



Notice of Ordinary Meeting

Notice is hereby given that an Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street, Ballina on **Thursday 23 August 2012 commencing at 9.00 am.**

Business

1. Australian National Anthem
2. Acknowledgement of Country
3. Apologies
4. Confirmation of Minutes
5. Declarations of Interest and Reportable Political Donations
6. Deputations
7. Mayoral Minutes
8. Regulatory Services Group Reports
9. Strategic & Community Services Group Reports
10. General Manager's Group Reports
11. Civil Services Group Reports
12. Public Question Time
13. Notices of Motion
14. Advisory Committee Minutes
15. Reports from Councillors on Attendance on Council's behalf
16. Questions Without Notice
17. Confidential Session

Paul Hickey
General Manager

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

Deputations to Council – Guidelines

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

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

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

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1. Australian National Anthem

The National Anthem will be performed by Southern Cross K-12 School.

2. Acknowledgement of Country

In opening the meeting the Mayor provided an Acknowledgement of Country by reading the following statement on behalf of Council:

I would like to respectfully acknowledge past and present Bundjalung peoples who are the traditional custodians of the land on which this meeting takes place.

3. Apologies

4. Confirmation of Minutes

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 26 July 2012 were distributed with the business paper.

A copy of the Minutes of the Extraordinary Meeting of Ballina Shire Council held on Wednesday 8 August 2012 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 26 July 2012.

That Council confirms the Minutes of the Extraordinary Meeting of Ballina Shire Council held on Wednesday 8 August 2012.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil Items

8.1 DA 2012/247 - Redevelopment of the River Street Woolworths Site

8. Regulatory Services Group Report

8.1 DA 2012/247 - Redevelopment of the River Street Woolworths Site

Applicant	Newton Denny Chapelle
Property	Lot 2 DP 734682 & Lot A DP 81292 No 82-96 River Street & 3 Cherry Street Ballina
Proposal	The demolition of the existing Woolworths building and adjoining dwelling and construction of a 2499m ² Woolworths Supermarket and 57 car parking spaces and landscaping.
Effect of Planning Instrument	The land is zoned 3 Business Zone under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

Council on 26 June 2012 received an application for the redevelopment of the Woolworths site at 82-96 River Street Ballina. In response to public submissions and to concerns expressed by Council staff, amended plans were submitted on 8 August 2012. This report will address the amended proposal.

Proposal

The amended development application proposes the demolition of the existing fire damaged 1468m² Woolworths building and the house on the north-eastern corner of Cherry and Fawcett Streets Ballina and the construction of a 2499m² Woolworths Supermarket in their place.

The submitted plans show a building sited to the River Street frontage of the site having a floor level set at 2.2m AHD. The proposed development includes on-site loading and unloading facilities, 57 car parking spaces, a scooter parking space at the rear of the building, and two at the front. Advertising signage, landscaping, servicing infrastructure and associated works are also provided for. Vehicular access to the site is to be gained from Cherry Street and from Fawcett Street.

The Supermarket building comprises the floor use areas detailed in the table below

Floor use	Amended floor area (m ²)
Trading area	1,653
Public walkway	91
Back of house	463
First floor access stairs & lift	34
Unisex PWD	8
First floor office	196
Airlock	54
Total	2,499

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil.

Public Exhibition

The development application comprising the original design was advertised for a period of 14 days from 12 July to 27 July 2012.

175 property owners and occupants were notified by mail, notices were published in local papers and three signs were erected on the three frontages of the site.

The three submissions have been received and these will be discussed further in this report. All submissions support the application however they each raise a number of concerns relating to the proposal.

Applicable Planning Instruments

The proposed development is subject to the requirements of:

- The Environmental Planning & Assessment Act 1979 (EP&A Act);
- Environmental Planning and Assessment Model Provisions 1980 (model provisions);
- State Environmental Planning Policy 55 Remediation of Land (SEPP55);
- State Environmental Planning Policy 71 Coastal Protection (SEPP71);
- State Environmental Planning Policy (infrastructure);
- State Environmental Planning Policy North Coast Regional Environmental Plan (REP);
- Ballina Local Environmental Plan 1987 (BLEP); and
- Ballina Shire Combined Development Control Plan (DCP);

The proposal has been assessed against the requirements of these instruments and the findings are provided in the body of the report.

Report

The following report is presented in accordance with the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979.

79C Evaluation

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) The provisions of:

(i) Any environmental planning instrument,

The application is for the development of a “Shop” on a site zoned commercial in BLEP 1987. The application has been assessed against the relevant sections of the above mentioned environmental planning instruments, and generally complies with the requirements of those environmental planning instruments.

The State Environmental Planning Policy (infrastructure) requires the application to be referred to the Roads and Maritime Service for their comments.

The Roads and Maritime Service have advised the following;

The additional floor area will generate an additional number of trips in the Thursday peak traffic period. Council should be satisfied that there is sufficient spare capacity at adjacent intersections to accommodate this traffic increase.

The proposed loading dock is adjacent to the customer car park. Heavy vehicles servicing the supermarket will be required to reverse into the loading dock immediately adjacent to customer parking. This has the potential to create pedestrian and vehicle conflicts. It is recommended heavy vehicle access to the loading dock be restricted to off peak business times. Implementation of a traffic management plan that restricts pedestrians and customer vehicles access to the heavy vehicle reversing area is also recommended during heavy vehicle deliveries.

Comment

A traffic management plan has been submitted with the application.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority

Council on 15 December 2011 adopted a Draft Local Environmental Plan (DLEP 2011) which staff understand is approaching finalisation at the Department of Planning.

The application is for the development of a “Shop” on a site zoned commercial in DBLEP 2011. The application has been assessed against the relevant sections of DBLEP 2011, and generally complies with the requirements of the draft environmental planning instrument.

(iii) Any development control plan

The application has been assessed against the provisions of Ballina Shire Combined Development Control Plan (DCP) and found to be generally compliant. It does not, however, comply with some of the current requirements of the following parts of the Plan:

Policy Statement No 2 - Carparking and Access;
Policy Statement No – 11 Flood Levels;
Policy Statement No 16 - Public Art;
Chapter 2 – Ballina Town Centre.

Chapter 1 Policy Statement No 16 – Public Art

Clause 3 provides that Commercial developments with a value of over \$1,000,000 must provide Public Art to the value of at least \$15,000 as an integral part of the development. The art is to be permanent and durable and is to be placed in an area of the development site that is freely accessible to members of the public.

Comment

The application proposes that the required Public Art be applied to the eastern wall of the building, in a location adjoining the Ballina Boulevard carparking area. This site is considered unacceptable as the owners of the Ballina Boulevard may at any time redevelop their site which could result in the Public Art being covered.

Council at its 26 July 2012 meeting resolved to exhibit amendments to the public art policy. The effect of these amendments is that, if the policy is adopted, the requirement for public art to be located on the development site will be amended to allow the option of contributing towards art pieces on public land instead of the development site.

The applicant has advised that a payment to Council for *an alternative public art project is able to be entertained in lieu of an on-site work.*

In view of the recent resolution of Council to amend the art policy to allow contributions towards a public art project, and the willingness of the applicant to entertain a contribution to the Council for the provision of public art. It is to be recommended that if the Council is of a mind to grant approval to this application, a condition be imposed requiring the payment of \$15,000 towards the establishment of a public art project.

Chapter 2 – Ballina Town Centre

The site is included in the Riverside East Precinct. The Desired Future Character for which is:

The Riverside East Precinct is comprised of a mix of uses with a relatively higher component of major commercial development. Modern commercial spaces are provided at the lower floors of buildings which accommodate substantial commercial, leisure and entertainment anchors.

A human scale is retained along the River Street frontage while buildings of a greater scale are situated within sites and along Fawcett Street. A lush treed area of open space is provided along the northern side of Fawcett Street which provides an attractive outlook for residents on either side of the street and deep soil zones within the larger street block are planted with landscaping. Newer large scale buildings exhibit a high standard of architectural and environmental design and harness river views. They have a distinct base, middle and top and display horizontal patterns, significant articulation, the use of lightweight elements and carefully designed rooftops.

Parking for vehicles, bicycles and other mobility aids is provided on-site, partially at ground level and in sub-basement car parking areas. Public access is provided through street blocks by the provision of mid-block connections and other paths and lanes.

Comment

The proposed development complies broadly with the descriptors for the desired future character of the precinct other than for the provision of a *lush treed area of open space along the northern side of Fawcett Street*.

The DCP's Structure Plan proposes the establishment of an area of public/private open space along the rear of the Yeates House /Woolworths / Ballina Boulevard / Mc Gintys Hotel properties. It is proposed that this open space area be achieved as part of the redevelopment of the sites.

Clause 3.7.3 (b) Setbacks to Fawcett Street

Objectives

- *To provide a public space that provides an attractive and inviting path for people between Fawcett Park and the Martin Street Boat harbour*
- *To deliver an attractive outlook for apartment residents and pedestrian environment for commercial customers*
- *To prevent land use conflicts*
- *To provide surveillance and a sense of enclosure to the area of open space that is created by the setback*
- *To provide for effective drainage*

In response to these requirements the applicant advises *the proposal has setback the building from Fawcett Street in order to provide an open area consistent with the objectives of the standard. Further, as the proposal relates to a retail development with associated service areas, no scope exists to provide open space fronting Fawcett Street. The design does incorporate a landscape area on the corner of Fawcett Street and Cherry Street to provide a response to the streetscape.*

Comment

The landscaping proposed to be provided in the development comprises a small area at the corner of Cherry and Fawcett Streets, nine trees planted throughout the car parking area and a number of small landscaping areas located in the carpark. It should be noted that it may not be possible to plant 5 of these trees as a consequence of the widening of Fawcett Street recommended in the External Roads and Traffic section of this report.

It cannot be argued that the proposed landscaped carpark adjoining Fawcett Street would deliver the *lush treed area of open space* referred to in the Desired Future Character for the Precinct. Sensitively and seriously implemented, a landscaped carpark could, however, create a much improved and, perhaps, an *attractive outlook for apartment residents and pedestrian environment for commercial customers* as sought in the Objectives.

The proponent contends that, as *the proposal relates to a retail development with associated service areas, no scope exists to provide open space fronting Fawcett Street*. It is accepted that, if the limited available site area is to be utilised to minimise the parking deficit of the development, then the proposed development has no scope to provide open space fronting Fawcett Street.

Clause 4.12 Awnings

Awnings increase the usability and amenity of public footpaths by protecting pedestrians from sun and rain. They encourage pedestrian activity along streets and, in conjunction with active edges such as retail frontages, support and enhance the vitality of the local area. Awnings, like building entries, provide a public presence and interface within the public domain and contribute to the identity of a development.

The policy requires continuous awnings to be provided in areas of high pedestrian activity, particularly where there are ground floor retail uses and active frontages. Awnings are to be horizontal or near horizontal to footpath, at a height in the range of 3.2 – 4.0 metres. Adjoining awnings are to be of a consistent height and depth and should contain under-awning lighting.

Comment

The application proposes the construction of awnings for the full length of the River Street frontage of the site and over the rear entrance and disabled car parking spaces.

The River Street awning has been designed as an integrated architectural element of the building. It ranges in height from 3.5 to 6.6 metres and whilst it is not within the height range of the DCP, it is considered that the design would contribute positively to streetscape. Concern is raised that the western end of the awning, being considerably higher than the adjoining awning, will leave a sun and rain gap in the protection afforded to pedestrians. If the Council is of a mind to approve this application such should be addressed via a condition of consent.

The carparking and flood protection aspects of the development having regard for the provisions of the DCP are assessed in the section of this report addressing the suitability of the site for the development.

(iiia) Any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

No planning agreement has been entered into under Section 93F, or any draft planning agreement under section 93F

(iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no prescribed matters relative to this application.

- (v) **Any coastal zone management plans (within the meaning of the *Coastal Protection Act 1979*), that apply to the land to which the development application relates,**

There are no coastal zone management plan matters that are applicable to this application.

- (b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,**

Context and Setting.

The proposed development is the reconstruction of a supermarket building previously damaged by fire. The supermarket is located within the Ballina CBD and was previously, and is anticipated to be in the future, an integral part of the commercial fabric of the Ballina Town Centre.

Public Domain.

The proposal will have no adverse impact upon the existing public domain. The DCP requires the provision of a landscaped public/private open space area adjacent to Fawcett Street, which has not been comprehensively provided by the design of this development. One of the intended functions of the open space area required by the DCP is *to provide meaningful separation between tall buildings on both sides of the street*. In this instance a tall building is not going to be constructed on the northern side of the street, but instead an open car park area and whilst this will not be the *lush treed area of open space* described in the DCP, it will be an open space area.

Social impact.

As well as providing grocery services to residents and workers in the town centre, the previous store on the site also acted as a social hub for local people and it is anticipated that the reconstruction of this store will again stimulate this social activity. The amended entry design from River Street provides a sheltered area, albeit small, and some bench furniture that will facilitate social interaction on the street.

The development has also been discussed at Council's Access Reference Group (ARG), who have raised the following matters in response to the originally submitted plans:

Upstairs section: The lack of a lift limits access to this section to people who are unable to use the stairs. This will effectively limit employment opportunities for people with access/mobility issues.

Comment

The amended plans show provision for a lift.

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The plans do not display the proposed set out of the supermarket and the ARG would like to ensure that the aisle widths will be sufficient to accommodate two wheelchairs passing each other in the aisle. Similarly, the walkway should be wide enough to allow two people in wheelchairs to pass each other and should be kept free of obstacles.

The ARG consider that the proposed scooter bay parking is poorly located as it is adjacent to the trolley bay and are concerned that it will be used as a trolley bay.

The location of the scooter bay is likely to be a congested area with a great deal of pedestrian traffic. The ARG believe that it will be difficult to turn into and will also be difficult to reverse out of.

The ARG would suggest that most of the people who use scooters are highly likely to enter the supermarket via the River Street entrance and as such would suggest that it would be preferable to relocate the scooter parking to the River Street entrance.

Comment

The amended plans show two additional scooter parking spaces accessible from River Street.

Toilets: The ARG would suggest that it would be preferable to have a unisex accessible toilet (that comply to standards) as well as additional public toilets.

Comment

The proposal contains a unisex accessible toilet but not multiple customer toilets. It is considered that the proposal is compliant with the relevant applicable standards.

Accessible parking spots: ARG would recommend altering the design so that people exiting their vehicles do not have to travel on the road way to gain access into the supermarket.

Comment

Two undercover, accessible car parking spaces are proposed to be located immediately at the Fawcett Street doors to the shop. The design necessitates the use of the carpark vehicular access aisle for a short distance but this is not considered to be unreasonable.

Economic impact.

The previous store on the site functioned as one of the Town Centre's main anchor developments attracting customers to the CBD and enabling other local businesses to leverage off its presence. It is anticipated that with the reconstruction of this shop Woolworths will re-establish this vital economic role, once again draw customers back to this part of Ballina's Town Centre and consequently stimulate the vitality of the local business environment.

(c) The suitability of the site for the development.

The development site is one of the largest single land parcels within the Ballina Central Business District and, in development control terms, is well suited for the development of a supermarket by reason of its central location, size, regular dimensions and level nature.

The site is, however, within a flood risk area and development provision needs to be made to address this issue. Servicing, parking and traffic management matters also need to be addressed.

Trolley Management Plan

As the size of the proposed car park is below that required for a development of this size, trolley control will be important as more customers than usual will be required to park elsewhere in the CBD. This will result in trolleys being left in parts of the CBD other than the development's carparking area. To overcome this problem, if Council is of a mind to grant approval to this development, conditions will need to be imposed requiring that an active trolley management plan be developed for the store. Such a plan will need to give consideration to the provision of an electronic barrier around the exits from the development that would prevent trolleys from being taken away from the premises.

Additionally, store management should be requested to enter into negotiations with Council to develop ways to restrict the number of workers parking in the car park so that its limited capacity is maximised for store customers.

Council's Civil Services Group reports with respect to road traffic and flooding matters as follows:

External Roads and Traffic

The existing external road network is currently being reconstructed within both Cherry Street and River Street along the site's frontage. These roads will both be constructed to a suitable standard to service the proposed development.

New kerb has been laid in Cherry Street and its position and level is to remain as is, except for the driveway crossover for the Cherry Street car park access, where the upright kerb will be replaced by a dish drain with no change in kerb invert level.

Fawcett Street is currently not constructed as a full width formed pavement along the site's full frontage. The section fronting the existing dwelling adjacent to the intersection with Cherry Street currently has an unformed shoulder. This shoulder will need to be reconstructed to allow for an 8m sealed carriageway for the full frontage of this allotment.

The section of Fawcett St along the frontage of the existing Woolworths development will need to be graded to ensure that suitable crossfall and drainage are provided to suit the existing one way crossfall.

The existing carriageway in Fawcett Street east of the Woolworths site is 8.2m wide. By widening the pavement towards the Woolworths boundary a minimum pavement width of 8m will be able to be provided along the full length of the Woolworths site in Fawcett Street to service the development.

Provisions for Service and Delivery Vehicles

A Loading and Delivery Management Plan has been prepared by the applicant. The plan is based on the site being serviced by both rigid vehicles and standard articulated vehicles. The design allows these vehicles to enter and exit the site in a forward direction however the location of the loading dock requires vehicles to travel through the car parking area for access.

Given the potential for conflict the load management plan should be amended to specify that deliveries occur outside peak trading hours of the development.

The applicant shows semi-trailers (AV) and heavy rigid trucks (HRV) using the site and, in relation to the turning template design note dated 7/8/12 the following comments are made:

- AV's are unable to make a right turn exit into Fawcett Street. Consequently the driveway access will need to be redesigned to enable this turning manoeuvre. The recommendation for the applicant to provide an 8m carriageway in Fawcett Street will assist with this design requirement.
- In servicing the site a HRV would occupy part of the access driveway when emptying the bin. It would then have to exit the site towards Cherry Street against the proposed one way traffic flow in the car park. It is to be recommended that this proposed one way traffic flow be amended to a two way traffic flow.

Parking Numbers

Council's parking requirements for this type of development are contained in DCP Volume 1, Policy Statement No 2, Car Parking and Access and DCP Volume 2, Chapter 2, Ballina Town Centre. The development is located within the area defined as the Riverside East Precinct of the Ballina Town Centre and the parking requirements for a retail development are 1 space per 25m² Gross Floor Area at ground level and 1 space per 40m² Gross Floor Area at the first floor.

A copy of the applicant's Car Parking Assessment Report is attached for Council's information. The applicant's revised assessment dated 7/8/2012 is based on a total Gross Floor Area of 2116m² ground floor and 196m² first floor. The applicant's report describes the 2116m² floor area as consisting of 1653m² of "trading area" and 463m² of "back of house".

The applicant's Gross Floor Area calculations exclude the following areas which are required to be included by the definition of Gross Floor Area used in the Council's Plan:

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- The 91m² area within the building identified as a walkway\mall and coloured yellow on Drawing SD1006 issue J.
- The 26m² and 28m² areas within the building identified as airlocks and coloured white on Drawing SD1006 issue J.
- The 8m² area within the building identified as a Unisex toilet and coloured grey on Drawing SD1006.
- The 34m² area within the building identified as a stairway.

Gross Floor Area as defined within Council's Ballina Town Centre DCP is a fairly standard and widely applied definition and is as follows:

Means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1400 millimetres above each floor level, excluding -

- a) Columns, fin walls, sun control devices, awnings and any other elements, projections or works outside the general lines of the outer face of the external wall;*
- b) Lift towers and cooling towers on the roof, machinery and plant rooms and ancillary storage space and air conditioning ducts;*
- c) Car-parking needed to meet any requirements of the Council and any internal access thereto;*
- d) Space for the loading and unloading of goods; and*
- e) Internal public arcades and thoroughfares, terraces, balconies, atriums, (maximum 10m² per dwelling) and verandahs with outer wall less than 1400 millimetres high, and the like.*

The applicant's car parking assessment excluded the 91m² walkway area, coloured yellow on Drawing SD1006 issue J, from the Gross Floor Area calculation on the basis that they believe it falls within the definition of an internal public arcade or thoroughfare as per point (e) above. Whilst it is understood that the applicants have interpreted the DCP in this manner, Council staff do not consider the walkway in question to be consistent with the intent of this clause of the DCP.

Council staff understands the reference to public arcades and thoroughfares was intended to refer to those internal walkways which provided access to multiple tenancies within a development. A typical example would be the Wigmore Arcade development where there is a communal undercover public walkway providing direct access to several separate tenancies. In this case the main walkway is internal providing access only to the trading area.

Whilst the applicant may suggest that customers will utilise this walkway to access other adjoining developments when shopping within the CBD, these developments do not gain direct access from the walkway. The Council staff therefore recommend that the 91m² walkway area be considered to form part of the Gross Floor Area calculations when assessing the development.

Similarly, the Gross Floor Area definition does not exclude the 26m² and 28m² areas within the building identified as airlocks or the 8m² area identified as a Unisex toilet. The definition does however permit exclusion of the 34m² area within the building identified as a stairway.

It is therefore recommended that Council determine the car parking requirements for the development based on a total Gross Floor Area of 2,465m².

The ground floor GFA is 2269m² consisting of the following:

- The 1,653m² area within the building identified as a Supermarket and coloured tan on Drawing SD1006.
- The 463m² area within the building identified as back of house and coloured purple on Drawing SD1006.
- The 91m² area within the building identified as a walkway\mall and coloured yellow on Drawing SD1006.
- The 26m² and 28m² areas within the building identified as airlocks and coloured white on Drawing SD1006.
- The 8m² area within the building identified as a Unisex toilet and coloured grey on Drawing SD1006.

The proposal also includes 196m² of floor area within the first floor of the development which falls under the definition of Gross Floor Area within the DCP.

Therefore GFA (ground floor)	2,269m ²
GFA (first floor)	196m ²
GFA (total)	2,465m ²

The applicant's parking assessment also seeks allowance for the following parking credits:

- A five space car parking credit associated with the closure of the two existing driveways off River Street as this will enable the reinstatement of five angled parking spaces. The revised assessment is seeking six spaces
- A 2.2 space car parking credit associated with the previous commercial use of the existing building\dwelling located on Lot A DP 81232 which fronts Cherry Street.
- A loss of two car parking spaces from on-street parking (1x Cherry St driveway & 1x Fawcett St on-street parking due to truck turning.

Whilst the five space credit associated with the driveways is acceptable, to Council's knowledge there has been no commercial use of the building on Lot A DP 81232 for more than 10 years meaning that any previous commercial approvals would be considered by Council to have lapsed. The allocation of the 2.2 space car parking credit to this site is therefore not considered appropriate and has been excluded from this parking assessment.

The applicant's car parking assessment also suggested that a "land use" discount of 14% should be applied to the development on the basis of the site's CBD location and apparent high parking turnover associated with the development based on Council's 2003 CBD car parking study.

It should be noted, however, that Council considered these issues when adopting the car parking rate of 1 space per 25m² gross floor area within the Ballina Town Centre. Retail developments in other areas of the Shire

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are required to provide parking at a rate of 4.4 spaces per 100m² which equates to 1 space per 22.7m² gross floor area. Further, the Roads and Maritime Services "Guide to Traffic Generating Developments" recommends a rate of 6.1 spaces per 100m² gross floor area which equates to 1 space per 16.4m² gross floor area. The rationale behind the land use factor presented by the applicant was largely the reason behind Council adopting the lower car parking requirement of 1 space per 25m² gross floor area for retail and refreshment room use within the Ballina Town Centre. It is therefore recommended that the land use factor not be included within the parking assessment for this development.

The recommended car parking requirements for the development are therefore as per the calculations below:

Council Requirement		Proposed Gross Floor Areas	Required Number of Parking Spaces
Use	Rate		
Retail in Town Centre Ground Floor	1 space per 25m ² gross floor area	2,269 m ²	90.8
Retail in Town Centre First Floor	1 space per 40m ² gross floor area	196 m ²	4.9
Parking Credit for removal of existing driveways in River Street			- 5
		Total required	91

The applicant's revised parking assessment shows a requirement to provide 89.5 spaces and they are of the opinion that they have accounted for 75.8 spaces when considering all the above mentioned reductions and the 57 carparking spaces provided.

Council's staff are of the opinion, as demonstrated above, that 91 car parking spaces are required.

Should Council support the applicant's suggestion that the internal walkway and air locks, coloured yellow and white on Drawing SD1006, be excluded from the gross floor area calculation based on them being an internal public thoroughfare as per the applicant's interpretation of the DCP, the total car parking requirement for the development would be reduced from 91 to 85 spaces.

The application proposes to provide 57 on-site car parking spaces which equates to a total shortfall of 34 car parking spaces, if the walkway is included in the gross floor area, or 28 car parking spaces, if the walkway is excluded from the gross floor area. Council's staff are of the opinion that the shortfall in carparking numbers is 34 carparking spaces.

The application proposed to make up the onsite car parking shortfall via the payment of contributions under the Ballina CBD Car Parking Contribution Plan. Under the applicant's assessment this equated to 13.7 spaces. The Council's assessment is that a shortfall of 34 parking spaces would be required to be accounted for via payment under the contribution plan.

The 34 spaces would equate to 37% of the total parking requirement at the site. Council has previously restricted the Ramada development to providing a maximum of 20% of its total car parking requirement via the Ballina CBD Car Parking Contribution Plan. The 20% limit was applied to the Ramada development on the following basis:

1. The number of spaces and financial modelling within the contribution plan was based on developments within the CBD providing on average 5% of their parking requirements via the contribution plan with this rate rising up to 20% for developments along the river front. The allocation of more than 20% to large developments could potentially consume a large portion of the spaces allocated under the plan limiting the opportunity for all developments within the CBD to utilise the plan.
2. A large portion of the car parking demand associated with the Ramada development related to accommodation, which by nature is not suited to car parking being provided a 'walking' distance from the development site.
3. The Ramada development is a relatively distant walk from the Wigmore car park site making the use of the Wigmore car park a less realistic option for the provision of parking than other CBD developments located closer to the Wigmore car park site. The distant CBD developments would still, however, receive some benefit from the eventual construction of the Wigmore car park as this will provide a parking alternative for those vehicles which currently park on-street in the CBD area. This will therefore increase the availability of on-street parking in the CBD area generally, which will benefit all CBD developments, even those more remote from the Wigmore car park.

In regards to the Woolworths application, some differences when compared to the Ramada development are:

- No accommodation;
- Higher parking turnover rate;
- Higher potential for multi purpose trips;
- Closer proximity to move on street parking;
- Closer to proposed Tamer Street parking areas.

With these issues in mind, Council may believe that there is sufficient overall merit associated with the development to justify permitting more than 20% of the car parking requirement for this development to be provided via the contribution plan.

The Ballina CBD Car Parking Contribution Plan currently proposes to provide the additional off-street car parks via redevelopment of the existing Wigmore car park located in Tamar Street. Council previously approved a multi-story car park at this site under DA 2007/786. This development would provide an additional 117 car parking spaces allocated to the Ballina CBD Car Parking Contribution Plan.

The 2007/786 consent was recently activated via the release of a construction certificate for the modification of several car parking spaces off Winton Lane. Whilst these works activated the consent they will not provide any additional car parking capacity beyond the existing car park.

Given the limited utilisation of the contribution plan by developments in recent years, Council does not currently have a date scheduled for the construction of future car parking in Tamar Street. Should Council support the proposal that the Woolworths development provide their parking shortfall via the contribution plan then the development of car parking areas in Tamar Street may be activated. Until such time, any approval that relies on the contribution plan will place additional demand on the existing Wigmore car park and on-street parking within the CBD.

Should Council choose to impose a maximum limit of 20% on the Woolworths development, the current application shall be limited to making cash contributions to only 18 car parking spaces under the plan. The proposed development would therefore be deficient by 16 car parking spaces. To cater for this deficiency the proposed development would have to be reduced by approximately 450 m² of floor space (i.e. reduce the depth of the building by approximately 10m)

However, it should be noted the 20% figure is not absolute and is relative to proposed parking facilities under the existing plan. In the longer term, Council could provide additional parking by adjusting the plan.

It is therefore requested that Council determine the following issues in regards to the proposed application:

- Confirmation that the 91m² walkway and 26m² and 28m² airlocks should be included within the gross floor area as per the gross floor area definition within Council's Ballina Town Centre DCP.
- Confirmation as to whether the full shortfall in on-site car parking can be provided via the Ballina CBD Car Parking Contribution Plan given that this will equate to in excess of 20% of the total parking requirement for the site.
- Alternatively if Council were to seek to limit the amount of carparking contributions to 20% it would need to also seek to have the size of the building reduced accordingly.
- A third conceivable option would be to require the development to provide all the required car parking on site, which would in turn require the construction of a multi storey carpark on the site by Woolworths. This is not the application that has been submitted and the Council would have to defer or refuse the current application should this option be preferred.

Flooding

The proposed Woolworths development site is located within the Ballina floodplain and is subject to the controls within Council's Development Control Plan Chapter 1 – Urban Land, Policy Statement 11 – Flood Levels.

Section 3.3 of Policy Statement 11 specifies that the minimum fill level for the proposed development site is RL 2.0m AHD, being the 100 year ARI level and is based on an assumed sea level rise of 200mm. Section 3.3 also requires a minimum floor height of RL 2.5m AHD, which adopts the 500mm freeboard allowance recommended within the NSW State Government's Floodplain Development Manual.

Policy Statement 11 currently contains only these prescriptive measures, meaning that all developments within the Shire are normally required to comply with the minimum fill and floor height requirements specified within the Policy Statement.

Council recently exhibited a draft revision of Policy Statement 11 which gives alternatives to the prescriptive measures. Council needs to determine whether in the current circumstances non-compliance with the prescriptive measures is justified, and that the performance criteria of the draft plan can be satisfied and utilised. Whilst the exhibition period has now closed a recommendation on the final draft policy has not yet been referred back to Council for determination.

Despite this, the applicant has requested that Council consider the current application in accordance with the performance criteria controls specified within the exhibited draft document. Whilst this draft policy has not been adopted by Council, the following assessment has been included for Council's consideration in determining the merits of the current application.

It is currently anticipated that the draft Floodplain Risk Management Study, including a proposed revision of Policy Statement 11, will include the prescriptive measure that all lots must be filled, as a minimum, to the 100 year ARI 2050 flood level. It is also anticipated that the draft policy will recommend that Council adopt a freeboard of 200mm for commercial and industrial developments as opposed to the 500mm freeboard required under the current policy.

This recommendation is based on the fact that commercial and industrial developments are non habitable, are generally constructed from more flood compatible materials, that property and goods are generally stored off the floor on shelving and racks and that the 500mm freeboard can be difficult to achieve in commercial and industrial developments due to the disabled access requirements preventing the use of entry steps which are commonly used in residential developments.

The draft policy will also provide the opportunity for commercial and industrial developments with the Ballina CBD area to construct commercial and industrial building floors at zero freeboard if suitable controls are implemented in the building design to meet the performance criteria specified within the plan. These controls would be proposed as an alternative to the standard requirement that freeboard be provided by raising floor levels above the minimum fill levels. Freeboard will still

however, be the preferred option as it would not require implementation of further controls during flood events.

The existing buildings within the Ballina CBD generally have floor heights ranging from RL 1.8m AHD to RL 2.0m AHD with some older levels at RL 1.7m AHD and some recent levels RL 2.5m AHD. The floor heights will therefore be required to be increased on average by approximately 0.2 to 0.4 metres. Whilst this increase will have an impact on building design due to the requirement for ramps, at 0.2 to 0.4 metres, the impact should not significantly constrain building design or site utilisation.

The following extract from Section 9 of the Draft Floodplain Risk Management Study has been included to describe the rationale behind the proposed prescriptive measures of maintaining minimum fill heights, as described above.

9 Managing Flood Risk in a Changing Climate

9.1 Introduction

Under current climate conditions, flood risk on Ballina Island, the most densely developed area in the study area, is generally relatively low (i.e. most of Ballina Island is dry for the 100 year ARI flood event). However, if current sea level rise projections are realised, inundation of the island will occur far more frequently in the future. As such, developing a plan on how to manage future flood risk is one of the most challenging fundamental aspects of this study. For this reason, climate change is a recurring point of discussion in this document.

In order to further emphasise the importance of climate change in the study area, this chapter focuses purely on managing the projected future flood risk and elaborates on earlier such discussions in this report.

9.2 Floodplain Risk Management Options

A number of floodplain risk management options have been discussed in the preceding chapters. However, in terms of specifically addressing the projected future flood risk on Ballina Island, the following options have been considered:

- *Do nothing;*
- *Planned retreat*
- *Build a system of levees and pumps; and*
- *Update/improve planning and development controls.*

Doing nothing is a form of unplanned retreat, and retreating has not been considered a viable option by the committee. Levees introduce risk of breach, overtopping and an increased maintenance burden on the community. With climate change being a gradual change over time, and current predictions uncertain, a gradual and adaptive floodplain management option would be well suited to dealing with the impacts of climate change. Land use planning is just such a mechanism, and the policies are implemented on the ground relatively

slowly, thus providing an opportunity to update the controls if required.

9.3 The Adopted Strategy

The recommended approach for managing future flood risk is to enforce appropriate controls on development in the floodplain. This is implemented through the draft DCP in Appendix G, by defining minimum Flood Planning Levels (FPLs), which are based on future flood level predictions, for development.

Where new large developments are proposed a precautionary approach has been taken (i.e. using climate change conditions), because this can be achieved more easily than in developed areas. FPL's for infill development are based on 2050 climate change conditions as this is more practical in existing urban areas. The proposed development controls promote filling of entire lots to the 100 year ARI 2050 flood level. This flood level is approximately 200mm higher than the King Tide level plus 900mm sea level rise (2100 horizon forecast). Thus the proposed controls will mitigate regular tidal flooding beyond 2050.

9.4 Conclusion

Climate change poses a threat to the sustainability of Ballina due to a significant increase in the future flood risk. If a strategy to manage this risk is not implemented, much of Ballina will succumb to regular flooding. This floodplain risk management study has recommended that future flood risk is managed through planning and development controls, which stipulate minimum floor levels for development. Over time, through redevelopment, this approach will lead to filling of Ballina Island and surrounding low-lying developed areas. This approach is also adaptive, whereby if future climate change science predicts different sea level and rainfall intensity changes, development controls can be updated as required.

While this strategy will encourage filling of private land, it does not specifically address public infrastructure such as roads and stormwater drainage. The strategy will therefore need to be supplemented with further investigation into required improvement and flood mitigation of public infrastructure; which is a recommendation of this study.

As stated previously, the current Woolworths application proposes to adopt this strategy by meeting the proposed minimum fill height (100 year ARI 2050 flood level) of RL 2.2m AHD whilst also providing a minimum floor height of RL 2.2m AHD and implementing mitigation measures as an alternative to providing the recommended 200mm freeboard. In summary, the mitigation measures include:

- Waterproofing the building using sealed walls with water tight joints and sealing the entry doors using a removable flood levee.

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- Providing high strength window panes below RL 2.5m AHD capable of withstanding the impact loads from floating debris.
- Constructing the building using flood resilient materials in the walls and floors.
- Flood compatible electrical design.

A copy of the applicant's Flood Risk Assessment Report is attached for Council's information. This report refers to a finished floor level of RL 1.8m. The applicant as part of amending material lodged 8 August 2012 has, submitted a revised design proposing a finished floor level of RL 2.2m AHD. Assuming a floor level of RL 2.2m AHD, the proposed control measures of the development satisfactorily address the performance criteria specified within Council's draft Floodplain Risk Management Study. A summary of this assessment is provided in the tables on pages 11 and 12 of the applicant's Flood Risk Assessment Report included in attachment.

In addition, Woolworths have given an undertaking to indemnify Council against any potential loss should flood damage occur despite the implementation of these mitigation measures. Whilst it is recommended that Council accept this undertaking, should the development be approved, it should note that this indemnity will not be transferable if the property is sold in the future. Despite this it is still recognised that the application satisfies the performance criteria specified in the proposed draft Floodplain Risk Management Study.

When considering this proposed new strategy Council may receive opposing submissions from other developers who have recently been required to comply with the minimum fill and freeboard requirements of the existing Development Control Plan Chapter 1 – Urban Land, Policy Statement 11.

There have only been two commercial developments within the Ballina Town Centre area which have been constructed to the existing DCP at floor levels above RL 2.2m AHD. These were located at 75 Tamar Street, which is 4 lots west of the Council offices and 130 Tamar Street, which is located one lot east of the Kerr Street and Tamar Street intersection. These developments were both constructed to a floor level of RL 2.5m AHD.

There are a number of developments in the Ballina Town Centre which have been constructed at floor levels of 2.1m AHD and 2.2m AHD, prior to 2010 including the Council building at 89 Tamar St near the post office, the Seamark development in River St across from the courthouse and the commercial building at the corner of Tamar and Cherry Streets diagonally across from the Council offices.

Council has, up until now, enforced the approach of minimum fill and floor requirements as there has been no alternate policy available to consider or manage other control measures. The draft Floodplain Risk Management Study (including the proposed revision of Policy Statement 11) will enable greater design flexibility for managing the flood risks associated with commercial and industrial developments. It would therefore be unreasonable to continue to require freeboard as the only design option available for commercial and industrial developments given

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that Council has prepared a policy to consider alternative flood mitigation strategies.

It is therefore requested that Council determine whether the proposed application must comply with:

- The requirements of Council's existing Development Control Plan Chapter 1 – Urban Land, Policy Statement 11 – Flood Levels, which requires a minimum fill height of RL 2.0m AHD and minimum floor height of RL 2.5m AHD; or in this case,
- Apply the requirements of the draft Floodplain Risk Management Study and proposed revision of Policy Statement 11, which proposes a minimum fill height of RL 2.2m AHD and a minimum floor height of RL 2.2m AHD based on the development providing the flood mitigation measures that deal with zero freeboard, as included with the applicant's Flood Risk Assessment Report.

(d) Any submissions made in accordance with this Act or the regulations.

Submissions

Three submissions have been received supporting the proposal, with one questioning the application of Council's flood policy.

Two submissions have been received from residents opposite the site. These are signed by multiple parties and whilst they generally support the application, they express concerns in relation to a number of design and operational matters, namely, *noise pollution from vehicles and trolley collection, and fumes from plant and vehicle exhausts.*

Comment

The noise report submitted with the application is generally sufficient in that it addresses the likely noise issues. Having said this, it identifies that some noise impact protection measures can't be finalised until after Woolworths complete their plant selection for external installations. This generally doesn't happen until the project has obtained consent and is well underway. The noise consultant advises that these should be certified prior to operations commencing to ensure that noise emissions from the site due to externally mounted plant and equipment meet relevant applicable standards. It is considered that reasonably conventional measures can be taken to meet these.

