

DOUGLAS SHIRE COUNCIL

An **ORDINARY MEETING** of the Douglas Shire Council will be held on **TUESDAY 16 SEPTEMBER 2014** at **10.00a.m.** at the Council Chambers, 64-66 Front Street, Mossman, and the attendance of each Councillor is requested.

AGENDA

'ACKNOWLEDGEMENT OF COUNTRY'

'I would like to acknowledge the Kuku Yalanji people who are the Traditional Custodians of the Land. I would also like to pay respect to their Elders both past and present and extend that respect to other Indigenous Australians who are present'.

1. *Attendance & Apologies*
2. *Conflict of Interest/Material Personal Interest*
3. *Mayoral Minutes*
4. *Confirmation of Minutes of the Ordinary Council Meeting held on 26 August 2014*
5. *Agenda Items as Listed*
6. *Notices of Motion - Nil*
7. *Urgent Business*
8. *Closed Session*

NEXT ORDINARY MEETING – 7 OCTOBER 2014



CHIEF EXECUTIVE OFFICER

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DRAFT PLANNING AND DEVELOPMENT BILL 2014

J Elphinstone: Senior Planning Officer #428298

RECOMMENDATION:

That Council makes a submission to the Department of State Development Infrastructure and Planning regarding the Draft Planning and Development Bill 2014 raising issues as outlined in the Officer report.

EXECUTIVE SUMMARY:

The Department of State Development Infrastructure and Planning (DSDIP) has released a Consultation Draft Planning and Development Bill and is seeking comment from the community including local government. Consultation closes at the end of September with an expected introduction to Parliament in November and proclamation by mid-2015. Council officers attended a DSDIP briefing and raised several concerns to DSDIP staff. Significant concern is held as much of the detail of the new planning regime is within the yet to be released draft Regulation.

Specific concern is also held with the change in the overall purpose of the legislation, the change from a four-year to a six-year approval, change to the basis on which extensions are determined, the need for a LGIP to be in place and the lack of detail of all the transitional provisions. It is recommended that Council lodges a submission in regards to the concerns outlined in the report.

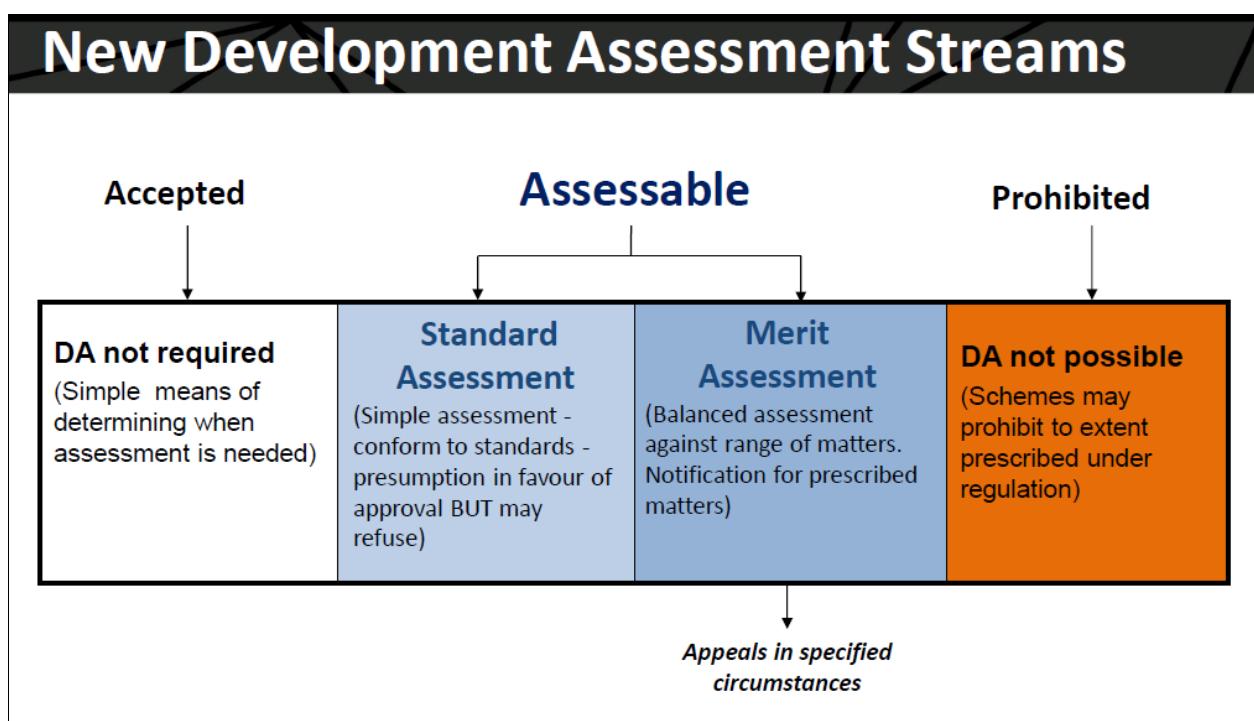
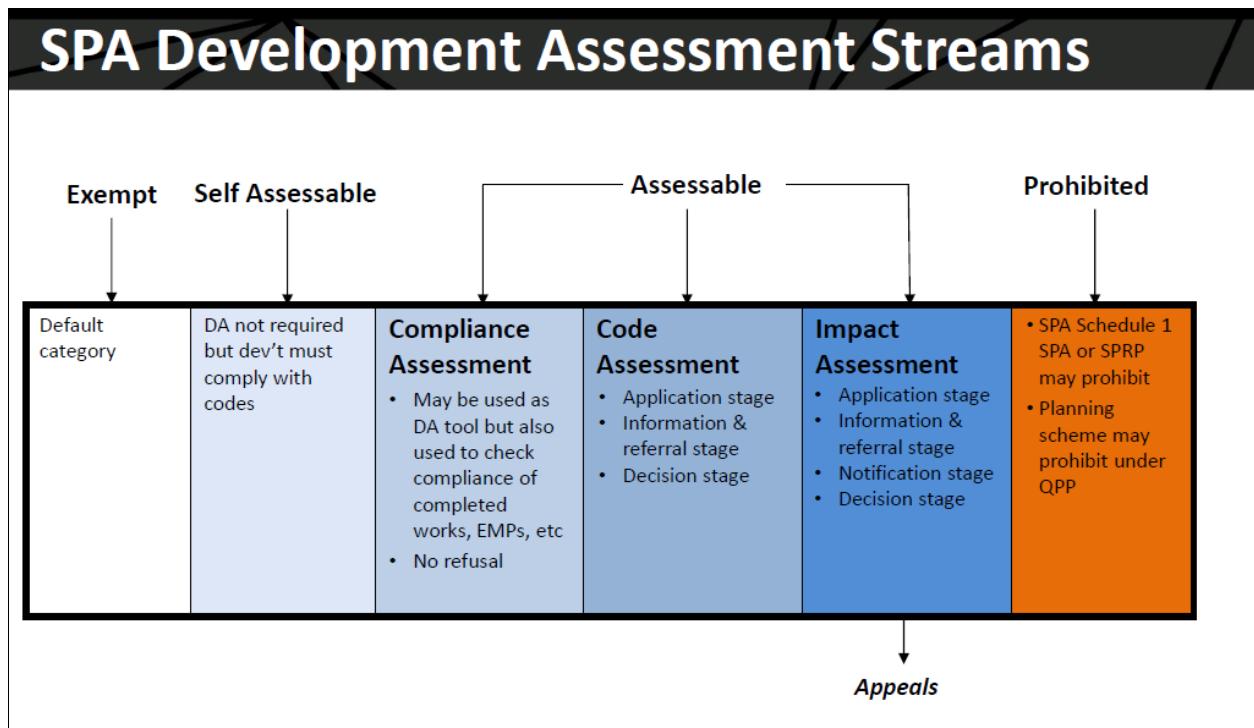
BACKGROUND:

Following an eighteen month consultation with industry the Department of State Development, Infrastructure and Planning (DSDIP) released a Consultation Draft of the *Planning and Development Bill 2014 (P&D Bill)* that is proposed to replace the *Sustainable Planning Act 2009 (Qld) (SPA)*. The Bill is available on the State website at https://haveyoursay.dsdp.qld.gov.au/planning/draftbills/supporting_documents/Draft%20Planning%20and%20Development%20Bill.pdf. The P&D Bill focuses on an assessment system that promotes prosperity. There will no longer be a reference to 'ecological sustainability' which was a fundamental concept under SPA and the *Integrated Planning Act 1997 (Qld)*.

