



Notice of Ordinary Meeting

An Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Thursday 23 May 2019 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. Planning and Environmental Health Division Reports
9. Corporate and Community Division Reports
10. Civil Services Division Reports
11. Notices of Motion
12. Advisory Committee Minutes
13. Reports from Councillors on Attendance on Council's behalf
14. 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.
- Deputations, per person, will be limited to a maximum of two items on the agenda.
- 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.
- Deputations on the same matter will be listed together with the opposition first and the speaker in affirmative second.
- 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.
- To avoid conflicts of interest, real or perceived, deputations will not be accepted from:
 - Tenderers during a public tender or request for quotation
 - Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
 - Consultants who are engaged by Council on the matter the subject of the deputation.

Public Question Time – This Session Does Not Form Part of the Ordinary Meeting

- A public question time has been set aside during the Ordinary meetings of the Council. The Ordinary meeting will be adjourned from 12.45 pm for Public Question Time. If the meeting does not extend to 12.45 pm Public Question Time will be held after the meeting closes.
- 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 Ordinary meeting agenda.
- 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 question before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, multiple questions can be invited and considered.
- Recording of the questions will not be verbatim and will not form part of the minutes of the Ordinary meeting.
- The standard rules of behaviour in the Chamber will apply.
- Questions may be asked from the position in the public gallery.

The non-confidential parts of Council's meetings are broadcast live to the web and are recorded for future reference. Recordings are made available on Council's website. In accordance with our Code of Meeting Practice, the recording or taking of photos by other people during the meeting is not permitted unless permission has been granted from the meeting.

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

1. Australian National Anthem

The National Anthem will be performed by Councillors and staff.

2. Acknowledgement of Country

In opening the meeting the Mayor provided an Acknowledgement of Country.

3. Apologies

4. Confirmation of Minutes

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Wednesday 24 April 2019 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Wednesday 24 April 2019.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7.1 Mayoral Minute - Emergency Services Levy Increase

7. Mayoral Minutes

7.1 Mayoral Minute - Emergency Services Levy Increase

Councillor

David Wright

Local Government NSW has asked councils to support the following campaign.

Each year, the NSW Government collects payments from councils and insurers to fund emergency services agencies in NSW, with councils required to pay 11.7 per cent of the budget required by NSW Emergency Services (SES, Rural Fire Service, NSW Fire Brigades). These charges are embedded in council rates and insurance premiums.

From 1 July 2019 the NSW Government plans to collect an additional \$160 million (in 2019/20) from NSW councils, communities and those paying insurance premiums to provide better workers' compensation coverage for volunteer and career firefighters who are diagnosed with one of 12 specific work-related cancers.

Councils were sent bills with a letter from Revenue NSW in May 2019, saying NSW council contributions will increase by \$19 million in 2019/20. The letter also foreshadowed increases in the following year, but not the amount.

Ballina Shire Council received an invoice from Revenue NSW for \$322,000 for its emergency services levy contribution for 2019/20. This is \$55,000 more than last year's levy (a 21%) increase. This will mean council will need to find additional funds and/or cut planned initiatives or services.

Council supports career and volunteer firefighters in NSW – as it does all emergency services workers and volunteers. Indeed, many NSW council staff and councillors are volunteers. We also support the Bill passed in November 2018 to address what was a workers' compensation shortfall.

However, the sector was at no point advised that it would be required to cover the cost via significant increases to the emergency services levy, or what this cost would be.

Local Government NSW is calling upon the NSW Government to fund the first 12 months of this extra cost and work with local governments to ensure the implementation of the funding mechanism is fairer into the future.

RECOMMENDATIONS

1. That Council notes:
 - a. That last December, the NSW Government enacted laws to provide better workers compensation coverage for firefighters who are diagnosed with one of twelve specific work-related cancers
 - b. That in many areas of NSW, fire services are made up of elected and staff members of local government, and that local governments strongly support this expanded workers compensation scheme
 - c. That as a result of these changes, the State Government has decided to implement the new scheme by charging local governments an increased Emergency Services Levy, without consultation
 - d. That the expected increase in costs to local governments will be \$19m in the first year alone, and that there is little or no time to enshrine this charge in Council's 2019/20 budget
 - e. That Local Government NSW has long advocated for the Emergency Services Levy to be significantly modified to ensure it is transparent, equitable and accountable.
2. That Ballina Shire Council supports Local Government NSW's calls for:
 - a. the NSW Government to cover the initial additional \$19m increase to local governments for the first year and
 - b. the NSW Government to work with NSW local governments to redesign the funding mechanism for the scheme to ensure fairness into the future.
3. That the Mayor
 - a. write to the NSW Premier and NSW Interim Opposition Leader, NSW Minister for Customer Services, NSW Minister for Emergency Services, Minister for Local Government and Shadow Minister for Local Government, and local state member/s to:
 - i. call upon the NSW Government to fund the 12 months of this extra cost rather than requiring councils to find the funds at short notice when budgets have already been allocated
 - ii. explain how this sudden increase will impact council services / the local community.
 - iii. highlight that councils were not warned of the increased cost until May 2019, despite the new laws being passed in November 2018
 - iv. explain that the poor planning and implementation of the increase is inconsistent with the Government's commitment to work in partnership with the sector
 - v. ask the Government to work with local governments to redesign the implementation of the scheme to ensure it is fairer for councils and communities into the future.
 - b. Copy the above letter to Local Government NSW.

Attachment(s) - Nil

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

8. Planning and Environmental Health Division Reports

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

Applicant	Ardill Payne & Partners
Property	Lot 18 DP 1074398, Lot 1 DP 586688, No.'s 112 and 140 Broken Head Road, Newrybar
Proposal	Boundary adjustment subdivision of two existing lots to create two modified lots - Proposed Lot A 2.9 ha and Proposed Lot B 27.7 ha
Effect of Planning Instrument	The land is zoned 7(c) Environmental Protection (Water Catchment) under the provisions of the Ballina LEP 1987
Locality Plan	The subject lands are depicted on the locality plan in Attachment 1.

Introduction

Council is in receipt of a Development Application for a boundary adjustment subdivision of two existing lots to create one x 2.9 ha allotment (Proposed Lot A) and one x 27.7 ha allotment (Proposed Lot B). Refer to the development plan in Attachment 2.

The subject site is zoned 7(c) Environmental Protection (Water Catchment) under the Ballina Local Environmental Plan (BLEP) 1987 and consequently, the provisions of the BLEP 1987 apply to the subject land.

The proposed boundary adjustment subdivision will result in two modified allotments, each being less than the 40 hectare minimum lot size as stipulated in Clause 11 of the BLEP 1987.

Existing Lot 1 DP 586688 is 15.61 hectares in area and contains an existing shed outbuilding (but enjoys a dwelling entitlement).

Existing 18 DP 1074398 is 16.26 hectares in area and contains an existing dwelling house and packing shed approved via DA 2010/513.

Both existing allotments are significantly below the 40 hectare minimum lot size applicable to the subject land.

The existing and proposed lot areas and their variation from the minimum lot size development standard are shown in the following table.

Existing			Proposed		
Lot	Area (ha)	Variation (%)	Lot	Area (ha)	Variation (%)
1	15.61	60.97	A	2.9	92.75
18	16.26	59.35	B	27.7	30.75

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

During the assessment of the current DA various non-compliance issues were noted being:

- The original dwelling on No. 112 closest to Broken Head Road was conditioned to be decommissioned and converted to a packing shed in accordance with the provisions of the DA 2010/513 consent. Council identified that this building was still being occupied as a dwelling. The on-site septic management system (OSSM) to this house was located very close to the boundary and the location of the trenches is unknown. This building was required to be decommissioned with some fixtures and walls removed and these works have recently been completed.
- The rural shed on No. 140 was also being occupied as a residence. The proposed boundary would have resulted in the OSSM septic tank being on the boundary and would likely mean the trenches would be on the adjacent lot. This shed was also required to be decommissioned and some fixtures removed. The existing OSSM tank was also undersized and has since been removed and backfilled.
- It was also evident that a new driveway crossover and an internal road/driveway had been constructed, along the battle-axe handle proposed in the boundary subdivision leading to the lower set dwelling approved under DA 2010/513. It appears earthworks (and possible tree removal in the location of the intermittent waterway, which the driveway crosses) may have been required to construct this driveway and no sediment and erosion controls were in place in the 7(c) Water Catchment zone. The driveway crossover and associated works will form part of the merit considerations.

The current DA has been held in abeyance until these non-compliance matters were suitably addressed as they directly affected the proposed development (i.e. septic trenches were close to proposed and existing boundaries).

These non-compliance issues have now substantially been resolved.

The purpose of this report is to seek Council's determination of a requested variation to the development standard under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), as the application proposes a variation of more than 10% to the development standard.

The proposal seeks a variation to the 40 hectare development standard as the resulting areas of Proposed Lots A and B would be 2.9 hectares (92.75% variation) and 27.7 hectares (30.75% variation) respectively.

Approval for this variation to the 40 hectare minimum lot size development standard is still required even though the existing lots are already well below this 40 hectare development standard.

Council may assume concurrence of the Director of the Department of Planning and Environment to carry out an assessment of the application under SEPP 1 and grant approval to the variation sought, if considered reasonable.

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

Should Council resolve to approve the proposed variation, the development application will be subsequently determined under delegation.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition twice due to revised subdivision layouts. No public submissions were received during either public exhibition period.

No objections were received from the NSW Rural Fire Service or Rous Water to the proposal.

Report

The proposed development is currently being assessed by Council staff under the heads of consideration in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The development will be able to be determined under delegated authority. The only matter required to be determined by Council in relation to this report is the requested variation to the minimum lot size development standard in Clause 11 of the BLEP 1987.

State Environmental Planning Policy No.1

The subdivision of land, including boundary adjustments, is permissible with development consent within the 7(c) zone.

The mechanism that provides the ability to vary a development standard contained within the BLEP 1987 is an application via SEPP 1. The following assessment has been carried out with respect to SEPP 1.

BLEP 1987 - SEPP 1	
Assessment of requested variation	
a) What is the development standard being varied?	<p>Clause 11 Subdivision of land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l)</p> <p>Clause 11(2)(b) of the BLEP relates to the minimum lot size within the 7(c) zone, and states the following:</p> <p><i>(2) Except as provided by subclause (3), the council may consent to the subdivision of land referred to in subclause (1) only where the area of each allotment to be created by the subdivision is not less than:</i></p> <p><i>(a) in the case of land within Zone No 1 (a1) or 7 (i)—20 hectares, and</i></p>

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

BLEP 1987 - SEPP 1	
Assessment of requested variation	
	<p><i>(b) in the case of land within Zone No 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f) or 7 (l)—40 hectares.</i></p> <p>The minimum lot size standard for the 7(c) zone is 40 hectares.</p> <p>Existing Lot 1 is 15.61 hectares in area, which is already 60.97% below the 40 hectare minimum lot size. The proposed modified lot (Proposed Lot A) has an area of approximately 2.9 hectares, meaning there would be a 92.75% variation to the development standard.</p> <p>Existing Lot 18 is 16.26 hectares in area, which is already 59.35% below the 40 hectare minimum lot size. The proposed modified lot (Proposed Lot B) has an area of approximately 27.7 hectares, which equates to a 30.75% variation to the development standard.</p>
<p>b) What is the underlying objective of this development standard?</p>	<p>There are no stated objectives contained within Clause 11 of BLEP 1987 relating to the minimum lot size development standard. Notwithstanding, the objectives of the 7(c) zone are as follows:</p> <p>A The primary objective is to prevent development which would adversely affect the quantity or quality of the urban water supply.</p> <p>B The secondary objective is to regulate the use of land within the zone:</p> <p>(a) to encourage the productive use of land for agricultural purposes and to permit development which is ancillary to agricultural land uses, except for development which would conflict with the primary objective of the zone, and</p> <p>(b) to ensure development of the land maintains the rural character of the locality, and</p> <p>(c) to ensure development of the land does not create unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.</p> <p>C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on water quality and quantity being minimised as much as is reasonably practical.</p> <p>It is reasonable to consider that the underlying objective of the minimum lot size development standard is related to and supports the underlying</p>

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

BLEP 1987 - SEPP 1	
Assessment of requested variation	
	<p>objectives of the 7(c) zone. The objectives aim to protect the quantity and quality of the urban water supply, encourage the productive use of the land and maintain the rural character of the locality.</p>
<p>c) In accordance with clause 8 of SEPP 1:</p> <ul style="list-style-type: none"> • Does the non-compliance with the development standard raise any matters of significance for state or regional environmental planning? • Is there a public benefit in maintaining the planning controls adopted by the Ballina Local Environmental Plan 1987? 	<p>The non-compliance with the development standard for minimum lot size in the circumstances of DA 2018/702 is not considered to raise any matters of significance for state or regional environmental planning.</p> <p>The applicant contends that strict compliance with the minimum 40 hectare standard is unreasonable and unnecessary given:</p> <ul style="list-style-type: none"> • The subject land comprises two existing undersized allotments and the proposed boundary adjustment is consistent with the underlying objectives of the zone in terms of ensuring that the potential agricultural viability of the land is maintained. <p>There is limited public benefit to maintaining the planning controls adopted by BLEP 1987 in this circumstance, being the 40 hectare minimum lot size. Both allotments are already below the minimum lot size and each enjoy a dwelling entitlement. The proposal would result in a lot configuration which better reflects the topography of the land and links useable areas of the site for more sustainable agriculture (i.e. farm build up).</p> <p>The proposal is considered to meet the objectives of the 7(c) zone and the broader objectives of the BLEP 1987.</p>
<p>d) Will the cumulative effect of similar approvals undermine the objective of the development standard or the objectives of the zone?</p>	<p>As stated above, the underlying objective of the minimum lot size development standard contained within Clause 11 of BLEP 1987 is related to and supports the objectives of the zone.</p> <p>The development is unlikely to create a precedent in the area as the existing locality is characterised by a number of rural and lifestyle lots below the minimum lot size and the assessment of the proposal has been based on the merits of the application.</p> <p>Furthermore, the subject allotments are already significantly below the minimum lot size and it would be unreasonable to prevent the adjustment of the common boundary in this instance.</p> <p>The applicant contends that the proposal is consistent with the zone objectives and provides for a reconfiguration between two existing allotments that better reflects the topography of the land and links useable areas of the site.</p>

8.1 DA 2018/702 Boundary Adjustment - Broken Head Road

BLEP 1987 - SEPP 1	
Assessment of requested variation	
	It is considered the proposed boundary adjustment will not result in any unreasonable impacts in relation to rural character, amenity and demand for services.
<p>e) The Five Part Test (Note: only one of these tests needs to be satisfied)</p> <ul style="list-style-type: none"> • Are the objectives of the standard achieved notwithstanding non-compliance with the development standard? • Is the underlying objective or purpose of the development standard not relevant to the development and therefore compliance is unnecessary? • Will the underlying object of the purpose be defeated or thwarted if compliance was required and therefore is compliance unreasonable? • Has the development standard been virtually abandoned or destroyed by Council's actions in granting consents departing from the development standard and therefore is compliance with the development standard unnecessary and unreasonable? • Is compliance with the development standard unreasonable or inappropriate due to the existing use of the land and current environmental character of the subject property (should this property have been included in the current zone)? 	<p>It is considered compliance with the development standard in this instance is unnecessary and unreasonable. The subject allotments are already well below the 40 hectare minimum lot size and there are existing allotments in the immediate vicinity which are of similar size (also below the 40 hectare minimum) and are used for a similar purpose.</p> <p>The proposed boundary adjustment provides for a reconfiguration between two existing allotments that better reflects the topography of the land and links useable areas of the site for agricultural production. The proposal is not considered to result in any unacceptable impacts to the amenity or character of the locality.</p> <p>It is considered the proposed development is consistent with the objectives of the 7(c) in that it aims to encourage the productive use of the land and maintain the rural character of the locality.</p> <p>It is considered the underlying purpose of the development standard would not be compromised as a result of the proposed boundary adjustment, particularly as no further dwelling entitlements will be created.</p>

Further, the applicant provided an agricultural report (and supplementary advice). The report has concluded that the level of production that is achievable from existing Lot 1 and Lot 18 is such that the probability for long term agricultural use of these respective lots is not very high (each in their own right).

Both existing lots are at risk of being lost from purposeful long-term agricultural land use.

Proposed Lot B, which locates all of the practically usable agricultural land into one area, provides a greater level of sustainable production and income that is more appropriate to the living standard requirements of a land owner.

Options

Option One - Council determines the proposed variation to the minimum lot size development standard is appropriate in the circumstances of the case for the reasons discussed in this report and approves the variation to the development standard being sought. This is the recommended option.

Option Two - Council determines that the proposed variation to the minimum lot size is excessive or inappropriate in the circumstances and that the request should be refused. This option is not recommended.

The boundary adjustment subdivision of the land is permissible with consent and is consistent with the objectives of the 7(c) zone.

The proposed allotments are of sufficient size and shape to contain the existing improvements and approved developments on each property and will continue to facilitate the productive use of agricultural land.

In the case of proposed Lot A, although unlikely to be suitable for viable agricultural production, it is still of sufficient size to contain a future dwelling house without impacting adversely on surrounding agricultural production.

The proposed boundary adjustment subdivision will not result in any changes to the existing land use or built form and is considered to maintain the rural character and amenity of the locality.

Compliance with Clause 11(2)(b) under the BLEP 2012 is considered unreasonable in this circumstance and the request to vary this standard is warranted for the boundary adjustment subdivision of the subject land. Consequently, the request to vary the minimum lot size standard in this instance is well founded.

Should Council resolve to approve the application to vary this standard (Option One), staff will proceed to determine the development application under delegated authority.

RECOMMENDATION

That the application under SEPP 1 to vary the minimum lot size development standard in Clause 11 Subdivision of Land of the Ballina Local Environmental Plan 1987 for DA 2018/702 involving the boundary adjustment subdivision of two existing lots to create one x 2.9 ha allotment (Proposed Lot A) and one x 27.7 ha allotment (Proposed Lot B) be **APPROVED**, for the reasons outlined in this report.

Attachment(s)

1. DA 2018/702 - Locality Map - 112 & 140 Broken Head Road Broken Head Lot 18 DP 1074397 & Lot 1 DP 586688
2. DA 2018/702 - Proposed Subdivision Plan

8.2 Wollongbar Strategic Plan - Project Completion

8.2 Wollongbar Strategic Plan - Project Completion

Delivery Program Strategic Planning

Objective To report on submissions received in response to the public exhibition of the draft Wollongbar Planning and Environmental Study and draft Wollongbar Strategic Plan 2018 - 2038 and seek direction from the Council with respect to the adoption of the strategic plan.

Background

Council resolved at its Ordinary meeting held 28 April 2016 to proceed with the preparation of a place-based strategic planning process for the urban areas of Alstonville and Wollongbar [Minute No 280416/12].

Council's decision was in response to Action HE3.1.2b of the 2015/16 Delivery Program and Operation Plan (now Action HE3.1d of the 2018/19 plan relating to Wollongbar). This action relates to ensuring that Council's planning instruments reflect current and future needs through the preparation of contemporary forward planning documents.

In the above context, the review of the planning framework for Wollongbar progressed through a planning and environmental study process incorporating a comprehensive, multi stepped, community engagement program.

The initial community engagement process occurred over an approximate six-week period from 20 April 2017 until 2 June 2017.

The initial community engagement process included the following elements:

- Staff interviewing residents at the Wollongbar Shopping Centre (two week day afternoons);
- Staff door knocking homes in the Kuarrabri estate and established residential area (two Saturday mornings);
- Letterbox drop to approximately 1000 residential properties in Wollongbar providing advice on the strategic planning exercise and availability of an electronic survey;
- Dedicated web page and electronic surveys (separate surveys for residential and industrial owner/occupiers);
- Advertisements on Paradise FM re staff door knocking;
- Paradise FM interview, Community Connect story, press releases, and Ballina Shire Advocate notices;
- Letters to all property owners in the Russellton Industrial Estate;
- Letters (122) to owners of residential lots in established Wollongbar Village and WUEA selected for door knocking; and
- Letters to owners of commercial and large lots within Wollongbar Village, and owners of land adjoining Wollongbar urban areas.

Outcomes from the above included staff interviews with 74 people and receipt of 65 survey responses.

8.2 Wollongbar Strategic Plan - Project Completion

The Wollongbar Progress Association received a briefing on the community engagement process and survey results at its Annual General Meeting on 7 June 2017.

Submissions received in respect to the pre-study community engagement assisted to establish the direction of the draft Wollongbar Planning and Environmental Study (draft WPES) and the various issues that it examined. It also assisted in the development of a range of potential actions as contained in the exhibited draft Wollongbar Strategic Plan 2018 – 2038 (draft WSP).

Following the initial community engagement phase in 2017 work commenced on the preparation of the Wollongbar strategic planning documents.

This work was guided by the adopted Ballina Shire Growth Management Strategy 2012 which identifies the following strategic actions for Wollongbar:

- Accommodate further population growth through implementation of the Development Control Plan for Wollongbar Urban Expansion Area (WUEA) via the development assessment process.
- Plan for the provision of additional sporting facilities to service the increasing population.
- Maintain the urban buffer / inter-urban break between Wollongbar and Alstonville.
- Revisit the Third Village concept.
- Manage and/or promote Aboriginal, European and other non-Aboriginal cultural heritage values in accordance with relevant stakeholders.

The following additional issues were also examined through the environmental study process:

- Estimation of remaining residential development potential (lots and dwellings) within the Wollongbar Urban Expansion Area (WUEA) and established residential areas.
- Consideration of demographic characteristics including factors such as population growth rates, new dwellings and dwelling mix, dwelling occupancy rates, unemployment rates, car ownership and usage for journey to work.
- Availability of employment lands (industrial and commercial) to assist employment creation.
- Preliminary suitability assessment of land in close proximity to Wollongbar village to support residential development.
- Preliminary suitability assessment of land adjacent to the Russellton Industrial Estate to support industrial development.

Following the completion of the draft strategic planning documents the Council, at its Ordinary Meeting held on 26 July 2018 [Minute No 260718/13], endorsed the public exhibition of the draft WPES and draft WSP subject to further consideration following public exhibition.

Attachment 1 contains a copy of the draft Wollongbar Planning and Environmental Study as publicly exhibited.

8.2 Wollongbar Strategic Plan - Project Completion

Attachment 2 contains a copy of the draft Wollongbar Strategic Plan 2018 - 2038 as publically exhibited.

Attachment 3 contains a copy of the draft Wollongbar Strategic Plan 2019 - 2039 as recommended for adoption following public exhibition (inclusive of recommended amendments).

This report seeks direction from Council on the finalisation and adoption of the Wollongbar Strategic Plan.

Key Issues

- Forward planning framework and principles for Wollongbar
- Community engagement

Information

Alstonville Wollongbar Inter Urban Break (Urban Buffer)

The draft WSP identified two areas adjacent to Wollongbar as having potential for future urban development.

Further, the status of the urban break has historically been a key issue arising as part of strategic planning initiatives on the Alstonville Plateau, with this issue also being a key feature in the recently completed Alstonville Strategic Plan process.

A number of comments received in response to the exhibition of the Wollongbar strategic planning documents raised concerns regarding the future of the urban break located between Wollongbar and Alstonville.

Online survey responses also registered strong support for the retention of a rural separation between Wollongbar and Alstonville.

Due to the above the following information is provided related to the history of the urban buffer.

In addition, information is provided relating to the projected population of Wollongbar, industrial land supply as well as an overview of the current Wollongbar strategic planning process.

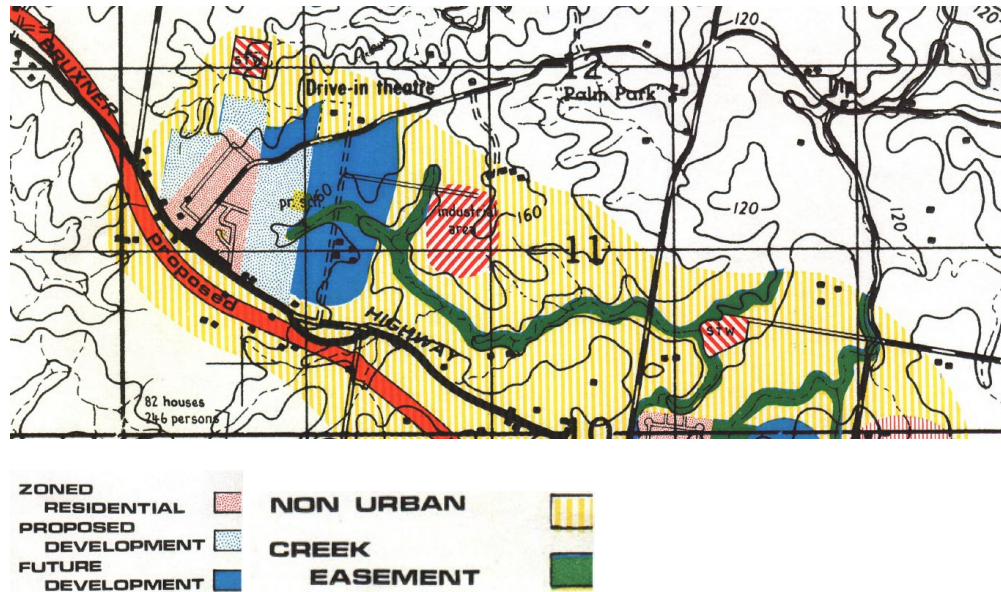
Urban Buffer Historical Context

In 1975 Tintenbar Shire Council adopted a development strategy for Wollongbar and Alstonville. That strategy set population targets (4,500 for Alstonville and 2,500 for Wollongbar) which when reached contemplated a separate village being developed.

The area between Wollongbar and Alstonville was designated as non-urban with a small industrial estate proposed to be located approximately where the Wollongbar Sports Fields are located today.

8.2 Wollongbar Strategic Plan - Project Completion

Extract from 1975 Tintenbar Wollongbar – Alstonville Strategy

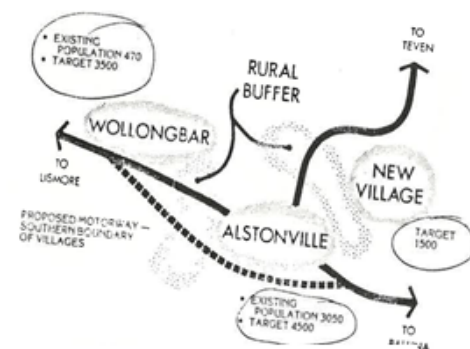


In 1983 the Ballina Shire Local Environmental Study reviewed the 1975 Wollongbar – Alstonville Strategy.

A rural buffer was proposed, between Wollongbar and Alstonville and a proposed new village, to maintain the individuality and integrity of each village.

The 1985 Draft LEP strategy also incorporated the buffer as well as the concept of a separate village triggered by Alstonville reaching its then target population of 5,900 persons by 2001.

The Principles Diagrams associated with the 1983 and 1985 planning processes are reproduced below.



1983 Principles Diagram

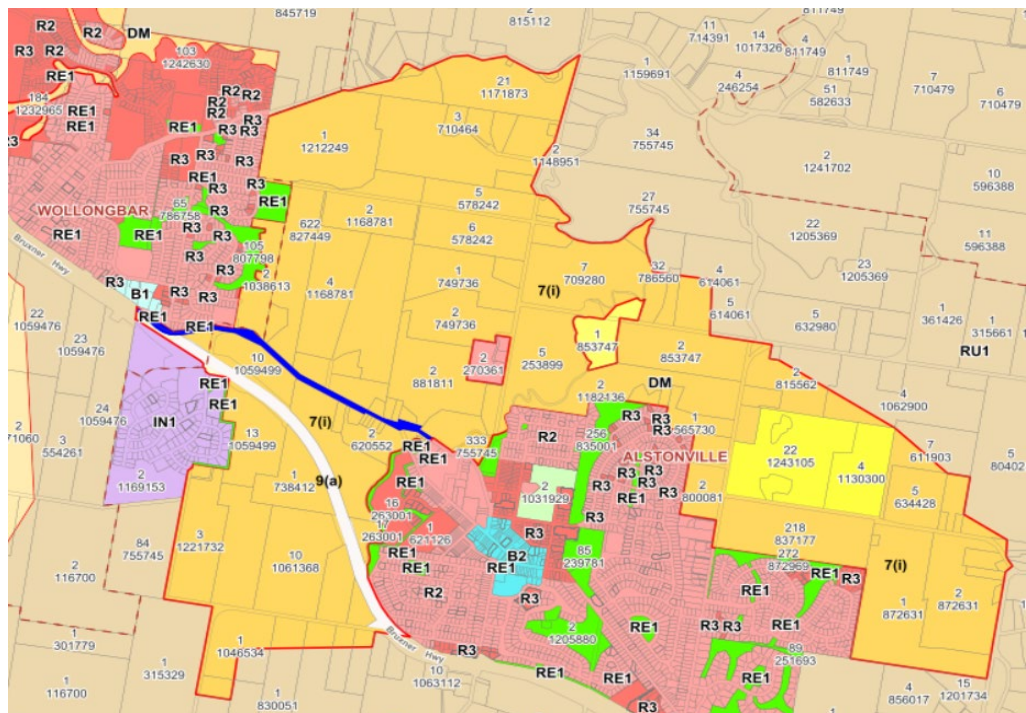


1985 Principles Diagram

The rural buffer concept was incorporated within Ballina LEP 1987 as the 7(i) Environmental Protection (Urban Buffer) zone.

The location of the urban buffer zone is shown by the mustard colour on the zoning plan extract as follows. The purpose of this zone is to maintain a rural separation between the Alstonville and Wollongbar urban areas.

Extract from Ballina LEP 2012 land Zoning Map



The precise reasons for the urban buffer being extended south of the proposed Bruxner Highway (Alstonville bypass) are not known.

In 2000/01, the Council explored the concept of a third plateau village and progressed this project to the identification of candidate village sites.

One of the five candidate third village sites was proposed to be located beyond the most southern extent of the urban buffer i.e. south-east of the Russellton Industrial Estate

The 7(i) Environmental Protection (Urban Buffer) zone under the provisions of Ballina LEP 1987 remains in place today as the area it occupies is deferred from the provisions of Ballina LEP 2012.

The legislative framework for Ballina LEP 2012 is based on the NSW Standard Instrument Principal LEP template. As the Standard Instrument does not contain a zone equivalent to the urban buffer zone the area occupied by this zone was deferred from Ballina LEP 2012.

In October 2015, the Department of Planning and Infrastructure finalised the Northern Councils E Zone Review process. Under the Northern Councils E Zone Review process the application of environmental protection zones is required to be based on both ecological or physical criteria and primary use of land considerations.

The consequences of this are that it resulted in a loss of opportunity to apply environmental protection zones to areas on the basis of scenic and amenity value, coastal value, water catchment characteristics or for urban buffer purposes.

8.2 Wollongbar Strategic Plan - Project Completion

Council considered the above at its Ordinary meeting on 27 April 2017 [Minute No 270417/12] and resolved to retain areas the subject of an environmental protection zone under Ballina LEP 1987 as deferred areas.

Therefore, the current policy position of Council is to retain the 7(i) Environmental Protection (Urban Buffer) zoning and by extension recognise an inter-urban break between Alstonville and Wollongbar through a land use zone.

Urban Buffer Current Strategic Policy Framework

The Ballina Shire Growth Management Strategy adopted by the Council in July 2012 contains the following strategic action for both Wollongbar and Alstonville:

Maintain the urban buffer / inter-urban break between Wollongbar and Alstonville.

The Alstonville Strategic Plan adopted by the Council in December 2017 contains the following strategic action:

Advocate a policy position which discourages proposals which seek to introduce urban style development within the rural area which separates Alstonville from Wollongbar and from farmland designated as being of State and Regional significance.

