² recreation hall.

As part of this resolution, Council also requested that staff review the developer contributions in recognition that this is an isolated park. At Council’s Ordinary Meeting 19 December 2013 Council reconsidered the developer contributions and resolved to retain the contributions as outlined in the November 2013 report to Council.

On 12 February 2014, the applicant lodged a Section 96 Modification Application seeking to modify the consent by deleting the following conditions:

1. Condition 8 – which confirms the kiosk and associated deck area is not to be used as a refreshment room for people who are not guests staying at the premises

2. Condition 11 – which requires a public positive covenant that prohibits guests from keeping dogs on-site, requires the owner's/manager's dog to be within a fenced enclosure during the fox baiting program and the recognition of the implementation of the fox baiting program by the owners/occupants and
3. Condition 34 – which requires the applicant to pay developer contributions in respect of the development.

A copy of the applicant's Modification Application is attached. These matters will be specifically considered in this report.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The modification application was placed on public exhibition. Two submissions supporting the recently issued approval (with conditioned restrictions) and objecting to the modification or deletion of restrictions were received. Two submissions were also received supporting the applicant's request to delete the restrictions.

Applicable Planning Instruments

Council needs to have particular regard for Section 96(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and be satisfied with the following matters:

- (a) that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted
- (b) it has consulted with the relevant public authorities or approval bodies
- (c) notified the application
- (d) considered any submissions received concerning the proposed modification
- (e) considered relevant matters under Section 79C (1) of the EP&A Act.

These matters have been satisfied. Refer to previous reports to Council 28 November and 19 December 2013 and the content of this report as they are all relevant, either directly or indirectly, to the modification application the subject of this report.

Report

Prohibition of use of Kiosk as a Refreshment Room

The applicant requests deletion of Condition No. 8 which prohibits the kiosk and associated deck area from being used as a refreshment room (i.e. restaurant) for people who are not guests staying at the caravan park.

Condition No. 8 states:

“The kiosk and associated deck area approved by this consent is not to be utilised as a refreshment room and is to provide service only to guests staying at the caravan park and their visitors.”

Refreshment rooms are permitted in the relevant zone with consent, however consent has never been granted for the use of the kiosk and associated substantial covered deck area for use as a public restaurant.

Development Application 1979/491 (floor plan attached) only permitted a small internal area (27m²) of the reception building to operate as an “office and kiosk”. Development Application 2011/506 (floor plan attached) sought to formalise the unauthorised covered deck area (80m²) immediately off the “office and kiosk” and to formalise the increased internal area/layout of the kiosk and other modified areas of the reception building (totaling approximately 200m² inclusive of the covered deck area also utilising for dining purposes).

The applicant contends that as there is no definition of a “kiosk” within the BLEP 1987, the use of a “kiosk” is more broader, i.e. it can operate essentially as a public restaurant and has no restrictions on how it may be used, nor what size it is.

This position is not supported as it is clear from the small internal floor area of the “office and kiosk” approved in 1979 and the fact that no attached deck areas existed at this time, that this was a small, ancillary convenience store intended for guests staying at the park.

It was not approved as a restaurant for the general public, particularly as the kitchen area of the building was contained within the attached manager’s residence for use in association with a dwelling and the building did not have adequate sanitary facilities to service the general public. Further, the annual inspection of the food preparation area by Council Officers does not formalise the use of this area as a restaurant and/or function centre.

Condition No. 8 is simply regularising changes to the internal layout and deck area and confirming the previously issued use for a “kiosk” and not as a “refreshment room” or “function centre”. This condition is imposed for a planning purpose and its effect is to mitigate the impacts of an increase in the number of patrons on the site and should remain.

Council should also note the use of the building and deck area (particularly by the general public and not just guests and their visitors staying at the park) as a “refreshment room” or “function centre” as contended by the applicant would raise a number of further impacts that have not been considered, these being:

- (a) Car parking – the applicant has nominated seven spaces immediately adjoining the building utilised as a restaurant (which is also being utilised as a reception, office and storage area).

In accordance with Council's DCP 2012, a restaurant is required to provide parking at the rate of 1 space per 3 seats or 15 spaces per 100m² of Gross Floor Area (GFA), whichever is the greater. As no seating plan is provided the GFA rate of 15 per 100m² GFA would be applied. The additional 124.4m² (comprising 79.16m² of deck area and 45.24m² for the kitchen and freezer room) requires 18.6 spaces (or 19 rounded up). The storage room is considered at a warehouse rate and has a negligible parking requirement.

Consequently, the approved car park layout is deficient by 12 spaces and the proposal would require additional car spaces to be satisfactorily provided.

- (b) Contributions – additional contributions over and above those previously presented to Council would be applicable noting the additional floor area proposed for the restaurant and storage room that was originally part of the manager's residence and a restaurant rate of 40 trips per 100m² GFA.

Considering the new 10.5m² storage room at a warehouse rate of 4 trips per 100m² GFA and providing the previous manager's residence with a 1 ERA credit, an additional \$6,137.68 in road contributions would be applicable for the part use as a restaurant (based on current financial year rates).

- (c) Provision of sanitary facilities – although the applicant has not nominated the maximum number of people to utilise the building, Table F 2.3 of the Building Code of Australia (BCA) sets out the minimum facilities required based on employee and patron numbers. Based on a Class 6 restaurant the following sanitary facilities would be required:

1 Water Closet (WC) per 100 male patrons, urinal 1-50;
1 WC per 25 female patrons, or 2 WC's for 26-50 female patrons.

Further, Table D.13 of the BCA sets out the area/person ratio dependent upon the use of the building. For restaurants, it is 1m² per person. Consequently, based on the alfresco deck area and potential internal seating area, over 100 patrons would need to be considered.

Condition No. 27 requires the provision of one disabled accessible unisex facility within this building which is clearly insufficient to meet the requirements of the BCA for use of the building/deck as a restaurant. Although the applicant may contend that people can also utilise the existing park amenity building, this is not desirable or considered practical, particularly in adverse weather or at night, as it is approximately 50 metres away.

- (d) On-site wastewater system capacity - particularly if it is utilised by the general public whilst the park is at its peak guest capacity. A validation and verification effluent monitoring program in accordance with Condition No. 76 has not been provided to Council to date.

Consequently, the total capacity and adequacy of the wastewater system has not been clarified at this point and is required to be prior to the approval of any additional loadings from people utilising the restaurant and not staying at the park.

Alternatively, Council could have required the owner to 'reinstate' the building to its approved layout and use under DA 1979/491 to ensure the "kiosk" could not be readily utilised as a "refreshment room" or "function centre".

Prohibition of Dogs

The applicant seeks to delete Condition No. 11(in its entirety) of the consent which states:

"A public positive covenant is to be imposed on the land (Lot 1712 DP 597523 and Lot 1 DP 1186674) in favour of Council and the National Parks and Wildlife Service (NPWS) under Section 88E of the Conveyancing Act 1919, requiring the following:

- (a) That the owner/occupant recognise that a fox baiting program is implemented by the relevant Government Agencies from time to time and the owner/occupant must not raise objection to any fox baiting carried out in accordance with the South Ballina Fox Baiting Program.*
- (b) In the event that dogs registered and/or owned by the managers are kept on the property, the following fenced dog enclosures and controls are to be established and maintained at all times:*
 - i. There shall be constructed and maintained a fenced enclosure immediately adjoining to the manager's residence which is designed and constructed so as to provide a secure enclosure for keeping dogs.*
 - ii. Any gate forming part of the fenced enclosure shall be a self-closing gate.*
 - iii. No gate to the fenced enclosure shall be propped open or otherwise kept open other than for the purpose of passing through.*
 - iv. During a fox baiting program on the subject land or on adjoining Crown land, and/or Nature Reserve, dogs are not permitted on any part of the property outside a fenced dog enclosure (that complies with the provisions outlined above) except under leash.*
- (c) No guests and/or their visitors are permitted to have dogs on-site.*

The applicant submits that Council's Development Control Plan 2012 (DCP 2012) does not apply to the determination of the Modification Application as it was adopted after the original DA 2011/506 was lodged.

This is not supported as DCP 2012 was in force at the time the Modification Application was lodged and is relevant to Council's determination of the Modification Application. In any event, Chapter 18, Part 5.3 of Council's previous Combined DCP 2009 is, in most relevant respects, identical to Chapter 7, Part 4 of DCP 2012.

Additionally, the applicant's submission that the relevant DCP provisions only apply to land zoned E2 – Environmental Conservation (i.e. do not currently apply to this site) is incorrect. Whilst additional fencing requirements are imposed for land within Zone E2, the balance of the DCP controls still apply to the site. This includes a requirement to create an appropriately fenced dog enclosure.

A note to Part 4 of DCP 2012 (and Part 5.3 of the Combined DCP 2009) states that "Council discourages the keeping of dogs on lands adjoining the Coastal Reserve due to their recognized potential impact on the Pied Oystercatcher and requirements associated with the fox baiting program undertaken in the locality". The note recommends that Council impose Section 88E instruments on all titles within the area to prohibit the keeping of dogs.

The Office of Environment and Heritage's (OEH) submission to Council dated 8 March 2012 and as reaffirmed via letter dated 31 March 2014 as part of this modification (copies attached), clearly identifies the significant environmental concerns posed by the potential for the increased number of patrons using the site to lead to an increase in the number of domestic dogs being kept on the site.

A number of other submissions made to Council for the original application and for the Modification Application also reflect these concerns.

It is therefore appropriate for Council to take these concerns into account and prohibit the keeping of dogs by guests if Council is not satisfied that the arrangements proposed by the applicant will alleviate these concerns. This is still the case despite the applicant's submissions as part of the Modification Application.

Specifically in relation to the matters raised by the applicant (*italics*) the following comments are provided:

A. The condition is not required by NPWS, who in fact encourage well-managed pet friendly accommodation as pets are not allowed in National Parks or Nature Reserves.

Comment:

Discussions with the OEH in Grafton confirm that the planning considerations, which are the basis of OEH's position, override any concerns expressed by NPWS Alstonville regarding neighbour relations and provision of pet-friendly accommodation. The position of OEH has been reaffirmed in its recent submission dated 31 March 2014.

B. The letter from OEH (8 March 2012) does not require dogs to be banned from the caravan park. The focus of OEH is clearly on "straying domestic dogs".

Comment:

The OEH (Biodiversity Management Unit, Grafton) does not specifically request that dogs be banned from the caravan park. A number of points raised in the letter relate to the need to ensure that dogs, where permitted, are tightly managed to ensure that there are not likely to be significant impacts on threatened species or their habitats. The OEH is concerned about domestic dogs wherever they stray from.

In relation to Threatened shorebirds and migratory species, disturbance by domestic dogs is noted as a factor contributing to declining breeding success in Pied Oystercatchers on South Ballina Beach.

In addition, the presence of straying domestic dogs within the Richmond River Nature Reserve (RRNR) represents a significant impediment to the FoxTAP program. The proposed development was noted by OEH as failing to consider management to prevent straying of dogs from the caravan park, and risks to the dogs should they take fox bait (a circumstance that would indirectly threaten the fox baiting program).

Vandalism of warning and general regulatory signs is noted by OEH. OEH considered that all such impacts are likely to increase with an expansion of visitation at the caravan park.

OEH recommended that the consent authority investigate all available options for minimizing the risks from domestic pets that may arise from the proposed development. This includes educational tools (such as signage), compliance (such as regular Council patrols), physical controls (such as fencing), and other options **such as restrictive covenants** where legally possible).

While stopping short of recommending a ban on dogs, OEH clearly expects that Council will constrain the presence and activities of dogs to the maximum extent possible.

C. The condition that bans all dogs at all times apparently derives from Council's DCP 2012 (as quoted in the Council Staff report 28 November 2013), which assumes the area is zoned E2. While the environmental qualities of the area are recognized, it must also be recognized that development exists in this area (our development, residential development, commercial development etc) and indeed that development has led to the E2 zone not being adopted. Reliance by Council on this DCP is inappropriate.

Comment:

Further to the comments within this report, the DCP requires that dogs be fenced during the fox baiting season (six months of the year). The background to this requirement predates the 2012 DCP and is set out in the Department of Lands Threatened Species (Pied Oystercatcher) Management Strategy (February 2007) and is a recommendation endorsed by a number of natural resource management agencies and other stakeholders (including NPWS and Council). The restriction relates to the 7(f) zones, which is the existing zoning for the caravan park (being a "Deferred Matter").

D. The fox baiting that is mentioned by Council is done at least 1 km from the property boundary so there is no interference from pets. The local NPWS have said they will not support Council in instituting such a ban. Insofar as Council rely on NPWS, that reliance is based on the personal view of one officer – it is not the view of the organization.

Comment:

Again, the environmental planning considerations of OEH Grafton will override any particular views expressed by NPWS Alstonville regarding neighbour relations. While the fox baiting is conducted at least 1 kilometre from the property boundary, the issue of straying dogs taken to beaches by visitors and guests (despite education and information provided) remains.

E. There have been no recorded pet deaths of pets owned by guests or residents of the Ballina Beach Village as a result of fox baiting in the entire history of fox baiting at South Ballina, but particularly during the 4 years the current owners have occupied the site.

Comment:

Council has no evidence or record to the contrary.

F. Further, Council has not proposed that other residents of South Ballina restrain or fence their dogs in this way, nor have they put the same conditions on to the other (permanent) caravan park with regard to restricting pet stays during the baiting season, even though the other caravan park is operating quite openly and advertises as being “pet friendly”. The nearby Patch’s Beach residential area has no such restrictions despite being as close to the fox baits as the subject site (geographically the baits are located about half way between the two locations).

Comment:

Council will apply the requirements of the DCP as new developments arise in land identified on the South Ballina Foreshore Map. Council has required the fenced dog enclosure on a number of smaller developments in South Ballina. The location of the other referenced caravan park (known as “Seabreeze”) is approximately 500 metres further to the west and is not adjacent to the South Ballina Beach access point.

G. This ban is to apply on private property which has had dogs on it for over a century, first as a working farm, then as a caravan park since the late 1970’s.

Comment:

As noted in the report to Council 28 November 2013, Council has never formally recognized/approved the caravan park as being “pet friendly”. Other aspects of the history of dog ownership on the property are not relevant.

Additionally, the application significantly increased the site/guest capacity of the park and it is not reasonable or practical to only place a restriction on that part of the site that was subject to the expansion, which considering the scale and other rectification works almost applies to the entire developed area of the site in any event.

H. *This is a quote from the local NPWS ranger:*

“NPWS would acknowledge the risk of pet death if pets were to stray onto the national park and eat a bait. We get blamed for pet deaths...even when it is not the 1080 bait. It really is an effective control option if used properly. The baiting uses best practice techniques so as to minimise all off target damage (I can explain more). NPWS political thinking is also supportive of pet friendly camping because an alternative (to no pet NPWS camp areas) should be offered to the community from other providers...”

Comment:

See A and D above.

I. *There are no other holiday villages in Ballina Shire that are pet friendly to the degree provided by the development (the other holiday pet friendly park is only so at limited times, and limits the size of dogs to 3kg). The Park meets a significant public demand and Council needs to be aware that if this demand isn't met then as a consequence, there will be more illegal and unmanaged camping with dogs in the area, including during the fox baiting time. This is known as “displacement” in criminology.*

Comment:

Neither Council nor OEH have any obligation to facilitate the provision of pet-friendly accommodation. Council does not allow guests to keep dogs, for example, at its Flat Rock Camping Ground due to similar environmental sensitivities, however there are other caravan/camping grounds that allow guests to have dogs without the restrictions outlined by the applicant. The keeping of dogs at particular caravan/camp grounds needs to be dealt with on a merit basis.

J. *By allowing dogs in the managed environment of the Village at all times including during fox baiting any harms are contained and controlled.*

Comment:

Evidence suggests that dogs might be controlled in the park but are, at least on occasions, also taken to restricted areas outside the park. By the nature of its destination, guests staying at the park are going to regularly utilise South Ballina Beach and are not going to leave their dog(s) unattended in the park.

K. *The owners have introduced a very successful pet owner education program:*

- 1. Created awareness that dogs are not permitted in national parks, nature reserves or crown lands and in particular the beach to the east of the subject site;*

2. *Promoted responsible dog ownership – must be on leads at all time, pick up after them, no barking or aggressive dogs, and no banned breeds;*
3. *Hired a professional dog trainer who comes during school holidays and works with guests and their dogs to teach training techniques and reinforce the above;*
4. *Installed signage informing guests of where they can and can't go with their dogs;*
5. *The current operators inform guests via the website of the proximity of the Nature Reserve, again (verbally) at check in and through signage at the park.*

The educational program outlined is admirable and reflects the environmental sensitivities of the locality. The success of the education program has not been independently assessed. The absence of incidence of fines does not indicate that there are no problems. For instance, the Richmond River Area FoxTAP Program Shorebird Warden 2013 – 2014 (reported by NPWS 2014) aimed to provide a public contact, advisory and educational role at key locations. Fines were not issued. While it is likely that the applicant is correct in stating that there have been no incidents of dogs eating the fox baits or attacking wildlife, there can be no certainty.

Council must remember that the consent goes with the land, therefore management and/or ownership may change at any time and the education program may not be as diligently carried out on a consistent basis.

Development Contributions

Council has imposed developer contributions under both the Ballina Shire Roads Contributions Plan 2010 (Roads Plan) and the Ballina Shire Contributions Plan 2008 (Open Space and Community Facilities Plan) for a current monetary total of \$590,246.95.

The applicant seeks a modification to Condition No. 34 to reduce the amount of developer contributions it is required to pay (i.e. to remove them entirely). The applicant submits that:

1. the Section 94 Contributions Plan with respect to roads does not provide for levies to be paid by Caravan Parks or Camping Grounds
2. there is no, or an insufficient, nexus between the development and the infrastructure that is said to be required by the development and
3. on any view the contributions are unreasonable.

The contributions Council seeks to levy will not be unreasonable or unlawful merely because the site is isolated from a number of the works items contained within the contributions plans.

Notwithstanding this, Council must be satisfied that:

1. the subject development generates the need for, or increases the demand for, a public amenity or service of the type proposed to be funded by the contribution (i.e. the identified works item) and
2. the specific works item listed in Council's contribution plans that Council proposes to fund using the contributions it raises, relates (either directly or indirectly) to the need or demand generated by the subject development.

Roads Plan

The Roads Plan clearly anticipates that tourism developments will be levied contributions under the plan calculated by the daily trip rates generated by each “unit” of development.

In circumstances where the applicant has not prepared a traffic study, Council applies the plan by undertaking its own determination of the appropriate daily trip rate. This approach was adopted by Council in both the 28 November and 19 December 2013 reports to Council.

Council’s Infrastructure and Planning Manager has reviewed the further submissions of the applicant and has advised that the contribution for roads items imposed under the consent is in accordance with the Roads Plan and are not unreasonable.

Open Space and Community Facilities Plan

The 19 December 2013 report to Council questioned the relevance of the proposed district parks, playing fields and regional open space facilities to the original application. Accordingly, the report recommended that contributions for these items not be levied.

The Open Space figures mentioned in that report were as follows, being a total of \$58,143.69:

Ballina District Parks	\$17,609.23
Ballina Playing Fields	\$22,944.77
Regional Open Space Facilities	\$16,925.19
Open Space Administration	\$ 664.50

Council subsequently resolved not to support that staff recommendation and resolved to retain the contributions as per the original planning assessment.

Council’s Civil Services Group has now reviewed the further submissions of the applicant and has confirmed their position and recommendation outlined in the 19 December 2013 report to Council remains, i.e. that the contributions for open space (both local and regional) should not be imposed under the consent as they are unreasonable in the circumstances.

The Community Facilities contributions are still considered appropriate, with those figures as follows:

Ballina District Community Facilities	\$33,381.32
Regional Community Facilities	\$75,635.67
Community Facilities Administration	\$ 1,387.63

Conclusion

As can be seen from the relevant issues outlined within Council's previous reports of 28 November and 19 December 2013 and this report, it is considered that Condition No.'s 8, 11 and 34 are fair and reasonable and should remain each in their entirety as their effect has a specific planning purpose and nexus, that is to mitigate the impacts caused by an increase in the number of guests both on and external to the site.

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

Option 1

That Council refuse the modification application in its entirety. This is the recommended option based on the matters outlined in this report.

Option 2

That Council approve the modification application in its entirety, thereby deleting Condition No's 8, 11 and 34 from the consent notice.

Option 3

That Council approve parts of the modification application only (i.e. components of the contributions and/or dog restrictions and/or kiosk use). This option is not preferred as the modification application clearly seeks to delete the three conditions in their entirety.

RECOMMENDATION

That the Section 96 modification application to DA 2011/506 to delete Condition No's 8, 11 and 34 from the consent in their entirety relating to the creation of an additional 123 short term accommodation sites (65 being caravan/recreational vehicle sites and 58 being camping sites), indoor recreation hall and associated amenities building, additional deck adjoining the existing kiosk/shop and office/reception, manager's cabin, associated facilities, infrastructure and rehabilitation works on Lot 1712 DP 597523 & Lot 1 DP 1186674, No. 440 South Ballina Beach Road, South Ballina be **REFUSED** for the following reasons:

1. The approved development, if modified, does not meet and is inconsistent with the objectives of the Ballina Local Environmental Plan 1987 and the 7(f) – Environmental Protection (Coastal Lands) Zone of the Ballina Local Environmental Plan 1987.
2. The approved development, if modified, is inconsistent with Council's Development Control Plan 2012.
3. The approved development, if modified, is inconsistent with Council's Contributions Plans.
4. The approved development, if modified, will have a significant impact on threatened shorebirds and the Glossy Black Cockatoo.
5. The approved development, if modified, will be inconsistent with existing approvals applying to the site.
6. The approved development, if modified, is not in the public interest
7. Council is of the opinion that the development contributions levied are reasonable in this instance.

Attachment(s)

1. Locality Plan
2. Applicant's Report
3. DA 1979/491 Floor Plan Reception/Kiosk Building
4. DA 2011/506 Floor Plan Reception/Kiosk Building
5. OEH Submission of 08/03/2012
6. OEH Submission of 31/03/2014
7. Public Submissions

8.3 DA 2012/452 - Section 96 - Men's Shed, Fishery Creek Road, Ballina

8.3 DA 2012/452 - Section 96 - Men's Shed, Fishery Creek Road, Ballina

Applicant	D P Roberts Planning Solutions
Property	Lot 1 DP 572329 and Lot 1 DP 133631 No. 44 Fishery Creek Road, Ballina
Proposal	Section 96 Modification – To amend the finished floor height of the new building (shed)
Effect of Planning Instrument	The land is zoned RU2 Rural Landscape under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

On 14 February 2013, Council granted development consent under delegation for the erection of a new building (shed) and the change of use of an existing dwelling house for the purposes of a community building (Ballina Community Men's Shed) at Lot 1 DP 133631 and Lot 1 DP 572329, No. 44 Fishery Creek Road, Ballina.

As part of the requirements for the construction of the new building (shed), Condition 35 of the issued development consent was imposed in relation to Council's minimum fill and floor level requirements.

Condition 35 currently states:

35. The whole of the building envelope for the proposed shed is to be filled to a minimum level of RL 2.6m AHD with the finished floor height of the building at RL 3.1m AHD. A surveyor's certificate verifying compliance with this height is to be submitted to the Principal Certifying Authority at completion of footings/slab formwork (prior to concrete pour). All filling under the building is to be carried out in accordance with *Australian Standard AS2870*.

On 11 October 2013, Council received a Section 96 Application to Modify Development Consent 2012/452 to amend Condition 35.

The applicant has proposed modifications to the finished floor level of the new building (shed), such that Condition 35 will read as follows:

35. The whole of the building envelope for the proposed shed is to be filled to a minimum level of RL 2.6m AHD with the finished floor height of the building at RL 2.8m AHD. A surveyor's certificate verifying compliance with this height is to be submitted to the Principal Certifying Authority at completion of footings/slab formwork (prior to concrete pour). All filling under the building is to be carried out in accordance with *Australian Standard AS2870*.

Refer to Attachment 2 – Plans which shows the proposed new finished floor level for the new building (shed).

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Report

In summary, the applicant has provided (via letter received on 3 March 2014) the following points in support of the proposed modification:

- *The application has been amended in an attempt to comply with Council's draft policy in relation to building on flood prone land. The amended plans show a fill level which is compliant with Council's current policy but only provides a 200mm floor level freeboard above the minimum fill level. It is acknowledged that this is non-compliant with the current policy of 500mm.*
- *Council's draft policy however, provides for non-habitable buildings having a lower floor level freeboard of 200mm above the minimum fill level.*
- *The proposed shed is a non-habitable structure, the application fully complies with Council's minimum fill level and with the 200mm freeboard direction set within a draft policy.*

Council's technical officers have undertaken an assessment of the proposal, with consideration given to Chapter 2b of the Ballina Shire Development Control Plan 2012, the draft amendments to former Policy Statement No. 11 of the Ballina Shire Combined DCP and the Ballina Floodplain Risk Management Study. The following comments have been received from Council's Civil Services Group in relation to the proposed modification and the abovementioned documents.

Background to assessment documents for flood planning in the Shire

In June/July 2012, draft amendments to Policy Statement No. 11 – Flood Risk Management (of the former Ballina Shire Combined DCP) were placed on public exhibition. As a result of that process, a revised document was required to be prepared in order to make the document more user-friendly and easier to interpret. This revision did not occur in time for the preparation of the new shire-wide DCP, and as such, the draft DCP (Ballina Shire Development Control Plan 2012) that was exhibited in September/October 2012, did not incorporate the new format and content (as was previously exhibited as a draft amendment to Policy Statement No. 11) within the new Chapter 2b – Floodplain Management.

It must be noted that the revision of the draft amendments to the former Policy Statement No. 11 did not require, nor does it involve, any changes to the technical content in relation to flood mapping layers, fill heights or floor heights. In relation to the proposed Section 96 modification, it is noted that the reduction in floor level freeboard proposed in the draft amendments, from 500mm to 200mm for commercial and industrial buildings in appropriate areas, did not receive any objections and therefore will remain unchanged as part of a new draft document.

In relation to the progress of Council's flood planning policies to be incorporated into the Ballina Shire DCP 2012, it is advised that a revised document (being a revision of the now Chapter 2b – Floodplain Management) will be placed on public exhibition in the near future.

Assessment of Proposed Modification

The new building (shed) approved as part of DA 2012/452, will have a fill level consistent with the existing Chapter 2b and the draft amendments to former Policy Statement No. 11.

In terms of the Section 96 Application, the applicant has applied for a reduction in the finished floor level of the new building (shed) from Chapter 2b – Floodplain Management of the Ballina Shire DCP. In accordance with the current provisions within the Ballina Shire DCP 2012, the applicable flood planning map is "2a 2b" which corresponds to a fill level of 2.6m AHD and a floor level freeboard of 500mm AHD, i.e. a finished floor level of 3.1m AHD.

The plans (prepared by Richard Crandon, Job No. 2013/43, Drawing No. A1, Dated 12.2.14 and Drawing No. S1, Dated 15.2.14) lodged as part of the Section 96 Application depict a 200mm slab on compacted fill with a finished floor level of 2.8m AHD. Fill levels are comparable to flood levels in each nominated area, therefore, it is proposed that the slab on ground floor level for the new building (shed) be 200mm above the flood level.

The proposed reduced floor level is consistent with the exhibited draft amendments to former Policy Statement No. 11 – Flood Risk Management and the Ballina Floodplain Risk Management Study. The draft amendments to former Policy Statement No. 11 categorises the development as having a Flood Planning Level (FPL) based on 2100 climate change conditions, i.e. a 2a flood planning map, with medium flood risk planning consideration for commercial/industrial use. The minimum applicable FPL is therefore FPL4 which permits a fill level of 2.6m AHD with a 200mm floor level freeboard, i.e. a finished floor level of 2.8m AHD.

The draft amendments to former Policy Statement No. 11 also state that mechanical and electrical equipment should be located above the nominated flood level. The proposed slab level is to be located above the applicable flood level and therefore, as electrical and mechanical equipment are typically located above the slab (and hence above the flood level), no concerns are raised in relation to mechanical and electrical equipment.

Recent developments with floor level variations

The Highway Service Centre and Woolworths River Street developments both sought, and had approved, variations to their floor level in accordance with the draft amendments to former Policy Statement No. 11. Both developments proposed the applicable minimum fill level and applied for a variation to the current Chapter 2b of the Ballina Shire DCP 2012 from 500mm floor level freeboard to 200mm freeboard in accordance with the draft amendments to former Policy Statement No. 11. The Section 96 Application for the "Men's Shed" development is proposing a variation consistent with the approvals issued for both the Highway Service Centre and Woolworths River Street developments.

The Highway Service Centre is situated in a floodway. The flood variation report focused heavily on the number of culverts required to provide passage of flood water to the Richmond River. The floor level variation was a minor component of the report.

In the instance of the "Men's Shed" development, it was deemed development in the Ballina flood plain that hadn't been provided for by existing flood plain modelling conducted in relation to the BMT WBM "Ballina Floodplain Risk Management Plan". Therefore, the applicant was required to commission BMT WBM to include the development in a modelling "run" of the Ballina flood plain catchments and provide advice.

The modelling report was provided in February 2013, prior to the approval of DA 2012/452, which contains the following extract:

"Flooding across this part of the floodplain occurs from local catchment flows emanating from Emigrant and Maguires Creeks, and flooding from the Richmond River. At the site, the floodplain serves primarily as a flood storage zone. Considering the loss in flood storage due to the filling of an 800m² pad for the "Men's Shed", in relation to the volume of water on the floodplain during a 100 year ARI flood event, there will be a negligible change in peak flood levels due to filling (i.e. less than 1mm). Further, since the site is not in a conveyance zone or floodway, site filling will have negligible impact on the movement of floodwater across the floodplain during events up to and including the 100 year ARI event."

In view of the above assessment, it is considered that the proposed modification to the floor level for the new building (shed) is consistent with the draft amendments to former Policy Statement No. 11 and recently approved developments (Highway Service Centre and Woolworths Supermarket at River Street) that have sought the same variation. The development has been included in WBM BMT modelling of the Ballina floodplain which reports that there will be "negligible impact on the movement of floodwater across the floodplain".