The new regulatory framework comprises:

- a. the Planning and Development Bill 2014 (Qld);
- b. the Planning and Environment Court Bill 2014 (Qld); and
- c. the Planning and Development Regulation 2014 (Qld) (P&D Regulation).

The State Government has a stated purpose of seeking to develop Australia's best planning system. The State government's reform initiative will have the effect of lowering the level of assessment for development generally by having four categories of development types rather than SPA's six. 'Exemption certificates' will also be available for some assessable development. The new Bill gives a new set of development types and limits assessable development to a "Standard Assessment" and a "Merit Assessment" as referred to the following diagrams.



The P&D Bill sets a framework for planning regulation and is considerably briefer than SPA. The P&D Bill removes two of the four State planning instruments, namely State Planning Regulatory Provisions (**SPRPs**) and the Queensland Planning Provisions (**QPPs**). The detail of the new planning regime, including development assessment benchmarks, mandatory requirements for planning schemes, the process for the operation and implementation of the planning and development assessment system, Development Assessment Rules, and a range of planning instruments are set to be contained in the as yet unreleased associated new Regulation.

It is also understood some matters currently contained in the SPRPs and QPPs (including standard definitions) will be relocated to the P&D Regulation and guidance material.

Unlike impact assessment under SPA, public notification (and hence third party appeal rights) is not mandatory in respect of merit assessment and the P&D Regulation may restrict when a local government can require notification. The timing of assessment, requests for information, public notification etc., are part of the “Development Assessment Rules.” These “Rules” are contained in the yet to be released Regulation.

The P&D Bill also removes a number of SPA provisions including:

- a. The reduction in number of State planning instruments;
- b. Removal of the ‘call-in’ process;
- c. The requirement to obtain an owner’s consent prior to lodging a development application and in respect of most state owned land, servient tenements or acquisition land;
- d. The removal of any Planning and Environment Court provisions, to its own draft bill;
- e. Environmental Impact Statements (**EIS**); and
- f. Acknowledgement Notices.

Infrastructure Designation will be a one-stop-shop assessment with the Planning Minister to consider the relevant state interests removing the need for separate or additional approvals.

The P&D Bill contains very few transitional provisions.

The submission period is open until 26 September 2014.

OFFICER COMMENT:

Purpose of Act

It is clear that the Sustainable Planning Act 2009 is unwieldy and bulky. The proposed planning legislation has evolved through a process from the initial overhaul of the Local Government (Planning and Environment) Act 1990, through the Integrated Planning Act 1997 and the Sustainable Planning Act 2009. In each legislation change has been an increased roll-in and coordination of associated legislation seeking to achieve a single approval process. Given the complexity of issues the “overhaul” has been a lengthy process, cumbersome to both local government and the development industry and has not resulted in the expected delivery of a “better” development assessment system. Given the existing framework there is a need for improved legislation.

The roll-in of associated development legislation has placed Queensland in an enviable position, comparative to other States. There is a need for Queensland to create the best possible system for development within the State to achieve the full potential available for Queensland.

The “purpose” of the past and current legislation has evolved reflecting the development and community need for planning regulation. The LG(P&E) Act sought to provide a framework for local government and the State *“to facilitate orderly development and the protection of the environment” and “to provide an adequate framework for a person to apply for approval in respect of a development proposal and to provide for appropriate appeal rights in respect thereof.”*

The IPA improved this introducing regional planning and sought to “achieve ecological sustainability by—

- (a) coordinating and integrating planning at the local, regional and State levels; and
- (b) managing the process by which development occurs; and
- (c) managing the effects of development on the environment (including managing the use of premises). ”

The SPA also seeks to “achieve ecological sustainability” with similar methods as IPA but with greater accountability and improved delivery.

Concern is raised with the basic purpose of the new Bill, “*to facilitate Queensland’s prosperity, including by balancing economic growth, environmental protection and community wellbeing,*” which appears to imply that prosperous growth is reflected in economic growth against the wellbeing of the environment and the community. Despite the changes to the legislation over time there appears little recognition in the value of the environment or the community other than abating decline in these attributes through “protection.” Other legislation changes such as the delivery of offsets have provided replacement “environments.” However these changes have not given sufficient scope to seeking an enhancement of the environment and the wellbeing of the community through planning reforms. The new Bill could be improved by seeking improvements to economic growth, the environment and community wellbeing.

Development Framework and Regulations

The proposed new legislation will not necessarily result in improved development or more timely economic prosperity. Several global factors have resulted in poor financial confidence and subsequent decline in local development activity. Development that has occurred has been measured and in the majority of situations reflects economic austerity matching consumer needs rather than grandiose schemes or unsustainable outcomes.

The new Bill continues the need for a local government planning scheme review each ten years. This forward “decade” planning gives opportunity to review best practise engineering, social, environmental and economic considerations and analyse past, “worst case” developments. This cycle seeks that poor planning does not reoccur or continue in the future. The new Bill recognises the need for similar local government planning schemes, as per SPA, but also the need for local variation. The Bill will remove the strict SPRP’s and QPP’s but will provide direction with definitions through the associated Regulation. It is envisaged that the transfer of clauses to the Regulation regarding IDAS will make the assessment system more manageable and less cumbersome.

It is understood from discussions with DSDIP staff that the new Bill gives opportunity for the developer to “opt out” of the request for further information stage through the “Development Assessment Rules.” Council officers were advised that issue has been raised by industry of some State Departments or local governments extending the information request period, or issuing a request on the basis of achieving a longer assessment time. Serious concern is raised with this scenario as no detail of the “benchmarks” or “Rules” are available as these are contained in the yet to be released draft Regulation. With no available draft Regulation it is difficult to comment or give Council assurance on this matter. It is disappointing that the draft Regulation has not been released and opportunity for further comment on the new Bill should be available on the release of the draft Regulation.

Period of Approval

Concern is raised with the change to the life of a development permit, which the new Bill seeks to extend from four years to six years and the removal of the existing roll-over provisions through the issue of later approvals. Under SPA extensions to the period of approvals can occur where subsequent approvals are obtained within two years. There is also ability under SPA for an approval to have a longer period of approval through a condition of approval and this adequately addresses complex and large developments. No benefit is achieved by increasing the period of approval to six years. Such an increase is likely to lead to growth stagnating as developers “sit” on their approvals. The four year period also gives opportunity for development to occur within the 10 year life cycle of planning scheme reviews.

The period of approval is further complicated by S.222 (2)(b) for continuing approvals which allows a use to start within 5 years after completion of the development. It is not clear what type of development is envisaged by this clause.

Extension to Existing Approvals

The situation of “sitting” on approvals and stagnating development is exacerbated by the new extension clauses. Unlike SPA where the approval is compared to current laws and requirements an extension under the new P&D Bill may be determined on, “any relevant matter,” meaning anything other than “anyone’s personal circumstances, financial or otherwise.” Under the proposed new Bill it would be difficult to refuse a request to extend even where the approval was issued under a superseded planning scheme. The current S.388 SPA, for the extension of an existing approval, clearly defines that considerations of merit are matters for assessment under a new, fresh application and limits the determination to the consistency with current requirements. This is good planning and should not be changed.

The decision period for determining a request to extend is to be reduced from 30 days to 20 days. This is an inappropriately short period considering the cycle of Council meetings and the complexity of some applications.

