



## 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 26 September 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
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  4. Confirmation of Minutes
  5. Declarations of Interest & Reportable Political Donations
  6. Deputations
  7. Mayoral Minutes
- 

**1. Australian National Anthem**

The National Anthem will be performed by 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 Thursday 22 August 2019 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 22 August 2019.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

## 8.1 Club Lennox - Lease and Planning Matters

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### 8. Planning and Environmental Health Division Reports

#### 8.1 Club Lennox - Lease and Planning Matters

**Delivery Program** Commercial Services

**Objective** To outline various lease and planning matters arising in relation to the operation of Club Lennox and seek direction on the address of these matters.

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#### **Background**

Council considered various lease and planning matters arising in relation to Club Lennox at the August 2019 Ordinary meeting.

At that meeting, Council resolved as follows:

*That the matter be deferred to the September Ordinary meeting subject to a Councillor briefing being held with all parties.*

In response to the resolution, a Councillor briefing was held on 28 August 2019. Representatives of Club Lennox and those who have raised concerns with Council about the operation of the Club were in attendance.

The representatives were provided with an opportunity to address the Councillors present at the briefing, with a number of issues being raised.

The information that follows is based on the content of the August 2019 report to Council, along with updates to address matters arising from the Councillor briefing and further submissions that have been made to Council.

Council considered leasing arrangements over the King Street road reserve for Club Lennox in March and May 2019. Council resolved to grant a lease to Club Lennox for the continued use of the King Street area.

There is also an existing lease in place for Lot 31 DP 11905, 10 Stewart Street, being the land parcel that contains the building and the majority of the associated bowling greens and car parking.

In response to the consideration of the lease, Council has received feedback and submissions from a number of individuals and groups about the operation of the Club.

The various submissions raise concerns about the operation of Club Lennox (particularly from the perspective of some neighbours) whilst others express support for the Club.

The location of Club Lennox and the nature of the immediate surrounds is shown in Figure 1.

The Club is located on community land owned by Council and part of the King Street road reserve.

## 8.1 Club Lennox - Lease and Planning Matters



**Figure 1: Aerial view of Club Lennox (centre) and surrounding area**

The concerns raised about the operation of the Club relate to noise, patron behaviour, activities outside of the building (such as the presence of food trucks and outside seating), development activity, car parking in King Street and the lease of public land in King Street.

The concerns raise two key matters for consideration by Council being the planning implications of the activities being undertaken (in Council's capacity as a planning authority) and implications associated with the terms of the leases that are in place (in Council's capacity as the landowner).

The purpose of this report is to outline the key issues, address the applicable planning considerations and seek direction from Council as the landowner (lessor) on the preferred approach to address the concerns raised.

### **Key Issues**

- Neighbourhood impacts associated with the operation of Club Lennox
- Community benefits associated with the operation of Club Lennox
- Need for planning approval for certain activities
- Compliance with the terms of leases in place

### **Information**

One of the primary concerns raised by neighbours has been impacts associated with noise, patron behaviour and outside activities.

Noise associated with patrons and music at the venue, and other matters involving the service of alcohol are typically matters for Liquor and Gaming NSW. It is understood that Liquor and Gaming NSW has been in contact with Club Lennox in relation to complaints made by neighbours.

## 8.1 Club Lennox - Lease and Planning Matters

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In relation to noise, one element of this for Council consideration is complaints about noise emanating from children using the playground at Club Lennox. Staff have discussed this issue with Club Lennox representatives.

In response, the Club has advised that there is screening that may assist in mitigating impacts associated with the playground that is to be constructed.

Further, the Club has advised that the playground has a current curfew of 9pm and the use of the playground is being monitored by Club staff. The Council development consent for the playground does not limit its hours of operation.

Ongoing monitoring of the use of the playground is a reasonable approach. Based upon such monitoring the need for further mitigation of potential impacts can be reviewed and options such as reduced playground hours of operation could be considered.

Council could consider management options with Club Lennox based on the requirements of the leases in place.

Concerns have also been raised more generally about noise generated from children playing on the greens and otherwise around the Club.

This is not a matter to be regulated through the planning process but it may be possible for Council to address this through the application of the terms of the leases in place if there is concern about this aspect of the complaints received.

Another aspect of the complaints raised with Council relates to whether some of the activities being undertaken by Club Lennox have the appropriate planning approvals in place.

In response to this, Club Lennox has provided details of its planned activities (including in relation to the use of the bowling greens for outdoor seating and food truck activity).

An overview of what the Club proposes is contained in Attachment 1 and is summarised as follows.

In summary, Club Lennox has advised that it would like to undertake the following activities that are the subject of a need for approval from Council:

- Craft Beer and Food Truck Festival to be held on 23 November between 2pm and 8pm. This requires an approval for an event on public land from Council.
- Sundays on the Green involving the use of part of the eastern bowling green for seating and music between 4pm and 7pm on Sundays during the daylight savings period. There is also the presence of a food truck proposed. Ongoing or permanent occupation and use of the greens for Sundays on the Green requires development consent (and hence lodgement of a development application).
- Sundays on the Green on a temporary basis (as a special event) pending assessment and determination of a development application. This is proposed as a measure to enable the activity to occur in the short term. This type of approach may provide further information on the nature of the activity and its impacts to inform a development application.



## 8.1 Club Lennox - Lease and Planning Matters

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The craft beer and food truck festival and temporary use of the green for Sundays on the Green may be considered as special events on public land.

A special event is defined under the Ballina LEP 2012 as *a function or event open to the public or a section of the public and includes a ceremony, concert, cultural celebration, dance, exhibition, fair, festival, fete, gathering, market, open air theatre, parade, sporting event or street parade.*

Special events do not require development consent but do require Council's approval under its Events on Public Land Policy.

Whether or not there is a need for the Club to seek development consent for its activities, the key issue is whether Council wishes to enable such activities in its capacity as landowner in the first instance.

Essentially, Council needs to provide direction on the application of several provisions in the two leases that apply to the land.

The King Street lease states, in part, as follows:

*Clause 6.01 – To use the premises only for the purpose of a bowling green, fencing, and lawn bowls related structures, and for no other purpose without the express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.*

*Clause 6.02 – Not to carry on in part of the premises any annoying, noxious, offensive or illegal business, occupation or practice and the Lessee shall in the course of his permitted use keep noise, odours, vibration or otherwise to a minimum so as not to be an annoyance, nuisance, grievance, damage or to neighbouring area or people.*

*Clause 6.03 – Not to bring upon the premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Lessee's use.*

As per these clauses there is a reasonably strong emphasis already in the lease to minimise any adjoining impacts, albeit these clauses only relate to the relatively small area of road reserve identified in the King Street road reserve.

The lease over the balance of the property (expiring on 31 December 2024) has somewhat similar clauses as follows (notably though the wording in 6.01 differs and is arguably broader in its application):

*Clause 6.01 – To use the premises only for the purpose of a bowls and sports club and for no other purpose without the express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.*

*Clause 6.02 – To conduct its activities in a reputable and proper manner and not to carry on in any part of the premises any annoying, noxious, offensive or illegal business, occupation or practice and the Lessee shall in the course of its permitted use keep noise, odours, vibration or otherwise to a minimum so as not to be an annoyance, nuisance, grievance, damage or to neighbouring area or people.*

*Clause 6.03 – Not to bring upon the premises any heavy machinery or other plant or equipment not reasonably necessary or proper for the conduct of the Lessee's use.*

These clauses place the onus on the lessee to minimise any impact on the adjoining neighbours.

## 8.1 Club Lennox - Lease and Planning Matters

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This also creates the difficulty for Council in trying to assess or determine what is reasonable, particularly in trying to balance the concerns of neighbours with the broader community benefits associated with the operation of the Club and the efforts of the Club to remain financially viable.

There appear to be two activities that require consideration in the short term.

These are the use of part of the bowling greens for outdoor seating and entertainment (south eastern part of the eastern green) and occasional festival type activities (such as food vans and entertainment).

From a planning perspective, the outdoor seating and entertainment area proposed requires development consent.

However, short term temporary use of this area for Sundays on the Green or a similar activity could be considered under Council's Events on Public Land Policy.

The lodgement of a development application requires the agreement of Council as the landholder.

If a development application is lodged for the use of the greens for seating and entertainment, Council's typical approach would be to hold on any compliance action relating to the existing seating that is located on the greens pending the outcome of the development assessment process.

Where a development application is not necessary (for example, previous approvals suitably address the use or the use is development that does not require consent), Council still needs to turn its mind to whether this use is appropriate.

In both cases, Council needs to decide whether the use is consistent with the terms of the applicable lease.

In the case of occasional festival events or other short term special events that are exempt from the need for development consent, these need to be considered in terms of the lease in place and the provision of agreement from Council for the lodgement of Event on Public Land applications from Council's perspective as the landholder and lessor.

### **Sustainability Considerations**

- **Environment**

Concerns raised in relation to the operation of Club Lennox include noise impacts on local residents. This needs to be considered in terms of what is reasonable for the operation of a club.

- **Social**

Concerns raised in relation to the operation of Club Lennox include impacts associated with noise and patron behavior on local residents. This needs to be considered in terms of what is reasonable for the operation of a club.

The other side to this is that Club Lennox plays a role in the social fabric of Lennox Head.

- **Economic**

Club Lennox has indicated that it is seeking to diversify its activities as part of its overall strategy to remain financially viable and provide suitable Club facilities to its patrons. The impacts on the operation of the Club need to be balanced with the consideration of financial viability and broader community benefits arising from the Club.

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

The key legal implication is the interpretation and application of the relevant provisions of the lease. A clear decision of Council in this regard will assist in the efficient application of resources to the address of the matters arising.

Planning matters arising can be addressed through the application of the local planning framework and where required, compliance action.

There are no direct financial implications known at this stage.