With respect to the concerns expressed by local residents that the general operation of the car park may be a cause of noise nuisance, the Council is advised that such is not expected to be the case.

The utilisation of the carpark for truck operations tied to loading, unloading, and waste management, has been specifically addressed in the noise report. Essentially, these activities are proposed to be managed by the applicant by limiting the times of truck movements. This proposal is recommended to be accepted subject to comprehensive management plans being developed by Woolworths and submitted to, and approved by, the Council.

The noise absorbing walls suggested by local residents in submissions are not considered to be necessary or reasonable imposts and are not recommended. A check with the noise consultancy confirms that the suggested additional awnings would not materially assist with noise attenuation either.

The request to limit trolley collection to before 9.00pm is at odds with the NSW trading legislation that sees trading in town centres to 10.00pm being a norm. Woolworths are proposing closing at 10.00pm most nights and operationally they would need to finalise trolley collection at closing time. The recommended trolley management plan could, however, look at how late night trolley movements can be minimised.

Fumes from the carpark area are not expected to be a substantial problem.

Making Fawcett Street between Cherry Street and Fawcett Lane a one way street from east to west or alternatively making the turn out of the Fawcett Street car park exit left turn only.

Comment

Fawcett Street is currently a two lane two way road east from Cherry Street and is one way eastbound from Moon to Cherry Street. If Fawcett Street was one way westbound then all movements from the commercial premises between Cherry Street and Fawcett Lane would need to exit the area via Cherry Street. This flow combined with the Fawcett Street traffic from Moon Street, would concentrate all the exiting traffic into Cherry Street.

The alternative of left out only from the Fawcett Street car park takes traffic away from Cherry Street. The ability of vehicles (cars and delivery vehicles) to enter and exit the site in either direction is preferred.

The preferred option is to have Fawcett Street east of Cherry Street remain two lanes and two way.

Requiring cars exiting the car park via Cherry Street to turn right, thus taking them away from the residential units in Fawcett Street.

The Cherry Street car park access is proposed to function as a left in left out driveway. Vehicles leaving the car park will turn left into Cherry Street and then left into Fawcett Street or U turn around the centre parking to head north along Cherry Street. The centre parking is designed to not have another gap to allow right turn exit from the car park

The preferred option is to have left turn exit only from the Cherry Street driveway.

One submission raised questions about the adequacy of Council's Flood Policy and the timing and implementation of same in relation to the proposed development.

This is a matter addressed earlier in this report.

(e) The public interest.

There appears to be a good deal of interest in the reopening of the supermarket, from the general public and from the surrounding shop owners who have reported a drop in trade since the closing of the old Woollies. The surrounding shop owners are depending on the reopening of this building, to bring customers back into the CBD to help them through the current economic hard times.

Summary

The reconstruction of the Woolworths building is seen as an integral part of the fabric of the Ballina Central Business District, with surrounding shop owners hoping that the reopening of the shop will attract shoppers back to the locality and help them through the current economic hard times.

The application complies with the majority of the requirements contained in the applicable Planning provisions, with the following exceptions.

- The application does not comply with the filling and flood level requirements currently set by the BSCDCP.

Council has, however, recently exhibited an amended flood policy, which makes provision for both prescriptive measures and performance criteria, and for a reduction in the required floor level in commercially zoned land. The applicant has advised that they are prepared to comply with the requirements of the draft policy, but are reluctant to comply with the requirements of the existing policy.

- The application does not comply with the car parking requirements prescribed in BSCDCP.

Council has been presented with a number of options in the report and it is recommended that the Council accept the staff calculations with respect to the amount of parking that needs to be accounted for by the developer.

- The application does not comply with the public art requirements of BSCDCP Policy 16 - Art Policy.

The public art proposed by the applicant is considered unacceptable. Council at its meeting of 26 July 2012 resolved to amend the public art policy to permit the payment of a contribution towards the provision of public art on public land. It is recommended that if Council is of a mind to approve this development a condition be imposed requiring the

applicant to pay a contribution to the Council towards the provision of public art.

- The application does not comply with the open space requirements of the BSCDCP Chapter 2- Ballina Town Centre.

Council's DCP requires the allocation of a parcel of land along the Fawcett Street frontage of the site for the establishment of a treed open space area. This has not been provided. The applicant states that the provision of the car parking area, which is an open space, the planting of a number of trees, the establishment of a small open space in an area of the site which cannot be used for any other purpose, and a number of other small landscaping areas within the car park reasonably complies with the aims of the DCP.

It is recommended that the Council require a new landscape design for the carpark area to ensure that tree plantings can occur following the recommended widening of the Fawcett Street carriageway.

- The application does not comply with the awning requirements of DCP.

The proposed River Street awning does not strictly comply with the requirements of the DCP for the reason outlined in this report but it is considered that the submitted awning design adds sufficient amenity and variation to the streetscape to be considered as being acceptable. A minor modification of the design to improve sun and rain protection has been recommended.

An awning is also proposed at the entrance to the store from the carpark. This will afford weather protection for customers using this entry.

Options

Having assessed the application it is considered that the Council has the following options:

1. Defer determination of the application and request the applicants to modify the design to include one or more of the following:
 - Dedication of land along the Fawcett Street frontage of the site for landscaped open space purposes.
 - The provision of off-street parking in accordance with the Council's DCP requirements.
 - A raised finished floor level to meet Council's current DCP requirements.
2. Refuse the application for one or more of the following reasons:
 - The submitted design fails to satisfactorily address the landscaped open space requirements of the DCP.
 - The proposal is an overdevelopment of the site in that it fails to provide sufficiently for off-street car parking.

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- The proposed flood protection measures are inadequate and do not meet the minimum floor levels required by the Council's current DCP.
3. Given the overriding social and economic need of re-establishing the supermarket business in the Ballina Town Centre following destruction of the Woolworths former store by fire, the Council could accept that the application is largely for a re-construction of the previous store that proposes to advance key elements of the Council's DCP by:
- Repositioning the building to the River Street frontage of the site;
 - Providing a substantial open area (albeit a landscaped carpark) to the Fawcett Street frontage of the site;
 - Proposing an acceptable alternative approach to flood protection in the Ballina Town Centre area that accords with the new, publicly exhibited, draft flood protection approach currently being proposed for consideration by the Council; and
 - Sufficient on-site car parking combined with the proposed cash contribution to the Council's Ballina Town Centre car parking fund for those spaces not able to be provided on-site.

Options one and two are not recommended as it is considered that, subject to contributing to the current DCP's full calculated car parking shortfall, the application has made proper and reasonable design and development provision for the key development assessment matters. The development will make a substantial contribution towards advancing the Council's planned upgrading and consolidation of the role of the Ballina Town Centre as the principal commercial centre of the Shire and, if built, will be a major retail business around which other town centre businesses will be able to stabilize and build with confidence.

Conclusions

It is noted that the application does not comply with a number of Council's policy requirements. In particular the floor level of the building does not comply with the current flood policy, and the total number of car parking spaces is below that required by Council's car parking code.

However, as this supermarket was previously and in the future will be an important part of the commercial fabric of the Ballina CBD, it is recommended that the application be approved subject to conditions requiring the floor level of the building to be in accordance with the provisions of Council's exhibited draft flood policy, and the payment of a contribution in accordance with the requirements of Council's Section 94 contribution plan towards the provision of carparking spaces in the CBD.

RECOMMENDATIONS

That development application 2012/247 to demolish the existing Woolworths building and dwelling at 3 Cherry Street and the construction of a new Woolworths supermarket and associated car parking spaces at Lot 2 DP 734682, 82-96 River Street Ballina and Lot A DP 81292, 3 Cherry Street Ballina, be APPROVED subject to the planning, environmental and engineering conditions attached.

Attachment(s)

1. DA 2012/247 - Locality Plan
2. Flood Risk Assessment Report
3. DA 2012/247 - Submissions
4. DA 2012/247 - Site Plan & Elevations
5. DA 2012/247 - Schematic Plan
6. DA 2012/247 - Recommended Conditions of Consent

8.2 DA 2012/195 - Mixed Use Development

8.2 DA 2012/195 - Mixed Use Development

Applicant	Logan Architecture
Property	Lots 25, 26 & 27, Section 1, DP 11687, 45-49 Ballina Street, Lennox Head
Proposal	Demolition of the existing Thai Gardens Restaurant and Motel and subsequent construction and strata title subdivision of a mixed use commercial/tourist/residential two storey development with basement car parking
Effect of Planning Instrument	The land is zoned 2(b)- Village Area Zone under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

A development application has been received from Logan Architecture for a mixed use commercial, tourist and residential two storey building with basement car parking over three Lots in Ballina Street, Lennox Head.

The subject lands involve Lots 25, 26 and 27, Section 1, DP 11687 45-49 Ballina Street Lennox Head. The rear of the subject property fronts Rayner Lane. The combined area of the three lots is 3285m².

The development will involve the following works and uses:

- Demolition of the existing Thai Gardens Restaurant and Motel;
- Construction of two refreshment rooms and shop at ground level on the Ballina Street frontage;
- A two storey tourist/residential development comprising 15 dual key self contained units, a four bedroom manager's residence (Unit 8) and ancillary facilities with the manager's residence providing access to a roof top terrace; and
- Basement carparking for 48 vehicles.

The site will also feature facilities for guests including a reception area and lobby, pool, BBQ area and guest terrace adjacent to one of the two refreshment rooms.

The building will have an active street frontage with pedestrians accessing the site from Ballina Street, featuring a walk through design to the courtyard style guest facilities on ground level. Vehicle access to the basement carpark will be via a single two lane driveway off Rayner Lane.

8.2 DA 2012/195 - Mixed Use Development

The Statement of Environmental Effects (SEE) accompanying the application states that the “building’s facade is intended to provide a contemporary aesthetic and to minimise the bulk and scale of the building”. The building will have external walls of rendered and paint-finished masonry, fibre cement, timber, weatherboard and zinc cladding. The roof will be colorbond metal roof sheeting.

The application, while seeking consent for a commercial and tourist (short term) development, also seeks consent for the apartments to be utilised for long term residential accommodation. The application is quoted as follows:

“(However) consent is also requested that the owners of each apartment be able to use their apartment for residential purposes if required, so as to make the project economically viable.”

“The proposal is designed as a tourist development and a study of the floor plans and Unit layouts demonstrate this.”

The Statement of Environmental Effects claims that if long term accommodation is not permissible, then the development becomes financially unviable. The application states that finance from institutions requires these types of developments (tourist accommodation) to have residential capabilities due to stricter lending guidelines following the global financial crisis.

The applicant has also stated that while long term residents would be owners only, each individual apartment will have the capability of being a mixed use, in that the larger portion of the unit may be used for long term residential accommodation, while the studio portion is used for short term tourist accommodation.

Lot 27 being the southernmost Lot included within the proposal, was the subject of a recent development consent for a mixed use tourist/commercial development containing eight self contained units and refreshment room (DA 2008/504). This development did not proceed, however a dwelling upon the site was demolished, leaving the site in its current vacant state.

The lands are situated within a built urban environment which is predominantly surrounded by residential and commercial buildings.

The adjoining and adjacent land uses are:

- To the north, a subdivided Lot with the Lot fronting Ballina Street containing a single storey dwelling and the Lot fronting Rayner Lane containing a two storey dwelling house;
- To the south – Single storey dwelling house;
- To the west – Intersection with Park Lane, Medical Centre, Commercial Premises;
- To the east – Dwellings, single and double storey.

The subject lands are serviced with reticulated water, sewerage, electricity and telecommunication services. The existing services are at sufficient capacities to cater for the proposed development.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil (or state otherwise if this is not the case)

Public Exhibition

During the public exhibition period, 51 submissions were received. Of these submissions, 40 supported the application.

These submissions supported the proposal as they considered the development to be consistent with the seaside amenity of Lennox Head and to be beneficial to the local economy. These submissions also supported the dual use of the proposal for tourist/residential and the commercial components.

11 submissions received objected to the proposal for reasons as outlined below:

Traffic

The proposal will increase traffic in Rayner Lane. The Lane is currently used as a thoroughfare for pedestrians and cyclists. Rayner Lane does not have a footpath and is not sufficient in width to cater for pedestrians and cyclists.

The high use of Rayner Lane for pedestrians of all ages and cyclists will cause conflicts between users and vehicles due to increased traffic emanating from the development.

Council is acting contrary to historic decisions by supporting increased traffic movement in Rayner Lane. Previous developments, significantly smaller than this development, have been refused due to the adverse impacts on the Lane.

A low speed limit should be imposed upon traffic in the Lane to improve safety.

Comment

Council's development engineer has provided the following information about traffic in Rayner Lane.

"Rayner Lane is bitumen sealed with traffic calming in the form of speed bumps at each end. To assist with lowering vehicle speeds in Rayner Lane, the application has been conditioned to reinstate the central speed bump at its previous location."

Rayner Lane also provides a popular pedestrian route and the DCP has acknowledged this by requiring road widening along the western side of Rayner Lane. This application has been conditioned accordingly with a 3.6m land dedication and the provision of a 1.3m pedestrian path for the full road frontage of the property."

Entry and Exit into Rayner Lane

The number of vehicles entering and exiting the development will cause conflicts with pedestrians and vehicles in Rayner Lane due to the sloping driveway and visibility issues.

Comment

The entry/exit point / driveway shall be required to comply with the Australian standards for grades. The road dedication increases sight lines in the area and also allows vehicles to exit the traffic stream in such a way that does not impact on flows.

Noise

The combination of uses onsite, particularly the use of the units for private parties will cause noise problems for adjoining residential properties. No provisions have been made to protect adjoining owners from noise pollution.

No live music should be allowed onsite in conjunction with the use.

Comment

A Noise Impact Assessment accompanied the Statement of Environmental Effects. (SEE) There are a number of potential issues relating to conflicts between the various uses proposed onsite. A Plan of Management has been lodged by the applicant in conjunction with a Noise Impact Assessment. This Plan of Management is intended to be incorporated into the operation of the development once completed. It has been formulated to ensure the proposal does not cause landuse conflicts within the development between the commercial and residential/tourist uses. It has also included strategies to address the proposal's potential impact upon adjoining properties. Council's assessment staff are satisfied that the development can comply with required noise levels and construction standards. Conditions of any consent can be applied requiring the development to comply with these standards during use.

Consent has not been sought for the playing of live music in the refreshment rooms. In any event, the normal State Legislation relating to noise nuisance would apply to any activities conducted on the site. These are enforceable only to a degree and, as with all similar developments, any sporadic incidences of nuisance would be unlikely to be effectively prevented.

Waste Disposal

The size of the proposal is of concern having regard to the location of the waste bins adjacent to residential properties and the collection of the bins in Rayner Lane. Multiple bins in the Lane will likely be a congestion issue.

Comment

The submitted design proposes the bin storage area on the northern boundary of the site adjacent to the pool / courtyard area of the development. The application has provided sufficient information regarding the number and types of bins required for the development. Richmond Waste are proposed to be the waste disposal contractors servicing the site. This company is satisfied with the details provided for this aspect of the development. Conditions of consent will be applied to any consent granted for the management of waste and the construction of the waste area. A condition can be included within any consent granted to ensure side boundary fencing is of sufficient height and of masonry construction to reduce noise impacts on the northern boundary.

Previous Developments Refused Due to Traffic Issues in Rayner Lane

Comment

Development Application 1983/186 for 53 Ballina Street, Lennox Head, was refused by Council and subsequently by the Land and Environment Court in 1984. This DA being for shops fronting Ballina Street and two units at the rear was refused on several grounds, including traffic generation in Rayner Lane.

Development Application 1989/36 for 63-65 Ballina Street, Lennox Head, being for a commercial building containing offices and shops was granted conditional consent in 1989. A condition of this development consent was that all vehicular access to Rayner Lane was denied.

Since the determination of these two Applications, Chapter 8- 'Lennox Head Village Centre' of the Ballina Combined DCP has been adopted resulting in a planned shift in traffic flows in the locality. One objective of this Chapter is to minimise increased traffic in Ballina Street through the sole use of Rayner Lane for new developments. To accommodate this traffic in Rayner Lane, a progressive road widening scheme, to be implemented through land acquisition during redevelopment of Lots has been adopted by the Council.

Construction Impacts on Rayner Lane

The use of Rayner Lane for access during the construction period is of concern. Trucks and mechanical implements, based on recent construction works in Rutherford Street have the potential to cause adverse safety and obstruction issues. This concern will be heightened as Rayner Lane is the sole access point during the construction period.

Comment

A Construction Management Plan will be a condition of any consent granted. The aim of this Plan will be to minimise disturbance to the locality. While short term impacts are anticipated during the construction period, these will be minimised through the implementation of the CMP and restrictions placed on any consent granted.

One stabilised construction access point will be permissible to the site from Ballina Street during the demolition process. No access from Rayner Lane will be permitted during this process.

The applicant will nominate access to the site during the construction period within the Construction Management Plan. Any access provisions proposed in the Management Plan will be assessed and must be approved prior to the release of the Construction Certificate.

Applicable Planning Instruments

Ballina Local Environmental Plan 1987

The current zoning of the site under the Ballina Local Environmental Plan 1987 (BLEP) is 2(b)- Village Area Zone.

The applicant has stated that the use will meet the objective of the 2(b) Village Area Zone being a mixed development providing a variety of urban uses. It is submitted that the proposal is of an appropriate density and scale for the locations, the site being in close proximity to existing services and to the beach.

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Approval is sought to use the facility for tourist and residential purposes with a commercial component fronting Ballina Street.

In accordance with Clause 9(2) (b) of the BLEP 1987, tourist facilities, residential flat buildings, refreshment rooms and shops within the 2(b) Zone are permissible with development consent.

A **“tourist facility”** is defined within the BLEP as:

“an establishment providing for holiday accommodation or recreation and may include a bed and breakfast establishment, boat shed, boat landing facilities, camping ground, caravan park, holiday cabins, hotel, house boat, marina, motel, playground, refreshment room, water sport facilities or a club used in conjunction with any such activities.”

A **“refreshment room”** is defined within the Model Provisions as adopted by the BLEP as:

“a restaurant, cafe, tea room, eating house or the like;”

A **“shop”** is defined as:

“a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause, or a building or place used for a purpose elsewhere specifically defined in this clause”

A **“residential flat building”** is defined as:

“a building containing 2 or more dwellings”

The objectives of the 2(b) Village Area zone are as follows:

- A *The primary objectives are:*
- (a) *to regulate the subdivision and use of land to permit a wide range of urban purposes, and*
 - (b) *to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities, commercial and special uses and other urban and tourist facility purposes.*
- B *The secondary objectives are to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.*

The proposal is generally consistent with the objectives of the zone for the following reasons:

- The strata subdivision is appropriate for the proposed use, facilitating individual ownership of each dual key unit combination and each individual commercial premise and the allocation of shared Common Property recreation and service areas.
- The development will provide commercial, tourist and residential uses upon the site as allowable under the provisions of the Ballina Combined DCP.

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- The site will be appropriately landscaped in accordance with the Ballina Combined DCP. The development will result in a low scale vegetated streetscape, as demonstrated in the landscape plan. It is considered that the design of the building is consistent with the user needs of Lennox Head providing onsite carparking and thoroughfares within the building linking the accommodation with the street.

The proposal is consistent with Clause 17- Limitation on Building Height of the BLEP being below the height reference of 6.4m.

Draft Ballina LEP 2011. (DLEP 2011)

In accordance with Section 79C 1(a)(ii) consideration must be given to any Draft Environmental Planning Instruments. On 15 December 2011, Council resolved to adopt the BLEP 2011 and refer it to the Department of Planning for the making of the Plan.

The site will be zoned B2- Local Centre under the DLEP 2011.

The objectives of this zone are as follows;

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage 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 minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *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.*

For the purposes of the DLEP 2011, the development is defined as a mixed use development containing commercial, (restaurants and shop), tourist accommodation and residential accommodation. The definitions of all the proposed uses are as follows:

mixed use development means a building or place comprising 2 or more different land uses.

Commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

A **restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.

Shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks

Shop top housing means "one or more dwellings located above ground floor retail premises or business premises."

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In accordance with these definitions, the proposed tourist and commercial components of the development are permissible with consent. However, residential accommodation is prohibited in the zone other than dwelling houses, secondary dwellings and shop top housing. The proposal includes residential accommodation units above the ground floor commercial premises (Unit No. 14, 15, 16) and therefore this component of the application could be regarded as being shop top housing. However, based on the current definitions of the DLEP 2011, the use of all the remaining units at the rear of the commercial premise for residential purposes would be prohibited under the new Plan. The history of the inclusion of these definitions in the DLEP is discussed in more detail at a later stage of the report.

Having regard to the proposed objectives of the zone, the use of the site for commercial and tourist purposes is considered consistent for the following reasons:

- The proposal will offer opportunities for additional retail and business development in the Lennox Village, therefore creating employment opportunities;
- The proposal will stimulate the Village by providing tourist accommodation within walking distance to commercial services, benefitting both visitors and operators in Lennox Head;
- Commercial and tourist uses are consistent with the future vision of Lennox Head; and
- It is considered that adverse landuse conflicts are unlikely to occur between the site and adjoining properties due to satisfactory design, proposed construction standards, and the implementation of the Plan of Management.

While the residential component of the development is not consistent with the zoning provisions of this Draft LEP, the applicants have requested the application be assessed against the current BLEP 1987. Having said this, the proposal does, however, rely upon an increase in the permissible floor space ratio (FSR) for the site prescribed by the DLEP within Clause 4.4(2). Currently, the Ballina Combined DCP has a maximum FSR of 0.6:1. The DLEP 2011 permits a FSR of 0.8:1.

The DLEP 2011 is currently with the DoP for the making of the plan. The plan has been certified, exhibited and forwarded to the Minister for the making of the Plan and Council is advised that gazettal of the Plan is very close. However, the essential supporting documents such as the Development Control Plans have not yet been exhibited or adopted. It is, therefore, likely the operational date of the Plan will be delayed for some time, following any gazettal of the plan. A savings provision is contained within the DLEP and is as follows:

- 1) *1.8A If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced.*

Therefore, it is reasonable for Council to give more determining weight to the current BLEP 1987 than to the DLEP 2011, but to also give assessment consideration to relevant aspects of the new plan such as the specified FSR.

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Ballina Shire Combined DCP.

Chapter 1- Policy Statement No.1 Multiple dwellings
Chapter 8- Lennox Head Village Centre

The Ballina Shire Combined DCP is applicable to the site.

The provisions relevant to this application are principally contained within Chapter 1- Policy Statement No. 1 Multiple Dwellings and Chapter 8- Lennox Head Village Centre.

In accordance with the provisions of this DCP, the proposal is located within the C2-District Centre- Control Plan Area for Lennox Head. The preferred land uses of this control plan area are *“retail, commercial, community and residential activities of a district scale.”*

The objectives of the C2 District Centre are as follows:

- *To encourage the consolidation and development of an intermediate range of commercial and service centres at Alstonville and Lennox Head.*
- *To ensure that architectural styles and the range of facilities provided are consistent with the locational features and user needs of each district.*
- *To replicate the historic character in commercial developments proposed in Alstonville.*
- *To encourage a vibrant low scale, vegetated commercial streetscape in Lennox Head. In this regard it will require developers to stagger building lines, providing large paved and landscaped pedestrian environments and adopt architectural styles suitable to the beachside locality.*

The proposed use is considered consistent with the preferred landuses of the C2- District Centre. The proposal is also consistent with the objectives of the control plan area for the following reasons:

- The development of three properties consolidates existing Lots within the Lennox commercial centre;
- The architectural styles are considered consistent with the vision for the Lennox Head Village;
- The development will result in a low scale vegetated streetscape and will comply with nominated building lines.

Relevant development standards for the C2 area as set out in Policy Statement No.1 of Chapter 1 are summarised in the table below.

Matters	Development Standards	Proposed	Compliant
Built Form	Sympathetic to the character and scale of Lennox Head. Chapter 8 of the DCP contains more specific guidelines in terms of built form and is discussed below	It is considered that the development complies with the built form objectives of the C2 area.	Yes
Floor Space Ratio	Dependant on height restrictions and onsite	0.74:1	No. Assessed

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Matters	Development Standards	Proposed	Compliant
	carparking requirements. Chapter 8 of the DCP contains more specific guidelines in terms of FSR and is discussed below		below.
Building Height	2 storeys 6.4 metres	6.4m	Yes
Maximum Density	On merit The suitability of the development upon the land hinges on more specific provisions of DCP Chapter 8 as discussed below.	Based on 16 units and a site area of 3285m ² , the density of the site is 1 residential unit for every 205m ² plus three commercial occupancies	See Table below relating to Ch. 8 provisions.
Site coverage	On merit The suitability of the development upon the land hinges on more specific provisions of DCP Chapter 8 as discussed below.	Based on a ground floor Gross Floor Area (GFA) of 1205.3m ² , and a site area of 3285m ² the site coverage is 37%.	See Table Below relating to Ch. 8 provisions.
Landscaping	To be incorporated in the overall design Mixed commercial/residential developments 50m ² /unit. Therefore 800m ² required	854m ²	Yes
Private Open Space	50m ² for Ground floor Units for residential flat buildings and space to be contiguous with living areas.	Non-compliant in relation to the residential use of the apartments. Refer to discussion following this Table	No
Onsite Parking	Shops 4.4 spaces / 100m ² GFA Other development on merit DCP Chapter 8 has specific requirements for carparking for the development.	49 carparking spaces	Yes NB Consent will be conditioned requiring sufficient spaces to remain as common property
Minimum setback	Building Code of Australia DCP Chapter 8 has specific requirements for building lines and	2m setback from Rayner Lane following road widening dedication. 2m "staggered"	Yes

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Matters	Development Standards	Proposed	Compliant
	setbacks to Ballina Street and Rayner Lane-	setback from Ballina Street.	
Road Dedication	3.6m wide land dedication for Rayner Lane widening	Proposed on the plan	Yes

Clause 7.3 of the DCP Chapter 1- Policy Statement No 1- Private Open Space provides that:

“Included in the area requirement of landscaped open space to be provided is an area set aside for private open space for ground floor units. The area required is 50 m² per unit and may be provided in more than one part subject to one part having a minimum area of 40 m² and a minimum dimension of 4.0m and:

- 1. -should be exclusive of space required for car parking purposes, whether covered or not;*
- 2. -should comprise unobstructed yard area;*
- 3. -should be contiguous with the living area in respect to which it is provided;*
- 4. - should be capable of being physically enclosed, but need not necessarily be so enclosed; and*
- 5. - should have its existence clearly indicated and its limits defined on any document of title to a townhouse or strata unit.*

Please note that this is a requirement for dwellings in a residential flat development and not short term accommodation, or tourist development.

The combined balcony/patio areas for units on the ground floor are well below the minimum of 50m², and are not continuous between the larger and smaller dual key unit. Balconies on the ground floor for the larger part of the dual key units are 15m², with smaller balconies off the Studio Unit being 10m². With the exception of Unit No 2, none of the units on the ground floor have the provision of 50m² private open space, despite combining total areas for the 2 or 3 bedroom units with studio units that feature small balconies of 10m². Unit 4 on the ground floor has minimal private open space, providing a total of a 4m² balcony on the southern side of the building.

These areas of private open space would not be critical if the development was for tourist or short term accommodation use only given the other areas proposed onsite for guests such as the pool and terrace. While these common areas would also benefit long term residents, it is considered reasonable to require the provision of satisfactory private open space for residents as nominated by this DCP. The proposal is not consistent in this regard.

The Land and Environment Court Hearing of 2009 relating to 20-21 Pacific Parade Lennox Head for a change of use of a Motel Development to a part residential flat building is relevant to this application, specifically private open space for individual units. Each unit for this development was to be provided a minimum of 20m² for each balcony, orientated towards the Pacific Ocean and directly across from a large public reserve. The Commissioner considered the

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provision of private open space was adequate in this case, despite the non compliance with the 50m² minimum area.

However, having regard to this judgement, this application is considered to differ from this application as:

- This proposal is not a conversion of an existing building but a new development, upon a flat, regular shaped lot with minimal site constraints;
- The Motel is located directly opposite the Pacific Ocean and a large public reserve while the subject site is surrounded by various developments and bounded by Ballina Street and Rayner Lane at the front and rear;
- The Motel consisting of 13 units is smaller than this development. This application proposes accommodating up to 30 (plus managers' residence) separate domiciles.

There does, however, appear to be design potential for the inclusion of additional areas of the site, contiguous to ground floor units, into their private open space provision. Should the current application's lack of private open space for ground floor units be critical to the Council's determination of this application, it could either defer for revised design, or condition a redesign, to provide additional private open space for ground floor units.

The Ballina Shire Combined Development Control Plan Chapter 8 Lennox Head Village Centre is the main chapter of the DCP applicable to the site and has the following objectives:

- a. *To encourage the retention and enhancement of the seaside village atmosphere as the Centre evolves into the future;*
- b. *To achieve well designed developments which relate to the streetscape and character of the locality;*
- c. *To control the bulk, scale and traffic generation of development, consistent with the desired future character of the Village Centre;*
- d. *To encourage the consolidation and development of an intermediate range of retail, commercial, community and residential activities of a District scale;*
- e. *To provide for the staged implementation of a Landscape Masterplan for public land within the Village Centre;*
- f. *To provide safe, comfortable and convenient places for al-fresco dining;*
- g. *To rationalise traffic flows and car parking provision within the Village Centre; and*
- h. *To improve pedestrian linkages both within the Village Centre and to adjacent residential and open space areas.*

This Chapter provides guidelines for all future developments within the Lennox Head Village Centre including preferred landuses, design requirements and other provisions. The Plan also divides the Village Centre into Land-use precincts with precinct specific requirements applicable. The subject site is within Precinct D1- Commercial Accommodation.

Under Chapter 8, the following development standards are applicable to the site and proposal.

Matter	Development Standard	Proposed	Compliant
General Design requirements			
Floor Space Ratio	Maximum 0.6:1	0.74:1	No See comments below
Roof Design	Skillion and/or peaked roof in Village Centre	Skillion Roof proposed	Yes
Active Street Frontage	Expanses of blank walls and dark glass not appropriate	Commercial premises will have direct frontage to Ballina Street	Yes
Floor and Entry Levels	Ground level to generally have the same finished level as the footpath.	The floor levels of the entry, courtyard and restaurant will be at ground level with direct access off Ballina Street.	Yes
Waste receptacles	Should be sited at the rear of Building Fronting Rayner Lane and integrated into development, screened enclosures	Proposed on the northern side boundary with direct access to Rayner Lane. Will be screened and roofed	Yes
Colour and Materials	<p>Colour schemes drawn from the natural environment of Lennox Head such as grey green (pandanus), Red-Brown (Tea Tree Lake) Tan Buff Grey Green (Spinifex)</p> <p>Use of composite construction materials is encouraged such as masonry, glass, timber and powder coated iron.</p>	<p>The SEE has stated that colours will respond to those listed in the DCP.</p> <p>Groundfloor walls will be generally rendered and painted masonry offset against split face blockwork and stone cladding</p> <p>First floor walls will be more lightweight being a mixture of weatherboard cladding and expressed joint fibre cement.</p> <p>The façade to Ballina Street is to be composed of more natural</p>	Yes

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Matter	Development Standard	Proposed	Compliant
		materials including clear finished timber weatherboards, timber windows and doors and stone cladding.	
Building Height	6.4m	6.4m	Yes
Services	Lift towers, air-conditioning and service units to be located within roof or enclosed within structures	Air-conditioning units will be located on rear balconies in screened enclosures. Lifts hidden in roof	Yes
Landscape Design	Landscape Design to be prepared by a qualified designer Pavement design to be compatible with Landscape Masterplan for Lennox Head Existing trees to be retained where possible Native vegetation that is tolerant to exposure to salt to be used	Landscape design prepared to a satisfactory standard A number of mature trees will be retained in the original location or relocated elsewhere onsite Planted native vegetation proposed.	Yes
Vehicular Access	One access point. Access from Rayner Lane only. Driveways to be located to maximise onstreet parking opportunities	Only one two way access to basement carpark located off Rayner Lane. Driveway located to maximise parallel parking in Rayner Lane	Yes
Signage	To be integrated into design so it shall not impact on area's amenity due to size, illumination or the like	No details provided	Further details required in conjunction with any consent granted
Balconies	May project into the building line if of cantilevered construction and have a max projection of 1.8m	Minor projections into the building line in Rayner Lane by portion of balconies Minor projection into building line of Ballina Street greater than the 1.8m permissible	No The applicant has offered to modify the proposal to comply with this provision. Condition for any consent granted

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Matter	Development Standard	Proposed	Compliant
Fences	Fences greater than 1m in height forward of the building line are discouraged If greater than 2m in height then wall is to be articulated to provide visual relief. Element of the wall to be visually permeable for not less than 30% of the total length in Rayner Lane	A 1.2m high fence is located along the new property boundary in Rayner Lane. This fence is not consistent with the provisions of the DCP as it is not articulated and not permeable.	No The applicant has offered to modify the fence to comply with this requirement. Condition of consent proposed
Disabled Access	Development is accessible to all persons, including those with a disability	Direct disabled access is provided from Ballina Street and Rayner Lane. Unit 14 is also wheelchair accessible	Yes
Alfresco Dining	To provide safe comfortable convenient places for alfresco dining within the Village Centre	The restaurants will have alfresco dining set back from the street and integrated into the overall design	Yes
Residential and Tourist Development	To provide a range of styles and densities within the Village Centre, including tourist accommodation. This accommodation should provide a high level of amenity to residents and tourists	The proposal is for residential and tourist accommodation in a medium density style development	Yes
Public Art	Include a public art piece to the value of at least \$15,000	The public art will be a water feature/sculptural element located in the entry adjacent to the Ballina Street	Yes- Further details required in conjunction with any consent granted
Precinct Specific Controls			
Carparking	Residential Flat Building 1 space for each 1 b/r 1.2 space for each 2 b/r 1.5 space for each 3 or more b/r, plus one	49 spaces. NB- The site has an 8 vehicle credit for road widening, therefore, site need only provide 47 spaces and accordingly has a	Yes *

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Matter	Development Standard	Proposed	Compliant
	additional space per five units for visitor parking Commercial (including offices) and alfresco dining 1 space per 25m ² Total required 55	credit of 2 spaces	
Building Lines (Precinct D1)	Ballina Street Staggered 2m lines Rayner Lane 2m after land dedication	2m staggered setback is provided along the frontage 2m after land dedication	Yes

*Please note that the underground carpark has allocated a proportion of the carparking spaces to individual Lots, however a sufficient number of spaces will remain in common property (fourteen) for general public access for the commercial premises and unit visitors.

The preferred land use within this D1 Precinct pursuant to Clause 3.6.1 of DCP Chapter 8- Lennox Village Centre is *“short term tourist accommodation such as serviced apartments, motels and the like. Buildings intended for use as permanent residential accommodation are also permitted. Commercial activities, such as Refreshment Rooms, may be considered only when ancillary to the use of the premises for tourist accommodation and where fronting Ballina Street (short term accommodation must, however, remain the dominant land use).”*

The planning background to the identification of the preferred uses within this precinct partly relates to traffic circulation in the Village. Clause 1.5 of the DCP Chapter 8 Lennox Village Centre states that there is to be no intensification of existing traffic access in Ballina Street, the long term goal being to relocate vehicle access to Rayner Lane. However, it also recognises the role of the lane as a pedestrian thoroughfare, therefore requiring careful management of the scale and type of developments permissible in this precinct. Traffic generation for the subject development is discussed below.

The use of the site for tourist and commercial purposes only would be considered consistent with the preferred land uses; tourist being the dominant use having regard for the proposed floor areas of both. The proposal also intends to utilise the development for long term residential purposes and this component of the application is not consistent with the preferred landuses for the precinct identified in the plans.

The SEE has sought to justify this departure from the DCP Chapter 8 Lennox Village Centre by submitting that the development is clearly a tourist facility and the approval of the building for long term use is for “financial reasons” only. The application is “not seeking to gain residential use in the guise of a tourist development”. However, Council must provide a full assessment of the development as proposed, namely, short term and long term accommodation combined with commercial uses. Therefore a full assessment of this use and the suitability of the development for this use must be undertaken.

Floor Space Ratio:- The current floor space ratio applicable to the site is 0.6:1 pursuant to DCP Chapter 8 Lennox Village Centre. The development application proposes a floor space of 0.74:1. The SEE states that 0.6:1 is not sufficient for such a 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, with the following being particularly relevant in Council's determination of the application.

An assessment of the development in regards to the relevant environmental planning provisions has found the application is generally compliant with those provisions relating to carparking, height, bulk, scale and setback criteria.

The main issues arising and areas of non-compliance and departures from the provisions relevant to the proposal are outlined below.

Consistency with Current Planning Legislation

Ballina Local Environmental Plan 1987

The proposal is consistent with the current Ballina LEP. It is considered consistent with the objectives of the zone, is permissible with development consent and compliant with relevant clauses within this instrument.

Draft BLEP 2011

The Draft Ballina LEP 2011 has been prepared and publicly exhibited on two occasions. At Council's Environmental and Sustainability Committee of 1st December 2011 it was resolved as follows;

"That Council submit the revised Draft Ballina Local Environmental Plan 2011 to the Department of Planning & Infrastructure and request that the plan be finalised for implementation in accordance with the terms of the Environmental Planning and Assessment Act and associated Regulation."

The Plan was lodged with the Minister in February 2012 and Council is advised that the making of the Plan is very close. However, the associated Development Control Plan critical to the operation of the DBLEP is yet to be publicly exhibited and adopted. Therefore the Plan is likely to come into force some time after its Gazettal to enable the supporting DCP to be completed.

The long term residential component of the development is not consistent with the provisions of the Draft BLEP. The site is located within a B2 Local Centre Zone. Residential accommodation, other than dwelling houses, secondary dwellings and shop top housing will be prohibited in this zone. In accordance with Section 79C 1(a)(ii), consideration must be given to any draft instruments during any assessment process. Consequently, it is considered that the use of the development for long term accommodation if not above retail or commercial premises would be prohibited development under the new Plan.

2) As mentioned previously, pursuant to Clause 1.8A of the DLEP 2011, *"if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced".*

The application was submitted before the making of the plan, therefore, while the proposed residential component is inconsistent with the DLEP 2011 and due consideration must be given to this Plan, the proposal must be considered as if the plan had not commenced.

The SEE lodged with the application states that the Draft LEP *"does not support permanent residential accommodation in the B2 Zone"* and states that *"the application relies on the current Ballina LEP"*.

The SEE states that the proposal is designed as a tourist development based upon floor plans and unit layouts. However, the applicant has advised that tourist accommodation that cannot be utilized by the owners for long term accommodation is not viable for the purposes of finance. The applicant considers the prohibition of the use of this development and those similar for long term residential purposes *"may result in new developments not being built"* and this form of development being unviable due to financial institutions' lending restrictions.