Local Government Infrastructure Plan (LGIP)

The draft Bill states that Council can only levy infrastructure charges where a LGIP is in place. While there are transitional provisions for the continued application of issued infrastructure charges notices, there appears to be no provisions where the local government does not have a LGIP in place. The Consultation Draft comments that not all of the transitional provisions have been written due to the complexity of changing legislation. However the lack of detail raises concern to what will be the actual outcomes.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE:

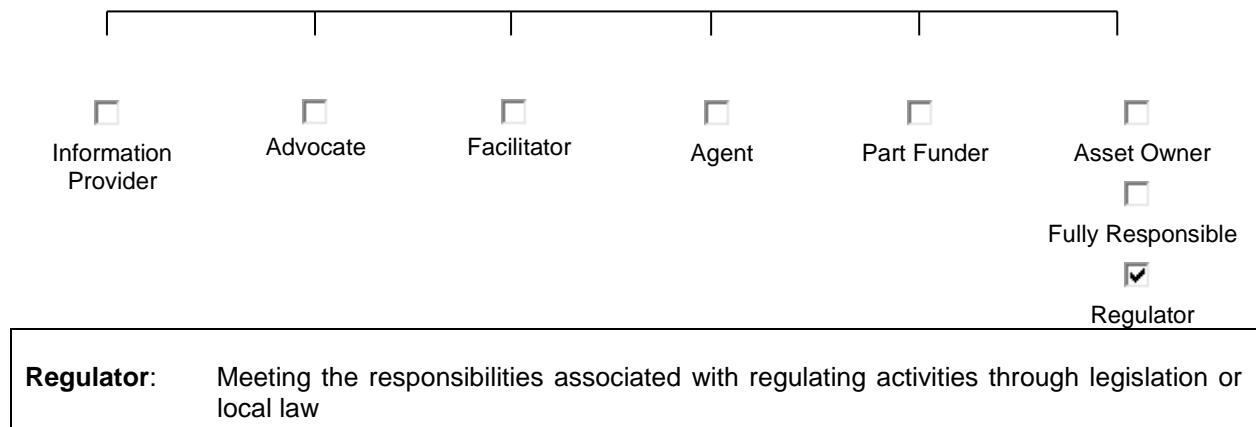
Council’s Regulatory Role is prescribed under the Sustainable Planning Act 2009. This is not reflected in Council’s Corporate Plan other than “to manage the rate, extent and impacts of changes to the built environment” to “preserve the unique appeal to the Douglas Shire.” There is no specific goal for planning regulation in the Corporate Plan.

There are no related activities under Council’s Operational Plan.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:



FINANCIAL/RESOURCE IMPLICATIONS:

No further resources are required as Council already regulates development under the Sustainable Planning Act 2009.

RISK MANAGEMENT IMPLICATIONS:

Concern is raised with the new Bill as:

- a. it may allow continuance of past planning requirements when new best practise should be applied;
- b. It necessitates that Council achieve a LGIP prior to introduction of the new legislation;
- c. it hinders the development of the built environment in a timely manner reflective of identified current and future planning.

INTERNAL/EXTERNAL CONSULTATION:

Council's Planning officers attended a briefing by James Coutts, Executive Director and Sue Pope, Regulation Drafter, DSDIP. Consultation was undertaken within the planner's officer group.

ORDINARY COUNCIL MEETING 16 SEPTEMBER 2014	5.2
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REQUEST TO EXTEND RELEVANT PERIOD – PRELIMINARY APPROVAL FOR MATERIAL CHANGE OF USE – VIXIES ROAD, WONGA BEACH

Neil Beck: Planning Officer - MCUI 2248/2006: #428133

<u>PROPOSAL:</u>	PRELIMINARY APPROVAL FOR MATERIAL CHANGE OF USE
<u>APPLICANT:</u>	WONGA BEACH AQACULTURE RESORT PTY LTD PO BOX 2214 DANGAR NSW 2309
<u>LOCATION OF SITE:</u>	VIXIES ROAD WONGA BEACH QLD 4873
<u>PROPERTY:</u>	LOT 51 ON SP155078
<u>LOCALITY:</u>	RURAL AREAS AND RURAL SETTLEMENTS
<u>PLANNING AREA:</u>	RURAL
<u>PLANNING SCHEME:</u>	DOUGLAS SHIRE PLANNING SCHEME 2008
<u>REFERRAL AGENCIES:</u>	DEPARTMENT OF STATE DEVELOPMENT, INFRASTRUCTURE & PLANNING
<u>NUMBER OF SUBMITTERS:</u>	NOT APPLICABLE
<u>STATUTORY ASSESSMENT DEADLINE:</u>	17 SEPTEMBER 2014
<u>APPLICATION DATE:</u>	4 AUGUST 2014
<u>APPENDIX:</u>	1.

LOCALITY PLAN



RECOMMENDATION:

That Council approves the request for an extension of the Preliminary Approval for Material Change of Use for Dwelling House, Local Utility, Display Home, Dwelling House/Attached Flat and Estate Sales Office (as defined in the Superseded Transitional Planning Scheme for the Shire of Douglas, December 1996) over land described as Lot 51 on SP155078, located at Vixies Road, Wonga Beach, so that the Relevant Period of the Preliminary Approval aligns with the Relevant Period of the Reconfiguring a Lot as detailed in Negotiated Decision Notice dated 16 December 2013.

EXECUTIVE SUMMARY:

Council is in receipt of a Request to extend the Relevant Period of a Preliminary Approval for Material Change of Use for Dwelling House, Local Utility, Display Home, Dwelling House/Attached Flat and Estate Sales Office (as defined in the Superseded Transitional Planning Scheme for the Shire of Douglas, December 1996 over land described as Lot 51 on SP155078, located at Vixies Road, Wonga Beach, ('Preliminary Approval').

The Preliminary Approval was issued via a Negotiated Decision Notice dated 18 April 2011 and is due to expire on 18 April 2015.

A Development Permit to reconfigure the land in accordance with the Preliminary Approval was issued via a Negotiated Decision Notice dated 16 December 2013 with a Relevant Period of four (4) years. The approval provides for the creation of 99 lots ranging in size from 2000m² to 4000m².

The land is currently within the Rural Planning Area within the Rural Areas and Rural Settlements Locality in the 2008 Planning Scheme.

The request to extend the Preliminary Approval seeks to align the Relevant Period of the Preliminary Approval with that of the approval to reconfigure the land with the intent that the Preliminary Approval remains current for as long as the approval to reconfigure the land remains current.

No concerns are raised with the request and approval is recommended.

TOWN PLANNING CONSIDERATIONS:

Background

In July 2006 application was made to the former Douglas Shire Council seeking a Preliminary Approval for Material Change of Use (Residential Uses) and a Development Permit for Material Change of Use (Residential Uses – Stage 1) for the 38.88 hectare parcel of land described Lot 51 on SP155078. The application was substantially delayed due to discussions between the Applicant and Concurrence Agencies.

At the time of lodgement, the Transitional Planning Scheme for the Shire of Douglas was applicable. Under that scheme the site was split between the Special Facilities Zone (reflecting an existing approval for a resort development) and the Rural (Agriculture) Zone. While the proposal was not compliant with the intentions for these zones, the applicant held the view that the intensity of the proposed development was consistent with the development intensity and resident population permitted by the Special Facilities Zone.

The Plan of Development which nominates two (2) precincts (reflecting minimum lot sizes), a connector road, an esplanade and drainage reserve was approved by way of a Negotiated Decision Notice dated 18 April 2011. A copy of the approved Plan of Development is attached at Appendix 1. While the approved Plan of Development nominates a minimum lot size of 1000m² in Precinct B, Condition 13 of the Preliminary Approval states that the minimum lot size is 2000m² and that 1000m² will only be permitted where it is demonstrated that a community effluent disposal system or similar alternative is to be installed in association with any development proposal.

An application to reconfigure the land in accordance with the Preliminary Approval was lodged in July 2011 with no lots less than 2000m². The response to Council's Information Request was submitted in May 2013 with Council approving the development at the Ordinary Meeting held on 25 September 2013. The Applicant sought to negotiate conditions of the approval which resulted in the issue of a Negotiated Decision Notice dated 16 December 2013. A copy of the approved plan is attached at Appendix 2.

Proposal

The Preliminary Approval allows for the future subdivision of the site into residential lots which can accommodate the following uses:

Dwelling House (Self Assessable)

Any premises comprising one (1) dwelling unit in a separate building, not including a Caretaker's Residence or integrated housing. The term includes the ancillary use of such premises for swimming pools, tennis courts (without lighting) and the like, the keeping of domestic animals in accordance with Council's policies by-laws, the use of the premises for family day care, and subject to subsection 7.2.4, for bed and breakfast accommodation in accordance with Council's policy.

Local Utility (Self Assessable)

Any premises used or intended for use by a Government, Semi-Government, Statutory or Local Authority or Government Owned Corporation in the course of supplying a public utility service or undertaking relating to the provision of water supply, sewerage, electricity, gas, telecommunications, transport, drainage or waste and refuse disposal where these activities do not involve any of the following:

1. The construction of electricity power lines, transformers or switching stations operating at or in excess of 60000 volts;
2. The constructions or use of any building or other structure having a floor area greater than 50m² or a height greater than 5 metres; or
3. The use of land in excess of 800m² in area.