### **Consultation**

Council has received submissions from local residents and other stakeholders relating to the operation of Club Lennox. This includes numerous submissions in support of Club Lennox since the Councillor briefing was held following an email request sent out by the Club to its members.

Neighbours have also expressed concerns that are fundamentally about amenity. These relate to noise, patron behavior and outside activities (seating, music, children using the greens, food trucks).

Concerns have also been raised about whether suitable development approvals are in place in relation to some of the activities being conducted by Club Lennox.

Other submissions have expressed support for the operation of the Club. Reasons for support of the Club provided in submissions to Council have included:

- The Club provides an important meeting venue for local community groups and members of the community more generally
- The Club supports a wide range of community, charity and sporting organisations, including group functions, events and activities
- The Club financially supports local groups through cash donations, provision of venue facilities at no cost and enabling and holding of fund raising initiatives
- The Club is part of the Lennox Head lifestyle, providing hospitality, fellowship and entertainment for people.

### **Options**

With respect to the use of the bowling green area, the key question is whether Council wishes to enable Club Lennox to undertake outside activities on the bowling greens and their immediate surrounds.

## 8.1 Club Lennox - Lease and Planning Matters

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The primary options are to provide in principle agreement to outside activities or to advise the Club that Council does not support the use of the greens for purposes other than lawn bowling.

The Club has been using the green areas for uses other than lawn bowling as the Club seeks to diversify to attract patrons and operate in a financially responsible way.

This use must be done in a way that is mindful of impacts on residential neighbours.

To provide for a suitable balance between Club operations and use of this area and neighbourhood amenity, it is recommended that the following approach is taken:

- Where the proposed use of the land or activity is already the subject of an existing approval or the use is classed as exempt development or development that does not require consent, that Council as lessor agrees to the use or activity being carried out (subject to compliance with clause 6.02 in both leases).

This scenario enables existing lawful land uses and activities and uses that do not require development consent under the applicable planning framework to proceed.

- Where the proposed use of the land or activity is exempt development, but it requires an approval from Council under the Local Government Act and/or Roads Act, that Council as lessor agrees to the lodgement of the required application.

This scenario allows activities that require an event on public approval to be assessed on a merit basis in line with Council's current policy and assessment processes for special events. Requirements can be applied through this process to address potential impacts identified in relation to the event.

- Where the proposed use of the land or activity requires development consent, that the proposed use or activity be reported to Council as lessor to enable consideration of the particular proposal and circumstances, before a development application may be lodged for assessment.

This scenario allows Council to consider any proposed development requiring consent in detail before enabling lodgement of an application. Where Council does not agree with a proposed use or activity this means any proposed application would not have the required land owner authority and it could not be processed (i.e. the use or activity would not be able to proceed).

In relation to the particular activities that Club Lennox has proposed as outlined in this report (craft beer and food festival and Sundays on the Green), it is recommended that Council provides landowner authority for the lodgment of the required applications.

## **8.1 Club Lennox - Lease and Planning Matters**

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In the case of the activities proposed, potential impacts can be considered through the relevant application assessment processes and Council can apply restrictions and conditions on the proposed activities.

With respect to clause 6.02 of the leases, it is recommended that Council approach the application of this clause based on findings and feedback from Liquor and Gaming NSW.

That is, a trigger for action in relation to this clause would be a circumstance where Liquor and Gaming NSW identify a breach or concerns about the operation of the Club that is communicated to Council.

In situations where a development application is required, matters such as noise and neighbourhood amenity would be considered as part of the assessment process and ultimately in the decision whether to grant development consent.

Other noise matters can be addressed on a case by case basis depending on the particulars of the circumstances.

If Council prefers not to enable uses and activities on the bowling green area and its surrounds, the Club may seek to rely on clause 6.02 of the lease for Lot 31 DP 11905 to use the premises for the purpose of a bowls and sports club.

That is, it may be able to be argued that use of the greens for seating and entertainment is for a purpose associated with a bowls and sports club and hence the activity is compliant with the lease.

If development consent or another form of approval is required for a use or activity, Council could still determine an application made by way of refusal but this would need to be on grounds relevant to the type of application (e.g. impacts, non compliance with a standard) rather than based on the position of Council as the lessor.

Council could also attempt to withhold land owner consent for lodgment of an application but this may not be reasonable given the provision in the lease.

Alternatively, Council could defer this matter again to a briefing to seek additional information.

In summary this is a difficult matter as Council is attempting to balance the responsible operation of Club Lennox with on-going concerns expressed by neighbours.

The recommendations that follow provide a reasonable balance albeit it is accepted the recommendations may not go far enough from the complainants' perspective as the more regular use of the greens for entertainment and other activities has somewhat changed the amenity that existed in this location for many years.

The recommendations address the management of the lease generally as well as the particular activities and development proposed by Club Lennox as noted in Attachment 1.

## **8.1 Club Lennox - Lease and Planning Matters**

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The deferral of certain matters to Liquor and Gaming NSW can also lead to frustration for complainants as they expect Council to deal with these matters.

However where a matter is within Liquor and Gaming's jurisdiction, this Department is the appropriate regulatory authority and has the appropriate skills to deal with amenity concerns from licensed premises.

### **RECOMMENDATIONS**

1. That Council manages the lease to Club Lennox for Lot 31 DP 11905, 10 Stewart Street, and the associated lease over part of King Street as follows with respect to land use and activities on and around the bowling green area:
  - Where the proposed use of the land or activity is already the subject of an existing approval or the use is classed as exempt development or development that does not require consent, that Council as lessor agrees to the use or activity being carried out (subject to compliance with clause 6.02 in both leases).
  - Where the proposed use of the land or activity is exempt development, but it otherwise requires an approval from Council under the Local Government Act and/or Roads Act, that Council as landowner and lessor agrees to the lodgement of the required application.
  - Where the proposed use of the land or activity requires development consent, that the proposed use or activity be reported to Council as landowner and lessor to enable consideration of the particular proposal and circumstances before a development application is lodged for assessment.
2. That in relation to the proposed Craft Beer and Food Truck Festival, that Council as landowner and lessor agrees to the lodgement of the required application for an event on public land.
3. That in relation to the proposed temporary operation of Sundays on the Green (where the activity meets the exempt development criteria for a special event on public land under the Ballina LEP 2012), that Council as landowner and lessor agrees to the lodgment of the required application for an event on public land.
4. That in relation to the proposed Sundays on the Green initiative, that Council as landowner and lessor agrees to the lodgement of a development application for the ongoing use of the greens for this purpose.
5. That Council be guided by findings from investigations undertaken by Liquor and Gaming NSW in relation to the management of noise related issues under the Club Lennox leases for Lot 31 DP 11905, 10 Stewart Street, and part of King Street.

### **Attachment(s)**

1. Club Lennox - Summary of Intended Activity and Development

## 8.2 70 Shelly Beach Road East Ballina - The Beach House

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### 8.2 70 Shelly Beach Road East Ballina - The Beach House

**Delivery Program** Development Services

**Objective** To inform Council of the options for enforcement/legal action against the land owner in relation to alleged unauthorised building activity and works undertaken at 70 Shelly Beach Road, East Ballina

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#### **Background**

Investigations into alleged unauthorised building activity and works at 70 Shelly Beach Road, East Ballina (Lot 1 DP 781525) commenced in August 2018. This property is now commonly known as The Beach House (formally Gunundi and Dunes on Shelly Beach).

An Order to stop work was issued to the owner of the property on 18 October 2018 under Schedule 5 Part 6 of the Environmental Planning and Assessment Act 1979.

In November 2018 Council commenced Class 4 legal proceedings in the NSW Land and Environment Court against the land owner in relation to works which were undertaken on the subject site without development consent.

In response to the commencement of those proceedings and concerns raised by Council about the lawfulness of the building works carried out on the property, the owner undertook the following actions:

- Refrained from using the Conference Centre building, disabled toilet and Dormitory building
- Obtained a Building Information Certificate under Division 6.7 of the Environmental Planning and Assessment Act 1979 for those works commenced
- Obtained Development Consent for proposed works on the subject property via two Development Applications, being DA 2018/603 and DA 2018/781.

Council resolved at the 24 April 2019 Ordinary Council meeting that, subject to confirmation from Council's solicitor, Council formally withdraw from the Class 4 proceedings in the NSW Land and Environment Court.

Consequently, the Class 4 proceedings were finalised on 9 May 2019 by the filing of a Notice of Discontinuance signed by both parties on the basis the respondent pay the applicant's costs as agreed or assessed.

As part of the debate on this matter Council had also sought information in respect to the appropriate level of enforcement action that should be implemented in respect to the works undertaken without development consent.

This report provides an overview of the options available, and the confidential report later in this agenda outlines the legal opinion.

### Key Issues

- Appropriate level of action in response to alleged unauthorised works undertaken at 70 Shelly Beach Road, East Ballina having regard for the requirements of the Environmental Planning and Assessment Act 1979 and associated Regulations and instruments.

### Information

As outlined, Council has taken Class 4 action against the land owner of 70 Shelly Beach Road, East Ballina.

Council's Enforcement Policy sets out a number of options Council can take with respect to unauthorised building activities and works.

The options outlined in the Enforcement Policy are:

1. Issue Formal Warnings
2. Issue Penalty Infringement Notice(s)
3. Commence Local Court Criminal Prosecution Proceedings
4. Commence Land and Environmental Court Criminal Prosecution Proceedings

The confidential report provides commentary on the appropriate level of action post the Class 4 Court proceedings.

### Sustainability Considerations

- **Environment**  
A consistent application and enforcement of planning and development laws assists in achieving desired development and environmental outcomes.
- **Social**  
A consistent application and information of planning and development laws assists in ensuring community confidence in relation to development activity in the Shire.
- **Economic**  
Legal action typically comes at a net cost to the community.

### Legal / Resource / Financial Implications

Legal implications associated with this matter are the subject of the confidential report.