It is recommended by the Civil Services Group that the proposed modification to the floor level of the new building (shed) be approved.

Matters for consideration – Section 96 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979)

8.3 DA 2012/452 - Section 96 - Men's Shed, Fishery Creek Road, Ballina

Under the provisions of Section 96 (3) of the EP&A Act 1979, the following points are made in relation to the assessment of the application:

- The development as modified remains substantially the same development as originally consented to
- The proposed modification is permitted with development consent and is consistent with the provisions of the Ballina Local Environmental Plan (BLEP) 2012
- The proposed modification is considered to be generally consistent with the provisions of the Ballina Shire Development Control Plan 2012, other than Chapter 2b – Floodplain Management
- The proposed modification should not impact on any feature, process, quality etc. of the natural coastal environment. The proposal is consistent with the provisions of the NSW Coastal Policy
- It is considered that the proposed modification will have minimal impact upon both the natural and built environments
- The proposed modification is considered suitable for the subject site.

Conclusion

The proposed modification to Condition 35 of DA 2012/452 is considered to be consistent with the provisions of Council's local planning instruments and policies.

The approved development will have a fill level consistent with the existing Chapter 2b – Floodplain Management of the Ballina Shire DCP 2012 and the draft amendments to former Policy Statement No. 11 of the Ballina Shire Combined DCP.

The proposed modification to the floor level for the new building (shed) is inconsistent with the current provisions of Chapter 2b – Floodplain Management of the Ballina Shire DCP, being only 200mm above the minimum fill (flood) level. However, the proposed reduced floor level is consistent with the exhibited draft amendments to former Policy Statement No. 11 – Flood Risk Management and the Ballina Floodplain Risk Management Study.

The Highway Service Centre and Woolworths River Street developments both sought, and had approved, variations to their floor level in accordance with the draft amendments to former Policy Statement No. 11. The Section 96 Application for the "Men's Shed" development is proposing a variation consistent with the approvals issued for both the Highway Service Centre and Woolworths River Street developments.

The development approved as part of DA 2012/452 has been included in WBM BMT modelling of the Ballina floodplain which reports that there will be "negligible impact on the movement of floodwater across the floodplain".

8.3 DA 2012/452 - Section 96 - Men's Shed, Fishery Creek Road, Ballina

In view of the matters discussed above, it is recommended that the proposed modifications to Condition 35 be granted consent.

RECOMMENDATION

That the Application under Section 96(1A) of the Environmental Planning and Assessment Act 1979 to amend Condition 35 of DA2012/452 in relation to the finished floor level of the new building (shed) be **APPROVED** as follows:

35. The whole of the building envelope for the proposed shed is to be filled to a minimum level of RL 2.6m AHD with the finished floor height of the building at RL 2.8m AHD. A surveyor's certificate verifying compliance with this height is to be submitted to the Principal Certifying Authority (PCA) at completion of the footings/slab formwork (prior to concrete pour). All filling under the building is to be carried out in accordance with *Australian Standard AS2870*.

Attachment(s)

1. DA 2012/452 - Section 96 Locality Plan
2. DA 2012/452 - Section 96 Plans for Revised Fill Height

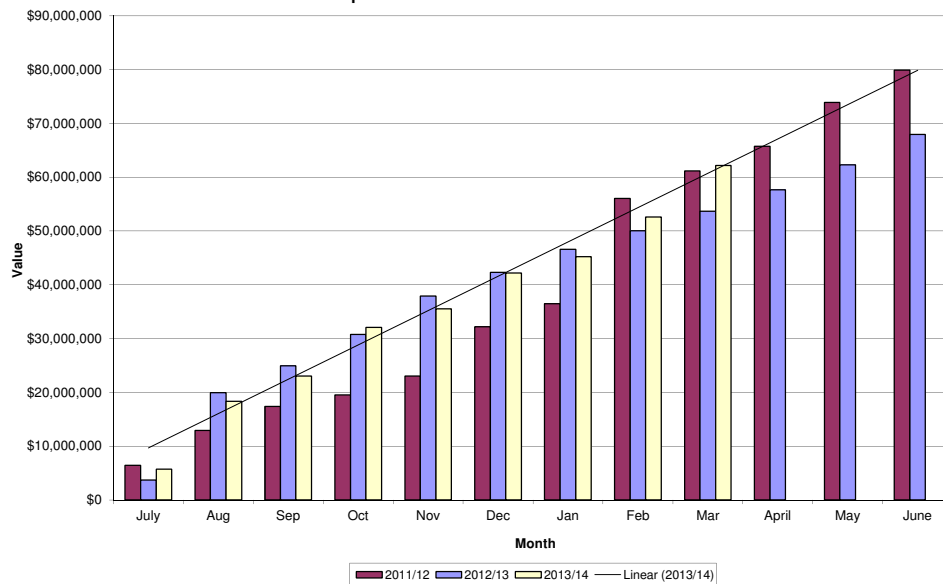
8.4 Development Consent Statistics - March 2014

8.4 Development Consent Statistics - March 2014

During the period of 1 March 2014 to 31 March 2014 the Development and Environmental Health Group issued Development Consents comprising of:

Number of Applications	Value of Work
28 Other Building Related	\$ 1,565,500
20 Dwelling/Duplexes/Residential Flat Buildings	\$ 7,620,000
4 General Developments	\$ 420,000
Total Value	\$ 9,605,500

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 March 2014 to 31 March 2014.

Attachment(s)

Nil

8.5 Development Applications - Works in Progress - April 2014

8.5 Development Applications - Works in Progress - April 2014

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	Determination Pending
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
2012/291	23/07/2012	Newton Denny Chapelle	To undertake a staged 47 Lot Community Title residential subdivision with lots ranging in size from 303m ² to 773m ² , associated road, earth and	Awaiting Additional Information

8.5 Development Applications - Works in Progress - April 2014

DA No.	Date Rec'd	Applicant	Proposal	Status
			infrastructure servicing works, creation of a public road and one 6.4 hectare Torrens Title residue lot - 565-589 River Street, West Ballina	
2013/446	18/11/2013	Newton Denny Chapelle	To undertake a boundary adjustment subdivision, demolition of existing dwelling house, erection of residential accommodation comprising 20 multi dwelling housing units and associated earthworks, access driveway, services, tree removal and car parking. The development is to be undertaken in a staged manner - 209 & 195 Ballina Road, Alstonville	Awaiting Additional Information
2013/473	03/12/2013	Planners North	To establish two dwelling house pads, one on each of Lots 2 and 3 DP 809785 with associated access and asset protection zones as a staged development application – 219 Sneesbys Lane, East Wardell	Referred to Government Departments
2014/19	24/01/2014	Visionstream	To erect a	Awaiting

8.5 Development Applications - Works in Progress - April 2014

DA No.	Date Rec'd	Applicant	Proposal	Status
		Pty Ltd	telecommunications (fixed wireless broadband) facility comprising a 30 metre high monopole tower with antennas, compound area, equipment and associated works – 55 Beacon Rd, Teven	Additional Information
2014/31	5/02/2014	Newton Denny Chapelle	Staged development application pursuant to S.83B for a residential subdivision comprising two stages, with stage one including 159 residential lots, five public reserve lots, tree removal, civil infrastructure works and associated easements and stage two consisting of concept approval for nine residential lots and one public reserve lot - 78 Hutley Drive & Henderson Lane, Lennox Head	Awaiting Additional Information
2014/44	12/02/2014	Civiltech Consulting Engineers	Two lot subdivision, demolition of existing sheds, tree removal and erection of	Being Assessed

8.5 Development Applications - Works in Progress - April 2014

DA No.	Date Rec'd	Applicant	Proposal	Status
			two new sheds and one dwelling house - 54-56 Moon Street, Ballina	
2014/46	13/02/2014	RJ & L Johnson	To establish a bed and breakfast facility - 412 Friday Road, Brooklet	Referred to Government Departments
2014/63	24/02/2014	Northern Rivers Surveying Pty Ltd	Two Lot Subdivision to Create 1 x 87.5 ha and 1 x 1 ha allotments and Erection of a Shed Upon Proposed 1 ha allotment for Use as a Home Industry - Macadamia Nut Processing - 61 Jorgensens Lane, Brooklet and 145 Brooklet Road, Newrybar	On Exhibition
2014/80	04/03/2014	Newton Denny Chapelle	Erection and Strata Title Subdivision of a Mult-Dwelling Housing Development Comprising Six x Three Bedroom Single Storey Dwellings - 8 Megan Crescent, Lennox Head	Being Assessed

8.5 Development Applications - Works in Progress - April 2014

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
2013/286	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				

RECOMMENDATIONS

That Council notes the contents of the report on the status of outstanding development applications for April 2014.

Attachment(s)

Nil

9.1 LEP Amendment Request - 16 Tara Downs, Lennox Head

9. Strategic and Community Facilities Group Reports

9.1 LEP Amendment Request - 16 Tara Downs, Lennox Head

Delivery Program Strategic Planning

Objective To outline a planning proposal to rezone Lot 12 DP 813210 known as No. 16 Tara Downs, Lennox Head and seek direction on the further processing of the proposal.

Background

The Council, at its Ordinary Meeting held on 27 March 2014, considered a request from Mr D Foley to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012). If granted, the amendment would rezone Lot 12 DP 813210, No 16 Tara Downs, Lennox Head from zone RU1 – Primary Production to zone R2 – Low Density Residential under the terms of the LEP.

In relation to this matter, the Council resolved as follows [Minute No. 270314/16]:

1. *That Council prepare a planning proposal for the application of an R2 Low Density Residential zone relating to Lot 12 DP 813210, being No 16 Tara Downs, Lennox Head.*
2. *That the subdivision potential and associated minimum lot size for subdivision of Lot 12 DP 813210 be determined following assessment of additional technical information.*
3. *That a further report be submitted to the Council documenting the planning proposal.*

The planning proposal has been prepared and forms Attachment One to this report. The purpose of this report is to seek the Council's endorsement of the planning proposal for submission to NSW Planning and Infrastructure (NSW P&I) to obtain a Gateway determination. Established practice in relation to this type of LEP amendment is for the Council to receive the planning proposal documentation for consideration (following initial commencement of an LEP amendment process) with a view to determining whether the matter should progress to Gateway determination.

Additional information required to enable a comprehensive assessment of the relevant technical matters will be sought from the proponent after Gateway determination, assuming an affirmative response is received.

Key Issues

- Processing of LEP amendment request and submission of planning proposal for Gateway determination

Information

In summary, the planning proposal provides for an amendment to the Ballina LEP 2012 to rezone the subject land from RU1 Primary Production to R2 Low Density Residential. The proposal also seeks to enable a change to the minimum lot size for subdivision, but identifies that determination of the preferred standard is subject to further technical assessment.

The planning proposal has been prepared on the basis of information already available to Council. At this stage the degree to which known land constraints such as acid sulfate soils, bushfire hazard, contamination, land slip, storm water management, mosquito management issues, visual amenity impacts, vehicular access and potential lot configuration and size for future subdivision will impact on the planning proposal is not fully known. However, these issues will be further examined post Gateway determination if the Council resolves to adopt the recommendation below.

The attached planning proposal documents the degree to which the proposal complies with the locality's strategic planning framework. Consideration has been given to the planning proposal's consistency with the Far North Coast Regional Strategy, the Ballina Shire Growth Management Strategy, the Lennox Head Structure Plan, the Ballina LEP 2012, applicable State Environmental Planning Policies and the Minister's Section 117 Directions.

It has been concluded that the planning proposal is generally consistent with the framework provided by each of these documents.

Gateway determination requirements will specify the range of investigations and studies that NSW P&I will require to advance the planning proposal. Such information will then be required to be submitted to Council by the proponent for incorporation within the planning proposal prior to consultation with public authorities and the community.

Sustainability Considerations

- **Environment**

The subject land is substantially cleared of trees and contains predominately grass and weed species. Hairy Joint Grass, being a threatened and vulnerable plant species, has previously been found on this site. The significance of this vegetation, as well as the impact of the proposed subdivision on adjoining flora and fauna communities, would be assessed further post Gateway determination.

- **Social**

Aside from potential visual amenity impacts to adjacent properties arising from the development of the future land, the proposed zoning does not raise any significant social implications. Amenity implications will be considered further as part of the detailed assessment of the proposal post Gateway determination. In this regard, conceptual subdivision configuration and proposed lot size will be relevant.

- **Economic**

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

Legal / Resource / Financial Implications

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

The matters arising from this report can be attended to within existing resources.

In the event that Council wishes to advance this proposal, the proponent will be required to meet various processing costs in accordance with the Council's adopted schedule of fees and charges, as well as providing the necessary additional technical information, following Gateway determination.

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 the matter is in the initial phases.

Should the matter proceed, an affirmative Gateway determination will advise of consultation requirements with government agencies and the community. Engagement would then occur following assessment of the required additional information and in accordance with the Gateway determination.

Options

1. Endorse the planning proposal for submission to Planning and Infrastructure for Gateway determination.

This is the preferred and recommended option. In the circumstance, requiring the submission of technical information after a favourable Gateway determination has been obtained provides the proponent with additional confidence to justify the expenditure of funds to meet the cost of specified technical reports and studies. There are no identified technical issues that warrant detailed pre-Gateway determination assessment in this instance.

2. Require the proponent to submit additional information for incorporation into the planning proposal prior to submission to Planning and Infrastructure for Gateway determination.

The preparation of the planning proposal has highlighted a number of land constraints that will require detailed examination to determine associated impacts. However, these can be assessed after Gateway determination (assuming the proponents have the ability to provide relevant information).

3. Cease or defer processing of the LEP amendment request.

The Council may decline or defer the consideration of the requested LEP amendment.

9.1 LEP Amendment Request - 16 Tara Downs, Lennox Head

This course of action is not recommended as the rezoning and low density residential development of the land would be what is envisaged (subject to assessment of relevant constraints) within the current strategic planning framework. The proposal represents an opportunity to provide additional land for housing in an area with good access to utilities and services.

Proceeding with the proposal at this time will enable the completion of further technical assessment following Gateway determination. Importantly, the Council will have other opportunities during the processing of the amendment request to cease progress of the matter, should it determine this to be the appropriate course of action in the future.

RECOMMENDATIONS

1. That the Council authorises the submission of the planning proposal (contained in attachment One) which provides for the application of an R2 Low Density Residential zone over Lot 12 DP 813210, being No 16 Tara Downs, Lennox Head to NSW Planning and Infrastructure for review and Gateway determination.
2. That upon an affirmative Gateway determination being received from NSW Planning & Infrastructure, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal, including a determination of minimum lot size provisions.
3. That a further report be presented to the Council in relation to this matter following the mandatory community and government agency consultation.

Attachment(s)

1. Attachment One - Planning Proposal

9.2 Cumalum Precinct B Development Control Plan

9.2 Cumalum Precinct B Development Control Plan

Delivery Program Strategic Planning

Objective To invite the Council to consider the adoption of the Cumalum Precinct B Development Control Plan following its public exhibition.

Background

The Council considered a report relating to the preparation of draft development control plan for Precinct B of the Cumalum Urban Release Area at its Ordinary Meeting held on 23 January 2014. With respect to this matter, the Council resolved as follows [Minute No. 230114/10]:

- 1. That the draft development control plan amendment for Cumalum Precinct B be placed on public exhibition for a minimum of six weeks, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.*
- 2. That Council receive a further report addressing the exhibition and submissions received following the conclusion of the public exhibition period.*
- 3. That Council receive a separate report regarding the process involved in identifying an alternative name for Cumalum Precinct B for the purpose of future geographic reference.*

In accordance with Council's resolution, the draft Precinct B Development Control Plan material was publicly exhibited from 5 February 2014 until 21 March 2014.

The purpose of this report is to present information relating to the submissions received during the public exhibition process, and invite the Council to adopt the Development Control Plan (sub-chapter) for Cumalum Precinct B.

In relation to Item three of the above resolution, a separate report will be prepared inviting the Council's consideration of the locality naming options and a preferred procedure associated with that.

Key Issues

- Urban development
- Development control
- Community consultation

Information

In accordance with the Council's resolution, the Cumalum Precinct B Planning Proposal has been forwarded to NSW Planning & Infrastructure (P&I - formerly the Department of Planning & Infrastructure) to be finalised.

9.2 Cumbalum Precinct B Development Control Plan

Council requested that P&I defer those parts of Precinct B for which the Voluntary Planning Agreement (VPA) had not been registered to the respective land titles (in accordance with the Council's resolution).

As a consequence, the landholdings of Mr Owen & Mrs Margaret Lynn were omitted from the draft LEP maps forwarded to P&I in December 2013. Council understands that delay in the finalisation of the Cumbalum rezoning has occurred due largely in part to a backlog of LEP amendments with P&I and the Parliamentary Counsel's Office, and due to the need for amendments to occur in sequence as a consequence of the system of standardised map sheets under the Standard Instrument LEP. The finalisation of the Cumbalum rezonings has been affected by the need for the Crane Street and Stewart Farm amendments to precede it.

Notwithstanding the above, Council was advised in mid March 2014 that actions were being taken to register the VPA to the Lynn landholdings. Given this, the Lynn landholdings have been re-inserted in the amending LEP map sheets, consistent with the Council's resolution on this matter. Following confirmation that the VPA registration has occurred, P&I will proceed to give effect to the planning proposal through amendment to the Ballina LEP 2012.

Draft Development Controls

The introduction of development controls for Precinct B comprises the following:

- The inclusion of precinct-specific subdivision controls provided in Part 5 of Chapter 3 - Urban Subdivision. This material includes a number of maps relating to structure, staging, mobility, landscaping and open space matters.
- The inclusion of precinct references and general map amendments as outlined in the following table.

Amendments to general provisions of the Ballina DCP 2012:

DCP Part / Section	Proposed Amendment
<i>Text Amendments</i>	
Chapter 2 – Section 3.16 – Public Art	Inclusion of commercial precinct reference for the purpose of applying requirements for the provision of public art, where appropriate, in association with future development.
<i>Map Amendments</i>	
Special Area Controls Map - Subdivision	Identifies land to which precinct-specific controls apply. Triggers the need to consider proposed Section 5.5 of the DCP.

9.2 Cumbalum Precinct B Development Control Plan

DCP Part / Section	Proposed Amendment
Natural Areas & Habitat Map	Identifies land proposed (in the Precinct B Planning Proposal) to be zoned E2 and E3 within the precinct (with a 50m buffer). Identification on this map triggers the need for compliance with Section 3.3 of the DCP relating to the protection and enhancement of ecologically significant areas. Note: The E zones are to be deferred from the LEP amendment due to the State Government's E zone review. However, this amendment to the DCP, and the associated application of environmental provisions to parts of the release area, can be undertaken regardless of the E zone review.

It is noted that the draft development controls that are the subject of this report focus on subdivision matters. The need for further site specific built-form development controls may emerge over time as further consideration is given to the desired built form.

Under the proposed approach, the relevant existing provisions of the Ballina DCP 2012 for construction of dwelling houses and other residential buildings will apply (that is, special controls for housing separate to those already in place are not recommended at this time). Should the need for further site-specific built form controls (or design guidelines) emerge, these will be the subject of further deliberation by the Council, involving further amendment to relevant sections of the Ballina DCP 2012.

Submissions

Two submissions were received during the public exhibition period. Copies of the submissions are provided as Attachment One to this report. The key issues raised, and the Council staff response, are provided below.

Submission One – Planners North on behalf of Mr Ken Kaehler

Mr Kaehler is the owner of land (Lot 102 DP 1017364) located within the western portion of Precinct B, but which is not proposed for residential zoning in the Precinct B Planning Proposal.

Seven objections are raised in the submission, prepared on Mr Kaehler's behalf by Mr Steve Connelly. An outline of these objections and Council staff response are provided below.

1. 'The designation of the land as "Environmental Management"'

The submission objects to the identification of the Kaehler land as 'Environmental Management' land in the maps that accompany the DCP (for inclusion in Chapter 3) on the grounds that this is inconsistent with Section 74BA of the *Environmental Planning and Assessment Act 1979*, which reads as follows:

9.2 Cumbalum Precinct B Development Control Plan

74BA Purpose and status of development control plans

- (1) *The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:*
 - (a) *giving effect to the aims of any environmental planning instrument that applies to the development,*
 - (b) *facilitating development that is permissible under any such instrument,*
 - (c) *achieving the objectives of land zones under any such instrument.*

The provisions of a development control plan made for that purpose are not statutory requirements.
- (2) *The other purpose of a development control plan is to make provisions of the kind referred to in section 74C (1) (b)–(e).*
- (3) *Subsection (1) does not affect any requirement under Division 3 of Part 4 in relation to complying development.*

The key provision of s.74BA (above) is the requirement that a DCP give ‘...effect to the aims of any environmental planning instrument that applies to the development’ (emphasis added). It is noted that the draft development controls proposed for inclusion in Chapter 3 (Urban Subdivision) relate to development for the purpose of residential subdivision. As residential subdivision is not permissible on the Kaehler property, the provisions of the DCP relating to subdivision do not apply.

Accordingly no part of Chapter 3 of the DCP directs or requires Mr Kaehler to undertake environmental restoration works on his land, in association with residential development occurring within Precinct B.

Notwithstanding, it is noted that all land identified through the Local Environmental Study recommended for environmental protection and/or environmental management purposes has been shown as such in the DCP documentation.

The E3 zone was proposed for all rural land adjacent to the residential footprint of both precincts, in a manner consistent with the ‘urban buffer’ associated with Alstonville and Wollongbar. The E3 zone has not been applied at present in the draft Cumbalum Precinct B LEP amendment (referred to above) due to the State Government’s E zone review.

2. *‘Provisions which provide that other owners will have some control over the management of Lot 102 DP 1017364’.*

The submission objects to Clause 5.5.3(A)(ii) of the draft DCP which provides that future subdivision applications should have regard for the need to integrate with the likely future subdivision layout of adjoining land, including consideration of infrastructure and servicing.

The intent of the clause relates to ensuring integration of future subdivision stages, including development of smaller landholdings, which may be under different ownership, within the developable parts of the site and adjoining land where relevant.

9.2 Cumbalum Precinct B Development Control Plan

In response to the submission, it is noted that the Kaehler land does not enjoy any subdivision potential by virtue of the Ballina LEP 2012. Further, nothing in the subject DCP clause requires the landholders of adjoining land (such as Mr Kaehler) to do anything with respect to such integration, as the obligation is on the party making the application.

Consequently, it is respectfully submitted that the suggestion that some control over Lot 102 is inferred by the clause is a case of misinterpretation.

3. *'Inadequate provisions in relation to storm water management'*

The submission suggests that Clause 5.5.3.B(xvii) of the draft DCP does not give adequate consideration to water quality considerations associated with stormwater flows arising from future development as the text in the clause relates primarily to ensuring no adverse impacts result from increased stormwater volume.

In response, it is noted that clause 5.5.3.B(xvii) reads as follows (emphasis added):

"xvii. Development is to address the development standards relating to stormwater management set out in Chapter 2. Additionally, proposals must demonstrate that development will not adversely impact on the downstream natural environment or on adjacent private property due to increased stormwater volume."

Development standards relating to stormwater quality are contained in Chapter 2 (referred to in the clause) of the Ballina DCP 2012. Consequently, it is considered that the DCP Chapters 2 and 3, read in conjunction as intended, adequately address the matters raised in the submission with respect to this matter.

A further point raised in the submission is the nomination of stormwater treatment devices on part of the Kaehler land, without prior consultation. In response, it is acknowledged that the nominated stormwater treatment area (located on the north-western edge of the development area) encroaches on the Kaehler land.

It is proposed that Figure 1 be amended to remove such designation.

4. *'Request that the subject land be identified as an environmental monitoring point for water quality purposes'*

The submission requests, in relation to Clause 5.5.3.B(xxiv) of the draft DCP, that Lot 102 DP 1017364 be identified as a water quality monitoring point.

In response, this request can be accommodated by the amendment of the clause to insert the following words:

"The location of water quality monitoring points is to be determined in consultation with the Council, prior to the placement of monitoring equipment"

Council can then, subject to the agreement of the landholder, request that a water quality monitoring point be located on Lot 102 DP 1017364.

9.2 Cumbalum Precinct B Development Control Plan

5. 'Environmental management provisions applying without land owner authority'

The submission raises objection to the inference read into Clause 5.5.3.E(i) of the draft DCP that the Kaehler land will be required to be rehabilitated in conjunction with future development.

In response, this interpretation is not intended. It is noted that the relevant clause reads (in part) as follows (emphasis added):

- i. *"Areas identified as Environmental Conservation or Environmental Management on the Cumbalum Precinct B Structure Plan (Figure 1 – Appendix C) must be rehabilitated and embellished in accordance with the requirements set out below:*
 - *Development applications must be accompanied by a Vegetation Management Plan (VMP) that applies to all environmental protection zoned land within the stage, other than the Aboriginal Cultural Site..."*

In response, it is proposed that the staging plan, provided as Figure 3, be amended to clearly indicate that the Kaehler property does not form any 'stage' in the development, and that the wording of the above clause be amended to read *"...that applies to all Environmental Conservation and Environmental Management land within the stage"*.

6. 'The extent of the land covered by the DCP'

The submission requests that Figure 6 'Precinct B Development Obligations Map' in the draft DCP be amended to include all land identified in the DCP (sub-chapter), including the Kaehler land. The reason for this request is not clear.

Figure 6 is a reproduction of the map contained in the Cumbalum Precinct B Voluntary Planning Agreement (VPA) which identifies the properties subject to infrastructure delivery obligations under the VPA, as well as the intended locations of key items of infrastructure. Mr Kaehler is not a party to the VPA.

The map is included in the DCP to provide clarity to the future development assessment process regarding the infrastructure delivery arrangements negotiated under the VPA.

There does not appear to be any utility or benefit to be derived by adding land to Figure 6. Further, it is suggested that the inclusion of additional land on Figure 6 has the potential to cause confusion with respect to the VPA.

On the basis of the above, it is recommended that no changes be made with respect to Figure 6.

7. 'Various incorrect definitions relating to the site being an area which is subject to some special considerations relating to natural area and habitat.'

Similar to point 1 outlined above, the submission objects to the nomination of the land on the 'Natural Areas and Habitat' map of the DCP on the grounds that it is inconsistent with the provision of s.74BA of the Act.

9.2 Cumbalum Precinct B Development Control Plan

It is noted that the implication of being identified on this map is that any development on the land, that requires development consent, will be subject to Chapter 2 Section 3.3 (Natural Areas and Habitat) of the DCP, which includes the following development controls (emphasis added):

3.3.3 Development Controls

- i. Development is to be sited, designed and managed to avoid or mitigate potential adverse impacts on natural areas and habitat;*
- ii. All development (except dwellings, basic agricultural buildings and routine agricultural management activities) must demonstrate a net environmental benefit;*
- iii. A development application for land containing a wildlife corridor (as identified on the Wildlife Corridors Map), must demonstrate a long term net benefit to the operation and retention of the wildlife corridor. Compliance with this provision may also meet the requirements of (ii);*
- iv. Where development is unable to be sited, designed and managed to avoid potential adverse impacts on natural areas (as identified on the Natural Areas and Habitat Map), a proposal to remove habitat may be considered. If habitat is proposed to be removed or impacted as part of a development, an offset for the loss of biodiversity may be considered by Council provided it can be demonstrated that the proposed offset will maintain or improve biodiversity outcomes and values.*

The continued use of the land for agricultural purposes, that does not require development consent, is not affected by the above DCP clause.

Whilst it is acknowledged that development on the land that would require development consent (other than dwellings, basic agricultural buildings and routine agricultural management activities) would be subject to the development controls relating to natural areas and habitat outlined above, this is considered appropriate given the environmental zoning proposed as an outcome of the environmental assessment for the Cumbalum Precinct B study area.

Further, contrary to the view expressed in the submission, such a requirement is not inconsistent with the objectives of the RU2 Rural Landscape zone. It is noted in this regard, that in addition to objectives relating to the use of the land for agricultural purposes, the zone objectives of the RU2 zone include the following:

- To encourage development that involves restoration or enhancement (or both) of the natural environment if consistent with the production and landscape character of the land.*
- To enable development that does not adversely impact on the natural environment, including habitat and waterways.*

In light of the above, the application of development controls relating to 'natural areas and habitat' is considered to be consistent with section 74BA of the Act, should development other than routine agricultural activities and farm buildings be proposed on the land.

9.2 Cumbalum Precinct B Development Control Plan

Submission Two – Mr Anthony Potter

Mr Potter is the owner of land (Lot 1 DP 880178) located within the eastern portion of Precinct A of the Cumbalum Urban Release Area.

The main point raised in the submission relates to the proposed location of an 'off road shared pathway' (referred to in the submission as a 'laneway') on land adjacent to Brolga nesting habitat on the eastern edge of the precinct adjacent to the Ballina Nature Reserve. The submission suggests that public access to these areas should not be encouraged so as to not disturb the nesting habits of the Brolga (*Grus rubicunda*).

There is potential for Brolgas in the area to be disturbed by human access close by. Accordingly, and given the pathway is not central to the pedestrian network, it is recommended that the mapping be amended to remove the 'off road shared pathway' from land adjacent to the Brolga nesting habitat.