The term does not include a public utility or recycling depot as defined herein.

Park (Self Assessable)

Any premises to which the public is admitted, and where no charge is made, which:

- (a) has been ornamentally laid out or prepared;
- (b) is maintained so as to preserve or enhance its natural qualities, including the quality of its flora, fauna and geological or physiographical features;
- (c) has been prepared or is maintained as a grassed area either with or without trees or shrubbery; or
- (d) has been prepared or is maintained other than according to (a) or (c), but in such a way as to be in the opinion of the Council suitable for informal open-air recreation and which is used for open-air recreation.

The term includes any of the following facilities, provided for the enjoyment or convenience of the public at such premises:

- (i) kiosks for band stands or the supply of light refreshments to patrons of the premises;
- (ii) picnic places, places for enjoying views, routes for nature study, car parking areas, cycleway and footways;
- (iii) information and display areas for the promotion of such land;
- (iv) shelters and other public conveniences;
- (v) children's play areas;

- (vi) structures, surfaces or equipment for informal sport or physical exercise;
- (vii) sculptures, fountains, ponds or other decorative devices;

and also includes the occasional use of the premises for fairs, exhibitions and similar activities where such use is approved by Council. The term does not include indoor recreation, outdoor recreation grounds or place of outdoor entertainment.

Display Home (Self Assessable)

Any premises intended for eventual use as a dwelling house or multiple dwelling which is used for a period not exceeding two (2) years, or such longer period as approved by Council, to display to the general public the type of construction or design offered by a builder.

Dwelling House/Attached Flat (Self Assessable)

Any premises comprising:

- (a) premises that, were they not attached to (b), would be a dwelling house; and
- (b) a dwelling unit attached to (a) that:
 - (i) does not exceed fifty (50) square metres in area; and
 - (ii) is occupied by a member or members of the immediate family of, or by personal staff or servants necessary for the health or well-being of a member or members of the household.

Estate Sales Office (Code)

Any premises, including a caravan, erected on land subdivided and released as one estate and used or intended for use for a period not exceeding two (2) years, or such longer period as approved by Council, for the purpose of promoting and selling that land only. The term does not include a display home as defined herein.

As previously identified, approval to reconfigure the land in accordance with the Preliminary Approval was issued in December 2013. The extension of the Preliminary Approval is in keeping with the intended form of development for the land.

PLANNING CONSIDERATIONS:

In deciding a request made under section 383 of the *Sustainable Planning Act 2009*, Council as assessment manager must only have regard to the following matters in deciding a request to extend the relevant period of an approval:

- (a) *the consistency of the approval, including its conditions, with the current laws and policies applying to the development; and*
- (b) *the community's current awareness of the development approval; and*
- (c) *whether, if the request were refused –*
 - (i) *further rights to make a submission may be available for a further development application; and*
 - (ii) *the likely extent to which those rights may be exercised; and*
- (d) *the views of any concurrence agency for the approval.'*

a) Consistency of the approval with current requirements

The land is currently contained within the Rural Planning Area and therefore, when viewing the Preliminary Approval issued under the 1996 Transitional Planning Scheme in isolation, the Preliminary Approval is not consistent with current Planning Scheme. However, an approval to reconfigure the land pursuant to the terms and conditions of the Preliminary Approval was issued in December 2013. The reconfiguration approval has a Relevant Period of four (4) years. There is the ability for related approvals to the ROL approval, if issued within the first two (2) years from December 2013 can carry forward the approval in accordance with Section 341 of the *Sustainable Planning Act 2009*.

Should the extension not be granted, the situation could arise that the approval to reconfigure the land be acted upon and the smaller lots of 2000m² to 4000m² can be created. While having the ability to construct one (1) house per allotment, the reconfigured lots would also have the Rural land use rights afforded to the land under the current Planning Scheme. That is, the use of Animal Husbandry Intensive would be Code Assessable development. Clearly this outcome is not appropriate nor is it intended.

Having regard to the above, it is upon this basis that an extension of the Preliminary Approval be granted so the Relevant Period of the Preliminary Approval aligns with the Relevant Period of the Reconfiguring a Lot approval. If either of the Preliminary Approval or Reconfiguring a Lot approval lapse, then they both lapse. Likewise, if the ROL approval remains current, then the Preliminary Approval remains current.

The supporting material for the Reconfiguring a Lot application made it very clear that the application was being made pursuant to the Preliminary Approval and therefore Officers are satisfied that both approvals are intrinsically linked and that the reconfiguration of a lot approval cannot be viewed as a stand-alone approval.

In addition, the approved land uses detailed in the Preliminary Approval are consistent with the typical form of development to take place in residential areas.

b) The community's current awareness of the development approval

The original Material Change of Use application was impact assessable and was publically notified. The development proposal received eight (8) properly-made submissions which were considered in the original assessment of the application.

It is acknowledged that this application was advertised sometime ago and it is likely that the public awareness of the development has somewhat diminished overtime. However, that being said, the extension of the Preliminary Approval merely seeks to support and reinforce the existing approval to reconfigure the land issued in December 2013.

c) If the request were refused, rights to make a submission for a further development application and the likely extent to which those rights may be exercised.

Refusal of the request to extend the Relevant Period of the existing Preliminary Approval would result in an undesirable situation of having smaller allotments as permitted by the approval to reconfigure the land if acted upon, located within the Rural Planning Area.

If refused, the Applicant would have the ability to reapply for the Preliminary Approval. However, it is somewhat inconsequential given that approval to reconfigure the land in accordance with the Preliminary Approval has issued.

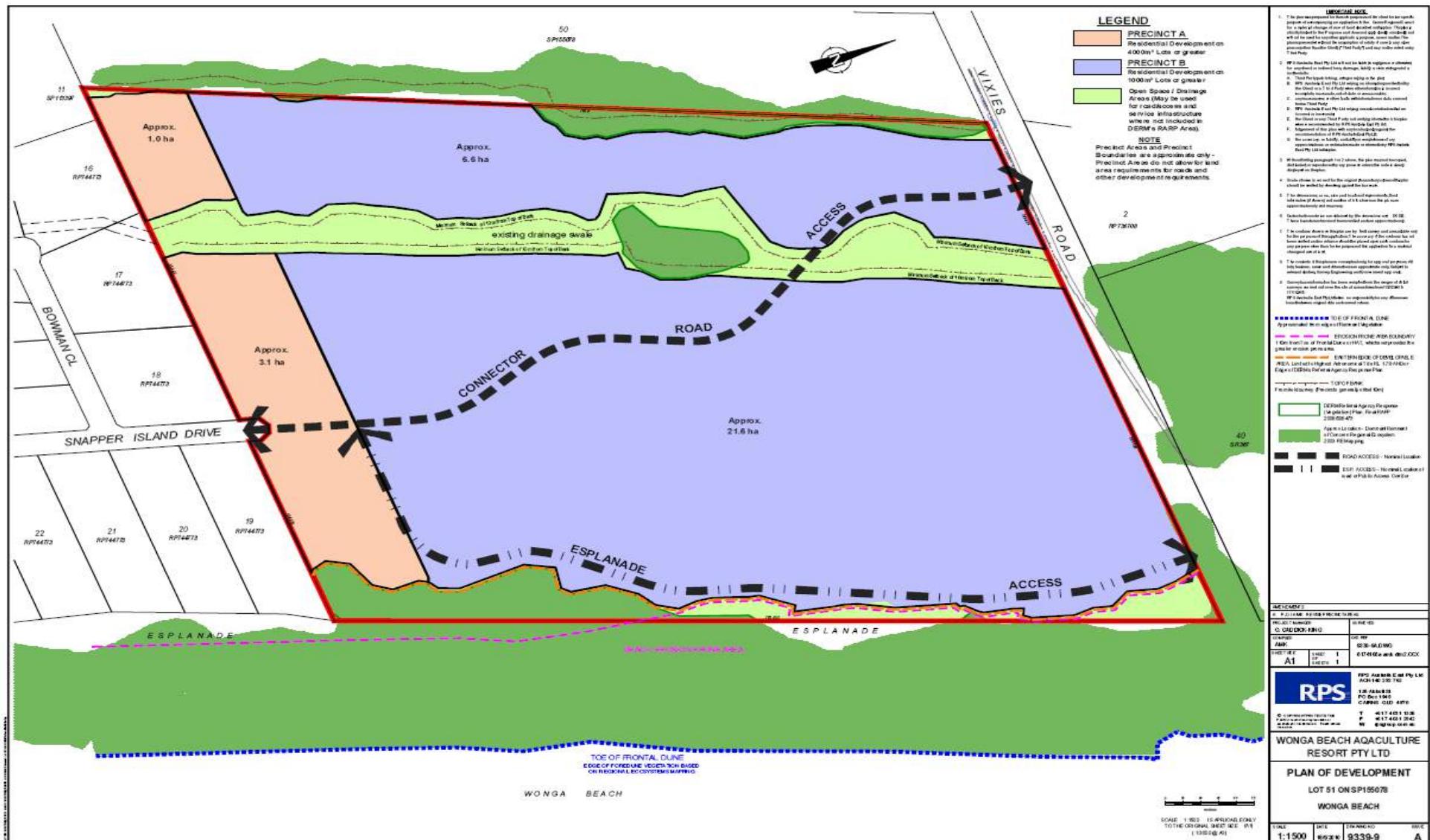
(d) The views of any concurrence agency for the approval.