### Consultation

Council's solicitor (Parker & Kissane) has been engaged in respect to this matter and it is intended to have their representative, Ms Clarissa Huegill available during the confidential session to advise on the options for legal action and enforcement.



## **8.2 70 Shelly Beach Road East Ballina - The Beach House**

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### **Options**

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

### **RECOMMENDATION**

That Council notes the contents of this report in respect to the options for enforcement action in relation to 70 Shelly Beach Road East Ballina.

### **Attachment(s)**

Nil

### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

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### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

**Delivery Program** Strategic Planning

**Objective** To present the outcomes of the public exhibition of BSCPP 18/002 Attached Dual Occupancy - Alstonville and associated amendments to Ballina Shire DCP 2012 relating to Alstonville and Wardell.

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#### **Background**

Council at its Ordinary meeting on 14 December 2017 adopted the Alstonville Strategic Plan 2017 – 2037 (ASP) and the accompanying Planning and Environmental Study.

Action 8 of the ASP, which is assigned a high priority, provides as follows:

*Action 8 - Initiate a planning proposal to permit dual occupancy development within the R2 zone upon lots having an area of 900m<sup>2</sup> or more.*

*Rational for the Action / Benefits*

*Dual occupancy (two dwellings attached or detached on one lot) are a lower impact form of denser housing which would assist with providing greater housing choice within Alstonville village.*

The 2017 Alstonville Planning and Environmental Study contained information which indicated that 529 R2 zoned lots with an area of 900m<sup>2</sup> or larger existed in Alstonville. It also estimated that approximately 500 of these lots may be suitable for dual occupancy purposes. The remaining 29 lots being part of developments such as seniors housing, schools and community uses.

Council at its Ordinary meeting on 13 December 2018 endorsed the Alstonville Dual Occupancy Planning Proposal. It also authorised its submission to the Department of Planning and Environment for a Gateway determination and its subsequent public exhibition.

Council also resolved to prepare draft DCP amendments to introduce slope controls, and other associated amendments, relating to the development of land for dual occupancy purposes at Alstonville and Wardell.

Restricting the development of lots with a land slope gradient exceeding 20%, for attached dual occupancy purposes, was estimated to reduce the number of suitable sites to 414. This number is also an estimate.

It is known that the methodology used to determine land slope affectation was not completely precise when applied to a broad area.

This means that there may be more or less than the 414 lots initially identified in the planning proposal.

The precise number of suitable attached dual occupancy sites will be established following more detailed land surveys undertaken as part of future DA proposals.

### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

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The planning proposal endorsed by Council proposed to limit dual occupancy to the attached form of this development. This was done in response to community concerns raised in respect to the detached form of secondary dwellings.

Such dwellings are typically erected in rear yard areas.

The associated perceived privacy and other impacts of this form of development has given rise to objections on numerous occasions.

The exhibited draft DCP amendments related to both Alstonville and Wardell as well as some associated minor general amendments.

Enabling of dual occupancy development on certain land at Wardell is the subject of a separate planning proposal.

The draft DCP amendments as they relate to Wardell seek to introduce lot size and building envelope requirements for attached dual occupancy development.

The Wardell Attached Dual Occupancy Planning Proposal has been exhibited but is unable to be reported to Council for finalisation at this time. This is because the NSW Rural Fire Service (RFS) has not supported the planning proposal in its current form due to bushfire risk concerns.

The issues raised by the RFS have been investigated by a specialist bush fire risk consultant and are currently the subject of further consultation with the RFS.

A report related to this issue will be presented to the Council at a later date.

Attachment 1 to this report contains a copy of the exhibited planning proposal.

Attachment 2 to this report contains a summary of the exhibited draft amendments to Ballina Shire DCP 2012 Chapters 2, 3 and 4. It also contains additional changes proposed following consideration of submissions.

The purpose of this report is to seek direction on the finalisation of the planning proposal and associated DCP amendments.

#### **Key Issues**

- Implementation of the Alstonville Strategic Plan 2017 – 2037
- DCP amendments
- Attached dual occupancy development
- Housing choice

#### **Information**

This planning proposal relates to lots within the Alstonville urban area which contain a minimum site area of 900m<sup>2</sup> and which are zoned R2 Low Density Residential under the provisions of the Ballina Local Environmental Plan 2012 (LEP).

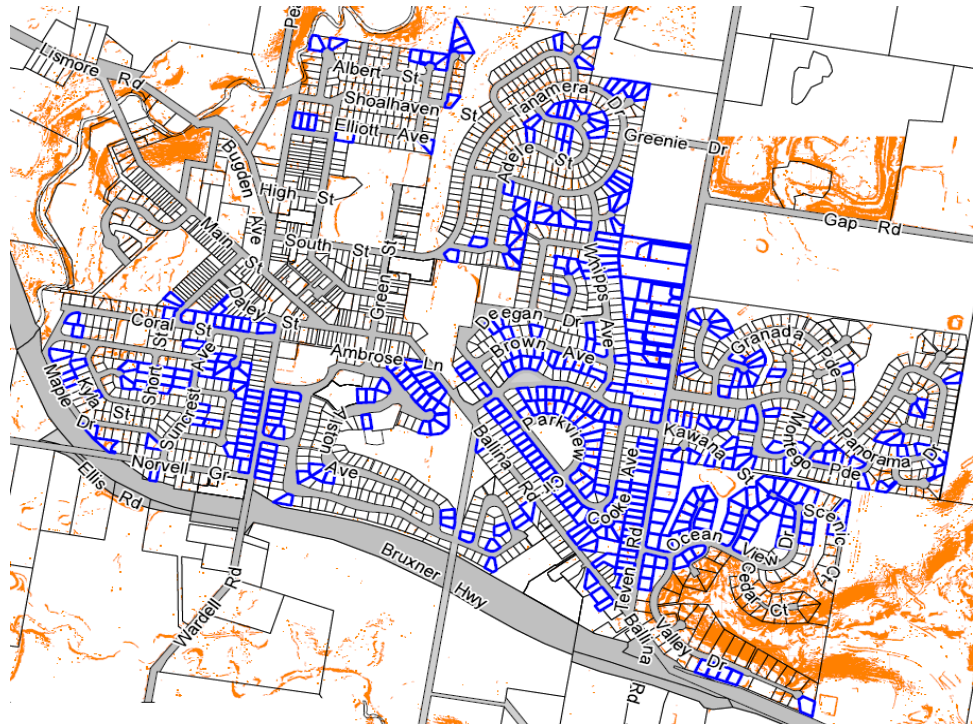
## 8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy

### *Exhibited Draft DCP Provisions*

Exhibited concurrently with the planning proposal were a range of DCP related amendments. The amendments as they relate to Alstonville, proposed to further limit attached dual occupancy development to those lots that have a land slope gradient of 20% or less. Lot size and width controls also form a part of the proposed DCP amendments.

Diagram 1 below shows by blue outline those lots identified within the planning proposal as meeting the minimum area and slope criteria.

**Diagram 1 – Lots identified as being impacted by the planning proposal (outlined in blue)**



The proposed DCP based provisions relating to land slope are contained within DCP *Chapter 2 – General and Environmental Considerations*. They take the form of an advisory note within part 3.5 *Land Slip and Geotechnical Hazard*.

The advisory note indicates that attached dual occupancy development, within the Alstonville R2 zone, on lots having a slope gradient of greater than 20% is deemed to be an inappropriate form of development. This is due to landslip risk factors and the degree of site works (cut and fill / retaining walls) likely to be required.

DCP Chapter 3 – Urban Subdivision is also proposed to be amended to include a requirement for a 20% maximum slope gradient limit for new dual occupancy lots.

It is noted that there were no specific submissions made in respect to the exhibited draft DCP controls for either Alstonville or Wardell.

### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

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Incorporating slope control provisions within the DCP is preferred because the determination of lots impacted by slope constraints is not precise at this stage of the process. Were the control to be contained within the LEP then further LEP amendments may be required to incorporate lots excluded or to remove lots later found to have excessive slope.

The DCP provisions have been drafted to provide sufficient flexibility to enable development to be considered on lots, which may not have been previously identified as being suitable. It may also enable development to occur on those lots where only a part of the lot is affected by the slope constraint.

#### *Retention of existing dwellings as part of attached dual occupancy development*

During the public exhibition process a number of enquiries were received on whether existing dwellings could be retained, and if so how the second dwelling would be permitted to be attached to an existing dwelling.

The planning proposal, and the associated DCP amendments, when drafted were based on the assumption that most proposals would involve the demolition of the existing dwelling and the erection of new purpose built attached dual occupancy developments. It would appear that there is significant interest in retaining and adapting existing dwellings so that they would be able to be integrated as part of an attached dual occupancy development.

The retention of existing dwellings as part of an attached dual occupancy development, whilst being sound from a sustainability viewpoint, has the potential to generate adverse amenity and compliance impacts.

Proposals such as separating old and new developments with attached carports or breezeways have the potential to create visually unattractive developments. Such developments may also extend significantly into rear yard areas and compromise the amenity and privacy of adjoining properties.

For the above reasons it is desirable that DCP provisions be drafted which clarify Council's approach to the retention of existing dwellings as part of an attached dual occupancy development.

Where existing dwellings are proposed to be retained it is important that the completed development presents visually as a unified development. This means in most cases the existing dwelling will need to be upgraded to blend visually with the new development.

Existing roofs may need to be extended and skillion rear roof extensions discouraged or not permitted. Landscaping elements and driveways may need to be reconstructed and fencing replaced. In terms of breezeways and carports these are considered in most cases not to be a satisfactory means of meeting the "attached" requirement and should not be permitted or discouraged.

Attachment 3 contains a draft DCP amendment to Chapter 4 Residential and Tourist Development of Ballina Shire DCP 2012. These provisions, have been further enhanced with diagrams which aim to show acceptable and unacceptable design solutions as well as suitable and unsuitable sites.

### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

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The diagrams, which will form a part of the DCP, have been prepared to assist in informing prospective developers, as to Council's requirements when seeking to retain existing dwellings as part of an attached dual occupancy development or when selecting development sites.

#### *Attached dual occupancy development in cul-de-sacs*

A number of submissions have raised the suitability of lots located within cul-de-sacs to be developed for attached dual occupancy purposes. This is because cul-de-sac lots are typically large in area but have small street frontages. This then limits the amount of on street car parking available in front of such lots as well as restricting the waste bin servicing area.

The State Government's *Low Rise Medium Density Housing Code* specifies a minimum lot width of 12m measured at the building line for complying dual occupancy development.

Council's DCP Chapter 3 Urban Subdivision specifies a minimum lot width of 12 metres for new dual occupancy lots. There are no minimum lot widths specified for dual occupancy development proposed on existing lots within Chapter 4 Residential and Tourism Development.

Incorporating a minimum lot width requirement within the DCP (Chapter 4) to mirror the requirements in the *Low Rise Medium Density Housing Code* would assist to address the cul-de-sac lot suitability concern.

The recommendations to this report address this issue by proposing to incorporate a 12 metre lot width requirement, at the building line, for attached dual occupancy development located within the R2 zone at Alstonville and Wardell (Attachment 3).

#### *Attached dual occupancy development on battle-axe shaped lots*

Battle-axe lots present additional design challenges when attempting to site an attached dual occupancy development so as to minimise amenity impacts. This is because they can adjoin a number of other lots and in many cases development on the battle-axe lot will create overlooking and privacy concerns.

Battle-axe lots may also be unsuitable for dual occupancy development due to lack of kerb side parking and limited footpath bin serving areas.

Attachment 3 also incorporates a DCP provision which seeks to restrict the creation of an attached dual occupancy utilising an existing dwelling as part of the development on battle-axe lots. Limiting the restriction to proposals, which seek to integrate existing dwellings, is preferred as an initial step. This is because it is considered that in many cases the existing dwelling may be sited in a manner which will make integration difficult.

Under the proposed DCP provisions it will be possible to seek approval for a new attached dual occupancy on a battle-axe lot (if there is an existing dwelling it would need to be demolished). This will be circumstance specific as it is likely to be difficult to meet all of the applicable planning requirements to construct an attached dual occupancy on battle-axe lots.

### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

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#### *Applicability of clause 4.6 of Ballina LEP 2012 - Exception to development standards - to the proposed 900m<sup>2</sup> proposed minimum lot size*

Clause 4.6 of the LEP enables a degree of flexibility to be applied to certain development standards related to particular forms of development. This is so as to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

It is a matter for Council to determine whether it wants flexibility to be applied to the proposed 900m<sup>2</sup> minimum lot area specified for attached dual occupancy development within the R2 zone at Alstonville. If Council determines that no flexibility should be provided to this lot size development standard it should resolve to instruct Parliamentary Counsel, when drafting the proposed LEP amendment provisions, to exclude the lot area provision from the operation of clause 4.6.

It is noted that 2 submissions have raised the issue of flexibility of the lot size development standard. In one example the lot has an area of 897.9m<sup>2</sup> or 2.1m<sup>2</sup> short of the proposed standard. It is considered reasonable that flexibility be retained, as is the case for other residential lot size standards contained within the LEP.

#### *Waste water infrastructure capacity*

A 20 year master plan currently under development for the Alstonville Waste Water Treatment Plant has factored in future population increases associated with both the Alstonville and Wollongbar Strategic Plan housing based initiatives.

#### **Sustainability Considerations**

- **Environment**

The proposal to permit attached dual occupancy infill residential housing within part of an existing residential area is consistent with the existing urban planning policy for the Alstonville area (Alstonville Strategic Plan).

It is also consistent with the strategic action relating to the investigation of the potential for infill development intensification contained within the Ballina Shire Growth Management Strategy. Finally the proposal is consistent with the North Coast Regional Plan direction relating to increasing housing diversity and choice.

- **Social**

The proposal is likely to have positive social impacts resulting from the provision of greater housing choice.

- **Economic**

The proposal has the potential to result in a number of positive economic impacts associated with construction.

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

Completion of the planning proposal to permit attached dual occupancy development on certain land in Alstonville within the R2 Low Density Residential zone under the provisions of the Ballina LEP 2012, and the associated draft DCP amendments, can be managed within existing staff resources. This matter is included in the current Strategic Planning work program.

The finalization of the proposed LEP amendment is proposed to be undertaken under delegation provided to Council by the Department of Planning and Environment.

### **Consultation**

The planning proposal and associated draft amendments to Ballina Shire DCP Chapters 2, 3 and 4 were publically exhibited from 22 May 2019 until 21 June 2019.

Consultation occurred with the NSW Rural Fire Service (RFS) and then subsequently with the Department of Planning and Environment.

The community engagement strategy associated with the public exhibition included:

- Letters to 411 property owners of land which was initially assessed as meeting the 900m<sup>2</sup> minimum lot size and maximum 20% slope gradient criteria.
- Letters to 583 property owners who adjoined the above land.
- Letters to 110 property owners who whilst meeting the 900m<sup>2</sup> minimum lot size criteria had their land assessed as not meeting the 20% maximum slope criteria.
- Letters to 143 property owners who adjoined the above land that was assessed as not meeting the maximum slope criteria.
- Advertisement within the Ballina Shire Advocate on 22 May 2019.
- Display of documentation on Council's web site and at the community access points.

In response 30 submissions were received. The submissions consisted of 6 supporting the proposal 20 objecting (2 from 1 person), 2 requests for information and 2 public authority consultation responses.

Attachment 4 and 5 to this report contains copies of submissions received. Attachment 5 contains two submissions where the writers have requested confidentiality.

The following table provides a summary of the main issues raised within the submissions together with staff comments.



### 8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy

**Table 1 – Summary of issues raised in submissions and staff comments**

Summary of Issues	Comments
Question capacity of the Alstonville Waste Water Treatment Plant	<p>The Alstonville WWTP requires various upgrades over the next 20 year period and is the subject of a current master planning process.</p> <p>This process is also aimed at ensuring that the Alstonville WWTP has sufficient capacity to meet the needs of the current population as well as increases associated from adopted strategic planning strategies.</p>
Spoil visual appearance of town, loss of village atmosphere, increased noise and emission affecting air quality, negative impacts during prolonged construction period, loss of amenity due to increased population, removal of greenspace, less oversight of inappropriate development, more dogs and cats, less owner occupies, rental properties not maintained to an acceptable standards.	<p>The LEP amendment will result in changes to Alstonville village through the provision of additional housing and greater housing choice. These are positive aspects of the proposal. Given the nature of the proposed changes and the likely slow take up of attached dual occupancy development, this proposal is unlikely to have significant detrimental impacts on the overall character of Alstonville.</p>
Loss of development potential of some land more suitable for purposes such as seniors housing.	<p>Seniors housing is already permitted within the R2 zone. It is not agreed that there will be a loss of development potential of the properties upon which attached dual occupancy development is proposed.</p>
Proposal not justified. What happens if claimed benefits aren't achieved?	<p>The proposal is considered to have been sufficiently justified at the time it was included as a strategic action within the Alstonville Strategic Plan. If anticipated housing choice benefits are not achieved then Council may wish to consider additional strategic actions when the Alstonville Strategic Plan is next reviewed.</p>
Concern about 2 storey development.	<p>The existing 8.5 metre height limit applicable to the R2 zone already enables 2 storey development to take place.</p>
Consider other options such as a third village.	<p>Other options were considered as part of the 2017 strategic planning process.</p> <p>The third village option was not considered as this was beyond the scope of the then Alstonville Planning and Environmental Study.</p> <p>Consideration of the third village option is still referenced in the 2012 Ballina Shire Growth Management Strategy as a strategic action for Alstonville and Wollongbar.</p>

### 8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy

Summary of Issues	Comments
Inadequate infrastructure, kerb and gutter, footpaths, bike ways and lack of street drainage.	It is acknowledged that there are many residential streets in Alstonville that do not contain kerb and gutter, formed and paved footpaths and ready access to a piped drainage system. These matters are considered at the DA stage when a case by case assessment is made of the opportunities available to upgrade infrastructure as part of the development process. This is similar to the process followed by Council in terms of development fronting rear lanes in Ballina and Lennox Head.
Concerns about increased traffic, roads too narrow, suitability of development within cul-de-sacs, potential parking problems.	This has been addressed through further recommended amendments to the DCP. Refer Attachment 3 for details. A minimum of 2 off street car parking spaces per dwelling in an attached dual occupancy development is required by the DCP.
Impact of property values, devaluation of properties without dual occupancy potential	No evidence has been submitted to substantiate this objection.
Impact of additional neighbours on farm land which is already impacted by various urban interface issues. Suggests that southern boundary to Rosedale Place and Hillburn Place be allowed to be developed.	The matters raised by this objector have in the main been previously considered as part of the consideration of submissions associated with the Alstonville Strategic Plan. Key reasons for not enabling the requested change relate to current land use zoning and the land being subject to a number of significant land use constraints (proximity to WWTP, proximity to quarry, bushfire prone land and State significant farmland).
Question why some properties excluded that meet area and slope criteria.	This issue has been addressed in the Background Section of this report.
Support proposal due to increased housing choice, ability to stay in neighborhood close to town facilities.	Noted
Proposal should be extended to include detached dual occupancy as per the strategic plan action.	The reasons as to why this is not the case have already been discussed within the Background Section of this report.
Proposal should provide for minor variations to the minimum 900m <sup>2</sup> lot size.	This issue has been addressed in the Information Section of this report.
NSW Rural Fire Service	Indicate no objection to the planning proposal proceeding. Also provide advice as to the matters that need to be considered on individual development parcels if located on bush fire prone land.
Department of Planning and Environment	Indicate that the inconsistency of the proposal with section 9.1 Direction 4.4 Planning for Bushfire Protection is justified. Advise Council may now proceed to finalise the plan once it receives a Parliamentary Counsel opinion confirming that the LEP may be legally made.