Retain the inter-urban break between Alstonville and Wollongbar

The draft Wollongbar Strategic Plan contains the following draft strategic action (Action 1):

Retain the rural separation between Wollongbar and Alstonville (north of Bruxner Highway).

Advocate a policy position which generally discourages proposals which seek to introduce urban style development within the rural area which separates Wollongbar from Alstonville with particular reference to properties fronting Lismore Road.

The change in wording proposed in the draft WSP action was designed to reinforce the importance of the urban buffer north of the Bruxner Highway along Lismore Road.

It was this part of the urban buffer that was frequently nominated in conversations with local residents during the 2017 consultation process as being “the buffer” between Wollongbar and Alstonville.

It is also this part of the urban buffer that is experiencing the greatest pressure for development (refer Submission 5 in Attachment 5 and a number of submissions made in response to the Alstonville strategic planning process in 2017).

The urban buffer north of the Bruxner Highway is visible from Lismore Road, and the rural vistas it contains is the dominant visual element, which reinforces the separation of Wollongbar and Alstonville along the major road link between the two villages.

8.2 Wollongbar Strategic Plan - Project Completion

In contrast the land to the south of the Bruxner Highway (south–east of the Russellton Industrial Estate), is now for the most part, visually separated from the rural land to the north of the highway.

This was not the case prior to the construction of the Alstonville bypass.

Population Target for Wollongbar

The 1985 Commission of Enquiry Report into the then Draft Local Environmental Plan (later became Ballina LEP 1987) noted that the *“submissions from Wollongbar residents complain of the lack of facilities existing in the village as attributable to its minimum size”*.

In 1986, 710 people lived in Wollongbar.

Commissioner Simpson was of the view that the development of Wollongbar to the then size of Alstonville (4,500 to 5,000 people) could be achieved with minimal effect on the scenic and agricultural potential of the urban buffer.

He also considered that a village of that size could also operate as a viable economic unit from a community facility and infrastructure perspective.

The population projections contained within the draft WPES, based on available land supply in December 2017, indicate that Wollongbar will likely reach a population of approximately 5,000 by 2038. This compares with a population of 2,828 people in 2016.

Feedback obtained from the 2017 community consultation process also indicated a frustration over the lack of shops and services in Wollongbar.

This was primarily related to medical services, a larger supermarket and variety in shops.

The population of Wollongbar village, and its socio- economic profile, has a significant bearing on the nature of services and shopping facilities that are established.

This was a consideration when nominating an alternative to the United Protestant Association (UPA) site for residential development suitability in the draft WPES.

Shire Housing and Population Context

Prior to the coming into effect of the North Coast Regional Plan 2036 (March 2017) an additional dwelling target of 8400 dwellings was set for Ballina Shire for the period 2006 to 2031 in the Far North Coast Regional Strategy (FNCRS).

The 2012 Ballina Shire Growth Management Strategy was required to address the delivery of the dwelling target through local growth management strategies.

In the above context Ballina Shire’s strategic direction incorporated strategies designed to achieve the dwelling targets set in the FNCRS.

8.2 Wollongbar Strategic Plan - Project Completion

The North Coast Regional Plan 2036 no longer contains a dwelling target for Ballina Shire. It has been replaced with a population projection of 45,850 and a dwelling projection of 22,000 for 2036.

The 2016 Census revealed that Ballina Shire had a population of 41,790 and contained 19,107 private dwellings.

In terms of Wollongbar there is, therefore, no longer an imperative to consider strategies designed to provide new housing opportunities so as to meet State based targets.

Decision making relating to the housing supply in Wollongbar, and more generally on the plateau including the third village concept, may now be made to reflect local circumstances and requirements.

In the context of lot supply for new housing it was estimated in 2018 that there was potential for 5,500 residential lots (excluding infill sites) within the shire.

This number of potential lots equates to in excess of 20 years of land supply and a potential shire wide potential population increase of approximately 14,300 people.

Overview of Wollongbar Strategic Planning Process

The philosophy adopted when preparing the draft WPES was to examine a range of factors impacting on Wollongbar village, examine relevant data and then draw conclusions based on the data provided.

This is the same approach as used in the preparation of the Wardell and Alstonville strategic plans and the Ballina Major Regional Centre Strategy.

The draft WPES is also used as a means of proposing a variety of change ideas, some of which were derived from comments made by community members during the pre-study consultation, and some as a response to issues that emerged during the study process.

The WPES, and accompanying Wollongbar Strategic Plan 2019 – 2039, when finalised and adopted by the Council, are proposed to form the basis for Wollongbar village strategic planning decision-making in the 20 year period to 2039.

Regular review of the strategic plan will also be required to ensure that it remains contemporary and adequately addresses issues as they arise.

A draft community vision for the future of Wollongbar village has been developed using comments made by community members in response to the public engagement initiatives undertaken during 2017.

The draft vision as exhibited states:

“our community has a vision for the future of Wollongbar to 2039 that involves:

- *Ensuring that the sense of community and wellbeing present in Wollongbar is maintained.*

8.2 Wollongbar Strategic Plan - Project Completion

- *Ensuring that Wollongbar continues to grow so as to facilitate well planned housing choice and employment opportunities.*
- *Ensuring that infrastructure such as footpaths, parks, as well as shops, services and jobs continue to be provided and enhanced for the convenience of residents."*

The draft WSP (Attachment 3) uses the three vision elements as locality objectives with each objective supported by a number of proposed actions.

The community's vision for Wollongbar village is therefore proposed to be achieved through the mechanism of the exhibited strategic plan and the 12 strategic actions that it contains.

Draft WPES Significant Findings and Conclusions

Findings that are more significant and conclusions drawn from data contained within the draft WPES include the following:

Residential Land Supply

- Residential land supply is limited, with an estimated potential 860 conventional lots / potential dwellings remaining as of December 2017. This includes a potential 78 lots outside of the WUEA and a total, at that time, of 62 vacant subdivided residential lots.
- Of the potential 720 unsubdivided lots / dwellings located in the WUEA, approximately 370 potential lots are estimated to be contained within 32ha of zoned residential land owned by the United Protestant Association (UPA).
- Based on estimated annual growth to 2038 (2.65%pa) an additional 850 dwellings would be required to accommodate this growth.
- As a contingency, based on advice received from the UPA during the 2017 consultation process that its land holding may not be used to supply conventional residential lots, alternative areas for greenfield residential lots were examined.

A preliminary residential suitability assessment of seven sites in close proximity to Wollongbar village was undertaken as part of the draft WPES process.

Of the seven sites evaluated only one site was considered suitable and warranting further evaluation based on the evaluation criteria used. That site is located within the urban buffer zone that separates Wollongbar from Alstonville. The land is also designated primarily as State Significant Farmland.

- To facilitate housing choice within the established village (outside of WUEA) dual occupancy – duplex development is nominated as potentially suitable. This is subject to it being initially limited to certain larger lots (minimum 900m²) and not subject to slope exceeding 20%. This is a similar strategy to that which Council has already endorsed for Alstonville.

8.2 Wollongbar Strategic Plan - Project Completion

It is noted that the State Government housing diversity and choice target, as contained in the North Coast Regional Plan 2036, is for 40% of new dwellings to be in the form of apartments, dual occupancies, townhouses and villa homes on lots less than 400m² by 2036. In 2016 only 16% of Wollongbar's housing stock was in the form of dual occupancies, villas and townhouses.

Industrial Land Supply

- Approximately 16ha of vacant industrial land exists within the Russellton Industrial Estate (RIE). Site topography (slope) is a major constraint for existing vacant industrial zoned land within the RIE.
- Council's 28 lot industrial subdivision (Kays Lane and Northcott Crescent, not yet released as of March 2019) may be the last viable industrial subdivision within the RIE.

Finalisation of this subdivision has not occurred due to costs associated with completing roads, drainage, and sewer including pumping station works. These works have been estimated to cost in excess of \$4 million.

- Industrial land (employment land) is estimated to conservatively generate 20 – 30 jobs per hectare.
- Sites potentially suitable for the expansion of the RIE have been the subject of a preliminary evaluation. A site located in Dulcet Lane, with an area of 23ha, has been identified as potentially suitable for industrial use. If ultimately rezoned, it has the potential to accommodate 500 – 700 jobs. This site is also located within the urban buffer zone on land designated as State Significant Farmland.

When giving consideration to whether Strategic Action No 9 (relates to industrial land release at Russellton) contained within the draft WSP should be adopted, it is also relevant to consider both the increased unemployment rate for Wollongbar in the five years to 2016 (increased from 4.6% to 6.3%), and limited availability of flood free industrial land in the shire.

Irrespective of the potential employment benefits associated with additional non slope constrained industrial land becoming available at Russellton, there are numerous significant issues to be considered before it can be determined if such a proposal has sufficient merit to proceed.

In terms of shire wide industrial land supply, advice received in March 2019 indicates there is very little serviced vacant industrial land currently available. There are a potential 28 lots at Russellton, an additional potential 20 lots in Boeing Avenue (Ballina), potentially 22 lots off North Creek Road (Ballina) and additional lots within the 35ha Southern Cross Industrial Expansion Area once rezoned.

In terms of a regional perspective anecdotal advice indicates that there is no vacant land available in Byron Bay or Bangalow and that the supply at Goonellabah is almost exhausted.

8.2 Wollongbar Strategic Plan - Project Completion

Wollongbar Demographic Characteristics (ABS data)

- Population increased by 432 people (+18%) in the five year period to 2016.
- An additional 246 dwelling houses (+27.6%) were built in the five year period to 2016.
- The median age of Wollongbar residents was 42 years in 2016. This is the same as it was in 2011. The median age across Ballina Shire increased from 45 to 48 years in the same period, and in Alstonville from 48 to 50 years.
- Unemployment has increased from 4.6% in 2011 to 6.3% in 2016. This is in contrast to the Ballina Shire result which saw unemployment reduced from 6.3% to 5.9% during this period. Alstonville's unemployment rate also increased from 5.6% to 5.9% in the same period.

Sustainability Considerations

- **Environment**

The strategic direction outlined in the draft WSP is one based on maintaining a supply of greenfield housing lots in Wollongbar over the next 20 year period. Wollongbar is currently the only source of greenfield housing lots on the Alstonville Plateau located within Ballina Shire.

At the time of preparation of the draft WPES the maintenance of a supply of greenfield housing lots on the plateau was considered to require the release of suitable additional residential land by the late 2020s. Such land would compensate for the potential loss of lots from land owned by the UPA within the WUEA. It assumed that the UPA's Sneaths Road site would not be used to supply conventional residential lots.

The UPA subsequently advised in November 2018 (refer Submission 2 in Attachment 5), that the UPA is likely to release its land holding in Sneaths Road for residential subdivision within five years. Given this advice there is no immediate need to consider alternative greenfield land release sites for housing within the 20 year life of the strategic plan.

The expansion of the Russellton Industrial Estate is also canvassed within the draft WPES as a means through which additional jobs may be able to be provided in close proximity to Wollongbar. The case for additional industrial land supply is more compelling than for residential development.

This is based on the extent of available industrial land in the Shire and region, and that planned residential land releases are underway in Wollongbar. The proximity of the Russellton Industrial Estate to both Ballina and Lismore is also a factor to consider in relation to the availability and productivity of new land identified for employment purposes.

If additional land is eventually released for residential and / or employment use this will impact on land otherwise used for agricultural purposes. It may also impact on the urban buffer between Wollongbar and Alstonville (current preferred sites are located within the urban buffer zone).

The environmental consequence associated with contemplating land releases within the urban buffer, and its non-compliance with State based planning policies, would require detailed evaluation to determine whether a substantive case can be made in support of such action.

The level of community support for planning proposals which seek to encroach upon land located within the urban buffer should be viewed as a factor when making decisions in respect of such proposals.

- **Social**
Significant social benefits are envisaged to result from strategies that result in increased housing choice opportunities and additional jobs being located in close proximity to an expanding urban area.
- **Economic**
Local economic activity is anticipated to be stimulated by strategies that result in more residential building and local job opportunities.

Legal / Resource / Financial Implications

The implementation of actions detailed in the strategic plan does not raise any specific legal obligations beyond compliance with the *Environmental Planning and Assessment Act 1979* where they relate to LEP and DCP matters.

The majority of actions, where Council has been assigned implementation responsibility, can be scheduled within existing work programs, primarily within the Strategic Planning team.

Consultation

The draft WPES and draft WSP were exhibited from 22 August 2018 until 2 November 2018.

The community engagement strategy for the exhibition of the draft WPES and the draft WSP included the following elements:

- Dedicated web page and associated information sheets and electronic survey;
- Letter box flyer delivered to approximately 1000 residential properties;
- Letters and emails to community groups, relevant government departments, Progress Association, and all persons previously advised as part of the pre-study consultation;
- Media releases, Advocate advertisements, Community Connect, radio interviews, Facebook posts; and
- Exhibition material at libraries, customer service centre and copy to Progress Association.

8.2 Wollongbar Strategic Plan - Project Completion

A Council staff member provided a public briefing at a Wollongbar Progress Association organised community meeting held during the exhibition period at which more than 70 local residents attended.

Online Survey

During the exhibition period 114 valid online survey responses were received as well as an additional 18 email and letter submissions.

In total 298 electronic surveys were received. Subsequent analysis revealed that one device was responsible for lodging 184 survey responses. Once this information became evident all 184 responses were removed from the survey data and survey results re-tabulated.

Attachment 4 contains a copy of re-tabulated survey results related to the Wollongbar 2038 Community Survey prepared by Council staff.

The evaluation of valid survey data found that there is strong support for the three vision elements and reasonable levels of support for many of the strategic actions contained within the draft strategic plan.

The Wollongbar 2038 Community Survey was designed to assist the community to provide feedback on the ideas contained within the WPES as well as the strategic actions proposed in the draft WSP. Survey results in themselves should not be used to determine public policy but are considered to be a part of a larger framework of tools available to assist public policy decision making.

Written Submissions

Attachment 5 contains copies of the 18 written submissions received.

Attachment 6 contains a summary of the key issues raised in the written submissions together with staff comments and recommendations.

The United Protestant Association (UPA) submission indicates that whilst they cannot commit to any firm plans they have begun to review their site and probably will release it to subdivision and residential development. The nominated time frame for releasing land was indicated as possible within five years.

It was indicated that the area south of Plateau Drive, along Sneaths Road, is likely to be released first. Refer to submission and summary No. 2 within Attachments 5 and 6.

Of the 18 written submissions received three submissions (Wollongbar Progress Association; M/s M Perkins; M/s J Gardiner) raise strong concerns regarding a variety of issues.

This included concerns relating to the information contained in the exhibited strategic planning documents, the potential encroachment of urban uses into the urban buffer, the lack of commentary concerning the passive recreation needs of the Wollongbar community, assumptions used to estimate the population increase potential resulting from the development of the UPA land as well as various other matters.

8.2 Wollongbar Strategic Plan - Project Completion

Refer to submissions and summaries Nos 12, 16 and 17 within Attachments 5 and 6.

Included within the submissions were six proposals relating to the rezoning of land; Newton Denny & Chapelle – 246 – 250 Lismore Road, Elders 5 - Smith Lane, Planit Consulting Pty Ltd – Lot 10 DP 1059499 Lismore Road, J Mudge – 12 Gilmore Close, GeoLINK – Lot 3 DP 1221732, and Newton Denny & Chapelle – 48 – 52 Simpson Avenue. Refer to submissions and summaries Nos 3, 5, 8, 9, 13 and 19 within Attachments 5 and 6.

The owners of the Russellton and Rifle Range Road proposed urban evaluation areas made submissions indicating their support for what was proposed as well as raising a number of other issues; J Daley – 73 Bruxner Highway, and W Porter – 184 Rifle Range Road. Refer to submissions and summaries Nos 7 and 15 within Attachments 5 and 6.

Submissions were also received from four NSW government departments and organisations. These submissions raised a variety of issues and some concerns. Refer to submissions from TAFE NSW, Department of Primary Industries Agriculture, Department of Industries – Lands, and Roads and Maritime Services. Refer to submission Nos 4, 6, 10 and 11 within Attachments 5 and 6.

The Alstonville Wollongbar Chamber of Commerce also made a submission (No 18) and is generally supportive of what is proposed.

In response to the issues raised in submissions a number of changes have been proposed to the strategic actions contained within the exhibited WSP. Changes proposed are detailed within Option 1 below.

Options

1. Council adopts the draft Wollongbar Planning and Environmental Study and draft Wollongbar Strategic Plan 2019 – 2039 (the timeframe reflecting the year of adoption) with appropriate amendments resulting from consideration of matters arising from the public exhibition process, and priorities, as set out in Attachment 3.

This is the recommended option.

Amendments recommended for the Wollongbar Strategic Plan 2019 – 2039 are as follows:

- Action 6 – Restrict dual occupancy development to “attached dual occupancy” to be consistent with planning proposals for Wardell and Alstonville.
- Action 7 – Defer action relating to the evaluation of 184 Rifle Range Road to support urban (residential) development for a period of 5 years. The five year period is recommended to allow future review of the extent to which housing supply is meeting planned outcomes. However, if the Council does not wish to contemplate or enable further residential expansion of Wollongbar into the urban buffer area at this time, action 7 should be deleted from the strategy.

8.2 Wollongbar Strategic Plan - Project Completion

- Action 10 – Delete action relating to the consideration of the future utility of the Wollongbar Basketball Court site in Kays Lane. Evaluation of this site has found that it has limited potential as an industrial site and therefore should be retained to support recreational activities.
- An additional action be inserted relating to Council's preparedness to further consider an LEP amendment application in respect to 5 Smiths Lane, Wollongbar to change the zoning from R2 Low Density Residential to R3 Medium Density Residential; and 246 – 250 Lismore Road, Wollongbar to permit the redevelopment of this site for the purpose of a service station.

With respect to the property at 246-250 Lismore Road, Council is in receipt of a request to amend the LEP to enable the proposed development. Although this land currently contains a service station, the LEP amendment is sought to provide a greater level of flexibility in relation to a future service station redevelopment.

It is recommended that this be the subject of further reporting to Council.

This approach is reflected in the recommendations.

Under this approach, it is important to recognise that the strategic plan includes an action to further investigate expansion of the Russellton Industrial Estate eastward at action no.9 (extract from the WSP below). This represents a shift in a long standing policy position regarding provision for urban land uses in the Alstonville Wollongbar urban break (buffer area).

9 | Evaluate the potential for land adjoining the Russellton Industrial Estate to the east (Lot 13 DP 1059499 and Lot 1 DP 738412) to support urban (industrial) development.

If this option is adopted by the Council, staff will proceed to finalise and publish the strategic plan and program the implementation of the actions as part of future operational plan and delivery programs.

2. Council defers further consideration of the Wollongbar Strategic Plan 2019 – 2039.

Should Council require additional information on issues raised in the submissions, or on the planning documents exhibited, then this report could be deferred for a further briefing or workshop.

If Council formed a view that proposals such as those related to permitting residential development within the urban buffer, or otherwise outside of the urban boundaries of Wollongbar (Submission No 5), warranted more detailed examination then it may be appropriate that further consideration of the Wollongbar Strategic Plan 2019 – 2039 as presented in this report be deferred.

Should Council wish to explore further the implications of a no-growth, urban buffer policy and significant farmland protection strategy, as opposed to the housing choice, consolidation and growth strategies developed in the draft WPES and draft WSP, then deferral of this report for a briefing or workshop may be appropriate.

8.2 Wollongbar Strategic Plan - Project Completion

There are no timing imperatives related to this project.

3. That Council ceases further consideration of the draft Wollongbar Planning and Environmental Study and the draft Strategic Plan 2019 - 2039.

Given the extent of community engagement undertaken this approach is not recommended. Adoption of the plan with recommended amendments will enable the programing and associated funding of actions to take place.

RECOMMENDATIONS

1. That Council adopts the draft Wollongbar Planning and Environmental Study, as contained in Attachment 1 to this report.
2. That Council adopts the draft Wollongbar Strategic Plan 2019 – 2039, as amended and contained within Attachment 3 to this report.
3. That a report be prepared for the Council's further consideration relating to the LEP amendment request lodged in respect to Lot 2 DP 527953, Nos 246 to 250 Rifle Range Road, Wollongbar, to permit a service station on this site.
4. That Council thank those that made submissions to the process and participated in the community engagement.

Attachment(s)

1. Attachment 1 - Draft Wollongbar Planning and Environmental Study (as exhibited) (Under separate cover)
2. Attachment 2 - Draft Wollongbar Strategic Plan 2018 - 2039 (as exhibited)
3. Attachment 3 - Draft Wollongbar Strategic Plan 2019 - 2039 as amended post exhibition
4. Attachment 4 - Wollongbar Community Survey Results April 2019
5. Attachment 5 - Submission Copies (Under separate cover)
6. Attachment 6 - Submission Summaries

8.3 Low Rise Medium Density Housing Code

8.3 Low Rise Medium Density Housing Code

Delivery Program Strategic Planning

Objective To consider the implications of the NSW State Government's Low Rise Medium Density Housing Code applying to Ballina Shire

Background

The Low Rise Medium Density Housing Code (the Code) is a code under the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the SEPP).

The Code will apply to Ballina Shire as from 1 July 2019.

In the case of Ballina Shire, the Code will permit as complying development manor houses, dual occupancy, and multi dwelling housing (terraces) within the R3 Medium Density Residential zone. The Code will not apply to the R2 zone because multi dwelling housing and dual occupancy are not currently permitted within this zone.

In summary, complying development is an existing system under the *Environmental Planning and Assessment Act* that operates through the establishment of a predefined set of criteria to assess development against for certain types of development. If the criteria are met by a proposed development, the development can proceed. Complying development proposals do not involve the merit based assessment of issues that occurs in relation to development that is not classified as exempt or complying development.

The Code was initially proposed to be applied to all NSW councils from 6 July 2018. Following concerns raised with the State Government by some councils, the Code was selectively applied to certain local government areas that did not seek to be deferred from its provisions.

Council sought deferral from the Code provisions in June 2018 to enable the implications of applying the Code to be further examined.

Currently 50 of the 128 councils in NSW are deferred from the Code until 1 July 2019. In terms of North Coast councils Ballina, Byron, Tweed, Coffs Harbour and Bellingen have been deferred from the Code provisions. The Code is applicable to the Lismore, Richmond Valley, Kyogle, Clarence Valley, Kempsey, Nambucca, and Port Macquarie - Hastings local government areas.

Verbal advice from Department of Planning and Environment staff indicated that a planning proposal would be required to be prepared if a Council proposes to seek a permanent deferral from the Code.

The purpose of this report is to seek direction on the application of the code within the Ballina Shire local government area.

Key Issues

- Introduction of State based planning provisions
- Medium Density Design Guidelines
- Manor houses and terrace housing forms

Information

Applicability of the Code to Ballina Shire

In the case of Ballina Shire, the Code will permit as complying development manor houses, dual occupancy and multi dwelling housing (terraces) within the R3 Medium Density Residential zone. Land constraint restrictions within the Code, however, prevent complying development from being undertaken on land certain land including upon land mapped as containing Class 1 or 2 acid sulfate soils.

The majority of Ballina Island and West Ballina are mapped as containing Class 2 acid sulfate soils. These areas are therefore excluded from the provisions of the SEPP. This further reduces the impact of the Code in Ballina Shire.

Applicability of the Code to Tweed and Byron Shires

Advice obtained from Department of Planning and Environment staff indicates that neither Tweed nor Byron Shires have made submissions (as at 6 May 2019) for their ongoing exclusion from the provisions of the Code after 1 July 2019.

In the case of Tweed Shire, information obtained from their staff indicates that they had submitted a planning proposal to the Department of Planning and Environment relating to implementation aspects of the Code. Tweed Shire Council is currently in a process of negotiating aspects of the planning proposal, which have not yet been publicly exhibited.

Byron Shire staff have advised that whilst they have not prepared a planning proposal negotiations were taking place at a political level relating to the applicability of the Code to Byron Shire.

In the case of both Tweed and Byron shires, the R2 Low Density zone, under their 2014 LEPs permit with development consent, attached dwellings, multi dwelling housing, and dual occupancy development.

These uses are prohibited in the R2 zone under the provisions of Ballina LEP 2012, which permits such uses only within the R3 Medium Density zone. This means that the SEPP will apply to areas zoned R2 as well as R3 (also R1 in the case of Tweed) and have wider implications for these shires than is the case in Ballina Shire.

In summary, the structure of the R2 and R3 residential zones in Ballina Shire means that the low rise medium density housing provisions only have effect in the R3 zone. The principles of the code align with the purpose of the R3 zone in Ballina Shire which is to enable a variety of housing forms.

Impact of the Code on Ballina Shire

This report seeks direction on whether a planning proposal should be prepared to reduce or remove the application of the Code in Ballina Shire. The Code will apply to Ballina Shire from 1 July 2019.

The Code introduces new housing form definitions, and complying development controls related to *dual occupancy*, *manor house* and *multi dwelling housing (terraces)*.

The SEPP defines *manor house* and *multi dwelling housing (terraces)*, being the newly defined housing forms, as follows:

manor house means a residential flat building containing 3 or 4 dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall or floor, and
- (b) at least 1 dwelling is partially or wholly located above another dwelling, and
- (c) the building contains no more than 2 storeys (excluding any basement).

multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

Manor house and multi dwelling housing (terraces) are considered to be already permitted with consent within the R3 Medium Density zone under the provisions of Ballina LEP 2012 (LEP). The residential flat building and multi dwelling housing definitions contained within the LEP currently also encompass these housing forms.

Dual occupancy development is currently permitted in the R3 zone under the LEP.

The following are the more significant implications for Ballina Shire arising from the application of the Code:

Minimum Lot Size Requirements

The following table sets out the minimum area and width requirements (at the building line) specified for dual occupancy, manor house and multi dwelling housing (terraces) in the Code.

Dwelling Type	Minimum Lot size	Minimum Width
Dual occupancy (attached or detached)	400m ²	12m
Dual occupancy (part of dwelling located above another dwelling)	400m ²	15m
Manor House	600m ²	15m
Multi-unit Housing (terraces)	600m ²	15m

In all of the above cases the Code specifies that where a minimum lot area is specified in an environmental planning instrument that area becomes the required minimum lot area.

8.3 Low Rise Medium Density Housing Code

In the case of Ballina LEP 2012 clause 4.1A enables consent to be granted for the erection of attached or semi-attached dwellings on lots having a minimum area of 300m² within the R3 zone. This is, however, subject to the development incorporating the subdivision of land into four or more lots.

Ballina DCP 2012 *Chapter 4 Residential and Tourist Development* (DCP) incorporates minimum lot area requirements for various types of residential accommodation (Table 4.6). The minimum lot area specified for multi-dwelling housing and residential flat buildings is 1000m² and for dual occupancy, it is 450m² (attached) or 600m² (detached).

The Code would therefore permit smaller lots to be developed for low rise medium density housing purposes than would be the case if controls under Ballina LEP and DCP were applied. It is considered that having regard to the development standards contained within the Code that there are unlikely to be any significant adverse outcomes associated with the lower lot sizes.

There are likely to be few individual lots available in those areas to which the Code will apply below 450m². This is because 450m² is the current minimum lot size applicable to certain new release areas under the LEP provisions.

The minimum lot sizes specified under the code are also significantly below the current minimum lot sizes applicable under the LEP in existing more established areas.

The option exists for Council to prepare a planning proposal seeking to incorporate minimum lot sizes for dual occupancy, manor houses and multi-unit housing (terraces) within the LEP.

Such action is not considered necessary as the Code is not expected to have a significant impact on the extent or form of medium density development in Ballina Shire.

Car Parking

The Code's minimum car parking requirement for dual occupancies, terraces and manor houses is one space per dwelling.

The DCP car parking requirement is two spaces per dwelling for dual occupancies (Manor houses and terraces are not specifically addressed in the DCP).

When the Code's setback provisions applicable to car parking (minimum 5.5 metres) are considered, which enables a stack space to be located in front of a designated car parking space, then the result is effectively the same as under the Council DCP.

This is because the DCP also permits stack parking as long as one space is a covered space.

Code Complexity

Council's building surveyors have examined the provisions of the Code and compared these with provisions applicable under the provisions of the DCP.

8.3 Low Rise Medium Density Housing Code

The view expressed is that the Code is onerous and prescriptive on design matters when compared with Council's DCP.

Designs for low rise medium density housing must be prepared by, or under the immediate direction of, an architect or an accredited building designer.

A Design Verification Statement is also required to be prepared which illustrates how the Design Criteria contained within Section 2 of the Medium Density Design Guide has been achieved.

In terms of design outcomes, including streetscape, it is envisaged that compliance with the Code is likely to result in acceptable outcomes.

Given the perceived complexities of the Code it is considered that, in a Ballina Shire context, there is unlikely to be significant interest in utilising the Code's provisions.

Conclusion

The Code will apply to Ballina Shire from 1 July 2019.

To seek exclusion from the Code would require a planning proposal to be prepared and an LEP amendment to be finalised.

The LEP amendment process would take approximately six months to finalise during which period the Code would be in force and available for use.

There is also no guarantee that the LEP amendment would be agreed to by the Department of Planning and/or the Minister for Planning.

The Code is likely to have limited applicability to development within the Shire due to land constraint issues.

In addition the perceived complexity of the Code is considered to be a disincentive to its use within a Ballina Shire context.

For these reasons it is considered that the preparation of a planning proposal which seeks to limit the application of the Code or to impose minimum lot size requirements is not warranted at this time.

Sustainability Considerations

- **Environment**
Not Applicable.
- **Social**
Not Applicable.
- **Economic**
There are considered to be no significant economic advantages to be gained from utilising the complying development pathways available through use of the Code in a Ballina Shire context.

8.3 Low Rise Medium Density Housing Code

Legal / Resource / Financial Implications

Application of the Code to Ballina Shire from 1 July 2019 is unlikely to give rise to any significant legal, resource or financial implications.

Consultation

Consultation has been undertaken with a neighbouring council.

Options

The following options are available:

1. Take no immediate action to prevent the application of the Code to development of low-rise medium density housing within Ballina Shire.

This is the recommended option. If this option is adopted then the Code will be available for use by those persons wishing to develop low-rise medium density housing, through the complying development pathway, upon suitable sites within Ballina Shire. Given that the Code will apply automatically from 1 July 2019 adoption of this option will provide greater certainty to the development industry and those who may seek to use its provisions.

Council could under this option also set a time period, say 12 months after 1 July 2019, in which to review the impact of the Code on development within the Shire. The extent to which the Code has been applied by the development industry and application of policy responses could then be considered further.

2. Resolve to prepare a planning proposal, which seeks to prevent the application of the Code to Ballina Shire and or incorporate minimum lot size provisions for low rise medium density housing within Ballina LEP 2012.

This option is premature as there is likely to be low uptake of the Code provisions given its complexity and the more streamlined and less onerous provisions contained within the DCP.

RECOMMENDATIONS

1. That Council notes that the NSW State Government's Low Rise Medium Density Housing Code will apply in the Ballina Shire local government area from 1 July 2019.
2. That Council review the operation of the Low Rise Medium Density Housing Code and its implications in Ballina Shire after a year of the Code's operation during the 2020/21 financial year.

Attachment(s)

Nil

8.4 Land Classification - Lot 11 DP 1251548 Willie Wagtail Place Alstonville

8.4 Land Classification - Lot 11 DP 1251548 Willie Wagtail Place Alstonville

Delivery Program Strategic Planning

Objective To determine the classification of recently acquired land under the provisions of the Local Government Act 1993.

Background

Lot 11 DP 1251548 (Lot 11) entered into Council's ownership on 14 March 2019 upon the registration of the plan of residential subdivision for Willie Wagtail Place at Alstonville.

The plan of subdivision designates Lot 11 as a Drainage Reserve as the lot contains infrastructure designed and constructed as part of the drainage system servicing the allotments and road system within this new subdivision.