The Department of State Development, Infrastructure and Planning has advised that no concern is raised in relation to the request.

COUNCIL'S ROLE

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

APPENDIX 1 – APPROVED PLAN (MCU)



APPENDIX 2: APPROVED ROL PLAN



ORDINARY COUNCIL MEETING**16 SEPTEMBER 2014****5.3**

REQUEST TO CHANGE CONDITION OF APPROVAL – MATERIAL CHANGE OF USE FOR SHOPPING FACILITIES & BUSINESS FACILITIES – 63-71 FRONT STREET, MOSSMAN

Neil Beck: Planning Officer - MCUC 3102/2009 #428389

PROPOSAL:

REQUEST TO CHANGE CONDITION OF APPROVAL
– MATERIAL CHANGE OF USE FOR SHOPPING
FACILITIES & BUSINESS FACILITIES

APPLICANT:

TOWN & COUNTRY
PO BOX 100
MOSSMAN QLD 4873

LOCATION:

63–71 FRONT STREET
MOSSMAN QLD 4873

PROPERTY:

LOT 1 ON SP258887

LOCALITY:

MOSSMAN AND ENVIRONS

PLANNING AREA:

COMMERCIAL

PLANNING SCHEME:

DOUGLAS SHIRE PLANNING SCHEME 2008

REFERRAL AGENCIES:

NOT APPLICABLE

NUMBER OF SUBMITTERS:

NOT APPLICABLE

STATUTORY ASSESSMENT
DEADLINE:

16 OCTOBER 2014

APPLICATION DATE:

2 SEPTEMBER 2014

APPENDIX:

1. APPROVED PLAN

LOCALITY PLAN



RECOMMENDATION:

That Council approves the request to Change a Condition of Approval for a Material Change of Use for Shopping Facilities & Business Facilities over land described as Lot 1 on SP258887, located at 63–71 Front Street, Mossman, subject to the following:

1. That Condition 22 (a) be amended as follows:

Provision of a covered pedestrian walkway as detailed on Drawing No DA01 Issue E that is constructed in accordance with the FNQROC Development Manual, to achieve an integrated shopping/commercial development. The pedestrian walkway must be designed to provide the safest and most direct pedestrian link practicable between Proposed Building A and the existing covered footpath of Existing Building C.

2. That all other conditions of Decision Notice for Development Permit MCUC 3102/2009 dated 14 December 2010 and amended by Decision Notice dated 15 January 2013 and Decision Notice dated 4 April 2014 remain unchanged.

EXECUTIVE SUMMARY:

Further to Council's Ordinary Meeting held 1 April 2014, a further request has been made requesting Council to amend Condition 22 (a) of the development approval and not require the walkway between the two existing developments to be covered.

The request has been made as a consequence of a Show Cause Notice being issued to both Town & Country and Woolworths regarding non-compliance matters with respect to the development approval and the lack of appropriate noise attenuation / traffic management practices and the impacts this was having on the residential properties adjacent to the western boundary.

As part of this process, the Applicant has requested Council revisit Condition 22 (a) and amend as necessary to support them in their view that what has been constructed is satisfactory with respect to the operation and layout of the existing developments on both Lot 1 & Lot 2 on SP258887.

Upon further consideration of the request and supporting grounds, and the Applicant's willingness and cooperation to resolve noise impacts generated from the approved uses to the best of their ability, the request to amend the condition is supported.

Approval of the request is recommended.

PLANNING CONSIDERATIONS:

Background

The site consists of a 9828m² regularly-shaped, flat lot on the western side of Front Street, at the southern end of Mossman Town Centre. The lot is designated as being in the Commercial Planning Area within the Douglas Shire Planning Scheme 2008.

The site is the former location of the Woolworths Shopping Centre and formed part of the development approval for the new Shopping Centre now established on Lot 2 on SP258887.

On 15 January 2013, approval was issued for a request for a minor change to the Material Change of Use approval for the Shopping Facilities and Business Facilities. In determining the request, additional conditions were added to the approval requiring a covered pedestrian walkway, designated disabled car parking spaces and screening of the pad mount sub-station adjacent the south eastern corner of the building.

At the Ordinary Meeting of 1 April, 2014 Council resolved that:

in order to comply with Condition 22a of the Decision Notice dated 15 January 2013, the walkway extending from the existing building on Lot 1 on SP258887 to the existing structure in the centre traffic island on Lot 2 on SP25887 must be covered.

Request to Change Condition

The Applicant has requested that Council amend Condition 22 (a) to the extent necessary to not require the walkway to be covered as detailed in the Council Resolution dated 1 April 2014.

Condition 22 and in particular Condition 22 (a) reads as follows:

22. Amendment to Design

The proposed plan of development (Proposed Site Plan 602682 DA01 D) must be amended to accommodate the following changes;

- a. *Provision of a covered pedestrian walkway that is constructed in accordance with the FNQROC Development Manual, to achieve an integrated shopping/commercial development. The pedestrian walkway must be designed to provide the safest and most direct pedestrian link practicable between Proposed Building A and the existing covered footpath of Existing Building C.*
- b. *Provision of a pedestrian crossing at the location on the Supermarket Car Park Entry Road where the above pedestrian walkway connection from Proposed Building A and the existing footpath of Existing Building C meet.*
- c. *Identify appropriately marked and dimensioned car parking spaces for disabled persons to service Existing Building C.*
- d. *Provision of suitable screening of the proposed sub-station on the southern corner of the site to minimise the visual impact of the development on the Front Street streetscape. The materials used must be consistent with or complementary to the materials proposed for the screening of the service court and condenser deck.*

An amended plan of development incorporating the above amendments must be endorsed by the Chief Executive Officer prior to issue of a Development Permit for Building Work.

Applicant's Comment

The following comments have been made to support the request:

As expressed in our response to Councils Show Cause Notice our main concerns for not covering this part of the walkway system was purely in consideration of safety issues that would arise if this part of the walkway was covered.

- a. Firstly, if covered this would be the only covered pedestrian crossing in the whole complex. It is our view that if the pedestrian crossing onto the veranda area of Town and Country was covered this may give pedestrians (particularly children) a false sense of security that they were still on the veranda area and not give the traffic due attention when stepping onto the crossing.
- b. The second reason this area was left uncovered was for access reasons by the fire department in the event of a fire. A fire truck would be unable to access this area if the walkway was covered as the covered walkway would be lower than the height of the fire truck and may cause delays in response to a fire.
- c. The third reason this area was left uncovered was because this car park area was designated for RV type vehicles, such as a Winnebago.
- d. Further, the proposed height of the walkway over the pedestrian crossing would be such that almost no protection from rain would be afforded to pedestrians. Therefore taking into consideration the safety reasons given above, it seemed sensible and appropriate to leave this section uncovered.

Town & Country Limited have worked closely with Council representatives to find a sensible and suitable solution regarding noise from delivery trucks delivering to the site. Town & Country at considerable cost commissioned an Acoustic Report to better understand the level and frequency of noise generated on the site. We have submitted a copy of the Acoustic Report to Council for their reference. As a result of this scientific report Town & Country have included in all our lease agreements that deliveries can only be made between the hours of 7am to 6pm to our site. As a result of Town & Country's leadership on this issue Woolworths have also agreed to and have already implemented deliveries to their site between the hours of 7am to 6pm.