### Options

The options available to Council in respect to this planning proposal and associated DCP amendments include the following:

1. Authorise the General Manager to finalise the amendment of Ballina LEP 2012 as detailed in the exhibited Planning Proposal BSCPP18/002 – Attached Dual Occupancy - Alstonville contained within Attachment 1 together with relevant DCP amendments as exhibited and proposed.

This is the recommended option.

Adoption of this option will result in the LEP amendment being finalised as exhibited. It will also result in attached dual occupancy development being permitted within the Alstonville R2 zone on lots having a minimum area of 900m<sup>2</sup>.

In respect to the clause 4.6, relating to minor variations, this option would result in the variation clause being available for use by applicants where circumstances justify its use to vary the minimum lot area requirement.

Council could also determine under this option to resolve not to permit the 900m<sup>2</sup> minimum lot size to be varied using clause 4.6.

Adoption of this option would also result in the draft exhibited DCP provisions being adopted. They would then become effective upon the finalisation of the respective dual occupancy LEP amendments for Alstonville and Wardell. This would also incorporate the additional amendment relating to the minimum 12 metre lot width requirement for dual occupancy sites which is recommended as a result of the consideration of submissions.

Finally, this option would result in the additional DCP provisions contained within Attachment 3 being publically exhibited so as to provide greater guidance where existing dwellings are proposed to be retained, and to reinforce the unsuitability of battle-axe shaped lots for attached dual occupancy development.

2. Finalise the planning proposal together with the draft amendments to the DCP as exhibited without making any further changes to the DCP.

This option is not recommended as it will not address the potential unsuitability of some cul-de-sac lots to support attached dual occupancy development.

This approach does not address the highlighted issues related to the potential unsuitability of battle-axe lots and it will not provide guidance as to Council's requirement where existing dwellings are proposed to be retained.

3. Discontinue the planning proposal and draft DCP amendments and take no further action to finalise the attached dual occupancy planning proposal for Alstonville.

### **8.3 Planning Proposal and DCP Amendments - Attached Dual Occupancy**

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This option is not recommended having regard to the history associated with the development of this planning proposal and its compliance with the strategic planning framework for Alstonville.

It is also not recommended based on the nature and number of submissions received which do not support the proposal.

4. Request additional information and defer consideration of the planning proposal pending a briefing or an additional report addressing any areas of concern.

This option is available to Council should it require additional information relating to the planning proposal or DCP amendments.

#### **RECOMMENDATIONS**

1. That Council authorises the General Manager to finalise and implement Planning Proposal BSCPP18/002 – Attached Dual Occupancy Alstonville under delegated authority as detailed in Attachment 1.
2. That Council adopts the draft amendments to Ballina Shire DCP 2012 Chapters 2, 3 and 4, as publically exhibited and inclusive of the additional changes highlighted in red as detailed in Attachment 2.
3. That Council provide public notice of the adoption of the amendments to Ballina Shire Development Control Plan 2012 referenced in point two above, with the amendment to take effect from the date of finalisation of the respective LEP amendments for the Alstonville and Wardell dual occupancy planning proposals.
4. That Council publically exhibit the further DCP controls relating to attached dual occupancy development (as detailed in Attachment 3) in accordance with the terms of the *Environmental Planning and Assessment Act 1979* and the associated Regulation.
5. That Council receive a further report on the draft amendments the subject of point 4 above after the public exhibition period.
6. That those persons who made submissions be thanked for their contribution and provided with advice as to Council's decision with respect to this planning proposal and associated DCP amendments.

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

1. Exhibited Planning Proposal
2. Draft DCP Amendments - Alstonville & Wardell Attached Dual Occupancy (post exhibition)
3. Additional Recommended DCP Controls and Diagrams
4. Submissions (Non Confidential)
5. Submissions (Confidential) (Under separate cover)

**8.4 Ballina Shire Development Control Plan 2012 - Amendment No. 12**

**Delivery Program** Strategic Planning

**Objective** To inform Council of the outcomes of the public exhibition of proposed amendments to the Ballina Shire Development Control Plan 2012 and to seek direction in relation to the adoption of the recommended amendments.

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**Background**

Draft Amendment No. 12 to the Ballina Shire Development Control Plan 2012 (the DCP) was considered by Council at its Ordinary meeting held in April 2019. At that meeting Council resolved as follows:

1. *That Council proceed to undertake the public exhibition of Draft Amendment No. 12 to the Ballina Shire Development Control Plan 2012 (as contained in Attachment 1), in accordance with the terms of the Environmental Planning and Assessment Act 1979 and the associated Regulation.*
2. *That a further report be submitted to Council following the public exhibition of Draft Amendment No. 12 to the Ballina Shire Development Control Plan 2012.*
3. *In reporting back to Council further options for development controls relating to private recreational facilities associated with a dwelling house be presented to Council.*

In accordance with the above resolution, Draft Amendment No. 12 was placed on public exhibition from 22 May 2019 to 21 June 2019. The requirements for Alstonville and Wardell dual occupancy development relating to planning proposals BSCPP 18/002 and BSCPP 18/003 respectively were also exhibited as part of this DCP amendment.

The purpose of this report is to seek direction from the Council in relation to the adoption of the proposed amendments to the DCP.

**Key Issues**

- Implementation of amendments to the development control plan
- Ensuring the DCP provides for intended and consistent planning outcomes

**Information**

Details of the draft amendments to the DCP were reported to Council at the Ordinary meeting held in April 2019.

Full details of the proposed amendments, which were placed on exhibition in accordance with the Council's resolution, are contained within Attachment 1.

Some of the more significant proposed amendments to the DCP are outlined as follows:

- Inclusion of a provision within Part 3.1 of Chapter 2 – General and Environmental Considerations which specifies minimum buffer distances for hotmix asphalt / bitumen batch plants as well as the inclusion of diagrams which detail the manner in which buffer distances should be calculated
- Removal of references to the use of the contributions plan for the Lennox Head Village Centre contained within Part 3.19 of Chapter 2 – General and Environmental Considerations and Chapter 6c – Commercial Development Lennox Head
- Inclusion of a provision within Part 3 of Chapter 2 – General and Environmental Considerations which provides development controls for boat ramps, pontoons and jetties
- Adjustments within Chapter 2a – Vegetation Management to reference changes to biodiversity legislation and provisions and
- Adjustments within Chapter 4 – Residential & Tourist Development relating to car parking controls.

### *Alstonville and Wardell Dual Occupancy Development*

Council considered planning proposals BSCPP 18/002 and BSCPP 18/003 relating to dual occupancy development in Alstonville and Wardell respectively at its Ordinary meeting held in December 2018.

At that meeting Council resolved to authorise the associated DCP amendments for public exhibition.

The DCP amendments were exhibited from 22 May until 21 June 2019.

The Alstonville dual occupancy planning proposal (BSCPP 18/002) and associated DCP amendments for Alstonville and Wardell are the subject of a separate report elsewhere in this business paper.

### *Private Recreational Facilities Ancillary to a Dwelling House*

At the August 2017 Ordinary meeting Council considered a development application (DA 2017/312) that sought approval for the use of a private skateboard ramp facility located forward of the building line at 2-12 Greenwood Place, Lennox Head.

The application was accompanied by a noise impact assessment report, which was subsequently revised following the submission of an objection which critiqued the noise impact assessment report.

Council's Public and Environmental Health Section did not support the application given that the use of the skateboard ramp would most likely generate offensive noise and would significantly impact on the amenity of adjoining and nearby residents. Council subsequently refused the application.

Council also resolved at the August 2017 Ordinary meeting to develop a policy in relation to private skateboarding facilities in R2 and R3 zones. In lieu of a policy, it was considered that DCP controls were a sufficient mechanism to provide guidance for the consideration of potential impacts of development involving private recreational facilities.

It was proposed to insert a note within Chapter 4 – Residential & Tourist Development and Chapter 8 – Other Uses to advise that certain activities are likely to generate noise and adversely impact on the amenity of adjoining properties.

Any development application seeking approval for such facilities should be assessed individually on its merit having regard to the nature of the proposed development and the surrounding residential area.

In consideration of the proposed amendments to the DCP, Council resolved at its April 2019 Ordinary meeting to proceed with the public exhibition of the proposed DCP amendments and in reporting back to Council, further options for development controls relating to private recreational facilities associated with a dwelling house be presented.

In considering appropriate development controls for private recreational facilities such as skateboard ramps, consideration was given as to whether such development is consistent with the objectives of the R2 and R3 zones, in particular the objective *‘to provide for development that is compatible with the character and amenity of the surrounding neighbourhood’*.

Complaints received by Council in respect to private skate ramps generally relate to the level of noise generated by such structures.

Council has not received any recent complaints since the consideration of DA 2017/312 regarding noise from unauthorised private skateboard facilities.

A search of Council records has revealed no approvals have been issued for private skateboard ramps in residential areas.

Existing communal skateboard ramp facilities within the Shire are appropriately located in areas zoned for public recreation.

*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* contains provisions regarding the construction and installation of certain exempt development such as tennis courts, playground equipment and portable swimming pools and spas but does not impose restrictions on the hours of operation of such structures.

Prescriptive controls regulating the frequency and duration of use of such structures would prove very difficult to regulate and may encourage further similar development, which may not be desirable in an urban residential area.

In considering the development application for 2-12 Greenwood Place, Lennox Head (DA 2017/312), Council’s Public and Environmental Health Section made the following comment:

*The Public and Environmental Health Section does not support the submitted development application and note there is most likely no urban residential setting in the Shire at which a similar skateboard ramp would be suitable given the likely impacts on residential amenity.*

Having regard to the above, the inclusion of development controls in an attempt to regulate such development would be misleading as it would send a message that Council regards such structures as being acceptable subject to compliance with certain standards.