Lot 11 is shown outlined by red edge in the locality plan below.



The purpose of this report is to determine the classification of Lot 11 under the terms of the *Local Government Act 1993* (LG Act). Part 2 of Chapter 6 of the LG Act regulates the management of public land.

Specifically, sections 26 and 27 of the LG Act require public land owned by Council to be classified as either “community” or “operational” land in accordance with its intended use.

Key Issues

- Correct classification
- Nature and use of the land

Information

The subject lot has been dedicated to Council by the developers of the Willie Wagtail Place subdivision for the purpose of a drainage reserve. The land contains stormwater management infrastructure provided as part of, and servicing, the residential development on the adjacent land.

Lot 11 has an area of 475.7m² and is zoned R2 Low Density Residential under the provisions of Ballina Local Environmental Plan 2012.

As Lot 11 has been created to contain stormwater management infrastructure and does not function as open space for public recreation it is recommended that it be classified as operational land in accordance with the provisions of the LG Act.

Section 31 of the LG Act provides that before a council acquires land, or within three months after it acquires land, it may resolve that the land be classified as either community land or operational land.

If the land has not been classified within the three month period then it is taken to have been classified as community land.

The subject land came into Council's ownership on 14 March 2019 upon the registration of Deposited Plan 1251548 and therefore the three month classification "window" expires on 14 June 2019.

Section 34 of the LG Act requires that public notice of a proposed resolution to classify land must be given and that a period of not less than 28 days to receive submissions must be provided.

A public notice of the proposal to classify the subject land as operational land was displayed in the Ballina Shire Advocate on 3 April 2019 in accordance with section 34 of the Act. Submissions were invited until 8 May 2019.

No submissions were received in response to the notification.

Given that the land is now in Council's ownership Council and the required public notification has been completed, it is now necessary for Council to confirm whether the land is to be classified as operational land under the terms of the LG Act.

Sustainability Considerations

- **Environment**
The classification of the subject lot as operational land is not expected to result in any negative environmental, social or economic outcomes. An operational classification is consistent with the current and proposed use of the land for stormwater management.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

The classification of Lot 11 as operational land is a legal mechanism under the LG Act that provides Council with flexibility in the management and maintenance of the land for stormwater infrastructure.

The proposed classification will not directly result in adverse resource or financial implications but will enable the efficient management and maintenance of the land for its intended public utility purpose in the long term.

Consultation

Public notification of the proposal to classify the land as operational land has occurred in accordance with the requirements of section 34 of the *Local Government Act 1993*.

Public submissions were invited, with the closing date being 8 May 2019. No submissions in response to the notification were received.

Options

1. Council may resolve to classify the lot as operational land.

Under this option, the proposed classification of the lot as operational land would take effect immediately upon the resolution of the Council.

This is the recommended approach.

2. Council may resolve to classify the lot as community land.

Where land is classified as community land, Council would be obliged to manage the land for community purposes and make provision for its categorisation and incorporation into a plan of management. Given the intended use of the land is exclusively for stormwater management, classifying the land as community land is not recommended.

The classification of the land as operational land as per option one is the recommended approach as the land has been specifically acquired for a use compatible with an operational classification. Classification as operational land allows for Council's relatively unfettered ongoing management and maintenance of the land for stormwater infrastructure purposes.

RECOMMENDATION

That Council classifies the land identified as Lot 11 DP 1251548, being land having frontage to Willie Wagtail Place and Teven Road at Alstonville, as operational land under the provisions of the Local Government Act 1993 and that this classification takes effect immediately.

Attachment(s)

Nil

8.5 Dangerous Dog Declaration - Review

8.5 Dangerous Dog Declaration - Review

Delivery Program Environmental and Public Health

Objective To determine whether or not a Dangerous Dog Declaration made under Section 34 of the Companion Animals Act 1998 is to be revoked.

Background

Council has received a request to consider the revocation of a Dangerous Dog Declaration that was made under the Companion Animals Act 1998 (the Act) in relation to a Bull Terrier (Staffordshire) named "Bully" with Microchip No. 943094330261285 owned by Mr Phillips.

The meaning of "dangerous" is defined under Section 33 of the Act and is outlined below:

- (1) *For the purposes of this Division, a dog is dangerous if it:*
 - (a) *has, without provocation, attacked or killed a person or animal (other than vermin), or*
 - (b) *has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or*
 - (c) *(Repealed)*
 - (d) *is kept or used for the purposes of hunting.*
- (2) *A dog is not, for the purposes of subsection (1) (d), to be regarded as being kept or used for the purposes of hunting if it is used only to locate, flush, point or retrieve birds or vermin. Vermin for the purposes of this subsection includes small pest animals only (such as rodents).*

The Intention to Declare a Dog Dangerous in this instance was issued after Council's Ranger (being the appropriate authorised officer under the Act) was satisfied that Bully had acted within the meaning of a dangerous dog following an attack where Bully attacked two dogs on 23 February 2018.

The incident involved Bully rushing at and attacking two dogs in a public place. The NSW Police and NSW Ambulance Service were advised and attended the dog attack incident. The two dogs the subject of the attack required urgent veterinary attention.

The subject dog (Bully) had been previously issued with a Formal Warning Dog Attack on the 5 May 2017 following an incident on 9 April 2017 where Bully rushed at, showed aggression towards, and attacked an animal being a dog in a public place. At this time the owner was advised that if future incidents occurred Council would have no other alternative than to issue an 'Intention to Declare Dog Dangerous' to Bully.

At the expiry of the Intention to Declare the Dog Dangerous no representations had been received by Council and therefore the Dangerous Dog Declaration was issued on 22 March 2018 by registered mail. The dog owner signed the registered post-delivery confirmation on 27 March 2018.

Therefore the Declaration was received and is in force. Refer to Attachment 1 for the Dangerous Dog Declaration.

8.5 Dangerous Dog Declaration - Review

At the time of the attack and the issuing of the Declaration, Council also issued a Penalty Infringement Notice (PIN) to the dog owner for the dog attack.

After the Declaration was issued Council was unable to locate and contact Mr Phillips and hence the whereabouts of Bully were unknown until earlier this year when this matter was before the Court in January 2019.

At this time Mr Phillips indicated where Bully has been kept and that given 10 months had already past that he would be making representations to Council to have the declaration reviewed.

The Declaration can be reviewed by the elected Council 12 months after the date of the declaration under the Act as defined below;

Section 39 Council can revoke declaration

- (1) *The owner of a dog that has been declared a dangerous dog or a menacing dog under this Division can apply to the council of the area in which the dog is ordinarily kept (whether or not it is the council whose authorised officer made the declaration) for the declaration to be revoked.*
- (1A) *An application under subsection (1) cannot be made until after the period of 12 months following the date on which the dog was declared to be a dangerous dog or a menacing dog.*
- (2) *The council to which the application is made may revoke the declaration but only if satisfied that:*
 - (a) *it is appropriate to do so, and*
 - (b) *if the council determines that it is necessary—the dog has undergone appropriate behavioural training.*
- (2A) *In making a determination under subsection (2) (a) in relation to a menacing dog declaration, the council is to have regard to the nature and extent of any behavioural training that the dog has undergone.*
- (3) *The council must, as soon as practicable, give notice to the owner of the dog that the declaration has been revoked or that the council has refused to revoke the declaration.*

Council has now received a representation from the dog owner requesting the Declaration be revoked and the dog issued with a new Order as a Menacing Dog.

Refer to Attachment 2 for the submission from Bully's owner.

The requirements of a Menacing Dog Order are similar to those imposed as per a dangerous dog except with the weakening of the enclosure requirements.

The enclosure requirements are:

During any period that the menacing dog is on property on which the dog is ordinarily kept, and is not under the effective control of a person of or above the age of 18 years, the dog must be enclosed in a manner that is sufficient to restrain the dog and prevent a child from having access to the dog.

As required by the Declaration Bully has recently undergone a behavioural assessment from a suitably qualified assessor and this assessment is Attachment 3 to this report.

8.5 Dangerous Dog Declaration - Review

The Declaration has been made with good reason and if Council is to revoke the declaration it needs to be convinced that it is appropriate to do so and the report that now follows outlines the matters to be considered regarding a dangerous dog and revocation of a declaration.

Key Issues

- Public safety and public interest
- Repercussion and potential injury should declaration be lifted and there is another incident

Information

Dangerous Dog Declarations impose mandatory requirements on the owners of such dogs.

The requirements are designed to protect public safety and the safety of other animals.

The requirements substantially restrict the freedom of the dog and hence the lifestyle of the owner and the ability to enjoy the dog.

A Dangerous Dog Declaration can only be revoked by a resolution of Council and not until after the expiration of a period of 12 months following the date on which the dog was declared to be dangerous.

Section 39(2) of the Act stipulates that Council must be satisfied that it is appropriate to revoke a dangerous dog declaration before doing so.

From when the Dangerous Dog Order was issued the Council Rangers were unable to locate Bully and his owner for a substantial period of time.

It wasn't until January 2019 that Council became aware of where the dog was being housed.

An inspection was organised for this address by the Rangers and it was identified that Bully was not being kept in accordance with the Dangerous Dog Order and hence the matter was listed in Court.

The dog owner has been issued with two penalty infringement notices from Council being for the dog attack incident on 23 February 2018 and then on 2 May 2018 for non-compliance with the Dangerous Dog Order.

Following this Council commenced legal proceeding for non-compliance with the Dangerous Dog Order and the dog owner was found guilty on three non-compliances and convicted for these offences and issued fines for each offence.

The Court also made the following Orders:

1. Pursuant to S47 of the Companion Animals Act 1998, until 2 May 2019 or revocation of the existing Dangerous Dog Declaration whichever is the earlier the dog Bully will from 9am on 15 February 2019 be either:

8.5 Dangerous Dog Declaration - Review

- a) Placed into the control of Ballina Shire Council or
 - b) Placed into a facility that complies with the provisions of s51 of the Companion Animals Act 1998.
2. The matter is re-listed for hearing in the Court on 2 May 2019 with the defendant to be excused if the Dangerous Dog Order has been revoked.

The matter was listed for Court on 2 May 2019 but an adjournment requested to 6 June 2019 given the delay in submitting to Council the behavioural assessment on "Bully" from the dog owner and Council's consideration of this matter at this meeting.

The Court approved adjournment of orders and the matter is now listed on 6 June 2019.

Council is not aware of any reported incidents involving Bully since the incident on 23 February 2018 notwithstanding that during the past 14 months the owner of Bully has not complied with the requirements of the Dangerous Dog Declaration and Bully has not been kept in accordance with the Declaration.

The report submitted by the dog behaviorist outlines that although the conditions for the assessment were not conducted in the dog's "normal" constant living environment, the assessment followed select criteria to assess the dog's behavior and temperament and is considered to be fair and reasonable given the circumstances.

The assessor summarises Bully as "a dog with some great qualities but he is unpredictable, you can teach an old dog new tricks but it's the 9 years of potential bad dog to dog interaction habits that "Bully" has which will be the problem. He lacks impulse control and cannot listen to commands under stress and distraction. His forward, loud and intense body language sets Bully up to have his blinkers on when seeing another dog which sets him up for a very bad situation".

Council has had care and control of Bully since 15 February 2019 and the dog owner during this time has had regular visits with Bully under the supervision of the Rangers.

Council Rangers have been observing Bully and are concerned with his behaviour, particularly when coming into contact with other people and animals.

There has been no change in his temperament since being at the animal shelter and he remains unapproachable by persons unknown to him.

However noting again that Bully is not in his normal environment with continued social interactions.

The Companion Animals Act was amended in 2013 for the purpose of providing Authorised Officers with a tiered approach to dangerous dog management. The Menacing Dog category may be applied to dogs that show unreasonable aggression towards a person or animal or are involved in less serious attacks (i.e. those not causing serious injury or death).

8.5 Dangerous Dog Declaration - Review

In this case the attack was without provocation, involved a person walking two small dogs, and did cause serious injury requiring an ambulance for the person and veterinary care for the dogs with hospitalisation overnight for one of the dogs.

For the above reasons and based on the evidence provided in the behavioural report, the revocation of the issued Dangerous Dog Declaration to Mr Phillips for his dog Bully Microchip No. 900006000071556 is not supported by Council's Rangers.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The imposition of a Dangerous Dog Declaration has a significant effect on the life of both a dog and its owner.

Dangerous dogs are a significant risk to other animals and the public and the companion animal legislation was created in response to the number, frequency, and severity of dog attacks across the State
- **Economic**
Council has incurred costs relating to this matter including court costs and the current housing of the dog.

Legal / Resource / Financial Implications

If the Declaration is upheld by Council then there is a continuing resource cost in keeping the Dangerous Dog Register regularly reviewed and the subsequent conditions of the declarations audited.

This can be attended to within existing resources.

Consultation

Council staff on several occasions have explained the situation and the processes to the dog owner. Council's Solicitor has represented Council in Court on this matter and has also reviewed and provided comments to this Council report.

Options

The options available to Council are to revoke the declaration or to refuse the request and the current declaration is to remain active.

If Council were to revoke the existing Dangerous Dog Declaration it could decide to declare the dog as a "Menacing Dog".

The recommendation is to not support the revocation due to the assessment report from the dog behaviourist and the observations and details from the Rangers.

8.5 Dangerous Dog Declaration - Review

It is important to recognise that if the Dangerous Dog Declaration is not revoked or the owner does not comply with the terms of the Dangerous Dog Declaration (i.e. requirements associated with the housing and management of the dog), the decision of the Court may be the destruction of the dog.

If the Dangerous Dog Declaration is kept in place, it is also important to recognise that even if the owner achieves compliance with the requirements of the declaration, the declaration will remain in place for the life of the dog (i.e. the declaration cannot be reviewed again).

In the circumstances, it is recommended that Council request a destruction order from the Court if the Dangerous Dog Declaration is not revoked by Council, or the owner does not comply with the terms of the declaration before the matter is heard again in Court.

This is on the basis that the owner of the dog has not suitably addressed the requirements of the Dangerous Dog Order for a substantial period of time, and ultimately, the dog is considered to be a risk to public safety (if the requirements of the declaration are not met).

RECOMMENDATIONS

1. That Council, based on the evidence outlined in this report, not approve the revocation of the Dangerous Dog Declaration issued to Bully Microchip No. 900006000071556.
2. That the owner of Bully and the Director General for Local Government be advised that the declaration has been not revoked as per Section 40 of the *Companion Animals Act* 1998.
3. That Council continue to house Bully until 6 June 2019, or prior to this date release the dog to the dog owner, if compliance with the Dangerous Dog Declaration is adequately demonstrated to Council (including obtaining a Certificate of Compliance from Council for the construction of the dog enclosure as per the Act).
4. If the owner does not achieve compliance with the Dangerous Dog Declaration, that Council requests that the Court issue a destruction order immediately on the dog at the hearing on 6 June 2019 (or thereafter if the hearing date is altered).

Attachment(s)

1. Dangerous Dog Declaration
2. Request for review of dangerous dog declaration
3. K9 Behavioural Assessment

8.6 Crown Land Classification and Categorisation

8.6 Crown Land Classification and Categorisation

Delivery Program Strategic Planning

Objective To seek direction on the classification and categorisation of Crown Land managed by Council to meet the requirements of the Crown Land Management Act (2016)

Background

The Crown Land Management Act 2016 (CLM Act) came into effect on 1 July 2018. The CLM Act abolishes reserve trusts and reserve trust managers under the former Act, and provides for the appointment of local councils as 'Crown land managers' in respect of land which was previously held by reserve trusts.

All Crown land has been dedicated or reserved for certain purposes in accordance with a Government Gazettal. This land may only be used for the dedicated or reserved purpose or any ancillary or incidental purpose as well as any authorised purpose as outlined in the CLM Act.

Council is currently Crown land manager for 35 reserves, which consist of 127 land parcels. Tables 1, 2 and 3 list the Crown Land parcels that Council manages.

Council is responsible for the care, control and management of this land; and is also required to exercise any other functions conferred or imposed by the CLM Act or any other Act in relation to this land.

The CLM Act was implemented to assist councils manage Crown land with reduced oversight from the Minister for Lands and Forestry or the Department of Industry Lands and Water (the Department).

The CLM Act enables Council to manage Crown reserves generally under the public land provisions of the *Local Government Act 1993* (LG Act).

Under this new management structure, Council is required to classify Crown land in its control, either as Community land or Operational land (subject to Ministerial approval), similar to Council owned land managed under the LG Act.

Following the classification process, the Department has requested that Council assign the land to one or more categories of community land under the LG Act.

The available categories are natural area (including subcategories of bushland; wetland; watercourse; escarpment; and foreshore), sportsground, park, cultural significance and general community use.

The categorisation of the land should be based on the use of the land and the reserve purpose.

8.6 Crown Land Classification and Categorisation

The assignment of land management categories is a fundamental requirement of the Crown Land reforms and the associated preparation of compliant management plans under the CLM Act.

A compliant plan of management (or plans of management) is required for all Crown Land managed by Council by 30 June 2021.

The CLM Act also includes specific provisions to facilitate compliance with the *Native Title Act 1993* (Cth).

Native title refers to the rights and interests in relation to land and waters held continuously by Aboriginal people under their traditional laws and customs, recognised by Australian law.

Under the CLM Act, councils will be liable for any acts they carry out on Crown land that may affect native title.

However, councils will not be liable for any acts that preceded their management or ownership of land affected by native title, with this liability remaining with the state.

Council as Crown land manager is to ensure that any authorisation or restriction of the use of Crown land under a Plan of Management is consistent with the *NT Act* (Cth).

The purpose of this report is to seek the endorsement of the Council for the initial assignment of classifications and categories to the Crown Land managed by Council.

This is an early step in the process being undertaken to achieve compliance with the CLM Act.

Importantly, the classifications and categories can be revisited and changed later in the preparation of management plans for Crown Land managed by Council.

Key Issues

- Assignment of community land categories to the reserves that align with the purpose of each reserve

Information

Classification of Council Managed Crown Land

The CLM Act authorises councils that are appointed Crown land manager for dedicated or reserved Crown land to manage Crown land as if it were public land under the LG Act. The LG Act requires that all public land must be categorised as community or operational land.

The CLM Act provides that Crown land managed by council managers as public land must be managed as if it were community land, unless the minister administering the CLM Act has given written consent to classify the land as operational.

8.6 Crown Land Classification and Categorisation

In accordance with section 3.22(5) of the CLM Act, the Department will only issue ministerial consent to manage the land as operational land where a council manager can demonstrate that either:

- the land does not fall within any of the categories for community land under the LG Act or
- the land could not continue to be used and dealt with as it currently can, if it were required to be used and dealt with as community land.

According to the Department's guidelines, land that may not fall within the scope of community land could include land used for cemeteries, coastal infrastructure, emergency services, quarries and gravel pits, reservoirs, sanitary purposes, sewage works, urban services and water infrastructure.

Once ministerial consent is provided under the CLM Act, Council is authorised to manage land as operational from that point forward.

Importantly, Council is able to manage operational land with more flexibility than community land.

This is particularly suited to infrastructure and land that is used or managed based on exclusive or restricted access arrangements.

The Crown land in Table 1 has been identified as land suitable for classification as operational land. An operational classification will enable Council to continue to use and deal with the land as is currently the case.

Table 1 – Crown Land to be classified as 'Operational' land

Reserve/ Dedication	Gazetted purpose	Lot/DP	Justification
R1000642	Municipal Purposes	2/59/758047	This reserve is occupied by the Ballina Shire Council Chambers (Customer Service Centre).
R74236	Night Soil Depot; Rubbish Depot	204/47668	Site of the former Wardell tip.
R87280	Public Recreation	1/1051004 2/1051004	This reserve is occupied by the Ballina pool complex and waterslide. The majority of the site is enclosed and managed by a contractor. The land also includes the Richmond River Sailing Club building, car parking and boat ramp infrastructure.
<u>Part</u> R540004	Public Recreation	560/1119965	Land is subject to a lease direct from the Department to the Cherry Street Sports Club.
<u>Part</u> R540019	Public Recreation	Part 2/88/758047 3/88/758047 4/88/758047	Part reserve affected by road. Hill Street runs through the land.

8.6 Crown Land Classification and Categorisation

Reserve/ Dedication	Gazetted purpose	Lot/DP	Justification
<u>Part R1010068</u>	Public Recreation and Coastal Environmental Protection	2/78/758047	6 Harbourview Street, East Ballina. The pilots cottage situated on this parcel of land is subject to a commercial residential lease direct with the Department.
<u>Part R1010068</u>	Public Recreation and Coastal Environmental Protection	1/1197191	Emergency Services/ Coastal Infrastructure – Lighthouse Beach Surf Club.
<u>Part R1010068</u>	Public Recreation and Coastal Environmental Protection	6/1197191	Emergency Services/Coastal Infrastructure – Building ‘B’ Lighthouse Beach Surf Club.
<u>Part R1010068</u>	Public Recreation and Coastal Environmental Protection	1/1115145	Emergency Services/Coastal Infrastructure - Lennox Head Surf Club
<u>Part R1010068</u>	Public Recreation and Coastal Environmental Protection	2/1115145	Pacific Parade, Lennox Head. Reserve affected by a road.
<u>Part R1010068</u>	Public Recreation and Coastal Environmental Protection	7025/106424 1	Emergency Services/Coastal Infrastructure. – Marine Rescue Tower
<u>Part 1010068</u>	Public Recreation and Coastal Environmental Protection	1/1247577	Emergency Services/ Coastal Infrastructure – Shelley Beach Surf Club.
R86408	Reservoir	3/91/758047	East Ballina water reservoir.
R57352	Sanitary Purposes	284/755684	Former waste management site. Depot site
R76641	Sanitary Purposes	203/755684	Former waste management site. Depot site.
R140001	State Emergency Services	452/720427	SES facility.

If ministerial consent to classify land in Table 1 is refused the land will be managed as community land and a categorisation of general community use will be sought under the terms of the LG Act.

8.6 Crown Land Classification and Categorisation

Initial categorisation of Crown land

Under the CLM Act, all Crown reserves that are classified as Community land require an initial categorisation of community land referred to in section 36 of the LG Act.

The initial category must be assigned as soon as practicable after the commencement of the CLM Act.

Council managers must assign a categorisation closely related to the purposes for which the land is dedicated or reserved.

Multiple categories may be assigned to Crown land where Crown land is subject to multiple reservation or dedication purposes.

In this process, Council officers have referred to the core objectives for each category prescribed by the LG Act, as well as the guidelines for the categorisation of community land prescribed by the *Local Government Regulation 2005*.

The Department has also provided guidance on the category for Council's consideration (note the Department did not provide guidance for all land – where this is the case it is noted in the table).

Figure 1 below outlines the procedure for the initial assignment of categories, extracted from a guideline published by the NSW Department of Industry Land & Water.

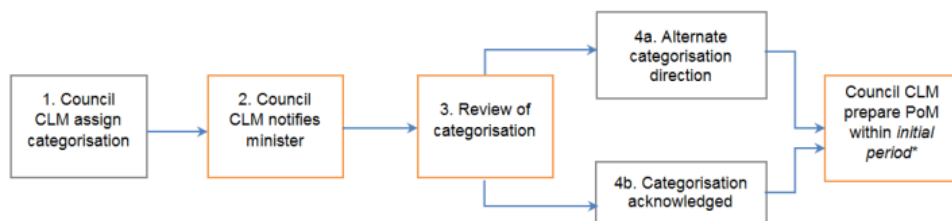


Figure 1 - Process map for categorisation of council-managed land
***Unless the minister consents to council classifying land as operational**

The Minister or Department may direct Council to alter an assigned categorisation in accordance with section 3.23(5) of the CLM Act.

A direction to alter the assigned categorisation must be adhered to by a council Crown land manager.

If Council has assigned a categorisation that differs from departmental guidance as to categories that might closely relate to reserve or dedication purposes, it must justify why it considers the assigned category to be most closely related to the purpose.

The reasons for the proposed categories that differ from guidance provided by the Department are set out in Table 2(a).

8.6 Crown Land Classification and Categorisation

Table 2(a) - Request to Minister – Initial categorisation of Crown land managed by Council as Crown land manager

Reserve/Dedication	Gazetted purpose	Categorisation	Justification (if required)
R1002263 NORTH CREEK FORESHORE RESERVE TRUST	Environmental Protection; Public Recreation	Natural Area (Bushland) / General Community Use	General Community Use based on existence of carpark and buildings
R97839 LENNOX HEAD PRESCHOOL	Kindergarten	General Community Use	N/A
R97786 REGATTA RESERVE (MARITIME MUSEUM)	Museum; Public Recreation	General Community Use/Park	N/A
R97297 BICENTENNIAL GARDENS	Preservation of Fauna; Preservation of Native Flora	Natural Area (Bushland)	N/A
R97810 ROSSLANE BUSHLAND	Preservation of Native Flora	Natural Area (Bushland)	N/A
R87219 EMPIRE VALE PUBLIC BATHS	Public Baths	Park	N/A
R700005 PIONEER PARK	Public Park	Park	N/A
R1239 WARDELL RECREATION RESERVE TRUST	Public Recreation	General Community Use/Natural Area (Bushland) 75/728641 Park 3/921060	Guidance was Park, however lot 75/728641 consists of bushland and a road.
R54223 TINTENBAR RECREATION GROUND	Public Recreation	Sportsground	Guidance was Park, however the land is improved with sporting areas such as a clubhouse and tennis courts.
R57670 LUMLEY PARK	Public Recreation	Sportsground/Park	Guidance was Park, however Lot 7004/92641 consists of the Tennis courts and part Lot 333/755745 consists of the tennis clubhouse.

8.6 Crown Land Classification and Categorisation

Reserve/Dedication	Gazetted purpose	Categorisation	Justification (if required)
R71612 CAPTAIN COOK PARK AND RSL MEMORIAL PARK	Public Recreation	Park 488/729289 546/821908 General Community Use 8/5A/758047	N/A Not on interim guidance schedule. CWA Hall on Lot 8/5A/758047 - General Community Use as there is a community building on the land.
R74019 RIVERVIEW PARK	Public Recreation	Park	N/A
R82164 KINGSFORD SMITH RESERVE	Public Recreation	Park 7006/1068885 7007/1068885 7008/1068885 7036/1068936 7037/1069244 Sportsground 7064/1118403 General Community Use 153/1098090	Guidance was Park, however this reserve is made up of 7 land parcels. 7064/1118403 consists of a clubhouse and the sports fields. 153/1098090 contains the Ballina Seagulls clubhouse.
R82927 WILLIAMS RESERVE	Public Recreation	General Community Use	Guidance was Park, however part of Williams Reserve consists of a sports clubhouse and Lennox Head Community Centre.
R83963 SAUNDERS OVAL	Public Recreation	Sportsground 495/729297 & 1/1153430 General Community Use 4/1153430	Guidance was Park, however this reserve is made up of 3 land parcels. 495/729297 & 1/1153430 are active sportsgrounds, consisting of clubhouses under a lease and sports fields 4/1153430 has an active Community garden.
R83979 WAVERLY PARK	Public Recreation	Park	N/A

8.6 Crown Land Classification and Categorisation

Reserve/Dedication	Gazetted purpose	Categorisation	Justification (if required)
R88004 SHAWS BAY RESERVE	Public Recreation	General Community Use	N/A Not on interim schedule
R89799 TINTENBAR RECREATION RESERVE TRUST	Public Recreation	Park	N/A
R94164 TINTENBAR RECREATION RESERVE TRUST	Public Recreation	Park	N/A
R96642 FISHERY CREEK BOAT RAMP	Public Recreation	General Community Use	Guidance was Park, however this land is a road/carpark.
R140060 LITTLE FISHERY CREEK WETLAND	Public Recreation	Natural Area (Wetland)	N/A Not on interim schedule.
R540004 HAMPTON (CLEMENT PARK)	Public Recreation	Sportsground	N/A Not on interim schedule *Note that 560/1119965 being the location of the Cherry Street Sports Club will be requested as operational land in the first instance.
Part R540019 EAST BALLINA CARAVAN PARK	Public Recreation	Park 5/88/758047 (Note the additional 3 parcels of land that make up this reserve has initially been requested as Operational land)	N/A Not on interim schedule
R43218	Wharfage	General Community Use	N/A Not on interim schedule.
R1014248 ALLAWAH BUSHLAND RESERVE	Environmental Protection	Natural Area (Bushland)	N/A Not on interim schedule.
R1014249 ALLAWAH BUSHLAND RESERVE	Heritage purposes and environmental protection	Natural Area (Bushland)	N/A Not on interim schedule
R90849	Public Recreation	Natural Area (Bushland)	N/A Not on interim schedule.

8.6 Crown Land Classification and Categorisation

The categories have been applied with the intention of maximizing the flexibility for future management of the land having regard for the guidance provided by the Department, current and planned land use and the reserve purpose.

Land categories can be changed by Council through the plan of management preparation process or by amending a plan of management.

Ballina Coastal Reserve

The Ballina Coastal Reserve R1010068 consists of 70 land parcels. Table 2 (b) identifies the recommended categories for these land parcels.

No Departmental guidance on the categorisation of this land was provided to Council for consideration.

It is important to note that as a direct result of the CLM Act (specifically the requirements under s 8.10 to comply with the *Native Title Act 1993* (Cth)) Council has encountered significant difficulties in the provision of tenure, use of buildings and provision of community infrastructure on the Ballina Coastal Reserve.

Council resolved at the Ordinary meeting held 28 February 2019 to write to the State Government and LG NSW expressing Council's concern that the CLM Act is creating significant impediments for councils to undertake routine works and provide straightforward tenure agreements to community groups.

To date, Council has not had a response that satisfactorily addresses these issues.

8.6 Crown Land Classification and Categorisation

Table 2(b) - Request to Minister – Initial categorisation of Crown land managed by Council as Crown land manager (coastal reserve)

Reserve/Dedication	Gazetted Purpose	Categorisation	Lot/DP
Part R1010068 BALLINA COASTAL RESERVE	Public Recreation and Coastal Environmental Protection	Natural Area <i>(Bushland)</i>	2/241434 5/241434 1/509389 3/590466 1/592045 2/592045 518/729428 519/729428 520/729428 522/729429 523/729429 524/729429 525/729429 526/729676 528/729679 530/729679 516/729900 128/755684 394/755684 406/755684 7033/1063883 7027/1064266 7029/1064319 7014/1068898 7013/1113173 7009/1065855 7031/1063878 <u>Part 7002/1052251</u> <u>Part 7006/1052252</u>

8.6 Crown Land Classification and Categorisation

Reserve/Dedication	Gazetted Purpose	Categorisation	Lot/DP
Part R1010068 BALLINA COASTAL RESERVE	Public Recreation and Coastal Environmental Protection	General Community Use	532/729679 539/729687 413/755684 3/78/758047 4/78/758047 6/78/758047 7032/1063896 7026/1064254 7023/1064275 7017/1064314 15/1116045 <u>Part</u> 2/1192961 (Historically now known as Lot 2/1247577) 3/1197191 4/1197191 1/228200 7011/1063876 3/1115145 7024/1063860 7013/1063873 7041/1071329 7015/1071432 7014/1071433 7038/1071434 7042/1108681 <u>Part</u> 15/89/758047
Part R1010068 BALLINA COASTAL RESERVE	Public Recreation and Coastal Environmental Protection	Natural Area/General Community Use	7035/1063864 <i>(Bushland)</i> 7034/1063872 <i>(Bushland)</i> 7030/1063893 <i>(Foreshore)</i> 7040/1071319 <i>(Foreshore)</i> 7039/1071828 <i>(Foreshore)</i> Proposed natural area subcategories noted in italics. Beach areas and developed foreshore areas to be categorised as general community use.
Part R1010068 BALLINA COASTAL RESERVE	Public Recreation and Coastal Environmental Protection	Park	<u>Part</u> 62/755725 <u>Part</u> 7001/1052251 <u>Part</u> 6/87/758047 <u>Part</u> 7022/1050837 <u>Part</u> 7015/1064316

8.6 Crown Land Classification and Categorisation

Reserve/Dedication	Gazetted Purpose	Categorisation	Lot/DP
Part R1010068 BALLINA COASTAL RESERVE	Public Recreation and Coastal Environmental Protection	Identified for classification as operational land (as outlined in Table 1)	2/78/758047 1/1197191 6/1197191 1/1115145 2/1115145

Similarly to the land in Table 2(a), the categories have been proposed based on maximising flexibility in the management of the land, being mindful of the current and planned land use and the reserve purpose.