In relation to the background of the permissibility of residential accommodation in the B2 Zone of the DBLEP, Council's Strategic & Community Services comment as follows:

"The history behind the land use zoning table in the B2 Zone is relevant to the use onsite for residential purposes. During the making of the Draft instrument, the State formulated definition for shoptop housing included residential accommodation above or behind a commercial use. During the ongoing process of the plan preparation, the definition of shoptop housing was altered by the Department of Planning to the current definition, removing any reference to residential accommodation behind or attached to a commercial premise. Strategic Services considered the original definition would be appropriate for the B2 Zone, promoting commercial frontages along Ballina Street with accommodation, either long or short term, above and behind these commercial uses. The amending of the definition effectively changed the intent of the DBLEP to permit residential accommodation in conjunction with commercial development."

Regardless, once the DBLEP comes into operation the residential component of the development will be prohibited in the B2 Zone.

Ballina Combined Development Control Plan

A comprehensive assessment of the proposal having regard to the relevant provisions of the DCP has been undertaken.

8.2 DA 2012/195 - Mixed Use Development

The use, being residential/ tourist and commercial while generally consistent with the provisions of the Ballina Combined DCP Chapter 1- Policy No. 1, is not compliant with the private open space provisions for residential accommodation. Specifically, the private open space balconies/patios onsite for ground floor individual units are insufficient for residential accommodation. If any consent is granted for long term residential use, it is considered that the areas onsite for private open space are insufficient and will not provide good amenity for these residents. These areas for private open space would not be necessary if the development was only for tourist accommodation. It is noted that the manager's residence which is intended for long term accommodation has substantially larger balconies for the occupants of this development, including a roof top terrace.

As outlined earlier, there appears to be design potential for the applicants to better address the private open space deficit for ground floor residential use. This is a matter that could be taken up with the applicants should Council otherwise want to approve the application.

The development is also inconsistent with certain provisions and preferred landuses prescribed by DCP Chapter 8 Lennox Head Village Centre. While standards such as fence heights and balconies within the building line can be conditioned within any consent granted, the preferred landuse is not long term residential accommodation, when combined with a commercial use.

The proposal is also inconsistent with the current FSR applicable to the D1 Precinct of 0.6:1. The FSR for this precinct is a numerical standard of this DCP and variations are possible, having regard to the merits of the case. However, the proposal has a FSR of 0.74:1, a significant departure to the nominated maximum. The applicants have requested a FSR consistent with the DLEP 2011, whilst otherwise seeking to rely on the provisions of the BLEP 1987.

An increase in floor area has the potential to have flow on effects in the form of a higher number of vehicle trips, reduced area of private open space onsite, greater numbers of people onsite and potential increased risk of adverse amenity for residents/guests and for others in the locality. However, the proposed increase to 0.8:1 as identified within Clause 4.4(2) of the DLEP 2011 is an indication that this level of density has now been tested by public consultation and determined to be acceptable future development in the locality.

A review of developments in the locality has determined that only one Lot in the D1 precinct has been granted consent and subsequently constructed having regard to the Ballina Combined DCP Chapter No 8- Lennox Village Centre (albeit in draft form only). (57 Ballina Street DA No. 2004/698). This development, being a mixed residential and commercial use was restricted to short term accommodation within the residential component as a condition of consent. This development had a FSR of 0.55:1.

Other development in the Lennox Head Village and the approved FSR's for each are summarised below;

8.2 DA 2012/195 - Mixed Use Development

DA No.	Location	Proposal	FSR
2010/926	45 Ballina Street (NB; valid consent for portion of the subject site)	Mixed two storey Tourist and commercial	< 0.6:1
2007/180*	52-54 Ballina Street (cnr of Ballina Street and Park Lane sth)	Mixed two storey residential/commercial	<0.6:1
2005/988*	72 Ballina Street	Mixed two storey residential/commercial	0.73:1
2002/994*	80-84 Ballina Street (Campbell's IGA)	Two storey Commercial	0.81:1

*These developments are within the Lennox Head Village Centre, however, are not located within Precinct D1.

The listed developments and the accepted FSR's is of relevance because the current proposal is requesting a significant departure to the current FSR of 0.6:1. The SEE has justified the proposed FSR of 0.74:1 on the basis that the DLEP 2011 has proposed a FSR for the locality of 0.8:1.

It is considered that while the proposal has complied with numerical standards in regards to carparking and setbacks, little justification has been provided to justify the FSR variation by the SEE. Regardless, as the development is considered satisfactory in regards to scale and built form, (these matters being interrelated with floor areas and ultimately the FSR) and as the DLEP is well advanced and has tested the proposed 0.8:1 FSR via local community consultation, this variation to the current standard is reasonable. As detailed above, other developments have been approved in the Village having FSR's greater than 0.6:1, albeit not within the D1 Precinct.

Traffic Generation along Rayner Lane

Most of the objections received during the public notification process related to the increased traffic from the development utilising Rayner Lane. Rayner Lane has a 3.5m wide pavement and does not have road verges or footpaths. The lane is frequented by pedestrians and cyclists as a link between the public reserves adjacent to the ocean and all pedestrians use the road carriageway due to the narrow width of the lane and the relatively low traffic volumes and traffic speed currently experienced.

A long term goal of DCP Chapter 8- Lennox Village Centre as stated within Clauses 1.5 and 3.6.1 is to limit vehicular access to properties facing Ballina Street, and instead use Rayner Lane. The DCP states "*while permitting some intensification of development within the precinct, increases in traffic in Rayner Lane should be limited*". All traffic for the proposed development will be via a two way driveway to a basement carpark in Rayner Lane. A 3.6m wide strip at the rear of the property will also be dedicated to Council for the widening of Rayner Lane to permit parking and a footpath. This dedication is the second of its kind in the street to date with no other properties affected by the dedication being the subject of development consent.

Council's Development Engineer has provided the following advice:

8.2 DA 2012/195 - Mixed Use Development

“The current traffic volumes in Rayner Lane have been estimated from 2003 traffic counts with a 3% annual growth factor. This results in current traffic volume in Rayner Lane 1120 vehicles per day (vpd) with the proposed development to generate an additional 377 vpd. This is an increase of approximately 33% in daily traffic. The current form of Rayner Lane has the capacity to cater for the increase in traffic associated with this development.

The DCP Chapter 8-Lennox Village Centre has acknowledged this change and conditions developments with road widening of the lane to cater for increased vehicle and pedestrian flows. As this road widening is linked to development, it will take some time to obtain the ultimate road form within Rayner Lane to include a dedicated pedestrian path, parking lane and travel lane.”

Having regard to this advice, the lane will experience an increase in traffic. The road widening will, however, result in a street capable of catering for these traffic flows. The traffic generation from the subject application will be from a consolidation of three lots in the precinct.

Building Code of Australia (BCA) Issues

The studio units of the dual key apartments are not compliant with the BCA for long term residential accommodation.

“Part F2 of the BCA requires certain facilities be provided to both Class 2 (long term units) and Class 3 (short term units).

The Class 2 units require laundry and kitchen sink facilities. The smaller (studio) units do not contain laundry and kitchen sink facilities, therefore would not be suitable for long term use but rather short term use.”

The applicant has clarified that the studio units will not be utilised for long term accommodation in isolation from the other portion of the dual key unit. While the applicant proposes that both residential and tourist use could occur within the dual key configuration, long term residential accommodation may only occur in the larger units with kitchen and laundry facilities.

Amenity / Lane Use Conflicts as a result of the Mixed Uses Onsite

The applicant has proposed that the site could be used for a mixture of short and long term residents in conjunction with the ancillary commercial uses fronting Ballina Street. A manager will be present onsite at all times and a Tourist/Residential Management Plan has been formulated to address potential conflicts onsite between all users and adjoining residents. However, issues such as regular guest changeovers including checking in and out of rooms with luggage in close proximity to residents, shared stairwells, closing doors, and pathways immediately adjoining relatively small areas of private open space (balconies of 10m²) have the potential to cause adverse amenity impacts.

It is considered that any management plan would have difficulty addressing issues arising from a mixture of residential and tourist accommodation within a relatively compact development. The close proximity of the common areas onsite with the units has the potential to cause amenity issues between holidaying guests and long term residents, regardless of 'house' rules. The tolerance of a person on holidays to noise, relative to those who are not is likely to be different.

Council has been involved with two Land and Environment Court (LEC) cases regarding the conversion of tourist developments into permanent or long term residential accommodation.

The Appeal dismissed by the LEC for the Ramada Hotel, Martin Street, Ballina, in 2010 involved an application refused by the Council that had requested a proportion of the 115 Suites have the option to be used for long term residential accommodation, rather than limiting the units to only short term tourist use. While this appeal was dismissed for a variety of reasons, the incompatibility between long and short term uses within the building was identified as being unacceptable having regard to the circumstances of the case. The Commissioner stated in regards to conflict between users that *"I am not convinced that it is a matter that can simply be addressed through the by-laws to the strata plan"*. The Commissioner also referred in the judgement of *Kent Pty Ltd v Council of the City of Sydney* addressing the residential and tourist use issue stating *"while both are residential in nature, the fact that they are separately defined in LEP 2005 would suggest that they have different characteristics."* and *"the greater frequency of short term occupants in and out of the building is potentially disruptive for long term occupants, particularly at times such as early in the morning or late at night. These movements may not always create excessive noise but may occur at a time when long term occupants reasonably expect not to be disturbed."*

While this development was much larger than the subject proposal, the Commissioner did consider that the mix of long and short term uses, particularly if occurring upon the same floor, had the potential to cause conflict between residents and guests.

Similar issues were contended within the Appeal for the Lennox Point Motel, 20-21 Pacific Parade, Lennox Head, in 2009. The Commissioner in that case contended that the findings of the Kent Street judgement above could be distinguished due to the significantly lower number of units (nine of the 13 units to be used for short or long term accommodation the remainder for short term accommodation only) and also because of the seasonal nature of the short term accommodation.

However, as mentioned in the discussion about private open space areas onsite, this development is considered different to the motel appeal for the following reasons:

- This proposal is not a conversion of an existing building but a new development, upon a flat, regular shaped lot with minimal site constraints;
- The motel consisting of 13 units is smaller than this development, that would accommodate up to 30 (plus managers' residence) separate domiciles / suites;

8.2 DA 2012/195 - Mixed Use Development

- The design of the building results in a U-shaped development, with a central common area including a guest pool, and terrace immediately adjoining the primary balconies of all units on the ground and first floors; and,
- The development proposes both a central walkway and a lift that separates guest access into six different travel ways.

Council has, in the past, experienced problems with the ability of onsite managers to satisfactorily enforce adopted regulations on a daily basis within tourist developments. Essentially, owners of strata titled properties are not required to utilise the services of the onsite managers for the management of their individual properties. Hence, day to day problems that may arise internally may not be the responsibility of the onsite manager to resolve.

BASIX Certificate

Please note that due to the residential nature of the development, a BASIX certificate is required to accompany the Development Application. Council has requested the submission of a certificate, which is currently being prepared on the applicant's behalf by an appropriate consultant. If consent were to be granted, no consent will be issued until a satisfactory certificate has been received.

Conclusions

The use of the site for a mixed tourist and commercial development is generally consistent with the local planning controls, in particular the Ballina Combined DCP Chapter 8 - Lennox Head Village Centre. However, the proponents have also requested that individual owners be given approval to utilise their unit for long term residential use; principally for financing purposes. Financing of a proposed development is NOT a valid assessment criterion in accordance with the Section 79C heads of consideration within the Environmental Planning and Assessment Act 1979.

Having regard to the application as proposed by the proponent, Council needs to particularly consider the following matters:

Preferred Landuses within the D1 Precinct as identified in the Ballina Combined DCP- Chapter 8- Lennox Head Village Centre and DLEP 2011 -B2-Local Centre

The use of the site for residential purposes when combined with a commercial use is not consistent with the preferred landuses for the D1 precinct. Tourist development is a preferred landuse, as is commercial so long as the commercial use remains ancillary to the dominant tourist use. Under the DBLEP zone, residential accommodation other than single dwellings, shoptop housing and secondary dwellings will not be permissible in the B2 Zone. Commercial premises and tourist accommodation will be permissible uses within the zone. As advised by the Strategic & Community Services Group, the prohibition of residential accommodation in the form proposed in this application was not intended in the original drafting of the 2011 plan.

Floor Space Ratio

The floor space ratio of the development does exceed the current maximum permissible by Chapter No. 8 Lennox Head Village Centre of the Combined Ballina DCP. It is recognised that a FSR exceeding the current standard may have implications regarding the amenity of the locality, given that the site will cater for a more intense development than if the FSR was 0.6:1. It is significant that the DLEP 2011 nominates a FSR development standard for the site of 0.8:1. Following gazettal of the DLEP as currently proposed, the FSR for the Lennox Village Centre will be 0.8:1 rather than the current 0.6:1. The development will comply with this proposed FSR. Having regard to the circumstances of the case and other variations granted elsewhere within the Lennox Village, this departure can be supported in this instance, given this FSR will be consistent with the new LEP once gazetted.

Private Open Space

The proposal as submitted is not compliant with Council's provisions for private open space for long term residential accommodation. The applicants have subsequently submitted sketch plans showing that additional private open space can be allocated to ground floor units.

Such would not be contiguous to Living Areas within the suites but would have value for private recreational purposes if the Council were to condition a redesign of the application in this regard.

The number of units proposed onsite, combined with the location of the development and the tourist orientated design has the potential to have adverse amenity impacts for long term residents and is contrary to the provisions of Ballina Combined DCP Chapter 1 Policy Statement No.1.

Onsite Management of the Development

It is also considered that the use of the site for a mixture of long term and short term residential accommodation has the potential to cause conflicts between residents and guests. Being a dual key development, the site has the potential to cater for up to 30 different guest groups, any portion of which being long or short term residents. It is recognised that the onsite manager and management plan will assist in reducing potential conflicts onsite, but such is unlikely to remove all potential adverse amenity issues associated with such a mixed use. The strata title subdivision of the site will facilitate individual ownership of the 16 units and commercial premises. These owners will not necessarily be obliged to utilise the services of the onsite manager for the letting of their unit. Further, the plan of management for the site does not bind individual owners to the onsite managers for the day to day operations of their unit. Accordingly, onsite managers may not have the ability to manage internal issues that arise from the behaviour of all occupants of the building, either long or short term.

Council must be satisfied that the plan of management for the site will satisfactorily address the potential issues arising from such a mixed use development that will have multiple owners and multiple combinations of long and short term occupants.

8.2 DA 2012/195 - Mixed Use Development

Despite the deputations of the proponent regarding the primary use of the site for tourist purposes as a justification for the departures from certain planning provisions, Council is obliged to consider the development if it were to be operated as a residential flat building, tourist development or any proportion of both. If Council sees fit to vary the relevant planning provisions, it must be satisfied that the proposal is suitable for these purposes.

In summary, those provisions requiring variation consideration are:

- The preferred landuse of the Ballina Combined DCP Chapter No.8-D1 precinct;
- The permissible uses of the DLEP B2 Local Centre Zone;
- The current floor space ratio for the site;
- The minimum areas of private open space for a residential flat building.

Council must also be aware that the development may not provide a good amenity for occupants having regard to the strata subdivision of the property and the mix of long and short term guests.

Options

1. Approve the proposed development as proposed, as a mixed tourist, residential and commercial use, subject to conditions.

Comment:

It is considered this option is inconsistent with the assessments of the report in regards to the residential aspect of the development, particularly the potential amenity issues associated with the mixed residential/tourist use and the deficiencies of the private open space areas proposed in the application.

2. Grant approval to the development as proposed, as a mixed tourist residential and commercial use, limiting the residential use to only the owners of the individual unit and conditioning a redesign of the allocation of private open space for the ground floor units.

Comment:

A restriction on the title of each individual Lot is an option that may be favoured by Council having regard to the applicant's request that individual Lot owners can reside in their units. This would assist in limiting the use of the site for unrestricted residential purposes and give more likelihood to the apartments being used principally for tourist accommodation as set out in the application.

3. Defer the application requesting further information from the proponent addressing concerns regarding the effective management and provision of private open space areas for the residential component of the development

Comment:

Council must consider the ability of the proponent to satisfy the deficiencies of the proposal without a major redesign or amendment of the proposed use of the development. The applicant has had sufficient opportunity to address concerns regarding the long term and mixed tourist/residential use. It is considered that to date the Council couldn't

8.2 DA 2012/195 - Mixed Use Development

be unreservedly satisfied in regards to these matters. The proposal has been designed for tourist use, at the cost of amenity for long term residential purposes.

4. Refuse the application on the basis that the development is not suitable as a mixed use residential/tourist and commercial development.

Comment:

It would be unfortunate if a development generally compliant with the relevant controls for tourist and commercial development is refused due to the proponents' need to have to include in their proposal limited opportunities for long term residential use. However, the residential component of the development is not without problems as identified and outlined in this report.

Given all of the circumstances of the case, including the current difficult economic circumstances that are being experienced across the Shire, it is considered to be in the public interest to approve the development in accordance with Option two above as the development would add substantially to the vitality of the Lennox Head Village Centre by providing additional holiday accommodation and village-scale business opportunities on an ongoing basis as well as employment for the building industry in the initial construction phase.

RECOMMENDATIONS

That development application 2012/195 to undertake demolition of the existing Thai Gardens Restaurant and Motel and the subsequent construction and strata title subdivision of a mixed use commercial/ tourist/residential two storey development with basement carparking on the subject land be **APPROVED** subject to the planning, environmental and engineering conditions attached.

Attachment(s)

1. DA 2012/195 - Locality Plan
2. Plans (floor plans, elevations, street views, driveway detail & landscaping)
3. Submissions of Objection
4. Submissions of Support
5. DA 2012/195 - Recommended Conditions of Consent

8.3 DA 2011/519 - 'Ramada', Section 82A Review of Determination

8.3 DA 2011/519 - 'Ramada', Section 82A Review of Determination

Delivery Program Development Services

Objective To obtain a determination in respect to the Section 82A Application seeking a review of Council's refusal of development application 2011/519.

Background

An application has been made through Section 82A of the Environmental Planning and Assessment Act 1979, seeking a review of the Council's decision to refuse the subject application at its meeting of 23 February 2012.

DA 2011/519 sought to change the permitted use of Lots 52 & 53 in SP 79299 (the penthouse apartments at the Ramada) from Short Term Accommodation to Long Term Accommodation.

Key Issues

- The applicant has submitted no additional information and seeks only the opportunity to address Council. A copy of the Council report to the meeting of 23 February 2012 is attached.

Information

The application has been notified in accordance with Section 82A which requires applications to be notified in the same manner as the original application for a period not exceeding 14 days. The application was advertised from 12 July to 18 July 2012 and all people notified of the original development application were notified once again.

One submission has been received, supporting the application. Six submissions have been received opposing the application with one containing a petition signed by 24 people. All submissions are attached to this report.

The submission in support of the application relates to the following matters:

The existing use is incompatible with tourist activities and has the effect of inhibiting the economic use of a substantial asset.

Comment

This submission is hard to understand as the existing use of the unit is for tourist accommodation, and as such was designed for that purpose,

The change of use of this unit will not create a precedent as these units are different to all others and do not lend themselves to holiday letting.

Comment

The subject units are larger than all others in the complex and in that regard are better suited to long term occupation.

8.3 DA 2011/519 - 'Ramada', Section 82A Review of Determination

The following are matters raised in the original application which were addressed in the Council report, a copy of which is attached. These matters have not been re-addressed here:

- Non-compliance with objective 67(a) of the North Coast Regional Plan to encourage tourism activity, which will be a positive benefit to the region's economy.
- Non-compliance with objective (i) of the Ballina Local Environmental Plan 1987 to encourage further development of tourist activities in the Shire
- Non-compliance with the car parking requirements.
- Non Compliance with the solar access, overshadowing, north facing rooms and open space requirements of BSCDCP Chapter 2 – Ballina Town Centre.
- Non-compliance with the requirement to provided private open space in the form of a balcony in a position other than on the south side of the building.
- The proposal is not in the public interest.
- The penthouse units attract a certain clientele to the Ramada Ballina which would be lost to Ballina if the penthouse units were to be removed from the list of available units.
- The by laws require every owner and caretaker on the 6th floor to give their consent to the granting of exclusive use to the balcony.
- The approval of this application could be used as a precedent for other similar applications.

The following matters have not been raised previously:

All original investors have lost heavily, and to allow these two owners to be singled out and given preferential treatment, which would have the effect of negatively impacting on the remaining owners would be improper.

Comment

Whilst the sentiment expressed attracts sympathy for the remaining unit owners, it relates to a commercial consideration and as such it is not a matter for Council to consider. The application is for two particular units in the building and has to be assessed on the merits of their design and disposition.

The application should not be considered as Mr Mills is no longer the owner of the property.

Comment

The Commonwealth Bank, the mortgagor in possession, has advised that it has given permission for the review to proceed.

Special treatment for the applicants.

Comment

The applicants are not being given any special treatment. They have made a formal application under the provisions of the Environmental Planning and Assessment Act 1987 which necessitates the Council assessing the merits of the proposal against the relevant planning provisions. Any person may make such an application. Where the current application submits that it can be differentiated from other suites in the building is with respect to apartment size and isolating position within the building.

No additional information has been submitted to support the application.

Comment

Whilst this is unusual, the applicants are not required to provide any additional supporting information.

The proponents were well aware of the limitations of their investment when they purchased their properties. That was, that the Ramada was to exclusively operate as a Hotel and not as a mixed or hybrid development.

Comment

This is a commercial consideration and as such it is not a matter for Council to consider. The Council is obligated to consider the particular merits of the subjection application.

Legal / Resource / Financial Implications

In respect to the Division of Local Government's (DLG's) "caretaker provisions" a concern was expressed that the petition could be considered as 24 objections, which then placed this application above the 25 objector threshold.

In further discussions with the DLG they advised that the original caretaker circular had failed to mention that the 25 objector threshold refers to section 79 (5) of the Environmental Planning and Assessment Act (1979). Section 79 of the Environmental Planning and Assessment Act (and its related sub sections) actually refers to "designated development" (i.e. major developments typically that require an environmental impact statement) under that Act. As the original application is not designated development the 25 objection threshold does not apply.

The caretaker provisions also allow for exceptions where a failure to make a determination could result in a deemed refusal. Due to the time frame that this Section 82A application has been with Council it would also be eligible under that clause for the exception provisions.

In summary there is no legal impediment for the current Council to determine this application at the August meeting.

Consultation

The application was exhibited for public comment.

Options

The options contained in the original report are still applicable, they being;

1. Approve the application subject to conditions.
2. Refuse the application
3. Defer the application until all approvals of the Owners Corporation and Management have been obtained.

The Council planning staff remain supportive of the recommendation contained in the original report, that being:

That development application 2011/519 for the change of use from short term accommodation to long term accommodation of Lots 52 & 53 in Strata Plan 79299 being units 601/602 & 603/604 of the Ramada Hotel be APPROVED subject to the attached conditions of consent.

The actual Council decision from the February 2012 was as follows:

*That development application 2011/519 for the change of use from short term accommodation to permanent accommodation of Lots 52 and 53 in Strata Plan 79299 being units 601/602 & 603/604 of the Ramada Hotel be **REFUSED** for the following reasons:*

1. *Non compliance with objective 67(a) of the North Coast Regional Environmental Plan “to encourage tourism activity that will complement the existing natural and man made features of the region and be of positive benefit to the region’s economy”.*
2. *Non compliance with objective (i) of the Ballina Local Environmental Plan 1987 “to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by long term residents”.*
3. *Non compliance with the car parking requirements of Ballina Shire Combined Development Control Plan Chapter 1, Policy Statement No 2 – Car Parking and Access.*
4. *Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 – Ballina Town Centre clause 4.18.1 Solar access and overshadowing mandatory requirement “provide some north facing habitable rooms and open space in each residential apartment in order to maximise access to sunlight”.*
5. *Non compliance with the requirements Ballina Shire Combined Development Control Plan Chapter 2 – Ballina Town Centre clause 4.18.6 Private open space mandatory requirement “provide private open space to all dwellings in the form of a balcony, courtyard, terrace and/or roof garden, at least one of which is not located on the southern side of the building.*
6. *The proposal is not in the public interest.*

8.3 DA 2011/519 - 'Ramada', Section 82A Review of Determination

It is accepted that the existing position of Council is for refusal however it is the role of staff to assess planning applications on their technical merit. Therefore the recommendation remains as per the original report.

RECOMMENDATION

That development application 2011/519 for the change of use from short term accommodation to long term accommodation of Lots 52 & 53 in Strata Plan 79299 being units 601/602 & 603/604 of the Ramada Hotel be APPROVED subject to the attached conditions of consent numbered one to eleven, as per the report to the 23 February 2012 Council meeting.

Attachment(s)

1. DA 2011/519 - Locality Plan
2. DA 2011/519 - Copy of Council Report, 23 February 2012.
3. DA 2011/519 - Submissions

8.4 Companion Animals Management Plan - Review

8.4 Companion Animals Management Plan - Review

Delivery Program Environmental & Public Health

Objective To undertake a review of Council's Companion Animals Management Plan.

Background

Council is required every two years to review its Companion Animals Management Plan. The initial plan was adopted by Council on the 23 September 2010, and is now due for review.

Key Issues

- Contents of the Plan
- Resource implications
- Community expectations
- Legislative requirements

Information

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

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

Directions and actions taken over the last two years on the following Action Plans have been considered in the Draft Review Companion Animals Management Plan that accompanies this report.

- Action Plan 1 - Registration and Identification
- Action Plan 2 - Dogs in Public Places
- Action Plan 3 - Barking Dogs
- Action Plan 4 - Dangerous Dogs & Restricted Breeds
- Action Plan 5 - Cat Management
- Action Plan 6 - Animal Welfare & Safety
- Action Plan 7 - Benefits of Pet Ownership
- Action Plan 8 - Provision of Facilities
- Action Plan 9 - Education
- Action Plan 10 - Enforcement
- Action Plan 11 - Funding
- Action Plan 12 - Review

8.4 Companion Animals Management Plan - Review

A number of the tasks identified in the Action Plans have been completed and continue to be on-going under the Draft Plan. Additionally, consideration has been given to the performance indicators and whether they are accurate and measurable. Refer to the changes and notations made in red and yellow in the accompanying Draft Review Companion Animals Management Plan.

The amendments in the Draft Review Plan outlined below highlight the companion animal management issues that have been considered during the implementation of the Plan since 2010 and this report provides recommendations to amend the Plan to improve the overall co-ordination of companion animal management in the Shire.

Financial Hardship

Council has recognised, at times, residents may experience genuine and significant financial difficulties in paying Council imposed fees associated with animal surrender and impounding of a companion animal.

In 2011 Council amended the Financial Assistance - Rates, Annual Charges and Fee Policy to allow consideration to be given to fee waiver, deferment or reduction of ranger imposed fees on application. This provides some relief to residents experiencing significant financial hardship.

Lennox Head Surf Club Dog Prohibited Trial Area

Council has been implementing a 2010 Council resolution to trial a dog prohibited zone immediately in front of the Lennox Head Surf Club. The trial has now been in place for over twelve months and appears to be achieving the Club's and the community's requirements. Educational signage has been installed informing residents and visitors of the restrictions.

This review is recommending the dog prohibited area be formalised and incorporated into the 2012 Companion Animal Management Plan.

Targeted Animal Education and Patrols

Council Rangers conduct targeted patrols of Council parks, reserves and beach areas to ensure pets are appropriately managed. This includes daily area patrols plus, during the summer months, the Rangers conduct foot patrols early mornings and late afternoons of key beaches. The foot patrols provide a great opportunity to educate dog owners on responsible pet ownership incorporating the checking of microchip and registration details of animals. The patrols were designed to increase education in the community with warnings being issued for non compliance, instead of penalty infringement notices (PIN's). Additionally, owners who didn't have their dogs under effective control in on-leash dog areas were given a free leash by the Rangers to encourage compliance.

Council Rangers have also conducted increased patrols of identified roaming dog problem areas. Letters and educational material have been sent to all residents in the Fig Tree Hill, Greenfield, Castle Drive and Northlake's Estates addressing roaming dog compliance.

Queries have been raised regarding the consistency and equity of enforcement of the current regulations governing dog management in public places.

8.4 Companion Animals Management Plan - Review

To provide an adequate level of policing and enforcement in the community, Council has in the last six months increased the ranger resources to three rangers but will need to continually monitor the resourcing of this Section to ensure community expectations can be addressed.

Collection of Dog Faeces

To improve environmental protection Council has been trialling the installation of "doggy poo" bag dispensers at Lennox Head. Council has received positive feedback about the installation of these dispensers and it is recommended Council locate additional dispensers at other prominent sites in the Shire.

Owners of dogs are required to remove and dispose of dog faeces. The dispensers help people to do this and also provide continued education about the importance of removing dog faeces for public and environmental health.

Council's "B" Ward Committee has previously requested that a more integrated approach to the collection and disposal of faeces from the beach areas was required, and the provision of bag dispensers and waste receptacles responds to this. Previous problems encountered with the mass waste of provided bags have not arisen in the current programme.

New Procedures Developed

As part of the Plan new procedures have been developed for Barking Dogs, Nuisance Cats, Roaming Dogs, Dog Attacks, Companion Animal Review Panel, and the Impounding of Animals. Council's website has been updated to reflect the management of such complaints and to provide educational resources to the community to address specific incidents/matters.

The new internal procedure for dog attacks has been developed to ensure that the investigation all of dog attacks are a matter of high priority and are reported to the Department of Local Government within the legislative time frames.

The creation of an internal Companion Animal Review Panel ensures all dog attack matters are investigated consistently and that appropriate action is taken to meet Council's legal obligations, protect public safety, and to maintain the public interest.

Dog Attacks

The number of reported dog attacks and dog related incidents have been steadily increasing over recent years. For the 2011/2012 reporting year Council Rangers have investigated 113 complaints regarding an alleged dog attack either on a person and/or animal. In contrast 96 complaints were investigated in the 2010/2011 reporting year.

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

It is important Council provides adequate off-leash exercise areas where owners can take their dogs away from their home environments and allow their pets to socialise in mutually neutral areas. Council has been closely

8.4 Companion Animals Management Plan - Review

monitoring dog attack and dog related incidents in the off-leash areas and over the last 12 months only one incident has been reported to Council.

Off-leash Areas

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

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

Dogs that are not exercised are more likely to develop behavioural problems such as aggressive behaviour and excessive barking. Therefore considering the advantages of off-leash areas it is proposed that Council increase their off-leash areas to include a trial of the Spit Beach on the Richmond River in Ballina.

Currently the Spit is designated as an on-leash area, however in recent years has become increasing utilised by dog owners and dogs off-leash are often observed. The Rangers have been monitoring this area and find it difficult to enforce the on-leash restrictions and accordingly a trial as an off-leash area is recommended for the next twelve months.

Many senior residents reside on the Ballina Island and can't always drive to the already nominated off-leash areas in Ballina and so providing an easily accessible site such as the Spit is recommended. The Spit designation will also foster opportunities for people to meet and interact and encourage people and dogs to exercise and help Council achieve improved outcomes in responsible dog ownership.

The Serpentine

The Serpentine is currently a dog prohibited zone identified with on-site signage. Similarly the enforcement of this dog prohibition zone is difficult due to the area's parking restrictions not enabling the Ranger to stop and take action before people and their dogs have left the area.

Notwithstanding the enforcement difficulties, The Serpentine is recommended for a twelve month trial as an on-leash area having the aim of testing whether or not this additional exercise area will improve animal management in this locality.

Off-leash Area Compton Drive

Concerns have continued to be raised with the safety of the Compton Drive off-leash dog area. This area has been strategically selected to be easily accessible and not create nuisances to surrounding properties. However it's close proximity to Compton Drive makes it unsafe for dogs to run and walk safely without raising concerns of the dogs being injured by a passing vehicle and/or potentially creating an accident.

8.4 Companion Animals Management Plan - Review

Council resolved at the adoption of the original Plan to support the installation of safety fencing at the off-leash area in Compton Drive however funding bids to date have been unsuccessful to complete these works. An investigation to establish a fully enclosed off-leash facility and the allocation of funding for such should be considered by Council.

Lake Ainsworth

There has been confusion in the community regarding the rules of dogs in the Lake Ainsworth Reserve. Currently dogs are prohibited from swimming in Lake Ainsworth and in the reserve immediately adjacent to the Surf Club - BBQ area. Conversely, dogs are permitted on the foreshore surrounding the Lake.

The Rangers are regularly requested to provide advice on the rules regarding dogs at the Lake, confirming the community confusion about what is permitted in the area. The "B" Ward Committee has also requested Council clarify its position regarding dog management in this area following reported conflicts between swimmers, the environment, vehicles and dogs.

To manage this, a prohibition of dogs from being in the Lake and along the foreshore area immediately surrounding the Lake is sought.

The Seven Mile beach off-leash dog area is in close proximity to this area and the prohibition of dogs on the foreshore should not impact on people walking to the entrance of the off-leash area.

Additionally, to afford greater public safety for the precinct, it is recommended that Council consider allowing people to access the off-leash area at Seven Mile beach from the beach access immediately to the north of the Surf Club. This access pathway would enable people to safely walk to the off-leash area and would discourage people and dogs from walking along the eastern road of Lake Ainsworth. During the busy summer months there are often competing conflicts with parked vehicles, travelling vehicles, pedestrians and swimmers in this area.

Support for this is drawn from the experience gained by having the pathway utilised on Lennox Head Market Days with minimal impact and disturbance.

Additionally, "B" Ward Committee has requested Council endorse that the fire trail at the end of Camp Drew Road, Lennox Head, be a dog prohibited zone due to the sensitive nature of the 7(f) Environmental Protection Coastal Lands Zoned lands. This request has been examined and is supported in the report's recommendations.

New Animal Shelter

Council has committed funds to the construction of a new animal shelter to ensure Council meets its responsibilities for the management of impounded cats and dogs. Construction works are anticipated to commence late January 2013 with scheduled completion by 30 May 2013. The new facility will provide high standard accommodation and ensure Council is compliant with its statutory obligations and that an optimum service is provided to the local community.

The Council's existing shelter has been sold to the Northern Rivers Animal Service (NRAS) and the Council's working relationship with the NRAS for the

8.4 Companion Animals Management Plan - Review

re-homing of animals is expected to further develop and prosper into the future given the proximity of the two services to each other.

Education

Over the next two years of the Plan the Council is planning to commence an education program specifically targeting the promotion of micro-chipping and registration of companion animals; and the importance of de-sexing pets. Council has programmed for the RSCPA de-sexing van to come to Ballina Shire later this year to promote de-sexing and to offer reduced fees for the de-sexing of animals. This program will be funded from the Regional Companion Animals Committee, which is a partnership of eight local councils in the region.

Sustainability Considerations

- **Environment**

The Plan assists with the protection of the natural and built environment through the introduction of clear guidelines for the management of companion animals.

- **Social**

Companion animal ownership brings both great benefits and significant adverse impacts for people living in the community. The irresponsible ownerships of pets can be the cause of many neighbourhood disputes. Dog attacks cause serious injury to people and other animals and have occasioned death.

Companion animal ownership should provide great support and companionship to owners and help with loneliness and assist in the rehabilitation of people without adversely impacting on other people's lives.

- **Economic**

If Council adopts the recommendations of this report then a future budget allocation will need to be provided for the installation of signage, fencing and educational material.

Legal / Resource / Financial Implications

The revision of the Plan corrects inaccuracies in the previous Plan arising from legislative changes and updates the Council's responses to the management of companion animals.

The costs to local councils in meeting the prescribed companion animal management responsibilities are substantial and there is a need to balance the allocation of resources to meet the requirements of the Act and the demands of the local community.

The Actions in the Plan will reasonably meet the Council's legal obligations and protect the public from the likelihood of claims being made.

Consultation

The Plan has been developed by Council staff in consultation with the NSW Department of Local Government, Companion Animals Section.

Options

1. Council endorse the revised Policy as presented.

Council placed the original document on public exhibition and received hundreds of submissions regarding the development of the original Companion Animals Management Plan. The amendments undertaken as part of this review are considered minor and therefore public exhibition of the revised Plan is not considered necessary, albeit that the revised Plan, if adopted, should be promoted throughout the community.

2. Council may decide to exhibit the revised Policy for public comment. If this option is taken, it is recommended that if no submissions are made to the exhibition then the Policy be adopted with no further actions required.
3. Council may decide to exhibit the revised Policy for public comment. If submissions are received from the exhibition process, the Policy be amended and reported back to Council.
4. Council may resolve not to adopt the revised Policy.
5. Council may resolve to amend the revised Policy, with a further report to Council reflecting amendments.

Overall the preferred approach is option one in that the changes are either considered minor, or are recommended on a trial basis. The trials will allow the community to provide feedback on the changes and rather than waiting two or three months for a public exhibition process to be completed it is proposed that Council proceed with the amended plan.

RECOMMENDATIONS

1. That Council adopt the Companion Animals Management Plan Policy, as revised and attached to this report, subject to the following points.
2. That Council support dogs being prohibited in Lake Ainsworth and the immediately surrounding foreshore area of Lake Ainsworth.
3. That Council support dogs being prohibited on the Fire Trail at the end of Camp Drew Road, Lennox Head.
4. That Council support the trial of the Spit beach area as an off-leash dog area for a period of twelve months. At the completion of the trial a report to be presented to Council on the outcomes of the trial together with associated recommendations.
5. That Council support the formalisation of the dog prohibited zone immediately in front of the Lennox Head Surf Club on the eastern side as indicated on the current signage.
6. That Council support the beach access pathway immediately north of Lennox Head Surf Club as an on-leash area, including northwards along Seven Mile Beach until the off-leash dog zone commences.
7. That Council support the trial of The Serpentine area as an on-leash dog area for a period of twelve months. At the completion of the trial a report to be presented to Council on the outcomes of the trial together with associated recommendations.
8. That Council support the installation of safety fencing at the off-leash area in Compton Drive, Ballina.
9. That Council support the additional installation of "doggy poo" bag dispensers and educational signage at prominent sites in the Shire.
10. That Council support the investigation of an additional suitable area to establish a fully enclosed off-leash facility and consider the allocation of funding in the budget for 2013/2014 for construction.
11. That Council continue to engage in a proactive education program to promote the Companion Animals Management Plan throughout the Shire.
12. That Council continue to review the signage surrounding dog prohibited, dog on-leash, and dog off-leash areas within the Shire to ensure that the level of information provided to residents and visitors is clear and informative.