Summary of proposed amendments

Several additional minor amendments have been identified by staff. These are included in the recommendations below. In response to the points raised in the submissions, and with reference to staff comments above, staff recommend that the following amendments be made to the exhibited DCP material:

DCP Section:	Recommended amendments:
Figure 1 – Structure Plan	<ul style="list-style-type: none">• Show stormwater treatment areas on developers' landholdings only – several of the proposed stormwater treatment areas on the western part of the land are shown encroaching onto adjoining land including the Kaehler property.• Show the (modelled) fill area on land proposed for development only. It is noted that not all the land modelling indicated could be filled, was ultimately found suitable for residential purposes through the Local Environmental Study, due to other factors.• Remove the zone references in the land use budget – due to the deferral of E-Zones.
Figure 2 – Mobility Plan	<ul style="list-style-type: none">• Remove off road shared pathways from land adjacent to Brolga nesting habitat.
Figure 3 – Staging Plan	<ul style="list-style-type: none">• Limit the extent of Stage 4 to the developers' landholdings only – current mapping extends staging areas to the extent of the precinct, thereby mapping the Kaehler land in Stage 4.
Figure 5 – Open Space Ownership	<ul style="list-style-type: none">• Remove fill area from map, as it is not relevant to open space ownership and it is already shown on Figure 1.• Remove off road shared pathways from land adjacent to Brolga nesting habitat (as for Figure 2).
Clause 5.5.3.B(xxiv)	<ul style="list-style-type: none">• Insert the following text at the end of the

9.2 Cumbalum Precinct B Development Control Plan

DCP Section:	Recommended amendments:
	clause: <i>“The location of water quality monitoring points is to be determined in consultation with the Council, prior to the placement of monitoring equipment”.</i>
Clause 5.5.3.E(i)	<ul style="list-style-type: none">Amend the wording of Clause 5.5.3.E(i) to read (in part) as follows (amendment shown underlined):<ul style="list-style-type: none"><i>“Areas identified as Environmental Conservation or Environmental Management on the Cumbalum Precinct B Structure Plan (Figure 1 – Appendix C) must be rehabilitated and embellished in accordance with the requirements set out below:</i><ul style="list-style-type: none"><i>Development applications must be accompanied by a Vegetation Management Plan (VMP) that applies to <u>all Environmental Conservation and Environmental Management land within the stage</u>, other than the Aboriginal Cultural Site...”</i>

The Development Control Plan section for Cumbalum Precinct B incorporating the above recommended amendments is provided as Attachment Two to this report (under separate cover).

VPA Restriction on DA Lodgement

Council was concerned during the rezoning process that Section 74D of the *Environmental Planning and Assessment Act 1979* provides a potential pathway for a development application to be lodged in the absence of Council having had an opportunity to prepare a DCP that reflects the community's objectives with respect to future development. Consequently, the following clause was inserted in the Cumbalum Precinct B Voluntary Planning Agreement (VPA):

4.5 A Landowner is not to prepare a development control plan, pursuant to s74D(3) of the Act or make a staged development application under s83C(2) of the Act without the Council's written consent.

Further to the above, prior to the public exhibition of the DCP, the proponents requested that Council remove the restriction imposed by clause 4.5 and give its written consent to the lodgement of a staged development application.

It is noted that in giving its agreement to lift the application of clause 4.5 of the VPA, Council would not be giving its agreement or consent with respect to the content of any such application.

As previously reported to the Council, given the basis for the inclusion of Clause 4.5 in the VPA, it is reasonable that Council relieve the proponent from this restriction upon the adoption by the Council of site-specific development control plan provisions for Precinct B.

9.2 Cumbalum Precinct B Development Control Plan

As such, it is recommended that upon the adoption of amendments to the principal development control plan for Cumbalum Precinct B, that Council staff be authorised to provide the Precinct B proponents with Council's written authorisation enabling the proponents to lodge a development application for the development of the land.

Sustainability Considerations

- **Environment**

The draft development controls, the subject of this report, include provisions that seek to recognise and protect the natural environment from adverse impacts associated with future development.

- **Social**

The draft development controls, the subject of this report, include provisions relating to the provision of community facilities to meet the future social needs of the community.

- **Economic**

The adoption of development controls, the subject of this report, will progress the availability of additional development land to the market, which is expected to provide for positive economic outcomes for the shire for a very significant period during establishment, and then on an ongoing basis.

Legal / Resource / Financial Implications

The adoption of development controls through additions to, and amendment of, the Ballina Development Control Plan 2012 provides guidance on development related matters, which will be considered in the context of future development assessment processes.

It is suggested that, should the Council resolve to adopt the development controls, the subject of this report, the earliest date for the commencement of the controls having regard for the placement of a public notice is 12 May 2014.

Consultation

The draft development controls were publicly exhibited, in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, for a period of 32 days from Wednesday 5 February 2014 until Friday 21 March 2014.

Information regarding the public submissions received during the public exhibition period is provided in the body of this report.

Options

1. Council may adopt the development controls as exhibited.

This option is not recommended as the public exhibition process and further review by Council staff have identified that a number of further (but relatively minor) amendments to the draft development controls are warranted.

2. Council can adopt the development controls, incorporating the amendments outlined in the body of this report. In association with the introduction of the development controls, the Council may lift the impediment to the landholders lodging a development application for the subdivision of the land, imposed by Clause 4.5 of the Cumbalum Precinct B Voluntary Planning Agreement.

This option is recommended as the public exhibition process and further review by Council staff have identified that a number of further amendments to the draft development controls are considered appropriate. Further, deleting the restriction to the landholder's ability to lodge a development application, is a matter of Council acting in good faith with respect to the Voluntary Planning Agreement that relates to development of the land.

As outlined above, should Council pursue this option, it is recommended that the development controls take effect from 12 May 2014. This option would also incorporate minor typographic and formatting adjustments.

3. Council can resolve to not adopt the development controls, for Cumbalum Precinct B.

This option is not recommended as the introduction of development controls provides Council's guidance to the consideration of future development applications for the development of the land.

The Council has made a significant commitment over many years toward ensuring that the shire's long term residential land supplies are secured. When finalised by the Minister for Planning and Infrastructure, Cumbalum Precinct A and B rezonings help to provide that security.

It is suggested that the adoption of the guidelines that have been formulated, as outlined in this report, establish sound parameters for the future development of Precinct B and for the protection of the local environment.

RECOMMENDATIONS

1. That Council adopt Amendment No.2 to the Ballina Development Control Plan 2012 (Cumbalum Precinct B), with minor amendments, as outlined in this report.
2. That the provisions for Cumbalum Precinct B under Amendment No.2 to the Ballina Development Control Plan 2012 take effect on 12 May 2014.
3. That the restriction imposed by Clause 4.5 of the Cumbalum Precinct B Voluntary Planning Agreement, placed on landholders to prevent the lodgement of applications for the development of the land, be removed, effective from the date the development control plan begins to operate.

Attachment(s)

1. Submissions to public exhibition
2. Draft Development Controls for Cumbalum Precinct B, as amended

9.3 Pacific Pines Development

9.3 Pacific Pines Development

Delivery Program Strategic Planning

Objective To inform the Council about the progress of the Pacific Pines development in Lennox Head and seek direction in relation to several key issues relating to costs, infrastructure and land management.

Background

The Royal Bank of Scotland (RBS) is the owner of the Pacific Pines Estate, being Lot 234, DP 1104071 in Lennox Head. RBS is working in partnership with Lend Lease to undertake the development of the land based on an approved concept plan under Concept Approval MP07_0026 issued by the (then) Department of Planning and Infrastructure in March 2013. Attachment One includes a plan showing the extent of the approved concept plan for the land (this area is referred to as the Pacific Pines development for the purposes of this report).

In summary, the Pacific Pines development, as currently approved, involves a residential subdivision providing for approximately 560 lots as well as a neighbourhood commercial precinct, a community hall, seniors' housing, playing fields and associated infrastructure including internal roads and a partial extension to Hutley Drive. More specifically, the playing fields proposed include two senior football fields, two junior football fields, two cricket fields, a hard stand area (tennis courts), cricket practice nets, an amenities building and associated car parking. Importantly, much of the planned infrastructure, including the playing fields is to be delivered up front by RBS and Lend Lease prior to the release of residential land in the first stage of the development.

The development of the Pacific Pines residential area has been ongoing for a long period of time with different proponents. Most recently, RBS and Lend Lease have been seeking to advance the first stage of their approved development (Stage 1A). RBS and Lend Lease have been meeting regularly with Council staff in relation to the proposed development and held briefings with the elected Council and the B Ward Committee late in 2013. Lend Lease has also commenced initial engagement with the local community in the vicinity of Pacific Pines.

Council's Strategic and Community Facilities Group has been working with RBS, Lend Lease and their local planning and engineering consultant GeoLINK to coordinate the flow of information between Council and the proponent. Following on from liaison in relation to this project, the proponent has made a submission seeking the Council's view in relation to several key issues that relate to the development (Attachment One). The issues identified relate to the provision of support for the construction of the playing fields, the configuration of the playing fields and the dedication of land (referred to as the conservation zone) into Council's ownership.

9.3 Pacific Pines Development

These issues are significant as they each relate to the timely progression of the development and the provision of the playing fields which are an important piece of infrastructure for the Lennox Head community.

The purpose of this report is to outline the key issues raised in the proponents' submissions and seek the Council's direction with respect to further action on these matters.

Key Issues

- Dedication of land into public ownership.
- Configuration and composition of the playing fields and sporting infrastructure.
- Support for the construction of the playing fields and sporting infrastructure.
- Timing for delivery of public infrastructure.

Information

Conservation Zone and Dedication of Land to Council

The Pacific Pines development is subject to an approval under the *Commonwealth Environment Protection and Biodiversity Conservation Act* (as well as its State Government approval under the *Environmental Planning and Assessment Act*). The EPBC Act approval was required because of the presence of Hairy Joint Grass (a vulnerable species under the Act) on the subject land.

Hairy Joint Grass and other significant ecological attributes on the land are contained within an area known as the 'conservation zone' and Council had proposed to zone this area for environmental protection purposes under the Ballina Local Environmental Plan 2012 until the deferral of the E zones within that instrument by the State Government. The extent of the conservation area and its ecological attributes are shown in Attachment Two. Significantly, the provision of the conservation zone area was supported by Council staff during the State and Commonwealth assessment and approval processes for this development.

A central consideration in relation to the conservation area is its long term ownership and management. The rehabilitation and management of the conservation zone is to be implemented under the management plans for the land. Under the plans, and consistent with the State Government's development approval, it is envisaged that the land will be dedicated to Council five years after the release of the final subdivision certificate for the last stage of development. The plan identifies that this is after implementation of weed control and rehabilitation measures have been completed and translocation and other plantings would be well established. There is also a monitoring regime relating to Hairy Joint Grass to be implemented and paid for by the proponent.

Whilst difficult to predict with any accuracy, the proponent has indicated that the intended handover of the conservation zone to Council is expected to occur in 10 to 15 years time (between 2024 and 2029).

9.3 Pacific Pines Development

The key issue for consideration is whether the Council is inclined to accept the land into its ownership, given that maintenance and management costs will be incurred by the public from that time onward. It is also important to recognise that the management of the land will need to have regard for the key ecological attributes of the land.

In considering the circumstances, it is also significant that Council advocated for the conservation of the ecological attributes of the land during the assessment and approval processes for the development. However, Council has not sought or recommended that the conservation area be handed over to Council for long term management. Indeed, when this outcome was proposed, Council staff conveyed written advice to the State Government that this approach was not supported.

The resolution of this matter is a high priority as the development cannot move forward (i.e. no individual lots can be developed) under the current EPBC Act approval if a restriction on title, covenant or other conservation mechanism is not in place to ensure the conservation zone is protected for conservation in perpetuity. This in turn means that the potential benefits associated with the proposed development, such as the sports fields, commercial precinct, road infrastructure and additional residential housing cannot proceed until the EPBC Act condition is met.

To meet this condition, the proponent has suggested the application of a positive covenant to the land that would name the Council as the beneficiary. Acceptance of this covenant arrangement would essentially give Council's endorsement to its receipt of the land five years after the release of the final subdivision certificate.

The key factors for the Council to balance in this regard are the longer term management costs, including management of ecological attributes, against the progression of the proposed development, including the provision of the planned playing fields. As a local planning authority, Council has an obligation to ensure the key ecological values of the site are protected, though this does not necessarily mean that Council must accept ownership of the conservation zone area to achieve this outcome.

On balance (particularly having regard for the broader outcomes associated with the Pacific Pines development), it is recommended that Council agree to being identified as the beneficiary of the proposed positive covenant over the land to enable the proponent to meet the applicable EPBC Act condition and progress the development. This approach is suggested on the following basis:

- the conservation area comprises natural heritage elements that have value for the wider Ballina Shire community; and
- the proposed development involves substantial provision of infrastructure and broader community benefit associated with that infrastructure and housing.

9.3 Pacific Pines Development

To minimise the extent of maintenance and management liabilities, it is further recommended that the Council authorise the General Manager to work with the proponents to establish wording within the covenant that seeks to both reflect the requirements of the EPBC Act condition and the desired environmental outcomes but providing flexibility in the way Council can manage the land once in its ownership (i.e. seek to find acceptable covenant wording that does not lock Council into a rigid maintenance regime).

It is also recommended that Council seek a commitment from the proponents that the handover of the land will occur in a collaborative way so that Council can consider the state of the land and its suitability for handover well in advance of the handover date.

Configuration of the Playing Fields and Sporting Infrastructure

Under the current State Government approval for the Pacific Pines development, the proponent is conditioned to playing field and sporting infrastructure provision prior to the release of the subdivision certificate for State 1A, in accordance with a previous development consent for the playing fields granted in 2004 (DA2004/1113 as modified). Practically, this means that the playing fields and associated infrastructure must be completed before the first houses are built.

The current approval requires the construction of two senior football fields, two junior football fields, two cricket fields, a hard stand area (tennis courts), cricket practice nets, an amenities building and associated car parking and road access (Attachment Three). It is evident that the provision of this infrastructure is highly desirable to Council for the broader community benefit that it offers.

The proponent has suggested an alternative layout to the playing fields, as shown in Attachment Four. This layout has the advantage of locating the amenities building and car parking immediately adjacent to Hutley Drive, which offers accessibility benefits as well as better passive surveillance opportunities when compared to the original design.

Council's Manager Open Spaces and Resource Recovery has reviewed both plan options and advises that the alternate layout is considered to be advantageous from an open space provision and management perspective. However, it is important to recognise that the current alternate layout does not include a hardstand area, as indicated in the originally approved configuration. Notwithstanding this, if the Council is of the view that the alternate layout is preferred, the following options could be pursued further in relation to the design of the infrastructure:

- Movement of the football/cricket playing surfaces south towards or over the water easement along the southern site boundary in an effort to provide space for a hard stand playing surface.
- Removal of the provision of the hard stand playing surface from the facility in favour of alternate infrastructure such as lighting for the playing fields.
- Removal of the provision of the hard stand playing surface from the facility in order to provide some cost relief to the proponent (as part of an approach determined in relation to the issue of cost relief discussed below).

9.3 Pacific Pines Development

If alternate playing field and sporting infrastructure design is preferred by the Council, it is important to recognise that this may be interpreted as a departure from the original playing field approval. Therefore, to enable the alternate design to proceed, it is considered the best way to do this is by using the provisions of the Infrastructure SEPP and on the basis of a clear position from the Council as to what infrastructure is sought to meet the intended outcomes envisaged under the original approval. The Infrastructure SEPP can be utilised because the open space land has previously been dedicated to Council.

A further advantage of using the Infrastructure SEPP is that it supports the proponent in progressing the construction of the playing fields in full, rather than in a staged way, as intended under the original consent. That is, the proponent is currently seeking to build the facility in one step, rather than two, and this is considered to be beneficial for both the community and the proponent as it reduces waiting time for the full facility and is likely to provide efficiencies in terms of development costs.

In considering the above approach, it is important to note that Pacific Pines development approvals also include construction of a road (part way) and dedication of an associated road reserve between Pacific Pines and the proposed Outlook development on the Henderson Farm site immediately to the west.

If Council agrees to pursue the alternate playing fields layout, it is important to consider the extent to which a road is constructed alongside the playing fields (northern side) between Pacific Pines Estate and the proposed Outlook Estate ("Henderson Farm"). Council could seek agreement from the proponent for construction of a length equivalent to that planned under the original playing field approval or alternatively, accept a shorter road length as a means of providing some cost relief to the proponent (having regard for the matters outlined in financial costs discussion below). Regardless of the extent of physical road construction, it is recommended that the requirement for the dedication of the road reserve linking the Henderson Farm to Pacific Pines is preserved.

Given the potential advantages of the alternate playing fields layout and the flexibility afforded in terms of infrastructure design and composition, it is recommended that Council endorse the pursuit of the alternative design for the playing fields through the use of an Infrastructure SEPP-based approval process. The detail of the alternate design would be subject to further liaison between Council staff and the proponent with respect to the provision of a facility that meets the intent of the original development consent condition and provides for a practical facility to service local open space needs. The elected Council may further consider the infrastructure as part of the approval process, if desirable.

Distribution of Financial Costs and Risks for Delivery of Pacific Pines Playing Fields

9.3 Pacific Pines Development

As outlined in the submission from the proponent, the Council's support is sought to enter into a voluntary planning agreement whereby Council would essentially agree to provide a level of support for the construction of the playing fields and associated infrastructure. This could be by way of direct financial contributions, relief from applicable Council-levied charges, deferral of charges and/or a reduction in the scope of works to reduce capital costs associated with the facility.

The proponent confirms a commitment to the construction of the playing fields and other community infrastructure in the first stage of the Pacific Pines development. The proponent currently intends that the fields will be suitable for play within 18 months of construction commencing. This is obviously a desirable outcome for Council and the community, particularly given the duration of the delays that have occurred to date.

The submission also indicates though that the infrastructure is costly, with the implication being that the fields are expected to cost more than anticipated. The proponent is asking Council to share the financial cost and risk associated with the provision of the facility for reasons outlined in the submission (Attachment One).

In summary, the proponent is of the view that the playing fields will cost in excess of the amount that would otherwise be payable under Council's developer contribution and charges systems. The proponent has expressed a view that this is not equitable and on this basis, it is more difficult than had been expected for the proponent to proceed with the Pacific Pines development in the current circumstance. Hence, the request for Council assistance.

The following provides an overview of a conundrum for the Council from a principle perspective, rather than delving into the details of particular figures or costs. The purpose of this report is to determine if the Council supports a principle of supporting the Pacific Pines developers in delivery of the playing fields or not. If there is support, further more detailed work would need to be undertaken to determine the extent of assistance provided, having regard for any methods that are given preference by the Council.

One way of looking at this situation is that the requirement for the provision of the facilities by the developer of the land has been known since the initial establishment of the Pacific Pines Estate in the late 1980s. In turn, the requirement for the facility to be provided directly by the developer was known by RBS and Lend Lease at the time they became involved in the ownership and potential development of the site.

It could also be considered that the direct conditioning of the developer of the land to provide the infrastructure up front at their cost is the preferred method of obtaining the infrastructure at low cost and risk to the Council at a particular time as determined through the consent process. Further, under this approach, the developer of the land is not required to pay playing field/ open space contributions to Council in recognition of the required construction of the fields.

9.3 Pacific Pines Development

Alternatively, the situation could be viewed differently on the basis that since the original consent was issued, the cost of the playing fields has grown well beyond what was originally anticipated. Further, the situation could be viewed from a perspective that the infrastructure provided should be generally equivalent to what it would cost the land developer under a developer contributions regime. From this viewpoint, it could be concluded that the current requirement of the developer to deliver the playing fields, as approved, is inequitable.

From either viewpoint, it is also important to recognise that the playing fields must be delivered prior to the release (tilling) of the first stage of the development and the proponent has committed to constructing the facility in full in this time period. Essentially, there is an opportunity to have the playing fields in place in the near future, well in advance of the majority of the remaining residential components of the Pacific Pines development. This is a highly desirable outcome from a planning perspective and could be viewed as a point of difference when compared to other requests Council receives for relief, deferral and support in relation to infrastructure provision as part of development.

Setting aside the specific details of particular costs and their magnitude, there is a need to determine if the Council is of the view that the circumstances are such that there is in-principle support for assistance in the delivery of the playing fields. This essentially requires a philosophical position from the Council as to whether it wishes to actively support the development financially or hold the developer to the conditions of their approval with no direct financial assistance.

If the Council wishes to support the developer, it is suggested that the best way to advance this is to enter into negotiations for the establishment of a voluntary planning agreement that sets out each party's contribution to the delivery of the playing fields.

In considering a voluntary planning agreement, a key question will be to what extent Council might assist, and how. Addressing the extent of assistance, the proponents' submission suggests that the playing fields equate to a contribution to the value of \$8M in community infrastructure. This figure is however, inclusive of land value estimated at \$5M. There is an argument that the land value should not be included as the land was dedicated to Council prior to the current landowner purchasing the Pacific Pines site.

Based then on a capital works cost of \$3M and an estimated value of contributions under the current section 94 plan of \$1.15M, there is a difference of approximate \$1.85M. This figure also needs to be tempered with consideration of the value of contributions waived for earlier stages of the Pacific Pines development, the additional contributions payable if the Pacific Pines playing fields were included in the section 94 plan and the extent to which the developer contribution cap would impact the funding that could be obtained. Therefore, it is likely that the gap between the real capital cost for the playing fields and what would otherwise be recouped under section 94 contributions is likely less than \$1.85M.

9.3 Pacific Pines Development

In terms of how the Council might contribute, there are several ways which include contribution of cash, provision of relief (by reduction or deferral) from other contributions and charges that are payable and/or reduction in the extent of infrastructure works required. Council's contribution could also be considered in relation to the value of having the playing fields built now rather than at some time in the future.

One possible approach could be to reduce the extent of works for the playing fields by removing the hard stand area from the facility (a possible saving in the order of \$200,000) and then a cash contribution that recognises the value of having the fields in place in the short term. Another approach could be to defer applicable contributions and charges based on staging, a timeframe or another agreed milestone. These approaches, along with others, would be considered if Council authorises negotiations in relation to a voluntary planning agreement. The Council may, however, wish to define the type and extent of options to be considered (e.g. deferral rather than reduction in payments).

Regardless of the approach taken, if the Council is interested in a voluntary planning agreement, it is recommended that Council makes it clear the extent to which it will consider funding the gap between estimated costs and contributions that would be payable. For example, if the Council is inclined to provide for a reduction in costs, an upper limit to the extent of support could be established. One option in this regard would be to set a limit of, say, 25% of the agreed gap, but not exceeding \$462,500 which allows for a reduction in potential costs through a reduction in the gap but sets a maximum based on the figures currently available.

Alternatively, if the Council is inclined to support deferral of contributions and charges, an option would be to establish that the value of deferred contributions and charges that would be provided for is not to exceed the agreed gap.

In considering the above, it is important to recognise that a consequence of the development not proceeding as per the currently planned approach could be that the delivery of the playing fields is delayed indefinitely, there may be additional costs borne by Council and/or Council may be required to build the fields. It is also worthwhile considering the other community benefits that may arise in association with the overall Pacific Pines development and that there are logistical benefits in dealing with a single proponent in the roll out of urban release areas, especially where there is significant public infrastructure planned.

Given the nature of this issue, this report provides an optional recommendation with respect to further consideration of a voluntary planning agreement.

Sustainability Considerations

- **Environment**

The Pacific Pines development includes a significant conservation area that has a broad community value.

9.3 Pacific Pines Development

- **Social**

The Pacific Pines development includes provision of substantial public infrastructure including playing fields and associated infrastructure, public roads and a community hall. The development will also provide significantly more housing choice within the Lennox Head market.

- **Economic**

The Pacific Pines development has the potential to create a number of employment opportunities in the construction industry in the short term and longer term employment opportunities in the planned commercial precinct and seniors' housing components of the development.

Legal / Resource / Financial Implications

The principal legal, resource and financial issues for the Council to consider are the direct and indirect financial costs associated with the various options presented, particularly in relation to land dedication and financial assistance for the delivery of the playing fields, and the impact on staff resources in the negotiation of a voluntary planning agreement.

If the Council agrees to enter negotiations in relation to a voluntary planning agreement, it is suggested that it would be appropriate for the proponent to bear the cost of preparing such an agreement. However, Council may incur some legal costs in seeking its own advice as part of any negotiations.

Consultation

Not applicable.

Options

The various pathways available to the Council with respect to the three key issues raised are canvassed above.

In summary, the options available to the Council are as follows:

Conservation Zone

The Council may agree, in principle, to accept the dedication of this land into its ownership in accordance with the conditions of approval for the development. In doing so, Council would agree to being named as beneficiary in a positive covenant over the land. This would allow the Pacific Pines development to proceed beyond its first stage in relation to conditions associated with the conservation area. Council's agreement to the covenant would be on the basis that the covenant wording allows for flexibility in Council's management of the land once dedicated into public ownership.

Even though public ownership of the land was not the preferred outcome when staff was assessing the original Major Project application, and is still not ideal, acceptance is recommended as a practical means of protecting the particular environmental features of the land.

9.3 Pacific Pines Development

In the alternative, the Council could elect not to accept the dedication of the land and the proposed covenant. In this instance, the developer would need to find an alternate way of satisfying the approval conditions associated with the conservation zone. There is a reasonable probability that this will be difficult and may require modification to the current approval, further delaying the delivery of the development and associated infrastructure (if a modification can be obtained).

Playing Fields Configuration

It is open to the Council to support the alternate playing field configuration, utilising the Infrastructure SEPP to advance this approach. This provides for an improved design outcome, subject to confirmation in the detailed design process that the required facilities can be accommodated. This also facilitates the delivery of the fields in one step. In taking this approach, it is also suggested that Council maintain a requirement for the access corridor arrangements to the adjoining "Henderson Farm" site.

The alternate approach is for the Council to maintain a requirement for delivery of the fields as per the 2004 development consent. For the reasons outlined in the discussion above, this design is not the preferred outcome.

Voluntary Planning Agreement

Fundamentally, direction is sought as to whether the Council wishes to support the delivery of the playing fields through the provision of financial assistance to the proponent. The following options are provided in this regard:

- a) That the Council does not support the provision of financial assistance for delivery of the playing fields to the proponent of the Pacific Pines development on the basis that the provision of this infrastructure is a requirement of the development approval for the land and has been the expectation of Council as part of the overall Pacific Pines development. On this basis, the Council declines the invitation to enter in a voluntary planning agreement with the proponent.
- b) That the Council considers that the circumstances associated with the Pacific Pines development are such that it agrees, in principle, to the provision of financial assistance to the proponent of the Pacific Pines development toward the delivery of the playing fields. On this basis, the Council authorises the General Manager to commence negotiations with the proponent to enter into a voluntary planning agreement.

In adopting option (b), it is important to be mindful that this may trigger other requests for assistance in the delivery of infrastructure either for this project, or for others. Given this, it is suggested that the Council needs to be satisfied that the specific circumstances relating to Pacific Pines Estate are sufficiently distinguishable to warrant assistance that would not otherwise be provided. Under this approach it is also suggested that the Council sets a cap on the maximum level of support as suggested in the above discussion in this report.

If adopting option (a), it is important to recognise that this may mean the proponent does not proceed with the development, and hence the playing fields may not be provided as planned in the short to medium term.

9.3 Pacific Pines Development

The recommendations are structured into options A and B, with the only difference between them being the approach in relation to the voluntary planning agreement.

RECOMMENDATIONS

Option A

1. That the Council accepts, in principle, the dedication of the conservation zone area within the Pacific Pines development into Council ownership following compliance with the relevant conditions of development approval (State and Federal) and subject to the proponent providing a commitment to work collaboratively with Council in relation to the ultimate handover of the land.
2. That the Council authorises the General Manager to liaise with the proponent to establish a positive covenant over the conservation zone area benefitting Ballina Shire Council based on the principle of achieving compliance with the applicable conditions of approval, recognition of the desired environmental outcomes and flexibility in the way in which Council can manage the land once its comes into public ownership.
3. That the Council endorse the provision of a revised playing fields configuration based on the alternate design illustrated in Attachment Four (but not necessarily excluding a hard stand playing surface) through the application of the provisions of the Infrastructure SEPP.
4. That, in conjunction with the revised playing fields configuration, Council maintains a requirement for the provision of a road access corridor between Pacific Pines Estate and the Henderson Farm.
5. That the Council declines the offer from the Royal Bank of Scotland and Lend Lease to enter into a voluntary planning agreement with respect to the delivery of the Pacific Pines Estate playing fields.

Option B

1. That the Council accepts, in principle, the dedication of the conservation zone area within the Pacific Pines development into Council ownership following compliance with the relevant conditions of development approval (State and Federal) and subject to the proponent providing a commitment to work collaboratively with Council in relation to the ultimate handover of the land.
2. That the Council authorises the General Manager to liaise with the proponent to establish a positive covenant over the conservation zone area benefitting Ballina Shire Council based on the principle of achieving compliance with the applicable conditions of approval, recognition of the desired environmental outcomes and flexibility in the way in which Council can manage the land once its comes into public ownership.

9.3 Pacific Pines Development

3. That the Council endorse the provision of a revised sporting facility configuration based on the alternate design illustrated in Attachment Four (but not necessarily excluding a hard stand playing surface) through the application of the provisions of the Infrastructure SEPP.
4. That, in conjunction with the revised playing fields configuration, Council maintains a requirement for the provision of a road access corridor between Pacific Pines Estate and the Henderson Farm.
5. That the Council accepts the offer from the Royal Bank of Scotland and Lend Lease to enter into a voluntary planning agreement with respect to the delivery of the Pacific Pines Estate playing fields and authorises the General Manager to enter into negotiations in this regard consistent with the sentiments expressed in this report. Further, that following negotiations this matter be reported to the Council for further deliberation.

Attachment(s)

1. Attachment One - Submission to Council - Sports Fields and Conservation Zone (GeoLINK March 2014)
2. Attachment Two - Pacific Pines Conservation Zone (GeoLINK)
3. Attachment Three - 2004/1113 Playing Fields Configuration
4. Attachment Four - Alternate Playing Fields Configuration

9.4 Heritage and Culture Program - Update

9.4 Heritage and Culture Program - Update

Delivery Program Strategic Planning

Objective To update the Council on the various heritage and cultural initiatives that have been undertaken in the last 18 months.

Background

Council's heritage and culture program delivers projects, processes and initiatives that aim to recognise, manage and further strengthen heritage and cultural values in the shire.

It is timely to update the Council on the heritage and culture program, as a number of projects have recently been initiated or completed. Recognition of Council's progress in regard to these matters also supports access to grant funding. More specifically, reporting to the Council on Council's heritage and cultural initiatives is required to access heritage advisor grant funding from the NSW Government.

This report provides an update to the Council on the various heritage and cultural initiatives that have been undertaken in the last 18 months.

Key Issues

- Recognition, management and promotion of natural, cultural and built heritage in the shire

Information

The following provides a brief overview of current or recently completed heritage-related projects.