Plans of Management

Following assignment of land to classifications and categories Council is required to proceed to prepare a plan of management for all land that is classified as 'Community' land under the LG Act that reflects the assigned category.

This is in order to ensure that Crown land is lawfully used and occupied and is managed in line with the LG Act.

This is an essential part of Council's role as the manager of Crown Land. Council must ensure there is a compliant plan of management (POM) for all Crown land managed as community land by 30 June 2021.

Council is presently required to prepare POMs under the LG Act for Council owned Community Land, and has an adopted Plan of Management for Community Land (2015).

This plan addresses all community land managed by Council in the shire.

The most efficient way to progress the requirement to have a POM in place for Crown Land managed by Council (by 30 June 2021) is to integrate of this land into the current POM for community land.

However, an exception to this is the Ballina Coastal Reserve.

This reserve is currently subject to a stand alone POM and it is considered appropriate that this be continued given the nature of the existing POM, the characteristics of the coastal reserve and the importance of the coastal reserve to the shire overall.

Compliance with the CLM Act will though require an update to this plan to align it with the terms of the LG Act.

Plans of Management currently in place under Division 6 of the *Crown Lands Act 1989* continue in force until an LG Act plan of management is adopted for the land. Council currently has three Plans of Management prepared under the *Crown Lands Act 1989* namely the

- Ballina Coastal Reserve POM
- Williams Reserve POM
- Hampton Park POM.

8.6 Crown Land Classification and Categorisation

Revision of these plans would be based on a principle of transitioning the plans as 'like for like' and the inclusion of anything that is Council policy or by Council resolution.

In summary, to achieve compliance with the CLM Act in the set timeframe, a comprehensive review of these plans is not proposed.

Rather, it is recommended that Council integrates the Williams Reserve and Hampton Park plans into the POM for Community Land (along with all of the Crown land identified in Tables 2(a) and 2(b).

It is recommended that the Coastal Reserve POM remains as a stand alone document but that it is updated (not fully reviewed) to align with the LG Act.

If the Council wishes to examine the planning and management framework for the above areas or other Crown land in details, it is recommended that this be done after Council has firstly achieved compliance with the CLM Act.

If the land is classified as operational, then the plan continues in force as if it were adopted under Division 3.6 of the CLM Act.

If Council is given consent to manage land as operational, the minister administering the CLM Act can also direct council to prepare a new plan of management for the land in accordance with Division 3.6 of the CLM Act.

The CLM Act includes specific provisions to facilitate compliance with the *Native Title Act 1993* (Cth). This includes Part 8 of the CLM Act which provides that council Crown Land Managers must engage a qualified native title manager to oversee and approve dealings that may affect native title to ensure that they are valid under native title legislation.

The advice and oversight of native title managers will be required for the approval and submission of approval of plans of management that authorise or permit certain dealings that affect native title.

Sustainability Considerations

- **Environment**
Environmental, social and economic values have been considered in the assignment of the recommended land classifications and categories.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

This is a legislative requirement linked to Council's Delivery Program and Operational Plan 2018-2022 through item HE3.1m - Implement Crown Land Management reforms.

8.6 Crown Land Classification and Categorisation

Council is required to assign the land categories for land classified as Community land as soon as practicable. The confirmation of land categories is a fundamental component of developing compliant Plans of Management, as required by the CLM Act by 30 June 2021.

Councils have received a nominal grant of \$30,000 from the Department to assist with the preparation of Plans of Management. This funding is not sufficient to meet the costs of the required work to achieve compliance with the CLM Act reforms.

This first step towards compliance, being the classification and categorisation of land, is being managed within existing resources.

Consultation

The review of classification and initial categorisation has occurred in consultation with internal Planning and Environmental Health Division and Civil Services Division staff.

Community consultation will be undertaken when draft Plans of Management are developed for the Crown Land reserves in accordance with the CLM Act.

No consultation is required for initial step. There will be opportunity for consultation when the plans of management are exhibited as part of a future phase of the reform implementation.

Options

Notification to the Minister of Council's initial classification and preferred land categories is a non-delegable function and requires a Council resolution.

The Council may proceed with the classification and categorisation process, decline to proceed further or defer the matter for further consideration.

Ceasing further action is not recommended as Council is obligated to undertake the classification and categorisation process under the CLM Act reforms.

If the Council would like more information about all or part of the process (e.g. plan of management preparation), staff could present additional details through a Councillor briefing.

The recommended approach is to proceed to request the classifications and categorisations for Crown land managed by Council as set out in this report. This would mean that Council would request that the Minister endorse the classifications and categorisations set out in Tables 1, 2(a) and 2(b).

This will then enable Council to proceed to prepare the required plans of management.

No reference maps have been included with the report primarily as the documentation would be extensive. If Councillors require any details on the parcels of land, contact the Planning and Environmental Health Division.

RECOMMENDATIONS

1. That Council endorses the initial classification and categorisation of Crown Land as identified in Tables 1, 2(a) and 2(b), as per this report.
2. The General Manager is authorised to seek Ministerial consent for the classification of Crown Land listed in Table 1 as operational land, as per this report.
3. The General Manager is authorised to seek the categorisation of Crown land under the management of Council in line with the categories identified in relation to Table 1 (if Ministerial consent to classify the land as operational is refused) and Tables 2(a) and 2(b), as per this report.
4. That Council endorses the preparation of compliant plans of management, as required by the *Crown Land Management Act* (2016) by 30 June 2021, in line with the principles set out in this report.

Attachment(s)

Nil

8.7 Ballina Ocean Pool - Update

8.7 Ballina Ocean Pool - Update

Delivery Program Open Spaces and Reserves

Objective To update Council on the progress of the Ballina Ocean Pool project.

Background

Council considered the Ballina Ocean Pool project at the March 2019 Ordinary meeting in response to a Notice of Motion. The resolution from that meeting was as follows:

That Council, as part of the May 2019 Ordinary meeting, receive an update report on the development of the planning application for Ballina Ocean Pool. The report should include information on the issue of Native Title, design and engineering plans, the use of and balance of the \$50,000 preliminary works grant, together with an overview of other necessary components of the application.

In September 2018, the Reserve Trust considered the status of the project and provided direction on the further involvement of the Trust (and Council as the Trust Manager) in the project. The Trust resolved as follows:

- 1. That the Ballina Coastal Reserve Trust endorses the lodgement of an application to seek the necessary planning approval for the Ballina Ocean Pool project at Shelly Beach, Ballina, subject to the application being inclusive of appropriate planning and technical assessments.*
- 2. That the Ballina Coastal Reserve Trust endorses the application of staff resources to address the applicable requirements of the Crown Land Management Act 2016 in relation to the Ballina Ocean Pool project.*
- 3. That the Trust obtains legal advice addressing Native Title in relation to the Ballina Ocean Pool proposal before an application for planning approval is lodged with Ballina Shire Council.*

This report provides information in response to the March 2019 Council resolution and the September 2018 Trust resolution.

Key Issues

- Planning status

Information

Project Background

The Ocean Pool is proposed on a site at Shelly Beach generally in the location shown in Figure 1 as follows.

8.7 Ballina Ocean Pool - Update

The area proposed for the ocean pool is located on Crown Land, including land within the Ballina Coastal Reserve.

The Ballina Coastal Reserve is presently managed by Council as the Ballina Coastal Reserve Trust (after 1 July 2019 the land will be managed by Council as Crown Land Manager).

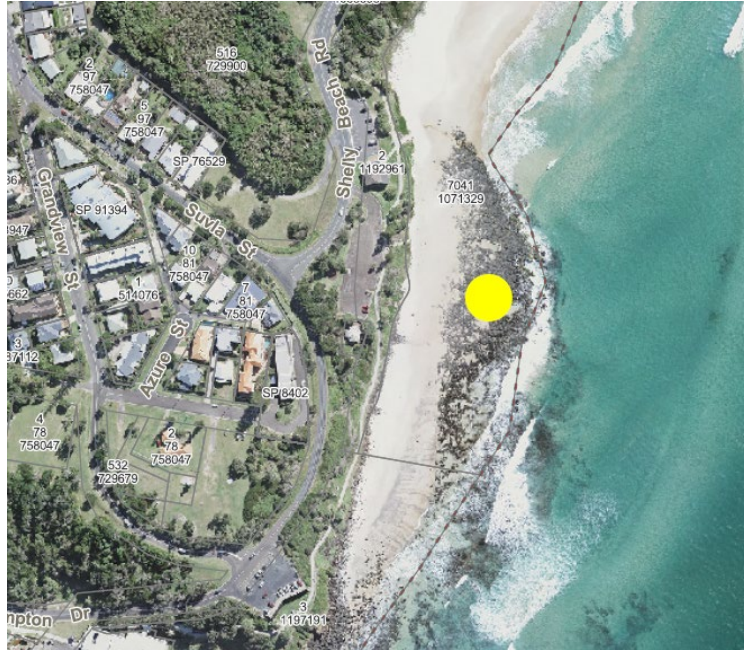


Figure 1: General location for proposed Ballina Ocean Pool at Shelly Beach Ballina (indicated by yellow dot)

Prior to the earlier mentioned decisions of the Reserve Trust and Council, the Reserve Trust last considered the Ballina Ocean Pool project in November 2015 where the Trust resolved as follows:

That Council, acting as the Ballina Coastal Reserve (R1010068) Trust, resolves that the Ballina Ocean Pool Committee Inc is established as a Committee of Council, with the terms of reference for the Committee as follows:

Terms of Reference – To oversee and implement the actions necessary to allow a planning application to be lodged with Council for the establishment of an ocean pool at Shelly Beach, Ballina. The Committee is to be set up on the basis that the ocean pool will be constructed through funding sources other than Council, and the pool is to be designed to ensure that nil, or minimal maintenance, is required for the facility on an on-going basis.

The Ballina Ocean Pool Committee was subsequently formed as a Committee of Council under Section 355 of the *Local Government Act 1993*.

At the April 2017 Ordinary meeting, Council accepted grant funding of \$50,000 for the project offered by the NSW State Government.

This money is held by Council, with the Ocean Pool Committee able to draw on the funds to complete investigations and reporting. Council has not allocated any of its own funds to the project to date although staff have been providing support to the project in relation to planning, Crown Land management, native title and grant management functions.

8.7 Ballina Ocean Pool - Update

In August 2018, the Ballina Ocean Pool Committee provided Council with draft engineering and ecological reports as well as a community and business impacts study relating to the Ballina Ocean Pool project.

The Committee has indicated to Council that it is still seeking to progress to the lodgement of an application with Council to seek the necessary planning approval for the project.

Reports and Information

In October 2018, representatives of the Ballina Ocean Pool Committee provided Councillors with an overview of the project and the findings of investigations undertaken. The Councillor briefing included discussion about pool design, engineering, ecological, location and cultural heritage issues.

Subsequently, Council received advice from Lindsay Taylor Lawyers in relation to native title considerations (see below).

In response to the Council's March 2019 resolution, the Ocean Pool Committee has advised that the following reports have been prepared (copies have been provided to Councillors under separate cover – Attachments 1, 2, 3 and 4):

- Coastal Engineering Advice Report (Water Research Laboratory December 2018). This is a coastal engineering study to assist with the design of the pool.
- Community and Business Impacts Report (Southern Cross University November 2017). This report provides information on feedback from Ballina residents and business operators in relation to the ocean pool concept.
- Marine Ecological Surveys for the Proposed Ballina Ocean Pool Report (Southern Cross University 2017). This report addresses marine ecology issues.
- Traffic Impact Assessment (Ardill Payne and Partners March 2018). Provides an assessment of traffic issues and impacts associated with the pool proposal.

The Committee has also indicated it has various letters of support for the pool including from Associate Professor Rob Brander of the University of NSW (coastal geomorphologist).

Council has not yet received detailed engineering design plans for the ocean pool. However, the Committee anticipates these being prepared at the tender stage. Further, Council has not yet received planning assessment documentation in the form of a development application or environmental assessment.

The Committee has advised that Planners North is presently preparing environmental assessment documentation, being information required to support an application for planning approval.

8.7 Ballina Ocean Pool - Update

Council should not provide agreement for the lodgement of any planning application relating to the ocean pool until it is clear that a full suite of planning and technical assessment documentation has been completed and compiled into a suitable planning application.

If this doesn't occur it then places the onus on Council staff, who are already struggling to meet the demand created by the current high level of development activity in the Shire, to amend or improve a deficient application.

Grant Funds

Council is currently holding State Government grant funds provided to support the ocean pool project. The total value of the grant is \$50,000.

The certificate of expenditure for this project was due to be returned to the NSW Department of Premier and Cabinet on completion of the project, or within six months of receipt of the grant, being the 5 January 2018.

The expenditure of the \$50,000 grant for the preliminary investigation of the proposed Ballina Ocean Pool is currently \$10,930.28. The receipted works include:

- Marine ecology survey - \$5,000.00
- Legal services for land zoning advice - \$2,500.28
- Legal advice - Native title advice - \$2,800.00 and
- Site survey for a proposed access ramp - \$630.00.

The Ballina Ocean Pool Committee advised in September 2018 that the engineering report from the Water Research Laboratory has a cost of \$28,000. However, the Committee is yet to provide adequate documentation regarding this cost in relation to the acquittal of the grant funds.

The balance of the grant is currently \$39,069.72, or will be \$11,069.72 if confirmation of the expenditure detail relating to the engineering report is provided to Council.

Native Title

In accordance with the Trust's resolution in September 2018, legal advice in relation to native title was obtained from Lindsay Taylor Lawyers.

A key issue in relation to native title is whether the ocean pool is a valid future act having regard for the requirements of native title legislation and Council's obligations as land manager under the *Crown Land Management Act*.

Because the construction of the pool is considered to be a future act under the relevant legislation, it is important to determine whether the act of constructing the pool can be validated under the applicable legislation. The advice provided to Council indicates that based on the information available at present, the construction of the ocean pool is not classed as a valid future act.

Notwithstanding the above, under the present legislation Council as the land manager can consider other options to enable the ocean pool project to proceed in compliance with the relevant native title legislation.

8.7 Ballina Ocean Pool - Update

These options include acquisition of native title rights, seeking a native title determination, entering into an indigenous land use agreement or seeking a native title certificate under the *Crown Land Management Act*.

The Ballina Ocean Pool Committee has indicated that it wishes to pursue the establishment of an indigenous land use agreement (ILUA). The establishment of an ILUA has not been substantially advanced to date although Committee members have had discussions with Jali LALC representatives on this matter.

An ILUA will require Council involvement as the land manager and as such, the negotiation of an ILUA will have resource implications for Council. It is also important to recognise that Council may wish to invite negotiations in relation to an ILUA in relation to other matters over time.

Therefore, if Council is to become involved in any ILUA process, it is recommended that this is considered in the context of Council's overall priorities rather than on a one off basis.

With respect to meeting the requirements of the *Crown Land Management Act*, The legal advice obtained also indicated that the ocean pool project would need to be recognised in a valid plan of management applying to the land.

If the Council wishes to continue to pursue the ocean pool project, it is proposed that this will be addressed through the plans of management being prepared to meet Council's obligations under the Crown Land reforms (see Crown Land Classification and Categorisation report elsewhere in this agenda).

Council's ability to include the project within a plan of management is also affected by native title considerations. That is, compliance with native title legislation is also a matter to be addressed in preparing a plan of management. This reinforces the importance of addressing native title up front in relation to the ocean pool project.

It is recommended that native title and the requirements associated with the plan of management are resolved before Council provides its agreement for the lodgement of an application that seeks planning approval for the project.

Sustainability Considerations

- **Environment**

This report has been prepared to provide an update on the status of the project for the Council. Environmental, social and economic matters would be further considered as part of the planning process. However, it is recommended that native title considerations be resolved prior to progressing to the lodgement of an application seeking planning approval.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

Council has been engaged in the Ocean Pool project on the basis of a minimal allocation of staff resources and no direct project funding.

Council's responsibilities as Crown Land Manager (Trust Manager) for the Ballina Coastal Reserve require certain matters to be considered when the Council endorses a project on the land. This inevitably has resourcing implications for Council. It is expected that continuation of the project will progressively require increased staff time dedicated to the project.

Consultation

The Ocean Pool Committee has undertaken a survey and prepared an associated report.

Council also examined the ocean pool concept as part of the Ballina Major Regional Centre Strategy. The strategy includes action A1.2 to facilitate the construction of an ocean pool at a convenient, cost effective and achievable location. This action is identified in the strategy as a facilitate and advocate action rather than a direct delivery of infrastructure.

Options

This report is provided for the information of the Council in response to Council's March 2019 resolution.

In addition to noting this report, it is recommended that native title matters should be addressed before Council agrees to the lodgement of any application that seeks planning approval.

Further, to minimise the impact on Council's resources, it is recommended that the work required to address native title should be the responsibility of the project proponent in the first instance.

It is also recommended that Council's endorsement of any future planning application be subject to confirmation that a suitable suite of planning and technical documents have been prepared and the address of the ocean pool in the plan of management framework.

RECOMMENDATIONS

1. That Council notes the contents of this report relating to the status of the Ballina Ocean Pool project.
2. That (as Crown Land Manager) the Council's endorsement for the lodgment of an application to seek the necessary planning approval for the Ballina Ocean Pool project at Shelly Beach, Ballina is subject to the resolution of native title matters, incorporation of the project into a relevant plan of management and the completion of appropriate planning and technical assessments.

Attachment(s)

1. Coastal Engineering Report (Under separate cover)
2. Community and Business Impacts Report (Under separate cover)
3. Marine Ecology Report (Under separate cover)
4. Traffic and Parking Study (Under separate cover)

8.8 Policy (Review) - Backyard Burning

8.8 Policy (Review) - Backyard Burning

Delivery Program Environmental and Public Health

Objective To review Council's Backyard Burning Policy.

Background

Council's existing policies are periodically reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Backyard Burning Policy.

Council first adopted this policy on 22 June 2006. The objective of this policy is to prevent air pollution from air borne particulates and chemicals, and eliminate localised nuisance caused by smoke and odour generated by backyard burning.

Key Issues

- Legislative requirements
- Identification of new urban areas and clarity of policy content

Information

The review of this policy has identified only minor changes (as contained in Attachment 1 – shown highlighted in yellow and as strike through text). The key changes are outlined as follows:

- The deletion of some words to improve readability
- Deleting references to the repealed Stock Diseases Act 1923 and Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991 and recognising the appropriate legislation being the Biosecurity Act 2015
- Correcting the name of Council's Planning and Environmental Health Division
- Amending the Backyard Burning Restricted Area maps so they contain relevant and up to date mapping information. Changes include:
 - addition of Banyan Hill residential estate and surrounding land zoned R3 Medium Density Residential at Cumbalum;
 - addition of the recently approved Aureus residential development located at Skennars Head; and
 - addition of the remaining portion of Lot 282 DP 1141745, 19 Scotia Avenue, being part of the Ballina Heights subdivision at Cumbalum.

These areas are considered to be closely settled with backyard burning having the potential to have an adverse impact on neighbouring residents should it be carried out in an unsatisfactory manner.

All dates on maps will be updated once adopted.

Sustainability Considerations

- **Environment**

The updated maps and wording will improve the control of backyard burning and better allow members of the community and Council Officers to identify what activities are restricted in which areas to manage air pollution in the Shire.

- **Social**

The proposed amendments will improve the legibility of the policy allowing the community to better understand the policy requirements and better manage air pollution in the Shire.

- **Economic**

There are no economic implications relating to the review and proposed amendments to this policy.

Legal / Resource / Financial Implications

The changes will improve efficiency in the application of the policy and clarify the land to which it applies.

Consultation

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

Options

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

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

RECOMMENDATIONS

1. That Council adopts the amended Backyard Burning Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

Attachment(s)

1. Policy (Review) Backyard Burning

8.9 Ballina Sands - Legal Proceedings

8.9 Ballina Sands - Legal Proceedings

Delivery Program Development Services

Objective To seek Council endorsement of the proposed legal proceedings in line with legal advice

Background

Sand extraction activity associated with the Ballina Sands Quarry, located at 91 Newrybar Swamp Road Kinvara, was originally reported to the November 2017 Ordinary meeting. At that meeting, Council resolved as follows:

1. *That Council acknowledges community concerns that the Ballina Sands Quarry may have been extracting limits beyond its development consent conditions.*
2. *That Council receives a report on what actions are available to address any over extraction that may have taken place.*
3. *That Council officers inspect the site and report back to Council as a matter of urgency on the amount of material that is being stockpiled on site and any potential environmental issues that this could have on the surrounding area and North Creek.*

This matter was reported to the November 2018 Ordinary meeting, where Council resolved to proceed with Court action.

Court Attendance Notices have been served and this matter is now set down for hearing on 26 July 2019.

Key Issues

- Volume of sand extraction and compliance

Information

The background to this matter is briefly summarised above and was outlined in reporting to the Council in November 2018 (Attachment 1).

A separate confidential report is provided later in this agenda in relation to the outcomes of the investigation into this matter and options to address the current legal status of the investigation.

Sustainability Considerations

- **Environment**

Adherence to the applicable conditions of development consent regarding sand extraction volumes seeks to ensure that the development is commensurate with the intended scope of the development and the associated impact mitigation measures that are to be undertaken. This relates to environmental, social and economic considerations.

8.9 Ballina Sands - Legal Proceedings

- **Social**

As above

- **Economic**

As above

Legal / Resource / Financial Implications

CH Law has provided legal advice and staff have been acting in accordance with this advice. Legal implications associated with this matter are the subject of the separate confidential report.

Consultation

Information in this report has been provided in open Council as the information is a matter of public record.

Council staff have undertaken investigations in relation to the extraction of sand from the quarry and sought legal advice in relation to this matter.

Options

The primary purpose of this report is to provide an open Council overview of the basis for the confidential report. The recommendation is for the noting of the report.

RECOMMENDATION

That Council notes the contents of this report, which provides an introduction to the confidential report addressing sand extraction and compliance with the conditions of consent for DA 2013/162 in relation to the Ballina Sands Quarry located at Newrybar Swamp Road Kinvara.

Attachment(s)

1. Council Report - Ballina Sands Quarry - November 2018 Ordinary Council Meeting

8.10 Development Applications - Works in Progress - May 2019

8.10 Development Applications - Works in Progress - May 2019

The following schedule sets out current development applications that have not yet been determined for the reasons cited.

Note that dwelling house and dual occupancy applications are not included in this report.

DA No.	Date Rec'd	Applicant	Proposal	Status
2017/223	5/5/2017	Ardill Payne & Partners	Two lot residential subdivision to create 1 x 1,157sqm and 1 x 1,145sqm allotments and associated works – 31 Tara Downs, Lennox Head	Awaiting additional information
2018/51	2/2/2018	Ballina Island Development Pty Ltd	Subdivision of land to create 103 residential lots and seven super lots, construction of roads, stormwater management and drainage (including detention basins and piping of creek), infrastructure servicing, earthworks, vegetation clearing, open space and temporary signage – 20 North Creek Road, Lennox Head	Awaiting additional information
2018/74	13/2/2018	Ardill Payne & Partners	Amended Proposal: Demolition of Existing Residential Flat Building and Erection and Strata Title Subdivision of a Six Storey Residential Flat Building Containing 12 (originally 14) dwellings, associated car parking and works. The proposed building has a height of 18.6m (originally 18.3) with the lift over run at a height of 19.3m which is above the building height allowance of 18m under the Ballina Local Environmental Plan 2012 – 8 Grant Street, Ballina	Awaiting additional information
2018/432	26/7/2018	Ardill Payne & Partners	Two Lot Subdivision by way of a Boundary Adjustment to create one 1080m ² and one 776m ² allotments and construction of a shed on Proposed Lot 1 - 2 Old Pacific Highway, Newrybar	Awaiting additional information

8.10 Development Applications - Works in Progress - May 2019

2018/454	27/7/2018	Ardill Payne & Partners	Alterations and Additions to Existing Industrial Tenancy including use of a mezzanine floor - 3/7 Piper Drive, Ballina	Awaiting additional information
2018/482	10/8/2018	P & G Smith	To establish a home business comprising a cooking class conducted within an existing holiday cabin – 841 Fernleigh Road, Brooklet	Awaiting additional information
2018/554	13/9/2018	Ardill Payne & Partners	Change of Use to Establish a Depot – Removalist Business and Associated Signage – 6 Waverley Place, West Ballina	Awaiting additional information
2018/597	26/9/2018	Ardill Payne & Partners	Establishment and operation of a water supply system including the construction of shed and associated works – Lot 15 Ellis Road, Rous	Referred to Government Departments Councillor briefing to be held – date to be advised To be reported to Council for determination as per Council's resolution 251018/7 – 25 October 2018
2018/616	9/10/2018	Northern Rivers Land Solutions	To undertake bulk earthworks associated with the subdivision consented to under DA 2016/184 – 658 Tamarind Drive, 33 Mitchell Close, 52 Albert Sheathers Lane & 88 Sandy Flat Road, Cumbalum	Referred to Government Departments
2018/631	17/10/2018	GM Project Management	Proposed two lot subdivision to create one x 574sqm and one x 708sqm allotments and partial demolition and reconstruction of existing dwelling house – 7 Evelyn Villa Drive, Alstonville	Awaiting additional information

8.10 Development Applications - Works in Progress - May 2019

2018/702	19/11/2018	Ardill Payne & Partners	Boundary adjustment subdivision of two existing lots to create two modified lots – Proposed Lot A 1.95ha and Proposed Lot B 29.9ha – 140 Broken Head Road, Newrybar	Report to Council's May Meeting (elsewhere in this agenda) to determine the variation of the minimum lot size development standard
2018/730	29/11/2018	Surf Life Saving Far North Coast	Operation of a kiosk from the ground floor of the Shelly Beach Surf Life Saving Club building, and associated building works – 11 Shelly Beach Road	Awaiting additional information
2018/735	30/11/2018	Anthony De Ridder	Alterations and Additions to Industrial Development – 38-44 Piper Drive, Ballina	Awaiting additional information
2018/741	5/12/2018	Ardill Payne & Partners	Stage 2 of a Seniors Housing Development (Alstonville BaptistCare/Maranoa) comprising 15 self-contained dwellings, tree removal, car parking, infrastructure and associated works - 15-19 The Avenue, Alstonville	Awaiting additional information
2018/746	5/12/2018	Ardill Payne & Partners	Alterations and Additions to the Ballina Central Shopping Centre, comprising the addition of two pad sites, new outdoor dining space, new commercial floor space and alterations to the car parking area, including a new car parking shade structure – 44 Bangalow Road, Ballina	Awaiting additional information
2018/747	6/12/2018	Ardill Payne & Partners	Staged Torrens Title Subdivision and Boundary Adjustment to create 18 x residential lots, 1 x residual lot, 1 x drainage reserve, associated infrastructure works, earthworks and revegetation/rehabilitation works (Avalon Estate Stages 6a and 6b) - Rifle Range Road & 22 Scarlett Court, Wollongbar	Being assessed

8.10 Development Applications - Works in Progress - May 2019

2018/753	7/12/2018	Newton Denny Chapelle	Staged Torrens Title Subdivision comprising 31 x residential lots, 1 x open space lot, extension to an existing drainage reserve and associated infrastructure works, earthworks and vegetation management works - Avalon Avenue, 55 Avalon Avenue, 93 Rifle Range Road, Wollongbar	Being assessed
2019/1	3/01/2019	Byron Highlander Estate Pty Ltd	Change of Use of an Approved Dwelling House to a Tourist Facility (Accommodation) in addition to its use in conjunction with the Place of Assembly (Function Centre and Refreshment Room) approved as part of DA 2017/557 – North Teven Road, Teven	Determination pending
2019/9	24/12/2018	Ardill Payne & partners	Construction of Ballina community Men's Shed – 36 Racecourse Road, Ballina	Awaiting additional information
2019/21	21/1/2019	Ardill Payne & Partners	Establishment of a detached dual occupancy involving the relocation of a dwelling and tourist and visitor accommodation comprising the change of use of an existing studio to a holiday cabin and the erection of a new holiday cabin and associated works – 208 Fernleigh Road, Tintenbar	Awaiting additional information
2019/30	24/1/2019	Newton Denny Chapelle	Staged development involving the temporary use of the land for five years as a function centre for the purpose of hosting wedding ceremonies. It is proposed to host a maximum of 20 ceremonies in any 12 month period catering for a maximum of 120 people. The proposal also involves staged development of eight holiday cabins and associated amenities and infrastructure – 43 Tuckombil Lane, Tuckombil	Awaiting additional information To be reported to Council for determination as per Council's resolution 240419/9 – April 2019

8.10 Development Applications - Works in Progress - May 2019

2019/109	25/2/2019	Ardill Payne & Partners	Boundary Adjustment Subdivision to create one x 5.6ha and one x 8.4ha allotments – 189 Uralba Road, Uralba	Determination pending
2019/123	28/2/2019	Newton Denny Chapelle	Demolition of all structures on-site and erection and Strata Title subdivision of a mixed use development comprising a three storey 9.7m high building (above the 9.0m height of buildings development standard) including food and drink premises and retail premises at ground and second floors, business premises at second floor and shop top housing consisting of two residential dwellings on the third floor, on-site car parking, vegetation removal and associated works. A pedestrian walkway linking Ballina Street and Park Lane is proposed - 74 Ballina Street, Lennox Head	Awaiting additional information
2019/133	4/3/2019	Ardill Payne & Partners	Subdivision to create eight residential Torrens Title lots varying in size from 690sqm to 1200sqm and one residue 2.72 hectare allotment and associated works – 44-52 Blue Seas Parade, Lennox Head	Awaiting additional information
2019/137	7/3/2019	P A Lowndes	Alterations/Additions to an existing Recreation Establishment - 1305 Eltham Road, Alstonvale	Awaiting additional information
2019/138	7/3/19	G Fury	Vegetation management works comprising the removal of two trees - 14 Buchanan Street, Ballina	Being assessed
2019/144	8/3/2019	Newton Denny Chapelle	To undertake renovation, refurbishments and upgrades to Summerland House Farm comprising upgrades to the visitor facilities and amenities and upgrades and expansion of the existing macadamia de-husking facility – 253 Wardell Road, Lynwood	Awaiting additional information

8.10 Development Applications - Works in Progress - May 2019

2019/145	8/3/2019	Ardill Payne & Partners	Construction of an Industrial Development to be Used for a Depot and For General and Light Industrial Purposes, Filling of Land and Associated Works – 29-31 Smith Drive, West Ballina	Awaiting additional information
2019/162	15/3/2019	Northern Rivers Land Solutions	Change of Use to Establish a Vehicle Repair Station – 24 Barlows Road, West Ballina	Awaiting additional information
2019/168	18/3/2019	Vision Town Planning	Change of Use to Establish a Recreation Facility (Indoor) Gym – 4/1 Stinson Street, Ballina	Awaiting additional information
2019/170	19/3/2019	MP & MJ Veronesi	Two Lot Boundary Adjustment Subdivision to create one x 78ha and one x 5ha allotments – 987 & 937 Wardell Road, Meerschaum Vale	Awaiting additional information
2019/176	21/3/2019	Northern Rivers Land Solutions	Change of Use to Recreation Facility (Indoor) – Martial Arts Studio – 11 Russellton Drive, Alstonville	Being assessed
2019/187	28/3/19	TJ Chilcott	Demolition of an existing house and erection and Strata Title subdivision of a multi dwelling housing development comprising three x two bedroom dwellings and associated vegetation management works – 54 Commercial Road, Alstonville	Awaiting additional information
2019/194	1/4/19	Newton Denny Chapelle	Construction of driveway – Teven Road, West Ballina	Being assessed
2019/197	2/4/19	BC Offley	Vegetation management works comprising the removal of one tree – 8 Yeates Court, Wollongbar	Determination pending