Attachment(s)

1. Draft Review - Companion Animals Management Plan (Policy Ref: C16)
2. Responsible Pet Ownership Brochure

8.5 Development Applications - Works in Progress - August 2012

8.5 Development Applications - Works in Progress - August 2012

The following schedule sets out current development applications that have not yet been dealt with for the reasons cited:

Please note that duplex and dual occupancy applications are not included in this report.

DA No.	Date Rec'd	Applicant	Proposal	Status
2006/242	20/10/2005	Ardill Payne & Partners	Site Filling - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2008/578	6/2/2008	A Koellner	Erection of a Shed for Steel Fabrication - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2010/278	6/11/2009	Ardill Payne & Partners	To Establish a dwelling/house site - No. 263 Sneesbys Lane, East Wardell	Being Assessed
2011/166	15/04/2011	SJ Connelly CPP Pty Ltd	Construction of a residential flat development comprising 30 x two storey dwellings and associated works, Condon Drive, East Ballina (North Angels Beach)	Awaiting Additional Information
2011/320	22/07/2011	Ballina Shire Council	To change the method of extraction of an existing Extractive Industry "Ballina Airport Sandpit" from dry (excavation) to wet (dredging) and to change the end use of the pit from a landfill for dry/inert waste to the retention as a flooded pit as part of the	Being Assessed

8.5 Development Applications - Works in Progress - August 2012

			rehabilitation works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	
2011/506	23/11/2011	C Lonergan	Regularise and Expand existing Caravan Park from 55 Sites to 178 Sites and construct new Amenities Block and Recreation Building, 440 South Ballina Beach Road, South Ballina	Awaiting Additional Information
2011/515	30/11/2011	Newton Denny Chapelle	Staged Development - 5 x Lot Subdivision for future cluster housing development and construction of public road, No. 565-589 River Street, West Ballina	Awaiting Additional Information
2011/541	20/12/2011	Ballina Shire Council	Construction of a Surf Club Storage Building, 78 space carpark, bulk earthworks and landscape works; Cedar Crescent, Light House Parade & Compton, Drive East Ballina	Awaiting Additional Information
2012/32	03/02/2012	Ballina Shire Council	Sharpes Beach Car Park Upgrade and Associated Works Including Upgrade of Coast Road Intersection, Surf Lifesaving Tower and Storeroom, Viewing Deck	Awaiting Additional Information

8.5 Development Applications - Works in Progress - August 2012

			and Shower, Unisex Toilet, Picnic Facilities, Shared Pedestrian Path and Beach Accesses and Associated Infrastructure and Rehabilitation Works; Lot 2 DP 784864 & Lot 7032 DP 1063896 (Ballina Coast Reserve), The Coast Road, Skennars Head	
2012/69	7/03/2012	D Cope	Erection of a Rural Worker's Dwelling, 161 Broken Head Road, Newrybar	Awaiting Additional Information
2012/118	2/04/2012	Ardill Payne & Partners	Six Lot Residential Subdivision, Chilcott Circuit, Cumbalum	Determination Pending
2012/137	16/04/2012	SJ Connolly CPP Pty Ltd	Two Lot Subdivision, 61 Jorgensens Lane, Brooklet	Referred to Government Department
2012/166	09/05/2012	Victor Holmes	Construction of Bridge across Maguires Creek and Erection of Dwelling House and Associated Works, 1468 Eltham Road, Tuckombil	Referred to Government Departments
2012/194	31/05/2012	J Nielsen	Change of Use and Ancillary Storage/Compound Area – 3 & 5 Lismore Road, Alstonville	Referred to Government Departments
2012/201	01/06/2012	SJ Connolly CPP Pty Ltd	Two Lot Boundary Adjustment Subdivision – L76 The Coast	Referred to Government Departments

8.5 Development Applications - Works in Progress - August 2012

			Road Skennars Head & L50 Condon Drive, East Ballina	
2012/217	13/06/2012	All Steel Garages & Sheds P/L	Erection of a Four Unit Industrial Development and Associated Works and Demolition of Existing Dwelling House to be undertaken in Two Stages - 28 Barlows Road, West Ballina	Being Assessed
2012/228	18/06/2012	Ardill Payne & Partners	Erection of Storage Shed - 210 Southern Cross Drive, Ballina	Being Assessed
2012/230	19/06/2012	Newton Denny Chapelle	Subdivision by way of boundary adjustment to create 1 x 7.3ha and 1 x 71.3 ha allotments - 22 Carney Place & 1506 Pacific Highway, Knockrow	Being Assessed
2012/231	19/06/2012	Ardill Payne & Partners	Subdivision by way of Boundary Adjustment to create 1 x 31ha and 1 21ha allotments - 10 & 14 Martins Lane West, Knockrow	Being Assessed
2012/234	20/06/2012	SJ Connolly CPP Pty Ltd	Subdivision by way of boundary adjustment creating 1 x 2ha allotment and 1 x 95ha allotment - 13 Edward Place & Newrybar	Referred to Government Departments

8.5 Development Applications - Works in Progress - August 2012

			Swamp Road, Knockrow	
2012/238	22/06/2012	The Ryan Family Trust Superannuation Fund	Erection of an Industrial Building for general industry use purpose - 27 Piper Drive, Ballina	Awaiting Additional Information
2012/242	25/06/2012	Margaret & Anthony Rolfe	To remove three trees including 1 x Moreton Bay Fig Tree - 943 Fernleigh Road, Brooklet	Determination Pending
2012/245	26/06/2012	RJ Cunningham	Alteration and Additions to an existing Industrial Building - 5 Robb Street, Alstonville	Being Assessed
2012/246	26/06/2012	DP Westaway	Extension of Trading Hours for Riverside Health Studio to 24 hours/day - 178 River Street, Ballina	Being Assessed
2012/256	29/06/2012	Newton Denny Chapelle	Staged Erection and Strata Title Subdivision of a Residential Flat Development Comprising Three Units and associated works - 59 Pacific Parade, Lennox Head	On Exhibition
2012/261	4/07/2012	Ardill Payne & Partners	Construction of Sports Clubhouse/Amenities and Car Park - Chilcott Circuit, Cumbalum	Being Assessed
2012/269T	10/07/2012	Newton Denny Chapelle	Removal of One Tree - Tallow Wood Place, Lennox Head	Being Assessed
2012/271	10/07/2012	SJ Connolly CPP Pty Ltd	Two Lot Subdivision to	Being Assessed

8.5 Development Applications - Works in Progress - August 2012

			create 1 x 2ha and 1 x 40ha allotments - 142 Martins Lane, Knockrow	
2012/274	11/07/2012	Ardill Payne & Partners	Alterations and Additions to the Southern End of the Ballina Fair Shopping Centre including Demolition of Existing Pool and Gym Tenancy and Relocation of Mini Major Tenancy into the Demolished Pool and Gym Space and Construction of a New Loading Dock in the South-Western Corner of the site - 84 Kerr Street, Ballina	Being Assessed
2012/276	13/07/2012	JF & VK Moss	Removal of One Tree - 84 North Creek Road, Ballina	Being Assessed
2012/280	13/07/2012	DL & SM Harder	Removal of One Tree - 3 Mellis Circuit, Alstonville	Being Assessed
2012/281	16/07/2012	D Scott	To undertake alterations to existing offices and laboratory building for the purposes of establishing offices and classrooms for the Alstonville Ballina Community College - 494 Bruxner Highway, Alstonville	Being Assessed
2012/291	23/07/2012	Newton Denny	To undertake a staged 47 Lot	Being Assessed

8.5 Development Applications - Works in Progress - August 2012

		Chapelle	Community Title residential subdivision with lots ranging in size from 303m ² to 773m ² , associated road, earth and infrastructure servicing works, creation of a public road and one 6.4 hectare Torrens Title residue lot - 565-589 River Street, East Ballina	
2012/297	24/07/2012	Ardill Payne & Partners	To enable the permanent occupation of the existing Lennox Head Rural Fire Service Brigade Shed - 3 Byron Street, Lennox Head	Being Assessed
2012/301	30/07/2012	MT Campbell	To undertake the removal of four trees - 3 Christine Place Ballina	Being Assessed
2012/304	27/07/2012	Ardill Payne & Partners	To establish a weekly farmer's market on a 12 month trial basis to be held on Saturdays between 7.00am and 2.00pm in the public car park located between Bugden Lane and Commercial Road, Alstonville	Being Assessed
2012/310	2/08/2012	Poss 'n' Bear Pty Ltd	To undertake the installation of an Ice Vending Machine in the	Being Assessed

8.5 Development Applications - Works in Progress - August 2012

			Ballina Fair car park - 84 Kerr Street, Ballina	
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Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
NIL				

Major Development (Determined by Minister)

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
MP 07_0026 MOD 4 (DA 2008/510)	01/08/2012	Geolink (on behalf of The Royal Bank of Scotland)	To modify the approved concept plan and project application layout - Hutley Drive, Lennox Head	Being Assessed
MP 05_0009 MOD 2 (DA 2006/394)	02/08/2012	Glenn Mills (on behalf of Wantana Pty Ltd)	To modify the consent by extending the project approval for 2 years - 256-274 River Street, Ballina	Being Assessed

RECOMMENDATION

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

Attachment(s)

Nil

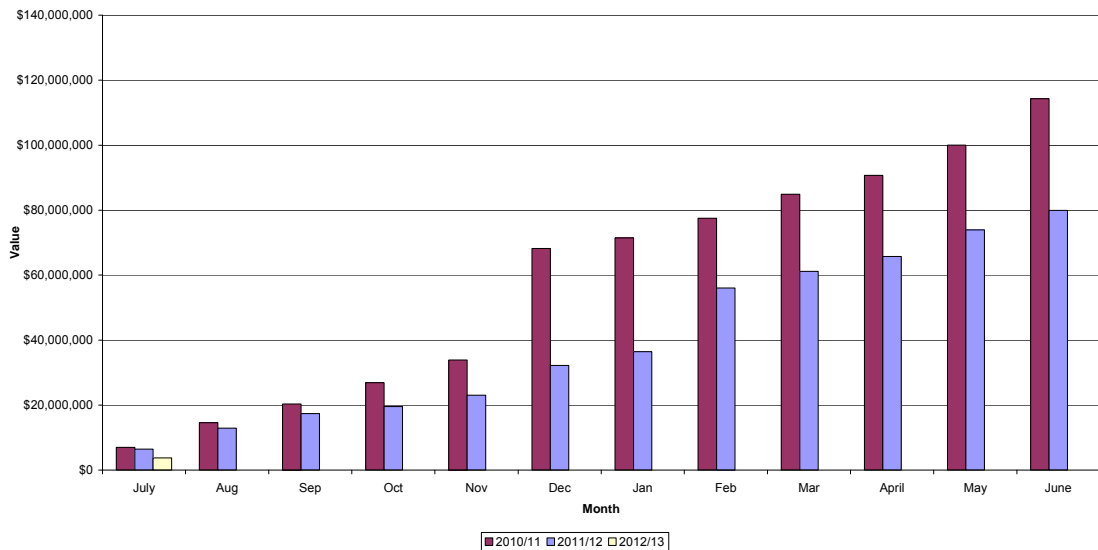
8.6 Development Consent Statistics - July 2012

8.6 Development Consent Statistics - July 2012

During the period of 1 July 2012 to 31 July 2012 the Regulatory Services Group issued Development Consent comprising of:

Number of Applications	Value of Work
29 Other Building Related	\$ 1,041,000
8 Dwelling/Duplexes/Residential Flat Buildings	\$ 2,682,000
13 General Developments	\$ 3,000
Total Value	\$ 3,726,000

The following chart details the cumulative consent figures for 2012/13 as compared to 2011/2012 and 2010/11.



RECOMMENDATIONS

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

Attachment(s)

Nil

9.1 LEP Amendent Request - Masters Proposal

9. Strategic & Community Services Group Reports

9.1 LEP Amendent Request - Masters Proposal

Delivery Program Strategic Planning

Objective To review the Council's decision not to proceed with the preparation of a planning proposal in relation to a Masters Home Improvement Store on part Lot 11 DP 1011575, Pacific Highway, West Ballina.

Background

Council received a request for the rezoning of part Lot 11 DP 1011575, River Street (formerly Pacific Highway), West Ballina on 18 April 2011. A plan illustrating the site is provided below. The application sought to rezone part of the subject land to permit uses associated with a Masters Home Improvement Store. The request was reported to Council's Ordinary Meeting held on 23 June 2011 with a recommendation to decline the request to proceed with the preparation of a planning proposal.

The subject site:



The Council resolved at its Ordinary Meeting held on 23 June 2011 [Minute No. 230611/10] to defer the matter to a workshop, including a presentation from the applicant. The workshop was held on 3 August 2011. Council subsequently resolved at its Ordinary Meeting held on 25 August 2011 [Minute No. 250811/5] as follows:

9.1 LEP Amendent Request - Masters Proposal

That Council declines to proceed with the preparation of a Planning Proposal in relation to the concept for an Oxygen (Masters) Home Improvement Store on part Lot 11 DP 1011575, Pacific Highway, West Ballina due to its inconsistency with planning for the locality, particularly the Far North Coast Regional Strategy and Council's West Ballina Structure Plan.

Following the Council's decision, Council officers were contacted by officers from the Department of Planning & Infrastructure (DP&I) to advise that they had been requested to undertake a review of the Council's decision. This review was undertaken, however, the conclusions reached as a result of the review have not been made available to Council.

On 25 July 2012 Council received a letter from the NSW Director General of DP&I requesting that Council undertake a review of its decision not to support the proposal proceeding in the plan making process. The letter from the Director General is provided as attachment one.

The purpose of this report is to enable a review of the previous Council decision on the basis of the matters raised in the correspondence from the Director General.

Key Issues

- Request to amend Ballina Local Environmental Plan 1987 (BLEP 1987)
- Request for review of decision from the NSW Director General of Planning

Information

Request to amend Ballina Local Environmental Plan 1987 (BLEP 1987)

The site comprises vacant land located on the northern side of River Street (formerly the Pacific Highway) between the River Bend manufactured home estate and the approved site of the proposed Highway Service Centre. Lot 11 DP 1011575 has a total area of 17 hectares. The land the subject of the request comprises the eastern portion of the lot, adjoining the approved highway service centre. The area of the land to which the request relates is approximately 3.6 hectares.

The rezoning request sought an amendment to BLEP 1987 to enable development for the purpose of bulky goods premises, hardware and building supplies and a garden centre on the subject land. The plans of the proposed Masters Home Improvement Store indicate a total gross floor area of 13,897m² and car parking for a total of 377 vehicles.

Masters is a joint venture between Woolworths Limited and Lowe's Companies Incorporated, a home improvement retailer with some 1,700 stores in the USA and Canada. The concept is described in the documentation accompanying the request as a large format home improvement store which "...will include a wide range of offerings such as timber, hardware, building materials, landscaping materials, plants, and ancillary products including white goods".

The proposal also noted that the proposed Masters store would not utilise the entire area of the site proposed to be rezoned and that the residual land can cater for the future bulky goods uses in the region.

9.1 LEP Amendent Request - Masters Proposal

The proposal submitted contained justification for the rezoning of the subject land, including the following:

- *Proposed uses are partly permissible on the land (i.e. some of the land uses are identified as permitted with development consent or as advertised development within some of the zones applying to the land)*
- *That part of the land which is located outside the Town and Village Growth Boundary identified in the Far North Coast Regional Strategy meets the sustainability criteria for rezoning the land*
- *No other suitable site is available within the established employment zones in Ballina or within the West Ballina Structure Plan area. Review of the currently zoned land available for bulky goods in the Southern Cross, Clark Street and Homeworld sites, and within the West Ballina Structure Plan has found that:*
 - *Majority of lots highly fragmented and in various ownership and that amalgamation of lots to meet with minimum site requirement of 3.5 hectares is unlikely*
 - *Sites that meet the 3.5 hectare minimum area do not have good access to the main road system and would require a circuitous route to the site. Not suitable for future patrons or delivery trucks and does not best cater to the majority of the catchment which is located further to the north and south*
 - *Sites do not enjoy good visibility from the main road network*
 - *Homeworld site, while located on the Pacific Highway, is constrained by poor access and does not provide for good multi-directional access to the site. No similar uses are located on this site and it is located further away from the proposed on/off ramp to the bypass road*
- *If located in established employment areas, the site area required for the proposal will constrain the land available for other employment generating land uses*
- *There is a current development application before Council for a highway service centre to the immediate west. Co-location of retailing is considered good practice where demand cannot be accommodated in existing centres*
- *The proposed Oxygen (Masters) development will occupy only part of the land proposed to be rezoned and the residual land can cater for future market demand for bulky goods in the region*
- *Subject site is not affected by critical habitat or ecological constraints. Land is not identified as high quality farmland. Flood channel through the property can be accommodated and the proposed building designed to account for flood impacts.*

9.1 LEP Amendent Request - Masters Proposal

The documentation accompanying the request to rezone the land included an Economic Impact Assessment (EIA) containing detailed information regarding economic demand for bulky goods in the region. The sales potential assessment provided in the EIA projected sales of \$29 million in 2013. The EIA also estimates that 51 direct construction jobs and 136 ongoing retailing jobs would result from the proposed development.

In considering the request to rezone the land, Council acknowledged that the establishment of the new facility would reinforce Ballina as a significant retailing destination within the region and provide significant additional employment opportunities for the shire. However, these social and economic benefits were balanced against the recently established planning policy framework established for West Ballina through the West Ballina Study and Structure Plan, adopted by the Council at its Ordinary Meeting held on 17 March 2011 [Minute No. 170311/2].

The West Ballina Study and Structure Plan includes consideration of the subject land and concludes that while a portion of the site may be suitable for a highway service centre, subject to detailed investigations, the remaining part of the site "...is not suitable for other large footprint uses, including bulky goods, industrial and transport logistics".

It is noted that the part of the subject land zoned 2(a) Living Area Zone is presently located within the Town and Village Growth Boundary for Ballina, under the Far North Coast Regional Strategy (FNCRS). The incorporation of Council's adopted policy under the West Ballina Planning Study and Structure Plan into the FNCRS would result in this portion of land being removed from within the Town and Village Growth Boundary. Council has previously requested that this action be taken by virtue of its adoption of the Minutes of a meeting of its Environmental & Sustainability Committee held on 10 March 2011 [adopted by Council resolution at the Extraordinary Meeting held on 17 March 2011 Minute No. 170311/2] as follows:

1. *That Council adopt the West Ballina Planning Study and Structure Plan (excluding its application to Lots 1 and 2 DP 543357) as a basis for local urban land release planning and land management policy.*
2. *That Council advises the Department of Planning of its adopted policy for the West Ballina locality and seeks recognition of this policy in the current revision of the Far North Coast Regional Strategy.*

No other part of the land is currently located within the FNCRS Town and Village Growth Boundaries for Ballina Shire.

The FNCRS provides sustainability criteria which must be satisfied in order for any land not within the identified Town and Village Growth Boundaries to be considered for rezoning. While the proponent concludes that the proposal satisfies the sustainability criteria, Council officers are of the view that the sustainability criteria are not adequately satisfied, particularly in relation to the flood risk affecting the subject land.

Request for review of decision from the Director General

9.1 LEP Amendent Request - Masters Proposal

Following the Council's resolution not to proceed with the rezoning request at its Ordinary Meeting held on 25 August 2011 Council officers were contacted by officers from the DP&I and advised that a review of the decision was being undertaken by the Department, presumably initiated by a request from the proponent company.

In the attached correspondence dated 23 July 2012, the Director General of the DP&I has requested that Council "...undertake a review of its decision not to support the proposal proceeding in the plan making process". The Director General has requested that the following matters be taken into account in the review process:

- *the uses are partly permissible on the proposed site for the Masters project (that is, permissible with development consent or as advertised development within some of the zones applying to the land),*
- *the relationship of the site to existing and proposed commercial/retail and industrial uses and areas along the old highway,*
- *policy objectives of the Far North Coast regional Strategy (FNCRS) which classifies Ballina as a 'developing major regional centre'. The focus of the FNCRS is to provide opportunities for employment and to stimulate economic activity in the region. These policy settings necessitate detailed consideration of investment opportunities, and*
- *NSW 2021 Plan which aims to encourage steady and strategic growth in regional areas. The Plan strives to achieve access for regional communities to economic and lifestyle opportunities of our state.*

In response to the matters the Director General has raised, the following comments are provided.

In relation to dot point one the partial permissibility of the proposal in accordance with the provisions of the BLEP 1987 is noted. However, the structure of the BLEP 1987 is 'open' thereby potentially permitting a wide range of land uses subject to satisfying consistency with the objectives of the particular land use zone. The zones applying to the land include Zone No. 1(b) Rural (Secondary Agricultural Land) Zone, Zone No. 2(a) Living Area Zone and Zone No. 9(a) Roads (Main Roads Proposed) Zone.

The rezoning request submits that the proposed land use may be presently permissible as advertised development within the 2(a) Living Area Zone and 9(a) Roads (Main Roads Proposed) Zone. It also identifies the retail plant nursery component of the proposal as being permissible with development consent within the 1(b) Rural (Secondary Agricultural Land) Zone.

Notwithstanding the provisions of the land use table, the material submitted with the rezoning proposal does not address the consistency of the proposal with the relevant zone objectives. A review of the zone objectives indicates that it may be difficult to substantiate an argument that the proposed use is consistent with the objectives of the zones applying to the land, and therefore the provisions of Clause 9(7) of BLEP 1987 may prevent Council from granting consent to those components of the development which are potentially permissible on the land.

9.1 LEP Amendent Request - Masters Proposal

Further, while some elements of the proposal may be potentially permitted in accordance with BLEP 1987, Council has been requested by the proponent to consider a rezoning proposal for the subject land, rather than the proponent lodging a development application.

The land is proposed to be zoned RU2 Rural Landscape in accordance with the provisions of draft Ballina Local Environmental Plan 2011 (draft LEP). The proposed land uses are prohibited within the RU2 Rural Landscape Zone.

Dot point two requires consideration of the relationship of the site to existing and proposed commercial/retail and industrial uses and areas along the highway. The site is located on River Street (formerly the Pacific Highway) adjacent to the Teven Road Interchange. Land identified in accordance with BLEP 1987 as Zone No. 3 – Business Zone is located approximately 500 metres to the east of the site. Approximately 600 metres to the west of the site is land identified as Zone No. 4 –Industrial Zone in accordance with BLEP 1987, but on the other side of the highway.

The draft LEP proposes the retention of an industrial zone to the Smith Drive area to the west and the introduction of the B6 Enterprise Corridor Zone approximately 450 metres to the east of the site. The application of the R2 Low Density Residential Zone is proposed to the east of the site between the subject land and the proposed B6 Enterprise Corridor zoned land. The site is located to the west of the current urban footprint. The provision of a highway service centre, as approved, was required to be accommodated in accordance with a Ministerial Direction made in accordance with Section 117 of the *Environmental Planning and Assessment Act, 1979*. The provision of a highway service centre is considered appropriate in this location however the intensification of the commercial uses on the land is not consistent with the provisions of the adopted West Ballina Study and Structure Plan.

In relation to the final two dot points, Ballina is recognised as a 'developing major regional centre' in the FNCRS. In preparing the draft shire wide LEP a number of submissions were made specifically in relation to bulky goods retailing land uses within the shire. The representations made generally related to either the prohibition of bulky goods premises on industrial zoned land, or the prohibition of bulky goods retailing uses on specific land parcels. In response to the submissions the permissibility of bulky goods retailing in certain zones and on specific land parcels was identified by Council as a matter requiring further and more detailed consideration as part of the LEP renewal program.

In response to the above, and having regard for Council's ownership of particular land holdings, Council engaged consulting firm Hill PDA to carry out investigation and analysis with respect to bulky goods retailing and large format retailing (LFR) land use in Ballina Shire. The primary purpose of the investigation and analysis was to inform the establishment of a land use planning framework for bulky goods retailing and LFR premises in Council's new Standard Instrument local environmental plan (LEP) and Local Growth Management Strategy (LGMS).

9.1 LEP Amendent Request - Masters Proposal

The key findings of the Hill PDA report included the following:

- Bulky goods and LFR land uses are distributed over several locations in Ballina, primarily in the Ballina Town Centre, Kerr Street Retailing Precinct, Clarke Street Industrial Area, West Ballina along the Pacific Highway and the Southern Cross Industrial Precinct.
- The Southern Cross Industrial Precinct houses the greatest proportion of bulky goods and LFR floorspace, with some 20,000m² of available floorspace.
- The Harvey Norman Centre in the Southern Cross Industrial Precinct provides for the greatest concentration of bulky goods retailing floor area in the shire at present.
- Hill PDA considered it advantageous to concentrate bulky goods retailing and LFR floor space in one location.
- On the basis of the demand analysis, consideration of potential locations and potential development scenarios, Hill PDA recommended that Council should seek to encourage a bulky goods retailing and LFR cluster in the Southern Cross industrial precinct in and around the Harvey Norman Centre. Hill PDA suggested that this cluster could be achieved by using approximately 6ha of land to the north and west of the Harvey Norman site that is presently zoned for industrial purposes under the Ballina LEP 1987.
- Additional land required to meet demand where other development does not proceed in the shire could be accommodated in the vicinity of the Harvey Norman Centre, being on greenfield land that is proposed for the expansion of the Southern Cross Industrial Estate. Hill PDA estimated that the additional land area needed to meet demand, beyond that noted above, is approximately 3 ha.
- Council could encourage a cluster of bulky goods retailing and LFR uses in the Southern Cross Industrial Precinct through the application of a B5 Business Development zone under its Standard Instrument LEP.

Following its consideration of the Hill PDA report Council resolved at its Ordinary Meeting held on 23 February 2012 to implement a strategic planning framework for bulky goods retailing consistent with the recommendations in the report. Council also resolved to proceed with the preparation of a planning proposal for the application of a suitable zone over land at the Southern Cross Industrial Estate [Minute No. 230212/21].

The draft planning proposal has been prepared and was reported to Council's Ordinary Meeting held on 26 July 2012. Council resolved as follows [Minute No. 260712/21]:

1. *That Council proceed with the referral of the planning proposal for the Southern Cross Industrial Estate Bulky Goods Precinct, based on the application of a B5 Business Development zone to the subject land, to the Department of Planning & Infrastructure for gateway determination.*
2. *That in the event that the gateway determination enables the planning proposal to proceed, the planning proposal be placed on public exhibition in accordance with the requirements of the gateway determination.*

9.1 LEP Amendent Request - Masters Proposal

As is evident from the above process undertaken by Council in response to representations made in relation to the establishment of bulky goods premises within the shire, Council's approach to this issue has included detailed consideration of opportunities to provide for employment and stimulate economic activity and investment opportunities in the region. Council's consideration of this issue recognises the classification of Ballina in the FNCRS as a 'developing major regional centre' and is consistent with the aims of NSW 2021 which include encouraging steady strategic growth in regional areas.

The requested review of Council's decision not to proceed with the rezoning of the land at West Ballina for the establishment of a Masters Home Improvement Store has not resulted in a different conclusion to that reached by Council its Ordinary Meeting held on 25 August 2011 [Minute No. 250811/5].

The proposal is inconsistent with the strategic planning framework for West Ballina as identified in the adopted West Ballina Study and Structure Plan and the FNCRS. This work was undertaken in close liaison with government agencies and respective property owners.

The further detailed assessment of bulky goods land uses within the shire undertaken by Hill PDA reinforces that the distribution of these land uses over several locations is not an optimum planning arrangement for the community and these types of uses should be clustered together where practicable.

Sustainability Considerations

- **Environment**
The land to which the proposal relates is subject to significant constraints in the form of geotechnical issues and flooding.
- **Social**
Additional retailing opportunities for residents within the identified catchment would be provided if the development was undertaken.
- **Economic**
The proposal identifies substantial positive economic benefits associated with the development including employment opportunities for the local area and reduction of escape expenditure.

Legal / Resource / Financial Implications

In the event that Council resolves to proceed with the LEP amendment appropriate resources will be required to be allocated to the project.

Consultation

There has been no consultation undertaken with either the community or government agencies, other than DP&I, specifically in relation to the LEP amendment request to date.

Options

It is considered that the following options are available to Council:

1. Proceed with the planning proposal

If Council forms the view that the previous decision to not proceed with the request to rezone the land was inappropriate, it is open to Council to resolve to proceed with a planning proposal. This approach would mean that Council would prepare a planning proposal addressing the development of the land for a Masters Home Improvement Store. The planning proposal would provide for bulky goods premises, hardware and building supplies and a garden centre on the subject land. The planning proposal would be reported back to Council prior to its submission to DP&I for consideration. On the basis of the inconsistency of the proposed concept with the provisions of the West Ballina Study and Structure Plan, the FNCRS, and Council's planning framework for bulky goods retailing within the shire, this option is not recommended.

2. Defer the matter and invite the NSW Director General of the Department of Planning & Infrastructure to address Council

This option would enable the Council to hear from the NSW Director General or a nominated delegate directly to outline the issues raised in the request for review. A presentation from a representative of the Department of Planning & Infrastructure would enable Council to make a decision having the benefit of further explanation of the Department's issues and concerns. Given the issues raised in the correspondence from the Department this option is not considered necessary, however, Council may view this option as beneficial in reaching a decision regarding the requested review.

3. That Council reaffirm its decision to not proceed with the planning proposal

In the event that Council determines that its previous decision not to proceed with the planning proposal was appropriate, correspondence will be forwarded to the Director General of DP&I to advise of the outcome of the review.

This option is consistent with Council's adopted urban planning policy for the locality and the adopted planning framework for bulky goods retailing within the shire. This option is recommended.

RECOMMENDATIONS

1. That Council advise the Director General of the NSW Department of Planning and Infrastructure that a review of the Council's previous decision to decline to proceed with a planning proposal to facilitate a Masters Home Improvement Store on part of Lot 11 DP 1011575, River Street, West Ballina, has been undertaken at his request.
2. That the Director General be advised that the outcome of the review is that Council is satisfied with its previous decision to decline to proceed with the preparation of a planning proposal.

Attachment(s)

1. Letter from Department of Planning

9.2 Ballina LEP 1987 - Amendment No.90 - Stewart Farm

9.2 Ballina LEP 1987 - Amendment No.90 - Stewart Farm

Delivery Program Strategic Planning

Objective To advise Council on information received from the NSW Minister for Planning and Infrastructure regarding the processing of draft Ballina LEP 1987 Amendment No. 90.

Background

Council has been involved in the consideration of draft Ballina Local Environmental Plan Amendment No. 90 Stewart Farm, Skennars Head (Amendment No.90) since 2005. Since mid 2011, this LEP amendment has been the subject of several decisions of Council, including two occasions where Council has rescinded a previous decision. Attachment one shows the area the subject of the draft amendment and Attachment two contains a chronology and summary of the key decisions associated with Amendment No. 90.

Most recently, Council has considered Amendment No. 90 at its May and July 2012 Ordinary Meetings. At its May 2012 Ordinary Meeting, Council resolved as follows [Minute No.240512/7]:

1. *That Council re-affirm the resolution of December 2011 concerning LEP Amendment No 90.*
2. *That the General Manager continue discussion with Dr and Mrs Stewart concerning the proposed dedication as per 1(d) of the December 2011 resolution and convey to them that Council is prepared to accept conditional dedication of said land that requires Council to not, at any time, undertake development on the land that is inconsistent with the present 7 (f) zoning.*
3. *That Council not progress any further work on this rezoning until point two is resolved to the satisfaction of Council. If agreement cannot be reached on point two Council accepts that the rezoning will cease.*
4. *That legal advice be sought on the means to limit future development on the eastern side of the Coast Road.*

Following the above resolution, staff met with the landholder (Dr and Mrs Stewart). The purpose of the meeting was to convey Council's resolution and to seek confirmation of Dr and Mrs Stewart's position with respect to the dedication of land associated with the Sharpes Beach lease area east of The Coast Road (Attachment Three) into public ownership as part of the rezoning of land associated with the draft LEP amendment.

With respect to the land dedication matter, Dr and Mrs Stewart clearly indicated that they were not willing to provide for the dedication of the land into Council's ownership.

Given that the land dedication matter could not be resolved consistent with Council's resolution, the Department of Planning and Infrastructure was

9.2 Ballina LEP 1987 - Amendment No.90 - Stewart Farm

advised in July 2012 of Council's decision to cease the rezoning and it was requested that the Minister for Planning and Infrastructure discontinue Amendment No.90 in accordance with point three of Council's resolution.

Subsequently, Council considered a rescission motion at its July 2012 Ordinary Meeting and upon rescinding its May decision, Council resolved as follows [Minute No.260712/15]:

1. *That Council endorse the concept of a dedication of the land on the eastern side of The Coast Road, in the vicinity of the Sharpes Beach car park that is the subject of lease arrangements between Council and the Stewart family, at a maximum period of approximately 20 years after the rezoning of the land.*
2. *That subject to point one being agreed with the proponents and landowners, Council endorses the finalisation of the environmental study associated with Draft Ballina LEP Amendment No.90 - Stewart Farm.*
3. *That the outcomes of points one and two be reported to the Council for consideration with respect to the potential public exhibition of Draft Ballina LEP Amendment No.90.*
4. *That in respect to point one that the previous conditions as reported to Council be retained as Council's minimum conditions for a Voluntary Planning Agreement.*

This resolution was conveyed in writing to the proponents and subsequent discussions with the proponents has indicated that Dr and Mrs Stewart are unlikely to proceed with the dedication of the eastern side land as per point one. This has not yet been confirmed in writing.

On 15 August 2012, Council was contacted by telephone by the Acting Regional Director Northern Region of the Department of Planning and Infrastructure in relation to information received from the NSW Minister for Planning and Infrastructure.

This report is presented to advise the Council of the advice from the Minister received via the Department of Planning and Infrastructure.

Key Issues

- Potential for the intervention of the Department of Planning and Infrastructure in the processing of Amendment No. 90.

Information

Council was advised by telephone on 15 August 2012 that the Minister for Planning and Infrastructure intends to 'call in' Amendment No. 90 and continue the progress of the matter separate from Council. However, prior to formally taking this step, the Minister wishes to provide Council with a further opportunity to reconsider its decision to pursue the dedication of land located east of The Coast Road. It appears that the Minister considers that the amendment should proceed and is encouraging Council to remove the dedication issue from its considerations associated with the LEP amendment and immediately progress the rezoning toward completion.

The information is summarised from a telephone conversation with the Department's Acting Regional Director Northern Region as the Department has indicated that it is unlikely to provide the Minister's advice in writing. This is unfortunate as it would be helpful for both the Council and the public record for the Department's views to be communicated formally in writing.

The advice from the Department is consistent with correspondence from the Department dated 13 June 2012 in which the Director General of the Department suggests that the dedication of the land east of The Coast Road should be deleted from the planning proposal associated with Amendment No.90 (Attachment Four). In considering this, it is important to note that the Department had previously supported the dedication concept and advised as such at the commencement of the LEP amendment process in 2007 (Attachment Five). Council has acted consistent with this advice. However, the Department appears to have shifted away from this position and is now of the view that the dedication of the land east of The Coast Road should not be further considered as part of Amendment No. 90.

Under the *Environmental Planning and Assessment Act*, the Minister for Planning and Infrastructure is able to provide for the continuation of an LEP amendment to completion regardless of a council's decision to cease processing a proposed amendment. If this occurs in relation to Amendment No. 90, the matter would be progressed by an alternate planning authority, possibly the Department itself or a Joint Regional Planning Panel. If the LEP amendment is progressed by an alternate authority, Council may have little input into any further assessment and action associated with the matter.

The extent to which Council would be involved in the progress of Amendment No. 90 if administered by an alternate planning authority is important in the context of the proposed dedication of land on the western side of The Coast Road and provision of road infrastructure that the proponent has presently agreed to provide for. If Amendment No. 90 proceeds via an alternate planning authority, Council will not have the certainty that these previously addressed matters will be maintained as outcomes of the amendment.

Sustainability Considerations

- **Environment**
The central issue associated with an alternate planning authority progressing Amendment No.90 is that Council will not have direct management of the LEP amendment process and therefore, environmental, social and economic matters may not be addressed in the way that Council would prefer.

- **Social**
As above.

- **Economic**
As above.

Legal / Resource / Financial Implications

There are no direct legal or financial implications for Council associated with the appointment of an alternate planning authority to administer Amendment No. 90.

However, there may be financial implications associated with outcomes arising from the amendment such as infrastructure liabilities that have not been anticipated to date.

Council is able to continue to process Amendment No. 90 within its available resources. Where an alternate planning authority is appointed, Council staff would likely seek to provide information to the Department of Planning and Infrastructure to assist in the assessment of the LEP amendment.

Should Council determine to discontinue the amendment, the required process to action this approach can be administered within available resources. There is no avenue of legal appeal available in this circumstance on the basis of merit considerations, although the proponent could seek to challenge such a decision on procedural grounds.

Consultation

No formal community engagement by Council has been undertaken in relation to Amendment No. 90 to date as the amendment has not yet progressed to the exhibition stage.

Options

1. Maintain the current approach to Amendment No.90 (as per Council's July 2012 resolution).

Under this approach, Council would maintain a view that the dedication of the land the subject of the lease in the vicinity of Sharpes Beach, east of The Coast Road, should be addressed as part of Amendment No.90 and that the amendment will only proceed upon agreement regarding the dedication.

Based on the advice from the Department of Planning and Infrastructure, it is highly likely that this course of action will result in the Minister for Planning and Infrastructure intervening in the amendment process via the appointment of an alternate planning authority to progress Amendment No. 90. It is also likely that the dedication of land east of The Coast Road will not be further considered as part of Amendment No. 90 if an alternate body is appointed to administer the amendment.

The key concern with this approach is that an alternate planning authority may not consider the other issues relevant to Amendment No. 90 (aside from the dedication matter) in the same way that Council would have done. This could lead to an outcome that differs from Council's preferred approach. In particular, an alternate planning authority may not have the same interests in dedication of land west of The Coast Road or in relation to infrastructure provision that Council has.

2. Cease further consideration of the dedication of the land east of The Coast Road and progress Amendment No. 90.

This approach would involve removal of the requirement for agreement regarding dedication of the land east of The Coast Road to enable Amendment No. 90 to proceed. If this approach is adopted, it is recommended that the requirement for completion of an environmental study for the land and subsequent reporting of the study outcomes to Council prior to public exhibition form the basis of a new resolution. This could be based on the existing points two and three of Council's July 2012 resolution.

This approach would mean that Council will forego the pursuit of dedication of the Sharpes Beach lease area as part of the LEP amendment and will continue to lease the area as previously agreed with the landholder. This approach may satisfy the concerns of the Minister for Planning and Infrastructure and avoid intervention by the Minister and appointment of an alternate planning authority.