In conclusion, any application seeking consent for such structures should be subject to a merit-based assessment, taking into account the individual circumstances relating to each proposal. Should Council seek to provide some guidance for proponents regarding the potential impacts of such development then the proposed note, as exhibited with the DCP amendments and reproduced below, is recommended.

**Notes:**

Private recreational facilities ancillary to a dwelling house are to be used for the recreational enjoyment of the occupants of the dwelling house only.

Examples of private recreational facilities include (but is not limited to) items and areas used for the following activities:

- Basketball
- Cricket
- Handball
- Netball
- Skate board ramps
- Tennis courts

These activities (facilities) are likely to generate noise and other issues and may adversely impact on the amenity of adjoining properties and the surrounding area. A development application that seeks approval for a private recreational facility will be assessed individually on its merit.

*Car Parking Controls – Chapter 4 Residential & Tourist Development, Element H – Vehicular Access and Parking*

It is proposed to amend the controls contained in Element H – Vehicular Access and Parking by removing the requirement for screening of stacked parking permitted forward of the building line as well as other minor adjustments to improve the function of the clause.

Upon further consideration it is proposed to amend the controls relating to carports and car parking spaces located forward of the building line as outlined in Attachment 2 to this report.

The proposed amendments will also provide more consistency with the car parking provisions for complying development contained within the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) in relation to setbacks.

**Sustainability Considerations**

• **Environment**

The DCP establishes local planning policy in relation to a variety of environmental, social and economic considerations. Specifically, it establishes guidelines for development proposals within the shire. As such, the DCP provides an opportunity for Council to address a wide range of sustainability considerations in relation to development. Amendment No. 12 to the DCP seeks to improve the application of these sustainability considerations.



- **Social**  
As above.
  
- **Economic**  
As above.

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

The preparation of Draft Amendment No. 12 to the Ballina Shire Development Control Plan 2012 has been undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and its associated Regulation. The amendment can be completed and implemented within the existing resources of the Strategic Planning Section within the Planning and Environmental Health Division.

Clause 21(1) of the *Environmental Planning and Assessment Regulation 2000* sets out the process applicable once Council has considered submissions. Clause 21(1) is reproduced below:

#### **21 Approval of development control plans**

*(1) After considering any submissions about the draft development control plan that have been duly made, the council:*

- a) may approve the plan in the form in which it was publicly exhibited, or*
- b) may approve the plan with such alterations as the council thinks fit, or*
- c) may decide not to proceed with the plan.*

### **Consultation**

Draft Amendment No. 12 to the DCP was publicly exhibited between 22 May and 21 June 2019 in accordance with the requirements of the EP&A Act and associated Regulation.

Details of the proposed amendments were posted on Council's website and made available at library community access points and at Council's Customer Service Centre.

An advertisement also appeared in the Ballina Advocate on 22 May 2019.

No submissions have been received in response to the public exhibition.

### **Options**

1. Adopt and implement Amendment No. 12 to the DCP as exhibited for public comment subject to the changes to Element H in Chapter 4 as detailed in Attachment 2 to this report.

This is the recommended course of action and will support the provision of sound and consistent land use planning outcomes in the Shire.

The concept of regularly monitoring the DCP and adapting its provisions to changing circumstances is one that the Council has successfully applied

over a considerable period and it is suggested this process should continue.

If this is the approach adopted by the Council, it is proposed that the amendment will take effect from the date of publication in the Ballina Shire Advocate. Public notice is required to be given of the amendment's adoption within 28 days of the Council's decision.

Alternatively, Council could proceed to adopt the amendments subject to changes as specified by the Council.

2. Decline the adoption of DCP Amendment No. 12

Council may resolve to decline to adopt Draft Amendment No. 12 to the DCP in whole or in part. This is not the recommended course of action as it will result in the identified changes, corrections and interpretive improvements not being incorporated into the DCP which will impact on its efficiency in providing intended and consistent land use planning outcomes.

3. Defer adoption of DCP Amendment No. 12

Council may resolve to defer the adoption of Draft Amendment No. 12 to the DCP and seek additional information and/or further consideration of the identified issues.

As detailed in this report, the intent of Draft Amendment No. 12 is to provide better function and clarity to the DCP and as such, this option is not recommended.

It is also noted that the work program for Council's Strategic Planning Section within the Planning and Environmental Health Division includes the monitoring of Council's key strategic land use planning documents, and their regular reporting to the Council.

This assists in ensuring that the DCP remains relevant in achieving the desired development outcomes in the shire.

**RECOMMENDATIONS**

1. That Council adopts Draft Amendment No. 12 to the Ballina Shire Development Control Plan 2012, as exhibited for public comment, subject to the changes to Element H in Chapter 4 as detailed in Attachment 2 to this report.
2. That Council provide a copy of Ballina Shire Development Control Plan 2012, once amended, to the NSW Department of Planning, Industry and Environment as required by the Environmental Planning and Assessment Regulation.
3. That Council provide public notice of the adoption of Ballina Shire Development Control Plan 2012 Amendment No. 12, with the amended DCP to take effect from the date of publication in the Ballina Shire Advocate.

**Attachment(s)**

1. BSDCP 2012 Draft Amendment No 12 - Schedule of General Amendments
2. BSDCP 2012 - Chapter 4, Element H - Vehicular Access and Parking - Draft Amendments

## 8.5 Community Participation Plan - Draft

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### 8.5 Community Participation Plan - Draft

**Delivery Program** Strategic Planning

**Objective** To seek endorsement for the public exhibition of the draft Community Participation Plan.

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#### **Background**

The land use planning functions performed by Council are governed by the legislative requirements of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act).

All NSW planning authorities, including councils, are required to prepare a Community Participation Plan (CPP) in response to new requirements under the EP&A Act. A CPP is to outline how and when a planning authority such as Ballina Shire Council will engage with the community when undertaking planning activities and functions under the EP&A Act.

The planning functions of Council include the assessment and determination of development applications (DAs) and the preparation or amendment of strategic plans including local environmental plans, development control plans, contributions plans, local strategic planning statements, planning agreements and other land use plans and strategies. This CPP is not required to relate to any other functions of Council beyond planning.

All applicable NSW planning authorities are required to have a final version of their first CPP published on the NSW Planning Portal by 1 December 2019.

#### **Key Issues**

- Community participation in the planning system
- Meeting legislative requirements

#### **Information**

Council's engagement with the community occurs across a range of Council planning functions including strategic and statutory planning processes, where the *NSW Environmental Planning and Assessment Act 1979* (EP&A Act) and associated *Environmental Planning and Assessment Regulation 2000* (EP&A Reg) requires community notification or consultation.

Council has well established engagement processes and principles that are routinely applied across Council's land use planning functions.

The approach taken for community participation in Council activities varies depending on the scale and scope of the proposal or plan under consideration and the minimum mandatory requirements set out in the relevant legislation.

The current approach taken by Council in relation to community participation in DA matters is set out in the notification and public exhibition timeframes section of Chapter 1 the Ballina Shire Development Control Plan 2012 (DCP).

## 8.5 Community Participation Plan - Draft

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The level of notification is based on the nature and scope of the proposed development as well as the legislative requirements for some types of DAs as set by the EP&A Act and EP&A Reg.

The exhibition timeframes for the preparation or amendment of strategic plans is currently guided by the EP&A Act and associated EP&A Reg.

The process of public exhibition and notification is an important part of how Council engages with the community on planning decisions.

This provides a regular and valuable way for the community to participate in the decision making process by making comments (submissions) on a development proposal or draft plan during the public exhibition period.

Although the EP&A Act and EP&A Reg set minimums for public exhibition and notification, Council regularly goes beyond these and, at its discretion may provide additional notification or longer timeframes to those property owners and occupiers, community groups, organisations and agencies that, in the opinion of Council, may have an interest in the strategy, plan or development proposal.

The purpose of the CPP is to consolidate Council's community participation approaches on planning matters into a single document. The draft CPP incorporates the minimum standards set out in the EP&A Act for how long certain types of plans and DAs need to be exhibited for, together with those timeframes and notification processes that are standard Council practice.

A copy of the draft CPP is contained in Attachment 1.

### *Strategic Planning*

Council's strategic planning functions under the EP&A Act include the preparation or amendment of:

- Local strategic planning statements (long term strategic land-use plans)
- Local environmental plans (prepared through a planning proposal)
- Development control plans (detailed design controls)
- Contributions plans (outlining infrastructure contributions)
- Community participation plans (setting out how Council will engage with the community on planning matters) and
- Planning agreements (agreements with proponents for delivery of works or additional contributions).

The EP&A Act mandatory exhibition timeframe for the strategic planning documents listed above is 28 days.

Council also engages the community in planning matters where community participation is not mandatory, often through tailored engagement programs. In these kinds of situations, Council designs and applies a range of community engagement techniques based on the particulars of a project or circumstance.

## 8.5 Community Participation Plan - Draft

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The suggested standard minimum exhibition timeframe for other strategic plans and strategies (e.g. place based strategic plans, Economic Development Strategy, Local Growth Management Strategy) in the draft CPP is 21 days.

It is envisaged that community participation guidelines will be prepared over the next 12 months to provide a toolbox for additional discretionary engagement activities to guide Council staff in involving the community in the plan making process.

### *Statutory Planning*

The CPP incorporates Council's current requirements for public notification and exhibition of development proposals outlined in Chapter 1 of the DCP 2012.

As per the current DCP provisions, the CPP prescribes notification and exhibition timeframes based on a three level notification process.

The level of notification is based on the nature and scope of the proposed development as well as the legislative requirements for some types of DAs as set by the EP&A Act and EP&A Reg.