8.10 Development Applications - Works in Progress - May 2019

2019/202	3/4/19	PF Worth	Vegetation management works comprising the removal of one tree – 20 Willie Wagtail Place, Alstonville	Council had resolved – (240419/8 April 2019) for DA to be reported to Council for determination. Applicant has subsequently withdrawn application. No further action to be taken.
2019/221	10/4/19	Ardill Payne & Partners	Two lot residential subdivision to create one x 1111m ² allotment (below 1200m ² min lot size standard) and one x 1389m ² allotment, part demolition of existing dwelling house and alterations and additions to the existing dwelling house including construction of a swimming pool, vegetation management works and associated infrastructure works – 30 Teven Road, Alstonville	On exhibition
2019/222	11/4/19	Southern Cross Soloists Music Ltd	Temporary Use – Annual Music Concert – 179 Broken Head Road, Newrybar	Being assessed
2019/223	11/4/19	Tim Fitzroy & Associates	Expansion of the existing solid waste transfer station with a processing capacity of up to 28,000 tonnes per annum. The proposed expansion will allow for sorting of construction/demolition waste, general mixed waste, recycling, paper/cardboard, green waste, steel, timber, waste oil and community recycling centre for household chemicals. The transfer station is proposed to operate 6.00am to 6.00pm Monday to Friday and 7.00am to 4.00pm Saturdays and Sundays and the waste transfer (haulage) operations to occur 24 hours Monday to Sunday.– 2 Northcott Crescent, Alstonville	On exhibition

8.10 Development Applications - Works in Progress - May 2019

2019/224	11/4/19	Betula Pty Ltd	Two lot Torrens Title Subdivision to create one x 45 hectare and one x 53 hectare allotments – Newrybar Swamp Road, Lennox Head	On exhibition
2019/233	15/4/19	Planners North	To establish trial fill embankments and installation of settlement monitoring plates– 550-578 River Street, West Ballina	Being assessed
2019/236	16/4/19	W Brocklebank	Vegetation management works comprising the removal of one tree – 5 Nixon Place, Lennox Head	Being assessed
2019/269	30/4/19	Newton Denny Chapelle	Erection of Sports Amenity and Clubhouse Facilities at the Wollongbar Sports Fields – 80 Elvery Lane, Alstonville	On exhibition
2019/250	18/4/19	M Preston	Vegetation management works comprising the removal of four trees – 1&2/30 Southern Cross Drive, Ballina	Being assessed
2019/276	3/5/19	J Carson	Vegetation management works comprising the removal of 15 trees – 19 Acacia Street, Wollongbar	Being assessed

8.10 Development Applications - Works in Progress - May 2019

Regional Development (Determined by Northern Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
2016/2	4/1/2016	21st Century Builders Pty Ltd	Amended Proposal: To undertake the first stage of the urban subdivision of the new Cumbalum Urban Release Area – Precinct B comprising a total of 166 allotments and including road construction and intersection works at Ross Lane, extensive earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works - 246 Ross Lane, 47 Dufficys Lane & Ross Lane, Kinvara	Awaiting additional information
2016/524	16/9/2016	Planners North	Amended Proposal: Seniors Living Development pursuant to SEPP (Housing for Seniors and People with a Disability) 2004 comprising amended layout, 147 (previously 211) serviced, self-care housing with associated clubhouse, recreation facilities, roads and associated infrastructure and environmental management and protection works – 67 Skennars Head Road, Skennars Head	Awaiting additional information
2016/746	23/12/2016	Ringtank Pty Ltd	Erection of three dwelling houses, 10 site caravan park, equine facilities including stables, veterinary facility, quarantine stalls, horse float and equipment shelters and two equestrian exercise lawns, private outdoor recreation facilities including go-kart track, shooting range, associated buildings, roadworks, earthworks including dam and landscaping - Carrs Lane, Empire Vale Road, Reedy Creek Road- Keith Hall/Empire Vale	Referred to Government Departments
2017/600	30/10/2017	Newton Denny Chapelle	Expansion of an Existing Resource Recovery Facility - 19-21 Northcott Crescent, Alstonville	Referred to Government Departments

8.10 Development Applications - Works in Progress - May 2019

2018/321	13/6/2018	PalmLake Works Pty Ltd	Staged erection of an extension to an existing Seniors Housing Development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 comprising of 156 self-care dwellings, recreation facilities and associated car parking, infrastructure works, site filling and associated works – 120 North Creek Road, Ballina	Subject to Land and Environment Court appeal
2018/756	11/12/2018	Newton Denny Chapelle	Construction of a Multi-Purpose Hall at Emmanuel Anglican College, comprising two indoor sports courts, associated gymnasium and amenities, a stage and retractable seating. The proposed building is to front River Street, is to have a maximum height of 12.6 metres and is to be used during and outside school hours, 7 days a week. The development also involves an increase in student numbers, earthworks, infrastructure works, car parking and vegetation management works – 62 Horizon Drive, West Ballina	Being assessed

Major Development (Determined by Minister)

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

RECOMMENDATION

That Council notes the contents of this report on the status of outstanding development applications for May 2019.

Attachment(s)

Nil

9.1 Use of Council Seal

9. Corporate and Community Division Reports

9.1 Use of Council Seal

RECOMMENDATION

That Council affix the Common Seal to the following document.

US 19/03	Transfer of Sublease and Licence from A Foukkare and T Burns to JDNI Pty Ltd and an additional five year option period for premises known as Ballina Gallery Café, for Part Lot 1 DP 1153927, being that part of the building and surrounds known as the “Old Council Chambers”. Explanation: This reflects the sale of the Gallery café business, which was subject to these documents being approved by Council.
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Attachment(s)

Nil

9.2 Investment Summary - April 2019

9.2 Investment Summary - April 2019

Delivery Program Financial Services

Objective To provide details of Council's cash and investments portfolio breakup and performance.

Background

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a Council must provide a monthly report (setting out all money Council has invested), to be presented at the Ordinary meeting of Council, immediately following the end of the respective month. This report has been prepared for the month of April 2019.

Key Issues

- Compliance with Investment Policy and the return on investments.

Information

Council's investments are all in accordance with the Local Government Act, the Regulations and Council's Investment Policy. The balance of investments as at 30 April was \$80,538,000. This represents a decrease of \$3 million from March. Council's investments, as at 30 April, are at an average (weighted) rate of 2.87%, which is 1.22% above the 90 Day Bank Bill Index of 1.65%.

The balance of the cheque account at the Commonwealth Bank, Ballina, as at 30 April 2019, was \$3,834,537. This balance is higher than the balance of \$3,773,588 as at 31 March 2019. The combined movement of investments and bank balances was a decrease of \$2,939,051. This overall decrease is attributable to large creditor payments including capital projects at the Airport \$0.5 million and the Ballina Indoor Sports Centre \$1.2 million.

The majority of Council's investment portfolio is restricted by legislation (external) and Council (internal) uses for the following purposes:

Reserve Name	Restriction	% Portfolio*
Wastewater Fund (incl developer contributions)	External	10.8%
Water Fund (incl developer contributions)	External	21.8%
Section 94 Developer Contributions	External	11.2%
Bonds and Deposits	External	2.7%
Other External Restrictions	External	5.1%
Carry Forward Works	Internal	3.5%
Bypass Maintenance Funding	Internal	4.6%
Landfill and Resource Management	Internal	2.1%
Employee Leave Entitlements	Internal	3.7%
Quarries	Internal	1.0%
Property Reserves	Internal	5.9%
Plant and Vehicle Replacement	Internal	1.4%
Road Works	Internal	6.8%
Swimming Pools Capital	Internal	0.2%
Indoor Sports Centre	Internal	3.7%
Miscellaneous Internal Reserves	Internal	7.1%
Financial Assistance Grant in Advance	Internal	2.8%
Unrestricted		5.6%
Total		100%

* Reflects reserves held as at 30 June 2018.

9.2 Investment Summary - April 2019

A. Summary of Investments by Institution

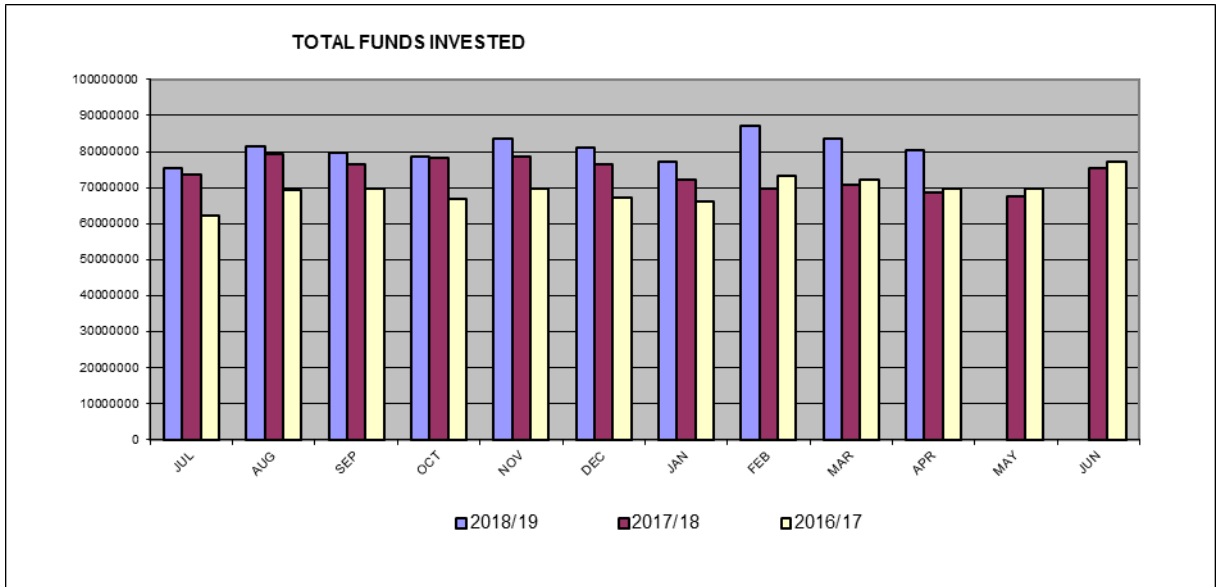
Funds Invested With	Fossil Fuel Aligned	ADI Rating *	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
Grandfathered Investments							
National Australia Bank	Yes	BBB	1,788	1,788	0	2.2%	2%
Rated Institutions							
AMP Bank	Yes	A-	6,500	6,500	20%	8.1%	
Auswide Bank	No	BBB	1,000	1,000	10%	1.2%	
Bank of China	Yes	A	12,000	12,000	20%	14.9%	
Bank of Queensland	Yes	BBB+	0	4,000	10%	5.0%	
BankWest	Yes	AA-	12,000	10,000	20%	12.4%	
Bendigo & Adelaide Bank	No	BBB+	3,000	3,000	10%	3.7%	
Beyond Bank	No	BBB	2,000	2,000	10%	2.5%	
Commonwealth Bank of Australia	Yes	AA-	9,000	5,000	20%	6.2%	
Credit Union Australia	No	BBB	4,100	4,100	10%	5.1%	
Defence Bank Ltd	No	BBB	4,500	3,500	10%	4.3%	
Greater Bank Limited	No	BBB	2,000	2,000	10%	2.5%	
Heritage Bank	No	BBB+	2,000	2,000	10%	2.5%	
ME Bank	No	BBB	5,750	5,750	10%	7.1%	
My State Bank Ltd	No	BBB+	4,500	4,500	10%	5.6%	
Newcastle Permanent Bld Society	No	BBB	4,700	4,700	10%	5.8%	
Teachers Mutual Bank Limited	No	BBB	1,700	1,700	10%	2.1%	
Westpac Banking Corporation	Yes	AA-	7,000	7,000	20%	8.7%	98%
Total			83,538	80,538	100%		
Credit Rating Summary as per the Investment Policy							
	Maximum Allowed		Value	Value	%	%	
	%	Value	Previous	Current	Previous	Current	
A- or Higher	100%	80,538	46,500	40,500	56%	50%	
BBB	60%	48,323	37,038	40,038	44%	50%	
Total			83,538	80,538	100%	100%	

B. Summary of Investments Fossil Fuel Aligned

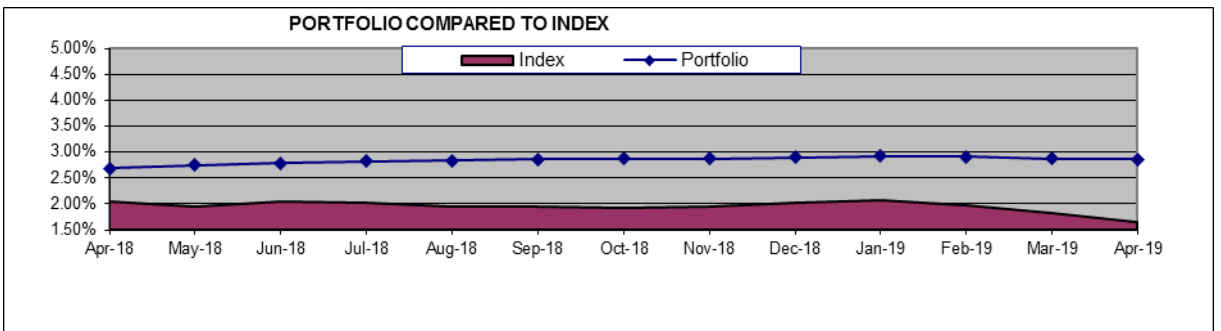
	Previous Month	Current Month
Fossil Fuel Aligned	48,288 58%	46,288 57%
Non-Fossil Fuel Aligned	35,250 42%	34,250 43%
Not Classified	0 0%	0 0%
Total	83,538 100%	80,538 100%

Classification based on advice from 'Market Forces'.

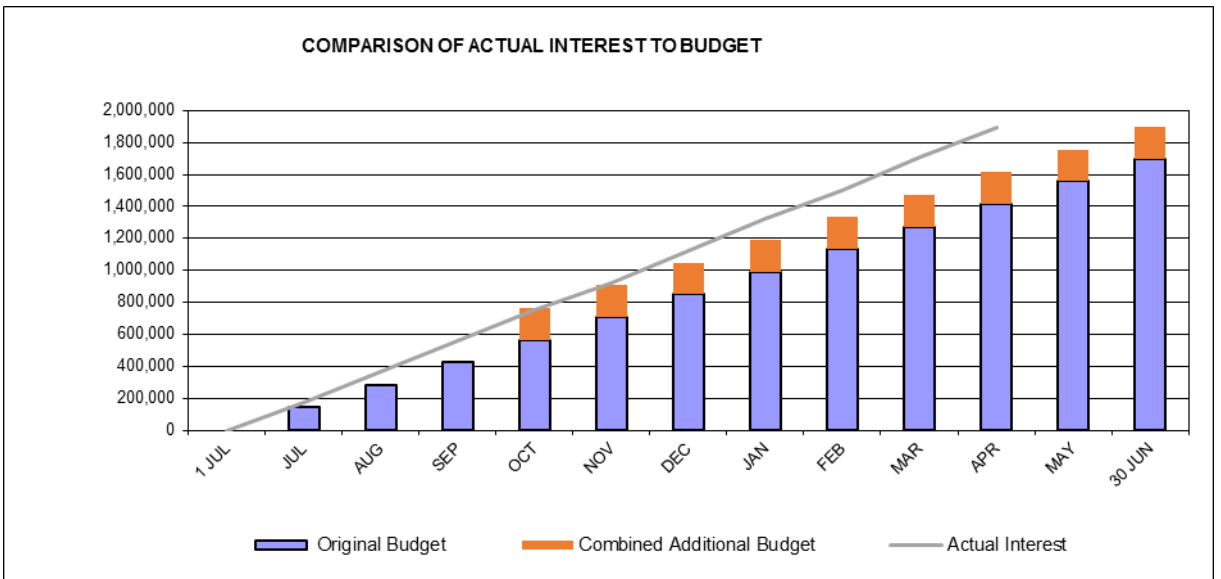
C. Monthly Comparison of Total Funds Invested



D. Comparison of Portfolio Investment Rate to 90 Day BBSW



E. Progressive Total of Interest Earned to Budget



9.2 Investment Summary - April 2019

F. Investments held as at 30 April 2019

PURCH DATE	ISSUER	TYPE	RATE	NEXT MATURITY	PURCH VALUE \$'000	FAIR VALUE \$'000
03/08/17	Westpac Banking Corporation	FRN	3.09%	03/05/19	2,000	2,000
06/09/18	Newcastle Permanent Bld Society	FRN	3.42%	06/05/19	1,000	1,007
06/02/18	Newcastle Permanent Bld Society	FRN	3.42%	06/05/19	700	705
08/02/19	Westpac Banking Corporation	FRN	3.06%	08/05/19	2,000	2,000
06/03/19	ME Bank	TD	2.50%	07/05/19	4,000	4,000
09/11/17	ME Bank	FRN	3.24%	09/05/19	750	754
07/08/18	BankWest	TD	2.80%	14/05/19	4,000	4,000
20/09/04	National Australia Bank (ASX Listed)	FRN	3.19%	15/05/19	1,788	1,590
18/08/17	Westpac Banking Corporation	FRN	2.99%	20/05/19	1,000	1,000
21/02/19	Newcastle Permanent Bld Society	FRN	2.94%	21/05/19	2,000	2,000
22/02/19	Newcastle Permanent Bld Society	FRN	2.94%	22/05/19	1,000	1,000
14/08/18	BankWest	TD	2.81%	21/05/19	4,000	4,000
24/02/17	Greater Bank Limited	FRN	3.34%	24/05/19	1,000	1,001
30/08/16	Greater Bank Limited	FRN	3.42%	30/05/19	1,000	1,001
06/03/19	Credit Union Australia	FRN	3.13%	06/06/19	600	605
10/09/18	AMP Bank	FRN	2.94%	11/06/19	1,500	1,499
17/06/16	Commonwealth Bank of Australia	FRN	2.89%	17/06/19	1,000	1,000
27/06/18	Heritage Bank	TD	3.05%	24/06/19	2,000	2,000
26/04/19	BankWest	TD	2.15%	25/06/19	2,000	2,000
29/06/17	Teachers Mutual Bank Limited	FRN	3.19%	28/06/19	1,000	1,006
30/06/16	Commonwealth Bank of Australia	FRN	2.81%	30/06/19	1,000	1,000
02/07/18	Teachers Mutual Bank Limited	FRN	3.14%	02/07/19	700	703
26/03/19	Commonwealth Bank of Australia	TD	2.38%	04/07/19	1,000	1,000
24/04/19	Bank of Queensland	TD	2.29%	04/07/19	4,000	4,000
11/01/19	Commonwealth Bank of Australia	FRN	2.83%	11/07/19	1,000	1,015
26/07/16	Commonwealth Bank of Australia	FRN	2.61%	26/07/19	1,000	1,000
30/04/19	Westpac Banking Corporation	FRN	2.49%	30/07/19	1,000	1,000
30/04/19	Westpac Banking Corporation	FRN	2.49%	31/07/19	1,000	1,000
05/02/19	Bendigo & Adelaide Bank	TD	2.80%	06/08/19	3,000	3,000
16/08/18	AMP Bank	TD	2.85%	16/08/19	1,000	1,000
28/08/18	Defence Bank Ltd	TD	2.85%	27/08/19	1,000	1,000
07/09/18	ME Bank	TD	2.75%	05/09/19	1,000	1,000
11/03/19	AMP Bank	TD	2.80%	11/09/19	1,000	1,000
13/03/19	Auswide Bank	TD	2.85%	17/09/19	1,000	1,000
26/03/19	My State Bank Ltd	TD	2.70%	26/09/19	1,000	1,000
02/10/18	Bank of China	TD	2.86%	01/10/19	2,000	2,000
15/10/18	Bank of China	TD	2.83%	10/10/19	2,000	2,000
18/10/18	AMP Bank	TD	2.83%	17/10/19	1,000	1,000
02/11/18	My State Bank Ltd	TD	2.85%	01/11/19	2,500	2,500
06/11/18	Bank of China	TD	2.86%	06/11/19	1,500	1,500
08/11/18	Defence Bank Ltd	TD	2.85%	07/11/19	1,500	1,500
19/02/19	AMP Bank	TD	2.85%	19/11/19	2,000	2,000
22/11/18	Defence Bank Ltd	TD	2.85%	22/11/19	1,000	1,000
27/11/18	Bank of China	TD	2.87%	26/11/19	2,000	2,000
29/11/18	Bank of China	TD	2.88%	29/11/19	3,000	3,000
03/12/18	Credit Union Australia	TD	2.86%	03/12/19	3,500	3,500
24/12/18	Bank of China	TD	2.87%	23/12/19	1,500	1,500
15/01/19	My State Bank Ltd	TD	2.86%	15/01/20	1,000	1,000
12/02/19	Beyond Bank	TD	2.81%	11/02/20	2,000	2,000
Totals					80,538	80,386
CDA = Cash Deposit Account		FRN = Floating Rate Note				
FRTD = Floating Rate Term Deposit		TD = Term Deposit				

RECOMMENDATION

That Council notes the record of banking and investments for April 2019.

Attachment(s)

Nil

9.3 Tender - Banking Services

9.3 Tender - Banking Services

Delivery Program Financial Services

Objective To obtain Council approval to accept a tender for Banking Services.

Background

The current transactional banking service arrangement with the Commonwealth Bank is due to expire at the end of the financial year.

As a result of this a joint tender was prepared with other local councils for banking services.

Tenders were received from the National Australia and Commonwealth Banks. A tender assessment panel was formed to evaluate the tenders received.

The panel consisted of members from Clarence Valley, Ballina Shire, Kyogle Shire, Tweed Shire, Byron Shire and Rous County councils. The purpose of this report is to accept the tender most advantageous to Council.

Key Issues

- Price and service

Information

In an effort to secure the best possible outcome and in the interests of resource sharing arrangements, a regional approach was adopted with respect to the Banking Service Facility. Finance staff from the Clarence to the Tweed participated in various meetings and exchanges of information.

Clarence Valley Council coordinated the process, which included packaging the total transactions for all councils in the region.

A notification application for the tender was lodged with the Australian Competition and Consumer Commission to ensure that it did not breach Australian Competition and Consumer Law.

The tender was for transactional services only and did not include investment of surplus funds or borrowings. These activities are market tested every time an investment is placed or loan funds are taken up.

Tenders were received from the National Australia Bank and the Commonwealth Bank. Rates were provided for payments received and payments made by Council (cash, debit and credit cards and electronic funds transfers).

The banks also outlined the services they could provide including on-line banking.

All services offered were reasonably similar so the main focus to separate the tender was the charges levied to provide services.

9.3 Tender - Banking Services

Rates varied from the two banks for each of the different types of transactions.

For Ballina Shire Council, transactions for the previous financial year were obtained and modeled against the rates for the two banks.

Following this analysis the Commonwealth was assessed to be the most cost effective by a close margin to the National Australia Bank.

All other councils in the joint meeting also concluded that the Commonwealth Bank was the best option.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
It is essential that Council utilises best practice banking processes from both efficiency and customer service perspectives.

Legal / Resource / Financial Implications

Council currently pays approximately \$95,000 per annum for transactional banking services.

Based on the new rates the cost to Council will remain very close to current costs depending on transaction levels; i.e. tendered rates have remained similar to the current rates.

This is an excellent outcome and one of the benefits derived from a joint tender process is the massive transaction volume makes it an attractive proposition to the service provider.

The Commonwealth Bank has offered a five-year contract from 1 July 2019 to 30 June 2024.

Consultation

Tenders were advertised regionally, in Sydney and on tenderlink.

Options

The current arrangement for banking services expires in June. Two tenders were received and both were of a very high standard. The options are to accept or not accept one of the tenders.

Either bank could satisfactorily provide the services required and the recommendation is that the tender from the Commonwealth Bank be accepted.

RECOMMENDATIONS

1. That Council accepts the tender from the Commonwealth Bank for transactional banking services, as outlined in this report, for the period 1 July 2019 to 30 June 2024.
2. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

Nil

9.4 Legal Matters - Update

9.4 Legal Matters - Update

Delivery Program Communications

Objective To provide an update on legal matters involving Council.

Background

The purpose of this report is to provide an update on current or recent legal matters to ensure that Councillors and the community are informed on litigation involving Council.

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 to the current or most recent financial year.

Details of the current legal case(s) are as follows:

Solicitor for Council	Parties	Description	Cost Estimate	Expenses to Date
Allens Linklaters	Planners North v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2016/184	1,000,000	1,189,000

Comment

The applicant appealed the deemed refusal of DA 2016/184 (Cumbalum views Estate) for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A) originally comprising a total of 642 residential allotments, four future development lots, eight residual rural lots, 18 open space lots, road construction, earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works.

The matter has been through a Section 34 Conciliation Conference, which was terminated by Commissioner Chilcott on 31 August 2017. The appeal was also scheduled for a one week formal hearing before Commissioner Brown commencing Monday 12 February 2018.

The applicant sought leave of the Court to formally amend the application on three occasions. These ongoing changes to the proposed subdivision from that originally proposed have been in response to Council's planning and environmental outcomes for this locality and following joint expert reporting.

A hearing before Commissioner Brown on the conditions in dispute was held on 15 May 2018.

A decision on the matter was handed down on 22 June 2018 with the development application approved with conditions. The approved development (now 457 residential lots) is different from that originally proposed reflecting the address of a variety of issues that were raised by Council as concerns both pre the Court action and during the Court proceedings.

Allens Linklaters are currently addressing the matter of the recovery of costs in line with Council's June 2018 resolution in this regard.

9.4 Legal Matters - Update

CH Law	Byron Highlander Estate v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge refusal of development application 2017/557	30,000	11,000
<p>Comment</p> <p>The applicant appealed Council's decision to refuse DA 2017/557 for a function centre, restaurant and tourist facility at North Teven Road, Teven. The matter was considered at a Section 34 Conciliation Conference on 30 October 2018. On 14 November 2018, the Court ordered that the appeal is upheld and that DA 2017/557 for the construction of a function centre for 100 attendees and change of use of the adjacent dwelling house use as tourist accommodation is approved subject to conditions of consent. This matter has now concluded.</p>				
CH Law	Ballina Shire Council v White	Ballina Local Court - Class 5 Prosecution Proceedings	15,000	900
<p>Comment</p> <p>Council was alleging that the landowner has undertaken works without the prior development consent of Ballina Shire Council where such development consent was required contrary to Section 4.2 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW). These works consist of:</p> <ul style="list-style-type: none"> • the construction of an internal road and the importation of fill materials • the installation of a culvert into a natural waterway/waterbody • the installation of drainage culverts along the road • the subsequent apparent failure of these roadworks whereby it appears that these works are failing with materials flowing into a natural waterway/waterbody • the removal and poisoning of vegetation; • a pollution incident, whereby soil has been deposited into a natural waterway/waterbody as a result of the above works and the installation of drainage works. <p>Council resolved to commence proceedings in the Local Court jurisdiction. This matter was listed in the Ballina Local Court where pleas of guilty were entered by the person responsible for the works, Mr Jason White. Mr White appeared again in Ballina Local Court on Thursday 14 February 2019 for sentence.</p> <p>Magistrate Stafford found that both charges were proven, however on the basis that the objective seriousness of the offences was at the minor end of the spectrum and that, following Council's Prevention Notice being complied with, significant repair to the natural environment was undertaken at a great cost to Mr White, there was no real ongoing harm to the environment. Mr White was granted a Section 10 (case proven, no criminal conviction recorded) under the provisions of the Crimes (Sentencing Procedure) Act 1999 (NSW). Mr White was ordered to pay Council's professional costs of \$4,200. These proceedings have now concluded.</p>				
CH Law	Ballina Shire Council v The Beach (East Coast Australia) Pty Ltd	Land and Environment Court - Class 4 Civil Enforcement Proceedings	35,000	26,600
<p>Comment</p> <p>Council staff have been investigating building activity and works at 70 Shelly Beach Road East Ballina (Lot 1 DP 781525) since August 2018. This property is commonly known as The Beach House (formerly Gunundi and Dunes). In summary, substantial works including building works and land forming have been undertaken at the site. The key issue in relation to this matter is whether necessary approvals have been obtained for various aspects of the works. The landowner has largely relied on exempt development provisions under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 as the basis for the work undertaken.</p> <p>Council initiated Class 4 proceedings in the Land and Environment Court seeking various declarations and injunctions relating to works undertaken and use of the property. The matter was adjourned until 10 May 2019 pending Council's determination of two development applications and a building information certificate. At the April 2019 Ordinary meeting Council resolved to grant consent to the two development applications. Subsequently, the building information certificate was issued.</p> <p>Class 4 Proceedings have now been discontinued at the agreement of both parties. No further action in relation to these Class 4 Proceedings is to be taken.</p>				

9.4 Legal Matters - Update

CH Law	Palmlake Works Pty Ltd v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2018/321	200,000	32,300
Comment				
<p>DA 2018/321 comprises the staged erection of an extension to an existing Seniors Housing Development (Palm Lake Resort) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 comprising of 156 self-care dwellings, recreation facilities and associated car parking, infrastructure works, site filling and associated works at Lot 2 DP 1155600, 120 North Creek Road Ballina.</p> <p>The application has a CIV of \$37.8 million and is deemed to be regionally significant development. As such, the Northern Joint Regional Planning Panel (JRPP) was identified as the determining authority. Although this is a JRPP matter, Council is required to attend to the appeal. The application was lodged on 13 June 2018. Council has sought additional information in relation to the application through various items of correspondence.</p> <p>On 24 October 2018, the applicant lodged Class 1 proceedings in the Land and Environment Court for a deemed refusal of development application 2018/321. The proceedings were lodged on the basis of not requiring that Council prepare its facts and contentions as to the case, as the applicant would be preparing amended plans for the development. Council has received legal advice and Counsel has been briefed as to the Class 1 proceedings.</p> <p>On 9 November 2018, the applicant filed a notice of motion containing an amended proposal and a request for expeditious proceedings in relation to this matter.</p> <p>Council prepared its Facts and Contentions by 17 December 2018. The applicant however failed to provide its response to the facts and contentions by the nominated date of 15 February 2019. The applicant subsequently sought leave on 16 April 2019 to further amend their application. An order for the applicant to pay Council's costs thrown away as a result of the amendment has also been made.</p> <p>Expert evidence in the fields of civil engineering (flooding, hydrology, geotechnical), bushfire, ecology and town planning have been engaged. An informal meeting between parties as required by the Court took place on 13 May 2019. The matter has been set down for Hearing from 15 to 22 July 2019.</p>				
CH Law	Michael Young v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2017/321	15,000	16,000
Comment				
<p>DA 2017/231 involves a proposal for a Dual Occupancy at Lot 2 DP 815590, Willowbank Drive Alstonvale. More specifically, the matter relates to a Section 4.55 modification application for amendments to an issued development consent for an attached dual occupancy.</p> <p>The modifications include the deletion of an approved linked walkway between two buildings and the removal of a condition of consent requiring the payment of Section 94 contributions. Council requested that the modification application be withdrawn and a fresh Development Application be submitted for the proposed building modifications and change of use to a detached dual occupancy.</p> <p>The applicant has exercised their rights under Clause 113 of the Regulation where the application is deemed refused if not determined within 40 days.</p> <p>The applicant has made an application for appeal to the Land and Environment Court regarding a condition of consent imposed requiring the payment of Section 94 contributions in addition to the argument against Council's request for the need to lodge a new Development Application for the modifications, rather than a Section 4.55 modification application.</p> <p>Preliminary discussions have been held with our solicitor and statements of evidence have been prepared by Council's own expert staff.</p> <p>The matter proceeded by way of a Section 34AA Conciliation Hearing on 10 and 11 January 2019 in the L&E Court. The Court granted consent to the dual occupancy development but the applicable Section 94 contributions remain payable.</p>				

9.4 Legal Matters - Update

CH Law	Ballina Shire Council v Ballina Sands	Ballina Local Court - Class 5 Prosecution Proceedings	15,000	26,000
<p>Comment</p> <p>Council resolved at the November 2018 Ordinary meeting to commence legal proceedings against Ballina Sands in relation to over extraction of sand from the Ballina Sands quarry located on Newrybar Swamp Road.</p> <p>Following the preparation and service of Court Attendance Notices on the quarry operators, the matter was listed for mention at Ballina Local Court on Thursday 14 February 2019. There was no appearance by the quarry operators however they were legally represented in Court.</p> <p>Council has provided evidence that it will seek to rely on for the prosecutions to the quarry operators through their solicitors, McCartney Young Solicitors. McCartney Young sought and was granted an adjournment to consider the Council's evidence.</p> <p>A Plea of Not Guilty has been entered. The matter has been set down for a formal Hearing on 26 July 2019.</p>				
CH Law	Wayne Millar v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge refusal of development application 2018/189	15,000	0
<p>Comment</p> <p>DA 2018/189 involves a proposal for a steel framed metal clad storage shed located on a residential lot at 4 Page Court Lennox Head. Council determined the application by way of refusal at its December 2018 Ordinary meeting.</p> <p>The matter is set down for a Section 34AA Conciliation and Hearing on 30 and 31 July 2019 in Ballina.</p>				
CH Law	Ardill Payne and Partners v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge refusal of development application 2017/707	45,000	8,000
<p>Comment</p> <p>DA 2017/707 involves a proposal for the demolition of an existing dwelling and ancillary structures, and construction of a new dwelling containing two storeys above ground level, a basement storey for carparking and storage, a swimming pool, and boundary fences on a residential lot at 5 Rayner Lane Lennox Head. Council determined the application by way of refusal at the August 2018 Ordinary meeting. The matter is set down for a Section 34AA Conciliation and Hearing on 12 and 13 September 2019 in Lismore.</p>				
CH Law	Intrapac Skennars Head v Ballina Shire Council & Northern Regional Planning Panel	Land and Environment Court – Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2017/244	40,000	32,200
<p>Comment</p> <p>DA 2017/244 relates to the Skennars Head Expansion Area and involves a proposal for the residential subdivision of Lot 6 in DP 1225206, involving 229 residential lots, and other associated works/easements in Lot 4 DP1184436, Lot 7 DP1225206, Lot 50 DP755684 and Lot 5 DP1225206.</p> <p>Although the development application has progressed to a point where it is before the Northern Regional Planning Panel for determination, the proponent has lodged an Appeal to preserve its Appeal rights. Importantly, this does not prevent the Panel from proceeding to determine the application. Ultimately, the determination of the application will inform the nature and extent of any Court action that follows.</p> <p>DA 2017/244 was determined by way of consent by the Northern Regional Planning Panel on 20 February 2019. The applicant subsequently withdrew the Class 1 Appeal.</p> <p>This matter has now concluded.</p>				

9.4 Legal Matters - Update

Legal / Resource / Financial Implications

This section provides an update on legal costs for recent years and for the year to date (mid May).