3. Discontinue Amendment No. 90.

It is open to Council to resolve to discontinue further processing of Amendment No. 90. This option is considered to be pre-emptive given Council's July 2012 resolution which invites further discussion between the proponent and landholder regarding the dedication matter. In this regard, Council has not yet received formal advice regarding the outcomes of any further discussions.

Further, Council has previously requested that the Department discontinue the amendment and although no formal correspondence has been received, it appears that the Minister for Planning and Infrastructure does not support this approach. As such, this course of action would likely result in intervention by the Minister and appointment of an alternate planning authority. Concerns associated with this outcome are outlined under option one.

Option Summary

If Council wishes to maintain the requirement for dedication of land east of The Coast Road as an outcome of Amendment No. 90, it is recommended that Council note the contents of this report. It is important to note that this approach will likely lead to intervention by the Minister for Planning and Infrastructure and progression of the amendment separate from Council. As this represents the current position of Council this is the recommendation included in the report.

However having regard to the Minister's advice, if Council wishes to maintain its role as planning authority for Amendment No.90, the recommendation would be that Council removes the requirement for the dedication of land east of The Coast Road from consideration as part of Amendment No. 90 and resolves to proceed to complete the local environmental study associated with the proposed rezoning. This is the preferred option of staff in that it is considered that an impartial review of this Amendment will confirm the following key facts.

- a) It is consistent with the Far North Coast Regional Strategy
- b) It is consistent with Council's adopted Urban Planning Strategy (this was endorsed again at the July 2012 Ordinary meeting through the updated Growth Management Strategy)
- c) It is consistent with the current zoning under the Ballina LEP (1987)

9.2 Ballina LEP 1987 - Amendment No.90 - Stewart Farm

- d) The preliminary results of the local environmental study indicate that a substantial portion of the land is suitable for and capable of accommodating residential development
- e) The proponents are currently proposing to dedicate to Council an area of scenic value on the western side of The Coast Road. The area to be dedicated is approximately 6.4 hectares of 44.9 hectares, which equates to approximately 14% of the land the proponents have an interest in.
- f) The proponents are proposing to construct a new roundabout, as part of the upgraded intersection at the junction of Headlands Drive and The Coast Road. This is subject to a \$100,000 contribution from Council.
- g) There are no other obvious infrastructure impediments, particularly with stormwater concerns having now been addressed
- h) The owners of the land are, at any time, able to ask the NSW State Government to acquire the land on the eastern side of The Coast Road, through the Coastal Lands Acquisition Scheme
- i) The next stage of the current process is to complete the environmental study and then proceed to public exhibition. The public exhibition will then provide Councillors with an opportunity to engage with the broader community in respect to this Amendment.

The preferred recommendation of staff on this basis would be as follows:

1. That Council notes the likely intervention in the processing of draft Ballina Local Environmental Plan Amendment No.90 by the Minister for Planning and Infrastructure where Council maintains its present approach to the dedication of land east of The Coast Road into public ownership.
2. That on the basis of the likely intervention from the Minister for Planning and Infrastructure, Council endorses the finalisation of the environmental study associated with draft Ballina Local Environmental Plan Amendment No.90 (without further consideration of the dedication of land east of The Coast Road) as Council prefers to maintain its role as planning authority in relation to the amendment.
3. That the environmental study be reported to Council for consideration with respect to the potential public exhibition of Draft Ballina Local Environmental Plan Amendment No.90.

Despite this, the recommendation that follows is to note the contents of this report based on the Council's current position.

RECOMMENDATION

1. That Council notes the contents of this report regarding the processing of draft Ballina Local Environmental Plan Amendment No.90.
2. That Council acknowledges that based on the contents of this report, the maintenance of its present position may result in the Minister for Planning and Infrastructure “calling in” this Amendment.

Attachment(s)

1. Attachment 1. Study Area - Draft Ballina LEP Amendment No.90
2. Attachment 2. Chronology of Key Decisions - Draft Ballina LEP Amendment No.90
3. Attachment 3. Stewart Land East of The Coast Road (including Sharpes Beach lease are)
4. Attachment 4. DP&I Correspondence 13 June 2012 - Processing of Draft Ballina LEP Amendment No.90
5. Attachment 5. DP&I Correspondence 25 January 2007 - Commencement of Draft Ballina LEP Amendment No.90

9.3 Ballina Twilight Markets

9.3 Ballina Twilight Markets

Delivery Program Strategic Planning

Objective To provide an update on the Ballina Twilight Market and seek the Council's direction on the appointment of a market operator.

Background

Council resolved at its Ordinary Meeting held on 22 March 2012 as follows [Minute No. 220312/12]:

1. That Council seek development consent for the extension of the Ballina Twilight Market to occur on an annual basis for the period commencing in conjunction with the September/October school holidays and ending with the end of the daylight saving period.

2. That Council seek expressions of interest for the market operator under the terms of the new approval (should such approval be granted).

The purpose of this report is to update the Council in relation to the Ballina Twilight Market's amended development consent and Registration of Interest (ROI) process and to seek direction on the appointment of a market operator.

Key Issues

- Economic development
- Market licence allocation

Information

Following the resolution of the March 2012 Ordinary Meeting, a development application was prepared to amend the hours of operation to allow a weekly twilight market each Thursday from 4pm to 8pm, commencing at the beginning of the September/October school holidays through to the end of the daylight saving period.

An amended development consent No. 2011/462 was issued by Council's Regulatory Services Group, under delegation, on 26 June 2012.

Following the granting of this consent, a Registration of Interest (ROI) package was prepared for the management and operation of the Ballina Twilight Market in accordance with Council's Market Policy. The ROI was advertised in local newspapers and closed on 1 August 2012.

One ROI was received being from the Westpac Life Saver Rescue Helicopter. This ROI met the mandatory criteria and was assessed against the qualitative criteria.

A panel of three operational staff assessed the ROI against a set of predetermined criteria based on the following:

9.3 Ballina Twilight Markets

- Insurance requirements
- Knowledge and experience in operating a market in accordance with Council's Market Policy and the applicable licence and development consent conditions;
- Extent of public benefit
- Experience in, and/or commitment to, enhancing the social, cultural and economic wellbeing of residents and visitors
- Knowledge of local market culture
- Experience in, and/or commitment to, environmentally responsible operations and initiatives
- Knowledge and understanding of the principles and practices of risk and environmental management and work health and safety and ability to apply them to market management.

The Westpac Life Saver Rescue Helicopter rated highly against each of the criteria largely due to its experience in the management and operation of the Lennox Head Community Market and the trial period of the Ballina Twilight Market. Consequently, this report recommends the appointment of the Westpac Life Saver Rescue Helicopter as continuing as market operator of the Ballina Twilight Markets.

Sustainability Considerations

- **Environment**
The success of a local farmers' market contributes to local sustainability through the reduction of 'food miles' associated with the transport of food.
- **Social**
Farmers' markets support the availability of fresh produce to the local community and provide opportunities for social interaction.
- **Economic**
Local farmers' markets support the local economy by retaining income within the region. Markets located in proximity to existing commercial areas can also contribute to the business activity of commercial areas.

Legal / Resource / Financial Implications

This market is to be conducted at no cost to Council, with the running costs being covered from stall fees and any remaining funds being distributed as specified in the Westpac Life Saver Rescue Helicopter's ROI.

Consultation

The ROI for the operation and management of the Ballina Twilight Market was advertised in the Ballina Advocate and the Northern Star newspapers and was open for a period of 28 days.

Options

1. Not proceed with engagement of the Westpac Life Saver Rescue Helicopter for the operation and management of the Ballina Twilight Market.

Council may choose not to engage the Westpac Life Saver Rescue Helicopter for the operation and management of the Ballina Twilight Market. However, this is not recommended due to the limited number of ROIs received and the demonstrated professionalism of the Westpac Rescue Helicopter Service in the operation of the market during the period of the trial.

2. Proceed with engagement of the Westpac Life Saver Rescue Helicopter for the operation and management of the Ballina Twilight Market.

Council can authorise the General Manager to proceed to engage the Westpac Life Saver Rescue Helicopter for the management and operation of the Ballina Twilight Market. This will involve the negotiation of a licence agreement between Council and the Service. The market operator will be responsible for all obligations under the Ballina Shire Council's Market Policy and requirements of the development consent and associated amendment. The term of the licence will be for a period of four years as per the ROI process.

This option is recommended as it allows the market to commence operation during the September / October 2012 school holiday period and builds on the success of the Ballina Twilight Market trial.

RECOMMENDATIONS

1. That Council notes the contents of this report in regard to the development consent and Registration of Interest process for the ongoing operation and management of the Ballina Twilight Market.
2. That based on the outcomes from the Registration of Interest process Council authorises the General Manager to appoint the Westpac Life Saver Rescue Helicopter as the market operator of the Ballina Twilight Market for a period of four years, with the terms of the licence agreement to be consistent with Council's Markets Policy.
3. That Council authorises the Council seal to be attached to the licence agreement.

Attachment(s)

Nil

9.4 Ageing Strategy

9.4 Ageing Strategy

Delivery Program Community Planning

Objective To advise the Council of the steps proposed to prepare a shire-wide ageing strategy.

Background

Council, at its Ordinary Meeting held on 26 July 2012 resolved to receive a report outlining the steps proposed to prepare a shire-wide ageing strategy. The report was also to canvass options on the formation of a committee to assist in the preparation of the ageing strategy. Finally, the report was also to identify steps undertaken by other councils in promoting positive ageing.

Ballina Shire's population, like much of Australia, is ageing. The recent release of the preliminary data from the 2011 Census indicates that approximately 21% of shire residents are aged over 65 years. This compares with 13.7% for Australia as a whole.

The purpose of an ageing strategy is to project the consequences of an increasing proportion of our population being within an older age cohort, and to identify the steps that Council, other agencies and community organisations might take to acknowledge and support this important sector.

Council has a number of current statutory and forward planning documents that respond to issues associated with an ageing population. These include but are not limited to:

- Community Strategic Plan
- Local Environmental Plan
- Growth Management Strategy
- Pedestrian Access and Mobility Plan (PAMP) and
- Social Plan

Key Issues

- Ageing of the population and development of appropriate responses

Information

The following is a summary of the proposed methodology for preparing the ageing strategy for Ballina Shire.

Demographic Analysis - Undertaken to understand the characteristics of the population of Ballina Shire. This will entail utilising and interpreting the data from the 2011 Census of Population and Housing.

Literature Review - This is undertaken to provide context to the strategy and to examine the likely impact of an ageing population on Ballina Shire.

9.4 Ageing Strategy

Community Engagement – It is proposed to conduct a community survey for residents which will be available online with hard copies of the survey to be distributed to various locations such as libraries, community centres, community organisations and service providers. The survey will seek participants' responses to questions such as:

- what aspects/services of Ballina Shire currently cater for the needs of older residents?
- what are the key issues affecting older residents?
- what are the current and future housing needs of older people?
- what areas should be considered when planning for an ageing community?

In addition, it is proposed to hold consultations with local community aged care providers, community organisations, respite services and relevant Commonwealth and State Government departments.

Data analysis- Data collected from the demographic information and the community consultation analysed and incorporated into a needs analysis.

Draft strategy action plan developed- Formulate action plan that identifies key issues and sets out possible strategies to meet the needs of an ageing population.

Draft strategy prepared – Draft strategy prepared and reported to Council for consideration and endorsement for public exhibition.

Council will be familiar with the processes undertaken by staff in the preparation of documents such as the draft Local Environmental Plan, the draft Growth Management Strategy, the new Development Control Plan, the Affordable Housing Strategy and the Social Plan. The intention is to generally follow a similar process for the preparation of the ageing strategy, but including the more targeted consultations referred to above.

In relation to the last part of Council's previous resolution, nine regional councils have been contacted and asked if their organisation has developed an ageing strategy and if so, was the strategy prepared with the assistance of a committee. They were also asked if they have a designated positive ageing support group.

Five councils responded and of those, two indicated that they have an ageing strategy.

Council	Positive ageing group?	Ageing strategy?	Did a committee assist in the development of the ageing strategy?
Byron Shire	No	Yes	At the completion of the draft strategy, a project reference group was formed to further refine the strategy.
Clarence Valley	No	Yes	Project management group formed to manage and oversee the development of the ageing strategy by a consultant.
Port Macquarie Hastings	No	No	
Richmond Valley	Yes	No	
Nambucca Shire	No	No	Staff indicated that the CSP would address many of the needs of older residents.

9.4 Ageing Strategy

Whilst the establishment of a project steering committee (or equivalent) to assist in formulating the draft strategy is certainly an option to consider, staff believe that the engagement measures proposed to be employed will provide ample opportunity for stakeholders to participate and sound outcomes to be delivered.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Our ageing population will have consequences for the delivery of social services and community infrastructure in Ballina Shire.
- **Economic**
In some circumstances, older community members are limited by their capacity to pay to access services.

Legal / Resource / Financial Implications

There has been no specific allocation made in the current Operational Plan for the preparation of an ageing strategy. The preparation of the ageing strategy will be prepared utilising existing staff resources.

Consultation

Public and targeted consultation, conducted in an appropriate manner, will be critical to the delivery of an effective strategy.

Options

Options have not been presented, as it is intended that this report be presented for information purposes only.

RECOMMENDATIONS

That Council notes the contents of this report outlining the methodology for preparing an ageing strategy for Ballina Shire.

Attachment(s)

Nil

9.5 Census Update

9.5 Census Update

Delivery Program Strategic Planning

Objective To present information relating to the 2011 Census for Ballina Shire.

Background

The 2011 Census of Population and Housing undertaken by the Australian Bureau of Statistics (ABS) was undertaken during August 2011. The preliminary results were recently released by the ABS. This report provides a brief overview of these results for the Council's information.

Key Issues

- Strategic planning
- Population growth
- Social change
- Economic development
- Infrastructure planning

Information

Estimated Resident Population

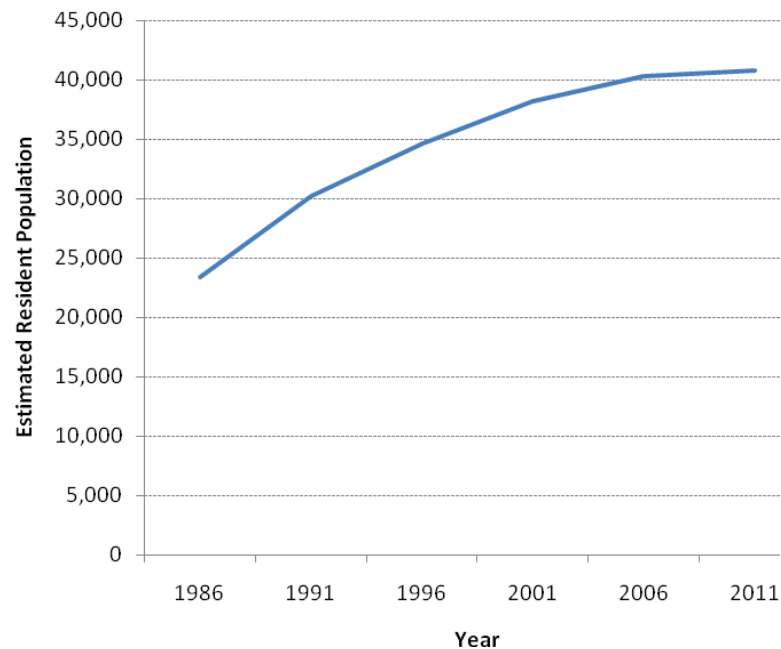
The Estimated Residential Population or ERP (as of 30 June for each nominated year) for Ballina Shire, neighbouring LGAs, New South Wales and Australia as a whole are provided in the following tables. The ERP is an estimate of population prepared by the ABS, reviewed annually, on the basis of the previous Census counts adjusted for persons away from home on Census night, births, deaths and migration estimates. Consequently, the ERP varies from the count of persons undertaken on Census night in the same year.

The ERP fluctuates over time as previous year's estimates are further reviewed and updated. For example, the ERP for Ballina Shire prior to the latest release for June 2011 was 42,922 persons. This was revised to 40,753 persons for June 2011 following the incorporation of the Census counts in the ABS estimates. This reflects the fact, acknowledged by the ABS, that the accuracy of the ERP declines the further the date is from the previous Census.

Population Growth (ERP), Ballina Shire 1986-2011

Ballina Shire	1986	1991	1996	2001	2006	2011
Estimated Resident Population	23,416	30,192	34,650	38,159	40,293	40,753
Average annual growth rate (%)		5.2	2.8	1.9	1.1	0.2

9.5 Census Update



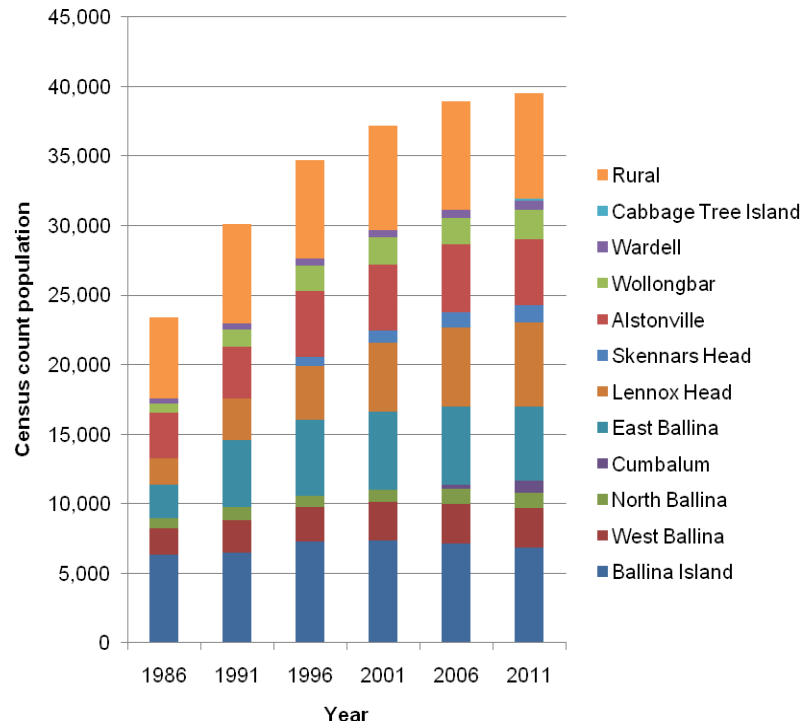
Population growth (Census counts), Ballina Shire localities 1986-2011

Census count population	1986	1991	1996	2001	2006	2011
Ballina Island	6,363	6,513	7,249	7,356	7,117	6,860
West Ballina	1,842	2,302	2,530	2,794	2,858	2,826
North Ballina	740	915	789	879	1,116	1,095
Cumbalum	0	0	0	0	287	871
East Ballina	2,453	4,828	5,488	5,570	5,576	5,322
Lennox Head	1,854	3,040	3,874	4,985	5,702	6,084
Skennars Head	0	0	637	858	1,081	1,196
Alstonville	3,266	3,685	4,725	4,773	4,942	4,796
Wollongbar	707	1,268	1,858	1,959	1,849	2,106
Wardell	315	423	450	483	612	648
Cabbage Tree Island	-	-	-	-	-	98
Rural	5,876	7,146	7,102	7,561	7,831	7,611
Ballina Shire Total	23,416	30,120	34,702	37,218	38,971	39,513

The decline in the rural population shown above is likely attributable to changes to the ABS geographical boundaries (particularly in relation to Cabbage Tree Island, Wardell and Skennars Head) between Census periods.

The distribution of population throughout Ballina Shire's localities is shown graphically in the following chart.

9.5 Census Update



The change in population (ERP) for Ballina Shire relative to other LGAs in the region, the State of New South Wales and Australia as a whole is shown in the following table.

Population growth (ERP), North Coast LGAs 2001-2011

Locality	2001	2011	Change 2001-2011		
	No.	No.	Change (persons)	Change (%)	Average Annual Rate of Change (%)
Ballina Shire	38,159	40,753	2,594	6.8	0.7
Byron Shire	29,689	30,825	1,136	3.8	0.4
Clarence Valley	48,617	51,252	2,635	5.4	0.5
Kyogle Shire	9,817	9,537	-280	-2.9	-0.3
Lismore City	43,064	44,282	1,218	2.8	0.3
Richmond Valley	21,183	22,697	1,514	7.1	0.7
Tweed Shire	74,577	88,463	13,886	18.6	1.7
<i>New South Wales</i>	<i>6,575,217</i>	<i>7,211,468</i>	<i>636,251</i>	<i>9.7</i>	<i>0.9</i>
AUSTRALIA	19,413,240	22,323,933	2,910,693	15.0	1.4

Source: ABS Catalogue 3218.0

The population growth rate of Ballina Shire over the ten year period to 2011 is generally in line with the average for the LGAs in the region (of 0.6% per annum). Tweed Shire experienced a strong level of growth over the period with an average annual growth rate of 1.7% per annum and an overall increase of almost 19% from its 2001 population.

9.5 Census Update

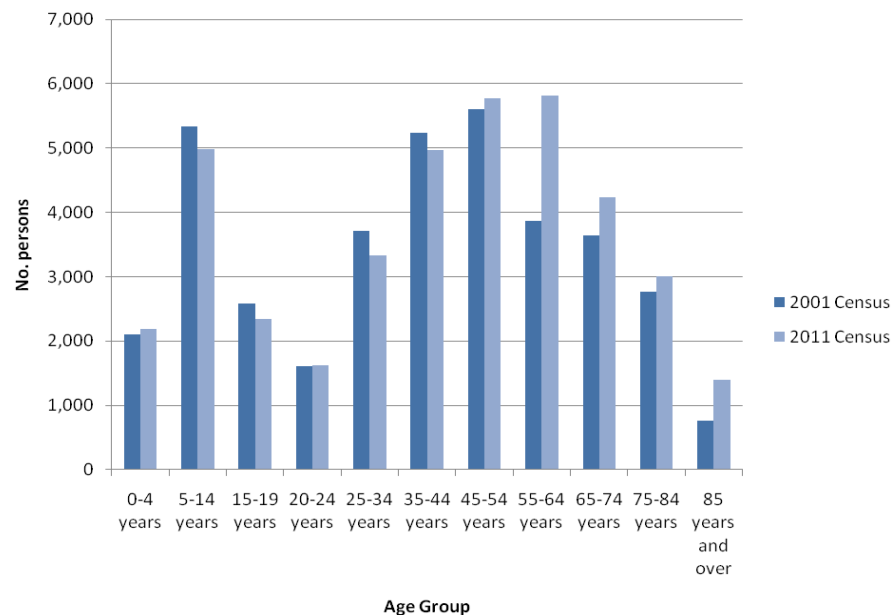
Age profile

The age profile of the Ballina Shire population (based on Census counts) is provided in the following table and chart.

Age profile, Ballina Shire 2001-2011

Age group:	2001 Census		2011 Census		Change 2001-2011	
	Persons	% of population	Persons	% of population	Persons	%
0-4 years	2,107	5.7%	2,186	5.5%	79	3.7%
5-14 years	5,340	14.3%	4,983	12.6%	-357	-6.7%
15-19 years	2,576	6.9%	2,340	5.9%	-236	-9.2%
20-24 years	1,612	4.3%	1,620	4.1%	8	0.5%
25-34 years	3,711	10.0%	3,333	8.4%	-378	-10.2%
35-44 years	5,236	14.1%	4,963	12.5%	-273	-5.2%
45-54 years	5,605	15.1%	5,771	14.6%	166	3.0%
55-64 years	3,865	10.4%	5,809	14.7%	1,944	50.3%
65-74 years	3,639	9.8%	4,229	10.7%	590	16.2%
75-84 years	2,763	7.4%	3,008	7.6%	245	8.9%
85 years and over	764	2.1%	1,404	3.5%	640	83.8%
Total	37,218	100.0%	39,646	100.0%		

Source: ABS Census Time Series Profile



The greatest changes to the age structure of Ballina Shire between 2001 and 2011 occurred in the 55-64 year age group (50% increase), the 85 years and over age group (84% increase). The number of persons within a family household with children in age groups of 25-34 years, 35-44 years, 5-14 years and 15-19 years, all declined in real terms over the period. The only exception to this was a slight increase in the 0-5 year age group (of approximately 4%).

Household structure

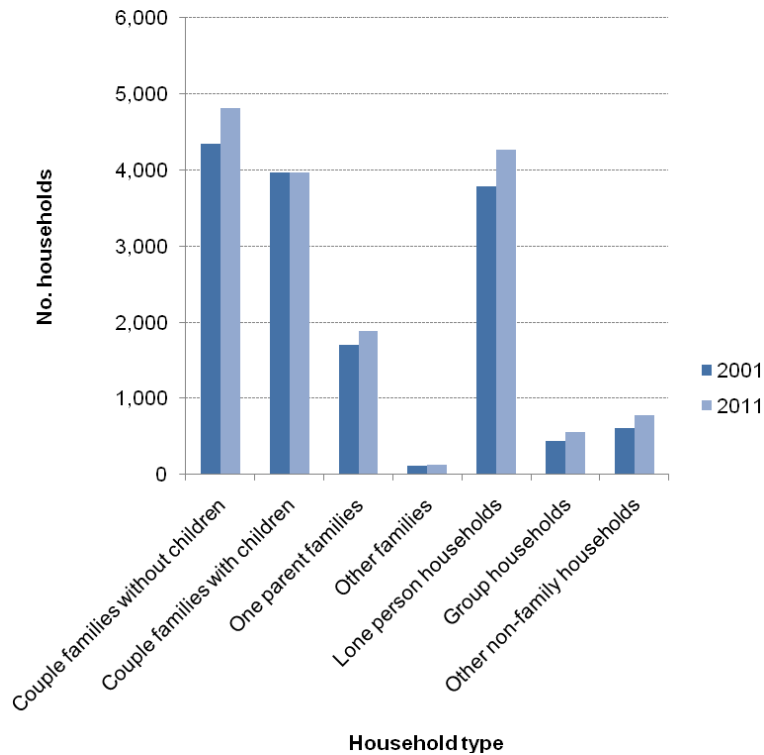
9.5 Census Update

The changes in the structure of Ballina Shire households are shown in the following table and chart.

Changes in household structure, Ballina Shire 2001-2011

Household structure	2001		2011		Change 2001-2011	
	Households	%	Households	%	Housholds	%
Family Households:						
Couple families without children	4,342	29.0%	4,809	29.4%	467	10.8%
Couple families with children	3,965	26.5%	3,962	24.2%	-3	-0.1%
One parent families	1,698	11.4%	1,883	11.5%	185	10.9%
Other families	118	0.8%	123	0.8%	5	4.2%
Total family households	10,123	67.7%	10,777	65.8%	654	6.5%
Non-Family Households:						
Lone person households	3,780	25.3%	4,261	26.0%	481	12.7%
Group households	438	2.9%	557	3.4%	119	27.2%
Other households	606	4.1%	775	4.7%	169	27.9%
Total	14,947	100.0%	16,370	100.0%	1,423	9.5%

Source: ABS Census Time Series Profile



The key changes in household structure between 2001 and 2011 are in the increase in the number of couple families without children (11% increase), lone person households (13% increase) and one-parent families (11% increase). The number of couple families with children remained unchanged over the period.

9.5 Census Update

Income and housing costs

Changes in median incomes and housing costs are provided in the following table.

Selected medians and averages, Ballina Shire 2001-2011

Selected Medians and Averages	Australia	New South Wales	Ballina Shire			
	2011	2011	2001	2011	Change 2001-2011 (#)	Change 2001-2011 (%)
Median age of persons	37	38	41	45	4	9.8%
Median total personal income (\$/weekly)	577	561	308	494	186	60.4%
Median total family income (\$/weekly)	1,481	1,477	731	1,153	422	57.7%
Median total household income (\$/weekly)	1,230	1,233	591	928	337	57.0%
Median mortgage repayment (\$/monthly)	1,800	1,993	900	1,733	833	92.6%
Median rent (\$/weekly)	285	300	150	290	140	93.3%
Average number of persons per bedroom	1.1	1.1	1.1	1.1	0	0.0%
Average household size	2.6	2.6	2.4	2.4	0	0.0%

Source: ABS Census Time Series Profiles

Between 2001 and 2011 individual, family and household incomes increased by approximately 60%. In comparison housing costs, in terms of mortgage repayments and rent increased by approximately 93%.

Ancestry

Key changes in the ancestry of the Ballina Shire population between 2001 and 2011 are shown in the following table.

The Aboriginal and Torres Strait Islander population of Ballina Shire increased by 39% over the ten year period to 2011, compared with a total shire population growth of approximately 7%. The Aboriginal and Torres Strait population increased from 2.4% of the total shire population in 2001 to 3.2% in 2011.

The number of persons born in countries other than Australia increased by 24% between 2001 and 2011, to comprise 10.7% of the shire population in 2011. The number of persons speaking a language other than English at home also increased, by 68% to comprise 3.3% of the shire population in 2011.

9.5 Census Update

Key ancestry statistics, Ballina Shire 2001-2011.

Ancestry	2001 Census		2011 Census		Change 2001-2011	
	Persons	% of Shire population	Persons	% of Shire population	Persons	%
Indigenous persons:						
Aboriginal	861	2.3%	1,197	3.0%	336	39.0%
Torres Strait Islander	23	0.1%	33	0.1%	10	43.5%
Both Aboriginal and Torres Strait Islander	25	0.1%	33	0.1%	8	32.0%
Total	909	2.4%	1,263	3.2%	354	38.9%
Birthplace:						
Australia	31,897	85.7%	33,362	84.2%	1,465	4.6%
Elsewhere	3,409	9.2%	4,242	10.7%	833	24.4%
Language spoken at home:						
English only	34,884	93.7%	36,683	92.5%	1,799	5.2%
Other language	777	2.1%	1,307	3.3%	530	68.2%

Source: ABS Census Time Series Profile

Dwelling structure

Changes in the structure of dwellings in Ballina Shire, between 2001 and 2011 are shown in the following table.

Changes in dwellings structure, Ballina Shire 2001-2011

Dwelling structure	2001		2011		Change 2001-2011	
	Dwellings	%	Dwellings	%	Dwellings	%
Separate house	10,041	67.2%	11,384	69.5%	1,343	13.4%
Total semi-detached, row or terrace house, townhouse etc	2,434	16.3%	2,089	12.8%	-345	-14.2%
Total flats, units & apartments	1,541	10.3%	2,124	13.0%	583	37.8%
Caravan, cabin, houseboat	769	5.1%	672	4.1%	-97	-12.6%
Improvised home, tent, sleepers out	27	0.2%	58	0.4%	31	114.8%
Other dwelling or not stated	135	0.9%	43	0.3%	-92	-68.1%
Total	14,947	100%	16,370	100%	1,423	9.5%

Source: ABS Census Time Series Profile

The number of separate houses increased by the most, in real terms, over the ten year period. With respect to the other forms of other dwellings some of the large changes in the number of those dwelling types may be attributable to changes to ABS definitions and to the interpretation of ABS guidelines by ABS Census collectors who make an assessment of dwelling types.

The number of persons counted as occupying 'improvised homes, tents and sleepers out' may be attributable to the greater effort made by the ABS, to to count this group, during the last Census collection.

9.5 Census Update

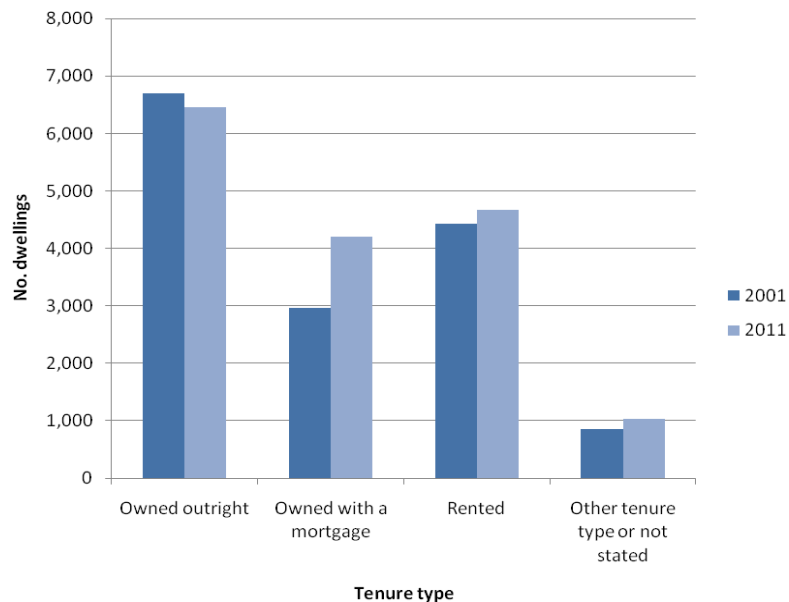
Tenure type

Changes to the form of housing tenure, of Ballina Shire households, between 2001 and 2011 are shown in the following table and chart.

Tenure type, Ballina Shire 2001-2011

Tenure type	2001		2011		Change 2001-2011	
	Dwellings	%	Dwellings	%	Dwellings	%
Owned outright	6,700	44.8%	6,452	39.4%	-248	-3.7%
Owned with a mortgage	2,963	19.8%	4,206	25.7%	1,243	42.0%
Rented	4,424	29.6%	4,676	28.6%	252	5.7%
Other tenure type or not stated	852	5.7%	1,037	6.3%	185	21.7%
Total	14,939	100%	16,371	100%	1,432	9.6%

Source: ABS Time Series Profile



It is noted that between 2001 and 2011, the number of dwellings owned outright declined (by 4%) while the number of dwellings owned with a mortgage and rented increased (by 42% and 6% respectively).

Futher information

It is noted that further Census data is due for release by the ABS in October 2011, relating to the following:

- Selected Labour Force, Education and Migration Characteristics;
- Family Composition and Labour Force Status of Parent(s)/Partners by Total Family Income (weekly);
- Non-School Qualification: Level of Education by Age by Sex;
- Non-School Qualification: Field of Study by Age by Sex;
- Labour Force Status by Age by Sex;
- Industry of Employment by Sex; and
- Occupation by Sex.

With respect to the demographic information available on Council's website, it is noted that this information (and the interactive website on which it is hosted) is provided by a consultancy, profileID, that provides similar services to many local governments throughout Australia and New Zealand. The data currently available only includes the 2006 Census, however it is anticipated that this will be updated to include the 2011 Census shortly. Once updated, a broader range of data will be available that can be interrogated through the interactive website. Further, it is anticipated that as more information becomes available, this information will assist in reporting to the Council in relation to a range of matters including economic development and social planning issues.

Sustainability Considerations

- **Environment**
The Census provides valuable information to Council to assist with planning associated with potential impacts of population change on the natural environment.
- **Social**
The Census provides valuable information to Council to assist with planning to accommodate changes in the social character of the shire population.
- **Economic**
The Census provides valuable information to Council to assist with planning for economic change in the shire.

Legal / Resource / Financial Implications

Not Applicable

Consultation

Provided for public information.

Options

This report is presented for information purposes only.

RECOMMENDATIONS

That Council notes the contents of the report regarding the preliminary results of the 2011 Census of Population and Housing for Ballina Shire.

Attachment(s)

Nil

9.6 NSW Planning Reform

9.6 NSW Planning Reform

Delivery Program Strategic Planning

Objective To inform Council about the key reforms to the NSW planning system as outlined in the NSW Government publication 'A New Planning System for NSW' Green Paper.

Background

In June 2011 an Independent Panel was established by the NSW Government to undertake a review of the NSW planning system. The review was commenced in response to concerns that the *Environmental Planning and Assessment Act 1979* and the NSW planning system in general have become "...complex and legalistic, focussed heavily on process and not on the outcomes the users of the system are seeking to achieve".

The NSW Government has now released a document titled *Green Paper – A New Planning System for New South Wales* (the Green Paper). The focus of the new planning system "...will be on good upfront strategic land use planning and removing the red tape from development assessment". The Green Paper states that the new legislation will be an 'enabling' Act establishing the broad framework for the planning system.

Submissions regarding the Green Paper close on 5 October 2012 for councils (and on 14 September 2012 for the general public). Following the consideration of submissions to the Green Paper the NSW Government will be releasing a White Paper/draft legislation later in the year. It is anticipated that legislation will be introduced into Parliament in early 2013.

This report outlines the key elements of the planning reforms detailed in the Green Paper.

Key Issues

- Comprehensive changes to the NSW planning system
- Consequences for councils and local communities

Information

The Green Paper outlines the major changes that are proposed to the way the planning system will operate in NSW. The new legislation will be an 'enabling' Act which establishes the broad framework for the planning system. Detailed prescriptive controls will not be included in the Act and will be addressed via 'guidance and good practice advisory notes'.

There are four fundamental reforms on which the Government's 'blueprint for change' is based, being:

- Community participation

Engage communities as an integral part of making key planning decisions that will affect the growth of their communities

- Strategic focus

Shift to evidence-based strategic planning in terms of planning effort, community and stakeholder engagement and decision making.

- Streamlined approval

A shift to a performance based system in which duplicative layers of assessment have been removed, decisions are fast and transparent, and code complying development is maximised.

- Provision of infrastructure

Integration of planning for infrastructure with the strategic planning of land use so that infrastructure that supports growth is funded and delivered.

The Green Paper states that the achievement of these reforms will necessitate substantial operational and cultural changes for planning practitioners at all levels. The Green Paper identifies an additional component of the blueprint for change as being an increased focus on delivery and "...the creation of a more facilitative planning culture".

The Green Paper identifies the following overarching purpose of the new planning system:

- Promote economic development and competitiveness
- Connect people and places
- Protect the environment
- Improve people's quality of life
- Resolve land use trade-offs based on social, economic and environmental factors
- Effectively manage growth and change.

The objectives of the broader planning system are identified as:

- Simple – reduce complexity and remove red tape
- Certain – provide predictability and certainty about how decisions are made for both investors and the community
- Transparent – base decisions on strong community participation and evidence
- Efficient – achieve time frames for completion of planning processes through increased accountability for efficient decision making
- Effective – planning strategies facilitate investment and manage change
- Integrated – promote greater cooperation and partnerships between all levels of government, and balance environmental protection with economic growth
- Responsive – provide flexibility to respond to change and ensure markets are competitive

The four fundamental reforms proposed outlined above are addressed in more detail as follows.

Community Participation

The NSW Government is proposing changes aimed at achieving public participation earlier in the strategic stages of the planning process. The Green Paper identifies the following changes in this regard:

- A Public Participation Charter

This will require appropriate community participation to occur in plan making and development assessment. The Public Participation Charter will set standards of community participation depending on the issue under consideration.

- Strategic community participation

Community engagement early at the strategic planning stages in the setting of the overall planning outcomes for an area. Planning objectives and scenarios for local growth and change will be tested publicly and trade-offs will be explained clearly.

- Transparency in decision making

This will be increased through: evidence-based decision making with full community participation; a clear strategic context for decisions and clear path through the hierarchy of plans; accessible planning information written in plain English; and public tracking of the decision making processes and public reporting of time frames.