For the majority of DAs that require exhibition, Council's standard timeframe will be at least 14 days but may be extended for more substantial developments.

Other DAs such as designated development or those including an environmental impact assessment are subject to the mandatory timeframe of a 28 day exhibition.

The CPP provides information about the notification and exhibition process for DAs.

It details the typical methods for notification that Council uses to inform the community that a DA or draft document is on exhibition together with the details typically included in notification information.

The CPP also explains where the community can find documents on public exhibition and how to make a good submission.

### *DCP Amendment*

Council's current exhibition and notification requirements are listed under Chapter 1 Section 3.2.4 in the DCP.

To avoid uncertainty in relation to minimum exhibition periods and reduce future amendments regarding notification requirements in two documents (the DCP and the CPP) it is recommended that the notification requirements outlined in Section 3.2.4 of the DCP be revoked once the CPP is made.

The CPP will then supersede the DCP notification provisions and provide the one document where Council's notification requirements for both statutory and strategic planning can be found.

## 8.5 Community Participation Plan - Draft

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The CPP will include the mandatory notification and exhibition timeframes outlined in the EP&A Act and associated EP&A Reg as well as Council's standard notification for other planning matters not covered by the EP&A Act.

The draft DCP amendment is contained in Attachment 2.

### *Next Steps*

If endorsed, the draft Community Participation Plan will be placed on exhibition for the mandatory period of 28 days.

The exhibition of the amended Ballina DCP 2012 would also coincide with the CCP exhibition period to ensure both documents can be aligned.

Prior to public exhibition staff may make minor wording or formatting adjustments to the draft documents.

Following exhibition of the draft Community Participation Plan and the amended DCP, Council staff will review submissions, make adjustments to the plans where required and finalise both for Council to consider their adoption at the November Ordinary meeting.

Additions to the final CPP may include a message from the Mayor and acknowledgement of community input and minor wording or formatting adjustments.

Once endorsed by Council, staff would issue the plan to the NSW Department of Planning, Industry and Environment for publishing on the NSW Planning Portal by the 1 December 2019 deadline.

### *Potential Future Versions of the CPP*

Due to the tight deadline for the CPP to be published on the NSW planning portal by 1 December 2019, a standalone CPP has been prepared dealing only with community participation as it relates to planning functions under the EP&A Act.

An option that is available to councils in preparing their CPP is to incorporate the requirements of the CPP into the Community Strategic Plan (CSP) which is prepared under section 402 of the Local Government Act 1993 (LG Act).

It would be logical for a community engagement/participation plan that sits within a CSP to address community participation across all aspects of Council processes, not just Council's planning related functions (as this first draft version of the CPP addresses).

There is the potential for Council to transition the next iteration of the CPP into the CSP and at the same time broaden the plan to consider and address community participation across the spectrum of Council's functions.

If this is the desired approach, Council could revisit the CPP and look at incorporating it into the CSP when the CSP is reviewed and updated in 2021.

### Sustainability Considerations

- **Environment**

The notification and exhibition requirements for a proposed development is influenced by the potential scope of impacts including potential consequences to the environment. The CPP outlines what types of developments this may include.

- **Social**

The involvement of the community in Council's decision making in relation to planning matters leads to better planning outcomes for the shire. The CPP seeks to provide clarity on how and when the community can participate in this process.

- **Economic**

Not applicable.

### Legal / Resource / Financial Implications

The CPP is a new legislative requirement of the EP&A Act. A key legal function of the CPP is to inform the community of the different minimum public exhibition timeframes Council sets for different types of development applications and strategic plans.

To avoid confusion, it is suggested the CPP will replace the notification requirements currently outlined in the DCP and the DCP updated accordingly.

Where there are inconsistencies between the EP&A Act and the CPP, due to updates to the EP&A Act or EP&A Reg, the Act will prevail until the CPP can be amended and exhibited in accordance with the mandatory 28 day timeframe.

Financing and resource requirements for the preparation and public exhibition of this draft CPP together with the exhibition of the amended DCP will be met through the existing strategic planning budget.

### Consultation

Internal consultation has been undertaken with staff across the statutory and strategic planning functions of Council to prepare this document.

Community engagement will be undertaken in accordance with the requirements of the EP&A Act that involves the public notification of the draft plan for a period of at least 28 days.

The amended DCP will also be exhibited for the mandatory timeframe of at least 28 days. Submissions received during this time will be reviewed and incorporated into the draft CPP or amended DCP if appropriate.

### Options

1. Endorse the Draft Ballina Shire Community Participation Plan (CPP) and the draft Ballina Shire Development Control Plan 2012 for public exhibition.



## 8.5 Community Participation Plan - Draft

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This approach would involve the public exhibition of the draft CPP and the exhibition of the draft amended DCP, either generally as presented in this report to the Council or with any amendment(s) as specified by the Council. Prior to public exhibition staff may make additional minor wording or formatting adjustments to the draft documents.

Following public exhibition of the draft CPP and draft amended DCP, a report on submissions received would be presented to the Council to provide a further opportunity for Council to consider the draft CPP and draft amended DCP prior to its finalisation and adoption.

This approach is recommended as it meets the requirements of the EP&A Act regarding the timeframe for the preparation of a CPP by 1 December 2019 and seeks to avoid any confusion regarding the duplication and possible inconsistency regarding notifications currently listed in Chapter 1 of the DCP.

### 2. Cease preparation of Draft Ballina Shire Community Participation Plan.

It is open to Council to cease further progress on the Draft CPP. This option is not recommended as this will not meet the requirements of the EP&A Act regarding the preparation of a CPP by all relevant planning authorities in NSW by 1 December 2019.

If a council does not meet the December deadline it must apply the mandatory community participation requirements in Schedule 1 to the EP&A Act.

This is not recommended as this option does not realise the benefits of the CPP in communicating Council's core planning engagement framework to the community in a single document.

### 3. Defer the endorsement of Draft CPP and hold a Councillor briefing.

This approach is not recommended prior to the public exhibition of Draft CPP as it would result in missing the 1 December 2019 deadline for the CPP to be published, and for the reasons presented in option 2 above.

If a Councillor briefing is desirable, it is suggested that this be scheduled during, or at the conclusion of, the public exhibition period prior to the November Ordinary meeting so that it does not impact on timeframes for meeting the deadline.

## RECOMMENDATIONS

1. That Council proceed to undertake the public exhibition of the Draft Community Participation Plan (as contained in Attachment 1), in accordance with the terms of the *Environmental Planning and Assessment Act 1979* and the associated Regulation.
2. That Council proceed to undertake the public exhibition of draft amendments to the Ballina Shire Development Control Plan 2012 relating to the Community Participation Plan (as contained in Attachment 2), in accordance with the terms of the *Environmental Planning and Assessment Act 1979* and the associated Regulation.

## **8.5 Community Participation Plan - Draft**

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3. That a further report on the outcomes of the exhibition process be submitted to Council following the public exhibition of the Draft Community Participation Plan and Ballina Shire Development Control Plan 2012 amendments.

### **Attachment(s)**

1. Community Participation Plan (draft)
2. Amendments to Public Notification and Exhibition of Development Proposals in BSDCP 2012 - Chapter 1 Administration (draft)

## 8.6 Land Classification - North Teven Road, Teven

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### 8.6 Land Classification - North Teven Road, Teven

**Delivery Program** Strategic Planning

**Objective** To determine the classification of land acquired by Council under the provisions of the Local Government Act 1993

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#### Background

The subject land is described as Lots 129, 153, 224 DP 755741 and Lot 21 DP 728269 (the lots) North Teven Road, Teven. The land is located as outlined in red on the site location diagram below.

The lots have a combined area of approximately 3.2724 hectares and are zoned RU1 Primary Production under the provisions of Ballina LEP 2012.

The lots have been acquired by Council to enable environmental restoration works to be undertaken on the land as part of the Healthy Waterways Program.

**Figure 1 - Site Location Diagram**



## 8.6 Land Classification - North Teven Road, Teven

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The purpose of this report is to invite Council to determine the appropriate classification of the lots 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 to be classified as either “community” or “operational” land in accordance with its intended use.

### Key Issues

- Classification of the land under the terms of the LG Act
- Nature and use of the land

### Information

The lots have been acquired as one parcel to enable environmental restoration works to be undertaken on part of the land. It is proposed to apply an operational classification to the land to maintain flexibility when considering the longer term use of the land, and whether all of the land is required to be retained in Council’s ownership. An operational classification provides Council with greater flexibility regarding the future use and potential sale of surplus land.

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 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.

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 provided in the Ballina Shire Advocate on 17 July 2019, in accordance with section 34 of the Act, with submissions invited until 16 August 2019.

The notification period in this case commenced prior to the land being transferred to council’s ownership. On 5 September 2019 settlement of the acquisition of the subject properties took place and the land has now transferred into Council’s ownership.

It is now necessary for Council to confirm whether or not the land is to be classified as operational land under the terms of the LG Act once it is transferred into council’s ownership.

### Sustainability Considerations

- **Environment**

The proposed operational classification of the lots is not expected to result in any negative environmental, social or economic outcomes. An operational land classification will provide Council with maximum flexibility with respect to the future use of these lots for environmental restoration purposes as well as the potential sale of any surplus land.

## 8.6 Land Classification - North Teven Road, Teven

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- **Social**  
As above.
- **Economic**  
As above.

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

The classification of Lots 21, 129, 153 and 224 as operational land is a legal mechanism under the LG Act that enables Council to utilise the land for operational purposes. The proposed classification will not result in adverse resource or financial implications.

### **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 16 August 2019. No submissions in response to the notification have been received.

### **Options**

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

Under this option, the proposed classification of the lots as operational land would take effect immediately upon the resolution of Council. This is the recommended option as it provides Council with the greatest flexibility with respect to the future use of this land.