Description	2016/17	2017/18	2018/19
Byron Highlander Est – DA 2017/557 (Function Centre)	0	2,800	8,200
Planners North – DA 2016/184 (CURA A)	273,000	832,100	72,500
Skennars Head – DA 2017/244	0	1,100	31,100
Tara Downs – DA 2017/223	0	0	2,200
Sand Quarry Advice – Newrybar Swamp Road	0	4,000	22,100
Northcott Crescent - Resource Management Facility	0	0	12,300
The Beach House	0	0	26,600
White (404 Old Byron Bay Road)	0	0	900
Michael Young – DA 2017/321	0	0	16,100
Ardill Payne – 5 Rayner Lane – DA 2017/707	0	0	8,000
Palm Lakes – DA 2018/321	0	0	32,300
Water Extraction – DA 2018/597	0	0	4,000
Seabreeze Caravan Park	25,000	104,500	0
Parrington Advice – DA 2016/140 – 47 Ellis Road	0	4,800	0
Complex Field – DA 2015/377 (51 Blue Seas Parade)	0	300	0
Quays Drive Advice – DA 2016/690	0	9,800	0
Retail Fuel – DA 2016/25	5,000	0	0
North Creek – Wall	6,000	0	0
Riveroaks / Ferngrove Consent	6,000	0	0
Fire Safety Statements	0	0	5,300
Miscellaneous	38,000	7,800	7,700
Total Expenditure	353,000	967,200	249,300
Expenditure Budgets	167,500	1,005,000	220,000
Legal Budget – Surplus / (Overdrawn)	(185,500)	37,800	(29,300)

Legal expenditure can vary significantly from year to year as shown in the following table and 2016/17 and 2017/18 were substantial expenditures, as compared to previous years, largely due to the CURA A matter. The current financial year is also trending high.

Year	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Expense	790,000	412,000	710,000	136,000	149,000	265,900	103,000	88,000
Income	161,000	0	353,000	8,000	19,000	34,000	5,000	20,000
Net	629,000	412,000	357,000	128,000	130,000	231,900	98,000	68,000

These expenditure figures exclude legal costs relating to lease documentation, property matters and contracts. The quarterly financial review report elsewhere in this agenda includes a recommendation to increase the legal expenditure budget for development and building services by a total of \$70,000.

Contract Disputes

Contract disputes, can at times involve legal action, and the major on-going disputes in respect to contracts are as follows:

- Haslin Constructions – Ballina Wastewater Treatment Plant Design

Council has not awarded completion of this contract as the works are not considered to be defect free. The Contractor disputes this position and the issues were referred to Expert Determination.

9.4 Legal Matters - Update

The Expert Determination report was decided in Council's favour.

As the value of the works considered by the Expert is in excess of \$500,000 this determination is non-binding on the parties.

A report regarding the details for this matter was included in the business paper for the last meeting of Council. As per that report, a range of actions is being undertaken in an attempt to resolve the dispute. By way of update to the last report, a key action is for the contractor to provide a commercial settlement offer. Council has not yet received this offer and the agreed submission date has passed.

- Cardno Pty. Ltd – Wollongbar Sports Fields Design

Council issued Cardno with a letter of demand in respect to rectification costs associated with defective design components. Cardno has responded by denying the claim. An assessment of this response has been undertaken from both a legal and technical perspective. Further correspondence to Cardno has been issued reinforcing our claim.

- Ridgemill Pty. Ltd – Ballina Swimming Pool Electrical

Council issued Ridgemill with a letter of demand in respect to the additional costs to Council after Council relied on the advice of the designer in regards to the electrical infrastructure needs for both pool sites.

At the time of the last update to Council, staff were assessing the response provided by Ridgemill. The assessment determined Council should continue to pursue this matter and a further response was provided to Ridgemill with a request to meet for the purposes of resolving a settlement.

Following exchanges of correspondence regarding the terms of a meeting, there is now agreement for a meeting to take place late in May.

Consultation

This report is provided in open Council to ensure the community is informed on legal matters involving Council. If Council wishes to discuss any matters of detail for the matters listed it may be necessary to resolve into confidential session to ensure any legal advice is not provided in open session.

Options

This report is provided for information only.

RECOMMENDATION

That Council notes the contents of the legal matters – update report.

Attachment(s)

Nil

9.5 Financial Review - 31 March 2019

Delivery Program Financial Services

Objective To provide a quarterly review of the 2018/19 financial year budget based on the known results to 31 March 2019.

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, submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year. This report provides the review for the third quarter of the 2018/19 financial year.

Key Issues

- Variations to the budget and financial performance of Council

Information

The purpose of this report is to provide information on known budget variances as at 31 March 2019. The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Office of Local Government (OLG).

To comply with these guidelines an Operating Statement, Capital Budget, Cash and Investment Statement, Key Performance Indicators, Contractors, Consultants, Legal Information and Certification by the Responsible Accounting Officer are required. Commentary on the variations recommended is then provided after the tables.

A brief overview of the information provided in the report is as follows:

Section One - Operating Income and Expenditure - These tables provide the operating income and operating expenditure budgets for the Funds (General, Water and Wastewater).

Section Two - Capital Budget - These tables outline the capital expenditure budgets.

Section Three - Cash and Investment Statement - These tables provide details on the projected movements in the cash reserve balances.

Section Four - Key Performance Indicators - The ratios provide an indication of the financial health of the organisation.

Section Five - Contractors/Consultants/Legal Expenses - This information provides details of specific expenses incurred and contracts entered.

Section Six - Other Matters - This section of the report is for any other additional matters. The report includes a resolution to adopt the fees and charges for swimming pools, following their exhibition.

Section Seven - Certification - This is a Statement by the Responsible Accounting Officer as to whether the current year's estimated financial performance is or is not satisfactory.

Section 1 – Operating Income and Expenditure

General Fund – Operating Income and Expenses

This section deals with the General Fund operations.

Tables for operating income and expenses follow, including recommended variations to budget.

Following the tables are comments in respect to proposed budget variations that are considered to be material.

Operating Income	Original Budget 2018/19 000's	December Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for Approval 000's	March Budget 000's	Actual to March 000's
Planning and Environmental Health Division							
Strategic Planning	294	381	0	381	0	381	131
Development Services	672	672	0	672	(30)	642	465
Building Services	1,332	1,442	0	1,442	200	1,642	1,241
Environmental and Public Health	341	914	0	914	0	914	396
Public Order	262	277	0	277	0	277	207
Sub Total	2,901	3,686	0	3,686	170	3,856	2,440
Civil Services Division							
Engineering Management	307	315	0	315	160	475	233
Depot and Ancillary Building Management	0	0	0	0	0	0	0
Stormwater and Environmental Protection	512	632	0	632	0	632	398
Roads and Bridges	237	470	0	470	0	470	394
Ancillary Transport Services	773	901	722	1,623	(4)	1,619	541
Roads and Maritime Services	783	943	0	943	0	943	1,020
Open Spaces and Reserves	809	809	0	809	200	1,009	710
Fleet Mgmt and Workshop	232	232	0	232	0	232	161
Rural Fire and Emergency Services	200	264	0	264	0	264	113
Quarries and Sandpit	66	66	0	66	0	66	63
Landfill and Resource Management	2,181	2,230	0	2,230	0	2,230	1,569
Domestic Waste Management	6,671	6,806	0	6,806	0	6,806	6,745
Sub Total	12,771	13,668	722	14,390	356	14,746	11,947
Corporate and Community Division							
Communications	15	15	0	15	0	15	11
Financial Services	230	230	0	230	19	249	124
Financial Services-General Purpose Revenues	27,700	27,999	0	27,999	260	28,259	25,298
Information Services	103	118	0	118	20	138	118
Human Resources and Risk Mgmt	161	175	0	175	100	275	184
Property Management	2,562	2,562	0	2,562	0	2,562	2,301
Ballina Byron Gateway Airport	6,632	6,732	0	6,732	205	6,937	4,843
Community Facilities	764	679	0	679	(17)	662	480
Library Services	85	108	0	108	0	108	108
Swimming Pools	657	657	340	997	0	997	987
Tourism	150	153	0	153	0	153	153
Sub Total	39,059	39,428	340	39,768	587	40,355	34,607
Total Operating Income	54,731	56,782	1,062	57,844	1,113	58,957	48,994

General Fund – Operating Income and Expenses (cont'd)

	Original Budget 2018/19	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Expenses (excluding depreciation)							
<i>Planning and Environmental Health Division</i>							
Strategic Planning	1,182	1,423	0	1,423	24	1,447	739
Development Services	1,736	1,833	0	1,833	55	1,888	1,375
Building Services	1,212	1,253	0	1,253	15	1,268	984
Environmental and Public Health	1,557	2,430	0	2,430	(88)	2,342	1,201
Public Order	580	580	0	580	6	586	450
Sub Total	6,267	7,519	0	7,519	12	7,531	4,749
<i>Civil Services Division</i>							
Engineering Management	2,744	2,761	0	2,761	10	2,771	2,016
Depot and Ancillary Building Management	1,854	1,830	0	1,830	10	1,840	1,468
Stormwater and Environmental Protection	904	1,016	0	1,016	0	1,016	697
Roads and Bridges	3,497	3,638	0	3,638	0	3,638	2,531
Ancillary Transport Services	1,699	2,080	722	2,802	(4)	2,798	1,482
Roads and Maritime Services	706	776	0	776	0	776	509
Open Spaces and Reserves	3,779	4,075	(55)	4,020	264	4,284	2,944
Fleet Mgmt and Workshop	(1,019)	(984)	0	(984)	0	(984)	(374)
Rural Fire and Emergency Services	430	473	0	473	0	473	268
Quarries and Sandpit	45	51	0	51	54	105	33
Landfill and Resource Management	1,409	1,487	0	1,487	0	1,487	993
Domestic Waste Management	6,506	6,581	0	6,581	(450)	6,131	4,104
Sub Total	22,554	23,784	667	24,451	(116)	24,335	16,671
<i>Corporate and Community Division</i>							
Communications	2,347	2,391	0	2,391	4	2,395	1,784
Financial Services	(4,468)	(4,466)	0	(4,466)	2	(4,464)	(3,407)
Financial Services-General Purpose Revenues	0	0	0	0	0	0	0
Information Services	2,915	2,945	0	2,945	23	2,968	2,392
Human Resources and Risk Mgmt	736	918	0	918	77	995	490
Property Management	1,501	1,925	(47)	1,878	0	1,878	1,231
Ballina Byron Gateway Airport	4,572	4,683	0	4,683	(105)	4,578	2,996
Community Facilities	1,811	1,775	0	1,775	3	1,778	1,261
Library Services	1,511	1,545	0	1,545	0	1,545	1,474
Swimming Pools	1,480	1,480	327	1,807	0	1,807	1,265
Tourism	603	606	0	606	0	606	322
Sub Total	13,008	13,801	280	14,081	4	14,085	9,808
Total Operating Expenses	41,829	45,104	947	46,051	(100)	45,951	31,228
Net Operating Result Before Depreciation	12,902	11,678	115	11,793	1,213	13,006	17,766
Depreciation Expense and Other Non Cash	13,885	13,885	0	13,885	0	13,885	3,471
Net Operating Result Continuing Operations	(983)	(2,207)	115	(2,092)	1,213	(879)	14,295

General Fund Working Capital Forecast

Item	Original Budget 2018/19	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Working Capital Surplus/(Deficit)	(199,900)	(118,300)	0	(118,300)	164,800	46,500	

Working capital is a measure of short term liquidity and as a rule Council aims to target a break even result for the General Fund.

Comments - General Fund

The **forecast operating result as at March** is a loss of \$879,000 which is an improvement of \$1,328,000 from the December forecast loss of \$2,207,000.

The estimated movement in **unrestricted working capital** has improved from an anticipated deficit of \$118,300 to an anticipated surplus of \$46,500.

Comments on the larger budget variations are contained in the report as follows. The adjustments shown in the tables are inclusive of all amendments and the comments do not account for minor budget changes.

General Fund - Operating Revenues

Planning and Environmental Health Division

Development Services

As noted at the December quarter review, income has been trending down but was anticipated to have improvement over the remainder of the year.

Although improved since the last quarter, a decrease of \$30,000 is proposed as it is still trending down.

This decrease brings the total forecast income for the Development Services section to \$642,000.

Building Services

Overall income is continuing to trend well above original budget forecasts.

A further increase of \$200,000 to forecast income is proposed, following an increase of \$110,000 in the December quarter review.

This increase brings the total forecast income for the Building Services section to \$1,642,000.

An amount of \$100,000 has been transferred to reserve to assist with engaging additional resources, if needed, based on the large workload associated with this level of activity.

Civil Services Division

Engineering Management

The budget for development engineer inspection fees has been increased by \$115,000 to \$340,000. This increase is due to large payments known to be received early April at the time of writing this report.

The budget for section 7.11 plans administration fees has been increased by \$45,000 to \$93,500 based on income received during the quarter.

An equivalent amount has been transferred to the Section 7.11 reviews reserve to assist with reviewing the existing Contribution Plans.

Ancillary Transport Services

The budget for the RMS street lighting subsidy has been revised down by \$4,000 to \$98,000 based on confirmation of the amount to be received.

Open Spaces and Reserves

Operating income budgets of \$150,000 and \$50,000, respectively, have been raised for the Ballina Community Men's Shed and the Club Lennox men's amenities upgrade, matching approved grant funding to be received by Council.

Whilst such projects might normally be considered capital in nature, these expenditure budgets are classified as operating budgets rather than capital budgets, as the assets are not owned by Council.

Corporate and Community Division

Financial Services

A correction of \$19,000 has been made to the dividends to be received by the general fund from the water and wastewater funds.

Financial Services - General Purpose

Forecast interest income has been increased by \$240,000. Of this, an amount of \$100,000 has been transferred to the legal reserve due to the on-going high level of litigation.

The forecast for rates revenue has been increased by \$20,000, based on actual rates levied to date, representing growth in the last quarter.

Information Services

Forecast Information fee income has been increased by \$20,000, to \$120,000, based on amounts received to date.

This amount has been transferred to the Information Services reserve, for future projects.

Human Resources and Risk Management

Budgeted income for the Statecover Workers Compensation Refund has been increased by \$50,000 based on amounts received.

As these amounts are to be applied towards Work Health and Safety projects and initiatives, this amount has been transferred to reserve.

Grant funding of \$50,000 has been received for the Elson Dixon Employment scheme. A budget for this income, with a corresponding increase to expenditure budgets has been raised for this amount.

Ballina Byron Gateway Airport

Overall forecast income for the airport has been increased by \$205,000.

Forecast car parking fees have been increased by \$120,000 to bring the total forecast income to \$670,000.

Forecast income from car rental franchises is increased \$70,000 to \$620,000, and car parking fines is increased \$15,000 to \$50,000, based on trend.

Original budgets were conservative, due to significant uncertainty around the impacts of the terminal expansion.

Community Facilities

Forecast income for the Alstonville Leisure & Entertainment Centre has been decreased by a further \$10,000, to \$45,000 based on trend to date.

Forecast income for the Lennox Head Cultural and Community Centre has been increased by \$5,000, to a total of \$135,000, with continued strength in the casual room hire income.

The Gallery's Ignite Studio forecast room bookings income has been reduced by \$10,000, to \$15,000 for this year.

General Fund - Operating Expenses

Planning and Environmental Health Division

Strategic Planning

The budget for 9 Byron Bay Road has been increased by \$19,000 based on committed costs. Council has identified this site for future use as a Pre-school and for the Lennox Head Rural Fire Service shed.

The budget for investigations has been increased from \$10,000 to \$15,000, to cover costs incurred. Native title investigations of \$6,000 were incurred across January.

Development Services

The budget for legal expenses has been increased by \$50,000 to \$250,000.

The budget for consultants, for the current year only, has been increased by a further \$5,000 to bring the total budget to \$55,000.

These increases are required due to the number of legal cases and complex development applications in process.

Building Services

The budget for legal expenses has been increased by \$20,000 to \$30,000, to meet expected costs for the year. A decrease of \$5,000 is proposed to the sundry office administration budget, based on costs incurred to date indicating some savings here.

Environmental and Public Health

Budget of \$88,000 has been transferred from the 2018/19 Healthy Waterways operating budget to capital budgets, as funding towards the purchase of land, requiring \$176,000. Council was successful in acquiring land at a recent auction.

The balance of the land purchase has been funded by a reduction of 2019/20 Healthy Waterways operating budgets with this funding financed between the financial years from an internal reserve.

Public Order

The budget for other public order and sundry has been increased by \$14,000 to \$33,000 to meet costs incurred. This expenditure predominantly relates to dog poo bags.

An offsetting saving of \$8,000 is recognised in the current year for companion animal educational programs, as these programs are now not expected to be carried out in 2019/20.

Civil Services Division

Engineering Management

The budget for sundry office administration expenses has been increased by \$10,000 to \$50,000 based on trend.

Depot and Ancillary Building Management

The budget for public toilet maintenance has been increased by \$10,000 to \$105,000 based on costs incurred. These costs are high in the current year due to a large number of power switch boards requiring upgrades based on age and condition.

Ancillary Transport Services

A decrease to the street lighting budget of \$4,000 corresponds to the adjustment to the RMS street lighting grant income budget.

Open Spaces and Reserves

Operating budgets of \$150,000 and \$50,000, respectively, have been raised for the Ballina Community Men's Shed and the Club Lennox men's amenities upgrade, matching approved grant funding to be received by Council.

Budget of \$89,000 has been raised for the Lennox Head/Boulder Compensatory roundabout vegetation works. This budget was transferred from roads capital budgets.

Budget of \$25,000 has been transferred from the Open Spaces general operations budget to Sporting Fields capital budgets, to match grant funding confirmed for Fripp Oval capital works.

Fleet Management

No adjustments to forecasts are proposed by the Manager Support Operations.

It is noted that operating expenses are trending high.

Quarries and Sandpit

A budget of \$50,000 has been raised to engage an independent contractor to conduct an assessment on noise and air pollutants for the Boral hot mix plant on Gap Road, Alstonville.

Council may wish to delay this expenditure until the NSW EPA undertakes night time testing as per the verbal commitment they provided at a recent stakeholder meeting.

A budget of \$4,000 has been raised for sandpit operations, for site survey costs required to activate the consent.

These adjustments are funded from the quarry reserve.

Landfill and Resource Management (LRM)

A number of adjustments have been made within LRM, netting off to a nil impact on the forecast reserve balance for LRM.

A number of income items are included as negative items within expenses. Forecasts for these incomes have been reduced by \$450,000 in total and noted below.

There is a reduction in the income received from LRM this year, to date, as a result of reduced volumes received at the Waste Management Facility.

Waste disposal fees and recyclable income, generated from Domestic Waste Management (DWM) have been reduced by \$300,000 and \$150,000 respectively.

The above adjustments are offset by a reduction to operating expenses of \$450,000 in total.

Mixed waste disposal costs have been decreased by \$300,000 and transport costs for recyclates decreased by \$150,000.

Domestic Waste Management (DWM)

As noted with the comments for Landfill and Resource Management (LRM) earlier in this report, waste disposal fees and recyclable income generated from Domestic Waste Management (DWM) have been reduced by \$300,000 and \$150,000 respectively.

That is, LRM income is reduced whilst DWM costs are also reduced.

The above adjustments result in a corresponding increase to the forecast reserve balance for DWM.

Corporate and Community Division

Communications

The budget for Australia Day has been increased to \$28,000, to meet actual costs incurred.

The budget for councillor phone expenses has been reduced by \$3,000, as based on trend there are savings here.

Information Services

Budgets have been increased by \$23,000. Increases have been made to software support, Mobile phone hardware and hardware support budgets of \$10,000, \$9,000 and \$4,000, respectively.

Human Resources and Risk Management

As noted previously in this report, an increase of \$50,000 is for the Elsa Dixon Employment expenditure budget, offsetting grant funding received. Any amounts unspent at the end of the financial year will be carried forward.

The forecast for injured workers rehabilitation costs has been increased by \$20,000 due to a case requiring long term rehabilitation.

Budgets for jury duty and Council's reward service program have been increased by \$4,000 and \$3,000 respectively.

Ballina Byron Gateway Airport

Overall forecast expenditure for the airport has been decreased by \$105,000.

The budget for security expenses has been reduced by \$100,000 to \$1,197,000, with the original forecast too high.

Other decreases were for electricity and maintenance budgets of \$20,000 and \$10,000.

Increases have been made to the cleaning contracts budget and the paid parking budgets, of \$15,000 and \$10,000, respectively.

The net adjustments resulting from the above expenditure decreases together with the increase in income budgets is an increase of \$310,000 to the airport reserve balance.

Community Facilities

The cleaning budgets for the gallery have been increased a further \$3,000, to \$23,000, based on trend.

Water Operations

This next section of the report deals with Council's Water operations.

9.5 Financial Review - 31 March 2019

The following table details the forecast operating result.

Water - Statement of Operating Income and Expenses (\$'000)

Item	Original Budget 2018/19	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Income	12,348	12,707	0	12,707	540	13,247	7,977
Operating Exps (excl. dep)	9,760	9,835	0	9,835	(9)	9,826	7,285
Net Operating Result Before Depreciation	2,588	2,872	0	2,872	549	3,421	692
Depreciation Expense	1,408	1,408	0	1,408	0	1,408	1,056
Net Operating Result from Continuing Operations	1,180	1,464	0	1,464	549	2,013	(364)

The **forecast operating position** (inclusive of depreciation) **as at March** is a surplus of \$2,013,000, which is an improvement of \$549,000 from the December surplus of \$1,464,000.

Forecast water consumption income has been increased by \$450,000 in total, as a result of high usage from a dry third quarter.

Forecast interest income has been increased by \$90,000.

A correction of \$9,000 has been made to the dividends to be paid to the general fund from the water fund.

Wastewater Operations

This next section of the report deals with Council's Wastewater operations.

The following table details the forecast operating result.

Wastewater- Statement of Operating Income and Expenses (\$'000)

Item	Original Budget 2018/19	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Income	18,709	19,054	0	19,054	290	19,344	17,436
Operating Exps (excl. dep)	12,985	13,540	0	13,540	0	13,540	9,495
Net Operating Result Before Depreciation	5,724	5,514	0	5,514	290	5,804	7,941
Depreciation/loan unwind Expense	3,985	3,985	0	3,985	0	3,985	332
Net Operating Result from Continuing Operations	1,739	1,529	0	1,529	290	1,819	7,609

The **forecast operating position** (inclusive of depreciation) **as at March** is a surplus of \$1,819,000, which is an improvement of \$290,000 from the December surplus of \$1,529,000.

Budgeted income from residential access charges has been increased by \$110,000 based on amounts levied. This increase is due to growth. Forecast interest income has been increased by \$110,000.

Budgeted income for non-residential sewer usage charges has been increased by \$50,000. This is a flow-on affect from increased water usage during the period. Budgeted recycled water income has also been increased, by \$20,000 due to increased usage.

No changes proposed to operating expenses.

Section Two – Capital Budget

This next section of the report looks at capital expenditure and changes to the programs.

General Fund - Capital Budget - Source and Application of Funds (\$'000)

General Fund Capital Works	Original Budget 2018/19	Revised Budget December	Approved Changes	Revised Budget	Changes for approval	March Budget	Actual to March
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
General Fund Capital Funding							
General revenue	6,822	5,958	49	6,007	41	6,048	
Reserves	21,828	20,241	(2,084)	18,157	(958)	17,199	
Loans	10,847	7,547	(3,789)	3,758	0	3,758	
Section 7.11 contributions	4,781	959	(226)	733	85	818	
Grants and contributions	13,203	12,412	(334)	12,078	(690)	11,388	
Total Funding	57,481	47,117	(6,384)	40,733	(1,522)	39,211	
General Fund Capital Expense							
Corporate and Community Division							
Information Services	22	132	0	132	0	132	118
Human Resources & Risk Management	0	0	0	0	0	0	0
Property Development and Management	6,972	5,588	(1,721)	3,867	0	3,867	1,675
Flat Rock Tent Park	180	180	0	180	0	180	83
Ballina Byron Gateway Airport	7,850	6,750	500	7,250	0	7,250	3,931
Community Facilities	8,194	9,617	(1,500)	8,117	0	8,117	3,078
Library	0	0	0	0	0	0	0
Swimming Pools	0	316	0	316	37	353	311
Northern Rivers Community Gallery	162	162	0	162	0	162	166
Planning and Environmental Health Division							
Environmental Health	265	129	0	129	176	305	12
Civil Services Division							
Depot & Ancillary Building Management	747	466	0	466	0	466	110
Stormwater	656	766	0	766	0	766	300
Roads and Bridges	23,132	13,398	(3,000)	10,398	215	10,613	6,643
Ancillary Transport Services	3,946	2,017	0	2,017	0	2,017	456
Water Transport and Wharves	230	67	0	67	0	67	8
Roads and Maritime Services	259	240	0	240	0	240	111
Open Spaces -Parks and Reserves	921	1,268	(516)	752	0	752	384
Open Spaces - Sporting Fields	2,325	3,094	169	3,263	(1,950)	1,313	91
Cemeteries	0	0	0	0	0	0	0
Fleet and Plant	1,320	2,510	0	2,510	0	2,510	458
Quarries and Sandpits	0	0	0	0	0	0	0
Waste Management	300	417	(316)	101	0	101	101
Total Capital Expense	57,481	47,117	(6,384)	40,733	(1,522)	39,211	18,036

Corporate and Community Division

Swimming Pools

Budget of \$20,000 has been brought forward from the \$100,000 in the 2019/20 budgets, for works to be completed during the Ballina pool closure in June. This is financed from the Community Infrastructure Reserve between the two financial years.

A new budget of \$16,500 has been raised for the provision of a chair lift adult change table at the Ballina pool.

Planning and Environmental Health Division

Environmental and Public Health

A budget of \$176,000 has been raised for the purchase of land for Healthy Waterways.

This purchase is funded by transfer of budgets from the Healthy Waterways operating budgets from the 2018/19 and 2019/20 years.

Civil Services Division

Stormwater

Budget adjustments net to nil, changes as follows:

Description of Works	Adjustment (\$)	Comments
Dodge Lane, Lennox Head	+65,000	Additional budget. Revised budget \$150,000
Burns Point Ferry Road Tide Gates	+16,000	Additional budget. Revised budget \$75,600
Urban Lanes Drainage	+15,000	Additional budget. Revised budget \$39,000
Rutherford St and Tresise Pl Backflow	+10,000	Additional budget. Revised budget \$20,000
Martins Lane Culverts	+5,000	Additional budget. Revised budget \$75,000
Stormwater Asset Data Collection	-48,000	Revised budget \$15,000
Tide Gates to Urban Streets	-16,000	Budget transferred to Burns Point Ferry Road Tide Gates. Revised budget \$nil
Alison Avenue Lennox Head	-15,000	Pre planning works no longer to be completed this year. Revised budget \$nil
Moon Street (Tamar St to Holden Ln)	-15,000	Pre planning works no longer to be completed this year. Revised budget \$nil
Stormwater Tanamera Drive	-15,000	Savings. Revised budget \$40,500
Henry Philp Ave	-2,000	Revised budget of \$30,000
Total	+0	

Roads and Bridges

Budgets have been increased by a total of \$215,000, changes as follows:

Description of Works	Adjustment (\$)	Comments
Kays Lane, Alstonville Bypass Handover	+130,000	New budget funded from Alstonville Bypass Reserves.
Gibbon St Segment 20	+89,000	Budget brought forward from 2019/20 funded from an internal reserve.
Ross Lane / Coast Rd r/bout	-89,000	Budget transferred to Open Spaces operating budgets for Lennox Point compensatory r/bout vegetation works. Revised budget of \$344,600.
S7.11 funded Heavy Patching	+85,000	Budget funded from section 7.11 reserves.
Martins Lane Dust Sealing	+9,000	Additional budget. Revised budget of \$80,000.
Newrybar Dust Sealing	-,9000	Budget transferred to Martins Lane Dust Sealing. Revised budget of \$166,000.
Total	+215,000	

Open Spaces

Of the total Skennars Head Fields works budget of \$2,275,000, the amount of \$2,000,000 has been deferred to 2019/20. There is a corresponding deferral of \$715,000 of the \$990,000 State Stronger Country grant income to 2019/20 also.

A budget of \$50,000 has been raised for Fripp Oval, with grant funding of \$25,000 matched by Council funds from open spaces operating budget.