- Use of information technology and electronic planning

Planning information will be able to be accessed by the community through electronic planning notification and engagement tools.

Strategic Focus

The new planning system will have an emphasis on evidence-based strategic planning. Major structural change is proposed to all levels of the planning system to reduce complexity and duplication including:

- NSW Planning Policies

These will replace State Environmental Planning Policies (SEPPs) and Section 117 Directions and articulate the NSW Government's policy direction and position on major planning issues such as housing affordability, coastal planning and mining.

- Regional Growth Plans

Regional Growth Plans will provide the principal direction on growth expectations over a 20 year period. Their delivery will be supported by clear accountabilities for the delivery of actions, links to funding for infrastructure, performance measures and annual reviews of performance. Growth plans for regional areas will be a priority in the roll out of the new planning system. These plans will also be strengthened and include provisions to facilitate

9.6 NSW Planning Reform

growth and change. Regional Growth Plans will be referred to in the new Act but will not be statutory instruments.

- Subregional Delivery Plans

These will be prepared in growth areas based on groupings of local councils and be:

- underpinned by a series of Sectoral Strategies that will provide a strong evidence base for housing, employment, retail, environment, rural, mining and other areas of focus.
- linked to Growth Infrastructure Plans which will provide a costed, funded infrastructure pipeline to support growth within the subregion.
- prepared in partnership with local government, State agencies and stakeholders and in consultation with the community.
- based on new subregional boundaries that will group local councils based on economic growth patterns, natural resource boundaries and infrastructure catchments.

The Subregional Delivery Plans will:

- directly rezone land in key areas, avoiding where possible the need for local plans to be separately and continuously amended.
 - provide a framework for code based assessment in key areas for subsequent development.
 - consolidate NSW Government agencies' requirements for development in the subregion, reducing subsequent referral and concurrence requirements.
 - link subregional planning to infrastructure planning and delivery.
- Local Land Use Plans

These will contain four parts comprising a strategic context, spatial land use zones, an infrastructure growth and service delivery component and development guidelines and standards. Local Land Use Plans will translate the development parameters and criteria set by the Subregional Delivery Plans and the Sectoral Plans into development controls and assessment criteria. Development controls and standards will focus on performance-based outcomes and be simpler, clearer and easier to navigate.

- New Zones

Three new zones are proposed:

- Enterprise Zone to capture investment opportunities.
- Future Urban Release Zone to indicate future use prior to programming infrastructure investment.
- Suburban Character Zone to give greater certainty in areas where the local community want to preserve local character.

Streamlined Approval

The key ideas of the Green Paper in relation to development assessment and compliance seek to make demonstrable changes to the way planning approval is obtained in NSW. They are aimed at providing certainty and clarity to the system so that an applicant knows what the assessment path will be, what the requirements for lodgement and assessment will be and who will determine the application. The following key changes are proposed:

- Depoliticising decision making

Support for a fundamental shift in the planning system that will see decision making on development applications streamed to appropriate, independent, and expert decision makers. State and regional scale development will continue to be assessed by the Planning Assessment Commission and the Joint Regional Planning Panels. The NSW Government is proposing that all councils follow the lead of a number of major councils in adopting the use of independent experts to determine development applications that would otherwise be reported to Council for determination.

- Strategic compliance

Development that is consistent with a strategic plan that has been prepared with community involvement may proceed in a streamlined way, including:

- Strategic compatibility certificate so that good development, implementing metropolitan or regional strategies can be considered without waiting for local land use plans to catch up.
- Councils and other consent authorities cannot refuse a proposal that complies with detailed building envelopes and standards developed through subregional planning-code assessment with any remaining components to be merit assessed by the consent authority.
- Removing concurrences through strategic planning.

- Reforming State significant assessment

Introduction of a suite of reforms to streamline assessment of State significant development, including integration with State planning principles and streamlining concurrence requirements.

- Smarter and timely merit assessment

Proposal to speed up and improve development assessment by setting assessment timeframes, involving decision making panels early, and providing applicants the opportunity to redesign their proposal prior to a refusal.

- Increasing code assessment (complying development)

Expansion to code assessment (complying development) by:

- Increasing the range of development types that are exempt from any approval.
- Extending the development types that can be approved by accredited certifiers.
- Allowing councils to vary standards for specific applications.

9.6 NSW Planning Reform

- Expanding the electronic housing code.
- Working with councils, industry and planning and building professionals to make code assessment simpler and more user-friendly.
- Extend reviews and appeals

The proposal to extend reviews and appeals includes:

- Allow proponents to seek an independent review of a council's decision on whether a rezoning should go ahead.
- Allow councils and proponents to seek an independent review of the Department of Planning and Infrastructure's decision on whether a rezoning should continue.
- Allow proponents to seek an independent review of the Department of Planning and Infrastructure's decision to issue a Strategic Compatibility Certificate or a Site Compatibility Certificate.
- Ensure more independent post approval reviews.

Provision of Infrastructure

The new planning system will align the funding and delivery of infrastructure with strategic planning to support growth across NSW. The major changes proposed to the planning system relating to infrastructure delivery are:

- Contestable infrastructure provision to enable greater private sector participation in the delivery of infrastructure that supports growth

For growth precincts, the private sector should be given the ability to design, fund, deliver, manage and operate infrastructure networks, such as for the provision of road, waste water, communications and energy supply. For larger Government infrastructure projects, greater consideration should be given to holding competitive tenders for the private sector.

Voluntary Planning Agreements are to be phased out or significantly modernised and simplified.

- Growth Infrastructure Plans to link strategic planning with infrastructure planning and provision, hence strengthening certainty and accountability for delivery
- Fairer, simpler system of infrastructure contributions to support the rapid supply of housing and improve affordability

The Government will reform the development contribution framework for State and local government infrastructure, providing a fairer, more transparent and more efficient scheme for the future.

- Public Priority Infrastructure to streamline assessment for major infrastructure delivery and provide upfront certainty accounting for increasing private delivery models

Delivering a new planning system

Delivery mechanisms identified in the Green Paper include:

9.6 NSW Planning Reform

- Chief Executive Officer's Group

The NSW Government will establish a formal NSW CEO Group with clear accountability for the delivery of approved strategic plans, including infrastructure coordination and provision across the State.

- Regional Planning Boards

The NSW Government proposes to establish Regional Planning Boards to provide a regional partnership of stakeholders, State and local governments to oversee regional and subregional planning initiatives.

- Mandatory Performance Monitoring

Proposal to introduce regular and mandatory performance measurement for strategic planning at all levels, with requirements to be embodied in the new Act.

- Planning Culture

Proposal for organisational reform to resource strategic planning and to improve the culture of the planning profession at all levels.

Sustainability Considerations

- **Environment**

The introduction of a new planning system will have potential environmental implications. However, at this stage it is difficult to determine their scope or precise nature.

- **Social**

The proposed simplification of the planning system has the potential to result in positive social outcomes.

- **Economic**

Economic outcomes have been a significant driver underlying the proposed new planning system.

Legal / Resource / Financial Implications

The new planning system has significant resource implications for Council both in the review of the proposed reforms and legislation and in the implementation phases. The full extent of the resource implications is yet to be determined.

Consultation

The period for submissions to be made to the Green Paper has been extended to 5 October for local councils. It is considered that further consultation with local government prior to proceeding to the White Paper/legislation would be beneficial and it is suggested that Council include this view in any submission to the NSW Government.

Options

1. That Council does not make a submission to the Green Paper

The proposed reforms to the NSW planning system are the most significant since the introduction of the *Environmental Planning and Assessment Act*. The proposed reforms detailed in the Green Paper have substantial implications for local government. Council has aimed to engage with the State Government during the planning reform process and it is considered worthwhile in this case.

This option is not preferred.

2. That Council makes a submission to the Green Paper

The proposed reforms to the NSW planning system require detailed review and consideration. A number of the provisions in the Green Paper also require further explanation to determine their implications for the operation of local councils.

For example, Council commenced the preparation of a new comprehensive local environmental plan (LEP) in 2006. The draft LEP has been forwarded to the NSW Department of Planning & Infrastructure for finalisation. The extent to which the work undertaken in the preparation of the draft LEP over the past six years is obsolete is not clear from the information provided in the Green Paper.

Other issues which warrant a submission to the Green Paper include the proposal for councils to adopt the use of independent expert panels to determine development applications that are presently reported to Council for determination.

This option will enable Council to respond to the key issues arising from the proposed reforms and is the preferred course of action. The submission will be prepared in consultation with the Regulatory Services Group and forwarded to the Department of Planning & Infrastructure. The submission will also be reported to Council for endorsement.

RECOMMENDATIONS

1. That Council notes this report relating to the comprehensive reforms to the NSW planning system.
2. That the Strategic and Community Services Group is authorised to prepare a submission to the Green Paper in liaison with Council's Regulatory Services Group.

Attachment(s)

Nil

10.1 Use of Council Seal

10. General Manager's Group Reports

10.1 Use of Council Seal

RECOMMENDATIONS

That Council affix the Common Seal to the following documents.

US12/24	<p>Discharge of Charge, Council to the Estate of the late L G Cowan (E M Cowan and S Czisz Executors) - Discharge of mowing encumbrance on Lot 34 DP 251693, being property situated at 3 Richland Court, Alstonville. Pending sale to Osbourne.</p> <p>Explanation: In 1976, the Council of the day placed a Memorandum of Encumbrance over the residential subdivision that encompassed Lots 1 to 88 inclusive in DP 251693. The mowing encumbrance ceases, by way of a Deed of Discharge of Charge, on the completion of the construction of a dwelling house or residential unit/s upon the individual allotments. Council usually receives requests to execute a Deed of Discharge of Charge of the encumbrance upon the property being sold, and prior to settlement, as is the case with Lot 34.</p>
US12/25	<p>Ballina Shire Council to Flynn Transport (NSW) Pty Limited: Part Lot 2 DP 1169153 on the Russellton Industrial Estate.</p> <p>Explanation: Flynn Transport (NSW) Pty Limited operate a haulage transport business from property owned by them and situated at Kays Lane on the Russellton Industrial Estate at Wollongbar. The company has leased a 3,973 sq mtr area of land from Council for truck parking since 2009. The lease was originally negotiated largely as a result of a local complainant contacting Council as a result of trucks being parked on the public roadway at Kays Lane. The new lease is proposed for a term of four years, and can be ended prior to the termination date should Council develop and sell the land within the lease term. The lessee has expressed an interest in purchase of the land at a market assessed rate in due course.</p>
US12/26	<p>Ballina Shire Council Lease Agreement to Northcott Disability Services for a term of 5 + 5 years - 64 Crane Street, Ballina, being Lot 1 DP 965058.</p> <p>Explanation: Council property at 64 Crane Street, Ballina has been leased to Ballina-Byron Family Services Inc (BBFS) for 10 years, since 5 August 2002, and following the current 5 year lease termination date of 4 August 2012 they have remained in occupancy on a holding-over basis pending their relocation to larger premises. BBFS have now formally notified staff that they will vacate the premises on 31 August, 2012. Being aware of the pending relocation of BBFS, staff have negotiated occupancy with Northcott Disability Services at a commencing rental that is the same as the rent currently paid by the outgoing tenant. Northcott Disability Services is not-for-profit organisation that provides support to people with a broad range of disabilities and their families and carers across NSW and the ACT.</p>

10.2 Investment Summary - August 2012

10.2 Investment Summary - August 2012

Delivery Program Financial Management

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

Background

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a council must provide a monthly report (setting out all money Council has invested), to be presented at the ordinary meeting of Council, immediately following the end of the respective month.

This report has been prepared for the month of July 2012.

Council's investments are all in accordance with the Act, the Regulations and Council's Investments Policy. The balance of investments as at 31 July was \$86,239,000. This represents an increase from June of \$8,281,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 July 2012, was \$2,255,244.54.

Council's investments as at 31 July are at an average (weighted) rate of 5.38% which is 1.88% above the 90 Day Bank Bill Index of 3.50%.

The majority of the approximately \$86 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

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

* Based on reserves held as at 30 June 2012

Of the total investments, approximately \$22 million are unexpended funds borrowed by Sewer Fund.

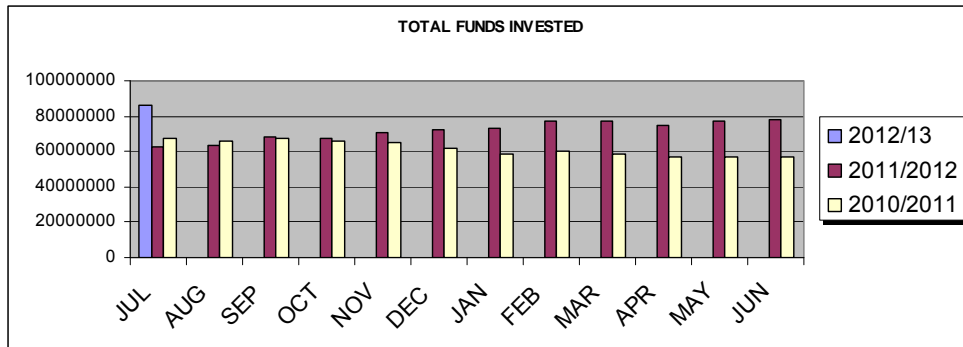
10.2 Investment Summary - August 2012

A. Summary of investments by institution

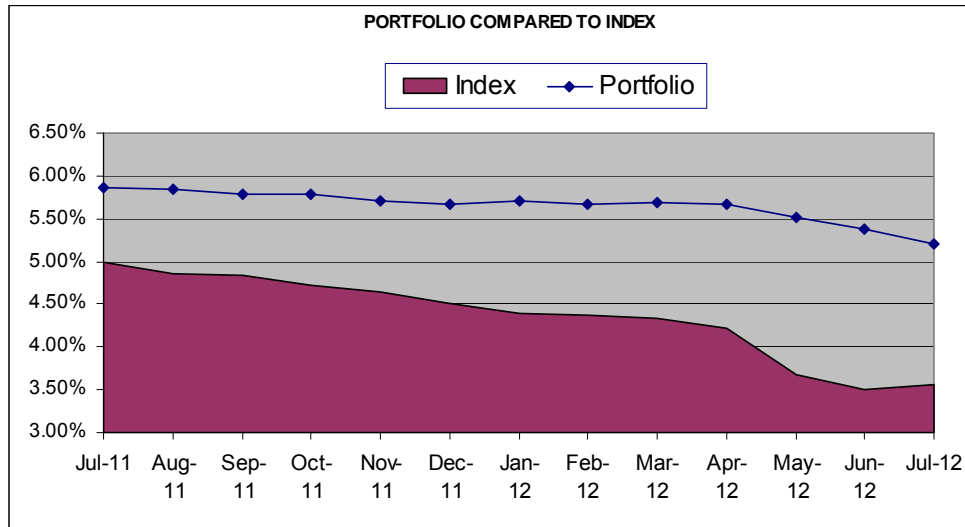
Funds Invested With	ADI Rating	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
Grandfathered Investments						
ANZ Bank	AA-	2,000	2,000	0	2.3	
Bendigo Bank Ltd	BBB	1,000	1,000	0	1.2	
Deutsche Bank	A+	4,000	4,000	0	4.6	
Goldman Sachs	AA-	1,000	1,000	0	1.2	
Heritage Building Society	BBB-	1,000	1,000	0	1.2	
HSBC Australia	AA-	1,000	1,000	0	1.2	
Longreach Capital Markets 28*	AA+	1,000	1,000	0	1.2	
Morgan Stanley	A	2,000	2,000	0	2.3	
National Australia Bank	AA-	1,788	1,788	0	2.1	
National Wealth M'ment Holding	A	2,000	2,000	0	2.3	20%
Rated Institutions						
ANZ Bank	AA-	38	20	20	0	
Bank of Queensland	BBB+	4,000	8,000	10	9.3	
Bank of Western Australia	AA-	8,000	10,000	20	11.6	
Commonwealth Bank of Aust	AA-	3,132	6,431	20	7.5	
Illawarra Mutual Bld Soc	BBB	2,000	2,000	10	2.3	
ING Bank Ltd	A	12,000	7,000	20	8.1	
Members Equity Bank	BBB	6,000	6,000	10	7.0	
National Australia Bank	AA-	11,000	11,000	20	12.8	
Newcastle Permanent Bld Soc	BBB+	1,000	1,000	10	1.2	
Suncorp Metway Bank	A+	10,000	16,000	20	18.6	
Westpac Banking Corporation	AA-	1,000	1,000	20	1.2	79%
Unrated ADI's						
Defence Bank		1,000	0	\$1m	0	
Community CPS Credit Union		1,000	1,000	\$1m	1.2	1%
Total		77,437	77,958			100%

* Rating is on Capital only by Citigroup Pty Ltd

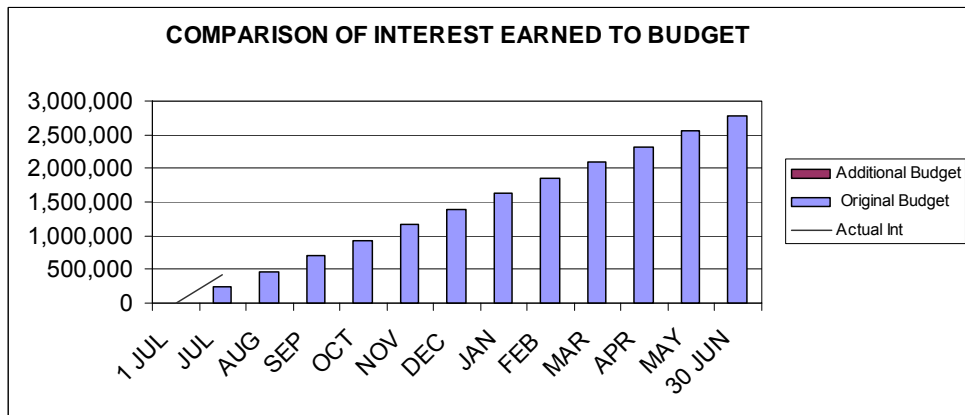
B. Monthly Comparison of Total Funds Invested



C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



Comment

The RBA left the cash rate on hold at 3.5% at the August 7 meeting.

Summing up their view of the current world economic situation in one paragraph, Governor Glenn Stevens said: "China's growth has moderated to a more sustainable pace, but does not appear to be slowing further. Conditions in other parts of Asia have recovered from the effects of last year's natural disasters, though the ongoing trend is unclear and could be dampened by the effects of slower growth outside the region. Growth in the United States continues, but at only a modest pace. The most significant area of weakness continues to be Europe, where economic activity has been contracting and policy makers confront the very difficult task of seeking to put both bank and sovereign balance sheets onto a sound footing, while promoting conditions for improved long-term growth."

10.2 Investment Summary - August 2012

E. Investments held as at 31 July 2012

Purchase Date	Issuer	Type	Rate%	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	4.51	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	4.51	23/04/14	2,000
20/09/04	National Australia Bank	FRN	5.02	Perpetual	1,788
08/08/05	Morgan Stanley	FRN	4.22	08/08/12	2,000
12/04/06	Goldman Sachs	FRN	4.10	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	4.12	16/06/16	2,000
28/06/07	Longreach Series 28	FND	0.00	27/06/14	1,000
21/09/07	Bendigo Bank	FRN	4.74	21/09/12	1,000
18/10/07	Heritage Bank	FRN	4.83	18/10/12	1,000
18/10/07	ANZ Bank (FRN)	FRN	4.28	18/10/12	2,000
14/03/08	HSBC Australia Ltd	FRN	5.81	14/03/13	1,000
17/12/08	Commonwealth Bank of Australia	FRTD	4.69	17/12/13	1,000
17/12/08	Commonwealth Bank of Australia	TD	5.93	17/12/13	998
03/02/10	Commonwealth Bank of Australia	FND	3.45	At Call	1,134
20/07/11	ANZ Bank	FND	2.50	At call	38
24/01/12	ING Bank Ltd	FRTD	5.47	24/01/17	1,000
06/02/12	Westpac Bank	FRN	5.46	06/02/17	1,000
22/02/12	ING Bank Ltd	TD	6.04	20/08/12	4,000
01/03/12	ING Bank Ltd	TD	6.00	28/08/12	1,000
14/03/12	National Australia Bank	TD	5.89	11/09/12	1,000
03/04/12	Members Equity Bank	TD	5.90	03/10/12	1,000
05/04/12	National Australia Bank	TD	5.66	03/08/12	2,000
18/04/12	Suncorp-Metway Bank	TD	5.70	16/08/12	2,000
20/04/12	National Australia Bank	TD	5.64	20/10/12	1,000
22/04/12	National Australia Bank	TD	5.64	20/10/12	4,000
24/04/12	Members Equity Bank	TD	5.90	22/10/12	2,000
03/05/12	Suncorp-Metway Bank	TD	5.46	01/08/12	2,000
04/05/12	Bank of Queensland	TD	5.60	05/11/12	2,000
07/05/12	Illawarra Mutual Bld Society	TD	5.30	07/08/12	2,000
09/05/12	Suncorp-Metway Bank	TD	5.30	09/11/12	2,000
14/05/12	BankWest	TD	5.50	13/08/12	2,000
17/05/12	BankWest	TD	5.45	15/08/12	2,000
22/05/12	Community CPS Credit Union	TD	5.45	20/08/12	1,000
22/05/12	Members Equity Bank	TD	5.40	20/08/12	2,000
28/05/12	Members Equity Bank	TD	5.40	27/08/12	1,000
30/05/12	Bank of Queensland	TD	5.25	28/08/12	1,000
06/06/12	Bank of Queensland	TD	5.25	04/09/12	1,000
26/06/12	BankWest	TD	5.10	24/09/12	3,000
27/06/12	Suncorp-Metway Bank	TD	5.00	25/09/12	2,000
03/07/12	Suncorp-Metway Bank	TD	5.10	31/10/12	2,000
23/07/12	BankWest	TD	5.00	05/11/12	1,000
24/07/12	Suncorp-Metway Bank	TD	5.10	21/01/13	4,000
24/07/12	Bank of Queensland	TD	5.20	26/11/12	4,000
24/07/12	BankWest	TD	5.05	06/11/12	2,000
25/07/12	Newcastle Permanent Bld Society	TD	5.00	23/10/12	1,000
30/07/12	ING Bank Ltd	TD	5.18	30/01/13	1,000
30/07/12	National Australia Bank	TD	5.06	29/10/12	3,000
30/07/12	Suncorp-Metway Bank	TD	5.15	27/11/12	2,000
Totals:					86,239
TD=Term Deposit		FRN=Floating Rate Note		FND=Managed	
ELN= Equity Linked Note		FRTD= Floating Rate Term Deposit		Fund	

RECOMMENDATION

That Council notes the record of banking and investments for July 2012.

Attachment(s)

Nil

10.3 Community Donations

10.3 Community Donations

Delivery Program Governance

Objective To invite Council to consider new requests for a donation and to provide further information in respect to a request considered at the July Council meeting.

Background

Council approved a number of general and capital assistance donations at the July 2012 meeting for the 2012/13 financial year. One such request received from the Mental Health Support Group Inc was considered and it was deemed that further information from the organisation was needed. Two other applications have subsequently been received from the Ballina RSL Sub Branch and Alstonville Croquet Club.

Key Issues

- Nature of request
- Community benefit
- Funding available

Information

Mental Health Support Group Inc

Additional information was sought and it was confirmed that the group is incorporated and they provide support to people throughout the region including Ballina. As well as attending to patients in hospitals they also visit people at home.

In terms of financial resources, last year the group received \$3,000 from Club Australia, which was spent on quilts for patient beds and \$2,000 from Lismore City Council spent on taking patients on outings.

The group does not have a defined base and members are from Ballina, Alstonville and Lismore. The donation amount requested is \$1,300.

Ballina RSL Sub Branch

The Club are seeking a donation to offset the cost of Council rates for the Ballina RSL Youth Club. Council donated the rates for the Youth Club in 2011/12 of \$2,929 (Ordinary Rate + Base Amount). The rates for 2012/13 are \$2,949 (Ordinary Rate + Base Amount).

Alstonville Croquet Club

The Club have a sign attached to the street sign at the intersection of Ballina Road and Teven Road, They are asking Council to fund the cost of a second sign to be placed on the street sign at the intersection of Teven Road and Gap Road.

The cost for Council to fund the supply and erection of this sign would be approximately \$100.

10.3 Community Donations

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Donations such as that requested provide valuable support to community groups.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

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

Items	Budget	Allocated	Balance
Donations (General)	76,500	72,243	4,257
Donations (Halls)	28,500	28,500	0
Donations (DA Fees)	3,000	0	3,000
Net Amount Available			7,257

The three donation requests are for \$2,949, \$1,300 and \$100 which marginally exceeds the remaining available budget in general donations, however it does not exceed the total funds available.

Also it appears that the funds available may increase by \$2,000 as correspondence has recently been received from the Naval Association that they will now be holding their proposed street march.

Consultation

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

The request from the Mental Health Support Group Inc. was considered at the July meeting and the resolution was to gather further information.

The requests from the Ballina RSL Sub Branch and the Alstonville Croquet Club were received late so there has been no specific consultation in respect of these requests.

Going forward it is proposed to advise applicants, other than those seeking relief from DA fees, that the 2012/13 financial year donations are complete and invite an application to be considered for the 2013/14 financial year. Due to the ever increasing number of applications being received it is considered that this is the only way to ensure that all applications are treated equally and assessed at the same time.

10.3 Community Donations

Options

The options are to approve or not approve the requests. Both options are provided as the allocation of donations is a matter for the elected Council.

RECOMMENDATIONS

1. That Council approve / not approve the donation request from Mental Health Support Group Inc as detailed within this report.
2. That Council approve / not approve the donation request from Ballina RSL Sub Branch as detailed within this report.
3. That Council approve / not approve the donation request from the Alstonville Croquet Club as detailed within this report.

Attachment(s)

1. Application - Mental Health Support Group Inc
2. Application - Ballina RSL Sub Branch (for Ballina RSL Youth Club)
3. Letter - Alstonville Croquet Club

10.4 Independent Local Government Review Panel - Update

10.4 Independent Local Government Review Panel - Update

Delivery Program Governance

Objective To provide an update on the NSW Independent Local Government Review Panel.

Background

The NSW Minister for Local Government has stated on a number of occasions that he is committed to the strengthening of local government in NSW and to ensure that councils are in a position to effectively manage the challenges of the 21st century.

One of the key platforms of this strengthening process is the Destination 2036 project which is based on a “long term reform agenda that will lead us to stronger communities through partnerships” (page 5 – Destination 2036 Action Plan).

The Destination 2036 project was commenced in August 2011 when General Managers and Mayors from all NSW councils met in Dubbo to develop the first stages of the Action Plan. Following further consultation with a wide range of stakeholders the Minister has now released the final Destination 2036 Action Plan and a copy of that document is available on the Division of Local Government’s web site (www.dlg.nsw.gov.au)

The document has a wide range of actions identified and one of the key items mentioned is the establishment of the Independent Local Government Review Panel (LGRP). This report provides an update on the actions of that Panel.

Key Issues

- Terms of reference for the Panel

Information

The LGRP was established by the NSW Government in April 2012, with its key task being to “improve the strength and effectiveness of local government in NSW”. The attachment to this report is the consultation paper prepared by the LGRP and that document provides a comprehensive overview of the role of the Panel and the actions being taken.

At this point in time the LGRP is in the first stage of consultation and they are seeking the community’s views on three key questions:

1. What are the best aspects of NSW local government in its current form?
2. What challenges will your community have to meet over the next 25 years?
3. What top five changes should be made to local government to help meet your community’s future challenges?

Submissions to this stage of consultation close on 14 September 2012.

10.4 Independent Local Government Review Panel - Update

As part of the consultation process the LGRP is meeting with all regional organisations of councils (ROCs) and a meeting was held with NOROC in Ballina on Monday 13 August 2012. NOROC was invited to make a presentation to the LGRP at that meeting, and the Mayors of each council were also invited to make a five minute presentation on behalf of their own councils. Generally speaking the NOROC member councils were united in the presentations in that the main themes for the three key questions were:

1. What are the best aspects of NSW local government in its current form?
 - Community representation and engagement
 - Community identity
 - Responsiveness to the community
 - Ability to provide key local services (i.e. water, sewer etc)
 - Regional cooperation
2. What challenges will your community have to meet over the next 25 years?
 - Aging population
 - Population change and impact on infrastructure
 - Shrinking rural communities
 - Skills shortage
 - Climate change
 - Coastal erosion
 - Development versus environment
 - Demand for increased and higher level of services
 - Land use consistency
3. What top five changes should be made to local government to help meet your community's future challenges?
 - Financial sustainability – long term solvency
 - Increased flexibility to allow councils to work together
 - Increased autonomy / independence/ accountability
 - Constitutional reform
 - Workforce development and removal of restrictive workplace practices

After the presentation from NOROC and the Mayors a workshop session was held to reaffirm or clarify some of these issues. As a general comment, funding, or access to funding, and the need for councils to have greater flexibility and autonomy (i.e. the State having more trust in councils and appreciating that councils have a partnership with their local communities) were the two major themes arising from the discussions held.

The issue of amalgamations or boundary adjustments was touched on, albeit briefly, with all councils, other than Tweed, not supporting amalgamation. In respect to Tweed Council they considered a report on this issue at an Extraordinary meeting held 7 August 2012. That report focused, in part on amalgamation options, which subsequently resulted in extensive media coverage throughout the region. A copy of the Tweed report is available on the Tweed Council web site (www.tweed.nsw.gov.au/ Your Council / Council meetings).

Sustainability Considerations

10.4 Independent Local Government Review Panel - Update

- **Environment**
Environmental, social and economic concerns all form part of the LGRP's considerations.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

There are no legal / resource or financial implications currently arising out of this report.

Consultation

The LGRP will be conducting a number of consultation phases.

Options

This report has been prepared as an update for Council on the role of the LGRP. Therefore the options are to note the contents of this report or for Council to agree to formulate a submission to the LGRP.

Overall it is considered that NOROC, on behalf of the councils of the entire region, has provided comprehensive feedback on the issues that need to be considered by the LGRP as part of this current consultation. The real opportunity for more comprehensive feedback will arise when the LGRP starts formulating actions to address the problems that councils face, such as financial solvency.

RECOMMENDATION

That Council notes the contents of this report in respect to the NSW Independent Local Government Review Panel.

Attachment(s)

1. LGRP Consultation Paper - "Strengthening Your Community"

10.5 Policy Review - Events on Public Land

10.5 Policy Review - Events on Public Land

Delivery Program Tourism

Objective To consider a submission received in respect to the exhibition of Council's revised Events on Public Land policy.

Background

At the 28 June 2012 meeting Council resolved to place on public exhibition the Special Events Policy (now known as the Events on Public Land Policy).

The draft policy was placed on public exhibition with the closing date of 1 August 2012. One submission was received, a copy of which is attached to this report. A copy of the policy as exhibited is also included for reference purposes.

Key Issues

- Content of policy
- Relevance of policy
- Address submissions

Information

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

One submission was received. The issues raised in the submission suggest that the policy might be improved in respect to consultation with community, in particular, of respective sporting groups prior to any Council event approval being granted.

The purpose of the policy is to enable staff to undertake the approval through delegated authority. One difficulty with the submission from Le-Ba is that any mandatory consultation could extend the approval process and there are times when there is not support from all clubs or organisations for an event.

Typically staff will then make a decision as to whether the matter should be reported to Council, for the Councillors to determine the response, or whether a decision can be made at an operational level to approve or not approve the event.

Even though it is not explicitly stated in the policy consideration of other groups and activities is a key part of assessing any application and consultation with particular interest groups may not reflect the wishes of the entire community.

10.5 Policy Review - Events on Public Land

As this currently does occur, and is somewhat implicit in the policy, the policy could potentially be improved through an amendment to the following paragraph which is located in the Long Term Event Approvals section of the document.

Current Paragraph

When a clash of dates or venues occurs with event organisers requiring event approval on public land, and this issue cannot be resolved operationally, then this will be determined by Council.

Revised Paragraph (or section)

Assessment

In assessing applications staff will consider a range of assessment criteria including, but not limited to:

- *Environmental impacts – potential damage to local flora and fauna and impact on the Council infrastructure*
- *Social impacts – impact on residential amenity, conflicts with other user groups and organisations, availability of land*
- *Economic impacts – likely economic benefits and dis-benefits to the locality and the Shire.*

When matters such as these cannot be resolved operationally, the event assessment may be reported Council for determination.

It is also recommended that this revised paragraph be included as a new section in the policy located above the “Long Term Events Approvals” section.

Finally the “Festival and Event Support Program” section of the policy makes reference to \$50,000 in funding. As this figure can change each year it is recommended that the dollar amount be removed from the sentence; i.e.

Council’s Festival and Event Support Program provides funding to support festivals and events held within Ballina Shire.

Sustainability Considerations

- **Environment**
Appropriate management of events reduces potential impacts to the environment of the shire.
- **Social**
Events promote social activities and inclusion. This policy also seeks to support community groups conducting events in the shire.
- **Economic**
Events have the potential to generate economic benefits for the shire.

Legal / Resource / Financial Implications

This draft policy aims to assist and ensure events coordinated in the shire are compliant with Council’s regulatory framework and legislative requirements. There are no financial implications associated with the revision of this policy.

10.5 Policy Review - Events on Public Land

Consultation

The draft policy was placed on public exhibition with the closing date of 1 August 2012.

Options

Council can adopt the policy as exhibited, amend the policy or determine not to adopt the policy. The recommendation is to Council adopt the policy as exhibited, subject to the minor amendments as outlined in this report.

RECOMMENDATION

That Council adopt the Events on Public Land policy as exhibited; subject to the following amendments:

- a) Inclusion of a new section, located prior to the "Long Term Events Approval" section, as follows:

Assessment

In assessing applications staff will consider a range of assessment criteria including, but not limited to:

- *Environmental impacts – potential damage to local flora and fauna and impact on the Council infrastructure*
- *Social impacts – impact on residential amenity, conflicts with other user groups and organisations, availability of land*
- *Economic impacts – likely economic benefits and dis-benefits to the locality and the Shire.*

When matters such as these cannot be resolved operationally, the event assessment may be reported Council for determination

- b) Removal of the following sentence from the "Long Term Events Approval" section, as it has been replaced by the information in point a):

When a clash of dates or venues occurs with event organisers requiring event approval on public land, and this issue cannot be resolved operationally, then this will be determined by Council.

- c) Removal of the reference to the \$50,000 allocation with the current sentence to be amended as follows:

Council's Festival and Event Support Program provides funding to support festivals and events held within Ballina Shire.

Attachment(s)

1. Events on Public Land Policy - Le-Ba Submission
2. Events on Public Land Policy - As Exhibited

10.6 Legal Matters - Update

10.6 Legal Matters - Update

Delivery Program Governance

Objective To provide an update on legal cases 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 final report on the 2011/12 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.

Solicitor for Council	Parties	Case Description	Original Cost Estimate	Costs Paid to Date
Blake Dawson	Oshlack v Ballina Shire Council & Ors	Land & Environment Court - ref. no. 2010/40570 - Challenge to approval of Marom Creek fluoridation plant - Rous Council and Lismore also joined in this case - Class Four	\$100,000	\$172,000
Comments <p>Mr Oshlack appealed the process followed by Rous, Lismore and Ballina councils in approving fluoridation. Rous Council engaged Blake Dawson Solicitors and Ballina Council agreed for that firm to also represent Ballina Council with costs to be shared. Lismore Council engaged a separate firm to act as their solicitors and only tendered a submitting appearance.</p> <p>The decision of the Court was eventually published on 16 May 2012 with the appeal being dismissed and Rous and Ballina councils being awarded costs. Whether or not Council has any chance of recovering costs will be subject to further advice from our solicitors.</p> <p>The time limitation for appeal of the original decision expired on Thursday 16 August, with the Mr Oshlack lodging an appeal. Further advice will be provided in respect to this appeal once Council's solicitors review the notice.</p> <p>Tenders will not be called to implement Council's earlier resolutions in respect to the construction of the plant needed to fluoridate Council's water supply until the appeal is determined.</p>				

10.6 Legal Matters - Update

Legal / Resource / Financial Implications

This next section of this report provides an update on the final legal costs for 2011/12 along with a comparison to the previous three financial years.

Description	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Budget	2011/12 Actual
Planning Legals					
Avalon	86,000	0	0	80,000 (was originally \$260,000 with subsequent reductions included in Quarterly Financial Reviews	0
Bryson and Blake	33,000	57,000	0		0
Greenwood Grove	53,000	44,000	7,000		0
Lennox Head Apartments	0	26,000	0		0
Ramada	0	51,000	364,000		2,000
Rich and Rich	0	16,000	1,000		0
Simpson	125,000	0	0		0
Stockpile - Temporary	0	0	66,000		0
Advice - Optus Tower	0	0	0		1,000
Advice - Riverside Suites	95,000	35,000	4,000		7,000
Advice - North Angels	0	7,000	4,000		0
Advice - Service Centre	0	0	37,000		0
Advice - Bulky Goods	0	0	0		4,000
Advice - Verna Wall	0	0	0		3,000
Insurance - LEP	0	0	0		6,000
Insurance - Misc Advice	44,000	43,000	61,000		45,000
Sub Total	436,000	279,000	544,000		80,000
Property Legals					
Gunundi	139,000	23,000	3,000	0	0
Homeworld - Sec 96	52,000	0	0	0	0
Homeworld - BLEP	163,000	110,000	4,000	0	0
Lennox Head Comm Ctre	0	0	0	75,000	55,000
Sub Total	354,000	133,000	7,000	75,000	55,000
Water Legals					
Oshlack - Fluoride	0	0	159,000	35,000	13,000
Total Expenses	790,000	412,000	710,000	190,000	136,000
Expenses Recouped					
Freedon	52,000	0	0	7,000	0
Jacobson / McMillan	103,000	0	0		0
Simpson	6,000	0	0		0
Stubberfield	0	29,000	29,000		0
Gunundi	0	0	71,000		0
Homeworld	0	0	190,000		0
Ramada	0	0	8,000		0
Greenwood Grove	0	0	15,000		0
Stockpile Temporary	0	0	37,000		7,000
Miscellaneous	0	0	3,000		1,000
Total Income	161,000	0	353,000		7,000
Net Cost	629,000	412,000	357,000	183,000	128,000
Fund Summary - Net					
General Fund	629,000	412,000	198,000	148,000	115,000
Water Fund	0	0	159,000	35,000	13,000

The major outstanding matters remain the Oshlack case and the Lennox Head Community Centre insurance claim, which is more a matter for arbitration. In respect to this claim, the architect's insurer has now agreed to suspend arbitration and to conduct a mediation session. It is anticipated at that meeting that an agreed settlement for Council's claim will be reached. The meeting is scheduled for 25 September 2012.