- *A Community at War: Wartime Stories from Ballina Shire* exhibition and book explores local accounts of war time experiences from across the Ballina Shire community. This exhibition associated with this project is currently on at the Northern Rivers Community Gallery.
- The *Object of the Story – Reflections on Place* gallery exhibition and associated publication was launched in 2013 and was based on oral histories told by local community members through cherished objects and contemporary portraits of the project's story tellers. The project was a partnership between Ballina Shire Council and the Jali Local Aboriginal Land Council.
- The annual NAIDOC Week activities and associated exhibition of local Aboriginal artists in the Northern Rivers Community Gallery continues to acknowledge and promote the shire's Aboriginal cultural heritage.

9.4 Heritage and Culture Program - Update

- The Historic Flood Photos Project provided insights into local flooding events. The historic collection of images available through Council's website shows how floods have temporarily, and permanently, shaped the local landscape over time and how the community has responded to these cyclic natural events. Whilst being a matter of general community interest, this project was conceived and delivered principally as an educational opportunity; as a reminder of the relative vulnerability of parts of the shire in terms of major weather events.
- The draft Ballina Shire Cultural Plan has recently been publicly exhibited. This plan will provide a strategic direction to support cultural activity in the shire. It encourages and enables Council and the community to instigate and foster cultural activity in the shire. This plan will guide Council and the community in building cultural services to 2020.
- The Historic Ballina Waterfront Heritage Trail, launched in December 2013, represents Ballina Shire's first interpretive signage trail. This trail consists of 19 signage panels that are located along the pathway between North Wall and Fawcett Park in Ballina. The stories reveal the importance of the Richmond River and its tributaries to past generations, and how it supports the local natural environment. A number of local history organisations were contributors to this project.
- Funding continues to be pursued for the Bundjalung Cultural Ways Project. This project seeks to engage the shire's Aboriginal community to develop and implement interpretive signage that promotes and acknowledges Aboriginal cultural heritage values in a suitable and innovative manner. The area targeted for the project is the coastal reserve, and in particular, the project would complement the coastal shared and recreational pathways.
- Council is working with community members and organisations to deliver public art on infrastructure. Following on from the successful Transform community art partnership with Essential Energy to paint local transformer boxes in the shire, Council is currently engaged in a collaborative project to prepare a mural on the sewerage pump station located adjacent to Chickiba Lake in East Ballina, and has developed a protocol for future art projects on public infrastructure.
- An Aboriginal cultural heritage management procedure is currently being prepared consistent with State Government policy for the consideration of Aboriginal cultural heritage in relation to development proposals. This internal procedure will complement existing processes and assist in guiding Council's development assessment staff in the consideration of Aboriginal heritage matters.
- The Ballina Local Environmental Plan 2012 (BLEP 2012) and Ballina Shire Development Control Plan 2012 incorporate provisions for the management and conservation of heritage items.
- The BLEP 2012 recognises the character and special attributes in the shire by listing local heritage items. A number of new heritage items have been listed in Council's BLEP 2012 based on Council's Shire-Wide Community Based Heritage Study, which was conducted a couple of years ago.
- The NSW Heritage Inventory administered by the NSW Office of Environment and Heritage has been updated in accordance with new listings included in BLEP 2012.

9.4 Heritage and Culture Program - Update

- A number of additional Aboriginal cultural heritage attributes that were identified in the shire through the Council's cultural mapping process (conducted in partnership with the JALI Local Aboriginal Land Council) have been provided to the Office of Environment and Heritage for inclusion in the OEH Aboriginal Heritage Information Management System (AHIMS).
- Council has developed a database of Aboriginal Cultural Heritage reports (based on information that has been submitted to and/or commissioned by Council over time). The purpose of the database is to make historic reports more accessible when considering Aboriginal cultural heritage in relation to projects and development proposals.
- The development of character statements for rural settlements in the shire has recently commenced as an action under Council's Growth Management Strategy. Character statements for the shire's rural settlements are intended to identify key aspects of sense of place and community and have the potential to strengthen any heritage values identified through the community engagement phase of this project.
- The Ballina Shire Council Aboriginal Community Committee was established in 2013 to work with the shire's Aboriginal community across Council's functional areas. This committee has been meeting since September last year and continues to provide constructive advice to Council on matters that involve or potentially impact the shire's Aboriginal residents, to assist the Council in its decision making function and/or delivery of services.
- Council's website continues to provide important information relating to the Aboriginal and European heritage of the shire as well as resources that promote the heritage conservation of the built environment.

Sustainability Considerations

- **Environment**

The recognition, management and promotion of the shire's natural heritage ensures that the integrity of natural spaces are retained into the future. Natural heritage is highly valued by the community and recognised as an important contributor to the community's sense of place. Built heritage also shapes the shire's towns, villages and rural landscape aesthetically, contributing to the uniqueness of our region and community.

- **Social**

The recognition, management and promotion of the shire's heritage and culture assists in supporting community expression, identification of sense of place and understanding how past experiences have shaped the community.

- **Economic**

The recognition, management and promotion of the shire's heritage and culture can make an important contribution to the local economy.

Legal / Resource / Financial Implications

There are no legal implications associated with this report. Resource and financial implications associated with the initiatives listed above have been met through existing budget allocations and grant funding.

Consultation

No consultation has been undertaken in relation to the preparation of this report. However, many of the initiatives listed above have involved consultation with the community, organisations and government agencies.

Options

This report has been provided for the purpose of updating the Council on the progress of the heritage and cultural related initiatives that have been undertaken by Council over the last 18 months.

RECOMMENDATION

That Council notes the contents of this report in relation to the progress of Council-initiated heritage and cultural related projects over the last 18 months.

Attachment(s)

Nil

10.1 Use of Council Seal

10. General Manager's Group Reports

10.1 Use of Council Seal

RECOMMENDATION

That Council affix the Common Seal to the following document.

US14/04	<p>Licence Agreement between Ballina Shire Council and Surf Life Saving New South Wales for the use of part of Suvla Street, East Ballina for the purposes of a private utility pole.</p> <p>Explanation: Surf Life Saving New South Wales (SLSNSW) sought Council's approval for the placement of camera infrastructure on their existing pole within the Suvla Street road reserve in the vicinity of the Ballina Surf Club. The licence agreement was established to address Council's liability in relation to the pole and associated infrastructure located within the road reserve. Licence Fee: \$1.00. Term of licence: 20 years.</p>
---------	--

Attachment(s)

Nil

10.2 Investment Summary - March 2014

10.2 Investment Summary - March 2014

Delivery Program Governance and Finance

Objective To provide details of how Council's surplus funds are invested.

Background

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a council must provide a monthly report (setting out all money Council has invested), to be presented at the ordinary meeting of Council, immediately following the end of the respective month. This report has been prepared for the month of March 2014.

Key Issues

- Investment return and compliance with Investment Policy

Information

Council's investments are all in accordance with the Local Government Act and the Regulations. The investments breached Council's investment policy on 17 February 2014, when Standard & Poor's lowered ING Bank Australia's long term rating from 'A' to 'A-'. Council's policy allows up to 20% of the total portfolio to be invested in an organisation with a rating of 'A' or higher, but only 10% of the portfolio with a rating of 'BBB' to 'A-'.

At the time of the ratings downgrade in February 2014, Council had \$13 million invested with ING, representing 18.5% of the total portfolio. Since that time one investment has fallen due and has been placed with an alternate institution. As at 31 March 2014 Council has \$12 million invested with ING which represents 17.3% of the total portfolio.

In accordance with Clause 16 of Council's investment policy no further investments have or will be made in ING until such time as they fall below 10% of the total portfolio. Also in accordance with Clause 16 maturing ING deposits will not be renewed, but placed with other organisations.

The next ING deposit renewals are:

- \$3 million on 14/4/14
- \$1 million on 26/5/14
- \$2 million on 21/7/14
- \$1 million on 29/7/14

Depending on how the total balance of the portfolio fluctuates over the next few months, it is likely that the full four months allowed in Clause 16 will be needed to bring the portfolio back into compliance.

The balance of investments as at 31 March 2014 was \$69,306,000. This represents a decrease from February of \$997,000.

10.2 Investment Summary - March 2014

Council's investments as at 31 March are at an average (weighted) rate of 3.72%, which is 1.05% above the 90 Day Bank Bill Index of 2.67%.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 March 2014, was \$1,718,834.

In respect to the current state of the investment market the monthly commentary from the NSW Treasury (T-Corp) is included as an attachment to this report.

As per that commentary there are concerns regarding an increase in the unemployment rate and weak household income growth.

As to Council's investment portfolio the majority of the approximately \$70 million of investments are restricted by legislation (external) and Council (internal) uses for the following purposes:

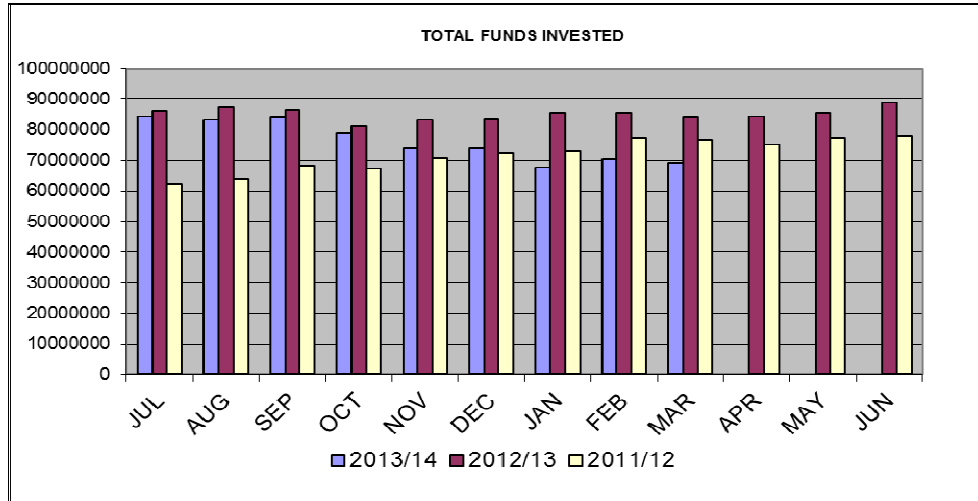
Reserve Name	Internal/External Restriction	% of Portfolio*
Water Fund (incl developer contributions)	External	12
Wastewater Fund (incl developer contributions)	External	34
Section 94 Developer Contributions	External	6
Bonds and Deposits	External	1
Other External Restrictions	External	16
Land Development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

* Based on reserves held as at 30 June 2013

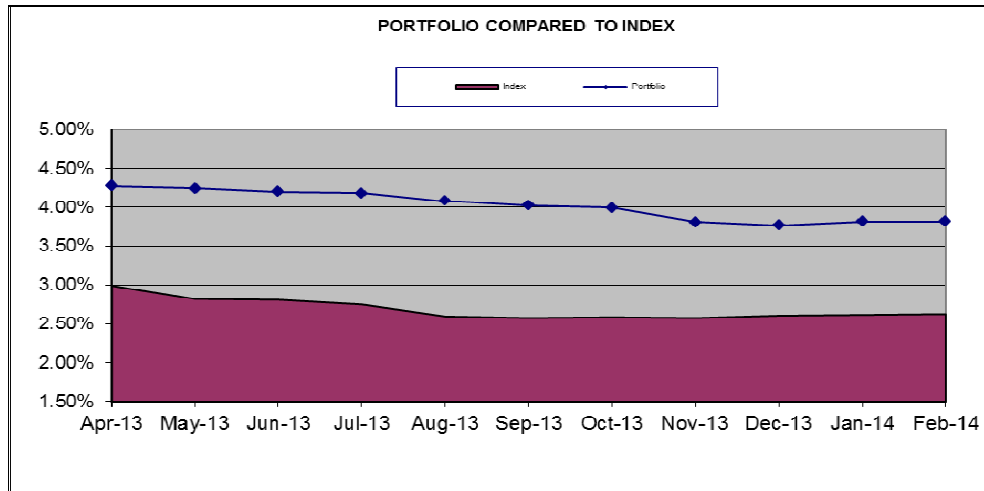
A. Summary of investments by institution

Funds Invested With	ADI Rating	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
Grandfathered Investments						
Goldman Sachs	AA-	1,000	1,000	0	1.4	
National Australia Bank	AA-	1,788	1,788	0	2.6	
National Wealth M'ment Holding	A	2,000	2,000	0	2.9	7%
Rated Institutions						
AMP Bank	A+	6,000	6,000	20	8.7	
Bank of Queensland	BBB+	5,000	5,000	10	7.2	
Commonwealth Bank of Aust	AA-	3,515	4,518	20	6.5	
Defence Bank Ltd	BBB+	1,000	1,000	10	1.4	
Greater Building Society	BBB	2,000	2,000	10	2.9	
Heritage Bank	BBB+	5,000	6,000	10	8.7	
Illawarra Mutual Bld Soc	BBB	2,000	2,000	10	2.9	
ING Bank Ltd	A-	13,000	12,000	10	17.3	
Members Equity Bank	BBB	6,000	4,000	10	5.8	
National Australia Bank	AA-	10,000	10,000	20	14.4	
Newcastle Perm Bld Society	BBB+	2,000	2,000	10	2.9	
Suncorp Metway Bank	A+	7,000	7,000	20	10.1	
Westpac Banking Corporation	AA-	3,000	3,000	20	4.3	93%
Unrated ADI's				\$1m	0.0	
Total		70,303	69,306			100%

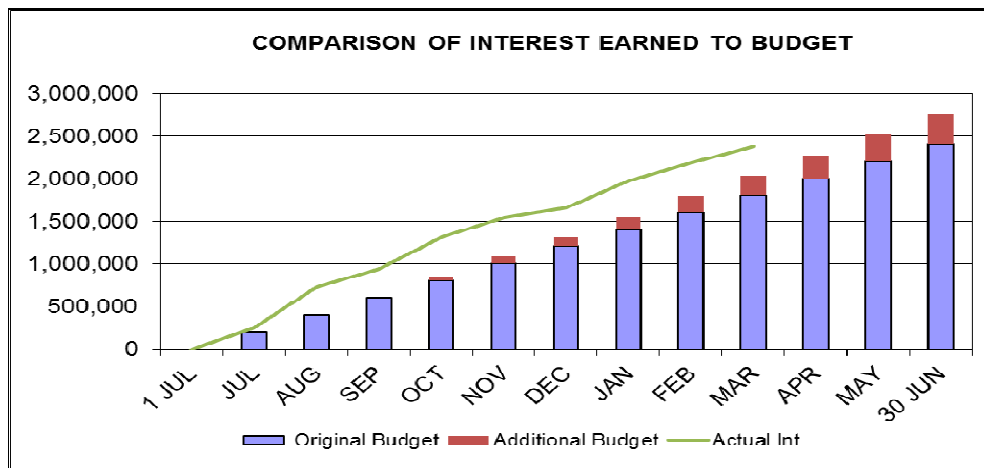
B. Monthly Comparison of Total Funds Invested



C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



10.2 Investment Summary - March 2014

E. Investments held as at 31 March 2014

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
20/09/04	National Australia Bank (ASX Listed)	FRN	3.88%	Perpetual	1,788	1,377
12/04/06	Goldman Sachs	FRN	3.14%	12/04/16	1,000	993
16/06/06	National Wealth M'ment Holdings	FRN	3.28%	16/06/26	2,000	1,922
	at call Commonwealth Bank Of Australia	FND	2.45%	at call	2,525	2,525
24/01/12	ING Bank Ltd	FRTD	4.57%	24/01/17	1,000	1,000
06/02/12	Westpac Bank	FRN	4.27%	06/02/17	1,000	1,036
25/01/13	Commonwealth Bank Of Australia	TD	4.36%	25/01/18	1,993	1,993
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
05/06/13	National Australia Bank	FRTD	3.88%	05/06/15	2,000	2,000
07/06/13	Greater Bld Society	FRN	4.11%	07/06/16	2,000	1,998
30/07/13	ING Bank Ltd	FRTD	4.08%	30/07/14	2,000	2,000
16/09/13	ING Bank Ltd	TD	3.72%	14/04/14	3,000	3,000
29/10/13	Illawarra Mutual Bld Society	TD	3.50%	28/04/14	2,000	2,000
31/10/13	Heritage Bank	TD	3.80%	31/10/14	1,000	1,000
01/11/13	National Australia Bank	TD	3.70%	30/01/14	2,000	2,000
06/11/13	Bank of Queensland	TD	3.80%	06/05/14	1,000	1,000
13/11/13	National Australia Bank	TD	3.75%	13/05/14	1,000	1,000
22/05/13	Bank of Queensland	TD	3.80%	22/05/14	3,000	3,000
25/11/13	Suncorp-Metway Bank	TD	3.65%	25/05/14	2,000	2,000
26/11/13	Bank of Queensland	TD	3.80%	27/05/14	1,000	1,000
26/11/13	ING Bank Ltd	TD	3.81%	26/05/14	1,000	1,000
23/12/13	AMP Bank	TD	3.90%	23/06/14	2,000	2,000
13/01/14	National Australia Bank	TD	3.65%	14/04/14	2,000	2,000
14/01/14	Members Equity Bank	TD	3.70%	14/05/14	1,000	1,000
20/01/14	ING Bank Ltd	TD	3.61%	21/07/14	2,000	2,000
24/01/14	AMP Bank	TD	3.80%	23/07/14	2,000	2,000
24/01/14	AMP Bank	TD	3.80%	23/01/15	2,000	2,000
30/01/14	ING Bank Ltd	TD	3.60%	29/07/14	1,000	1,000
04/02/14	Newcastle Permanent Bld Society	TD	3.50%	05/05/14	2,000	2,000
10/02/14	Heritage Bank	TD	3.75%	11/08/14	1,000	1,000
10/02/14	ING Bank Ltd	TD	3.70%	11/08/14	2,000	2,000
17/02/14	Members Equity Bank	TD	3.65%	19/05/14	2,000	2,000
25/02/14	Westpac Bank	FRN	3.57%	25/02/19	2,000	2,000
26/02/14	National Australia Bank	TD	3.70%	27/05/14	2,000	2,000
27/02/14	National Australia Bank	TD	3.74%	26/08/14	1,000	1,000
03/03/14	Suncorp-Metway Bank	TD	3.45%	03/07/14	3,000	3,000
04/03/14	Suncorp-Metway Bank	TD	3.55%	04/09/14	2,000	2,000
05/03/14	Heritage Bank	TD	3.55%	04/04/14	1,000	1,000
Totals					69,306	68,844
FND = Managed Fund			FRN = Floating Rate Note			
TD = Term Deposit			FRTD = Floating Rate Term Deposit			

10.2 Investment Summary - March 2014

RECOMMENDATION

That Council notes the record of banking and investments for March 2014.

Attachment(s)

1. TCorp Economic Commentary - March 2014

10.3 Councillor Attendance

10.3 Councillor Attendance

Delivery Program Governance

Objective To provide Councillors with professional development.

Background

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

Cr Meehan is seeking approval to attend the National General Assembly of Local Government from 15 - 18 June 2014 in Canberra.

Key Issues

- Benefit of the functions and cost
- Compliance with Expenses Policy

Information

A conference program for the National General Assembly of Local Government is attached. Registration is \$999 per delegate, plus dinner costs of \$230.

Flights, cab fares, accommodation and some meals would be in addition to this cost.

Sustainability Considerations

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

Legal / Resource / Financial Implications

Funds are available within the Council's professional development budget to finance these expenses with \$13,000 expended to date out of a total budget of \$31,000.

10.3 Councillor Attendance

Consultation

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

Options

Approve or not approve the travel and respective attendances for Cr Meehan. The recommendation is for approval.

RECOMMENDATION

That Council authorises the attendance of Cr Meehan at the National General Assembly of Local Government from 15 - 18 June 2014 in Canberra.

Attachment(s)

1. National General Assembly Conference Program

10.4 Community Donations

10.4 Community Donations

Delivery Program Governance

Objective To invite Council to consider an additional donation request.

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 an exceptional circumstance and a copy of the request is attached.

Key Issues

- Nature of request
- Community benefit
- Funding available

Information

Ballina High School

Melissa Gold, Science teacher in the Support Unit at Ballina High School has asked Council to donate three cubic metres of soil to re-establish the vegetable garden at the school as one of the practical components of the Life Skills Science program.

Council staff have advised the cost of the soil would be approximately \$240 based on ordering the mix from a local supplier and having it delivered to the site.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Donations can support community benefits to the Ballina Shire.
- **Economic**
Not Applicable

10.4 Community Donations

Legal / Resource / Financial Implications

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

Items	Budget	Allocated	Balance
Donations (General)	65,000	62,567	1,533
Donations (Halls)	40,000	40,854	(854)
Donations (DA Fees)	4,000	600	3,400
Net Amount Available			4,079

Consultation

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

Options

The options are to approve or decline the request. Typically the recommendation is for Councillors to determine approval or refusal.

RECOMMENDATION

That Council determine to approve or decline the request from Ballina High School.

Attachment(s)

1. Letter - Ballina High School

10.5 Ballina Jockey Club - Ballina Race Day Cup 2014

10.5 Ballina Jockey Club - Ballina Race Day Cup 2014

Delivery Program Governance and Finance

Objective To again obtain direction from Council as to how it wishes to manage the 2014 Ballina Race Day Cup.

Background

For many years Council, following an annual approach by the Ballina Jockey Club, has applied to the NSW Treasury for a half-day public holiday for the Ballina Cup.

In 2012 the holiday 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 (repealed). This change has increased the number of employees eligible for the public holiday. Due to this change the advice from NSW Treasury is that councils may now apply for a half-day public holiday or a local event day, with the local event day not automatically entitling employees to a public holiday.

A number of community concerns were expressed in respect to the 2012 and 2013 Cups due to school teachers now being eligible for the public holiday and schools having to close in the afternoon. For 2014 the Ballina Jockey Club has also announced that the racetrack will have a multi million dollar upgrade, albeit that they are uncertain as to when the works will commence, with those works potentially impacting on the 2014 Cup.

Council considered all of these issues at the October 2013 Ordinary meeting and subsequently resolved as follows for 2014.

- 1. That Council confirms its support 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 its 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.*

As per point one, Council resolved to support a part half-day (six hour) public holiday and NSW Treasury was advised of this proposal. The Ballina Jockey Club has recently written to Council confirming that the date for the 2014 Cup will now be Friday 12 September. A copy of the advice is attached.

10.5 Ballina Jockey Club - Ballina Race Day Cup 2014

Following further discussions with NSW Treasury they advised that Council should again consult with the community in respect to this confirmed date. The report that follows provides the results of this latest consultation process.

Key Issues

- Proceed or not proceed with part day public holiday

Information

Following advice from NSW Treasury, Council wrote to all the pre-schools, schools and Chambers of Commerce in the local government area to determine their support for the confirmed date. Letters were also sent to people who had previously supported or objected to the public holiday.

Council's correspondence outlined the October 2013 resolution, which confirmed a preference for a six hour public holiday.

As a result of this correspondence four responses were received, with each of those responses included as attachments to this report. Details of the responses are as follows:

- Mr Ron Van Setten – Mr Van Setten has been a strong and consistent objector to the public holiday
- Principal – Southern Cross School – also objecting to the public holiday
- Alstonville Wollongbar Chamber of Commerce – supporting a local event day rather than a public holiday
- Ballina Chamber of Commerce – supporting the six hour part-day public holiday.

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

As with business operators, Council has a direct expense through employees either not working or being paid penalty rates on Cup day.

Consultation

As per the information section of this report.

Options

The options are to approve a part half-day public holiday for Friday 12 September 2014 or approve a local event day.

As Council resolved in October 2013 to support a part half-day (six hour) public holiday the recommendation that follows is consistent with that earlier resolution of Council.

RECOMMENDATION

That Council confirms its support for the declaration of a part half-day public holiday between the hours of noon and 6 pm throughout the Ballina Shire on Friday 12 September 2014 for the 2014 Ballina Cup.

Attachment(s)

1. Advice from Ballina Jockey Club
2. Submissions

10.6 Alstonville Community PreSchool

10.6 Alstonville Community PreSchool

Delivery Program Community Facilities and Services

Objective To determine whether Council wishes to provide financial support to the construction of the Alstonville Preschool.

Background

Council's Finance Committee meeting on 18 March 2014 recommended as follows:

That Council receive a report outlining the likely cost of preparing the site to a suitable standard for the Alstonville Preschool.

A quantity surveyor's report has now been received for this project and the purpose of this report is to provide an overview of the likely total project cost and to determine whether Council wishes to provide financial support to the project.

Key Issues

- Cost and funding

Information

As part of the 2014/15 budget deliberations Council received a report on all the various non-recurrent projects under consideration. Projects listed in that report included swimming pool upgrades, sports and events centre, main street upgrades, car park improvements, Lennox Head Surf Club etc.

The report also identified community based projects seeking assistance from Council and one of the projects listed was the new Alstonville Preschool. Extracts from the commentary included in that report are as follows.

Alstonville Preschool

The Preschool Executive are already looking for Council to assist with this project as substantial improvements will be needed to the drainage and car parking in this location (Crawford Park).

The Preschool site is in a high volume floodway and the infrastructure required to manage drainage will be expensive. In addition there is limited formal car parking and the lengthy distance to the Preschool will require improvements to both the access and the car parking.

The Preschool see these, primarily, as Council's responsibility as the problems already exist.

A quantity surveyor's report has been requested to confirm the likely costs of this work along with the building construction costs.

10.6 Alstonville Community PreSchool

The Preschool has funding of \$384,881 from the State Government which, it is assumed, will be well below the actual building construction cost.

There remain major concerns that Council is facing liabilities in the hundreds of thousands of dollars if it wishes to support this project. There are no funds available in the Property Reserves for this work therefore any funding allocated will need to be sourced from our recurrent capital funding. In other words funds already allocated to key infrastructure areas such as roads, drainage, footpaths etc will need to be deferred to allow the funds to be reallocated to this project.

In looking at the recurrent funding, as per the introduction section of this report and the previous report in this agenda, the monies allocated to stormwater (i.e. approximately \$350,000) would appear to be the logical source. However if Council supports this option then it needs to recognise that stormwater is already a high priority and dependent on the amount of funds needed Council may not undertake any stormwater works in the next financial year.

The difficulties facing the Preschool in respect to this site should not be understated with Council's planning staff already having serious concerns about the strict conditions that will need to be applied, if a planning consent is issued. Those conditions may well impact heavily on the overall cost of the project.

As a result of that report Council then resolved as follows:

That Council receive a report outlining the likely cost of preparing the site to a suitable standard for the Alstonville PreSchool.

The QS report has now been received and the Preschool Executive are very keen to confirm Council's funding for this project, particularly as they have conditions to meet in respect to the grant funds they have already obtained for the work.

A copy of the Preschool's most recent letter and correspondence from Peter Lucena & Associates Pty. Ltd. which includes the QS report, are included as attachments to this report.

The QS report provides an identified cost of \$879,000, with that report also excluding a number of items as per page two of that document. It is highly likely that the total cost for this project will be in excess of \$1m plus. This estimate excludes any additional car parking or drainage works that Council may wish to undertake in respect to the Crawford Park precinct.

The attached correspondence from the Preschool states that they are seeking "assistance from council toward the site preparation costs, access, car park and installation costs of sewage, water and electricity".

Council staff have discussed this with the Preschool President and it has been confirmed that the Preschool don't expect a contribution from Council for the cost of the building and their request from Council is more for the infrastructure related matters.

10.6 Alstonville Community PreSchool

Based on the QS report the Preschool has confirmed that the Council contribution would be approximately \$117,000 or say \$120,000 in round numbers.

If Council is going to support this project, the preferred option, from a financial management perspective, is to cap our contribution at a set amount. This then ensures that Council is not faced with variations as the project progresses.

Council applied a similar approach at the 18 March 2014 Finance Committee meeting when it was agreed that our contribution to the Ballina cenotaph project would be limited to \$25,000 based on a total budget of \$150,000 plus.

If Council wishes to provide a financial contribution, as mentioned in the 18 March 2014 Finance Committee meeting, other recurrent infrastructure works will need to be deferred.

Stormwater was identified in the Finance Committee report as one option and with Council's contribution for civil related works, the recommendation would be undertake a further review of the 2014/15 Engineering Works program to determine which projects are to be deferred.

As an adjunct to this, through the recent Finance Committee meetings, Council has resolved or recommended that for 2014/15 \$50,000 is to be transferred from the Roads Budget for increased expenditure on Playground Equipment and \$30,000 from the Roads budget for car parking works at Newrybar. This second item is subject to Council confirming the minutes of the 8 April 2014 Finance Committee meeting later in this agenda.

The Civil Services Group has advised that the recommendation for the adjustment in the works program for 2014/15, to finance this overall adjustment of \$80,000 is to reduce the budget for Canal Road reconstruction works from \$132,400 to \$50,400. This will result in minimal works on that road in 2014/15. This adjustment highlights the impact of Council making somewhat ad hoc decisions in respect to the recurrent capital budgets.

Sustainability Considerations

- **Environment**
Any new development will need to mitigate the environmental impacts.
- **Social**
The Alstonville Preschool is a highly valued social asset for the local community.
- **Economic**
Adequate infrastructure such as preschools assists with creating an overall positive economic environment.

Legal / Resource / Financial Implications

The information section of this report has outlined the financial implications of this project.

Consultation

There has been significant on-going consultation in respect to this project, with the identification of the preferred site also subject to an extensive consultation process.

Options

The options range from Council not financially supporting the project, to providing support, with that support then defined by the level of financial assistance approved.

In favour of not providing support is that Council has significant demands on its finances though other key community infrastructure projects and there are no monies immediately available to provide financial support.

In favour of providing support is that the Preschool is a highly valued community asset, particularly from a social perspective, and due to the risk of the existing facility closing, the funding support provided may rank higher than other key infrastructure works.

In respect to providing support the Preschool has confirmed that a figure of approximately \$120,000 is the level of assistance required. If Council does wish to support the project the recommendation would be to cap our contribution at that figure so that it is clear that Council has no other financial responsibilities in respect to the works. Council projects will need to be deferred to finance that option.