Town & Country is currently renovating our shopping complex at a cost of approximately \$1million. This will provide our community with three new retail outlets in the space previously occupied by Woolworths. It is our intention to attract only retail businesses which will add value to our community and provide products and services currently not available in the Mossman area. We hope to announce the new tenancies over the course of the next few months as leases are signed and the renovations are completed.

Officer Comment

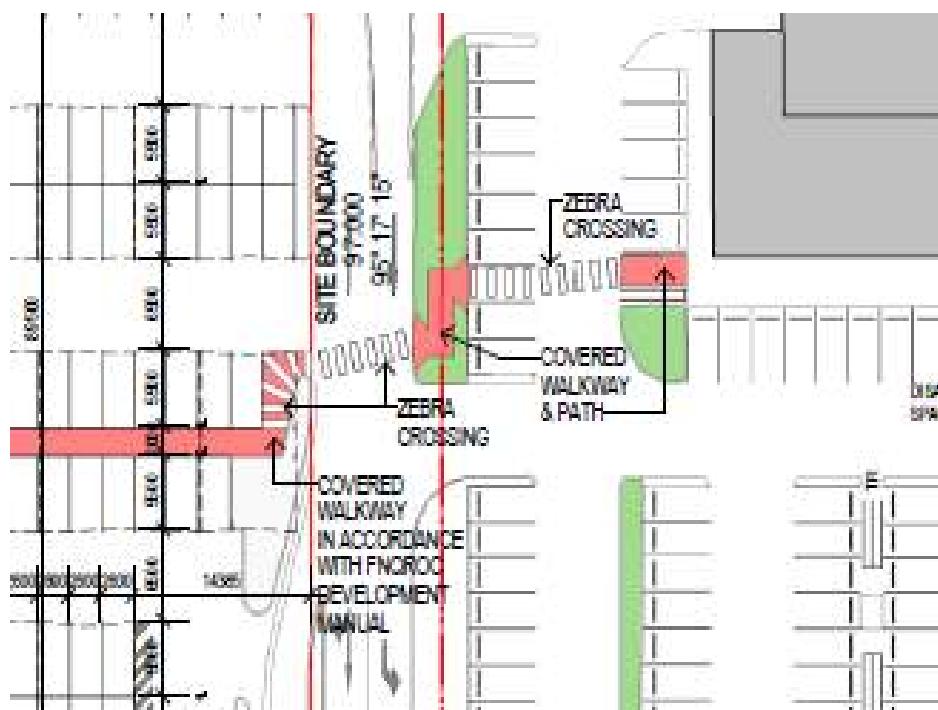
Condition 22a required a covered pedestrian walkway to achieve an integrated commercial development. Importantly, such an amended plan was to be endorsed by the Chief Executive Officer prior to the issue of a Development Permit for Building Work.

At the time of considering this particular item in March 2014, the Shopping Centre was still under construction and while the alignment was not ideal, it was felt that the walkway could still be covered in order to achieve the intent of this condition.

Upon further consideration and having regard to the comments made by the Applicant, in addition to the Applicant's acknowledgement and proactive response in addressing the noise impacts, which includes incorporating particular provisions in the leasing documentation to ensure deliveries don't take place prior to 7:00 am on Lot 1, the request to amend the condition to reflect what has been constructed is supported.

In addition, Woolworths have advised Council in writing that they too will not be getting deliveries prior to 7:00 am in order to reduce the noise impacts on adjacent residential properties. This is a direct result of Town & Country engaging an acoustic engineer to assess the noise impacts generated from their site as well as that of Woolworths.

Drawing No DA01 Issue E being the approved plan is attached at Appendix 1. The section of the plan detailing the connection and the extent of the walkway as constructed is detailed below.

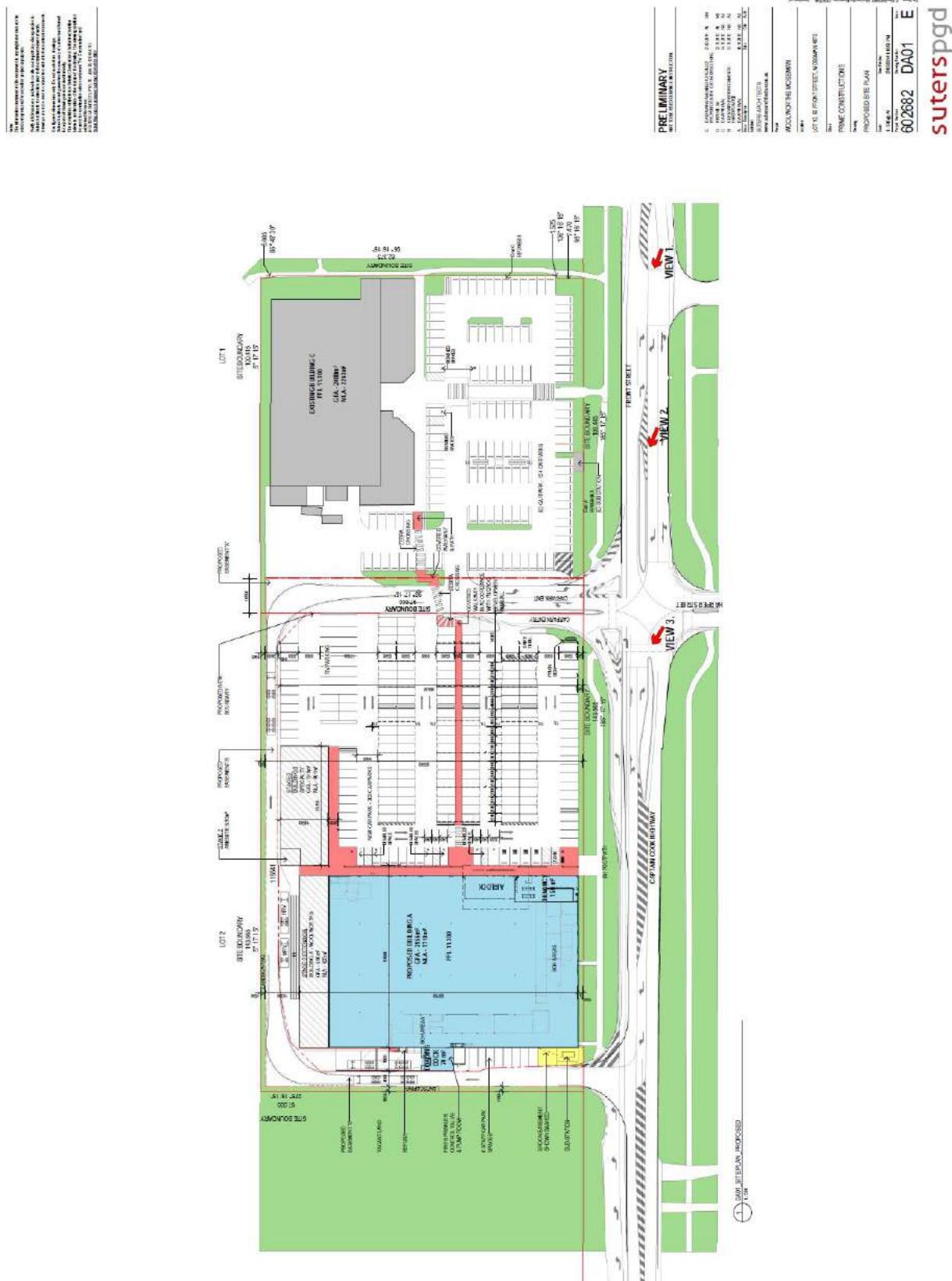


Drawing No DA01 Issue E - Plan illustrating extent covered walkway

It is therefore recommended that Condition 22 (a) be amended to reflect what has been constructed.

The Recommendation has been worded accordingly.

APPENDIX 1: APPROVED PLAN



ORDINARY COUNCIL MEETING 16 SEPTEMBER 2014	5.4
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APPLICATION FOR TEMPORARY ROAD CLOSURE OVER PART OF HERITAGE LANE, CRAIGLIE ABUTTING LOT 12 ON N157447

Graham Busby: Property Officer; #427661

Darryl Crees: General Manager Corporate Services

RECOMMENDATION:

That Council:

1. advises the Department of Natural Resources and Mines that it has no objection to the application for temporary road closure over road abutting Lot 12 on N157447 Heritage Lane Craiglie, subject to the following conditions:
 - the proposed landscaping must comply with Council's Planning Scheme Policy;
 - the proposed landscaping must not adversely impact on existing drainage flows in the area; and
 - the proposed landscaping must be removed and the area reinstated if the temporary road closure is revoked or otherwise terminated.
2. delegates authority to the Mayor and Chief Executive Officer in accordance with Section 257 of the *Local Government Act 2009* to determine and finalise any and all matters associated with the application.