Water Fund

Water - Capital Budget - Source and Application of Funds (\$'000)

Water Supply Capital Works	Original Budget 2018/19 \$'000	Revised Budget December \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for approval \$'000	March Budget \$'000	Actual to March \$'000
Water Capital Funding							
Reserves	2,034	2,768	(890)	1,878	0	1,878	0
Section 64 contributions	1,260	760	(705)	55	0	55	0
Total Funding	3,294	3,528	(1,595)	1,933	0	1,933	
Water Capital Expense							
Main Renewal	706	646	(200)	446	0	446	332
Reservoirs	830	5	0	5	0	5	2
Pressure Management	0	0	0	0	0	0	0
Water pump and bores	680	720	(665)	55	0	55	46
Trunk mains	230	480	(390)	90	0	90	21
Treatment Plant	226	241	(100)	141	0	141	92
Plant	0	353	0	353	0	353	353
Connections	280	441	0	441	0	441	281
Other	342	642	(240)	402	0	402	32
Total Capital Expense	3,294	3,528	(1,595)	1,933	0	1,933	1,159

The following revisions are proposed.

Description of Works	Adjustment (\$)	Comments
Grant St Pipe replacement / relocation	+60,000	New budget.
Wardell Rd / Duck Creek Rd project	+60,000	New budget.
Henderson Lane / North Ck Rd Water connection	+35,000	New budget.
Renewals budget	-155,000	Reallocated to projects above
Total	0	

Wastewater Fund

Wastewater - Capital Budget - Source and Application of Funds (\$'000)

Wastewater Services Capital Works	Original Budget 2018/19 \$'000	Revised Budget December \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for approval \$'000	March Budget \$'000	Actual to March \$'000
Wastewater Capital Funding							
Reserves	5492	4,519	(1,496)	3,023	0	3,023	0
Section 64 contributions	373	1,339	(91)	1,248	0	1,248	0
Total Funding	5,865	5,858	(1,587)	4,271	0	4,271	
Wastewater Capital Expense							
Pumping stations	1,148	1,333	(700)	633	0	633	546
Treatment Plants	1,116	1,748	(809)	939	0	939	580
Trunk Mains	1,548	710	(120)	590	0	590	576
Mains renewals	936	936	0	936	0	936	719
Plant	104	303	(65)	238	0	238	168
Reuse program	547	662	242	904	0	904	565
Other	466	166	(135)	31	0	31	9
Total Capital expense	5,865	5,858	(1,587)	4,271	0	4,271	3,163

No changes proposed.

Section Three – Cash and Investment Statement

The next table shows details of the projected cash and investments.

	Original Budget 2018/19 \$'000	Revised Budget December \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for approval March \$'000	Revised Budget March \$'000
Unrestricted	4,544	4,544	0	4,544	0	4,544
Externally Restricted						
- Section 7.11	9,220	10,976	231	11,207	70	11,277
- Domestic Waste M'ment	2,638	2,698	0	2,698	450	3,148
- Section 64 Water	7,813	8,863	706	9,569	0	9,569
- Water	8,279	8,862	753	9,615	549	10,164
- Section 64 Wastewater	5,649	6,720	90	6,810	0	6,810
- Wastewater	68	408	1,496	1,904	290	2,194
Total Externally Restricted	33,667	39,002	3,276	41,803	1,359	43,162
Internally Restricted						
- Employee Leave Entitlements	3,013	3,013	0	3,013	0	3,013
- Financial Assistance Grant	2,221	2,221	0	2,221	0	2,221
- Insurance Reserve	216	101	0	101	50	151
- Community Infrastructure Reserve	1,349	1,948	0	1,948	(20)	1,928
- Property Development Reserve	1,072	591	110	701	0	701
- Wigmore Arcade	296	296	0	296	0	296
- BBRC	325	0	0	0	0	0
- Flat Rock Tent Park	401	370	0	370	0	370
- Crown Properties Rental	141	141	0	141	0	141
- Council Elections	155	155	0	155	0	155
- Airport	471	1,112	0	1,112	310	1,422
- Community Centre Halls	400	83	0	83	0	83
- Swimming Pools Capital	119	0	0	0	0	0
- Ballina Surf Club	120	0	0	0	0	0
- Ballina Indoor Sports Centre	(69)	0	1,500	1,500	0	1,500
- Library Special Projects	113	113	0	113	0	113
- Other Corporate and Community Division	331	554	0	554	121	675
- Strategic Planning Studies and Proposals	525	358	0	358	0	358
- Sec 7.11 Plan Reviews	101	101	0	101	45	146
- Shaws Bay/Lake Ainsworth Coastal Mgmt Plans	355	16	0	16	0	16
- Salaries and Legals	185	115	0	115	0	115
- Richmond River Coastal Mgmt Plan	116	116	0	116	(18)	98
- Building	0	0	0	0	100	100
- Other Planning and Environmental Health Division	126	153	0	153	(70)	83
- Vegetation Grants	185	80	0	80	0	80
- Sportsfields	429	300	(253)	47	1,285	1,332
- Other Open Spaces	299	535	90	625	0	625
- Boat Ramps and Infrastructure	168	210	0	210	0	210
- Plant Renewal/Replacement	1,087	(139)	0	(139)	0	(139)
- Quarries	832	826	0	826	(54)	772
- Cemeteries	339	339	0	339	0	339
- Admin Centre and Depot	183	390	0	390	0	390
- Landfill and Resource Management	152	76	132	208	0	208
- Waste Levy	544	475	184	659	0	659
- Ancillary Footpaths	467	564	0	564	0	564
- Roadworks	2,528	4,592	300	4,892	(89)	4,803
- Bypass Funds	3,498	3,587	0	3,587	(130)	3,457
- Canal Dredging	190	130	0	130	0	130
- Stormwater capital	171	141	0	141	0	141
- Stormwater and Environ Mgmt Plans	330	330	0	330	0	330
- Other Civil	248	213	0	213	0	213
Total Internally Restricted	23,732	23,731	2,063	26,269	1,530	27,799
Total Restricted	57,399	62,733	5,339	68,072	2,889	70,961
Total Cash and Investments	61,943	67,277	5,339	72,616	2,889	75,505

The unrestricted cash figure is exclusive of movements in non-cash items such as debtors and creditors. The available cash figure is taken from note six of the financial statements as at 30 June 2018.

Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for March 2019, funds invested amounted to \$83,538,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 31 March to the amount of \$3,773,588.
4. Actual year to date cash and investments amounted to \$87,311,588 as at 31 December 2018. This amount includes cash at bank of \$3,773,588 and funds invested of \$83,538,000 which has been reconciled to bank statements and investment reports.

Comment on Cash and Investment Position

The forecast reserves position has increased from the December budget of \$67.3 million to \$75.5 million. Of this increase of \$8.2 million, \$5.3 million has already been approved in reports to Council through the quarter.

The changes to reserves made as part of this review total \$2.9 million.

Changes to reserves made as part of this review have been noted earlier in this report within either 'Section One-Operating Income and Expenditure' or 'Section Two – Capital Budgets'.

The changes made as part of this review are summarised below.

Section 7.11 Reserves

Net reserves have been increased by \$70,000.

An increase in forecast capital contributions of \$155,000 is offset in part by a budget of \$85,000 raised for heavy patching.

Domestic Waste Management

Net reserves have been increased by \$450,000, being the decrease to operating expenses noted within this report.

Water Reserves

Net reserves have been increased by \$549,000, being the net adjustment to the operating result.

Wastewater Reserves

Net reserves have been increased by \$290,000, being the net adjustment to the operating result.

Insurance Reserve

Net reserves have been increased by \$50,000, for the additional amounts received for the Statecover workers compensation refund.

Community Infrastructure Reserve

A decrease of \$20,000 is to bring forward swimming pool works from 2019/20.

Ballina Byron Gateway Airport

Net reserves have been increased by \$310,000 being the net of adjustments made to operating budgets within this report.

Other Corporate and Community Division

An increase of \$100,000 is proposed to legal reserves, to cover potential costs to be incurred next financial year.

An increase of \$20,000 is proposed to the Information Services reserve, being the increase to budgeted information fee income.

Section 7.11 Reviews Reserve (Strategic Planning)

An increase of \$45,000 is proposed, offsetting the increase to the income budget for the s7.11 administration fees.

Planning and Environmental Health Reserves

Planning reserves have been increased by \$100,000, being a portion of the large increase noted in Building income received.

Environmental Health reserves have been reduced by \$88,000 for the funding of the land purchase for the Healthy Waterways projects.

This amount is replenished in 2019/20 through a reduction in the 2019/20 Healthy Waterways operating budget.

Open Spaces Reserves

Net reserves have been increased by \$1,285,000.

Skennars Head Fields works of \$2,000,000 have been deferred to 2019/20, together with \$715,000 grant funding relating to that project.

Quarries

Net reserves have been decreased by \$54,000, being the net adjustment to the operating result.

Road Reserves

Reserves have been reduced by \$89,000 for the Gibbon Street works brought forward.

Alstonville Bypass Reserves

Reserves have been reduced by \$130,000 for the Kays Lane works.

Section Four - Key Performance Indicators

This section of the report takes selected financial benchmarks and compares the 30 June 2017 and 2018 ratios with the forecast at March to 30 June 2019.

The performance indicators that have been selected have a short term focus, which suits the quarterly review, which focuses on the short term.

Each ratio typically contains numerous variables and the forecast should be viewed as a good indication only.

Key Performance Indicators - Description

1. **Unrestricted Current Ratio** - Unrestricted current assets divided by unrestricted current liabilities.

Measured: as a ratio

Purpose: this ratio is used to measure Council's ability to meet short term liabilities with available short term assets.

Indicator type: Financial Position

Benchmark: >1.5:1 (NSW code of accounting practice)

2. **Operating Performance Ratio** – Total continuing operating revenue (excluding capital grants/contributions and fair value adjustments) less operating revenue (excluding capital items and profit or loss on sale) as a percentage of continuing operating revenue (less capital items and fair value adjustments).

Measured: as a ratio

Purpose: this percentage measures whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenue.

Indicator type: Financial Performance

Benchmark: = > 0: 1 (NSW code of accounting practice)

3. **Debt Service Cover Ratio** – Operating result (excluding fair value adjustments, capital grants/contributions, depreciation/amortisation, interest expense and profit or loss on sale) as a percentage of loan interest and capital payments

Measured: as a ratio

Purpose: The purpose of this percentage is a measure of whether Council has excessive debt servicing costs relative to the adjusted operating result.

Indicator type: Financial Position

Benchmark: >2:1 (NSW code of accounting practice)

Benchmark Indicators – General Fund

1. Unrestricted Current Ratio – General Fund

Benchmark: >1.5:1

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
4.71:1	4.62:1	2.78:1
Pass	Pass	Pass

Comment

The General Fund has comfortably met this benchmark for many years.

2. Operating Performance Ratio – General Fund

Benchmark: >0

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
11.39%	0.14%	-1.52%
Pass	Pass	Fail

Comment

This is a key ratio for “Fit for the Future” assessments and has historically been a difficult benchmark to achieve. The ratio is affected by many variables. The strategy to improve this ratio is to continue to closely monitor, maintain and even reduce operating expenses and increase income.

3. Debt Service Cover Ratio – General Fund

Benchmark: > 2

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
4.97	3.81	3.18
Pass	Pass	Pass

Comment

This ratio is sourced from the operating result and loan repayments. Swimming pool loans impact on loan repayments from 2017/18 onwards.

The strategy to continue to meet the benchmark is to limit further borrowings, unless matched by offsetting revenues, and strengthen the operating result by a combination of increasing income and decreasing expense.

Benchmark Indicators - Water

1. Unrestricted current ratio - Water

Benchmark: >1.5:1

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
132.47:1	117.72:1	16.56:1
Pass	Pass	Pass

Comments

The ratio meets the benchmark comfortably as the Fund has reasonable reserves and no debt.

2. Operating Performance Ratio - Water

Benchmark: > 0

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
10.03%	11.71%	15.20%
Pass	Pass	Pass

Comments

The Water Fund has achieved a positive operating performance ratio and this trend is expected to continue for future years.

3. Debt Service Cover Ratio - Water

Benchmark: >2

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
0.0	0.0	0.0
N/A	N/A	N/A

Comments

The Fund has no external borrowings.

Benchmark Indicators - Wastewater

1. Unrestricted current ratio - Wastewater

Benchmark: >1.5:1

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
1.59:1	0.99:1	0.55:1
Pass	Fail	Fail

Comments

This ratio did not meet the benchmark for the 2017/18 year, and similar for the current year, however is expected to move towards the benchmark in future years as loan debt is repaid.

2. Operating Performance Ratio - Wastewater

Benchmark: >0

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
-0.01%	5.89%	9.40%
Fail	Pass	Pass

Comments

The Wastewater Fund moved to a positive result in 2017/18 which means a pass in comparison to the benchmark and this is expected to continue.

3. Debt Service Cover Ratio - Wastewater

Benchmark: > 2

2016/17	2017/18	2018/19 Mar
Actual	Actual	Estimate
1.02	1.15	1.32
Fail	Fail	Fail

Comments

This ratio will fail the benchmark for many years due to the extremely high level of borrowings for the Fund.

The forecast is that the ratio will gradually improve year on year as the operating surplus continues to grow.

Section Five – Contractors/Consultants/Legal Expenses

Contractors

New contracts entered into during the quarter that meet the definition are detailed in the table below.

Contractor Name	Purpose	Amount (Excl GST)	Award Date	Duration of Contract	Incl in Budget Yes/No
SAFE Group	Supply of Hardware	Schedule of Rates	28/3/19	3 years	Yes
GHD Services Pty Ltd	Overland Flood Study & Flood Protection Feasibility Study & Plan	\$207,216	8/4/19	6 months	Yes

Consultants

Total expenditure to 31 March 2019 on consultants that meet the definition is detailed below.

Item	Expenditure YTD (excl GST)	Included in Budget Y/N?
Consultancies	\$361,700	Yes

Legal Expenses

The next table summarises the expense incurred to the end of March on legal fees. Legal fees have been included where there is a dispute situation.

This includes for example recovery of rates not paid but excludes processing of infringement notices (no dispute at this point) and amounts paid to legal firms that may be related to the creation of a lease or sale of land.

Item	Expenditure YTD (excl GST)	Included in Budget Y/N?
Legal Fees	\$243,300	Yes

The expenditure in the table is for the period ended 31 March 2019.

Section Six – Other Matters

Pool Fees

Following the exhibition of the draft fees for the swimming pools (included as Attachment 1 – due to the current season finishing 31 May and the new season commencing 1 June), this report includes a resolution for the adoption of these fees, to allow implementation from 1 June 2019.

One submission, from Mr Gordon Hayes, has been received and is included as an attachment to this report.

Mr Hayes proposes that a loyalty card discount be available for seniors, to encourage increased use of the pool facilities.

Management comment:

Whilst Council does not have a loyalty discount as such, Council does offer the ten ticket, three month and full season passes to provide reduced rates to regular users.

The Ballina and Alstonville pool facilities are not profit making businesses but rather community facilities to encourage health, wellbeing and fun.

No changes to the proposed fee structure is proposed.

Section Seven - Certification

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 31 March 2019 indicates that Council's projected financial position at 30 June 2019 will be satisfactory at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

The satisfactory position is based on the short term (twelve month) outlook.



Signed Linda Coulter, Responsible Accounting Officer

Sustainability Considerations

- **Environment**
This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

This report informs Council of actual financial results to date in comparison to budget.

Consultation

This report has been prepared to inform the community of budget variations. Staff have been consulted in the preparation of this report.

Options

Council may approve the budget amendments proposed, make changes or not approve any changes. It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

RECOMMENDATIONS

1. That Council notes the contents of the March 2019 Quarterly Budget Review and approves the changes identified within this report.
2. That Council adopts the swimming pool 2019/20 Fees and Charges, as exhibited, as per Attachment 1 to this report.

Attachment(s)

1. 2019/20 Draft Swimming Pool Fees and Charges
2. Submission re Swimming Pool Fees - Mr Gordon Hayes

9.6 Ballina Byron Gateway Airport - Terminal Expansion

9.6 Ballina Byron Gateway Airport - Terminal Expansion

Delivery Program Commercial Services

Objective To seek Council's approval to vary the contract with Woollam Constructions to include roof replacement works and entry plaza construction.

Background

Council undertook a tender process in April 2018 for the Ballina Byron Gateway Airport ("BBGA") Terminal Expansion Project.

At the 26 April 2019 Ordinary meeting, Council resolved to accept a tender from Woollam Constructions for the project. The original tender did not include the replacement of the existing roof and the design of the entry plaza area was still under review.

It was initially thought the existing roof would only require repairs however as the terminal expansion has progressed it has become apparent that repairs cannot be justified due to the roof's overall poor condition. As a result quotations have been received to replace the roof.

The plaza design has now been finalised to ensure it meets security and accessibility requirements.

It has been identified that it is in Council's interest for these works to be completed as part of the terminal expansion project to avoid further interruption to passenger movements.

Key Issues

- Variations to contract
- Compliance with the Local Government Act 1993
- Achieve best value for money

Information

Roofing Works

Council undertook a tender process for the BBGA terminal expansion.

The tender process identified a provisional sum of \$200,000 for roof repair works. These roofing works were identified some time ago as requiring attention due to the continual roof leaks in the building. Woollam's contract engagement included a \$200,000 roofing works provisional sum.

During the expansion project it has been identified that the roof repair works in the tender would not permanently solve the issues due to the age and condition of the roof.

9.6 Ballina Byron Gateway Airport - Terminal Expansion

Council requested Woollam Constructions to provide two quotes from roofing contractors for the major portion of the cost to ensure competitive pricing was achieved. These costs have been received at \$460,000.

Plaza Construction

The plaza and car park works were originally removed from the tender documents to enable the building works to progress as the design and layout for the plaza / car park was still undecided, at that stage.

A number of factors required consideration of landside security guidance (aviation) in the plaza design.

These factors have now been addressed and a concept plaza design is attached identifying the importance of the design works for improved security and accessibility.

To enable the terminal works to continue Council sought two competitive quotes for the plaza construction works, including one from Woollam Constructions.

The most competitive quote was from Woollam Constructions and is in line with the budget allocation of \$300,000.

After analysis of both quotes it was identified that based on a number of factors including time constraints for project funding, on-site setup and access and the current interface Woollam Constructions have in this area, that Woollam Constructions was the most suitable to undertake these works.

To facilitate the preferred option of engaging Woollam Constructions it is necessary for Council to consider certain provisions under the *Local Government Act 1993* (the Act).

Section 55 of the Act sets out the requirements for tendering.

Under Section 55(1) a council must invite tenders before entering into a contract to carry out work. However under Section 55 (3) (i), section 55 (1) does not apply to:

- (i) *A contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders.*

The extenuating circumstances in this instance are:

- Council's Funding Agreement with the NSW State Government and the timeframes set by this agreement
- building works cannot be fully operational until such time as the plaza works are undertaken
- Council has obtained quotations for the additional works from at least two contractors
- future inconvenience to passengers through a second round of construction works
- any delays may impact on the commercial viability of the airport.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
Completion of the expansion of the terminal building will improve the operational efficiency of the BBGA by allowing it to deal with a greater number of passengers and provide those passengers with an improved travel experience to the Far North Coast Region. The continued growth of the BBGA has a positive effect on the Far North Coast economy.

Legal / Resource / Financial Implications

At the March 2019 Finance Committee meeting, as resolved at the March 2019 Ordinary meeting, Council approved a budget of \$1.5m in the 2019/20 financial year for additional works related to the terminal, car park, solar and Airport Boulevard connection.

The 2018/19 budget for the airport terminal expansion is \$6.564m.

The additional works will be financed from these two budgets.

The report to the March 2019 Finance Committee stated that the \$1.5m may not be sufficient to fund all the works planned for 2019/20, and this budget will need to be reviewed once final costs are known for the terminal expansion, roof replacement and plaza works.

Consultation

Council has received formal quotes for the works requested. Woollam Constructions was appointed following a public tender process.

Options

1. That Council agree to extend the contract with Woollam Constructions to undertake the roof replacement works and plaza construction as outlined in this report.

This option is recommended for the reasons outlined in this report.

2. That Council resolves not to extend the contract with Woollam Constructions and invite tenders for the roof replacement works and plaza construction works.

This option is not recommended, as it would delay the delivery of the overall project, concerns regarding the funding agreement, along with possible commercial impacts on the operation of the BBGA.

RECOMMENDATIONS

1. That in accordance with Section 55 (3) (i) of the Local Government Act 1993 Council resolves not to invite tenders for the plaza construction works and roof replacement works for the Ballina Byron Gateway Airport Terminal Expansion Project, as detailed in this report, due to the following extenuating circumstances:
 - Council having an existing contractor on-site resulting in efficiencies as site establishment costs have already been incurred
 - Existing contractor was appointed following a public tender process
 - Two quotations have been obtained for the additional works
 - Timing concerns in respect to the grant funding agreement
 - Potential impacts on the commercial viability of the airport through on-going delays in the finalisation of the terminal expansion that would occur if new tenders are called.
2. That Council authorises the General Manager to finalise negotiations with Woollam Constructions to undertake the roof replacement works and plaza construction as outlined in this report.
3. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

1. Ballina Byron Gateway Airport - Plaza Design

10.1 Road Closing - Section of Public Road in River Drive East Wardell

10. Civil Services Division Reports

10.1 Road Closing - Section of Public Road in River Drive East Wardell

Delivery Program Asset Management

Objective To determine Council's response to the proposed closing of a section of public road adjacent to 3 River Drive East Wardell

Background

This report is presented to Council to consider closing a section of public road reserve adjacent to 3 River Drive, East Wardell.

The owners of vacant land adjacent to the Pacific Highway / River Drive intersection at East Wardell have requested a section of public road be closed and purchased.

The road reserve has an irregular shape at this location and the section of road requested to be closed (the "land") is not part of the formal road verge or road carriageway area.

Location diagrams are included as Attachments 1 and 2.

Key Issues

- Impact of closing a section of public road

Information

Council has received a request from the owners of 3 River Drive, East Wardell to close a section of Council public road adjacent to their property.

This land is adjacent to the southern boundary of 3 River Drive, roughly rectangular in shape and contains an area of approximately 360m². The land presents as a wide area of typical rural road reserve and is partly overgrown.

The section of road to be closed is between the Pacific Highway/River Drive intersection and a driveway access to 1 Raglan Street, East Wardell.

The land is clear of the constructed carriageway and is not relied upon for access by vehicles or pedestrians to the adjoining properties.

However this land, and the adjoining vacant private land owned by the applicant, being Lot 20 Section 2 DP 996 and Lot 9 DP 234385, is informally used by adjoining residents to park vehicles and store items.

There are no apparent Council or other service utilities located on the land. Should any services be located, easements or service relocations will be required.

10.1 Road Closing - Section of Public Road in River Drive East Wardell

The road closure will not affect the public use or functioning of River Drive, is not required by Council for road improvements, or necessary for future strategic road use.

Council is the roads authority for this public road. Any request to close a section of Council public road must first be endorsed by Council before any public advertising and road closing application can proceed.

The road is considered a constructed Council public road and upon closure would vest in Council. This is consistent with the provisions of the Roads Act 1993.

The land valuation and negotiated sale terms are matters for the owner and Council to resolve should the application be approved.

If the road is closed, it should be conditional that the land be consolidated with the adjoining property.

The road closing application requires the proponent to provide all the necessary information and to meet all costs throughout this process.

Sustainability Considerations

- **Environment**

The road closing and consolidation with 3 River Drive would provide an enlarged lot for this private property. The land is currently a partly overgrown and gravel area with limited public use or need.

- **Social**

The land is public road and currently forms the road verge adjacent to the River Drive carriageway. The public would not be adversely impacted if this section of road is closed as the functioning and use of River Drive will remain unchanged.

The land is between the existing Pacific Highway and 1 Raglan Street, East Wardell and a road closing does not adversely impact on access to or use of the adjoining properties.

- **Economic**

The recommendation seeks to support efficient land management principles with the road to be closed and consolidated with the adjoining land.

Legal / Resource / Financial Implications

All costs associated with the road closing, including application, survey, legal and other fees are to be met by the applicant. The application processing is undertaken by Council. Upon closing the road, the land would vest in Council along with any proceeds from the sale of the land. The road is not identified by Council for current or future road projects.

Consultation

This road closing request has been lodged with Council as the roads authority for this public road. If Council supports the road closing proposal to go forward to the next phase of the process, Council will undertake the required advertising.

Options

1. That Council supports the request for a road closing application to proceed for a section of public road adjacent to 3 River Drive, East Wardell.

The advantage of this option is it ensures the Council does not have any future liability or maintenance attached to this section of road, which is not considered to have any current operational or strategic purpose. It also allows for the road closing application to proceed and, if approved, consolidate the land with the adjoining property.

2. That Council opposes the request for a road closing application to proceed for a section of public road adjacent to 3 River Drive, East Wardell.

There are minimal, if any, benefits associated with retaining this part of the public road for current or future needs.

The recommendation to this report is option one.

RECOMMENDATIONS

1. That Council supports the request for a road closing application to proceed for a section of public road adjacent to 3 River Drive, East Wardell, unless objections are received during the period this proposal is advertised. A further report is required to assess any objections to the proposal.
2. That Council authorises the Council seal and signatures to be attached to the documents necessary for the road closing and disposal of the land, subject to all the costs of this process including application fees, survey, valuation and legal fees are the liability of the applicant.
3. That a requirement of the closure and disposal is for the closed road to be consolidated with the adjoining land being Lot 20 Section 2 DP 996 and Lot 9 DP 234385.

Attachment(s)

1. Locality Plan - Aerial Image
2. Locality Plan - Cadastre

10.2 Electric Vehicles

10.2 Electric Vehicles

Delivery Program Support Operations

Objective To determine the most suitable option to introduce battery electric vehicles into Council's fleet.

Background

In April 2015 Council received a report regarding the implementation of Electric Vehicles into the fleet.

The resolution authorised Battery Electric Vehicles (BEVs) to be added to the list of passenger vehicles available for selection by approved staff members under the staff internal Light Motor Vehicle Protocol(LMVP). The LMVP is an internal staff that outlines which staff have access to private use of Council owned vehicles.

To encourage staff to select an electric vehicle, the LVP was amended for the first electric vehicle selected to be offered at a 50% reduction in weekly lease fees for the first two years. To date there have been no staff members that have taken up this offer.

This report responds to a more recent resolution to review the most suitable options for introducing battery electric vehicles into Council's fleet.

Key Issues

- Feasibility
- Cost and benefits
- Level of incentive

Information

BEVs use electricity for their sole energy source. BEVs only come as passenger vehicles, with no utility vehicles currently in the market.

Under the NSW Buy Government Contract, the only BEV currently available is the Nissan Leaf.

The new Nissan Leaf is due for release in September 2019.

The new model, as compared to the previous, has an increased travel range, from 170km to 270km on a single charge.

Costs

The cost to purchase the Leaf is \$45,000 (ex-GST), with a charging station being in the order of \$3,000.

By way of comparison, Council has a number of Hyundai Tucsons in the fleet, with a current purchase price of \$35,000 (ex-GST).

10.2 Electric Vehicles

A vehicle's 'whole-of-life' cost enables fleet managers to gain a more accurate picture of the cost of a vehicle over time.

This cost assessment assists in making strategic purchasing decisions.

The calculation looks at the purchase price, the ongoing operational costs and the residual value after the vehicle is sold at the end of its working life.

This allows for a comparison of vehicles by looking at the total cost to Council for purchasing, operating and selling the vehicle.

The Nissan Leaf and the Hyundai Tucson have been compared in terms of their total cost to Council.

Details of this calculation are included as Attachment 1.

Over the five years that the vehicle would normally be held by Council, the Nissan Leaf has a total cost \$4,070 more than the Tucson (\$39,894 compared to \$35,824).

This is equivalent to \$810 per year.

The actual figures will vary based on kilometres travelled, changes in the market etc however the calculation provides a useful guide to the difference.

This is a financial calculation only and does not recognise environmental benefits.

The estimated cost to Council per kilometer for the vehicles is as follows:

- Nissan Leaf 2019 (BEV) \$0.53 / km or \$7,980 / year
- Hyundai Tucson (Petrol) \$0.48 / km or \$7,160 / year

Servicing

One of the difficulties faced when BEVs was last reviewed was the challenges faced with no local servicing facilities.

Lismore City Council has been transporting their Nissan Leaf to Southport for servicing, as this is the closest provider.

Staff have been liaising with the local suppliers and Lismore Motors are planning to become a certified service agent for the Nissan Leaf by the September 2019 release date of the new model.

Environmental Benefits

BEVs can reduce CO2 emissions and other pollutants.

A Fuel Lifecycle CO2 comparison of the Nissan Leaf and Council's common petrol vehicle, the Hyundai Tucson, is outlined in the following table.

This data has been sourced from the Australian Government Initiative, the Green Vehicle Guide.

Table One - Lifecycle Emissions

Vehicle	Tailpipe CO2 (g/km)	Fuel Consumption (L/100km)	Energy Consumption (Wh/km)	Fuel Lifecycle CO2 (g/km)
Nissan Leaf	N/A	N/A	173	156
Hyundai Tucson	178	7.7	N/A	209

Fuel lifecycle emissions cover emissions from both the production and combustion of transport fuels.

In addition to emissions produced from the combustion of fuel to power an internal combustion engine, emissions can also be produced in the process of extracting, refining and transporting fuels. These include emissions from the generation of electricity for BEVs.

The fuel lifecycle emissions for a BEV can be further reduced if the electricity for charging the electric vehicle is generated through a renewable energy source, such as solar PV.

Sustainability Considerations

- **Environment**
Several studies show that BEVs, even when charged by grid energy, have reduced emissions of pollutants, greenhouse gas, and improving energy efficiency when compared to petrol vehicles.
- **Social**
Purchase of a BEV would allow Council to demonstrate leadership and promote EVs as a feasible alternative to the community.
- **Economic**
There is currently an additional financial cost with BEVs, although this needs to be balanced against environmental benefits.

Legal / Resource / Financial Implications

Council's internal plant fund finances vehicle purchases, with the income for that fund generated through internal hire charges against the job for which the item of plant item is applied.

Staff with full private use agreements pay a fee for the private use with that fee ranging from approximately \$70 to \$180 per week.

Consultation

Consultation has occurred with suppliers and service providers.

Options

There are three options available to facilitate the introduction of BEVs.

1. Continue to include BEVs in the internal LMVP with additional incentives for staff to take up that option.

10.2 Electric Vehicles

BEVs are currently listed as an option under the protocol with the current incentive being a 50% reduction in lease fees for the first two years. This has not yet been taken up by any staff.

The advantages of this option is that Council does not incur the expense of an additional vehicle to its fleet, Council receives a lease fee for the private use of the vehicle, and the staff member allocated the vehicle is responsible for the cleaning and overnight security of the vehicle.

This option could be amended in a number of ways.

For example, the restriction to the first staff member could be removed so that the reduced price applies to all BEVs purchased.

Another option is to extend the 50% pricing for the whole of the lease rather than for the current two-year period.

The LMVP is an internal document reviewed annually by the General Manager. The next review of this protocol is in progress and there is an opportunity to consider options as part of the review.

2. Purchase one BEV as a General Pool Vehicle, to be located at the Administration Building. This then allows the BEV to be available for staff for any work related use.

This option allows for a practical trial to monitor utilisation, operational costs and the environmental benefits achieved. This could then potentially lead to the further roll out of BEVs into Council's fleet if the vehicle was well utilised.

It would also provide somewhat of an educational and marketing role in that as more and more staff use the vehicle, potentially any negative perceptions that may exist could diminish over time.

Word of mouth from staff members would also help better inform the broader community.