The recommendations that follow provide both options, as Councillors need to determine whether this project has higher priority over other infrastructure works for the shire.

The recommendations also take the opportunity to confirm that the \$80,000 Council has reallocated from the roads budget, through the Finance Committee meetings for the 2014/15 Delivery Program and Operational Plan, is to be sourced from the Canal Road reconstruction works.

RECOMMENDATIONS

1A. That Council advise the Alstonville Preschool that due to Council currently having limited property reserves and with all available funding allocated to other key community infrastructure projects, that it is not in a position to make a financial contribution to the preschool project.

OR

1B. That Council confirms that it will provide a maximum financial contribution of \$120,000 (excluding GST) to the construction of the Alstonville Preschool, with those monies to be sourced from the deferral of other infrastructure related projects that form part of the 2014/15 Engineering Works construction program. Council is to receive a report prior to the adoption of the 2014/15 Delivery Program and Operational Plan confirming which projects will be delayed, or deleted, to offset this \$120,000 contribution.

2. That Council confirms for the purposes of the exhibition of the draft 2014/15 Delivery Program and Operational Plan that the \$50,000 required for additional Playground Equipment and the \$30,000 required for car parking works at Newrybar is to be financed through a reduction in the Canal Road reconstruction budget from \$132,400 to \$52,400.

Attachment(s)

1. Letter from Alstonville Preschool
2. Peter Lucena & Associates - Cost Estimate

10.7 Council Owned Waterways - Structures

10.7 Council Owned Waterways - Structures

Delivery Program Community Facilities and Services

Objective To obtain Council direction in respect to a proposal to construct a pontoon on the Council owned waterways.

Background

During the past 12 months Council has been conducting a process to reclassify the Council owned waterways at the Ballina Quays canals and Banyanda Lake from community to operational land.

At the March 2014 Ordinary meeting Council resolved, despite objections from residents, to endorse the reclassification from community to operational land, following the reporting of the outcomes from the mandatory consultation process.

Council has recently received a development application to construct a new pontoon and jetty at 128 Kalinga Street, West Ballina (DA 2014/128) and the purpose of this report is to clarify Council's position in respect to these structures prior to the determination of that application.

Key Issues

- Clarify Council's position
- Any relevant conditions to be attached to approvals

Information

With Council having now supported the reclassification of these waterways from community land to operational, Council staff are in the process of preparing a policy document to guide how structures on the waterways are to be managed into the future.

That policy document, which is being prepared by the Strategic and Community Facilities Group, will consider issues such as the tenure arrangements (i.e. lease / licence / permit), administrative costs, fees and insurance.

The owner of 128 Kalinga Street, West Ballina has been expending monies preparing the designs etc for a new pontoon and jetty and recently they wished to submit a development application to seek planning approval for the works. As the structures will be partly on Council owned land the application required the General Manager's signature as land owner.

10.7 Council Owned Waterways - Structures

Initially there was a reluctance to provide that signature as it is currently unclear how Council wishes to manage these structures into the future. However, to avoid delays for the applicant, agreement was reached to sign the application on the proviso that Council staff would not determine the application until clarification was sought from the elected Council on future management options.

It was hoped that the draft policy document would be reported to this meeting to clarify a range of matters however there has been inadequate time to allow the document to be completed to a satisfactory standard.

Therefore the objective of this report is firstly to confirm that Council is satisfied with approving additional structures on the waterways and secondly, to provide an interim guide as to any conditions that should be included in future consents, acknowledging that a comprehensive policy is still to be reported to Council.

In respect to additional structures there is not considered to be any reason why Council should not allow approvals and it is recommended that Council continue to allow these structures.

In respect to relevant consent conditions, it is important that any future structures, as a minimum, have appropriate arrangements in place in regard to matters such as tenure, insurance etc.

This being the case any consents issued until Council adopts a formal policy should recognize that:

- A formal agreement should be in place between Council and the landowner in respect to the use of the Council land
- Insurance to a level satisfactory to Council should be held by the landowner
- Council reserves the right to charge a fee for the use of subject land. This is not to say Council will charge a fee, however it needs to be acknowledged that future Councils may well wish to charge a fee for this use of public land.

Sustainability Considerations

- **Environment**
Any planning consent will need to consider environmental impacts of the development.
- **Social**
Pontoon and jetties can provide substantial social benefits to users of those facilities.
- **Economic**
Improved infrastructure such as jetties and pontoons can provide economic benefits through increased valuations in land and a differentiation in the types of properties available.

10.7 Council Owned Waterways - Structures

Legal / Resource / Financial Implications

There are limited implications arising from this report, with the larger issue being how Council wishes to manage all the pontoons and jetties previously approved. The options available will be reported to Council in the near future.

Consultation

There has been limited internal consultation in the preparation of this report.

Options

The options range from not allowing any more applications for structures on the waterways to allowing further applications with appropriate conditions attached to any approval.

The recommendation is to allow further applications as these structures can improve the overall accessibility and amenity of these locations. However if applications are going to be allowed and approvals issued, the approvals need to recognize conditions that Council may wish to impose.

RECOMMENDATIONS

1. That Council notes the contents of this report and acknowledges that a further report will be submitted to Council in the near future to provide policy guidelines for the future management of structures on the Council owned waterways.
2. That in the interim, until the policy in point one is adopted, Council authorises the General Manager to sign development applications for structures on the Council owned waterways, subject to any consents issued for those applications acknowledging, as a minimum, the following conditions:
 - a) Council will require some form of legal tenure such as a lease, licence or permit for the use of the Council owned land
 - b) Insurance coverage to the satisfaction of Council will be required to recognize that the structure is on public land
 - c) Council reserves the right to charge a fee for the administration or use of this Council owned land.

Attachment(s)

Nil

10.8 Section 94 Car Parking Contributions Plan

10.8 Section 94 Car Parking Contributions Plan

Delivery Program Governance and Finance

Objective To adopt the re-exhibited Section 94 Car Parking Contributions Plan.

Background

Council at the 27 February 2014 Ordinary meeting resolved to not adopt the Ballina Shire Car Parking Contributions Plan 2013, as previously exhibited, and to re-exhibit the amended Ballina Shire Car Parking Contributions Plan 2014 for public comment. The re-exhibited draft Plan was placed on public exhibition with the closing date of 5 April 2014.

Two submissions were received, one from the Alstonville-Wollongbar Chamber of Commerce and one from the Ballina Chamber of Commerce. Copies of the submissions are attached.

A copy of the draft Section 94 Plan has not been reproduced with this report as it is extensive and a copy was included with the February 2014 report. That document is still available on the Council website, Councillor IPADs, or by contacting the General Manager's office.

Key Issues

- Contents of submissions
- Fine tuning of the draft plan

Information

Council currently 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 were 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 the property.

An updated Section 94 Car Parking Contributions Plan was prepared that provides a consolidated plan for Ballina, Lennox Head and Alstonville.

That document was presented to the October 2013 Council meeting and approved for exhibition, with no submissions received during the exhibition period.

However based on a staff review of the draft document the subsequent report to the February 2014 Ordinary meeting highlighted two further improvements to the draft plan being:

10.8 Section 94 Car Parking Contributions Plan

1. Ballina – Works Plan

Changes were recommended to the works plan and the contribution rate to reflect the actual costs of constructing the Tamar Street Car Parks.

2. Alstonville – Works Plan

Changes were recommended to adjust the land acquisition rate to reflect a more accurate rate.

As a result of these changes the draft plan was re-exhibited with two submissions now received. A summary of those submissions follows.

Alstonville – Wollongbar Chamber of Commerce

Supportive of the plan with three points raised:

1. Current Council owned property – This comment is enquiring about the timing of the construction of the new car parks on Council's property at 9 Commercial Road, Alstonville. Ideally, from a financial perspective, Council would fund this work from contributions when they have been collected, as this limits the financial burden on Council. In reality, Council has funded many Section 94 related projects from our own revenues, typically property reserves, and then reimbursed those reserves when the Section 94 contributions are collected. Council currently does not have funding set aside for this work and as it may be many years before the contributions are collected, Council may have to fund the works from revenue or reserves, although the timing of that work remains unknown.
2. Clarification as to works on adjoining land - Where the proposed car park is located on neighbouring land Council will have to acquire that land prior to the works, wait for the neighbor to re-develop to free up the land, or only construct part of the car park and finalise the works when the land is owned by Council.
3. This third point relates to consistency in DCP parking rates. This proposal will form part of the current review of Council's DCP, which Council resolved to exhibit at the March 2014 Ordinary meeting.

Ballina Chamber of Commerce

1. The Chamber states that the higher rate in Ballina than Lennox Head and Alstonville will act as a disincentive for commercial development in Ballina. The rates proposed in this draft plan are as follows:

Ballina - \$25,368
Lennox Head - \$15,999
Alstonville - \$14,722

Under the existing arrangements there is no contribution rate for Alstonville (i.e. car parking has to be provided on the property being developed) and the rates for Ballina and Lennox Head are \$28,071 and \$18,767 respectively. On a percentage basis this means that traditionally Lennox Head has been approximately 67% of Ballina and under this new plan it will be 63%.

10.8 Section 94 Car Parking Contributions Plan

The Chamber has not provided any evidence to support their statement and with the Ballina and Lennox Head rates having been in place since 2004, staff are not aware of any direct impact of this lower rate, particularly as they are distinct and different business centres.

Importantly, with the new plan, the proposed rates are lower for Ballina and Lennox Head than the current rates, to try and further assist development.

2. Reference is made to the figures in Table 3.1, which seems to infer that the predicted costs are too high. All the figures in the draft plan reflect either actual costs or indicative market costs.

Council shares the concerns of the Chamber in respect to the high costs of providing car parking and the purchase and construction of the car parks at 74 and 78 Tamar Street highlights this. The total cost of acquiring those two properties and constructing the car parks will be in the vicinity of \$2.9m, excluding the construction of the public toilets. Based on the predicted yield of 65 car parks, this equates to \$44,615 per car park.

The actual yield from these two car parks is 69 car parks, being 42, including two disabled at 74 Tamar Street and 27, including two disabled at 76 Tamar, albeit that three car parks were lost in Tamar Street. Therefore the net gain is 66 as compared to the original estimate of 65 car parks. This is considered to be close enough to the figure in the plan not to revise the plan on that basis.

3. The plans in Appendices B and C represent evolutions of the design for these works and with the car parks now largely complete; the appendices can be amended to incorporate the final design.
4. This comment is similar to the timing issue raised in the Alstonville submission. This is the difficulty that faces any council with Section 94 contributions in that you may not have the contributions collected to fund the works, however there may be a desire or need to undertake the works before the contributions are collected. As previously mentioned Council has done this on many occasions through the use of our own revenues or reserves, with those monies being reimbursed as contributions are collected. Another alternative is to loan fund the works and then include the loan financing costs in the Section 94 Contributions Plan. These types of decisions can be made at a future date as the need for the works becomes more pressing.
5. It is agreed that Council should be pursuing more cost effective parking solutions where possible and recent works such as the River / Cherry Street roundabout to Fawcett Park upgrade have resulted in improved parking outcomes (i.e. more parking spaces).
6. Finally the Chamber supports a more updated car parking strategy. The Civil Services Group also support this proposal and with some recently recruited technical staff having good traffic modelling experience, it is proposed to undertake this review largely in-house.

10.8 Section 94 Car Parking Contributions Plan

It is also agreed that if solutions can be found to provide car parking without the need for large acquisition and construction costs the cost per car park can be reduced.

This can then form part of a further review of the contributions plan once the updated car parking strategy is completed.

Sustainability Considerations

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

The Plan was placed on public exhibition with the closing date of 5 April 2014. The three shire Chambers of Commerce were also advised of the exhibition. Two submissions were received.

Options

In response to the submission from the Ballina Chamber it is agreed that the appendices need to be amended to reflect the final designs for 74 and 78 Tamar Street.

It is also agreed that Council should undertake a review of the car parking strategy for the Ballina Town Centre and that proposal is included in the recommendations. That review may well result in further modifications to the Section 94 Plan.

Council therefore has the option of again not adopting the plan and awaiting that further review or alternatively adopting the plan and undertaking a further review when the updated car parking strategy is completed.

On balance the preferred option is to adopt and implement the new plan as exhibited, subject to the minor modifications identified in this report. The plan does reduce the existing Lennox Head and Ballina contribution rates, and also introduces a rate for Alstonville for the first time.

The Alstonville rate will assist developers who previously may have been unable to provide adequate parking on their properties.

10.8 Section 94 Car Parking Contributions Plan

Clause 31(1) of the EP&A Regulation gives the council the following power when deciding to adopt a contributions plan:

(1) After considering any submissions about the draft contributions plan that have been duly made, the council:

- (a) may approve the plan in the form in which it was publicly exhibited, or*
- (b) **may approve the plan with such alterations as the council thinks fit, or***
- (c) may decide not to proceed with the plan.*

As per point (1) (b) Council can adopt the plan, subject to the changes outlined in this report and the recommendation that follows supports this approach.

If Council approves adoption the actual commencement date of the plan will be based on the official notification in the local papers.

RECOMMENDATIONS

1. That Council adopts the Ballina Shire Car Parking Contributions Plan 2014, as re-exhibited, subject to any amendments to appendices B and C to reflect the final designs for the car parks at 74 and 78 Tamar Street.
2. The adopted Car Parking Contributions Plan is to commence operation on the date the notice appears in the local newspaper(s).
3. That Council endorses a further review of the Ballina Town Centre Car Parking Study with information obtained from that study to assist with further refinements to the Ballina Shire Car Parking Contributions Plan.

Attachment(s)

1. Submission - Alstonville-Wollongbar Chamber of Commerce
2. Submission - Ballina Chamber of Commerce

10.9 Local Infrastructure Renewal Scheme - Allocation of Funds

10.9 Local Infrastructure Renewal Scheme - Allocation of Funds

Delivery Program Governance and Finance

Objective To respond to advice from the Division of Local Government in respect to the allocation of the Local Infrastructure Renewal Scheme loan monies.

Background

During 2013 Council was successful in applying for a \$1.2 million Local Infrastructure Renewal Scheme (LIRS) loan to help finance the construction of Ballina Heights Drive (BHD). This funding was under round two of the LIRS program, with this round providing a 3% interest rate subsidy on loan interest payments, as compared to 4% under round one. Council was successful under round one in obtaining \$9.6 million in LIRS monies, with \$7.3m allocated to the airport overlay project, \$1m for various road reconstruction works and \$1.3m for the River / Cherry Street Roundabout and associated beautification works to Martin Street.

In respect to the \$1.2m for BHD, during the past 18 months the magnitude of that project has changed significantly, with the overall budget decreasing by more than \$1m, along with additional funding contributions sourced from the developers of the Estate, and Council's wastewater activities. This has resulted in the LIRS monies no longer being required for the project, with Council deciding at the November 2013 Facilities Committee meeting to endorse an alternative funding strategy for BHD as per the following table.

Table One – BHD Funding	Funding (\$'000)	Revised (\$'000)
BBRC Grant	5,000	5,000
BBRC Grant – Interest Accrued	0	13
Section 94 Road Contributions Held	2,850	2,339
Contribution from Developers	0	388
Contribution from Wastewater	0	260
External Loan – LIRS (1)	727	0
Ballina Heights Loan Reserve	141	0
Ballina Heights Loan Repayment 2012/13	141	0
Ballina Heights Loan Repayment 2013/14	141	0
Total	9,000	8,000

(1) The LIRS amount of \$1.2m had already been reduced due to changes in the works program

With a variety of funds freed up from BHD, Council subsequently reallocated some of these monies to Ballina Town Centre works as follows:

10.9 Local Infrastructure Renewal Scheme - Allocation of Funds

Table Two – Other Projects Funding	Amount (\$'000)
Project Description	
River / Moon Streets Roundabout to Fawcett Street	1,300
Tamar / Cherry Streets Roundabout	570
Total Project Value	1,870
Funding Source	
Local Infrastructure Renewal Scheme (LIRS) Loan	1,200
Section 94 Road Contributions	670
Total	1,870

An amount of \$284,000 from the BHD project was also re-allocated to the Wollongbar Sports Fields to help finance that project.

In respect to the re-allocation of the LIRS monies Council staff have been liaising with the Division of Local Government (DLG) to ensure that the LIRS monies could be reallocated from one road project (i.e. BHD) to another (i.e. Ballina Town Centre works). The verbal advice received to date is that this should not be a problem as it is the same category of infrastructure (i.e. roads). This appeared reasonable, particularly as Council used part of round one of the LIRS program for similar works in River Street.

Unfortunately Council has now received written advice that the reallocation of the monies from the original project (BHD) has not been approved. A copy of that correspondence is attached.

The report that now follows outlines the options available to Council based on this advice.

Key Issues

- Funding options
- Implications for works plan

Information

With the DLG now advising that the LIRS monies must be used on BHD the options available are as follows.

1. Don't take up the LIRS monies and don't proceed with the works Council proposed for the LIRS monies: River / Moon and Cherry / Tamar Street roundabouts. This is a viable option however both of these projects are identified in Council's Section 94 Roads Plan as priorities for the short to medium term and delaying these projects only defers the liability that Council has to undertake these works. Also the LIRS monies provides a 3% subsidy which means in real terms Council is paying very little in the way of interest costs for the loan.
2. Reallocate the LIRS monies back to BHD and then apply part of the funding proposed for BHD back to the River / Moon and Cherry / Tamar Street roundabouts. The process for undertaking this is outlined as follows:

10.9 Local Infrastructure Renewal Scheme - Allocation of Funds

The common thread between all three projects is that they are identified as high priority projects for the period 2010 to 2015 in Council's adopted Section 94 Roads Contribution Plan. This means that 70% of the cost of the projects can be funded from developer contributions, as per the apportionments in the Section 94 plan.

The introduction section of this report identifies that a large part of BHD is funded from developer contributions. In order to take up the LIRS monies Council can reduce the developer contribution component of the funding for BHD by \$1.2m and replace it with the LIRS monies. This then frees up \$1.2m of developer contributions.

The trickier part is the reshuffling of the funding for the River / Moon Streets and Tamar / Cherry Street roundabouts. As mentioned these projects are also included in the Section 94 Roads Plan and the values in the plan are as follows:

Item	Value	Indexed Value
River / Moon Street Roundabout	960,000	1,031,000
Tamar / Cherry Street Roundabout	530,000	570,000

The indexed value represents a 7.42% cost increase, which is the amount the contributions have been increased by since the Roads Plan was adopted, up to 2013/14.

The Roads Contributions are proposed to be indexed by another 3% for 2014/15, which is when the works will take place, which means the project values can also be increased by another 3% to \$1,062,000 and \$587,000, resulting in a total value of \$1,649,000.

This then means that the total Section 94 road contributions that can be allocated to these projects (i.e. 70%) is \$1,154,300 (70% x \$1,649,000).

As per table two in the introduction, the current budget for the two roundabouts is \$1,870,000 with \$670,000 sourced from developer contributions. With \$1.2 million in contributions now freed up from BHD, the difference between the \$1,154,300 allowed and \$670,000 currently allocated can now be sourced from the available contributions (i.e. \$484,300).

This means based on a total project value of \$1,870,000, with \$1,154,300 funded from developer contributions, Council must then fund the shortfall of \$715,700 from sources other than contributions.

However, as Council is funding \$1.2m of BHD from the LIRS monies and as Council is actually allowed to fund 70% of the indexed cost of that project from Section 94 monies, Council can actually treat Section 94 monies held as recoupments for expenses incurred on BHD.

Effectively this means that Council is then able to access an equivalent amount of Section 94 contributions as general revenue as technically speaking Council has overfunded its commitment to BHD from revenue (or loan funds). In other words the Section 94 monies can be treated as monies recouped as Council has funded BHD.

10.9 Local Infrastructure Renewal Scheme - Allocation of Funds

What this now means is that those monies can be treated as general revenues and allocated to projects as Council sees fit. This is a similar process that Council follows with our community infrastructure reserve, where Section 94 contributions collected are transferred to that reserve as revenue, based on projects already funded by Council that are identified in the Section 94 Plans.

Examples of this includes projects such as the Lennox Head Community Centre, Kentwell Centre, Community Gallery etc.

If Council accepts this logic of applying the LIRS monies back to BHD the revised funding for the three projects originally identified is as follows:

Table Three – Road Funding	BHD (\$'000)	River / Moon (\$'000)	Tamar / Cherry (\$'000)
BBRC Grant	5,000	0	0
BBRC Grant – Interest Accrued	13	0	0
LIRS Monies	1,200	0	0
Section 94 Road Contributions Held	1,139	743	411
Section 94 Road Contributions Recouped	0	557	159
Contribution from Developers	388	0	0
Contribution from Wastewater	260	0	0
Total	8,000	1,300	570

In reality Council is applying exactly the same funding to deliver these projects, albeit that the funding is being allocated differently within each project. Due to the advice from the DLG it has been necessary to do this, to meet their requirements.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
The construction of these road projects has significant economic benefits with BHD opening up the Ballina Heights Estate and the Town Centre works part of Council's on-going beautification program.

Legal / Resource / Financial Implications

Ultimately this report is not impacting on Council's current financial position, with the report only identifying a different allocation of the available funding to projects previously approved by Council.

Consultation

There have been on-going discussions with the DLG.

10.9 Local Infrastructure Renewal Scheme - Allocation of Funds

Options

The two main options are outlined in the information section of this report in that Council can either decide not to take up the LIRS monies and not proceed with the two roundabout projects, or alternatively it can reallocate the mix of funding to deliver the projects as previously approved.

As this is largely a reshuffling of Council's existing finances, and as Council has previously approved the subject works program, the recommendation is to accept the LIRS monies and reshuffle the funding mix as outlined in table three of this report.

RECOMMENDATION

In order to take up the Round Two Local Infrastructure Renewal Scheme Loan of \$1.2 million, Council endorses a revised funding mix for the Ballina Heights Drive and River / Moon and Cherry / Tamar Street roundabout projects as per the following table:

Table Three – Road Funding	BHD (\$'000)	River / Moon (\$'000)	Tamar / Cherry (\$'000)
BBRC Grant	5,000	0	0
BBRC Grant – Interest Accrued	13	0	0
LIRS Monies	1,200	0	0
Section 94 Road Contributions Held	1,139	743	411
Section 94 Road Conts Recouped	0	557	159
Contribution from Developers	388	0	0
Contribution from Wastewater	260	0	0
Total	8,000	1,300	570

Attachment(s)

1. Local Infrastructure Renewal Scheme Funding - Division of Local Government

10.10 Waste Operations - Long Term Financial Plan

10.10 Waste Operations - Long Term Financial Plan

Delivery Program Governance and Finance

Objective To review the long term financial plan for Council's waste operations.

Background

Council considered a report on waste operations for 2014/15 onwards at the April 2014 Finance Committee meeting. Council endorsed a draft financial model and fees and charges for waste as part of that meeting, with the minutes from the meeting included later in this agenda for adoption by Council.

The recommendation for that item also acknowledged that further reporting was required due to Council accepting a new tender to transfer green waste directly to Lismore.

This report looks to address matters that remained unresolved at the April Finance Committee meeting.

Key Issues

- Equity in charging structure
- DWM legal constraints
- Affordability

Information

Domestic Waste Management (DWM) is the largest customer for the Landfill and Resource Management (LRM) business. The modelling presented to Council at the Finance Committee Meeting assumed that DWM would bring three different waste streams to LRM, being mixed, recycled and organics.

This assumption was incorrect as the organics waste stream will now be taken directly to Lismore without actually passing over the weighbridge at the landfill.

Issues that arise because of this change include:

- DWM was forecast to pay LRM gate fees of \$1.4m to drop the organic waste off at the LRM Centre. The DWM payment was calculated by the amount of tonnes taken over the weighbridge multiplied by the gate fee. Given that the organics trucks will no longer go over the weighbridge this mechanism will not work.
- The amount of waste coming in to LRM from DWM is now significantly less than in previous years. This has implications when looking at the reasonable cost legislation in respect of DWM.

10.10 Waste Operations - Long Term Financial Plan

Reasonable Costs

DWM is subject to specific legal constraints under the Local Government Act. A surplus on operations can be achieved in any given year however this needs to be accounted for separately and used to ensure the ongoing operations of the business. In other words the surplus funds must stay in the business for future use.

A DWM charge may be levied to recover costs associated with the collection and treatment of kerbside domestic waste. Treatment of waste may include operations of a landfill, remediation of the landfill and future costs to construct a new landfill. The next table provides details of the 2014/15 estimated costs to run the landfill.

Table One: Estimated 2014/15 LRM Expenses

Description	2014/15 (\$'000)
Administration and Overheads	961
Waste Received	394
Waste Collection	244
Recycling	475
Disposal	3,335
Depreciation / Remediation	1,497
Loan Repayment (interest/ principal)	1,359
Total Costs	8,265

In addition to these costs it is reasonable to include approximately \$200,000 per annum for future cell development as it is estimated that Council will need to expend approximately \$2m in the not too distant future to provide additional cells that will have a 10 year life.

Based on 2012/13 figures approximately 50% of waste that enters LRM is sourced from DWM and 50% from self haul. These tonnage figures exclude clean inert fill that is used to fill the water body and is not treated as waste and is not subject to the State Government waste levy.

On this basis it would be reasonable for DWM to pay 50% of the treatment costs. This equates to approximately \$4.25m once you include the future cell development (i.e. \$8.265m plus \$200,000 shared equally between DWM and self haul).

If the organics waste stream is excluded from this equation, as it is now travelling to Council's landfill, the percentage changes to approximately 39% DWM and 61% self haul. Hence it would then be reasonable for DWM to pay only \$3.3m (39% of \$8.265m plus \$200,000).

Based on the proposed pricing structure as reported to the April Finance Committee meeting, which assumes that DWM will continue to pay LRM for the organics waste stream, it is estimated that DWM will pay to LRM \$4.21m in gate fees. This means if the organics waste stream is included in the reasonable cost calculation the payment by DWM is close to being reasonable (ie \$4.21m as compared to costs of \$4.25m). Once the organics is excluded then it can be argued that DWM is paying too much.

10.10 Waste Operations - Long Term Financial Plan

The problem highlighted by these figures is that self haul is arguably being subsidized by DWM.

In 2014/15 the expected contribution by self haul to total income will be approximately \$2.9m compared to DWM \$4.2m. This adds weight to the strategy proposed in the Finance Committee report to increase the self haul prices higher than DWM to try to gradually remove the inequity.

Another issue is that as waste streams cease to enter the landfill, the reasonable cost calculations become very difficult to manage.

Council has consciously chosen to shield self haul from some price increases because of the level of customer resentment. DWM has picked up the tab for this strategy and now that the DWM waste streams are not entering the landfill (it is understood that it may be the case that recycling will also cease to enter LRM) it becomes difficult to justify DWM paying for most of LRM's expenses.

Options to resolve these issues include:

1. Levy a new annual charge under section 501 of the Local Government Act to recoup the net gate income foregone
2. Continue to use the gate fee to extract funds from DWM.

The first option to resolve this situation is to use section 501 of the Local Government Act where Council could levy an annual charge for Waste Management, which could be referred to as the Waste Landfill and Recovery Charge (WLR).

Under this proposal Council raises a new annual charge of say \$60 on all rateable assessments. This will achieve revenue of approximately \$1m (based on 17,000 assessments) which will replace the net adjustment noted above due to the removal of organics; i.e. LRM will lose income of \$1.4m and loading expenses are estimated to reduce by \$400,000.

This will also alleviate the pressure on the DWM reasonable cost test.

The DWM annual charge would be reduced by the same margin as the WLR; i.e. reduce the DWM annual charge by \$60 and raise a new WLR charge for \$60. Therefore, for most ratepayers, there will be a nil effect.

It is stressed that the implications of this charge are still being assessed however initial issues that could arise include:

- A small number of rural properties do not currently pay a DWM charge as the truck does not pass the property. Under this arrangement these properties would pay the new \$60 charge as they are rateable properties. It could be argued that it is only fair that they pay towards the costs to provide a landfill/transfer station for the shire.

10.10 Waste Operations - Long Term Financial Plan

- Similarly a few hundred non domestic customers (i.e. businesses) do not pay a DWM charge as they use a commercial operator or dispose of it themselves. This would be a new charge for these properties but again it could be argued that it is fair and reasonable that everyone contributes to the landfill.
- Council currently levies a DWM charge on all rateable properties, including vacant land. This vacant land charge is currently \$37 per property. The rationale for this charge is that the vacant properties are contributing to the landfill infrastructure. This charge may need to be replaced with the WLR charge.
- The DWM charge is based on the number of services provided whilst the WLR charge would be based on rateable assessments. This means that strata units will pay a charge per unit whilst flats will pay one charge per complex.

It is proposed to carry out further investigations however the likelihood is that if the new charge is introduced these issues will need to be modelled and addressed.

The WLR charge is the most transparent way to approach the problem of financing the landfill. Council still requires funds to operate the landfill and we are currently not generating sufficient funds via the self haul gate fee. Revenue raised using this charge would have to be applied to running the landfill, but it is not subject to the constraints of the DWM annual charge.

Another issue with this strategy is that the WLR charge may be subject to GST, whilst the DWM charge avoids this complication. Council has contracted a GST specialist to obtain a revenue ruling from the Australian Taxation Office (ATO) with a view to having the charge deemed to be exempt from GST. Several other councils have already obtained such a ruling so it is likely to succeed.

If the ATO ruled that GST was payable it would make this a less attractive option as ratepayers would be penalised 10% due to the nature of the new charge. It is anticipated that the outcome of application will be known in approximately 30 days.

The second option is to continue discussions with Council's auditor in respect to the reasonable cost test associated with DWM. This option is becoming increasingly difficult to rationalize as we move from a landfill to a transfer waste model and it is definitely less transparent for the community.

Legal / Resource / Financial Implications

Council needs to consider carefully the financial implications of any proposed changes in waste charges and the need to meet appropriate legislative and environmental standards.

Consultation

The proposed waste charges will be subject to community consultation through the exhibition of the draft Operational Plan.

Options

Council needs to ensure that both DWM and LRM remain financially viable. This report outlines the two main options available. At this point in time, with information still be researched on the use of the Section 501 charge, the preference is to exhibit both options for public comment during the exhibition. This will allow further reports to be submitted to Council during May and June.