EXECUTIVE SUMMARY:

The Department of Natural Resources and Mines (DNRM) has requested Council's views in respect to the temporary closure of part of Heritage Lane adjoining Lot 12 on N157447 situated at Craiglie. Council has no objection to this application, subject to several conditions being met.

BACKGROUND:

The subject land is located on the western side of the Captain Cook Highway, just south of Port Douglas

The proposed area of temporary road closure consists of an area of approximately 1540 m² and is situated on roadway which is adjacent to an existing cane and vanilla farm.

PROPOSAL:

DNRM have advised that the proposed use of the subject area is for access and landscaping purposes. Council's views have been sought specifically in respect to whether it has any objections or requirements relevant to the proposed landscaping on the area and whether the area should be retained open as road to accommodate drainage flows in the vicinity.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE:

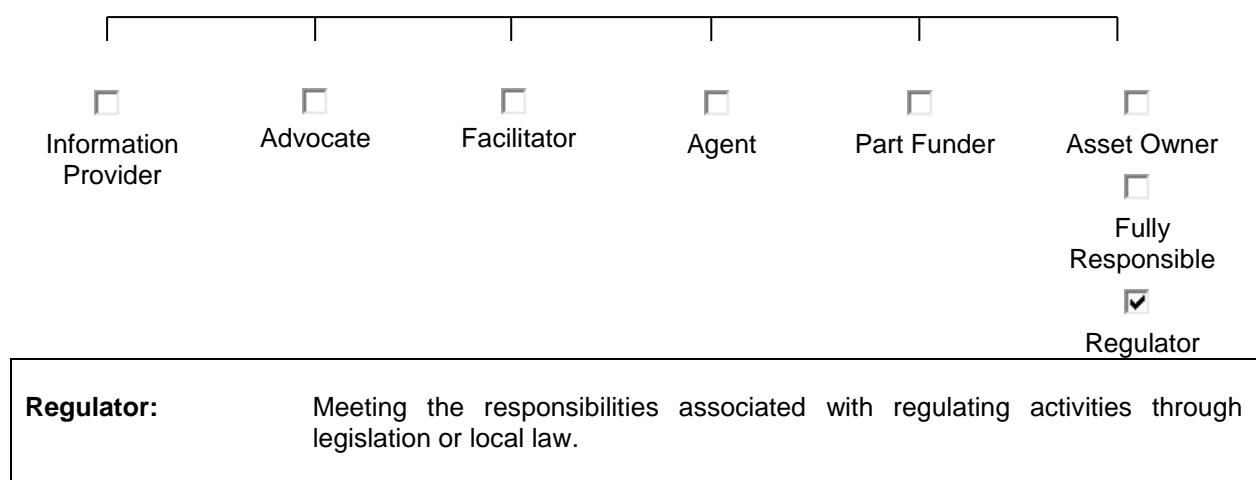
This report complies with Council's general policy 'Managing Tenure over Council Owned and Controlled Property'.

This report has been prepared in accordance with Goal 2 of the Corporate Plan – *To demonstrate leadership in local government through sound, transparent, accountable and equitable decision making.*

COUNCIL'S ROLE:

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:



FINANCIAL/RESOURCE IMPLICATIONS:

Council will not receive any income in respect to the proposed temporary road closure and there will be no cost to Council associated with its existence.

INTERNAL/EXTERNAL CONSULTATION:

The result of internal consultation with the operational areas of Council was as follows:

Development & Environment

Development & Environment has no objection to the application subject to the following:

- Landscaping should comply with the Planning Scheme Policy;
- A condition requiring that the landscaping does not adversely impact on drainage should be imposed; and
- A condition should be imposed requiring the removal of the landscaping and reinstatement of the area in the event that the temporary road closure is revoked or otherwise terminated.

Water & Waste

No concerns raised.

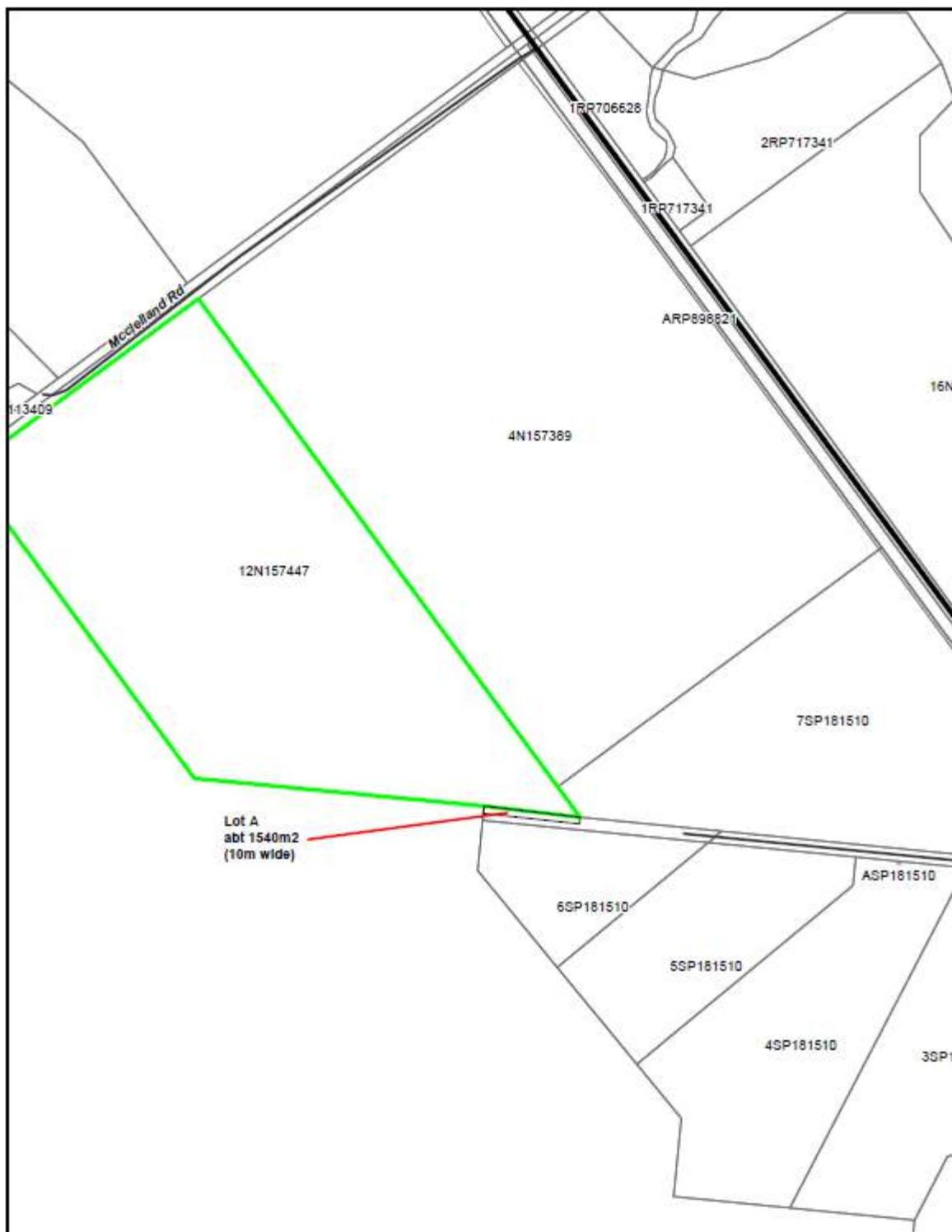
Infrastructure

No concerns raised.