10.6 Legal Matters - Update

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.

RECOMMENDATIONS

That Council notes the contents of the legal update for the year ended 30 June 2012.

Attachment(s)

Nil

10.7 Financial Review - Financial Year Ended 30 June 2012

10.7 Financial Review - Financial Year Ended 30 June 2012

Delivery Program Financial Management

Objective To provide a preliminary review of the 2011/12 financial year operating result

Background

In accordance with the Local Government Act the responsible accounting officer of a council must, not later than two months after the end of each quarter, prepare and submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year.

However under the Division of Local Government's Integrated Planning and Reporting requirements council is not required to submit a quarterly review for the June quarter.

Even though there is no requirement it is reasonable for Council to receive an update on the interim financial results for the financial year, prior to receiving the audited financial results which are typically not presented until October.

The report that follows provides the preliminary results for 2011/12, albeit that some of these results may vary as the audited financial results are prepared during the next two months.

Key Issues

- Overall results

Information

The focus of the report is on the operating result, being operating income and expense. A review of capital expenditure for the year is outlined in the next report in this agenda.

The information provided outlines the operating income and expense for each Fund (General, Water and Sewer) and is useful in determining whether the Fund is operating at a surplus or deficit (before and after depreciation).

The operating performance for each activity within the General Fund is also able to be monitored by matching income and expenses.

The figures are provided as per original budget, each quarterly review and the June actual results.

The variance figure represents the difference between the estimated March review results and the actual results as at 30 June.

10.7 Financial Review - Financial Year Ended 30 June 2012

General Fund

This first section deals with Council's General Fund operations.

General Fund - Statement of Operating Income and Expenses (by Activity)
Table One: General Fund - Operating Income (\$'000)

Operating Income	Original Budget	Sept Review	Dec Review	March Review	June Actual	Variance
Strategic Services						
Strategic Planning	393	416	416	448	447	(1)
Community Services	159	159	176	176	234	58
Community Gallery	52	52	60	60	67	7
Sub Total	604	627	652	684	748	64
Regulatory Services						
Development Services	305	305	312	312	333	21
Building Services	845	845	700	590	540	(50)
Public and Env Health	176	176	186	191	184	(7)
Admin and Public Order	87	87	77	77	70	(7)
Sub Total	1,413	1,413	1,275	1,170	1,127	(43)
Civil Services						
Asset Management	208	197	182	164	308	144
Stormwater and Env Prot	273	277	292	292	423	131
Roads and Bridges	100	120	143	153	174	21
Ancillary Transport Services	1,331	1,331	986	634	634	0
Roads and Maritime Services	1,351	1,351	1,355	1,355	1,582	227
Open Space and Reserves	722	808	851	888	1,047	159
Fleet Mgmt and Workshop	3,292	3,332	3,344	3,344	3,210	(134)
Rural Fire Service	182	182	182	190	212	22
Quarries and Sandpit	315	315	315	315	304	(11)
Swimming Pools	283	283	283	283	280	(3)
Landfill Management	6,502	6,417	6,297	6,088	5,701	(387)
Waste-Domestic	6,566	6,566	6,456	6,368	6,396	28
Sub Total	21,125	21,179	20,686	20,074	20,271	197
General Manager's Group						
Administrative Services	26	26	27	39	39	0
Financial Services	19,663	18,919	19,000	19,236	21,029	1,793
Regional Library	92	92	92	118	115	(3)
Information Services	4	4	4	6	5	(1)
Human Resources and Risk	76	110	140	205	204	(1)
Tourism	33	49	49	94	96	2
Property Management	3,478	3,478	3,423	3,289	3,239	(50)
Ballina Byron Airport	4,032	4,032	3,635	3,592	3,484	(108)
Sub Total	27,404	26,710	26,370	26,579	28,211	1,632
Total Operating Income	50,546	49,929	48,983	48,507	50,357	1,850

10.7 Financial Review - Financial Year Ended 30 June 2012

Table Two: General Fund - Operating Expenses (\$'000)

Operating Expenses (excluding depreciation)	Original Budget	Sept Review	Dec Review	March Review	June Actual	Variance
Strategic Services						
Strategic Planning	1,015	1,395	1,395	1,316	970	(346)
Community Services	693	798	764	768	704	(64)
Community Gallery	150	168	176	182	157	(25)
Sub Total	1,858	2,361	2,335	2,266	1,831	(435)
Regulatory Services						
Development Services	1,394	1,394	1,294	1,200	1,186	(14)
Building Services	768	768	768	768	761	(7)
Public and Env Health	664	669	669	619	570	(49)
Admin and Public Order	1,024	1,024	1,014	979	945	(34)
Sub Total	3,850	3,855	3,745	3,566	3,462	(104)
Civil Services						
Asset Management	2,719	2,733	2,922	3,102	3,094	(8)
Stormwater and Env Prot	518	778	793	828	650	(178)
Roads and Bridges	2,859	3,126	3,499	3,579	3,628	49
Ancillary Transport Services	2,142	2,290	2,003	1,728	1,750	22
Roads and Maritime Services	1,352	1,360	1,362	1,362	1,304	(58)
Open Space and Reserves	3,373	3,657	3,704	3,839	3,676	(163)
Fleet Mgmt and Workshop	2,375	2,415	2,414	2,414	2,296	(118)
Rural Fire Service	370	414	414	394	339	(55)
Quarries and Sandpit	67	136	136	152	76	(76)
Swimming Pools	669	669	669	669	663	(6)
Waste/Landfill Commercial	5,093	5,394	5,434	5,255	4,874	(381)
Waste - Domestic	6,380	6,110	5,993	5,851	5,511	(340)
Sub Total	27,917	29,082	29,343	29,173	27,861	(1,312)
General Manager's Group						
Governance	947	979	979	969	957	(12)
Administrative Services	904	904	774	754	722	(32)
Financial Services	(2,825)	(2,795)	(2,795)	(2,778)	(2,818)	(40)
Regional Library	1,280	1,334	1,334	1,361	1,310	(51)
Information Services	1,496	1,506	1,506	1,509	1,571	62
Human Resources and Risk	794	891	901	1,361	1,247	(114)
Tourism	616	651	651	696	687	(9)
Property Management	1,645	1,742	1,832	1,864	1,745	(119)
Ballina Byron Airport	2,577	2,577	2,694	2,730	2,768	38
Sub Total	7,434	7,789	7,876	8,466	8,189	(277)
Total Operating Expenses	41,059	43,087	43,299	43,471	41,343	(2,128)
Result Before Depreciation	9,487	6,842	5,684	5,036	9,014	3,978
Depreciation Expense	12,475	12,475	12,475	12,475	13,500	(1,025)
Net Operating Result	(2,988)	(5,633)	(6,791)	(7,439)	(4,486)	2,953

Comments - General Fund Operating Budget

There have been savings across a number of programs and items where there have been over-expenditures are often offset by savings from other items in the programs, outstanding grants and / or reserve transfers. A more detailed report on the net cash position of Council will be presented once all accruals and reserve movements have been finalised.

In general it is a satisfactory outcome in what has been quite a difficult year given the downturn in the construction industry. Brief comments on items where there are material differences between the March Review and the June Actual columns for the preliminary operating income and operating expense statement are as follows.

General Fund - Operating Income

Community Services

Income is above budget primarily due to the late receipt of \$50,000 grant income for a crime prevention works.

Development Services

In comparison to the March budget actual income was better than forecast with subdivision and development application fees both exceeding budgets. However forecasts were adjusted to accommodate the lack of development activity and income from this section is well down in comparison to previous years.

Building Services

During the year the budget has been adjusted down from \$845,000 to \$590,000 however actual income was only \$540,000. The poor market for the building and development industry is impacting our total finances quite significantly.

Asset Management

Council is able to charge the Roads and Maritime Services (RMS) for administration overheads on certain projects. An account was issued for all applicable works towards the end of the year and it exceeded expectations by \$143,000.

Stormwater and Environmental Protection

Income exceeded estimate due to the receipt of grant income that was not forecast for the Ballina Flood Risk study \$96,000 and the Coastal Hazard study stage 3 \$33,000.

10.7 Financial Review - Financial Year Ended 30 June 2012

Roads and Maritime Services (RMS)

Council performs various maintenance works on behalf of the RMS under contractual arrangements. One component of this work, referred to as 'Ordered Work', resulted in income of \$815,000 and the forecast was \$530,000. In contrast income from 'Routine Maintenance' and the 'Block grant' were less than forecast.

Council is entitled to make a surplus on Ordered Work and this was achieved in 2011/12 to \$248,000. These funds have been transferred to the Single Invitation Contract reserve.

Open Spaces and Reserves

Grant income that had not been forecast, totalling \$72,000, was received for three different vegetation management projects. Also income from Cemetery operations exceeded budget by \$58,000. The Cemetery made an operating surplus of \$121,000. Capital works expenditure was \$109,000 and a dividend of \$50,000 was taken to assist general revenue. This means that the Cemetery reserve will reduce by \$38,000 for the year.

Fleet Management and Workshop

Internal plant hire charges were down on budget by \$134,000 however this is roughly offset by operating expenses being \$118,000 less than forecast.

In total Plant Fund produced an operating surplus of \$915,000 and incurred capital expenditure of \$880,000, which resulted in a small cash increase of \$35,000 to the reserve.

The original budget anticipated borrowings of \$1.3 million to finance the purchase of new plant (as opposed to replacement plant) however the capital expenditure did not warrant taking out the borrowing, at this point in time.

Landfill and Resource Management (LRM)

Operating income was \$387,000 less than budget which is mainly due to less than forecast gate fees paid by Domestic Waste Management (DWM). Gate fees were reduced for DWM during the year to assist that business in the acquisition of four new collection vehicles.

Operating expenses are less than budget (see expenses section of this report) by a similar margin to income. This results in an operating surplus of \$827,000 which is quite close to the forecast of \$833,000.

Capital expenditure amounted to \$1,220,000 of which \$1,210,000 is a loan repayment. Capital income for the year was \$643,000 from the sale of the bulk collection business.

This means there will be a net transfer to reserve of \$250,000 which will take the LRM reserve to just short of \$2 million. This reserve includes \$430,000 that pertains to reimbursements from the State Government in respect to the waste levy and these funds can only be used for specific purposes.

10.7 Financial Review - Financial Year Ended 30 June 2012

Financial Services (General Purposes Revenues)

This item was above budget as Council has received advance payment of 50% of the financial assistance grant - \$1,757,000. This revenue will be transferred to reserve for expenditure in 2012/13.

Interest income applied to general revenue exceeded budget by \$70,000.

Property Management

Income is \$50,000 less than anticipated due to a combination of factors including:

- rental income for Wigmore Arcade, Fawcett Street and Tamar Street did not achieve forecast
- the airport was not in a position to repay any of the internal loan repayments to property reserves and
- income from Flat Rock camp ground did not achieve budget, albeit that expenses were well below budget.

Airport

Income was below budget due to lower than expected passenger numbers. It is also the case that both capital and operating expense exceeded budget and the airport reserve has gone further into the negative position. This means that the internal loan that is supporting operations will need to be expanded by \$153,000.

The table below provides a summary of the preliminary results.

Table Three: Airport: March Forecast Compared to June (\$'000)

Item	March	June (excl grant)	June (incl grant)
Operating Income	3,593	3,484	3,484
Operating Expense	2,730	2,768	2,768
Surplus (excludes depn)	863	716	716
Loan Principal Repaid	251	251	251
Capital Income	0	0	1,156
Capital Expenditure	635	618	1,232
Cash Result	(23)	(153)	389

For 30 June 2012 this table provides the overall cash result with the apron extension project excluded (column two) and included (column three). The key issue here is that for the apron extension project Council expended \$615,000 for the year and grant funds of \$1,156,000 were received. This means, on a purely cash basis, that there were surplus funds available at the end of June for the airport (as per column three) however those funds are largely restricted as they relate to unexpended grant funds, therefore column two provides the result with the externally restricted funds removed. With the externally restricted funds removed the airport reserve, or internal loan from other reserves, is now in the order of \$450,000.

Council's forward financial plan for the airport highlighted that 2011/12 and 2012/13 will operate with the reserve in deficit and it is anticipated that this will return to a break even or positive figure around 2013/14 or 2014/15.

10.7 Financial Review - Financial Year Ended 30 June 2012

With the 2011/12 figures now available it is recommended that Council review the airport business plan to ensure that the current level of overdraft can be repaid. This is also important in that Council has \$7 million in loan funds approved, with a 4% subsidy, through the NSW State Government Local Infrastructure Renewal Scheme. The actual timing and repayments for this loan may be slightly earlier than originally planned and a review of the business plan will allow all the latest available information to be incorporated into the plan.

General Fund - Operating Expenses

Strategic Planning

Expenditure savings in this program relate to projects not finalised or activities where the funds were not fully expended. This includes the LEP renewal, review, heritage programs, ARC Linkage Project, Captain Cook Master Plan and developer financed projects associated with rezonings. Any unexpended funds relating to projects have been carried forward to the next financial year.

Community Services

The savings in this program relate to the crime prevention plan (budget \$30,000) which was not commenced and salaries were lower than budget due to the Aboriginal Community Liaison Officer not having been replaced since the position became vacant.

A review of this position has been conducted and it is considered that due to the nature of the duties it may be more preferable to have the existing funding allocated for specific projects relating to the Aboriginal community (i.e. interpretative signage, walking trails etc).

The reason for this is that the workload for the position can vary and by having funding set aside for dedicated projects, resources can be allocated to those projects as opportunities arise.

Also, earlier in this report was the review of the Companion Animals Management Plan and that report highlighted the need for an additional ranger.

One option that has particular merit is for Council to employ an extra ranger, who is an Aboriginal person, who can then assist both in ranger duties and in liaising with the Aboriginal community. Council's former senior ranger, Mr Des Bolt, who retired approximately two years ago, performed a similar role very successfully.

This new position could be offered as a traineeship to assist in providing a younger Aboriginal person in having a career path with Council. This is considered to be an excellent opportunity for the reallocation of part of the existing funds and the proposal for the new trainee Aboriginal ranger position is included in the recommendations for this report.

Community Gallery

Minor savings throughout the Gallery budget contributed to the under expense.

10.7 Financial Review - Financial Year Ended 30 June 2012

Development Services

Actual expense was \$14,000 below the March forecast and is \$208,000 below the original budget. This saving is predominantly due to legal fees which were only \$68,000 for the year.

In comparison to previous financial years this is a significant saving as in 2010/11, for example, legal fees were \$540,000.

Public and Environmental Health

Savings in salaries were achieved during the year largely due to leave being taken. Also there were minor savings in administration, legal costs, water testing and a grant of \$5,000 was not expended.

Administration and Public Order

As with Environmental Health savings in salaries were achieved due to staff taking leave and not being replaced.

Stormwater and Environmental Protection

The saving to budget relates to environmental studies that are in progress. This includes Ballina Flood Modelling, Third Party Flood Modelling, Newrybar Flood Modelling, Coastal Hazard Study Stage 2 and Stage 3 and the North Creek Dredging Study.

Also a budget of \$50,000 for stormwater infrastructure data collection is only partially completed. Unexpended funds have been carried forward to 2012/13.

Roads and Bridges

Roads maintenance budgets have been over expended. The excess expense has been deducted from the roads capital works program. The really wet year made road maintenance a high priority and increased expenditure across the entire program.

Roads and Traffic Authority

Maintenance of Regional roads funded by the RMS block grant was under expended. Unexpended grant funds will be carried forward to 2012/13.

Open Spaces and Reserves

Savings to budget relate to primarily to grant based projects in Vegetation Management (approximately \$150,000 - Bitou Bush, Killen Falls regeneration, Chickiba Wetlands, Marom Creek Riparian Works and Bush Regeneration). Unexpended budgets will be carried forward to 2012/13. Also cemetery operating expense was \$26,000 less than forecast.

Fleet Management and Workshop

Operating expense was \$118,000 less than forecast. Refer to comment in the income section of this report.

10.7 Financial Review - Financial Year Ended 30 June 2012

Quarries

Operating expenses were \$76,000 under budget as a strategic options report for Tuckombil (budget \$50,000) was not finalised and sundry expenses were \$30,000 less than forecast.

The next table outlines the summary of movements that have impacted the quarry reserve this financial year.

Table Four: Quarry Reserve Movements (\$'000)

Item	2011/12
Tuckombil Operating Surplus	283
Sandpit Operating Loss	(55)
Dividend to General Fund	(100)
Contribution to Depot Car Park works	(8)
Contribution to Emigrant Creek Boat Ramp	(111)
Contribution to Yacht Club Car Park	(17)
Contribution to Ferry Ramps	(51)
ARC Link Project	(15)
Net Reserve Movement – Decrease	(74)

The reserve at the start of the year was \$1,626,000 and the revised balance will be \$1,552,000. General revenue has benefitted from a dividend from the quarry for some years and various works are typically financed from the reserve. In 2012/13 this reserve has also been nominated to finance the loan repayments for funds borrowed (\$1 million) to reseal various roads in the shire. The estimated cost to remediate Tuckombil quarry is in excess of \$2 million plus there will be costs associated with Stokers and possibly the sandpit. Future use of funds from this reserve need to be closely monitored or Council will not be in a position to cash fund remediation liabilities.

Rural Fire and Emergency Services (RFS)

The continued wet weather inhibited the ability of the RFS to carry out maintenance that would normally occur and minor savings resulted in various budgets. Following a request from the RFS \$25,000 has been carried forward to 2012/13 to enable additional works.

Landfill and Resource Management

Expenses are \$381,000 less than estimated. Major savings included:

- State levy \$100,000
- bale, placement and cover \$78,000
- green waste transport \$30,000
- green waste mulching \$50,000
- construction and demolition waste transport \$50,000

Domestic Waste (DWM)

Expenses are \$340,000 less than estimated. The largest single saving relates to gate fees which are \$180,000 less than forecast. Gate fees were reduced during the year by Landfill and Resource Management to assist DWM in a year when four new collection vehicles were purchased. Savings were also realised in respect to collection expenses and the green waste collection contract. The table below summarises the financial results for 2011/12.

10.7 Financial Review - Financial Year Ended 30 June 2012

Table Five: DWM: March Forecast Compared to June (\$'000)

Item	March	Actual
Operating Income	6,368	6,396
Operating Expense	5,852	5,511
Surplus (excludes depn)	516	885
Loan Principal Repaid	126	126
Capital Expenditure	1,385	1,417
Cash Result	(995)	(658)

The reserve balance at the beginning of the year was \$997,000 and it will be reduced to \$339,000. Considering that new trucks to the value of \$1.417 million were purchased, this is a more than reasonable result.

Administrative Services

Telephone, advertising, conferences and community connect expenses were all below budget and contributed to a net saving of \$32,000.

Financial Services

The savings relate to salaries (staff taking leave), rates postage and legal expenses. There is also a names and address project in progress which has a balance of \$7,000 unexpended to be carried forward to 2012/13.

Regional Library

Unexpended funds relate to special purpose grants from the State Library and these balances will be carried forward to 2012/13.

Human Resources and Risk Management

In March the leave budgets were increased by \$400,000 to accommodate expenses trending much higher than budgeted. The actual cash cost of leave entitlements was \$2.413 million which was \$65,000 less than the adjusted budget.

Other savings included public liability insurance premium and superannuation. There was also a budget of \$30,000 for a workforce project that was not commenced. These funds have been carried forward to 2012/13.

Information Services

The over expenditure relates to salaries \$26,000 as extra staff time has been necessary to maintain effective systems support. Also hardware lease payments were \$34,000 more than anticipated.

The ever increasing roll out of technology is placing additional pressure on the existing staff and the time is fast approaching where extra resources will need to be allocated to additional support staff or to staff dedicated to training existing employees to increase the overall level of skills available to use the technology.

10.7 Financial Review - Financial Year Ended 30 June 2012

Property Management

The under expenditure in this section relates to Wigmore arcade \$10,000, crown properties rentals/maintenance \$40,000 and Flat Rock camp ground \$54,000. The decrease in the operating expenses for Flat Rock camp ground has contributed to a profitable year for the park.

Water Operations

This next section of the report deals with Council's water operations.

Table Seven: Water - Statement of Operating Income and Expenses (\$'000)

Item	Original Budget	Sept Review	Dec Review	March Review	June Actual	Variance
Operating Income	8,145	8,145	8,145	8,275	8,616	341
Operating Exps (excl. dep)	8,520	8,643	8,643	8,658	8,185	(473)
Net Operating Result Before Depreciation	(375)	(498)	(498)	(383)	431	814
Depreciation Expense	2,100	2,100	2,100	2,100	2,100	0
Net Operating Result from Continuing Operations	(2,475)	(2,598)	(2,598)	(2,483)	(1,669)	814

The preliminary result for Water Operations is pleasing as in comparison to the March forecast it has improved by a massive \$814,000. Operating income is above budget and operating expenses under budget.

The main reasons why operating income exceeded budget include:

- interest income was \$147,000 over budget. This is primarily due to anticipated capital expenditure not occurring
- non residential access charges were up by \$50,000
- consumption charges exceeded budget by \$107,000 which is actually within 2% of the budget however it translates to a significant dollar figure.

The main reasons why operating expense was under budget include:

- projects for the Section 64 plan review and updating the GIS layer were not completed and a budget of \$56,000 was unexpended.
- staff leaves, printing stationary, postage and legal expenses all contributed to a saving compared to estimate of \$130,000
- water treatment expenses were down by \$38,000, mains operations \$97,000, mains maintenance \$69,000, other expenses \$50,000.

Operating income in the table seven includes interest on section 64 reserves to \$404,000. This income is restricted for specific purposes and once deducted from the table changes the result to a surplus, excluding depreciation, of just \$27,000 and a significant loss once depreciation is included. Hence in the context of an actual business result there remains substantial room for improvement. This is not to detract from a very good outcome in contrast to forecast and staff are to be congratulated for much of the expenditure savings to budget.

Sewer Operations

This next section of the report deals with Council's sewer or wastewater operations.

10.7 Financial Review - Financial Year Ended 30 June 2012

Table Nine: Sewer - Statement of Operating Income and Expenses (\$'000)

Item	Original Budget	Sept Review	Dec Review	March Review	June Actual	Variance to March
Operating Income	11,788	11,788	12,057	11,977	12,451	474
Operating Exps (excl. dep)	9,078	9,683	9,793	9,125	8,886	(239)
Net Operating Result Before Depreciation	2,710	2,105	2,264	2,852	3,565	714
Depreciation Expense	4,334	4,334	4,334	4,334	4,334	0
Net Operating Result from Continuing Operations	(1,624)	(2,229)	(2,070)	(1,482)	(769)	714

The preliminary result for Sewer Operations, similar to Water Fund is also pleasing with operating income above budget and operating expenses below budget.

In respect to income the main improvement relates to interest on investments which exceeded forecast by \$351,000. This is due to the fact Council is receiving loan income, in varying fixed instalments, with the last few months being \$4.8 million per month. Expenditure has not matched the income and one outcome is additional interest is generated. The other main income source that has exceeded budget is fixed charges, particularly non residential properties by \$102,000.

Savings to budget in expenditure occurred across a number of areas including employee costs \$55,000, effluent testing program \$36,000, loan interest repayment \$120,000 and pumping stations energy costs \$40,000.

The preliminary operating cash surplus of \$3.6 million (reduces to approximately \$3.4 million excluding section 64 interest) is very positive and positions the business well to meet impending loan repayments on the \$63 million borrowing. Inclusive of depreciation the fund is still running at a loss however significant strides towards a net profit have been made over recent years.

Sustainability Considerations

- **Environment**
This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

This report informs Council of actual results to date in comparison to budget. These results are subject to audit and certain end of year accruals.

Consultation

This report has been prepared to inform the community of any budget variations.

Options

Overall the preliminary operating results for all three funds appear reasonable in comparison to the March 2012 estimates. Further information will be available as part of the audited financial reports which are typically submitted to the October Council meeting.

RECOMMENDATIONS

1. That Council notes the contents of the preliminary financial report for the 2011/12 Financial Year.
2. That Council undertake a review of the airport business plan due to the current negative reserve balance, taking into account the 2011/12 operating results, along with the now announced funding of \$7 million through the NSW State Government's local infrastructure renewal scheme.
3. That in respect to the 2012/13 budget Council approves the reallocation of the funding provided for the Aboriginal Community Liaison Officer position to allow for the employment of an additional trainee ranger who is an Aboriginal person. The balance of the existing funding is to be retained for on-going projects relating to the Aboriginal community.

Attachment(s)

Nil

10.8 Budgets Carried Forward and Reserve Movements

10.8 Budgets Carried Forward and Reserve Movements

Delivery Program Financial Management

Objective To advise Council of works carried forward to the 2012/13 financial year and also of the transfers to reserves included in the finalisation of the 2011/12 results.

Background

At the conclusion of the 2011/12 financial year there were a number of projects that were either incomplete or not commenced for a variety of reasons (i.e. project on-going over two financial years, wet weather, timing etc). The first section of this report is to advise Council of those works and to obtain approval to carry funding forward to the 2012/13 financial year. The second section of this report then provides details on funds that have been transferred to reserves for future use. These items relate to either Council's business operations or to internal reserves that assist in financing the ongoing operations of Council.

Key Issues

- Sources of funding and works carried forward.

Information

It is important for budgeting and monitoring purposes that any incomplete projects and the matching funding are carried forward to the next year. This ensures that the next year's budget reflects the totality of the works program.

Table one, as follows, provides details of the items to be carried forward from 2011/12 to 2012/13. All of these projects have previously been approved by Council and the designated funding source will be carried forward with the project. Table two then outlines funds transferred to reserve to meet future commitments. These commitments may be in the form of known liabilities, future works or working capital for a business. The amounts carried forward and transferred to reserve include Council revenue, grants and section 94 contributions. In some instances the figure in the amount column may include one or more of these funding sources. For brevity a number of the figures are consolidated and if further information is required please contact Council's Finance section.

Table One - Summary of Items Carried Forward

Description	Dollars	Comment
STRATEGIC & COMMUNITY SERVICES		
Strategic Services		
Southern Cross University	4,300	Works in progress
Rezoning	53,600	Ongoing projects
Heritage Sharing Story	17,200	Works in progress
New LEP	94,500	Works in progress
Planning Studies	15,000	Works in progress
Heritage Programs	10,600	Ongoing projects

10.8 Budgets Carried Forward and Reserve Movements

Description	Dollars	Comment
Heritage Fund	13,300	Ongoing projects
Captain Cook Park Master Plan	60,000	Work not commenced
SCU Linkage Project	15,000	Work not commenced
Community Services		
Crime Prevention Works	80,000	Grant received
Art Gallery		
Digby Moran Grant	1,500	Works in progress
Art Gallery Reserve	31,000	Funds for floating walls and unpaid rental to Dept Lands
Strategic Services Group Total	396,000	
REGULATORY SERVICES GROUP		
Public & Environmental Health		
DECC Water Efficiency	5,300	Works not commenced
Animal Shelter	275,600	Works in progress
Regulatory Services Group Total	280,900	
CIVIL SERVICES GROUP		
Asset Management		
Climate Adaption Grant	6,200	Works in progress
Depot Upgrade	95,000	Works in progress
Admin Centre Refurbishment	13,000	Works in progress
Depot Car Park	4,600	Works in progress
Road Safety Officer	2,000	Ongoing projects
Stormwater Plan	9,000	Works in progress
Stormwater & Environmental Protection		
Coastal Hazard Study	118,600	Works in progress
Ballina Flood Risk	82,500	Works in progress
Ballina Flood Actions	30,000	Works in progress
Foreshore Protection	4,200	Ongoing projects
Stormwater	59,000	Works in progress
Third Party Modelling	17,600	Works in progress
Emergency Action Plan	5,000	Works not commenced
Newrybar Flood Model	12,000	Works not commenced
North Creek Dredging	5,000	Works not commenced
Roads and Bridges		
Roads Capital	1,010,400	Works in progress
Roads Section 94 Funded	177,300	Works in progress - Hutley Drive, Ballina Heights Drive
Ancillary Transport Services		
Footpaths and Shared Pathways	178,300	Works in progress
Wardell Town Centre Upgrade	47,300	Works in progress
Ballina Town Centre Upgrade	1,095,300	Works in progress
Street Lighting Project	184,300	Works in progress
Car Park Rental	13,400	Funds to meet account due
Roads & Maritime Services		
SIC Reserve	248,300	Surplus from RMS contracts
Regional Roads Grant	37,000	Unexpended grant
Ferry, Wharves & Jetties		
Ferry Ramp	11,300	Works in progress
Open Spaces and Reserves		
Newrybar Septic	15,000	Works in progress
Civil Works (Open Spaces) Reserve	56,500	Various works in progress
Coastal Reserves POM	25,000	Works not commenced
Disability Training	10,000	Grant funds for training
Tree Maintenance Reserve	30,000	Tree root barrier works
Lennox Foreshore Plan	14,000	Works in progress
Vegetation Management		
Various Grant Based works	195,700	Works in progress
Sporting Fields		
Kingsford Smith Lights	8,000	Works in progress
Saunders Oval Extension	13,000	Works in progress
Cemeteries		
East Ballina Extension	2,000	Works in progress
Alstonville Niche wall	3,500	Works in progress

10.8 Budgets Carried Forward and Reserve Movements

Description	Dollars	Comment
Alstonville Extension	1,000	Not commenced
Rural fire service		
Unexpended Operating Budget	25,000	To enable maintenance works not completed in 2011/12
Hazard Reduction	30,500	Unexpended grant
Quarries		
Tuckombil Quarry	49,000	Options report in progress
Landfill and Resource Recovery		
Leachate Pumps	56,000	Works not commenced
Organics Processing Pad	10,000	Works not commenced
Cover Recycling Area	55,000	Works not commenced
Civil Services Group Total	4,065,800	
GENERAL MANAGER'S GROUP		
Financial Services		
Financial Assistance Grant	1,757,000	Payment received in advance
Property Names and Address Project	7,000	Works in progress
Governance		
Community Donations	11,000	Acquittals in process
Human Resource and Risk Management		
Workforce Project	7,500	Works in progress
Libraries		
Library Special Projects	58,500	Grant funded projects
General Manager's Group Total	1,841,000	
COMMERCIAL SERVICES UNIT		
Community Property		
Sharpes Beach Masterplan	18,000	Works in progress
Wollongbar Sports Fields	2,000,000	Grant - Works not commenced
Flat Rock Camp Ground		
Minor works	10,000	Works not commenced
Airport		
Apron runway	541,400	Grant - Works in progress
Commercial Services Unit Total	2,569,400	
Water		
Telemetry Installation	4,000	Works in progress
WD 17 Sneaths Rd	12,000	Works in progress
Water WD18 Plateau Dr	45,000	Works in progress
Plant Purchase	50,000	Works in progress
Water Total	111,000	
Sewer		
Pumping Stations Various	305,000	Works in progress
Trunk Mains Various	1,445,000	Works in progress
Sewer Reuse	726,000	Works in progress
Backlog Program	12,000	Works in progress
Telemetry Program	30,000	Works in progress
Plant Replacement	50,000	Plant ordered
Mains Renewals Various	1,150,000	Works in progress
Ballina Treatment Plant Project Management	14,000	Works in progress
Ballina Treatment Plant Upgrade	300,000	Works in progress
Sewer Total	4,032,000	
Totals	13,296,100	

As mentioned table two provides details of transfers to reserve that relate to discreet business sections and recurrent reserves.

Figures relating to business operations such as domestic waste, landfill and resource recovery, plant, cemetery, quarry etc. represent the net movement of that activity for the year, which is then transferred to or from the reserve.

Table Two - Summary of Transfers to / (from) Reserve

10.8 Budgets Carried Forward and Reserve Movements

Description	Amount \$	Comment
STRATEGIC & COMMUNITY SERVICES		
Strategic Services		
Section 94 Plans Review	31,000	Funds to upgrade plans
Economic Development	29,500	Reserve for on-going activities
Section 94 Contributions and Interest	1,747,000	Contributions and interest
Strategic Services Group Total	1,807,500	
CIVIL SERVICES GROUP		
Stormwater & Environmental Protection		
Canal Dredging	16,000	Reserve to enable meaningful project every four years
Roads and Bridges		
Community Infrastructure Reserve	308,000	Funding offset for town centre works
Ballina Heights Drive	141,000	Funding to meet loan commitments
Ancillary Transport Services		
Commercial Opportunities Reserve	33,000	Loan repayment regarding street lighting project
Vegetation Management		
Coast Road Landslip	35,000	Ongoing revegetation works
Cemeteries		
Cemeteries Reserve	(38,000)	Net cash reduction for the year
Landfill and resource recovery		
Operations Reserve	251,000	Net cash increase for the year
Domestic Waste Management		
Operations Reserve	(658,000)	Net cash reduction for the year
Plant Operations		
Plant Reserve	35,000	Net cash increase for the year
Quarry Operations		
Quarry Reserve	(75,000)	Net cash reduction for the year
Newlog		
NEWLOG Reserve	7,000	Net cash increase for the year
Civil Services Group Total	55,000	
GENERAL MANAGER'S GROUP		
Finance		
Infrastructure revaluation	18,000	Assist with asset revaluations
Governance		
Elections Reserve	20,000	Annual election allowance
Human Resources & Risk Management		
ELE Reserve	104,000	Net increase to reserve
Visitor Information Service		
Marquee reserve	1,600	Net surplus from hire fees
General Manager's Group Total	143,600	
COMMERCIAL SERVICES UNIT		
Commercial Property		
Crown (Property Rents)	30,000	Income from crown reserve
Community Infrastructure reserve	(8,000)	Numerous movements including transfers to: \$2,180,000 for Harvey Norman sale and \$1,039,000 for various rentals. Transfers from: Ballina Town cent \$1,500,000 and Surf Club \$746,000.
Commercial Opportunities reserve	(1,186,300)	Numerous movements including transfers to: interest \$178,000 and section 94 recoupments \$122,200. Transfers from: Wollongbar land purchase \$1,573,000.

10.8 Budgets Carried Forward and Reserve Movements

Description	Amount \$	Comment
Industrial Land reserve	4,135,000	Numerous movements including transfers to: \$4,246,000 Harvey Norman sale and rental income \$289,000. Transfers from: land development expenses \$657,000 and dividend to general fund \$282,000.
Flat Rock Park		
Flat Rock reserve	21,000	Net cash increase for the year
Airport		
Airport Reserve	(152,000)	Net cash decrease for the year
Total Commercial Services Unit	2,839,700	
Water Supply		
Refurbishment Reserve	(447,000)	Net reduction to the reserve
Section 64 Reserve	356,000	Net increase to the reserve
Sewer Services		
Refurbishment Reserve	19,135,000	Net increase to the reserve
Section 64 Reserve	1,038,000	Net increase to the reserve

Other Matters

Employee Leave Entitlements (ELE) reserve- General Fund

The accounting procedure for wages expense includes the costing of ordinary hours to the section or project on which the staff member is working. When staff take leave the expense is costed to leave expense budgets within the Human Resources section of Council.

The salaries budget for the various operational sections assumes that on average staff will take four weeks annual leave plus estimates of time for sick and long service leave. Hence if staff take more leave than estimated, there will be a saving to budget in operational areas and an over expense in comparison to budget in respect to the leave expense.

Staff have been encouraged to take leave entitlements in recent years to reduce the overall Council liability. This has contributed to substantially more wages being costed to the leave expense than has typically been the case. It has also made it quite difficult to predict what expense will occur.

The original leave entitlements budget was inadequate and was increased by \$400,000 as part of the March review to \$2,481,000. The budget increase was supported by a transfer from the leave liability reserve of \$215,000. The actual cash cost at year end was \$2,414,000. This saving to budget plus other budgetary improvements (refer to the June Review report in this agenda) has been used to increase the transfer to reserve from \$69,000 to \$319,000.

This means that there will be a net increase to the reserve of \$104,000 and the estimated end year reserve balance will be \$1,715,000. The leave liability will increase by some \$150,000 to approximately \$7,227,000.

Therefore the cash reserve on hand will fund 24% of the liability which is satisfactory, however it is important that surplus end year funds are applied to this reserve so that it can keep pace, percentage wise with the liability.

Sustainability Considerations

10.8 Budgets Carried Forward and Reserve Movements

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

Legal / Resource / Financial Implications

There are no net financial implications from this report as the report details movements between years and surplus funds going into reserves.

Consultation

Provided for public information.

Options

This report is designed to ensure Councillors are informed on the transfers to reserves. The options are to approve the carry forwards and reserve transfers or not approve the adjustments. As they relate largely to previously approved Council decisions the recommendation is to approve the adjustments outlined in this report.

RECOMMENDATION

That Council approves the projects carried forward and reserve movements as outlined in tables one and two of this report.

Attachment(s)

Nil

10.9 Capital Expenditure - Quarterly Update

10.9 Capital Expenditure - Quarterly Update

Delivery Program Governance

Objective To provide the final quarterly status report on the progress of the capital works program included in Council's 2011/12 Operational Plan.

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 being followed is to provide a comprehensive quarterly status report on all the major capital works included in the plan. This status report provides details on major milestone dates, along with a comparison between budget and actual expenditure.

This report is to 30 June 2012 and represents the final report for the 2011/12 financial year.

Key Issues

- Status of works

Information

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

- Original Budget - represents the budget as per Council's adopted Operational Plan
- Carry Forward - represents budgets carried forward from the previous financial year that were approved by Council at the August 2011 Ordinary meeting
- Approved Variations - Variations previously approved by Council resolution either through a Quarterly Budget Review or a separate report on a particular 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, where necessary

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

Points of note in respect to the information outlined in the attachments are as follows.

Open Spaces

10.9 Capital Expenditure - Quarterly Update

The majority of the works program has been completed, with two items of playground equipment (Chickiba and Kellie Anne Crescent) and the Pat Morton Toilets scheduled to commence shortly in 2012/13. The Pat Morton toilets are now planned to use an on-site septic system, rather than connecting to the sewer network as had originally been planned.

The Alstonville Niche wall construction was completed in August 2012 and it provides a significant improvement to this cemetery.

The one sporting field project incomplete is the Saunders Oval expansion, which is being undertaken by Council's engineering works section. Other priorities for that section have delayed this work and it is now anticipated that the project will be completed by December 2012. This project will provide another two football fields (one large, one small) for Ballina.

Also the Australian Rules Club has still not paid their \$35,000 contribution to the Fripp Oval lights and that funding is currently being followed up. There is no concern, as yet, that the money will not be paid, however it still remains outstanding.

Engineering Works

Drainage

The majority of the projects are complete with the Tweed Street works now occurring in the early part of the 2012/13 financial year.