RECOMMENDATION

That Council approves the exhibition of a second set of waste management charges in the 2014/15 Delivery Program and Operational Plan, based on the contents of this report, to recognize that the introduction of an annual waste management levy may be required to ensure the financial sustainability of Council's waste operations.

Attachment(s)

Nil

10.11 Legal Matters - Update

10.11 Legal Matters - Update

Delivery Program Governance

Objective To provide an update on legal matters involving Council.

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 second 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 – Matter also appealed	\$100,000	\$176,200
Comments Ballina Shire Council and Rous Water were successful in defending the appeal and both councils were awarded costs. The confidential report listed in this agenda outlines the proposed course of action in respect to the recovery of costs.				
Solicitor for Council	Parties	Case Description	Original Cost Estimate	Costs Paid to Date
Clarissa Huegill	Newton, Denny, Chapelle v Ballina Shire Council	Land & Environment Court - ref. no. 13/10911 - Challenge to refusal of amendment of consent	\$20,000	\$2,000
Comments The applicant is challenging Council's refusal of a Section 96 application to amend DA 2011/105; i.e. Wiggins Scaffold Business.				
Allens, Arthur Robinson	Chris Lonergan v Ballina Shire Council	Land & Environment Court – Challenge to consent conditions	\$100,000	\$0
Comments The applicant is challenging a number of conditions 2011/506 – South Ballina Beach Caravan Park.				

10.11 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
Planning Legals						
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 – Wiggins	0	0	0	0	2,000	0
Advice – Verna Wall	0	0	0	0	12,000	2,000
Advice – 84 Kerr St	0	0	0	0	11,000	0
Advice – South Ballina	0	0	0	6,000	7,000	0
Advice / Insurance - Misc	44,000	43,000	24,000	53,000	26,000	34,000
Sub Total	436,000	279,000	507,000	68,000	58,000	36,000
Property Legals						
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	149,000
Sub Total	354,000	133,000	7,000	104,000	87,000	164,000
Water Legals						
Oshlack – Fluoride	0	0	159,000	13,000	4,000	0
Total Expenses	790,000	412,000	673,000	185,000	149,000	200,000
Expenses Recouped						
Freedden	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	34,000
Total Income	161,000	0	353,000	8,000	19,000	34,000
Net Cost	629,000	412,000	320,000	177,000	130,000	166,000
Fund Summary – Net						
General Fund	629,000	412,000	161,000	164,000	126,000	166,000
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	36,000	64,000
Ballina Surf Club	15,000	15,000	0
Lennox Head CC	115,000	149,000	(34,000)
Total General Fund	230,000	200,000	30,000
Water	0	0	0
Total Budget	230,000	200,000	30,000

10.11 Legal Matters - Update

In addition to the Oshlack case Council now has two matters on-going in respect to the refusal for the Section 96 application for the Wiggins Scaffolding Business and the consent conditions applied to the South Ballina Beach Caravan Park consent.

From a budgetary perspective the Wiggins matter is set to be heard in June, which means the costs will most likely be incurred over the 2013/14 and 2014/15 financial years. The majority of the South Ballina Beach Caravan Park costs should be incurred during the 2014/15 financial year.

With Council only having a recurrent planning legal budget of \$100,000 in the 2013/14 and 2014/15 financial years these legal actions may well result in the 2014/15 budget being over expended. This means Council will need to consider reviewing the 2014/15 legal budget prior to the adoption of the 2014/15 Delivery Program and Operational Plan at the June 2014 Council meeting.

As to the legal action, updates will be provided to Councillors on an on-going basis as the matters are progressed through the courts.

The only other 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 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 was not accepted and as reported to the Commercial Services Committee meeting held 18 February 2014 Council was required to serve its evidence as the matter is now heading towards arbitration.

Council submitted its evidence by the due date and under the current directions from the Arbitrator, GHP has until 6 June 2014 to respond.

Unfortunately the costs continue to escalate as per the financial summary, with another invoice still to be paid for \$14,000 relating to expert evidence to support Council's claim. If Council is successful we will be able to claim some of the total costs incurred, but as with any costs order only part of the costs incurred will be paid. The legal expenses for this matter are being financed through Council's property reserves.

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.

10.12 Policy (Review) - Pensioner Concessions - Rates and Charges

10.12 Policy (Review) - Pensioner Concessions - Rates and Charges

Delivery Program Governance and Finance

Objective To provide a timely review of the Pensioner Concessions - Rates and Charges Policy.

Background

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Pensioner Concessions – Rates and Charges Policy.

Council first adopted this policy on 22 July 2010 to formalise internal practices that had existed for many years.

In managing pensioner concessions on rates and charges there are instances where the Local Government Act 1993 (LGA) and Local Government (General) Regulation 2005 (LGR) are silent. The policy provides guidance for the processing of applications in this regard.

The following information section of this report provides brief reasons for the inclusion of each of the individual guidelines within the policy.

Key Issues

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

Information

The review of this policy identified only minor changes as follows:

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- A definition of “immediate family” has been included.
- The treatment of concessions applied to quarterly water consumption charges has been made clearer. Unused concessions in previous quarters are not transferrable to future quarters.
- References to “sewer” have been changed to “wastewater”, being the contemporary terminology used to describe effluent.
- The Government reimbursement that Council receives has been changed. The State Government now reimburse the full 55% to Council. Previously the Federal Government contributed 5% of the 55% reimbursement.

The changes to the attached reviewed policy have been marked in yellow and deletions with ~~strikethrough~~.

10.12 Policy (Review) - Pensioner Concessions - Rates and Charges

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.

A brief description of why each of the guidelines is included in the policy is as follows:

- **Application Form Processing** – the applicant must complete the prescribed form supplied by the Office of Local Government. When processing the form, we check that the applicant is still eligible with Centrelink as we have had occasions where people have made fraudulent applications using cancelled pensioner concession cards.
- **Limiting previous rating year claims** – The LGA and LGR are silent in regard to retrospective claims for concessions. The Office of Local Government supports a policy to limit previous year claims. Our policy includes provision for the General Manager to accept applications if the pensioner has a substantial reason for not applying in a timely manner. Our policy states that we will accept applications for the current and the previous rating year only.
- **Applying concessions for water charges** – For residential customers, we levy the water access charge annually in advance and water consumption charges quarterly in arrears. Prior to 2013/14, our water access charge was not high enough to apply the maximum \$87.50 pensioner concession in full. As a result, we provided the small remaining allowable concession on each quarterly water consumption account equally.

In 2013/14, our water access charge reached a level that allowed the maximum \$87.50 water concession to be applied to it. This meant that pensioner concessions were no longer provided on water consumption accounts. Even so, the clause to allow concessions to be applied to water consumption charges has been retained in the unlikely case that it may be required in the future.

- **Commencement of eligibility for water consumption charges** – The LGA states that pensioner concession eligibility is to be based on the date that rates and charges are levied. This was not reviewed when user pays water billing was introduced in the early 2000's. As water consumption charges are levied in arrears, it was inequitable to base the eligibility on the charges levy date due to variances in levy dates. Instead we use the water meter reading commencement date to determine eligibility, which is supported by the Office of Local Government. As explained in the previous point, this guideline has been retained in the policy although it is unlikely to be relevant from the 2013/14 rating year.
- **Annual audit of pensioner concession eligibility** – We ask Centrelink and the Department of Veteran Affairs to confirm the eligibility status of all active pensioners on our system at least annually. Most ratepayers fail to notify us when they become ineligible during a rating year and this process ensures we only provide rates and charges concessions to eligible pensioners.

10.12 Policy (Review) - Pensioner Concessions - Rates and Charges

- **Pensioners leaving their principal place of abode temporarily** - The LGA states that to be eligible for a concession, a pensioner must occupy their sole or principal place of abode. This compassionate guideline allows a ratepayer to leave their home temporarily providing it is not being occupied by other than immediate family members and still be eligible for the pensioner concession for a period of up to six months.
- **Interest charges and debt recovery actions still apply to properties owned by a pensioner** - This confirms Council's long standing procedure not to exclude pensioners from interest charges and debt recovery actions on overdue rates and charges. This is considered an equitable policy as a pensioner concession (up to a maximum of \$425.00 per annum) has already been granted as a financial assistance. Excluding pensioners from interest charges and debt recovery action would encourage non-payment of rates and charges. Furthermore, Council has a hardship policy for pensioners in extreme financial difficulty and rating staff are amenable in negotiating suitable arrangements to enable pensioner's additional time to pay off their overdue rates and charges.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The policy provides support to ratepayers who are eligible pensioners.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The granting of pensioner concessions is mandatory in accordance with the LGA and budgeted for annually.

Consultation

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

Options

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

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

10.12 Policy (Review) - Pensioner Concessions - Rates and Charges

RECOMMENDATIONS

1. That Council adopts the amended Pensioner Concessions – Rates and Charges Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

Attachment(s)

1. Policy (Review) - Pensioner Concessions - Rates and Charges

10.13 Policy (Review) - Commercial Activities on Public Land

10.13 Policy (Review) - Commercial Activities on Public Land

Delivery Program Open Spaces & Reserves

Objective To consider a number of matters in relation to the operation of Council's Commercial Activities on Public Land Policy.

Background

At the September 2013 Ordinary meeting Council adopted the latest review of the Commercial Activities on Public Land Policy.

Key issues addressed in that report related to whether Council wished to tender out the renewal of the three year licences for Surf Schools, Eite Surf Coaching and Stand Up Paddle Boards, an adjustment to the teacher / student ratio for kayaks and confirmation of the annual fees.

Three new issues have arisen recently in respect to the operation of this policy and the report that follows deals with these matters.

A copy of the current policy is included as an attachment to this report.

Key Issues

- Safety against commercial viability
- Number of licences
- Transfer of licences

Information

1. Kayak Operating Conditions

A person interested in operating kayak tours was critical of Council's qualifications requirements, particularly as they were able to obtain a licence from NPWS and operate from South Ballina, without some of those conditions.

Council's qualification requirements for kayak operators are listed in the Application Guidelines and Operating Requirements document (located in the policies section of Council's website), with those conditions as follows:

Kayak and Canoe Qualifications

Documentation demonstrating current qualifications, as listed below, must be lodged with Council at time of application. Once awarded it is the licensee's responsibility to maintain current qualifications and certificates for all kayak and canoe tour guides:

- A. Current Surf Rescue Certificate (SLSA Community Award), or Current Bronze Medallion (SLSA proficient annually), or Ocean Rescue Award (RLSS proficient annually), and*

10.13 Policy (Review) - Commercial Activities on Public Land

- B. Current Advanced Resuscitation Certificate, and*
- C. Senior First Aid Certificate (from a recognised registered training organisation), and*
- D. Kayak/Canoe Tour leader accreditation with competencies recognised or issued by Australian Kayaking Federation.*

The operator in question appeared to be objecting primarily to item B, the Advanced Resuscitation Certificate (ARC), although they also had some concerns over item A.

In respect to item B, NSW Surf Life Saving, on their website, states that the aim of this course is to provide participants with the skills, knowledge and application of oxygen, airway management devices and automated external defibrillators during resuscitation, and to administer oxygen to conscious and unconscious breathing casualties. The duration of the course is normally around nine hours.

To review the current level of qualifications consultation was undertaken with organisations such as the RMS Boating Operations Branch, Jet Boat Surf Rescue, Australian Lifeguard Services (ALS) and Australian Canoeing.

Written responses were received from ALS and Jet Boat Surf Rescue and copies of those responses are attached.

The response from ALS prefers the removal of B, with items A and C remaining. The response from Ballina Jet Boat Surf Rescue is similar in that items A and C appear to cover item B.

This being the case it is recommended that item B be removed from the guidelines, with item A remaining, as it provides reasonable options.

The Jet Boat Rescue Service also makes a good point about the need for life jackets, which is supported, and the policy conditions previously used to list all the safety equipment requirements for each commercial activity, which included items such as life jackets, mobile phones, drinking water and first aid kits etc.

Following a review of the policy by Council's Risk Section the preferred approach was to let operators determine their own equipment requirements, as a part of the risk management plan for their business.

As a risk management plan is required to operate, this was considered to be a more practical approach than having Council try and include every item of safety equipment in the policy and / or operating guidelines.

It is also understood that the kayak industry accreditation requires life jackets to be worn at all times.

2. Stand Up Paddle Board (SUPB) Licences

Council has been approached by an operator interested in establishing their own SUPB business in Ballina Shire. A copy of their correspondence is attached.

Currently the commercial activities policy only allows for two licences, with those licences held by Rubber Soul Boardriding and Mojo Surf.

When the policy was original drafted and tenders called for all the three year licences in 2010/11, the policy, at that time, allowed for three SUP Board licences.

As a result of that tender process in 2010/11, three tender responses were received with Rubber Soul Boardriding and Mojo Surf accepting their licence, however Byron Bay Stand Up Paddle Boarding was not prepared to pay the \$1,000 licence fee and no licence was issued. The policy was also then amended to only include two licences, reflecting the licences held.

Council now needs to determine whether it wishes to amend the existing policy to increase the number of SUPB licences on offer to three in response to this recent request.

In favour of this approach is that Council has previously supported this number and with only two licences currently available, it is a fairly restricted market. There have also been concerns expressed that Mojo Surf are not actively using their licence, a claim which has not been supported by Mojo.

Against this approach is that SUPBs are large items of equipment that can impact on amenity, albeit that the policy conditions acknowledge this by only allowing seven clients per class at Seven Mile Beach, three in Lake Ainsworth, Shaws Bay or Prospect Lake and 14 in the Richmond River.

Another consideration is the risk of legal action by one of the existing licence holders if Council increases the licenses on offer.

The threat of legal action has occurred previously when Council expanded the number of surf school licenses to satisfy complaints from existing operators, who had missed out on their licence through the 2010/11 tender process. The legal action was based on the argument that Council was impacting on the viability of the operators from whom Council had accepted a tender, by increasing the number of licenses.

Legal action did not eventuate as Council resolved this matter by reducing the licence fees to reflect the increased number of licenses.

With there only being two licence holders for SUPBs, and with the policy originally allowing for three when the current licence holder tenders were originally submitted, the risk of legal action is not considered to be as high, albeit that there is potential for a complaint, legal or otherwise, to be lodged with Council.

The final consideration is that if Council wishes to allocate an extra licence the existing policy states as follows (clause 5.8):

10.13 Policy (Review) - Commercial Activities on Public Land

If a licence becomes vacant, Council reserves the right to determine how it wishes to allocate that licence. Council's preference is to call tenders or expressions of interest when a licence becomes vacant to allow all interested parties an opportunity to obtain that licence.

Clause 5.9 then details the criteria that are to be applied in selecting a licence holder.

The interested party who has approached Council is the only known person interested in a new SUPB licence, however Council needs to be mindful that there may be other parties interested, who have not approached Council, as they are aware of the two licence limitation.

The calling of expressions of interest is the preferred approach as it ensures that any interested party has an opportunity to submit an interest.

Also as part of the September 2013 review Council endorsed an amendment to the policy to increase the number of Elite Surf School licences from four to six. At the time of that review only three licences were operating and Council approved an expression of interest process for the three vacant licences. No responses were received which means that only three licences are currently operating.

Importantly, if Council supports an expression of interest (EOI) process for the vacant SUPB licence, the EOI can also again seek expressions for the other vacant licences.

As the documentation has only been recently used it is a reasonably simple administrative process to call EOIs for the vacant SUPB licence and Elite Surf School licences.

3. Transfer of Existing Surf School Licence

There are currently five surf school licences, with those licences held by:

- Simon Freeden trading as Summerland Surf School – Gloria Street, South Golden Beach
- Kool Katz – Shirley Street, Byron Bay
- Soul Surf School (renamed from East Point Surf School) – Bay Street, Byron Bay
- Mojo Surf - PO Box 507, Byron Bay
- Cheyne Horan School of Surf – Dress Circle Drive, Lennox Head

Summerland Surf School has approached Council in respect to the sale of their business. A copy of their initial email dated 11 March 2014, Council's initial response dated 20 March 2014 and their latest email dated 14 April 2014 is attached.

As per the latest email Mojo Surf is the proposed purchaser of the business, however the licence would be retained by Summerland Surf School.

Based on this email it appears that Mojo Surf would be operating the business with Summerland Surf School still holding the licence.

10.13 Policy (Review) - Commercial Activities on Public Land

The current policy only allows for an operator to hold one class of licence, with Council specifically resolving not to support one operator holding two licences within the same class of licence (i.e. Surf School, Elite Surf School, SUPB) as part of the September 2013 review (refer to clause 5.10).

It is understood that Mojo Surf are already operating some their lessons through the existing Summerland Surf School licence. This partnership has resulted in some discontent with two other operators having complained to Council that Mojo is operating with two licences.

Council has been unable to address these complaints as the second licence is still technically held by Summerland Surf School.

This highlights the difficulties that arise when councils or similar authorities try and place restrictions on commercial operations, in that there are many business structures or agreements that can be drawn up that still satisfy the technical part of a policy or legislation, but perhaps don't satisfy the intent.

In this case, Council did not want one operator to have a large part of the market, but by forming what appears to be some form of business relationship, Mojo Surf is for all intent holding the two licences.

In respect to the sale or transfer of licences, clause 5.10 states as follows:

(b) Licences are not tangible assets and cannot be transferred to a new operator

This is going against the business model Mojo Surf is pursuing as they clearly are striving to expand their business operations and possibly obtaining additional licences from councils, as they become vacant or are sold.

This is a reasonable approach but what Council needs to be mindful of is that if licences are traded and sold, there is a risk that the value of those licences can increase significantly and ultimately it can become a very closed market.

Individuals and businesses may then have significant monies invested in their operations and it becomes increasingly difficult for the licensing authority (i.e. a council) to amend the licence conditions and the associated policies.

For example, some time in the future Council may well wish to reduce the number of licences on offer, or further restrict the areas where licences can operate, due to the beaches becoming increasingly popular; eg. Council may at some time not allow these activities to occur at Sharpes Beach as the Henderson Land is developed.

If licences are being traded and sold there becomes an ever increasing expectation that the licences are perpetually on-going, similar to other businesses based in commercial premises. The big difference with other businesses is that they can relocate to other commercial premises, however in the case of a crown reserve licence, there are no other locations where the operator can relocate (other than outside the Shire) therefore these licences are somewhat unique.

10.13 Policy (Review) - Commercial Activities on Public Land

This is similar to the issues Councils and the Crown have faced in managing long term tenants in crown reserve caravan parks, where those tenants may have prime foreshore positions. Over the years these dwellings have often been sold at a value far higher than the value of the dwelling, to reflect its location.

This then creates expectations that the dwelling can continue to be on-sold at this inflated value, when in fact only the value of the dwelling should be reflected in the purchase value, as the dwelling can be relocated at any time in the park.

Similarly, any sale of these commercial licences should only reflect the goods and chattels being sold, as these licences are not tangible assets, as stated in clause 5.10.

The latest email from Summerland Surf School is now asking for the policy to be amended to allow the on-sale of licences and this is a viable option if Council wishes to allow on-selling to occur.

Other Amendments

The final paragraph in clause 5.8 makes reference to the number of three year licences based on the original policy, with this paragraph not having been amended with changes in recent years; i.e.

Current practice is for Council to only provide three year licences for Surf Schools, Elite Surf Coaching and Stand Up Paddle Boarding due to the high level of interest in these licences and the limited number of licences available.

As mentioned in the report there are currently five Surf School licences and two SUPB licences. The table in clause 5.5 clarifies the number of licences available and it is recommended that the paragraph in clause 5.8 be deleted, as it duplicates that table.

Sustainability Considerations

- **Environment**
By managing the licences Council is taking steps to minimise any negative impacts on the environment.
- **Social**
Commercial activity licences provide a social activity for participants.
- **Economic**
Council generates a return on the licences and there may be some tourism benefits by having the licences available.

Legal / Resource / Financial Implications

There is limited resource or financial implications from this report and the potential for limited legal action is noted in the information section.

Consultation

The RMS Boating Operations Branch, Jet Boat Surf Rescue, Australian Lifeguard Services and Australian Canoeing were consulted.

Options

1. Kayak Operating Conditions

In respect to kayaking the options relate to amending the qualifications. It appears that the Advanced Resuscitation Certificate is a higher standard than what may be needed for these licences and the recommendation is to delete that requirement.

It is also recommended that Council engage with the relevant State Government agencies, such as NPWS (Office of Environment and Heritage) and also Crown Lands, to promote consistency with any similar licences offered by those organisations.

2. SUPB Licences

In respect to Stand Up Paddle Boarding the options relate to amending or not amending the number of licences on offer. On balance it is considered that the increase of the SUPB licences on offer to three is reasonable, especially as Council has previously supported three licences.

In respect to the allocation of this licence, the preference is to call expressions of interest. That will then allow any interested party to submit an expression and is therefore a fairer and more transparent process.

As it is unlikely that Council will obtain a large number of applications (i.e. may only be one) the recommendation is to allow that EOI to be determined by the General Manager under delegated authority. This saves further reporting to Council, although if the tender process is not a clear cut decision and may require some political input, a further report can still be submitted to Council for determination.

This expression of interest process can also include the other vacant Elite Surf School licences.

3. Transfer of Existing Surf School Licence

The final issue is the transfer of the Summerland Surf School licence and the request for the licence to be approved for transfer (or sale) to Mojo Surf.

The options are to approve or not approve the request.

In respect to approval Council could recognise that it is practicality impossible to stop Summerland Surf School and Mojo Surf coming to some form of legal agreement that will still allow Mojo to promote this licence under their business name, even without approval of the sale.

10.13 Policy (Review) - Commercial Activities on Public Land

Even though Council may wish not to promote the sale of the licences and to limit each operator one licence per class of activity, there will always be options to structure business arrangements and by including these restrictions Council is in reality struggling to find ways to regulate the market place.

Therefore Council could accept these difficulties and resolve to approve the sale based on the fact that both businesses have been operating within the Ballina Shire for a number of years and have a good performance record.

Alternatively Council can stick with the policy and not approve the transfer of the licence.

The email from Summerland Surf School is actually asking for approval to sell the business and this is a matter for those two operators to determine with Council having no role in that decision.

However Council has a role in the transfer of the licence and Council's position can remain that it does not support sale, which means that Summerland Surf and Mojo Surf will need to continue their relationship where the Summerland Surf licence is implemented under the Mojo Surf business name.

If Council confirmed this position, it is envisaged that prior to the existing licences being renewed when they expire (January 2017), the conditions of the licence agreement would be reviewed in an attempt to stop the type of business arrangement being implemented where one operator is using another operator's licence.

As the current policy of Council is not to allow sale and not to allow one operator to hold two licences in the same class of activity, the recommendation is not to approve the transfer of the licence.

4. Other Amendments

As per the information section of this report the final paragraph in clause 5.8 is incorrect and largely duplicates the table in 5.5, therefore it is recommended that the paragraph be deleted.

RECOMMENDATIONS

1. That based on the feedback from organisations such as Australian Lifeguard Service and Ballina Jet Boat Rescue, Council approves the deletion of the requirement for the Advanced Resuscitation Certificate from the operating guidelines for kayak licences.
2. That Council consult with other licensing authorities such as the Office of Environment and Heritage in order to ensure as much consistency as practical in the issuing of licences for similar activities.
3. That Council approves an amendment to the Commercial Activities on Public Land Policy to allow three Stand Up Paddle Board licences, as this is consistent with the original intent of this policy.
4. That Council call expressions of interest for this additional licence with the General Manager authorised to issue this licence based on the contents of the policy.
5. That in respect to the proposal for Summerland Surf School to transfer (sell) their licence to Mojo Surf, Council confirms that it has no role to play in the transfer of one business to another, however the transfer of the licence is not approved for the following reasons:
 - a) It is inconsistent with the licence agreement which does not permit the sale of licences
 - b) It results in one operator having more than one licence in a particular class of activity
 - c) It can result in inflated market values for what are non-tangible assets.
6. That Council approves the deletion of the final paragraph from clause 5.8 of the existing policy, as attached, as this paragraph only duplicates the information included in the table in clause 5.5

Attachment(s)

1. Policy - Commercial Activities on Public Land
2. Submission from Australian Lifeguard Services
3. Submission from Ballina Jet Boat Surf Rescue
4. Correspondence - Stand Up Paddle Board - Tausili and Melanie Toilolo
5. Correspondence - Summerland Surf School

10.14 Policy (Review) - Concealed Water Leaks

10.14 Policy (Review) - Concealed Water Leaks

Delivery Program Governance and Finance

Objective To respond to a Council resolution to review the Concealed Water Leaks Policy.

Background

The Concealed Water Leaks Policy was originally adopted by Council on 24 February 2011. It was developed to provide water consumers with some financial relief for larger than usual water bills, caused by a concealed water leak in plumbing within their private property.

Council requested a review of the current policy following consideration of the 2012/13 annual rates and charges write off report, presented to Council on 22 August 2013. This report satisfies that request.

The delay in providing this report is due to staff undertaking a review into possible changes to the water charging structure. The original intention was to present the findings of this review to Council for consideration during the 2013/14 rating year, for implementation in 2014/15.

However, due to time constraints, staff propose to finalise this review during 2014/15 for possible implementation in 2015/16. Further details about the review process are contained within the information section of this report.

The write off report reported to Council in August 2013 identified that Council provided financial assistance to 20 properties in 2011/12 and 38 in 2012/13, for a write off value of \$8,129.27 and \$16,436.68 respectively.

In 2013/14 (year to date), we have approved financial assistance to 23 properties for a value of \$10,526.91. A further 10 applications are currently being assessed. Four of these result in significant write offs (three relate to shopping centres). Further information about these properties is contained within the information section of this report.

Key Issues

- Whether the policy meets the requirements of Council
- Write off calculation methods
- Equity and fairness of the policy
- Financial impact

Information

Council requested a review of the policy as a result of the level of write offs presented in the 2012/13 rates and charges write off report. Information about the write off calculation methods, and issues that are taken into consideration when providing financial assistance are outlined as follows. A copy of the current policy, with recommended changes, is included as an attachment to this report.

Part 1 – Write Off

To determine the write off amount, Part 1 of the calculation requires that the water consumption determined to be caused by the concealed leak event, is to be charged at our lower step rate per kilolitre (KL).

For 2013/14, the first 350 KL per water meter is charged at \$1.91 per kilolitre and at \$2.87 per kilolitre thereafter. This is often the most significant part of the write off amount and is currently not limited by a maximum write off amount.

The logic behind using the lower rate is that the higher rate per kilolitre is primarily used as a pricing signal to encourage water conservation (i.e. a customer is penalised by paying a higher rate per kiloliter).

In the case of a concealed water leak, the customer is unaware of the excessive water consumption and our policy recognises this by charging for all water consumption deemed to have occurred due to a concealed leak, to be charged at the lower rate.

It is true that Council loses income from this however it can also be argued that the additional income was not expected within the original budget (as the customer's water consumption was higher than usual due to the leak). It should also be noted that the customer is still paying for the water consumed, just at the lower step rate.

It is also important to recognize that Rous Water charges Council for any water we use. Rous Water charged Council \$1.54 per kilolitre for bulk water supply during 2013/14 and the difference between the lower rate per kilolitre we charge, and the single rate Rous charge us, is \$0.37 per kilolitre (i.e. \$1.91 minus \$1.54).

Part 2 – Write Off

The second part requires that we write off 50% of the increase in water consumption caused by the concealed leak, above that determined as the consumer's normal water consumption. This is capped to a maximum write off of 250 kilolitres at the lower step rate per kilolitre.

For 2013/14, this maximum write off is \$477.50 (i.e. 250 KLs by \$1.91).

It could be argued that this part of the write off is the "real" income that Council loses as a result of a successful application under the policy.

10.14 Policy (Review) - Concealed Water Leaks

It is important to appreciate the write offs made in accordance with the current policy have minimal impact on Council's overall water operations, which has an annual operating income of approximately \$10m. Nevertheless they still represent a cost to the community. Also the number of applications has increased each year since the policy was introduced.

The policy does safeguard against repeat events by ensuring that owners are only eligible for financial assistance on a one off basis – irrespective of the number of properties owned or future property ownership changes.

2013/14 Applications

Staff are currently assessing four applications that if approved, will result in significant individual write offs. These will be reported to Council in May 2014 as they require individual Council approval because they exceed the General Manager's \$1,000 delegated authority limit to write off rates and charges.

All write offs are reported to Council annually, regardless of whether they are approved by the General Manager, or Council, in the first instance.

Draft write off amounts for the four subject properties as outlined as follows.

Write Off Applications

Assess. No.	Property Details	Part 1 Water Write Off (\$)	Part 2 Water Write Off (\$)	TOTAL (\$)
271237	Alstonville Plaza Shopping Centre	905.28	477.50	1,382.78
153366	Ballina Fair Shopping Centre	10,091.52	477.50	10,569.02
405488	Ballina Bayside Shopping Centre (Coles and K Mart)	14,219.90	477.50	14,697.40
290778	Residential – Rifle Range Road, Wollongbar	7,899.12	477.50	8,376.62
Total:		33,115.82	1,910.00	35,025.82

There are other write off applications that have been received and processing of those applications has not occurred as yet, and as a result, possible write off details are unavailable at this time.

A non-residential property pays for wastewater (sewer) usage and volumetric trade waste charges, based on the estimated volume of water that passes through their water meter that returns to our wastewater system.

In the event of any significant water leak, if the water lost as a result of a leak is proven not to have been returned to our wastewater system, an account adjustment is processed. This is not considered a write off because the basis of our non-residential charging structure is to charge for the volume of wastewater returned to our system for treatment. The customer should not be charged if the water is not returned for treatment as it is not impacting on our wastewater infrastructure.

Review of Water Billing Structure

Staff commenced a review of our current water charging and pricing structure during 2013/14. The review was commenced to investigate possible inequities and complexities in our billing structure. The review was expanded as a result of recently updated best practice pricing guidelines released by the NSW Office of Water (NSWOW). The guidelines provide various pricing options, one of which is that local water authorities can now implement a single rate per kilolitre for all water consumed, rather than a two step inclining tariff, if preferred and if other performance criteria are met.