ATTACHMENTS:

Attachment 1 – Locality Map

Attachment 2 – DNRM drawing CNS12\002

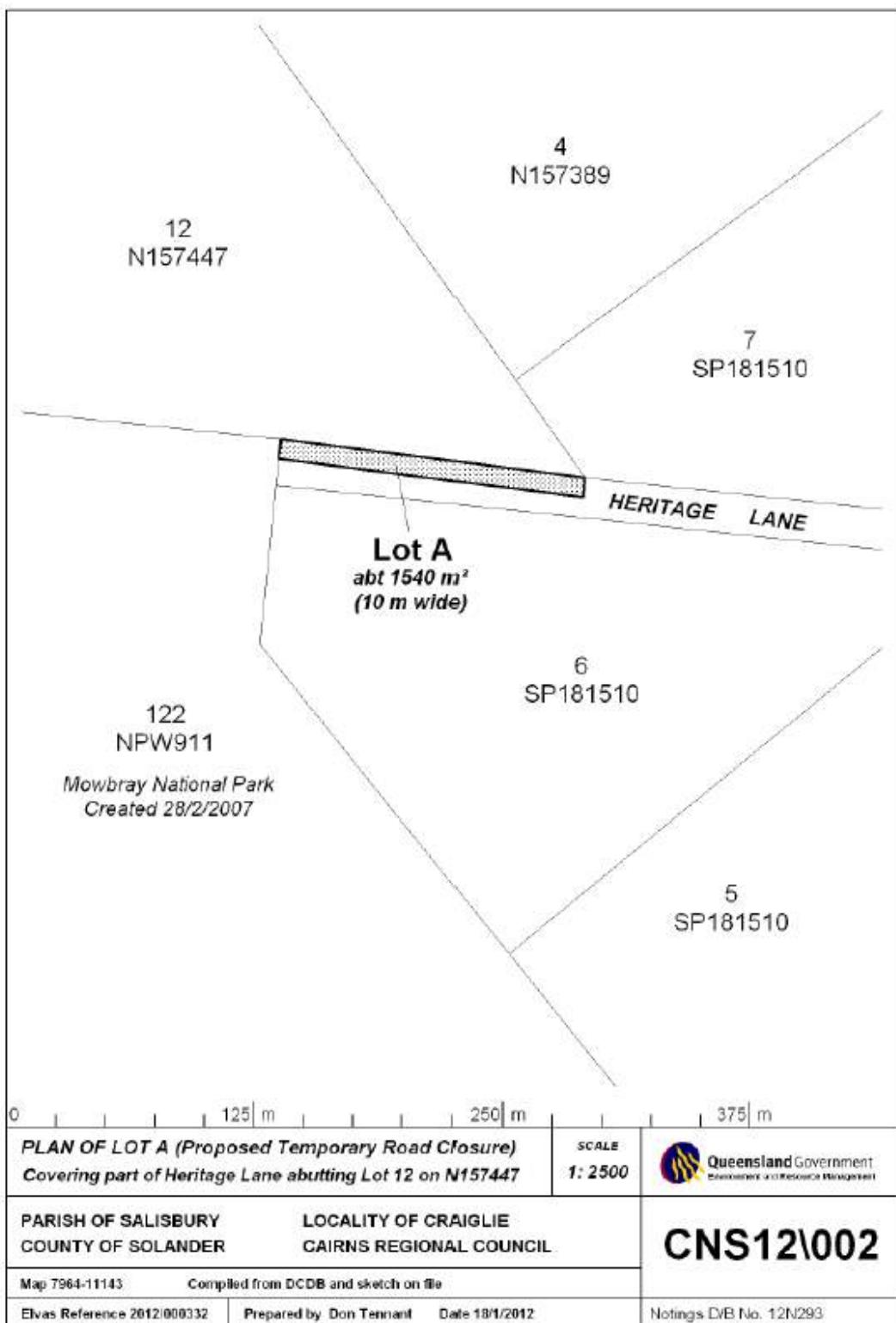
Attachment 1**Lot 12 on N157447**

**DOUGLAS
SHIRE COUNCIL**

©2014 Douglas Shire Council (DSC). Based on or contains data provided by DSC and the State of Queensland Department of Natural Resources and Mines (QDM) (2014). In consideration of the terms and conditions permitting use of the data, you acknowledge and agree that the agency giving the warranty in relation to the data does so on behalf of its source(s), and accept no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

No Scale
Map Grid of Australia
Zone 55 (GDA94)



Attachment 2

ORDINARY COUNCIL MEETING 16 SEPTEMBER 2014	5.5
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FINANCIAL REPORT FOR PERIOD ENDING 31 AUGUST 2014

Darryl Crees: General Manager Corporate Services #428679

RECOMMENDATION:

That Council notes the Financial Report for the period ended 31 August 2014.

EXECUTIVE SUMMARY:

The attached Financial Report details the progress of the 2014/15 budget for the period ending 31 August 2014. The figures presented in this report are still subject to any journal reversals and other adjustments that may be required as part of the 2013/14 end of financial year and audit processes.

BACKGROUND:

In accordance with section 204 of the *Local Government Regulation 2012* the Chief Executive Officer must present to Council a financial report which states the progress that has been made in relation to the budget. This report must be presented to Council on a monthly basis and cover the period up to a day as near as practicable to the end of the preceding month.

COMMENT:

The 2014/15 annual budget was adopted on 27 June 2014 and the attached report details progress against budget for the period ending 31 August 2014. In reviewing this financial report the following should be noted:

- The figures presented are subject to any journal reversals and other adjustments that may be required as part of the 2013/14 end of financial year and audit processes.
- Depreciation expense has been accrued based on budget forecasts. A revised estimate will be established once the asset register has been reviewed as part of the end of financial year audit process.
- Grant revenue has exceeded budget as a result of a greater than anticipated increase in the Grants Commission Financial Assistance Grant and the budget will be adjusted during a future budget review.
- Budget amounts have been distributed over the twelve month period based on estimates of when revenue will be earned and expenditure incurred. At present Council only has seven months of historical trends plus past experience applied by relevant staff and therefore some variations in timing will occur between actual and budgeted amounts. For example:
 - A portion of water usage charges for the current billing cycle has been accrued back into June and this has resulted in a variation in Net Rates and Utility Charges, which will remain until the budget is correctly aligned.
 - Revenue from Ferry Fares currently exceeds budget by \$42k, whilst Licences exceed budget by \$90k.

- Materials and Services expenditure is under budget by \$1.5m however current committals exceed this amount.

As reflected in the attached report, total operating revenue at the end of August was slightly ahead of budget whereas operating expenditure was well under budget. This has resulted in an operating surplus of \$7.1m compared to a budgeted surplus of \$5.3m. As mentioned above however, this result is subject to a number of variables.

PROPOSAL:

The Financial Report for the period ending 31 August 2014 be received and noted by Council.

FINANCIAL/RESOURCE IMPLICATIONS:

The results as at the end of August 2014 have not revealed any significant negative impacts on the 2014/15 budget.

ATTACHMENTS:

Financial Report

**Douglas Shire Council
Financial Report
For the month of AUGUST 2014**

Operating Revenue

	Actual \$	YTD '15 \$	Budget YTD '15 \$	Variance \$	Budget 14/15 \$	Actual as % of Budget 14/15
Net rates and utility charges	11,812,834	12,049,063	(236,229)	27,775,175	43%	
Fees and charges	1,022,836	884,915	137,921	3,703,494	28%	
Grants, subsidies, contributions and donations	335,199	143,800	191,399	800,536	42%	
Interest received	122,190	105,233	16,957	633,240	19%	
Other recurrent income	253,714	196,601	57,113	800,663	32%	
Total Operating Revenue	13,546,773	13,379,612	167,161	33,713,108	40%	
Operating Expenses						
Employee benefits	2,214,055	2,318,988	104,933	12,048,582	18%	
Materials and services	2,610,401	4,111,139	1,500,738	16,799,535	16%	
Depreciation	1,621,812	1,621,812	-	9,730,868	17%	
Finance costs	5,691	10,000	4,309	202,570	3%	
Total Recurrent Expenses	6,451,959	8,061,939	1,609,980	38,781,555	17%	
Operating Result	7,094,814	5,317,673	1,777,141	(5,068,447)	(140%)	
Capital revenue						
Capital Grants and Subsidies	-	952,000	(952,000)	952,000	0%	
Capital Contributions	-	200,000	(200,000)	200,000	0%	
Total capital revenue	-	1,152,000	(1,152,000)	1,152,000	0%	
Net result	7,094,814	6,469,673	625,141	(3,916,447)	(181%)	

Capital expenses

Capital expenses	430,239	8,821,525	8,391,286	8,821,525	5%
Total capital expenses	430,239	8,821,525	8,391,286	8,821,525	5%