With the BEV being a General Pool Vehicle and stored on site, Council also avoids paying any Fringe Benefit Tax (FBT) on the vehicle.

FBT is a liability that Council incurs when a passenger vehicle is used by staff for commuter and / or private use.

The cost of FBT depends on the kilometres travelled and is generally 20% of the purchase price per annum, meaning this is a significant cost saving if avoided.

As a General Pool Vehicle that remains on site, the central garaging and charging location, ideally needs to be secure for outside of operational hours.

While the Administration Building does not have any secure parking, there is a single garage located in the Council owned office building (71 Tamar Street), beside the Administration Building, which could garage one BEV.

10.2 Electric Vehicles

This would require the installation of a charging station into the storage area.

The Administration Building is a preferred location, due to the high number of staff who operate from the building and the likely volume of use it would generate.

As Council has, over a number of years, increased the weekly lease fees payable for private use of Council vehicles, there has been a stabilizing or slight decrease in the number of passenger vehicles located at the Administration Building.

This does, at times, create a limited supply of vehicles available for use by staff and the purchase of a General Pool Vehicle has been discussed internally on a number of occasions to overcome inefficiencies when a Council vehicle is not available.

The purchase of an additional vehicle could be undertaken using funds from the internal Plant Reserve or by adjusting a number of operational budgets.

The use of the Plant Reserve may result in the deferral of the replacement of one or more existing items of plant, however once purchased the Plant Reserve will be in position to manage future changeovers due to the internal hire charges levied during the life of the vehicle.

Alternatively the vehicle could be procured by lease, which is a reasonable option, albeit there are additional financing costs associated with a lease.

Under either option, an annual expense budget would need to be created to meet either the internal operating costs or the lease expenses.

The annual budget would be in the order of \$8,500 per annum.

3. Purchase two BEVs as General Pool Vehicles, one located at the Administration Building and one at the Waste Management Centre.

As per option two, the General Pool Vehicles would be stored and charged in a secure location outside general operational hours.

The Waste Management Centre has the ability to provide a secure location for garaging a BEV with minimal capital costs.

This would require the installation of a charging station into the storage area.

Additionally, charging costs and environmental CO₂ emissions are further minimized at the Waste Management Centre due to the 10kW solar installation currently operating on site.

The purchase of the two vehicles could use funds from the Plant Reserve, which would defer the replacement of one or more existing item of plant, or the vehicle could be procured by lease. The annual budget would be in the order of \$17,000.

10.2 Electric Vehicles

With a vehicle utilization of 15,000km per year for a General Pool Vehicle, spending an additional \$810 per year for the operation of the Nissan Leaf would likely reduce Council's CO2 emissions by 800kg.

This is based on there being a 50 g/km CO2 emissions difference when compared the commonly used petrol vehicle, the Hyundai Tucson.

In summary, at this point in time, the preference is to recommend option two.

This is a good starting point for Council and the likely high level use of the General Pool Vehicle, will help inform and educate staff across the organisation, as well as helping to promote the benefits across the entire community.

Further reductions in the private use lease fee, as per option one, have not been recommended, as the preference is not to provide too high a discount to staff members for private use of a community asset, recognising that there is still a cost to the community in providing this vehicle.

It is hoped that the General Pool Vehicle will be the catalyst for increased staff interest in BEVs.

Option three may be worthwhile, although the preference at this point in time is to defer that option, and it can be implemented later on following a review of the success of the initial purchase as per option two.

RECOMMENDATIONS

1. That Council approves the purchase of a Battery Electric Vehicle as a General Pool Vehicle, with a charging station to be installed at a suitable location as part of that purchase.
2. The General Manager is authorised to make the necessary budget adjustments required to facilitate that purchase with those adjustments to be included in the report back to the June 2019 Ordinary meeting when Council adopts the 2019/20 to 2022/23 Delivery Program and Operational Plan.

Attachment(s)

1. Whole of Life Cost - Electric Vehicle vs Petrol Vehicle

10.3 Tender - Group Training Services

10.3 Tender - Group Training Services

Delivery Program Human Resources and Risk Management

Objective To assess the tenders submitted for the provision of group training services for a two year period

Background

The engagement of trainees and apprentices is an important recruitment process for the future operations of Council.

Currently Council engages trainees and apprentices in a number of fields including horticulture, water operations, mechanical, electrical civil construction, carpentry, plumbing and administration.

The engagement of a group training organisation provides Council with specialist advice and assistance in the recruitment, training and support requirements associated with fulfilling state training and other legislative requirements.

A tender was advertised in March to engage a suitably qualified and experienced organization to undertake the provision of trainee/apprenticeship services for a two year period with an option (at Council's discretion) to extend by one further two year period.

Key Issues

- Comply with the *Local Government (General) Regulation 2005*
- Assess value for money
- Engage a suitably experienced service provider

Information

At the close of the tender period on 2 April 2019, tenders were received from five companies.

- Apprenticeships Are Us Ltd
- HVTC Northern Rivers
- MEGT Australia Ltd
- Local Government Group Training (Novaskill)
- Maxima Training Group (AUST) Ltd

These tenders were assessed by an internal panel.

The tender evaluation plan established certain mandatory criteria including insurance arrangements and previous local government experience and knowledge of relevant legislation. The evaluation also considered weighted price and non-price criteria.

The non-price criteria comprised capability/industry knowledge and local and community.

The details of the outcome of the assessment undertaken by the evaluation panel have been provided to Council by a separate confidential memorandum.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The engagement of trainees/apprentices enables Council to increase the available skill base in the Shire and promote employment opportunities.
- **Economic**
The training of trainees/apprentices assists in the delivery of services in the Shire and the skills and production capacity contributes to economic development.

Legal / Resource / Financial Implications

The purpose of this report is to ensure Council is compliant with relevant tendering statutory requirements.

The costs of the trainees and apprentices are allocated to the budget program areas where they work.

A pricing model was established to compare tenders. The total cost for these services is typically around \$250,000 per annum. Most of this cost is wages for the staff actually completing the apprenticeships or traineeships.

Consultation

A public tender process was undertaken.

Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulations 2005 which says the following;

(1) After considering the tenders submitted for a proposed contract, the council must either:

- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) decline to accept any of the tenders.*

As per the confidential memorandum, it is recommended Council accept the tender from Local Government Group Training (previously NovaSkill) for the rates tendered.

Local Government Group Training (previously NovaSkill) have been providing group training services to Council for a number of years and are extremely experienced in providing these services.

RECOMMENDATIONS

1. That Council accepts the tender for the provision of group training services from Local Government Group Training for a two year period.
2. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

Nil

10.4 Tender - Provision of Labour Hire Services

10.4 Tender - Provision of Labour Hire Services

Delivery Program Human Resources and Risk Management

Objective To obtain Council approval to award the contract for the Provision of Labour Hire Services for a five year period

Background

Tenders were advertised in March 2019 for experienced organisations to undertake the provision of labour hire services for a five year period. It is Council's intention to appoint a panel of two service providers who may provide casual staff to Council during the stated period. The appointment of two providers allows a degree of flexibility for Council and provides for a degree of competition during the term of the contract.

This report provides the outcomes from the tender evaluation process.

Key Issues

- Comply with the *Local Government (General) Regulation 2005*
- Assess value for money
- Engage suitably experienced service providers

Information

At the close of the tender period on 2 April 2019, 11 submissions were received.

- NORTEC
- Civil Constructions
- Complete Staff Solutions
- DOB Enterprises
- Hays Recruitment
- WorkPac
- Busicom Solutions
- Spinifex Recruiting
- Maxima Training Group
- Workforce International
- Drake International

These tenders were assessed by a panel in accordance with the internal tendering procedure.

The tender evaluation plan established certain mandatory criteria including insurance arrangements and Previous Local Government Experience and Knowledge of Relevant Legislation. The evaluation also considered weighted price and non-price criteria.

The non-price criteria comprised Experience and Past Performance, Capability/Knowledge of Industry and Local and Community.

The details of the outcome of the assessment undertaken by the evaluation panel have been provided to Council by a separate confidential memorandum.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Provides for additional employment in the local community.
- **Economic**
The provision of labour hire services enables Council to continue to undertake works within the Shire and is the most efficient method to adjust our resource demands in response to the variations in our program.

Legal / Resource / Financial Implications

The purpose of this report is to ensure Council is compliant with relevant tendering statutory requirements.

The costs for the services are charged to the budget program areas where the works are performed.

The actual amount of labour to be procured is uncertain. A pricing scenario, based on a predicted demand schedule was developed to compare the pricing from each tenderer.

This model compared the annual costs based on an assumed number of staff over a twelve month period. The pricing model indicates that it is expected that over a twelve month period the cost to Council would be approximately \$1,500,000 per annum.

Consultation

A public tender process was undertaken.

Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulations 2005 which says the following;

(1) After considering the tenders submitted for a proposed contract, the council must either:

- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) decline to accept any of the tenders.*

As per the confidential memorandum, it is recommended Council accept the tenders from Spinifex Recruiting (previously JHA Recruitment & Staff @ Work Pty Ltd) and Nortec Staffing Solutions for the rates tendered.

Spinifex Recruiting (previously JHA Recruitment & Staff @ Work Pty Ltd) have been providing labour hire services to Council for a number of years and are extremely experienced in providing these services.

10.4 Tender - Provision of Labour Hire Services

Nortec Staffing Solutions is locally based and are currently providing labour hire services to a number of councils in the Northern Rivers.

RECOMMENDATIONS

1. That Council accepts the tenders for the provision of labour hire services for a five year period from Spinifex Recruiting and Nortec Staffing Solutions.
2. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

Nil

10.5 Tender - Large Format Concrete Unit Pavers

10.5 Tender - Large Format Concrete Unit Pavers

Delivery Program Engineering Works

Objective To obtain Council approval to award the contract for the Manufacture and Supply of Pavers for the CBD upgrade.

Background

Tenders were advertised in April 2019 for the manufacture and supply of large format concrete unit pavers and ground surface indicators (tactiles). These pavers are being supplied for the Ballina CBD upgrade - Stage Four.

This report provides the outcomes from the tender evaluation process.

Key Issues

- Comply with the *Local Government (General) Regulation 2005*
- Assess value for money

Information

Tender submissions closed 30 April 2019, submissions were received from two tenderers:

- Alltac
- Urbanstone

These tenders were assessed in accordance with the internal tendering procedure.

Alltac was a non-conforming tender and was not considered further as they were only capable of providing metal ground surface indicators.

The metal ground surface indicators were not a part of this tender.

The Urbanstone tender submission was further considered however this was also found to be a non-conforming tender.

The Urbanstone submission indicated that they would not accept the Liquidated Damages provision included in the tender documents but were capable of complying with all other conditions of the tender.

Clarification was sought from Urbanstone following the close of tenders regarding their qualification on liquidated damages.

Subsequent correspondence from Urbanstone indicated that they would accept the Liquidated Damages clause with a cap of 5% of the Contract value.

The details of the price component of the tender submissions has been provided to Council by a separate confidential memorandum.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The improvements to the town centre are an important component in having a thriving CBD.
- **Economic**
It is essential that Council has a modern town centre to attract business and customers.

Legal / Resource / Financial Implications

The purpose of this report is to ensure Council is compliant with relevant tendering statutory requirements.

The cost for the supply of these products under the preferred tender is approximately \$327,734. This is consistent with the estimate for the project budget.

Consultation

A public tender process was undertaken.

Options

Considering Part 7 Clause 178 of the Local Government (General) Regulations 2005. The following options are available:

1. Accept the tender that, having regard to all the circumstances, appears to be the most advantageous:

This is recommended to accept the Urbanstone submission as it complies with the tender requirements and is comparable in price to previous (adjusted) submissions.

2. Decline to accept any tenders and invite fresh applications from persons interested in tendering for the proposed contract.

This is not recommended, as this course of action would unreasonably delay the commencement of the CBD upgrade project.

RECOMMENDATIONS

1. That Council accepts the tender for the provision of large format concrete unit pavers and ground surface indicators (tactiles) from Urbanstone, inclusive of the proposed amendment to cap the liquidated damages term in the general conditions to a cap of 5%.
2. That Council authorises the Council seal to be attached to the contract documents.

Attachment(s)

Nil

11.1 Notice of Motion - SES Centre - Funding Support

11. Notices of Motion

11.1 Notice of Motion - SES Centre - Funding Support

Councillor

Cr Cadwallader

I move

That Council increase its efforts to engage with our State and Federal Government representatives to secure increased funding for the construction of a new SES Centre for the Ballina Shire.

Councillor Comments

We all appreciate the wonderful work that the SES does to assist the community in times of disaster.

The SES is made up almost entirely of volunteers and as our Shire continues to increase in population it is essential that we quickly to advance the construction of a new SES centre for Ballina.

Funding, along with a preferred location, remain the major uncertainties in respect to this project. With Council not having funding available for at least three years, it is appropriate that we try and secure substantial funding from the State and / or Federal Governments to allow the planning to move forward more quickly and to allow construction to occur in a more timely manner.

If substantial funding is able to be secured we may then be in a position to re-arrange our existing community infrastructure priorities and bring our funding forward to allow the construction of a new centre in the not too distant future.

The proposed motion is worded in a way that will allow Council to make written submissions and / or visitations to the relevant Ministers as face-to-face meetings may be needed to help advance our case for funding assistance.

COUNCILLOR RECOMMENDATION

That Council increase its efforts to engage with our State and Federal Government representatives to secure increased funding for the construction of a new SES Centre for the Ballina Shire.

Attachment(s)

Nil

11.2 Notice of Motion - 4WDs on Ballina Beaches

11.2 Notice of Motion - 4WDs on Ballina Beaches

Councillor

Cr Cadwallader

I move

That Council receive a report on options to further ensure that 4WD beach users on Seven Mile Beach and South Ballina Beach do not negatively impact on the dunal system and wildlife.

Councillor Comments

There have been many concerns raised in the community regarding 4WDs on Ballina Beaches, particularly during holiday periods. Based on those concerns expressed by shire residents, Council receive a report on options to further ensure that 4WD beach users on Seven Mile Beach and South Ballina Beach, do not negatively impact on the dunal system and wildlife.

The sand dunes and vegetation are an important part of the beach ecosystem and are subject to wave and wind and can be easily damaged by human activity.

The permit system currently in place is designed to promote responsible off road vehicle use and encourage environmental awareness, but in recent times there has been many photographs taken of dunal destruction caused by irresponsible 4WD vehicle activity.

COUNCILLOR RECOMMENDATION

That Council receive a report on options to further ensure that 4WD beach users on Seven Mile Beach and South Ballina Beach do not negatively impact on the dunal system and wildlife.

Attachment(s)

Nil

11.3 Notice of Motion - Support for the Back Your Neighbour Campaign

11.3 Notice of Motion - Support for the Back Your Neighbour Campaign

Councillor

Cr Parry

I move

That Council confirms its support for the Back Your Neighbour Campaign and authorises the Mayor to forward submissions to the Prime Minister and the Minister, as well as the Leader of the Opposition, confirming our support for this campaign on humanitarian grounds.

Councillor Comments

I don't have a political affiliation, but I do well understand what concentration camps are.

I am totally ashamed that our Federal Governments have established and continue to maintain concentration camps for apparently genuine refugees. The Federal Government certainly does not represent my concerns about the wellbeing of Australian refugees. All of us who are not fully indigenous are, or are descended from refugees. This is what Australia is: you and me.

I find the prison confinement of refugees offshore and without hope unconscionable.

As a Council, I believe that we should voice our concern about the treatment being imposed on refugees in camps, in our name.

We are making a statement about our support for the 'Back your Neighbour' movement, which reflects our values and humanity, and in keeping with the expressions of support from our neighbouring Northern Rivers Councils.

COUNCILLOR RECOMMENDATION

That Council confirms its support for the Back Your Neighbour Campaign and authorises the Mayor to forward submissions to the Prime Minister and the Minister, as well as the Leader of the Opposition, confirming our support for this campaign on humanitarian grounds.

Attachment(s)

Nil

11.4 Notice of Motion - Captain Cook Park

11.4 Notice of Motion - Captain Cook Park

Councillor

Cr Meehan

I move

That Council write to the Minister for Crown Lands and our local member, seeking the revenue raised from the two licenses for part of Captain Cook Park to the Ballina RSL and the Alfresco Dining Area to be returned to Council to assist with funding on-going improvements to the park as per the adopted Council Master Plan.

Councillor Comments

I am aware that the revenue from the two licenses for this park, being to the Ballina RSL for emergency access on the eastern side of their building, and to the café operator for the Council approved alfresco dining area at the western end of the park adjacent to River Street, is paid directly to NSW Department of Industries – Crown Lands, even though Council was appointed as Reserve Trust Manager for this Crown Reserve on 27 July 2012.

It is unclear how much funding is paid directly to Crown Lands however Council staff believe it is in the tens of thousands of dollar per annum, which is diverted from our community.

If these funds were returned to Council we could implement additional works as identified in the Captain Cook Master Plan, which include road improvements, parking, pathways and recreational facilities.

COUNCILLOR RECOMMENDATION

That Council write to the Minister for Crown Lands and our local member, seeking the revenue raised from the two licenses for part of Captain Cook Park to the Ballina RSL and the Alfresco Dining Area to be returned to Council to assist with funding on-going improvements to the park as per the adopted Council Master Plan.

Attachment(s)

Nil

11.5 Notice of Motion - Climate Action Strategy Review

11.5 Notice of Motion - Climate Action Strategy Review

Councillor

Cr Smith

I move

1. That Council include in the draft 2019/20 Operational Plan an action to review Council's adopted Climate Action Strategy 2012-2020.
2. That early in the new financial year (2019/20) Council hold a workshop on the existing Climate Action Strategy, to assess where we currently stand in respect to that Strategy, and to identify options that Council may have available to implement more vigorous and direct actions to combat the threat of climate change as part of the new Climate Action Strategy.

Councillor Comments

Almost on a weekly basis now we're seeing more and more research coming out suggesting that a lot of the work that's been done regarding climate change to date hasn't been significant enough to mitigate against the most serious effects of climate change.

There is an impending threat that the goal of keeping global temperature rise under 2°C is becoming less and less likely and as usual governments (not just in Australia but across the world) are failing to act quick enough.

Our Council implemented a climate action strategy in 2012 that we are yet to review in this term of Council. Since the adoption of the strategy, a lot has changed in terms of both research, and the options open to council to pursue to play its role in addressing the issue of climate change.

The objective of this motion is to review our existing strategy and look at what more we can do, with the goal of implementing whatever options practical to ensure that at local level we're doing everything we possibly can in our role to combat humanities greatest challenge to date.

COUNCILLOR RECOMMENDATIONS

1. That Council include in the draft 2019/20 Operational Plan an action to review Council's adopted Climate Action Strategy 2012-2020.
2. That early in the new financial year (2019/20) Council hold a workshop on the existing Climate Action Strategy, to assess where we currently stand in respect to that Strategy, and to identify options that Council may have available to implement more vigorous and direct actions to combat the threat of climate change as part of the new Climate Action Strategy.

Attachment(s)

Nil

11.6 Notice of Motion - Emergency Services Levy - Permanent Firefighters

11.6 Notice of Motion - Emergency Services Levy - Permanent Firefighters

Councillor

Cr Willis

I move

That with the announcement of the new State Government Cabinet, that Council write to the Minister for Police and Emergency Services, the Honourable David Elliott, again seeking a commitment from the State Government to introduce permanent full time firefighters in Ballina based, initially, on the special roster model in recognition of the growth of the Shire and the commensurate requirement for emergency services.

Councillor Comments

As previously advised to Council, following our briefing held on 14 February 2018 with senior members of Fire and Rescue NSW it became apparent that the current Fire Station in Tamarind Drive can accommodate permanent full-time firefighters without further capital expenditure at the Ballina Fire Station.

It was also explained during that briefing that one option open to the NSW Government is to introduce permanent full-time firefighters at the Ballina Fire Station through a Special Roster. This would provide permanent full-time firefighter to complement the existing retained firefighters in a mixed model.

This Special Roster model would allow for the permanent firefighters to work on the many preventative aspects to their firefighting work during office hours and weekdays while also being available for any emergencies which may occur at that time.

The Special Roster model would bring an additional five permanent full-time jobs to our Shire. The cost to council would be in the region of an additional \$100,000 per year to approximately \$155,000 per year. The actual cost of the Special Roster would be in the region of \$1,500,000 per year.

This means there would be a cost in the region of \$200,000 to the NSW Government with the remainder of the cost to be paid by the Insurance Council under the existing legislative arrangements. It is important to understand that ratepayers already pay this latter cost component through insurance premiums. In this way, Council would be leveraging our contribution and bringing jobs and additional emergency fire services to our Shire.

It is acknowledged that the increase in the Emergency Services Levy will increase these original estimates, however there still remains significant leverage for the Council contribution.

COUNCILLOR RECOMMENDATION

That with the announcement of the new State Government Cabinet, that Council write to the Minister for Police and Emergency Services, the Honourable David Elliott, again seeking a commitment from the State Government to introduce permanent full time firefighters in Ballina based, initially, on the special roster model in recognition of the growth of the Shire and the commensurate requirement for emergency services.

Attachment(s)

Nil

12. Advisory Committee Minutes

12.1 Commercial Services Committee Minutes - 15 May 2019

Attendance

Crs David Wright (Mayor - in the chair), Sharon Parry, Eoin Johnston, Stephen McCarthy, Nathan Willis, Keith Williams, Sharon Cadwallader and Ben Smith.

Paul Hickey (General Manager), John Truman (Director - Civil Services Division), Matthew Wood (Director, Planning and Environmental Health Division), Kelly Brown (Director, Corporate and Community Division), Leanne Harding (Acting Property Manager) and Sandra Bailey (Secretary) were in attendance.

There were two people in the gallery at this time.

1. Apologies

Apologies were received from Cr Jeff Johnson and Cr Phillip Meehan.

RECOMMENDATION

(Cr Ben Smith/Cr Sharon Cadwallader)

That such apologies be accepted and leave of absence granted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Jeff Johnson

2. Declarations of Interest

Cr Ben Smith – declared an interest in Item 4.3 – Kentwell Community Centre – Leasing Update. (Nature of Interest: non significant, non pecuniary – one of the lessees mentioned in the report is a client of his business). He will be departing the meeting while the matter is discussed.

Cr Keith Williams – declared an interest in Item 4.4 – Expression of Interest – Shelly Beach Café Site and Item 5.1 of the Confidential Session – Expression of Interest – Shelly Beach Café Site Proposals. (Nature of Interest: non significant, non pecuniary – he is the owner/operator of a café in the Shire which is a competing business). He will be remaining in the meeting while the matter is discussed and voting on the matter.

Paul Hickey, General Manager –declared an interest in Item 5.1 of the Confidential Session – Expression of Interest – Shelly Beach Café Site Proposals. (Nature of Interest: non significant, non pecuniary - a good friend is mentioned in the submissions as assisting one of the proponents). He will be departing the meeting while the matter is discussed.

3. Deputations

- **Lindsay Clarke, Director of Lennox Head Community Sports Club** – spoke in favour of Item 4.1 – Lennox Head Community Sports Club – King Street Lease.

4. Committee Reports

4.1 Lennox Head Community Sports Club - King Street Lease

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Nathan Willis)

1. That Council authorises the General Manager to offer a new lease for the Lennox Head Community Sports Club for a portion of road reserve in King Street, Lennox Head, as per Attachments 1 and 2 to this report, with this lease to expire in line with the lease over 10 Stewart Street, Lennox Head (being the main clubhouse building site) on 31 December 2024.
2. That Council authorises the Council seal to be attached to all leasing documentation.
3. That in response to concerns raised by adjoining residents, Council confirms its commitment to:
 - a) ensuring that all appropriate planning consent conditions are in place for the operation of events at the Lennox Head Community Sports Club and
 - b) working with Liquor and Gaming NSW to monitor the operation of the Club and
 - c) monitoring the level of compliance by Club Lennox with the lease conditions and planning consent, with the level of compliance to form part of Council's evaluation for any future lease(s) renewal.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Jeff Johnson

4.2 Policy (Review) - Mobile Vending on Public Land

RECOMMENDATION

(Cr Ben Smith/Cr Sharon Cadwallader)

1. That Council adopts the amendment of the Mobile Vending on Public Land Policy and Guidelines as contained within Attachment 2 including references to the Sharpes Beach Site for fixed mobile vending purposes. Final locations for vending at Sharpes Beach are to be determined through an expression of interest process.
2. That Council place the amended Mobile Vending on Public Land Policy and Guidelines on exhibition for public comment, with any submissions received to be resubmitted back to the Council. If no submissions are received then no further action on the content of the policy is required.
3. That Council commences an expression of interest process for all fixed mobile food vending sites subject to point 4.
4. That the expression of interest process for Sharpes Beach be made available to potential vendors after Council has confirmed a timeframe for The Coast Road construction works to be undertaken and Council has made a decision on the scope of works and timing for the Sharpes Beach car parking area upgrade.
5. That no further permits be issued for fixed mobile food vending at Sharpes Beach until the expression of interest process is complete.
6. That Council engages with the landholder of the car park lease area in relation to the making of provision for fixed mobile food vending sites within the lease area.
7. That Council applies a fee of \$2,500 for fixed mobile food vending sites for the 2019/20 year (being the fee that will apply to any permits not issued through an expression of interest process).
8. That public notice of the fee set out in point 7 be provided in accordance with Section 610F of the *Local Government Act* and be included in Council's fees and charges document for 2019/20.
9. That existing Mobile Vending on Public Land Permit holders be advised of the exhibition of the amended policy and be invited to make comment.

FOR VOTE - Cr David Wright, Cr Sharon Parry, Cr Eoin Johnston, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Stephen McCarthy

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Jeff Johnson

Cr Ben Smith declared an interest in Item 4.3 and left the meeting at 04:43 pm.

4.3 Kentwell Community Centre - Leasing Update

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Eoin Johnston)

1. That Council authorises the General Manager to accept the leasing proposal from the Family Centre for the office space at the Kentwell Community Centre.
2. That Council authorises the General Manager to offer St Andrews a new three plus two-year lease for Activities Room 2 at the Kentwell Community Centre. The proposed lease to St Andrews is to be notified in accordance with the requirements of Section 47 and 47A of the Community Land Provisions of the Local Government Act 1993. Should no written objections be received the General Manager is authorized to finalise negotiations.
3. The Council seal is authorised to be attached to all relevant documentation as per points one and two.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan, Cr Jeff Johnson and Cr Ben Smith

Cr Ben Smith returned to the meeting at 04:43 pm.

4.4 Expression of Interest - Shelly Beach Cafe Site

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Sharon Parry)

That Council notes the contents of this report in respect to the expression of interest process for the Shelly Beach Café site.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Jeff Johnson

5. Confidential Session

RECOMMENDATION

(Cr Eoin Johnston/Cr Sharon Parry)

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

5.1 Expression of Interest - Shelly Beach Cafe Site Proposals

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following:-

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest due to the ongoing commercial negotiations and the inclusion of personal and private information relating to the proponents.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Jeff Johnson

(The Committee moved into Confidential Session at 4.46 pm).

Paul Hickey declared an interest in Item 5.1 and left the meeting at 4.46 pm prior to the Confidential Session.

Cr Keith Williams left the meeting during the Confidential Session at 5:47 pm.

Open Council

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Ben Smith)

That the Committee move into Open Council and out of Committee of the Whole.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan, Cr Jeff Johnson and Cr Keith Williams

(The Committee moved into Open Council at 6.07 pm).

The Mayor reported to the Open Meeting the recommendation made while in Confidential Session:

5.1 Expression of Interest - Shelly Beach Cafe Site Proposals

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Ben Smith)

That Council adjourn this meeting and reconvene at 8.30 am on Thursday 23 May 2019 in a closed briefing to hear the deferred presentation from proponent number one.

FOR VOTE - Cr David Wright, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Nathan Willis

ABSENT. DID NOT VOTE - Cr Phillip Meehan, Cr Jeff Johnson and Cr Keith Williams

Adoption of Recommendation from Confidential Session

RECOMMENDATION

(Cr Ben Smith/Cr Sharon Cadwallader)

That the recommendation made whilst in Confidential Session, be adopted.

FOR VOTE - Cr David Wright, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Nathan Willis

ABSENT. DID NOT VOTE - Cr Phillip Meehan, Cr Jeff Johnson and Cr Keith Williams

Adjournment

The Mayor declared the meeting adjourned at 6.09 pm

The meeting to be resumed at 8.30am Thursday 23 May 2019.

RECOMMENDATION

That Council confirms the minutes of the Commercial Services Committee meeting held 15 May 2019 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

13.1 Mayoral Meetings

13. Reports from Councillors on Attendance on Council's behalf

13.1 Mayoral Meetings

Councillor David Wright

Activities I have attended, or propose to attend, as at the time of writing this report, since the April 2019 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
1/5/19	Northern Rivers Wildlife Hospital – Fundraiser – Seven Mile Brewery
1/5/19	Information Session - Council and EPA Alstonville Asphalt Plant
2/5/19	Briefing – Mobile Vending On Public Land Policy
2/5/19	Meeting – Tony Gilding Subdivision
3/5/19	Surf Club Sponsors' Night
4/5/19	Ballina Relay for Life, Iade Battle - Rollerblading
5/5/19	Commemoration Park Markets, Kids' Day Out - Missingham Park
6/5/19	Meeting - Andrew Hurford and Father re Jetty
6/5/19	Meeting – Consultant Innovation Centre – Airport
6/5/19	Meeting – Rev Fred Nile, Dick Wills – Sub Branch Centenary
7/5/19	Meeting – Ocean Guardian – Shark Mitigation – Beach Barrier
7/5/19	Briefing – Economic Development Strategy
7/5/19	Briefing – Plateau Drive District Park
7/5/19	Alstonville/ Wollongbar Chamber Meeting
9/5/19	Announcement – Airport Funding, 'C' Ward Committee, Gallery Launch
11/5/19	Anglican Fete
12/5/19	Women in Super Mother's Day Classic
12/5/19	Commemoration Park Markets, Lennox Head Markets
13/5/19	Church Group, Julie Porritt – 15 Pippi Place
13/5/19	Briefing –Office of Environment and Heritage – Richmond River Funding
14/5/19	'A' Ward Committee Meeting
15/5/19	Commercial Services Committee
16/5/19	Meeting – John Bout
19/5/19	Commemoration Park Markets, Ballina Markets
19/5/19	Surfing Far North Coast Regional Surfing Titles
20/5/19	'B' Ward Committee
21/5/19	Public Meeting – Draft Delivery and Operational Plans – Wardell
22/5/19	Volunteers Morning Tea – Surf Club
22/5/19	Public Meeting – Draft Delivery and Operational Plans – Ballina
23/5/19	Council Meeting, Reserve Trust Meeting
25/5/19	Church Breakfast Meeting - SDA Church
25/5/19	Lennox Head – Alstonville Surf Club Presentation
26/5/19	Commemoration Park Markets
27/5/19	Briefing – SES Site Options, Vegetation Management Plan/Street Trees
28/5/19	Public Meeting – Draft Delivery and Operational Plans – Lennox Head
28/5/19	Grand Opening Ballina Coast High School.
29/5/19	Scooter Wise – Kentwell Centre
29/5/19	Public Meeting – Draft Delivery and Operational Plans – Alstonville
30/5/19	Oceanic Research Institute – Official Launch – Ramada

RECOMMENDATION

That Council notes the contents of the report on Mayoral meetings.

Attachment(s) - Nil

14. Confidential Session

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

14.1 Ballina Sands Quarry - Legal Proceedings (Confidential)

Refer to Item 8.9 of this agenda.

RECOMMENDATION

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

14.1 Ballina Sands Quarry - Legal Proceedings (Confidential)

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(e) (g) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- e) information that would, if disclosed, prejudice the maintenance of law; and
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as this matter is the subject of current litigation within the Ballina Local Court.