The focus of the ongoing review is to consider improvements having regard to equity, simplicity and ongoing actions regarding water efficiencies and water education.

The review has expended significant staff resources and due to this, the review has been unable to be completed in time for Council to consider changes to our 2014/15 water charging structure. It is anticipated that the review will be completed during 2014/15 for possible implementation in 2015/16.

The two primary changes being investigated are summarised as follows;

- Water Consumption Charges – Change from a two step inclining tariff to a single rate per kilolitre for all water consumed
- Water Access Charges (residential only) – Change from a charge based on meter sizes to the levying of a minimum charge for each self contained occupancy within the subject property. This change would affect non-strata units (i.e. flat developments).

Further information on these proposals will be submitted to Council during 2014/15.

Policy Review

One part of the usual process when reviewing Council policies is to update the template and this has now been completed as per the attached document. The new template includes information on definitions, policy history etc.

References to “sewer” have been changed to “wastewater”, being the more contemporary terminology used to describe effluent.

The balance of the policy is considered to still be relevant and remains largely unchanged.

Whilst the policy provides some compassionate relief for our ratepayers, the number of applications has increased each year since the policy was introduced. This in turn results in an increased loss of income (especially considering the significant applications for assistance we have at hand).

In this regard, it seems prudent to cap the financial assistance provided under Part 1 of the policy adjustment procedure (clause 1.2). This part of the adjustment was previously unlimited.

10.14 Policy (Review) - Concealed Water Leaks

The recommended change is to limit the financial assistance granted under Part 1 to a maximum of \$1,000 per application. This would result in limiting the total financial assistance provided to a property in 2013/14 to a maximum of \$1,477.50.

The definition of a “concealed water leak” has also been amended slightly to recognise that water leaks may be “concealed” due to a variety of reasons, as each property is unique. The policy has also been amended to allow the General Manager, or authorised delegate, to decide if a water leak event meets the definition of a concealed water leak.

It is also recommended that we assess applications in accordance with the policy in force at the time the application was received. This is an important point, as it will mean that the very large applications currently in the pipeline, as listed in this report, will be reviewed without a cap in place for the ‘part 1’ adjustment.

It would be open to Council to backdate the policy amendment such that it affected any applications not yet determined. In considering this point staff in discussions with the applicants, have advised them of the current policy and the potential write off, if successful.

A copy of the amended policy is attached to this report. Changes have been marked in **yellow** and deletions with ~~strikethrough~~.

Sustainability Considerations

- **Environment**
Part of the objectives of the policy is to educate customers in regard to water conservation awareness and water leak prevention processes.
- **Social**
This policy provides compassionate support to ratepayers who experience larger than usual water accounts as a result of a concealed water leak event.
- **Economic**
Write offs granted as a result of a leak are effectively a loss of income to Council.

Legal / Resource / Financial Implications

Write offs under the concealed water leaks policy are approved in accordance with section 607 of the Local Government Act 1993, and clauses 131/132 of the Local Government (General) Regulation 2005.

Applications under the policy take considerable time for staff to process.

Consultation

The original policy was exhibited publically in 2010/11 and no submissions were received.

It is recommended that Council exhibit the document for public comment.

10.14 Policy (Review) - Concealed Water Leaks

Education plays an important role in persuading customers to be water wise. Advertising strategies from a variety of sources to encourage customers to conserve water (and therefore money), have been ongoing for many years now and will continue into the future.

Options

There are many options available for Council to consider.

These include:

- Adopt the presented changes
- Retain the existing policy
- Consider changing the capped limits of financial assistance under Part 1 and/or Part 2.
- Consider excluding non-residential properties. This is not considered a desirable option due to equity concerns. It may also create difficulties applying the rule in the case of mixed use properties.
- Abolish the policy.

Overall the policy is still considered to have merit and the recommendation that follows supports the adoption of the amended policy, with particular emphasis to the restriction now placed on Part 1.

RECOMMENDATIONS

1. That Council adopts the amended Concealed Water Leaks Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.
3. That applications received prior to the adoption of this review are to be assessed under the policy in force at the time the application was received by Council.

Attachment(s)

1. Policy (Review) - Concealed Water Leaks

10.15 Delivery Program Review - 31 March 2014

10.15 Delivery Program Review - 31 March 2014

Delivery Program Governance and Finance

Objective To provide the quarterly review of the Delivery Program and Operational Plan.

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 third 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 31 March 2014.

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 for nine months of the year. This means that 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.

The attachment has two main sections being:

10.15 Delivery Program Review - 31 March 2014

- 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 90 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	19	9	28	23	79
Amber	1	0	5	3	9
Red	2	0	0	0	2
Total	22	9	33	26	90

Program Actions Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	86	100	85	88	88
Amber	5	0	15	12	10
Red	9	0	0	0	2
Total	100	100	100	100	100

Many of the actions remain on track or are already completed. Items not marked as green that may require further comment include:

- Ballina and Alstonville Swimming Pools (page 5) – Council has now resolved to pursue a special rate variation to fund these upgrades.
- Indoor Facility for Ballina (page 5) - This is showing as amber as Council has recently resolved to now investigate land at the Southern Cross Industrial Estate.
- Review branding of Southern Cross and Russellton Industrial Estates - page 8) – This project is unlikely to be completed this year and it is questionable as to whether Council wishes to expend significant monies rebranding the Estates when there are many other priorities for the Commercial Services Unit.
- Develop and Release Industrial Land at the Russellton Industrial Estate (page 11) – The latest review of the property reserve cash flows confirmed there was insufficient monies for this work to be undertaken during 2013/14 or 2014/15.
- Progress Adopted Master Plan for Southern Cross Industrial Estate (page 11) – As per the above item this work has been suspended to cash flows.

10.15 Delivery Program Review - 31 March 2014

In respect to the Service Delivery Targets there are 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	21	18	22	11	72
Amber	3	1	5	1	10
Red	1	1	3	1	6
Unknown or N/A	0	0	1	0	1
Total Tasks	25	20	31	13	89

Service Delivery Targets Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	84	90	71	85	81
Amber	12	5	16	8	11
Red	4	5	10	7	7
Unknown or N/A	0	0	3	0	1
Percentage Total	100	100	100	100	100

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

- Asset Management – Percentage of DA referrals completed within 21 days – 36% (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.

A new staff member has recently commenced employment in this section and that person has extensive experience in the northern rivers region and their input should make a significant difference to current service levels. This result of 36% is a significant improvement on the previous quarter.

- Community Facilities and Services – Operating deficits (page 25) – The commencement of the operation of the Ballina Surf Club remains a learning experience as Council comes to grips with the market for room hire and the operating costs for maintaining the building. Cleaning is proving to be very expensive. Expenditure has slowed in recent months and it is still hoped the budget targets can be reached by year end.
- Environmental and Public Health – On Site Effluent Disposal Inspections – 41 (target 250 - page 27) – The concerns with this program have been previously reported to Council as part of the 2014/15 budget deliberations.
- Water and Wastewater (page 31) – There has been some compliance concerns although they are primarily minor licensing matters.

Sustainability Considerations

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

10.15 Delivery Program Review - 31 March 2014

- **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

Options

The report is for information purposes.

RECOMMENDATION

That Council notes the contents of this report on the 31 March 2014 review of the Delivery Program and Operational Plan.

Attachment(s)

1. Delivery Program Review - 31 March 2014 (Under separate cover)

10.16 Capital Expenditure Review - 31 March 2014

10.16 Capital Expenditure Review - 31 March 2014

Delivery Program Governance and Finance

Objective To provide a quarterly status report on the implementation of Council's capital works program.

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 Operational Plan. This status report provides details on key milestone dates, along with a comparison between budget and actual expenditure.

This report is for the nine month period to 31 March for the 2013/14 financial year.

Key Issues

- Status of works

Information

To assist in understanding the 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.
- New Variations – Represents further recommended changes based on the latest available information for the project.
- 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.

The attachments are split into the main functional sections within Council undertaking the works: i.e. Open Spaces, Waste, Engineering Works, Operations Support, Commercial Services, Water and Wastewater. 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 – Council has endorsed a landscape plan with further community consultation underway.
- Play Equipment (various) – Majority of program completed with Council recently resolving to review the forward equipment replacement plan.
- Wollongbar Sports Fields – due to the layout plan being amended a Section 96 amendment was required for the project. This has resulted in delays in construction with the period to June 2014 needed to obtain the new planning approval and to seek tenders for the next stage of construction works.

Waste Management

Biochar is the major project with the feasibility assessment still on-going.

Engineering Works

Drainage

A transfer of funds between projects is recommended for Allens Parade, Lennox Head and Grant Street, Ballina to reflect the latest estimates.

Some projects are likely to be transferred to 2014/15 as detailed design is still being undertaken prior to construction works taking place.

Urban and Rural Roads

Major projects such as the Compton Drive re-alignment and associated car park for the Ballina Surf Club are complete, with the construction of Ballina Heights Drive also well advanced.

Council accepted a tender for provision of asphalt for rehabilitation works on the former Pacific Highway (Tamarind Drive) at the October 2013 Ordinary meeting. These works are now anticipated to commence in May as the supplier has been having trouble sourcing asphalt for the project.

A reduction in the budget for the Alstonville Bypass related works is recommended.

This budget is sourced from a reserve held for monies transferred to Council as part of the handover of the old Bruxner Highway and the reduction in this year's budget will result in those monies being transferred back to that reserve.

Ancillary Transport Services

The street lighting program has been completed for 2013/14 and the Tamar Street Car Parks are virtually complete.

Design work is still underway on the Missingingham Car Park project to ensure that the final works are sympathetic to this location.

Shared Paths and Footpaths

Planning consent is still being sought for the Coastal Shared Path / Walk component of the project on the eastern side.

The actual commencement of the western cycleway has now been altered to May as the Cultural (Aboriginal) Management Plan consent conditions are still to be finalised.

Budgets have been relocated within projects to reflect actual and estimated expenditures.

Operations Support

Ballina Surf Club – Main building, car park and Compton Drive re-alignment all largely complete. A quantity surveyor's report on options for the storage building (i.e. to include gym plus other facilities) has now been received and this matter will be reported to Council in the near future to determine which option Council wishes to pursue. It is recommended that part of this budget be transferred to 2014/15 as the storage building will not be commenced this financial year.

Lennox Head Surf Club and Eastern Lake Ainsworth – Council has had one briefing on this project and based on the feedback from that briefing a report will now be submitted to Council to determine the preferred development option. As per the Ballina Surf Club it is recommended that part of the funding be rolled forward to 2014/15 to reflect the likely expenditure timeframe.

Ballina Sports / Leisure Centre – Kingsford Smith Plan – Council has resolved not to proceed with this project.

Ballina Sports / Leisure Centre – Design and Approval – Council has now resolved to investigate a site option at Southern Cross Industrial Estate.

Projects such as the Naval Museum and Ballina Library improvements should progress quickly now that agreement has been reached on the scope of works.

Northern Rivers Community Gallery / Public Toilets – Council approved a \$15,000 transfer from the Gallery to the public toilets in Ballina Street, Lennox Head as part of adopting the 18 March 2014 Finance Committee meeting minutes at the March 2014 Ordinary meeting.

The last attachment to this report is a submission from a resident expressing their concern in respect to this relocation of funding. Also the new gallery co-ordinator is supportive of the works as previously planned and with monies already expended on designs Council may well wish to revisit this decision.

Another possible funding source could be to transfer monies from one of the other Operations Support projects, where the budget is unlikely to be expended this financial year. For example \$15,000 could be transferred from the Ballina Sports / Leisure Centre budget to remedy this issue as that adjustment is not likely to impact on the overall outcomes for the sports centre. The sports centre budget is actually sourced from the property reserves so ultimately it would be the property reserves funding this adjustment.

Commercial Services

The capital works for the airport are complete.

The Fawcett Street café works are largely complete with the tenant having taken possession of the building in early April.

Water and Wastewater

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

Both projects are close to being finalised.

Budget changes for water and wastewater as a result of this report are:

Water

- Telemetry Program - \$70,000 to undertake urgent improvements to this system

Wastewater

- Re-use Skennars Head Fields – \$50,000 - This project was originally deferred to 2014/15 but it is now proceeding this financial year.
- Telemetry Program - \$35,000 – Similar to water, the budget is being increased to fund urgent works.

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. Consultation has been undertaken with staff managing the various projects.

10.16 Capital Expenditure Review - 31 March 2014

Options

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

Capital Works Summary – 31 March 2014 (\$'000)

Section	Budget (%)	Expended (%)	Percentage
Open Spaces	877,100	549,000	63
Waste	529,000	203,000	38
Engineering Works	21,072,100	11,235,000	53
Operations Support	4,873,200	2,382,600	49
Commercial Services	7,105,300	5,834,000	82
Water	2,956,000	1,640,000	55
Wastewater	10,729,300	6,363,200	59
Total	48,142,000	28,206,800	59

The end of March 2014 represents 75% of the year completed with 59% of the capital works program delivered. This is a reasonable result considering very little construction works are undertaken during January.

The percentage figure may be low for waste however the value of the works is also relatively small. There are a number of minor State Government levy funded works to be completed for this program and with a new manager now recruited those works should be finished this financial year. Biochar is the other major project and the feasibility assessment continues as to whether or not this project is viable.

Operations Support has a variety of projects such as the Naval Museum, Ballina Library and Ballina Sports / Events Centre, which have been subject to constant review. As agreement has now been reached on the works for the museum and library, this should allow these projects to be completed this financial year.

In respect to budget changes, there are a limited number of adjustments listed in this report and the recommendations that follow seek Council approval for the additional budget adjustments.

RECOMMENDATIONS

1. That Council notes the contents of the 31 March 2014 Quarterly Review of the Capital Works Program.
2. That Council approves the transfer of funding for the following General Fund projects, as outlined in the "New Variations" column, as per the attachments to this report.

Item	Current Budget	Revised 2013/14	Revised 2014/15
Engineering Works			
Drainage – Allens Parade	30,000	60,000	0
Drainage – Grant Street	80,800	50,800	0
Alstonville Bypass (monies transferred back to Reserve)	220,000	0	0
Shared Path – Lennox / Pat Morton	9,000	44,000	0
Recreational Path – Pre construct	186,100	151,100	0
Shared Path – Pre construct	134,200	169,800	0
Shared Path – Headlands Drive	35,600	0	0
Footpath – Byron Street	68,100	33,100	0
Footpath – Grant Street	32,000	67,000	0
Operations Support			
Ballina Surf Club	973,000	573,000	400,000
Lenox Head Surf Club	400,000	50,000	350,000

3. That Council approves the transfer of funding for the following Water and Wastewater projects, as outlined in the "New Variations" column, as per the attachments to this report.

Item	Current Budget	Revised 2013/14	Revised 2014/15
Water			
Telemetry Installation	0	70,000	0
Wastewater			
Re-use – Skennars Fields Shed	0	50,000	0
Telemetry Program	125,000	160,000	0

Attachment(s)

1. Capital Expenditure - General Fund - Open Spaces and Waste (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 Operations (one page - A3 attachment)
6. Capital Expenditure - Wastewater Operations (two pages - A3 attachment)
7. Submission - Gallery Funding

11.1 Procurement - Bus Shelter - Swift Street Interchange Upgrade

11. Civil Services Group Reports

11.1 Procurement - Bus Shelter - Swift Street Interchange Upgrade

Delivery Program Engineering Works

Objective To seek endorsement for the supply of shelter infrastructure.

Background

Council has been requested by Transport for NSW (TfNSW) to project manage the implementation of an upgrade to the Swift Street Bus Interchange.

The project requires the supply of shelter infrastructure. To comply with the agreed timeframes with TfNSW and to have the ability to undertake the installation over a school holiday period, it has been necessary to place an order for the shelter. The purpose of this report is to seek Council's endorsement of the procurement process.

It is emphasised that this project is not a grant, Council is the project manager. Council was selected as the project manager because of our capacity to deliver the project and our understanding of the local issues relevant to the project. This means the project's objectives, design, scope and budget is ultimately determined by TfNSW. For this reason, this report does not further explore the details of the project. If any Councillor would like more information regarding what is proposed they should contact the Group Manager Civil Services.

Key Issues

- Procurement of Shelter Infrastructure
- Compliance with Local Government Act

Information

The shelter infrastructure is valued at approximately \$275,000 and therefore it is a requirement that the Council call for tenders under the NSW Local Government Act.

However, as per the introduction section, constraints in relation to the management of the project's preferred timelines did not allow for a tender period. The arrangements to deal with this issue, and still comply with statutory requirements are described in the following information.

11.1 Procurement - Bus Shelter - Swift Street Interchange Upgrade

Council has engaged a local landscape architect to assist with this project. Our architect and staff have worked in collaboration with TfNSW, including using their experience with suppliers in providing this type of infrastructure. On this basis, pricing and concept design options were sourced directly from selected suppliers.

Two preferred suppliers, Town and Park Furniture, and Hub Street Furniture have responded to this process. Both design options submitted were considered suitable for the project's purposes.

However, in the opinion of the architect, the Hub Shelter was preferred. The recommendation provided from the architect is reproduced below.

"With its simple and modern design the Hub Shelter is a better urban scale than the Town and Park Furniture and will contribute positively to the aesthetic of the street as well as performing the key role of providing shelter for the children. It also seems to be more adaptable to future uses in terms of the ability to fit out with lighting, CCTV. Based upon the comments above, I believe that the Hub Shelter will provide the best urban design and functional outcome."

Hub, with an indicative pricing of \$268,503 was approximately \$10,000 less expensive than the Town and Park design.

The design includes the provision of three 4.8m x 18m long shelters and two 4.8m x 9m long shelters. These shelters have a wing-shaped roof with box gutters. The frame is a wire sprayed galvanised finish – this is a mat, sand paper like finish which is designed to be very durable and is "not kind to marker pens". The roofing is designed to allow for the load of maintenance staff.

TfNSW have accepted this recommendation and pricing.

Tender Requirements

The Local Government Act, at Section 55 (1), requires Council to call tenders when entering a contract for an amount greater than \$150,000. However section 55(3)(i) provides exemptions in certain circumstances from the requirements of Section 55 (1). Section 55 (3)(i), is reproduced below.

*This section (meaning S55 (1)) does not apply to the following contracts:
(i) a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.*

The extenuating circumstances for this project are that TfNSW, as the client and funding organisation, have agreed to the price, product choice and procurement method. It is also noted that there are significant benefits to the local community, and to the schools in particular, if the installation is undertaken in school holidays. Having regard to the limited manufacture and supply lead times for this infrastructure, it was necessary to place an order for the purchase so that the installation can proceed on the programmed days.

Sustainability Considerations

- **Environment**
The project will improve the environment of this area.
- **Social**
By improving the safety and amenity of the interchange, social benefits accrue from the project.
- **Economic**
Efficient transport systems support economic development.

Legal / Resource / Financial Implications

There are no financial or resource implications associated with the recommendation to this report. The report seeks to ensure the Council meets its statutory requirements for procurement. Council will be reimbursed for its project management expenses.

Consultation

On behalf of TfNSW, the development of the project has been undertaken in consultation with the local schools.

Options

The recommendation to this report is for Council to endorse the procurement actions taken for this work for the reasons outlined above.

RECOMMENDATIONS

1. That Council, for the purposes of the requirements under section 55 of the Local Government Act, endorse the purchases of bus shelter infrastructure from Hub Street Furniture for the price of \$268,502 exclusive of GST.
2. That Council record the reasons that an unsatisfactory result would not have been achieved by seeking tenders for this work include;
 - limited available market of suppliers.
 - time requirements to enable installation in accordance with project management agreement.
 - time requirements to enable installation to be undertaken in school holidays which provides safety benefits, costs savings and minimises disruptions.
 - the full cost of the purchase is to be met by Transport for NSW who have advised of their agreement.
 - competitive market pricing was still able to be obtained.

Attachment(s)

Nil

11.2 Water Service - 2 Ascot Place, Ballina

11.2 Water Service - 2 Ascot Place, Ballina

Delivery Program Water and Wastewater

Objective To further review a request for a water service at the subject property

Background

At March 2014 Ordinary meeting, Council considered a report in relation to a request to provide a new fire service main to 2 Ascot Place, located in the Canal Industrial Estate, Ballina. The owner of the property had requested that Council meet the costs associated with installation of this service.

The report advised that currently a water service is provided from a drainage reserve at the rear of the property. This service is suitable for service fire hose reels, but is not suitable to service a fire hydrant. The owner has requested an extension of the water main to enable sufficient capacity for a fire service to be provided.

The contention from the owner's representatives is that the fire service should have been provided at the time of subdivision and, on the basis that Council was the consent authority and developer, Council is responsible for the costs of the service.

The request for Council to meet these costs has previously been declined by Council staff. The owner's representatives have sought a review of this position, and in response to this request, the matter was referred to Council for determination. A copy of the previous report is attached.

The Council resolution from the last meeting in relation to this matter was to hold a Councillor briefing. Having regard to the current congested nature of the Councillor Calendar, public holidays and so forth, rather than a briefing, the following report has been prepared to assist to resolve this matter expeditiously. It is of course an option for the Council to defer to the previous decision and conduct the briefing prior to making a decision.

The following report provides new information in respect of an offer from the property owner. Also reported is advice from Council's insurer.

Key Issues

- Determine whether Council has a liability to meet the owner's request.
- Consider an offer from the owner to contribute to the works.

Information

Further details of the background to this matter, including the relevant planning and other provisions, are set out in the previous report to Council which is attached to this report. The previous report also provided an analysis of the issues and the options available to Council.

11.2 Water Service - 2 Ascot Place, Ballina

In addition to the information in the previous report, Council is advised of the following.

Advice from Council's Insurer

The report to the last Council meeting was referred to the Council's insurer for legal advice. The response is reproduced below.

Thank you for your instructions received earlier this morning.

I have read the report to Council re Water Service – 2 Ascot Place, Ballina.

I will not repeat the information contained in the proposed Report to Council on the above issue.

I note that the advisers to the owners of the relevant property, Ardill Payne & Partners (Ardill Payne) have included, as a major reason why the Council ought to spend in the order of \$35,000.00 to provide drinking water mains to the property and a fire hydrant within 60-70metres, is the potential for Council to be liable should a fire occur at the property (and impliedly be unable to be extinguished, or extinguished sooner than it might otherwise have been should a fire hydrant have been in place at the 60-70metre interval).

The liability issue is succinctly and properly detailed in the letter of Andrew Swan to Ardill Payne dated 8 October, 2013 – “The role of Council as either the developer or the approval authority of the original development is not considered to be relevant to this issue and you have not provided evidence that there was an unacceptable breach of the relevant standards at the time of construction.”

Without any evidence that at the time of the original development Council ought to have either provided (as developer) or required (as the approval authority) the provision of the fire hydrant at the location now proposed, we see the risk of Council being found to be in any way liable, should a fire develop, as minimal at best.

As the owners are now clearly on notice of a potential issue with extinguishing a fire, if Council decides not to proceed with installing the fire hydrant as requested by Ardill Payne, they should be taking steps to ensure that risk is minimised and this should probably be referenced in any further correspondence which the Council provides to Ardill Payne further to its decision on the report.

Owner's Contribution Offer

After the last Council meeting the following email has been received from the owner's representatives.

11.2 Water Service - 2 Ascot Place, Ballina

Further to our phone conversation yesterday, I can confirm on behalf of my client that they would accept a 50:50 cost share arrangement with Council for the construction of a water main in Ascot Place. The water main shall be extended a suitable distance into the frontage of lot 71 such that future connection to the main for extension of fire services into Lot 71 is easily achievable. The water main shall also include a fire hydrant in the vicinity of Lot 71. This cost share arrangement will be accepted on the condition that the agreed price will be based on competitive tenders submitted by suitable experienced contractors.

Staff are not aware of any further additional information that can be readily researched to supplement the earlier report and the determination of this matter.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Council has governance responsibilities to ensure fairness to those with business dealings with Council and on behalf of the broader community generally.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Based on the advice of Council's insurer, Council does not have any legal liability to provide the requested service.

If the Council accepted the 50% offer, Council's costs are expected to be in the order of \$18,000. These costs would be met from the water operations budgets.

Consultation

Consultation has been undertaken with the owner's representatives.

Options

The options available to Council include.

1. Conduct a briefing in accordance with the previous resolution.
2. Meet the full costs of installing the fire service
3. Meet 50% of the costs to install the fire service
4. Decline to accept any liability for the costs to install the fire service.

Option One is provided in case the Council still prefers a general discussion around the issues in this matter.

11.2 Water Service - 2 Ascot Place, Ballina

Option Two is not recommended as there is now an offer of contribution from the owner.

Option Four, to decline the liability remains a reasonable position for Council. This option was recommended by staff previously because there was no conclusive evidence that the provision of the service was Council's responsibility and that all property owner's purchase property with a mix of opportunity and risk in regards to the historical and future regulation and management of the land. The advice from Council's insurer confirms that there are no liability issues for Council if it chose to decline the request.

It is acknowledged however that it is also a reasonable position to share the costs where this is considered to be the Council acting in the fairest capacity. The assessment of fairness in the circumstances is considered a matter of individual opinion for each Councillor to resolve.

Having regard to the mixture of opinions expressed by Councillors in the previous debate, the shared contribution approach would appear, on balance, to provide the option that is the compromise acceptable to the majority of Councillors and the landowner. Therefore Option Three is the recommended option. There are adequate funds available in the water budget for this expenditure.

RECOMMENDATIONS

1. That Council agrees to the request to fund 50% of the costs to provide a fire service to 2 Ascot Place for the reasons outlined within this report.
2. That Council's contribution is capped at a maximum of \$18,000.

Attachment(s)

1. Copy of Report from March 2014

11.3 Local Traffic Committee Report - April 2014

11.3 Local Traffic Committee Report - April 2014

Delivery Program Asset Management

Objective Consideration of items referred to the Local Traffic Committee meeting held in April 2014

Background

The Local Traffic Committee (LTC) met on 9 April 2014. A copy of the agenda was distributed to all Councillors. This report provides the recommendations of the Committee to Council.

Key Issues

- Consideration of recommendations from the LTC

Information

The agenda contained 19 business items of which three items require referral to Council for determination. A copy of the minutes of the meeting will be forwarded to Councillors once finalised.

Items Referred to Council

The following items are referred to Council for determination. Further background details are available in the LTC agenda previously distributed to Councillors.

a) **ANZAC Day 2014 Road Closure - Alstonville**

The Committee reviewed a request seeking approval for closure of Main Street (Bugden Avenue to Elizabeth Brown Park) Alstonville on Friday 25 April 2014 for the duration of the Anzac Day Parade. The recommendation is for Council to approve the application subject to the event being conducted in accordance with the submitted Traffic Management Plan.

b) **ANZAC Day 2014 Road Closure - Ballina**

The Committee reviewed a request seeking approval for closure of River Street (Martin to Grant Streets) Ballina on Friday 25 April 2014 for the duration of the Anzac Day Parade. The recommendation is for Council to approve the application subject to the event being conducted in accordance with the submitted Traffic Management Plan.

c) **Speed Zone Review – Urban Streets**

Following some concerns expressed to Council regarding the speed limit in Bentinck Street, a report was prepared for the Committee's consideration.

11.3 Local Traffic Committee Report - April 2014

The report noted that Bentinck Street is a significant collector/distributor road in the Ballina Urban Area providing an east west connection between Kerr Street (old highway) and the Coast Road. Due to this function it has a 60 km/h speed limit, whilst adjoining local streets have a 50 km/h limit.

The report also noted that in Bentinck Street there is the presence of schools, the hospital and aged care facilities. Furthermore, the number of intersections provides points of conflict for traffic, and the accident records show a large number of accidents in Bentinck Street, mostly associated with intersections.

The Committee was therefore invited to review whether or not it is recommended for Council to make a referral request to the RMS to undertake an assessment of the speed zone.

In addition to reducing the risks and consequences of accidents in the street, a further advantage of the lowering the speed zone is the removal of the significant amount of signage at each intersection where it is currently necessary to advise motorists of the changes in speed zones.

The disadvantage of this proposal is that keeping the 60 km/h speed limit in Bentinck Street reinforces its connecting road function and provides traffic with an enhanced through road amenity.

The Committee formed the view that a formal assessment to review the overall balance would be beneficial.

The Committee also noted that there were several other streets in the Ballina area with similar circumstances and therefore it is preferred to undertake a wider review. Examples of the other streets include Kingsford Smith Drive and North Creek Road.

At the time the 50km/hr urban speed limit was introduced in NSW, there were some community concerns in respect of the change. In part this resulted in the thinking at the time that the collector roads should be under a higher speed zone.

For some locations this will remain the preference, however it is also the case that community attitudes have changed once familiarity with the 50 km/hr zones was achieved meaning some of the old zones may not reflect contemporary needs.

For these reasons, the Committee has recommended to Council that all of the 60 km/hr speed zones in the Ballina and Lennox urban areas be reviewed, with the exception of the old Pacific Highway (Tamarind Drive, Kerr Street and River Street) and Southern Cross Drive.

This is due to the fact that they are higher order collector roads (i.e. high volumes) and Southern Cross Drive particularly has generally speaking only one side developed.

It is highly unlikely these two roads would be approved for the lower speed limit.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Improved traffic management systems support better road safety and local amenity outcomes.
- **Economic**
Optimised traffic management systems support the movement of people and goods which can assist in efficient production, tourism attraction and economic development generally.

Legal / Resource / Financial Implications

Council has statutory requirements in terms of the management of its delegations from the RMS, including the management of the LTC. There is no resource or financial implications directly associated with the recommendations to this report.

Consultation

Public participation in LTC processes is determined by the RMS Guidelines for the Management of Local Traffic Committees. Council has determined to use its meeting code arrangements for public access wherever it is consistent with the guidelines.

Options

The Council can either accept or reject the recommendations. Council's acceptance or rejection of the recommendations is reported to the next meeting of the LTC.

In rejecting a recommendation it is the preferred practice to advise the LTC of the Council's reason for the rejection and invite the Committee to reconsider the matter having regard to the comments of Council. Following that process, if that matter remains unresolved, Council can elect to refer the matter to the Regional Traffic Committee.