Urban and Rural Roads

The urban roads program is essentially completed, with Uralba and Wardell Roads being the main outstanding works for the rural roads program. The Wardell Road works have now commenced in the 2012/13 financial year.

In respect to bridges the Teven Bridges project is largely complete and Council has recently awarded a tender for the reconstruction of the Gibson and Yellow Creek Bridges.

Shared Paths and Footpaths

A number of segments of the Coastal Shared Path have been completed with planning approvals still being sought for the balance. The current time frame for the Aboriginal community consultation phase of the planning process to be finalised is October 2012, with the planning assessment phase to commence after that. At best, planning consents will be available by early 2013.

Operations Support

The plant replacement program is behind schedule typically due to long lead times that follow the placement of an order. These delays may reduce the amount of loan funding needed for the expansion of Council's plant, as previously resolved by Council, as on-going surpluses may help to fund the acquisitions. Decisions on loan funding will be considered at some point during the 2012/13 financial year.

Commercial Services

10.9 Capital Expenditure - Quarterly Update

The majority of the projects in this program are completed or underway with the Ballina Surf Club (total project cost of \$5.8m) and the Airport Apron Extension (total of \$4m) being multi million dollar projects where the cash flow falls over more than one year. The tender for the Ballina Surf Club was let at the August 2012 Extraordinary Council meeting.

Water, Wastewater and Waste

Expenditure for the water program was relatively minor for the year, whereas a total of almost \$29 million was expended on wastewater infrastructure. The contract for the Lennox Head and Ballina Wastewater Treatment Plants is well advanced, with separate reports on this contract being submitted to Council on a regular basis.

Sustainability Considerations

- **Environment**
Many of the works listed have positive environmental outcomes
- **Social**
Certain items provide significant social benefits (i.e. surf club)
- **Economic**
Improved infrastructure can benefit the local economy.

Legal / Resource / Financial Implications

The report provides financial information on the capital works program.

Consultation

This report is presented for public information.

Options

As per the following table there has been an extremely high level of capital expenditure incurred during 2011/12 and with the Ballina Surf Club, Airport Apron Extension, River Street Upgrades and Wastewater Treatment Plant Upgrades continuing or commencing during 2012/13, this high level of infrastructure investment by Council will continue into the near future.

Capital Works Summary - 30 June 2012 (\$'000)

Section	Budget (%)	Expended (%)	Percentage
Open Spaces	796,900	734,000	92
Engineering Works	11,325,900	9,171,200	81
Operations Support	3,051,600	1,067,000	35
Commercial Services	4,557,500	4,347,400	95
Water	905,000	711,000	79
Wastewater	32,031,000	28,697,000	90
Waste	1,406,000	1,428,000	102
Total	54,073,900	46,155,600	85

10.9 Capital Expenditure - Quarterly Update

Considering the relatively adverse weather conditions for a large part of 2011/12 the level of work completed is a credit to the Council.

RECOMMENDATION

That Council notes the contents of the Capital Expenditure - Quarterly Update report for the year ended 30 June 2012.

Attachment(s)

1. Capital Expenditure - General Fund - Open Spaces (one page - A3 attachment)
2. Capital Expenditure - General Fund - Engineering Works (two pages - A3 attachment)
3. Capital Expenditure - General Fund - Operations Support (one page - A3 attachment)
4. Capital Expenditure - General Fund - Commercial Services (one page - A3 attachment)
5. Capital Expenditure - Water Operations (one page - A3 attachment)
6. Capital Expenditure - Wastewater and Waste Operations (two pages - A3 attachment)

10.10 Councillor Induction Program

10.10 Councillor Induction Program

Delivery Program Governance

Objective To discuss the Councilor Induction Program following the September election.

Background

The induction program for any newly elected council is an important factor in ensuring that the council will operate cohesively and effectively during its four year term. The more informed councillors are of their roles and responsibilities the more likely that good governance will follow.

The Division of Local Government (DLG) has long acknowledged the need for adequate induction training and they have produced a publication titled "Councillor Induction and Professional Development – A Guide for councils", a copy of which is attached to this report. That document is also available on the DLG's web site (www.dlg.nsw.gov.au), along with other publications for Councillors.

The attached guide highlights the two key components of Councillor Development, being the initial induction process and the on-going professional development program.

This report focuses on options for the induction program for the new Council and allows existing Councillors to provide feedback based on their experiences during the past four years.

Key Issues

- Key items for inclusion in the induction program

Information

It is essential that all Councillors are adequately trained in their roles and responsibilities. This is especially important for newly elected officials, who may not be fully informed on the multitude of responsibilities and services carried out by a local authority.

The DLG has announced they will again be conducting councillor information seminars, as occurred for the first time after the 2008 elections. All councillors, both new and incumbent are expected to attend these seminars.

The seminars will focus on key areas such as:

- Civic leadership
- Roles, responsibilities and relationships
- Code of conduct and ethical decision making
- Long term strategic and financial planning and
- Making the most of meetings.

10.10 Councillor Induction Program

The DLG has prepared a draft program for the workshops and a copy of that program is included as the second attachment to this report. The 2008 seminars did not provide any focus on strategic and financial planning and it is pleasing to see that the draft 2012 program includes that topic as a key component.

The indicative date for the Northern Rivers seminar is Thursday 11 October 2012, in Lismore.

Internal Induction

In addition to the DLG seminar it is planned to hold a number of internal induction sessions / workshops / briefings. The proposal, at this point in time, and as a minimum, is as follows:

1. Welcome (possibly Friday 14 September 2012, however this will depend on the electoral results being declared).
2. Equipment Allocation (week commencing 17 September). During this week it will be necessary for new Councillors, and possibly existing Councillors, to be allocated IPADs and other equipment, along with any necessary training.
3. Organisation Briefings. This will consist of a number of sessions of two-hours over a two to three week period (Group and Section Managers to be present to provide an overview of their section's operations). These sessions are designed to provide an overview of each of the sections operating within Council. These sessions may identify major projects / tasks that will require further discussion.
4. Full Day Tour of the Shire (late September). This will include visits to Council properties, assets (i.e. treatment plants etc) and other major infrastructure areas. This could be held either on a week day or a weekend - a week day is preferred as it ensures Council staff responsible for the sites are available.
5. Community Satisfaction Survey Presentation (mid to late September) - Council is in the process of completing a survey to measure community satisfaction levels and priorities. The company that is completing this survey, which is the same company that undertook our last survey in 2008, is contracted to provide an overview of the results to Council. This information is important as it provides Councillors with an understanding of the community priorities based on a sound statistical analysis.
6. Strategy Workshop(s) (Either over a weekend or a series of nights – October / November / December). After the new Council has been operating for a small period of time it will be appropriate to allocate a significant amount of time reviewing the existing operations of Council and then working on agreed priorities for the Council term.

It is intended to review the entire Council budget and assets, particularly property assets, as part of these workshops to identify areas where the new Council would like to see more or less resources allocated.

10.10 Councillor Induction Program

The workshops could be conducted by an independent facilitator, however at this point in time it proposed that they be conducted in-house without the need for a facilitator. Generally it is considered that an independent facilitator does not add a lot to these processes, however this may well depend on the make up of the new Council and the level of trust and goodwill that exists between the Councillors.

7. Community Strategic Plan (CSP) – As part of the strategy workshops Council will need to determine the level of community consultation and engagement they would like to see conducted in reviewing the existing CSP. There are a wide range of options available, with some councils (eg Lismore) expending \$50,000 plus on the consultation and rewriting of their CSP and others taking a more limited consultation approach.
8. Code of Meeting Practice, Councillor Expenses Policy and Organisational Structure – Prior to 30 June 2013 the new Council will need to review and adopt an updated Code of Meeting Practice, Expenses Policy and Organisational Structure. Options available for these items will also be considered as part of the Strategy Workshops.

Overall this is considered to be a good starting point for the new Council and other activities will flow dependent on the direction provided by that Council.

On-going Training and Development Policy

Council has an adopted Councillor Training and Development Policy and even though the policy is fairly broad it classifies training offered to Councillors into three main categories:

- Imperative
- Desirable
- Developmental

The policy identifies that Councillors should attend training that is identified as imperative and desirable at least once every term and it will be a matter of working with the newly elected Councillors to determine what additional training will be undertaken.

Sustainability Considerations

- **Environment**
Appropriate information and resources equip Councillors to better understand and undertake their roles and responsibilities effectively. Councillor decision making, on behalf of the local community, can have significant environmental, social and economic consequences.
- **Social**
As above.
- **Economic**
As above.

10.10 Councillor Induction Program

Legal / Resource / Financial Implications

A training budget is provided for councillor development. Specific one off tasks such as a major community consultation process are currently not funded in the 2012/13 budget.

Consultation

The purpose of this report is to obtain feedback on options available from incumbent Councillors.

Options

This report has been prepared largely for Councillors to provide feedback on options they would like to see considered as part of the induction program for the new Council.

Feedback from Councillors was sought as part of the 2008 induction program and generally there were high levels of satisfaction, albeit that some Councillors were interested in pursuing additional training in key areas such as financial management and planning. This feedback was then used to assist with on-going training during the four year term.

At this point in time it is recommended that Council only notes the contents of this report as it will be a matter for the newly elected Council to determine the induction program they wish to see implemented. However any suggestions to improve or enhance the program, as outlined in this report, which builds on the program implemented in 2008, would be appreciated.

RECOMMENDATION

That Council notes the contents of this report in respect to the proposed Councillor Induction Program.

Attachment(s)

1. Councillor Induction and Professional Development Guide - A Guide for Councils
2. Draft Councillor Workshop Program

10.11 Community Strategic Plan - Reporting

10.11 Community Strategic Plan - Reporting

Delivery Program Governance

Objective To comply with the reporting requirements for the Division of Local Government's Integrated Planning and Reporting Framework.

Background

The Division of Local Government's (DLG's) Integrated Planning and Reporting Framework provides for the preparation of a number of key documents and reporting requirements in respect to those documents; i.e.

- Community Strategic Plan (CSP) – Must be reviewed by 30 June in the year following the local government elections (i.e. 30 June 2013 for new document). A report on the implementation of the CSP during the entire Council term must be presented at the final meeting of the outgoing council.
- Delivery Program – A new document must be prepared for the four year period commencing on 1 July following the election (next document is for 1 July 2013 to 30 June 2017) – Progress reports must be provided to Council in respect to the implementation of the Delivery Program at least six monthly.
- Operational Plan – New document must be adopted before the beginning of each financial year.

Each of these three documents will either be reviewed and / or updated with the newly elected Council and the purpose of this report is to comply with the requirement to report on the progress of the implementation of the CSP to the final meeting of the outgoing council.

Key Issues

- Breadth and depth of services and works provided during the term

Information

Rather than providing an extensive formal report on the numerous works and services provided during the past four years the approach taken has been to prepare a summary document that provides a snapshot of activities that have been completed during the last term. That document has been included as a separate attachment to this report.

It is not the purpose of this report to highlight one or a few of the major decisions taken during the last four years, as with any council term there will be projects or activities supported by some councillors and others that may not have had the same level of support.

Rather the importance of the attached summary is that it highlights the wide range of works and services that have been delivered by this Council.

10.11 Community Strategic Plan - Reporting

It was intended to distribute this information to the broader community in conjunction with the next edition of Council's Community Connect publication. Originally it was planned to publish the next edition prior to the election in recognition of the departing Council, however the DLG has expressed the following concerns in the past in relation to election material:

Councils should also be aware that publications that promote the current elected council's policies or emphasises the achievements of an elected member or group may potentially fall within the definition of "electoral matter" and thereby constitute "electoral material" under clause 356A of the Local Government (General) Regulation. "Electoral material" is subject to certain regulatory requirements during the 40 days preceding the election. (DLG circular 12-20)

Information was sought from the DLG as to whether or not the publication of the Community Connect would be considered as electoral material. No clear response was provided and ultimately it was determined that it would be more appropriate to wait until after the election prior to the next edition being published. This example highlights some of the inconsistencies that arise with the DLG in that they have introduced the Integrated Planning and Reporting Framework, one key component of which is a final report on the implementation of the CSP. Unfortunately the council that has implemented that CSP is not able to report that information to the public in any meaningful way.

Nevertheless, as mentioned, it will form a major part of the next edition of Community Connect, which will also welcome in the new Council.

Sustainability Considerations

- **Environment**
Many of the actions listed in the attached report have environmental, social and economic benefits.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

Not applicable.

Consultation

It is intended to promote the attached document following the election.

Options

This report is for noting however the attachment highlights the many meaningful actions that have been undertaken during the past four years, all of which are typically focused on improving the amenity and lifestyle that the residents of Ballina Shire enjoy.

10.11 Community Strategic Plan - Reporting

RECOMMENDATION

That Council notes the contents of this report in respect to the implementation of Council's Community Strategic Plan as per the attachment to this report.

Attachment(s)

1. Community Strategic Plan - End of Term Report (Under separate cover)

11.1 Mobile Base Station Proposal - Telstra

11. Civil Services Group Reports

11.1 Mobile Base Station Proposal - Telstra

Delivery Program Strategic Planning

Objective To seek Council's response to a proposal from Telstra to install a telecommunication facility in Lennox Head.

Background

Council has received advice from Telstra in regards to their intention to install a telecommunications facility to service Lennox Head. The details of the proposal are yet to be fully developed, however for the purposes of this report it is presumed that proposal will be "low impact", within the meaning of the *Telecommunications Act*.

Telstra are considering site options and have invited Council to provide some initial feedback. This invitation is in advance of the commencement of any formal consultation processes that are required should Telstra proceed further with the proposal. The site options under consideration are discussed below. The purpose of this report is for Council to determine its response to Telstra.

Key Issues

- Telecommunications coverage and service to a local area.
- Appropriate location of infrastructure.
- Respond to request for feedback.

Information

The Council has recently dealt with a proposal from Optus which resulted in the installation of a telecommunications facility on the Council water reservoir at Basalt Court. Council resolved a position that opposed that particular installation.

As the Council has recently dealt with a similar proposal, it is not proposed for this report to describe the statutory and regulatory framework to manage these types of matters. However, the following information is reproduced from the 10 August 2012 edition of the weekly bulletin published by the Australian Local Government Association (ALGA). The information was prepared by Australian Mobile Telecommunications Association.

A new industry code for the deployment of mobile phone base stations came into effect on 1 July, 2012. The new code – 564:2011 Industry Code for Mobile Base Station Deployment – has been published by the Communications Alliance (CA) and is registered as a mandatory code by the Australian Communications and Media Authority (ACMA).

The new regulations are the result of a scheduled five year review of the Australia's network deployment legislation by a Communications Alliance working committee made up of key stakeholders including prominent consumer, community, industry and government representatives.

11.1 Mobile Base Station Proposal - Telstra

The Code provides essential mandated processes for mobile network operators to follow to give the community and other stakeholders the opportunity to be fully informed about facilities that are deemed "low impact" under the Telecommunications Act. In recent years, approximately 60-70 per cent of new or upgraded facilities were "low impact" with the remaining 30-40 per cent requiring Council Development Applications.

The revision process has resulted in many improvements to the Code including requiring carriers to develop and evolve consultation plans which are specific to any new proposals for mobile phone base stations. The consultation plans must be submitted to local councils, and will be available online, improving transparency and visibility of the consultation process with local councils and communities. The timeframes for local councils and communities to comment on proposals for new infrastructure have been extended and consultations will now incorporate new and revised methods of communicating with local councils and the community (e.g. websites, letters, signage).

Residents who may be concerned about a proposed network antenna in their neighbourhood will now be able to log on to the updated Radio Frequency National Site Archive (www.rfnsa.com.au) website and access information about a proposal under the new 'consultation' tab. This database also provides all the regulatory site safety information.

The new consultation page provides information about the proposed deployment, including technical details, location and proposed consultation activities such as community information session details and contact details. The Industry Code and the RFNSA website together are best practice processes for mobile operators to demonstrate that all relevant stakeholders are informed and consulted about mobile phone network deployment and that compliance with relevant exposure limits and protection of the public is met.

A copy of the email from Telstra is attached. The email seeks feedback on four site options. These are discussed below.

Option 1- Basalt Court Reservoir

The proposal is for an installation on the reservoir roof. The Council has previously resolved its objection to this type of facility at this location.

Option 2- Kings Court Reserve

The proposal is for a free standing pole, estimated to be around 25-35 metres tall. At this location Council proposes to construct a playground and picnic facility incorporating a reservoir for recycled water. The detailed design is nearing completion and has been developed in close collaboration with community groups.

The key interest from these groups has been to ensure that the amenity of Kings Court Reserve is enhanced. In fact Council is making an extensive effort in this regard with the project including the objective for the embellishment to make the reserve iconic.

11.1 Mobile Base Station Proposal - Telstra

Option 3 - Skennars Head Sporting Fields

At this location the option would be to use existing floodlighting or install a free standing pole.

Option 4 - Blue Seas Parade

The land referred in the email is at the northern end of the newly constructed portion of Blue Seas Parade. The proposal is to co-locate on existing light poles in front of a property owned by a Mr and Mrs Dossor at 42 Blue Seas Parade.

Sustainability Considerations

- **Environment**
Telecommunication installations can have a negative impact on the environment and amenity of an area.
- **Social**
Telecommunications are important for social connectivity and access to services. Some members of the community hold public health concerns in relation to electromagnetic emissions from these facilities.
- **Economic**
Adequate wireless telecommunication capacity is essential to support economic development and efficient modern business operations.

Legal / Resource / Financial Implications

At this point in time there are no legal, resource or financial implications associated with the recommendation to this report.

Consultation

Telstra are seeking some initial feedback from Council prior to commencing any formal consultation processes. A copy of this report has been provided to Mrs Sue Hetherington from Worried Householders Action Against Tower (WHAAT) and Mr and Mrs Dossor, owners of 42 Blue Seas Parade, for their information.

Options

The Council resolved to object to the Optus proposal for Basalt Court. However it is also noted that the Council did not raise an objection to a similar proposal that was located at the water reservoir at the northern end of North Creek Road. Therefore the following analysis presumes that the Council accepts that there is a community desire for increased telecommunications capacity however that support is conditional on the proposal being acceptable at the site specific level.

1. Basalt Court – This site offers the advantage of co-location and consolidation of the infrastructure. The option is not considered further however on the basis of the previous decision of Council.

11.1 Mobile Base Station Proposal - Telstra

2. Kings Court – The proposed infrastructure is considered to be inconsistent with the Council’s vision for the amenity of this reserve.
3. Skennars Head – Offers the advantage of potentially using existing infrastructure and does not have the amenity issues that emerged at Basalt Court given the proximity of the houses to the reservoir. The Council would need to give further consideration to the visual and other impacts associated with a tower at this location.
4. Blue Seas Parade – The comments for option three apply to this site, although it is noted that it is very unlikely that the community would accept a tower at this site if the co-location option was not possible.
5. Reject All Sites – The Council could record its opposition to the further installation of this type of infrastructure in the Shire. This is not recommended on the basis of community demand for these types of services.

Co-location represents the least impact. Excluding option 1, options 3 and 4 have co-location potential. Therefore the recommendation to this report is for Council to advise Telstra that the Council will give further consideration to co-location options onto the existing public infrastructure at Blue Seas Parade and at the Skennars Head sporting fields. Importantly this recommendation only states further consideration in that if there are community objections to the proposals then Council reserves the right to withdraw its support for these two options.

RECOMMENDATION

That Council advise Telstra that in response to their request for feedback, the Council is interested in reviewing further details in respect of the options for co-location onto existing public infrastructure at Blue Seas Parade and at the Skennars Head sporting fields, subject to a further comprehensive community consultation process being undertaken.

Attachment(s)

1. Email from Telstra (Aurecon) - Page 1
2. Email from Telstra (Aurecon) - Page 2

11.2 Floodplain Risk Management Study and DCP - Submissions

11.2 Floodplain Risk Management Study and DCP - Submissions

Delivery Program Engineering Works

Objective To present for consideration the submissions received for the draft Floodplain Risk Management Study and draft Development Control Plan - Policy Statement 11 - Flood Risk Management

Background

In accordance with Council's resolution, the draft Floodplain Risk Management Study (draft Study) and accompanying draft Development Control Plan – Policy Statement 11 – Flood Risk Management – Amendment No. 15 (draft DCP) were placed on public exhibition for a period of 28 days with the closing date of the exhibition being 9 July 2012.

The exhibition material included a brochure which provided a plain English background and context for the draft Study and draft DCP. A copy of this brochure is included as Attachment One. Copies of the draft Study are available on Council's web site or by contacting the Civil Services Group.

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

Twelve submissions were received with a number of the submissions received late (through to August 2012). All submissions received have been reviewed by staff and are included as attachments to this report.

Key Issues

- Completion of draft Ballina Floodplain Risk Management Study

Information

Submissions

The DCP and the Study are each separate projects. However given their relationship it has been helpful to develop the two documents concurrently, including the joint exhibition. This has meant that some of the submissions received specifically address the study or the DCP, while some submissions make comment on both.

The following is a brief summary of the response to the exhibition.

11.2 Floodplain Risk Management Study and DCP - Submissions

Twelve submissions were received. Five were received from landowners/residents, two were from organisations (Ballina Environment Society and Ballina District Citizens and Ratepayers Association), and five from local planning consulting firms.

The comments, from a very broad perspective, could be categorised as follows:

Landowners and Residents

- Concerned with development/urbanisation of the floodplain and blockage/siltation of watercourses
- Concern with specific projects such as Ballina Bypass, Ballina Heights Estate (BHE), Gallans Road shared path route, Sandy Flat watercourse connection, blockage of Fishery Creek, McLeay culvert outlet, and Teven Road (West Ballina) floodway
- Practical issues of using fill to manage flooding and climate change various levee banks and pump stations.

Organisations

- Tidal inundation, drainage and dredging
- Draft DCP provides a balanced approach to flood risk but performance criteria should be strengthened with reference to ecological values and pollution impact

Consulting Firms

- Draft DCP is technically more complex and difficult to interpret
- A number of questions asked with the interpretation of Figures, Schedules and Tables within the draft DCP
- Consideration or more emphasis on non-fill and built form and operational solutions, rather than minimal fill
- Overall policy position with respect to climate change
- Practical implications of implementation of fill policy with respect to private land and public infrastructure over time
- Two submissions dealt with specific developments being managed by the relevant consultancy
 - Woolworths (River Street) and implications of minimal fill policy for retail/CBD area.
 - Ballina Heights Estate (BHE) and apparent inconsistencies with Ballina Bypass and draft Study information.

Proposed Response to the Submissions – Draft DCP

One of the key points raised by several submissions was that the draft DCP was confusing. In response to this, it is preferred that staff work through the submissions in detail to see where the draft can be improved. Therefore a recommendation to adopt the DCP has been deferred until a further report is presented to the new Council which sets out a discussion on any changes to the DCP.

11.2 Floodplain Risk Management Study and DCP - Submissions

Having regard to the information in the submissions, the framework and policy contained within the draft DCP is still considered to be the most appropriate direction for Council at this point in time. The policy as it applies to infill development is briefly summarised below.

- Proposes to continue to fill, adopting 2050 year 1:100 year ARI. This accommodates SLR of 0.4m by the year 2050, which exceeds 1:100 year ARI protection up to 2050, and allows for further climate change assessment into the future.
- The adoption of the 2050 year 1:100year ARI for minimum fill levels across Ballina island also provides property protection for SLR without flooding, and allows for positive drainage. The minimum fill heights across Ballina island for the draft DCP range from 2.1m AHD to 2.4m AHD and predictions for king tides at 2100 are 1.8m AHD (ie without flooding).
- Provides for reduced freeboard for commercial and industrial premises, rather than blanket 0.5m freeboard for all floor heights. This is relevant, in particular for the CBD and retail areas.
- Allow for consideration “performance measures” which may be considered if the prescribed and preferred protection measures are unable to be achieved.

Overall the outcomes of the draft DCP respond to the immediate requirements to consider Sea Level Rise and flooding for infill development with current climate change knowledge. As further information or knowledge grows with respect to climate change and flooding it is considered that responses through building adaption would be the next adaptive response, rather than continuation of incremental filling.

A further outcome of the draft DCP is the establishment of flood risk precincts where high and extreme flood risk areas are identified. Here certain developments are considered unsuitable and/or stringent requirements are exercised. It is noted that significant rural floodplain falls under the category. The draft DCP allows concessional development where existing farm improvements or building entitlements are permitted because of improved flood protection.

Draft Floodplain Risk Management Study

During the process of preparing the draft Study, a Community Reference Group (CRG) has continued to meet and received the same presentations made to Councillor workshops and Civil Committees. The CRG has primarily been represented by a number of local rural landowners.

Four of the five responses received from landowners/residents were from past and present members of the CRG. Their written submissions represent their views tabled at CRG meetings, where they raise concerns about development of the floodplain, adequacy of waterways and the need to preserve future floodways. Accordingly the draft Study has attempted to report on issues raised by CRG members. However, this study is unable to redress historical issues raised. Rather it is able to consider current and future floodplain development and aim to not worsen flood risk.

11.2 Floodplain Risk Management Study and DCP - Submissions

Many of the issues raised have already been canvassed and discussed during workshops and Civil Committee presentations conducted by the consulting team BMT WBM Pty Ltd and Bewsher Consulting. The options and alternatives for considering adaptive responses to climate change, sea level rise as well as flooding included:

- Increased filling
- Limit to filling plus building adaption
- Possible filling and building adaption
- Possible filling and time limited consents
- Levee and pump systems
- No action (or retreat)

The draft Study has also investigated the impact of flooding on the floodplain and how Council emergency services and the community can better manage the risk of floods. This work builds on the Ballina Flood Study Update report (BMT WMB, 2008) which primarily documented the complex flood model.

The draft Study focuses on three areas:

- Flood modification measures, which investigates floodway provisions and considers future development scenarios
- Emergency management, including evacuation times and routes and community awareness which has also been coordinated with SES support.
- Modifications to property which primarily deals with the draft DCP and planning controls.

For the information of Councillors the conclusion and recommendations of the draft study are reproduced below.

11 Conclusions and Recommendations

This floodplain risk management study has investigated the flood problem in the study area, estimated the damage caused by flooding and assessed the capacity of the community to evacuate. Various floodplain risk management measures have been canvassed and recommended floodplain management options have been grouped into two floodplain risk management schemes. These schemes will reduce current future flood risk in the study area, thereby reducing both flood damage and improving the communities' capacity to evacuate. The recommendations of the study area as follows:

- *Scheme B provides more benefit than Scheme A, and has therefore been selected as the preferred scheme. The primary recommendation of this study is to carry Scheme B forward into the Ballina Floodplain Risk Management Plan.*

11.2 Floodplain Risk Management Study and DCP - Submissions

Table 10-2 Composition of Assessed Schemes

Recommended Measure	Scheme A	Scheme B
<i>Gallans Road Cycleway Option 2</i>	X	✓
<i>Development Control Plan</i>	✓	✓
<i>Voluntary House Raising</i>	✓	✓
<i>Improve Flood Prediction</i>	✓	✓
<i>Improve Flood Warning</i>	✓	✓
<i>Increase Flood Awareness</i>	✓	✓
<i>Improve Evacuation Planning</i>	✓	✓
<i>Improve Evacuation Routes</i>	✓	✓

- *The Community Reference Group is concerned with the silting up of minor watercourses in the catchment. This has affected drainage of the floodplain after flood waters in the main creeks have subsided. It is recommended that consideration is given to implementing a study that investigates this issue. It is envisaged that the study would assess which creeks have silted up, the cause of siltation, consequences on the waterway/floodplain health and options to clear and prevent future siltation in the affected watercourses.*
- *The preferred floodplain risk management scheme mitigates future flood risk due to climate change by filling and raising floor levels. This is implemented primarily through development controls contained in the DCP. However, this does not consider public infrastructure such as roads or the storm water network. To implement the scheme successfully it will be necessary to assess how public infrastructure should be maintained/improved to match the changing climate and ground levels. It may therefore be necessary to undertake further studies to assess:*
 - *Options to mitigate future flood risk and drainage issues to public infrastructure; and*
 - *The storm water system capacity under future climate and catchment conditions. The aim of this assessment will be to analyse what improvements need to be made to the storm water system to mitigate future changes to ground levels, rainfall intensities and sea levels.*

Sustainability Considerations

- **Environment**
The draft Study reports on changes to the natural environment which impact on the built environment.
- **Social**
The draft Study identifies areas potentially subject to inundation due to flooding and climate change. This affects both existing residents and new development.

11.2 Floodplain Risk Management Study and DCP - Submissions

- **Economic**

There are significant economic implications for those undertaking development within the provisions of the draft DCP. However, there is also the potential for significant economic implications for development subject to inundation where such provisions are not applied.

Legal / Resource / Financial Implications

The process follows the guidelines outlined in the NSW State Governments Manual "Floodplain Development Manual, the Management of Flood Liable Land" (April 2005) and NSW State Government's advice regarding SLR projections (December 2009).

Under Section 733 of the Local Government Act, an exemption from liability is generally offered to Council where it has acted in good faith in accordance with guidelines.

Consultation

Throughout the duration of this project there have been a number of Civil Committees and/or workshop forums where the progressive outcomes of the study have been discussed with Councillors.

At the same time, (following the Councillor meetings), a Community Reference Group (CRG) meeting has been convened. The membership of the CRG, following the completion of the BFSU (2008) has largely comprised rural landowners with land interests in the floodplain in and around Ballina. However meetings during 2010 and 2011 have reintroduced representatives from Ballina and Lennox Head Chamber of Commerce and Ballina Environment Society.

A technical group has also been overseeing the progress of the study comprising Office of Environment and Heritage (OEH), SES and Council representatives from Civil Services, Strategic Services and Regulatory Services Groups. DOCS has not been engaged to date, but will be required to acknowledge emergency management aspects of the draft Study.

The draft Study and draft DCP was placed on public exhibition with the closing date of exhibition being 9 July 2012.

Options

As discussed above, consideration of the adoption of the draft DCP has been deferred.

For the draft Study however it is recommended that this be adopted so that Council can now prepare a draft Floodplain Risk Management Plan. This plan will also be placed on public exhibition. The Management Plan, not the Study, will represent the final policy position of the Council.

If Council's preference is to defer adoption of the Study, it is important to acknowledge that it is essentially a technical document. If this option is preferred, then Council will need to record the changes it desires to allow the consultancy team to review those changes prior to reconsideration.

11.2 Floodplain Risk Management Study and DCP - Submissions

In summary the submissions generally relate to matters that have been previously raised in correspondence and CRG meetings from residents and consultants. Whilst agreement has not been established on all points, and having regard to the continued strong interest in this project by these stakeholders, to close out those issues the recommendation to this report is for a letter to be sent to each author of a submission setting out our detailed and final response. It is also recommended that the Study be adopted to then allow the Management to be finalised for public exhibition.

RECOMMENDATIONS

1. That Council adopt the draft Floodplain Risk Management Study, as exhibited.
2. That the Council endorses the proposal for the General Manager to finalise the preparation of the draft Floodplain Risk Management Plan.
3. That, for the submissions received that dealt with the Floodplain Risk Management Study, Council write a letter to each author detailing our response to the specific issues raised in their submission.
4. That Council note the information in this report in respect to the draft Floodplain Risk Management Development Control Plan (DCP), including the advice that a further report will be prepared following a review of the draft DCP to incorporate comments received in response to the exhibition process.

Attachment(s)

1. Exhibition Brochure
2. Submissions

11.3 Local Traffic Committee Report - August 2012

11.3 Local Traffic Committee Report - August 2012

Delivery Program Asset Management

Objective This report is presented to Council for its consideration of items referred to the Local Traffic Committee meeting held in August 2012

Background

The Local Traffic Committee (LTC) met on 8 August 2012. 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 ten business items of which two items require referral to Council for determination. A copy of the Minutes of the meeting will be forwarded to Councillors once finalised.

Items Referred to Council

The following items are referred to Council for its determination. Further background details are available in the LTC agenda previously circulated to Council.

a) Special Event – Country Music Festival

The Committee reviewed an application for temporary closure of River Street on Saturday 29 September and Sunday 30 September 2012 from 6.00 am to 5.00 pm for the purpose of the Ballina Country Music Festival.

The Committee was unanimous in its position to endorse the application subject to the event being conducted in accordance with the submitted traffic control plan. The recommendation seeks Council's approval for the temporary road closure requested for the event.

b) Long Term Traffic Control – Compton Drive, East Ballina

A Development Application has been approved for the erection of a Surf Lifesaving Clubhouse at Lighthouse Beach on Compton Drive. During the construction works for this project, temporary pedestrian diversions are required to meet the needs of the area. A copy of the Traffic Control Plan to facilitate traffic and pedestrian access around the site are attached for the information of Council.

The Committee was unanimous in its endorsement of traffic control plan, subject to an amendment for the plan to include 'End Shared

11.3 Local Traffic Committee Report - August 2012

Path' signage. The Committee has also asked that the Civil Services Group prepare a further report reviewing the operation of the traffic control. This report is required no later than eight weeks after the commencement of its operation.

Sustainability Considerations

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

Legal / Resource / Financial Implications

Council has statutory requirements in terms of the management of its delegations from the RTA, including the management of the LTC. There is no resource or financial implications directly associated with the recommendations to this report.

Consultation

Public participation in LTC processes is determined by the RTA's Guidelines for the Management of Local Traffic Committees. Council has determined to use its meeting code arrangements for public access wherever it is consistent with the guidelines.

Options

The Council can either accept or reject the recommendations. Council's acceptance or rejection of the recommendations is reported to the next meeting of the TLC.

In rejecting a recommendation it is the preferred practice to advise the LTC of the Council's reason for the rejection and invite the Committee to reconsider the matter having regard to the comments of Council, Following that process, if that matter remains unresolved, Council can elect to refer the matter to the Regional Traffic Committee.

RECOMMENDATIONS

1. That Council approves the temporary closure of River Street on Saturday 29 September and Sunday 30 September 2012 from 6.00 am to 5.00 pm for the purpose of the Ballina Country Music Festival.
2. That Council approves the implementation of the attached Traffic Control Plan for the operation of Compton Drive during the construction of Ballina Surf Club and that the Traffic Control Plan be amended to include "End Shared Path" signage.

Attachment(s)

1. Traffic Control Plan for Compton Drive, East Ballina

12. Public Question Time

12. Public Question Time

13.1 Rescission Motion - Meet the Candidates Night

13. Notices of Motion

13.1 Rescission Motion - Meet the Candidates Night

Councillor Cr Peter Moore
Cr Alan Brown
Cr Keith Johnson

We the above Councillors, moved that Resolution 080812/03, as follows, be rescinded:

That the General Manager be authorised to co-ordinate one "Meet the Candidates Night" for A, B and C Wards.

Staff Comment

This rescission motion, even if defeated, leaves little room for Council to adequately organise the three nights proposed. Meeting rooms would need to be booked, if available, an independent chair confirmed and the events advertised. Typically it would be beneficial to advertise for at least two weeks, and with the Ballina Shire Advocate only being published on Thursday 30 August and Thursday 6 September 2012 after the August Council meeting, there is little time available to adequately promote the events.

COUNCILLOR RECOMMENDATIONS

That Resolution 080812/03, as follows, be rescinded:

That the General Manager be authorised to co-ordinate one "Meet the Candidates Night" for A, B and C Wards.

Attachment(s)

Nil

13.2 Notice of Motion - Dog Friendly Facilities

13.2 Notice of Motion - Dog Friendly Facilities

Councillor

Cr Smith

I move

That a small portion of residual land as part of the Wollongbar sporting fields master plan be considered for potential use as a dog friendly park.

Councillor Comment

The urban expansion of Wollongbar is well underway and Wollongbar has a lot of potential to be a family friendly suburb being so close to all of the basics that a young family needs access to.

However, while there are schools for the children and access to medical and shopping facilities, Wollongbar has nothing noteworthy for the family dog.

This motion if passed aims to find a small residual patch of land within the planned Wollongbar sporting field prescient so that not only the families get some well needed exercise on the weekend, but also the dog too.

The costs would be minimal as most of the facilities would already exist at the fields, the land would probably require a fence and a water drinking facility, possibly a bin however bin facilities would already be available within the existing plan.

COUNCILLOR RECOMMENDATION

That a small portion of residual land as part of the Wollongbar sporting fields master plan be considered for potential use as a dog friendly park.

Attachment(s)

Nil

13.3 Notice of Motion - Skateparks

13.3 Notice of Motion - Skateparks

Councillor Cr Jeff Johnson

I move

That Council receive a report identifying possible site locations for a skate park in both Alstonville and Wollongbar.

COUNCILLOR RECOMMENDATION

That Council receive a report identifying possible site locations for a skate park in both Alstonville and Wollongbar.

Attachment(s)

Nil

13.4 Notice of Motion - Aboriginal Cultural Heritage Trail

13.4 Notice of Motion - Aboriginal Cultural Heritage Trail

Councillor Cr Johnson

I move

1. That Council provides in principle support for the establishment of an Aboriginal Cultural Heritage Trail within the Coastal Reserve.
2. That the new Council hold a workshop and invite local Aboriginal representatives.

COUNCILLOR RECOMMENDATIONS

1. That Council provides in principle support for the establishment of an Aboriginal Cultural Heritage Trail within the Coastal Reserve.
2. That the new Council hold a workshop and invite local Aboriginal representatives.

Attachment(s)

Nil

14. Advisory Committee Minutes

14. Advisory Committee Minutes

Nil Items

15.1 Mayoral Meetings

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

15.1 Mayoral Meetings

Councillor Phillip Silver

Activities since the July 2012 Ordinary meeting:

<u>Date</u>	<u>Function</u>
28/7/12	Dragon boat blessing at Lake Ainsworth
30/7/12	Rotary dinner in Ballina
31/7/12	Rous Water performance review in Lismore
1/8/12	Tree planting in Lismore
2/8/12	Minister Page meeting in Ballina
3/8/12	NOROC Ordinary meeting in Kyogle
4/8/12	Fox Street kindergarten celebration in Ballina
4/8/12	Karate competition in Lennox Head
7/8/12	Envite celebration in Ballina
7/8/12	Access reform group meeting in Ballina
8/8/12	Rous Water Extraordinary meeting in Lismore
8/8/12	Ballina Extraordinary meeting in Ballina
11/8/12	Art Exhibition opening in Ballina
12/8/12	Rotary Fine Food and Wine event in Ballina
13/8/12	Independent Local Government Review Panel forum in Ballina
15/8/12	Rous Water Ordinary meeting in Lismore
18/8/12	Victory in the Pacific service in Ballina
21/8/12	Ballina Shire Concert Band AGM in Ballina
22/8/12	Rotary Dinner in Alstonville

RECOMMENDATIONS

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

Attachment(s)

Nil

16. Questions Without Notice

16. Questions Without Notice

17. Confidential Session

17. Confidential Session

Nil Items