RECOMMENDATIONS

1. That approval be granted to close Main Street (Bugden Avenue to Elizabeth Brown Park) Alstonville on Friday 25 April 2014, in accordance with the submitted Traffic Management Plan for the duration of the annual ANZAC Day parade.
2. That approval be granted to close River Street (Martin to Grant Streets) Ballina on Friday 25 April 2014, in accordance with the submitted Traffic Management Plan for the duration of the annual ANZAC Day parade.
3. That Council request the RMS to undertake speed zone assessments for the existing 60 km/hr speed zones in the Ballina and Lennox Head urban areas (with the exception of the old Pacific Highway and Southern Cross Drive).

Attachment(s)

1. Traffic Control Plan - 2014 ANZAC Day Parade Ballina
2. Traffic Control Plan - 2014 ANZAC Day Parade Alstonville

11.4 Wastewater Treatment Plants Upgrade - Update

11.4 Wastewater Treatment Plants Upgrade - Update

Delivery Program Water and Wastewater

Objective To provide and update on the upgrade of the Balina and Lennox Head Wastewater Treatment Plants

Background

Work is continuing on the upgrade of the Ballina and Lennox Head Waste Water Treatment Plants as part of Council's Urban Water Management Strategy.

At the February 2011 meeting Council resolved to accept the tender of Haslin Constructions Pty Ltd for RFT/Contract Number 0902774 being for the Design and construction of an MBR Waste Water Treatment Plant (WWTP) at Ballina, and a Recycled Water Plant at Lennox Head WWTP for an amount of \$45,437,315 including GST.

Given the size of this contract, quarterly progress reports have been provided to ensure Council is able to monitor the project. The following report is information in relation to the most recent reporting period.

The report also provides information on other key project items such as regulatory approvals and additional works to meet the goals of the Urban Water Management Strategy.

Key Issues

- To inform Council of the progress of the works within the Contract.
- To inform Council of other key project items

Information

Work Completed on the Contract for Reporting Period

The work completed during the reporting period for the West Ballina site includes the following:

- The new MBR wastewater treatment plant is in service, with all incoming sewage being treated in the new plant;
- The chemical storage areas and dosing systems are completed and are in service;
- The UV plant is complete, and is in service for the production of recycled water;
- The old plant has been decommissioned and demolished;
- The internal access roads have been completed;
- The sludge handling and storage buildings are complete, and the sludge handling facilities are fully in service;
- The ebb-tide and recycled reservoirs construction are complete, and are fully in service;

11.4 Wastewater Treatment Plants Upgrade - Update

- The plant is now producing recycled water for use on the site and the racecourse;

For the Lennox Head site, the following site works occurred during the reporting period:

- The new ocean discharge UV is in service;
- The recycled water plant is currently being commissioned, and is able to produce recycled water for use on site;
- The operation of the plant is being fine-tuned by the Contractor in conjunction with Council, and the operation of the plant has not been handed over to Council.
- The RW concrete reservoir is fully completed;
- The foul water pump station is complete;
- The chemical storage area and dosing systems to the existing aeration tanks are now in service;
- The emergency generators have been commissioned and test run during a planned power outage to the site.

Cost of Work Completed under the Contract

\$46,329,430 inclusive of GST.

Approved Variations

	Details	Cost (incl. of GST)
1	Modifications to inlet works to divert all flows through the manual bar screen to the storm detention pond.	\$17,532.90
2	Supply and Install an Isolating Valve to the existing bund in the Chemical Delivery area.	\$677.60
3	Supply Biofilter in lieu of Deodorising Bed	- \$51,615.00
4	Deletion of additional Amenities Building at the Lennox Head RWP location	- \$24,603.48
5	Concept Design for revised Effluent Streams due to requirement of NOW	\$33,250.80
6	Currency Fluctuation (as per Contract Conditions)	- \$39,311.00
7	Re-inclusion of Telemetry requirements for the sites	\$51,515.75
8	Back-up Level sensor for the Inlet Works	\$9,168.17
9	Disabled Access due to change in BCA	\$173,212.60
10	10. Install Electrical conduits and Cable pit for PS controls At Lennox	\$8,765.86
11	DA Certificate requirements	\$16,976.30
12	LP Sewer Connection to WWTP	\$10,502.80
13	Effluent Streams Modifications	\$2,275,488.02
14	Supply temporary Ferric tank and Convert existing Ferric tank to Alum	\$50,045.90
15	Additional Ballina Is main diversion and valving	\$21,225.82
16	Future RO return main and electrical conduits	\$28,941.14
17	Relocation of grease waste facility sampler and associated equipment	\$38,081.12
18	Supply and install PRV in existing RW system	\$26,199.71
19	Administration building security upgrade	\$16,988.40
20	Delay costs associated with the Effluent streams Modification variation	\$319,200.00
21	Access ladders for Pump Stations/Tanks	\$30,286.30
22	Automatic Greasing system for Belt Press	\$17,659.95
23	Salinity Reduction Options Report	\$21,973.60
24	Additional Salinity Option	\$1,584.00
	Total	\$3,053,747.26

11.4 Wastewater Treatment Plants Upgrade - Update

The majority of the cost of the variations is the work associated with the effluent stream modifications. This element has previously been reported to Council and related to a regulatory requirement issued to the Council following the award of the contract that changed the scope. The possibility of this change of scope was understood at the tender award time, however it was determined that it was more efficient to deal with the issue as a variation to enable the project to proceed in a timely manner.

Overall, the extent of variations for a project of this size and complexity is pleasing.

Progress to Schedule

The new Ballina plant has been constructed in two stages. Firstly the new WWTP component was constructed and placed in service – then the old plant was decommissioned and demolished so that the remainder of the works can be completed. The second component includes the sludge handling facilities, along with the recycled water reservoir and pump station, the ebb-tide discharge reservoir, remaining road and site civil and electrical works.

The current Contract completion date is 28 March 2014. Progress is behind schedule due to the need to resolve and the rectification of defects. Overall however, the expectations of the project management team are for a highly satisfactory outcome.

Other Issues

1. MBR Blower Failure

Two of the plants MBR blowers failed and have been returned to the manufacturer. The plant is currently running on the standby blower, with back up from the process air blowers. This has reduced the redundancy of the plant such that if the third MBR blower fails, the plant will only be able to run on limited capacity. Council and its contractors have put a number of contingencies in place to reduce this immediate risk. These include the following actions at the Contractor's cost:

- procuring a standby blower which has been installed on the site and available to operate automatically should the third blower fail
- having other hire blowers on standby for transportation to the site for manual operation
- making ready preparations to divert sewer to the Lennox Head treatment plant
- ensuring capacity in the overflow storage lagoon so that any environmental discharge could be delayed and provide time for additional safeguards to be put in place.

The blower failures are unsatisfactory and Council is working together with its contractors to ensure a long-term solution that will rectify the situation as soon as possible. Council is still in receipt of significant retention monies, which will only be returned once there is an acceptable solution under the contract.

Current actions to resolve this include the Contractor and its supplier:

11.4 Wastewater Treatment Plants Upgrade - Update

- arranging to have the failed blowers tested
- arranging to have the blowers rectified or replaced
- investigating replacement of all blowers with another type

The plant is currently operating in a satisfactory manner with the existing loads, and it is expected that with the above contingencies that there would be no unsatisfactory environmental discharge. The EPA has been informed and is aware that Council is addressing the issues, however some residual risk will remain until the blowers are permanently replaced.

2. Section 60 Approval from NOW

Council must receive approval from NSW Office of Water (NOW) to operate the recycled water scheme through its Section 60 requirements. To achieve approval, the treatment process requires validation that it will produce recycled water to the required quality and then verified by a testing regime prior to approval.

An independent auditor has been appointed, and the first stage of verification testing was conducted in November and December 2013. The results indicate that the recycled water produced meets all of the stringent requirements, however recycled water cannot be made available to urban dual reticulation until all testing, reporting, audits and approvals have been completed. The documents and systems are being compiled, and a meeting with NOW has been planned for May 2014 in preparation for Council's Section 60 application. It is expected that the consultation and approvals process will require several iterations and will last a number of months. Timing will be particularly sensitive to available resourcing within Council and NOW.

3. High Salinity in Recycled Water

The sewer network in the low lying areas of Ballina is subject to infiltration of salt water. Council has been completing a lining program of much of the network as part of its Asset Management Strategy to ensure longevity of the system. As previously reported the program had three objectives.

Firstly, the relining is a form of asset renewal addressing age and conditions issues. Secondly, was to reduce operating costs by reducing the amount of water pumped and treated from the reduction in infiltration. The third objective was to reduce the amount of salinity infiltration, and hence reduce the salinity of the recycled water produced.

Unfortunately the salinity has not reduced at the Ballina WWTP to the levels required for the supply of recycled water as adopted by Council under the Urban Water Management Strategy. In particular, salinity levels could limit the value and acceptance of recycled water for irrigation purposes having regard to the potential impact on some lawns and plants.

The cost of a small reverse osmosis (RO) plant was included in original project scope and budget estimates from October 2009, but was hoped to be avoided if infiltration control works proved successful. These have been unable to reduce salinity and the cost of an RO plant must now be realised.

As reported in the 28 November 2013 report, Council completed an Options Report (through the WWTP designer – Hydrosience Consulting) on the salinity, to determine a strategy to manage or reduce it.

11.4 Wastewater Treatment Plants Upgrade - Update

Options included managing the community to identify and plant salt resistant plants and grass, blending the recycled water with drinking water, link and blend the Lennox Head and Ballina recycled water schemes, and installing a reverse osmosis (or other salt removal equipment) plant to remove the salt to the required level.

A detailed review of the report has been completed by Council, and has determined that a RO plant as per the original concept design and resolution of Council's meeting of 22 October 2009 is the most suitable solution to reduce the salinity to the desired level.

This size plant is likely to be a "package" type plant, and would be attached to the end of the recycled water process. Council has engaged NSW Public Works to complete a technical specification to allow Council to procure the RO plant from a suitable contractor through a design and construct contract.

A scoping workshop shall be held with NSW Public Works to determine the technical operating parameters required to be specified, prior to completion of the technical documentation. Following that, it is expected Council would be in a position to begin the procurement process before the end of the calendar year.

As discussed further below, a report to the recent Finance Committee process to develop the draft Operational and Delivery Plan has included the necessary adjustment to the budget to provide for these works. If the Council requires further information in regards to the reporting undertaken to review the options to address this issue then it is suggested a Councillor briefing would be the most appropriate way to provide this advice.

Sustainability Considerations

- **Environment**
Timely construction of the contract works will ensure the WWTP's in Ballina and Lennox Head have adequate capacity and the environment is protected from the risk of overflows. The upgrade of the facilities, including the RO plant, will maximise reuse of effluent which in turn assists in improving discharge qualities and the water quality in the estuaries.
- **Social**
The upgrade of the WWTP's will accommodate growth and provide an alternative source of high grade recycled water which will limit the need to upgrade alternative means of water supply.
- **Economic**
The construction of the WWTPs will allow capacity in the network to further develop the Ballina and Lennox Head areas in a timely manner.

11.4 Wastewater Treatment Plants Upgrade - Update

Legal / Resource / Financial Implications

For the Haslin Constructions contract, there have been 24 approved variations to date for a sum of \$3,053,747.26. As detailed above there was a significant variation required for the changes to the effluent streams. It is anticipated that further variations will be within the contingency for this contract and no variation would currently be required to the contract budget.

The installation of an RO plant will have an effect on the overall project budget. A detail budget will be compiled following the operating parameter workshop when the scope and size of the plant is better known, however early indications are that the capital cost of the plant will be between \$1.5 and \$2.5 million dollars. An amount of \$2 million dollars has been included in the 2014/15 budget estimate.

Consultation

This report is provided for the public record.

Options

This report is for information only.

RECOMMENDATION

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

Attachment(s)

Nil

11.5 Policy (Review) - Private Structures on Public Land and Roads

11.5 Policy (Review) - Private Structures on Public Land and Roads

Delivery Program Governance and Finance

Objective To review the Private Structures (Existing) on Public Land Policy

Background

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Private Structures (Existing) on Public Land policy. Council first adopted this policy in 28 May 2009.

Key Issues

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

Information

The management of structures and other encroachments on Council land has been an issue before the Council on several occasions recently. It is the opinion of staff that a more comprehensive policy approach is preferred. This would include the development of a strategic approach to the management of the large number of existing encroachments and the development of a framework to assess either the disposal of public land or the lease or licence of land when that is in the public interest.

Following the recent review of the organisation structure, the task to develop such a framework is a project for the Strategic and Community Services Group. This Group is currently assessing the resource requirements and approach options to respond to this need and it is possible, having regard to the complexity of the issue and other program priorities that it may take up to twelve months to complete this project.

The periodic review of the existing policy is due now, and with the above comprehensive review planned, the approach has been to make amendments that will assist in the interim as relatively minor updates to the policy.

However, as per the attached document, this review reinforcing the position that Council holds concerns in relation to the unauthorized use of public land for private purposes and where identified those structures should be removed.

In addition to this change the policy review identified other changes as follows:

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- The policy name has been amended with the removal of the word 'existing' and the addition of the words 'and Roads'.
- The inclusion of roads in the policy.

11.5 Policy (Review) - Private Structures on Public Land and Roads

A copy of the amended policy is attached to the report with the changes marked for the reference of Councillors.

This process is not to be confused with the matter before Council in relation to the pontoon structures in the quays estates. The policy represents a general position and the quay estates matter is one that is subject to its own separate reporting and determination process.

Sustainability Considerations

- **Environment**
The appropriate use of public land is essential to reduce impacts to native vegetation and the environment generally.
- **Social**
Community land must be managed in accordance with the appropriate legislation to ensure equality of access and use of public land.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

There are no legal, resource or financial implications relating to the changes in this policy.

Consultation

It is recommended that Council place a draft of the policy update on public exhibition.

Options

1. Council can elect to retain the existing policy and defer changes until the proposed comprehensive review is complete.
2. Council can accept or amend the proposed changes to the policy.

It is recommended that Council take this opportunity to modernise the existing policy with some changes and note that this decision is in effect an interim one while the more comprehensive review is completed.

RECOMMENDATIONS

1. That Council adopts the amended Private Structures on Public Land and Roads Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required

Attachment(s)

1. Policy (Review) - Private Structures on Public Land and Roads

12. Public Question Time

12. Public Question Time

13.1 Notice of Motion - Pacific Highway Upgrade Woodburn to Wardell

13. Notices of Motion

13.1 Notice of Motion - Pacific Highway Upgrade Woodburn to Wardell

Councillor Cr Johnson

I move

1. Council write to Mr Don Page, Mr Barry O'Farrell, Mr Duncan Gay, Mr Brad Hazzard, Mr Greg Hunt and Mr Bob Higgins calling for a reconsideration of the proposed highway upgrade route between Broadwater and Wardell (Section 10).
2. It is Council's informed opinion that if the RMS' preferred route goes ahead as planned it will significantly impact on a number of threatened species and likely lead to the demise of a nationally significant Koala population.
3. There are a number of highway route options that don't impact on the Blackwall Range or this important wildlife corridor and these should be investigated further.
4. That the government considers protecting the area as a Koala Sanctuary and where possible plant additional Koala food trees.

COUNCILLOR RECOMMENDATIONS

1. Council write to Mr Don Page, Mr Barry O'Farrell, Mr Duncan Gay, Mr Brad Hazzard, Mr Greg Hunt and Mr Bob Higgins calling for a reconsideration of the proposed highway upgrade route between Broadwater and Wardell (Section 10).
2. It is Council's informed opinion that if the RMS' preferred route goes ahead as planned it will significantly impact on a number of threatened species and likely lead to the demise of a nationally significant Koala population.
3. There are a number of highway route options that don't impact on the Blackwall Range or this important wildlife corridor and these should be investigated further.
4. That the government considers protecting the area as a Koala Sanctuary and where possible plant additional Koala food trees.

13.2 Notice of Motion - Shared Pathway

13.2 Notice of Motion - Shared Pathway

Councillor

Cr Ken Johnston

I move

1. That in respect to the construction of the Coastal Shared Path from the Angels Beach underpass to Sharpes Beach (eastern side of The Coast Road), that the General Manager ensure that the segment approximately 140 metres of path planned adjacent to The Coast Road from the Angels Beach underpass north, be constructed towards the end of the construction program to allow point two, as follows, to be fully investigated.
2. That the General Manager submit the appropriate planning applications required to obtain development consent for the construction of the 140 metres of shared path, mentioned in point one, at a location either on or adjacent to the unformed path currently in that location, or alternatively at least a greater distance from The Coast Road than is currently planned, to improve the overall safety and experience of the ride for this segment of path.

COUNCILLOR RECOMMENDATIONS

1. That in respect to the construction of the Coastal Shared Path from the Angels Beach underpass to Sharpes Beach (eastern side of The Coast Road), that the General Manager ensure that the segment approximately 140 metres of path planned adjacent to The Coast Road from the Angels Beach underpass north, be constructed towards the end of the construction program to allow point two, as follows, to be fully investigated.
2. That the General Manager submit the appropriate planning applications required to obtain development consent for the construction of the 140 metres of shared path, mentioned in point one, at a location either on or adjacent to the unformed path currently in that location, or alternatively at least a greater distance from The Coast Road than is currently planned, to improve the overall safety and experience of the ride for this segment of path.

Attachment(s)

Nil

13.3 Notice of Motion - Sailing Club Boat Ramp

13.3 Notice of Motion - Sailing Club Boat Ramp

Councillor

Cr Cadwallader

I move

That Council clean up the Sailing Club Boat Ramp area so that it becomes a more attractive launch site for personal water craft.

Councillor Comment

Currently the launching of personal water craft from the Cawarra Street boat ramp is causing noise problems for the residents along North Creek. The advice I have received is that improving the Sailing Club Boat Ramp will increase the usage of that ramp by personal water craft. This work should be able to be undertaken at minimal expense to Council.

COUNCILLOR RECOMMENDATION

That Council clean up the Sailing Club Boat Ramp area so that it becomes a more attractive launch site for personal water craft.

Attachment(s)

Nil

14.1 Finance Committee Minutes - 8 April 2014

14. Advisory Committee Minutes

14.1 Finance Committee Minutes - 8 April 2014

Attendance

Cr David Wright (Mayor - in the chair), Jeff Johnson (arrived at 4.02 pm), Sharon Cadwallader, Keith Williams, Keith Johnson, Susan Meehan (arrived at 4.03 pm), Ken Johnston, Paul Worth, Ben Smith and Robyn Hordern.

Paul Hickey (General Manager), John Truman (Civil Services Group Manager), Vince Hunt (Acting Development and Environmental Health Group Manager), Steve Barnier (Strategic and Community Facilities Group Manager), Peter Morgan (Manager Finance and Governance), Neil Weatherson (Airport Business Manager), Paul Tsikleas (Commercial Services Manager) and Sandra Bailey (Secretary) were in attendance.

There were two people in the gallery at this time.

1. Apologies

Nil

2. Declarations of Interest

Nil

3. Deputations

- **Ian Duncan** – spoke in relation to Item 4.7 – Draft 2014/15 General Fund Budget – Other Considerations and in particular to Newrybar Parking and Traffic.

Cr Jeff Johnson arrived at the meeting at 04:02 pm.

Cr Susan Meehan arrived at the meeting at 04:03 pm.

4. Committee Reports

4.1 Ballina Byron Gateway Airport - Long Term Financial Plan

RECOMMENDATION

(Cr Keith Johnson/Cr Robyn Hordern)

1. That Council approves the inclusion of the draft Long Term Financial Plan for the Ballina – Byron Gateway Airport, as attached to this report, in the Draft Delivery Program and Operational Plan for 2014/15.
2. That Council authorises the General Manager to proceed with the construction of the car park extension as outlined in this report, with this expenditure to be financed from a loan / overdraft facility that allows the debt to repaid within a relatively short time frame.

FOR VOTE - Cr David Wright, Cr Jeff Johnson, Cr Sharon Cadwallader, Cr Keith Williams, Cr Keith Johnson, Cr Susan Meehan, Cr Paul Worth, Cr Robyn Hordern and Cr Ben Smith

AGAINST VOTE - Cr Ken Johnston

Adjournment

The Mayor declared the meeting adjourned at 5.01 pm

The meeting resumed at 5.18 pm

4.3 Fees and Charges - 2014/15

RECOMMENDATION

(Cr Ben Smith/Cr Robyn Hordern)

1. That Council approves the exhibition of the draft schedule of fees and charges for 2014/15, as attached, including the following amendment.

Swimming Pool Fees

Adult ten entry ticket – 2014/15 fee - \$34

Seniors ten entry ticket – 2014/15 fee - \$28

2. That Council receive a further report on the proposed pricing for the Water and Wastewater Connection Fees.
3. That clarification be sought on the Wollongbar Urban Expansion area sewerage charges.

Cr Jeff Johnson left the meeting at 05:30 pm.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson

4.7 Draft 2014/15 General Fund Budget - Other Considerations

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Susan Meehan)

1. That Council notes the contents of this report in respect to other considerations for the General Fund budget.
2. That Council allocate \$30,000 in the 2014/15 budget to assist the Newrybar community to build a carpark, with funds to be allocated from the roads budget.
3. That Council receive a report on options for the introduction of an annual charge for drainage works in respect to Richmond River County Council for 2015/16 onwards.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson

Cr Jeff Johnson returned to the meeting at 05:47 pm.

4.2 Regional Express Airlines - Fees and Charges Review

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Paul Worth)

That Council notes the contents of this report on the Regional Express Airlines fees and charges review.

FOR VOTE - All Councillors voted unanimously.

5. Confidential Session

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Ben Smith)

That Council moves into committee of the whole with the meeting closed to the public, to consider the following item in accordance with Section 10A (2) of the Local Government Act 1993.

5.1 Regional Express Airlines - Fees and Charges Review - Details

Reason for Confidentiality

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

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; and
- d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as the release of confidential information could result in the Council, acting on behalf of the community, not achieving the optimum financial outcome for the community..

FOR VOTE - All Councillors voted unanimously.

(The Council moved into Confidential Session at 5.47 pm).

Open Council

RECOMMENDATION

(Cr Keith Johnson/Cr Ken Johnston)

That Council move into Open Council and out of Committee of the Whole.

FOR VOTE - All Councillors voted unanimously.

(The Council moved into Open Council at 5.53 pm).

The General Manager reported to the Open Meeting the recommendation made while in Confidential Session:

5.1 Regional Express Airlines - Fees and Charges Review - Details

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That Council adopts and authorises the passenger charges and landing fees based upon the terms and conditions as outlined in this report for Regional Express to apply from 1 July 2014.
2. That Council authorises the Council seal to be attached to any agreements relating to these fees.

FOR VOTE - All Councillors voted unanimously.

Adoption of Recommendation from Confidential Session

RECOMMENDATION

(Cr Ben Smith/Cr Keith Johnson)

That the recommendation made whilst in Confidential Session, be adopted.

FOR VOTE - All Councillors voted unanimously.

4.4 **Waste Operations - Long Term Financial Plan**

RECOMMENDATION

(Cr Ben Smith/Cr Robyn Hordern)

- That Council endorses the inclusion of the DWM and LRM long term financial plans, as attached to this report, and the following waste charging structure, in the draft 2014/15 Delivery Program and Operational Plan for public exhibition, subject to further reporting:

LRM Waste Charges

Charge Type	2013/14 Charge \$	2014/15 Charge \$	% Increase
Kerbside Non Domestic Mixed Waste (Annual)	333	360	8
Kerbside Non Domestic Recycling (Annual)	165	178	8
Kerbside Non Domestic Green Waste (Annual)	292	315	8
DWM Gate Fee Mixed Waste	245/tonne	264/tonne	8
Self Haul Mixed Waste Under 300kg	200/tonne	216/tonne	8
Over 300kg	217/tonne	250/tonne	15
DWM Gate Fee Recyclates	194/tonne	210/tonne	8
Self Haul Recyclates	79/tonne	87/tonne	10
DWM Green Waste	245/tonne	264/tonne	8
Self Haul Green Waste	63/tonne	73/tonne	10
Remaining Gate Fees	Various	Various up to 10	Up to 10

Domestic Waste Charges

Charge Type	2013/14 Charge \$	2014/15 Charge \$	% Increase
DWM - Rural (excludes green)	364	377	3.5
DWM – Urban (all three collections)	408	422	3.5
Additional Extra Mixed Waste Urban- Fortnightly	152	157	3.5
Additional Mixed Waste Rural - Weekly	303	314	3.5
Additional Domestic Recycling	147	152	3.5
Additional Green Waste Collection - Urban Only	265	274	3.5
DWM – Vacant Land	37	38	3.5

- That Council write to the State Government expressing its concerns in respect to the possible re-application of the waste levy.

FOR VOTE - All Councillors voted unanimously.

4.5 Water Operations - Long Term Financial Plan

RECOMMENDATION

(Cr Robyn Hordern/Cr Keith Johnson)

That Council endorses the inclusion of the draft water long term financial plan, as attached to this report, and the following water charging structure, in the draft 2014/15 Delivery Program and Operational Plan.

Charge Type	2013/14 \$	2014/15 \$	% Increase
Water Access Charge - 20mm meter	178	194	9
Water Consumption under 350kl	1.91	2.08	9
Water Consumption over 350kl	2.87	3.12	9
Vacant Land Charge	178	194	9

FOR VOTE - All Councillors voted unanimously.

4.6 Wastewater Operations - Long Term Financial Plan

RECOMMENDATION

(Cr Keith Johnson/Cr Susan Meehan)

1. That Council endorses the inclusion of the draft wastewater long term financial plan, as attached to this report, and the following wastewater charging structure, in the draft 2014/15 Delivery Program and Operational Plan.

Charge Type	2013/14 \$	2014/15 \$	% Increase
Residential Annual Charge	734	807	10
Vacant Land	553	608	10
Annual Non Residential Access	553	608	10
Annual Non residential Usage Charge	1.86	2.05	10

2. That Council hold a Councillor briefing to review the Wastewater Long Term Financial Plan and associated strategies, prior to the adoption of the 2014/15 fees and charges at the June 2014 Ordinary Council meeting.

3. That staff report on the feasibility of implementing the draft motion below:

That a Wastewater Productivity Working Party be set up, tasked with examining and analysing opportunities to increase wastewater operations revenue, reduce costs, improve financial management strategies, and generally develop the best cost effectiveness possible for Ballina's wastewater systems.

FOR VOTE - All Councillors voted unanimously.

4.8 Special Rate Variation - Options

RECOMMENDATION

(Cr Keith Williams/Cr Robyn Hordern)

1. That Council provides in principle support for a proposal to seek a special rate variation to finance the refurbishment and redevelopment of the Ballina and Alstonville swimming pools.
2. That based on Council's current information the special variation would need to be a 5.5% increase in the rate pegging limit for 2015/16 and 2016/17, assuming a base rate pegging increase of 3% (i.e. 2.5% special variations).
3. That Council include points one and two in the draft 2014/15 Delivery Program, Operational Plan and Long Term Financial Plan for exhibition purposes.
4. That Council receive a further report on how these actions are to be implemented following the completion of the exhibition period for the draft 2014/15 Delivery Program and Operational Plan.

FOR VOTE - All Councillors voted unanimously.

4.9 Delivery Program and Operational Plan - Exhibition

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Keith Williams)

1. That Council approves the exhibition of the Draft Delivery Program / Operational Plan, as attached, inclusive of any amendments arising from this meeting and subject to the finalisation of both documents.
2. That Council hold public meetings as part of the exhibition process at Lennox Head and Wardell.

FOR VOTE - All Councillors voted unanimously.

MEETING CLOSURE

6.38 pm

RECOMMENDATION

That Council confirms the minutes of the Finance Committee meeting held 8 April 2014 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

15.1 Mayoral Meetings

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

15.1 Mayoral Meetings

Councillor David Wright

Activities since the March 2014 Ordinary meeting:

<u>Date</u>	<u>Function</u>
28/3/14	Meeting – Ballina Airport car parking
30/4/14	Lennox Head Markets
1/4/14	Briefing – Lismore City Council – Material Recovery Facility
1/4/14	Alstonville/Wollongbar Chamber of Commerce
2/4/14	Autism Morning Tea - Alstonville
2/4/14	Alstonville Rotary – Bowling Club
2/4/14	Access Committee
3/4/14	Bridging the Gap March – Missingham Bridge
5/4/14	Alstonville Orchid Society - Annual Show
6/4/14	Songkran Festival – Rous Mill
7/4/14	Councillor Briefing Coast Road Shared Path
8/4/14	Citizenship Ceremony
8/4/14	Finance Committee
8/4/14	Reserve Trust Meeting
9/4/14	Richmond River County Council
9/4/14	Drop in Session – Management Plan Shaws Bay
9/4/14	Opening Exhibition – Northern Rivers Gallery
11/4/14	ANZAC Grant Committee Meeting
11/4/14	Opening Ballina Art Society Annual Exhibition – RSL
12/4/14	Afternoon Tea By The Sea – Scope Club
13/4/14	Lennox Head Markets
14/4/14	Meeting – Tamar Street Tree
15/4/14	Port Ballina Taskforce
15/4/14	Councillor Briefing Pacific Pines
15/4/14	Councillor Briefing – Reside Living
16/4/14	Aboriginal Community Committee
16/4/14	Wardell Progress Association
23/4/14	Florence Price Gardens – ANZAC Walk and Service
24/4/14	Council Meeting
25/4/14	ANZAC Dawn Service – Ballina
25/4/14	ANZAC Service - Alstonville

RECOMMENDATION

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

16. Questions Without Notice

16. Questions Without Notice

17. Confidential Session

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

17.1 Legal Matters - Cost Recovery - Fluoride Appeal

This report contains information relating to action Council is currently taking to recover costs from the Land and Environment Court case with Mr Alan Oshlack, as outlined in the earlier Legal Matters – Update report contained at Item 10.11 of this agenda.

RECOMMENDATION

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

17.1 Legal Matters - Cost Recovery - Fluoride Appeal

Reason for Confidentiality

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

- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as this could prejudice the action Council is currently taking to recover costs from the Land and Environment Court case undertaken with Mr Alan Oshlack, resulting in a lower cost recovery to the community.