2. Council may resolve to classify the lots 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 that the land has been acquired by Council in part to facilitate its use for operational purposes, classifying the land as community land is not recommended.

The classification of the lots as operational land as per option 1 is the recommended approach.

### **RECOMMENDATION**

That Council classify the land identified as Lots 129, 153, 224 DP 755741 and Lot 21 DP 728269, located at Teven, as operational land under the provisions of the *Local Government Act 1993* and that this classification takes effect immediately.

### **Attachment(s)**

Nil

## 8.7 Development Applications - Works in Progress - September 2019

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### 8.7 Development Applications - Works in Progress - September 2019

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

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	Being assessed
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 <sup>2</sup> and one 776m <sup>2</sup> allotments and construction of a shed on Proposed Lot 1 - 2 Old Pacific Highway, Newrybar	Being assessed

## 8.7 Development Applications - Works in Progress - September 2019

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	Determination pending
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 & awaiting additional information  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 (Banyan Hill)	Subject to Land & Environment Court Appeal – hearing dates 31 January 2020 & 10-12 February 2020
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	Being assessed
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	Being assessed

## 8.7 Development Applications - Works in Progress - September 2019

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	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	Determination pending
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	Being assessed  To be reported to Council for determination as per Council's resolution 240419/9 – April 2019



## 8.7 Development Applications - Works in Progress - September 2019

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	Referred to Government Departments
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
2019/170	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	Referred to Government Departments

## 8.7 Development Applications - Works in Progress - September 2019

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	Determination pending
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	Referred to Government Departments
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
2019/283	7/5/19	Newton Denny Chapelle	Change of use from a high technology industry to general industry involving the assembly, manufacture and fitting of prosthetic limbs and alterations to the building - 2/188-202 Southern Cross Drive, Ballina	Awaiting additional information

## 8.7 Development Applications - Works in Progress - September 2019

2019/301	10/5/19	Alstonville Agricultural Society Inc	To undertake site levelling and erection of security fencing – 22-40 Commercial Road, Alstonville	Being assessed  To be reported to Council for determination as per Council resolution 270619/19 – 1 July 2019
2019/303	10/5/19	Alstonville Agricultural Society Inc	Proposed new roofed tiered seating and viewing platform extension adjacent to the rodeo arena area and new awnings to existing amenities building – 22-40 Commercial Road, Alstonville	Being assessed  To be reported to Council for determination as per Council resolution 270619/19 – 1 July 2019
2019/309	17/5/19	Ardill Payne & Partners	Establishment of a multi dwelling housing development comprising the construction of two attached dwellings on a vacant Strata Lot and subsequent Strata Subdivision of the attached dwellings – 175B Tamar Street, Ballina	Awaiting additional information
2019/316	20/5/19	RJ Westblade	Establishment of a multi dwelling housing development comprising the staged construction and Strata Title Subdivision of two detached dwellings - 20 Canal Road, Ballina	Awaiting additional information
2019/321	22/5/19	Ardill Payne & Partners	To undertake the construction of a new Clubhouse (Recreation Facility) at the existing Teven Golf Course - 1684 Eltham Road, Teven	Determination pending
2019/343	29/5/19	Ardill Payne & Partners	Erection of an Industrial Building for General Industrial Purposes - 54 North Creek Road, Ballina	Being assessed
2019/351	31/5/19	Ardill Payne & Partners	To undertake site filing - 29-31 Smith Drive, West Ballina	Being assessed
2019/370	6/6/19	Newton Denny Chapelle	Construction of a bridge across Duck Creek - 163 & 253 Wardell Road, Lynwood	Referred to Government Department

## 8.7 Development Applications - Works in Progress - September 2019

2019/373	7/7/19	R & J Harris Consulting P/L	Erection of a Business Identification Sign – 540 Pimlico Road, Pimlico	Determination pending
2019/376	11/6/19	Newton Denny Chapelle	Erection of five greenhouses to be used for the propagation of potted plants, expansion of farm dam, and associated earthworks and other civil works – 348 Rous Road, Rous Mill	Being assessed  To be reported to Council for determination
2019/382	11/16/2019	Ardill Payne & Partners	Two lot subdivision to create one 1321sqm and one 951sqm allotment (below the 1200sqm min lot size development standard) and demolition of existing garage and associated works – 5-9 Sapphire Court, Lennox Head	Being assessed
2019/388	14/06/2019	Civil Concepts Pty Ltd	Erection of a multi dwelling housing development comprising three two storey dwellings and associated works – 62 Avalon Avenue, Wollongbar	Awaiting additional information
2019/402	19/06/2019	Northern Rivers Land Solutions	Subdivision of Two Existing Lots to Create Two Modified Lots being one 18.45 ha and one 49.9ha allotments – Tamarind Drive & Ballina Heights Drive, Cumbalum	Referred to Government Departments
2019/429	28/06/2019	Hudsons Circus Pty Ltd	To hold a Circus on Crown Land from 21 October 2019 to 4 November 2019 with associated temporary structures and advertising signage – Boomerang and Kingsford Smith Park, Owen Street, Ballina	Amended proposal re-exhibited
2019/438	03/07/2019	Ardill Payne & Partners	To undertake the Torrens Title Subdivision of 4 x existing vacant lots to create 10 x vacant residential lots – 25-39 Fitzroy Street, Wardell	Referred to Government Department  Awaiting additional information

## 8.7 Development Applications - Works in Progress - September 2019

2019/452	12/07/2019	House With No Steps	Alterations and additions to rural workers dwelling and farm building and the use of that building and two approved dwellings for permanent group home accommodation, and associated works – 163 Wardell Road, Alstonville	Referred to Government Departments
2019/465	18/7/2019	Newton Denny Chapelle	To establish a warehouse or distribution centre for the storage of road base material pending its sale – Teven Road, West Ballina	Awaiting additional information
2019/487	29/7/2019	Ardill Payne & Partners	Erection of five pole signs associated with the Ballina RSL – 1 Grant Street, Ballina	Awaiting additional information
2019/498	2/8/2019	Ardill Payne & partners	Alterations and additions to an existing dwelling in attached dual occupancy and use as a transitional group home – 2 Jamie Place, Ballina	Being assessed
2019/499	2/8/2019	Planners North	Implementation of erosion and slope stabilisation measures, bushland regeneration works, ongoing geotechnical monitoring and use of existing structures for residential purposes – 35 Pine Avenue, East Ballina	Being assessed
2019/505	6/8/2019	Newton Denny Chapelle	Construction of Multi Dwelling Housing development comprising three detached single-storey dwellings and associated earthworks, driveways and landscaping, and Strata Title Subdivision – 12 Cowrie Street, Lennox Head	Being assessed
2019/519	15/8/2019	Newton Denny Chapelle	To establish a depot and storage premises and to undertake earthworks and retaining of the site – 23 Northcott Crescent, Alstonville	Being assessed

## 8.7 Development Applications - Works in Progress - September 2019

2019/520	15/8/2019	Newton Denny Chapelle	Two lot Torrens Title subdivision to create one x 902m <sup>2</sup> and one 831m <sup>2</sup> allotments and associated works – 25 Sandbreak Crescent, Lennox Head	Awaiting additional information
2019/531	20/8/2019	NSW Office of Sport c/- Creative Planning Solutions	Alterations and additions to a conference hall – 164 Camp Drewe Road, Lennox Head	Referred to Government Departments
2019/535	21/8/2019	Ardill Payne & Partners	To undertake a development in four stages comprising: Stage 1 - Three Lot Torrens Title Subdivision (Proposed Lots 1 and 2 – area of 801m <sup>2</sup> and Proposed Lot 3 – area of 1090m <sup>2</sup> ), Stage 2 - Erection of a Two Storey Dwelling on Proposed Lots 1, 2 and 3 Stage 3 - Strata Subdivision of Proposed Lots 1, 2 and 3 Stage 4 – Erection of a New Dwelling on each Vacant Strata Lot to create a Detached Dual Occupancy – 26-30 Fitzroy Street, Wardell	On exhibition  Referred to Government Departments  Awaiting additional information
2019/539	23/8/2019	Newton Denny Chapelle	Alterations and additions to an existing commercial building – 34 Cherry Street, Ballina	Awaiting additional information
2019/553	30/8/19	Newton Denny Chapelle	Change of Use to Establish a Recreation Facility (Indoor) – Personal Training Facility - 5/19 Owens Crescent, Alstonville	Being assessed
2019/559	2/9/2019	Necelle Pty Ltd	To undertake alterations and additions comprising the removal of the existing wall wetting system and fire rating the boundary between 79-83 Main Street and 77 Main Street with a fire rated wall - 79-83 Main Street, Alstonville	Being assessed

## 8.7 Development Applications - Works in Progress - September 2019

2019/562	2/9/2019	Newton Denny Chapelle	Change of Use from dwelling house to a specialist medical centre comprising one consulting room, including demolition of existing garage, alterations to existing building, carparking, drainage works and vegetation management works – 42 Ballina Street, Lennox Head	On exhibition
2019/563	2/9/2019	P Salvisberg	Vegetation Management Works involving the removal of two trees - 20 Pine Avenue, East Ballina	Being assessed
2019/564	2/9/2019	M Linder	Vegetation Management Works involving the removal of two trees - 6 Clement Place, Lennox Head	Being assessed
2019/577	9/9/2019	Newton Denny Chapelle	Establishment of a Recreation facility (indoor) comprising a 24 hour gymnasium studio including internal building works at EPIQ Neighbourhood Shopping Centre – 5 Snapper Drive, Lennox Head	Being assessed

## 8.7 Development Applications - Works in Progress - September 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	Subject to Land and Environment Court Appeal. Council is not a participant in the Appeal.
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	Being assessed



## 8.7 Development Applications - Works in Progress - September 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 – Hearing Dates 15-22 July 2019 & 19-20 August 2019  Awaiting decision by Commissioner
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### 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 September 2019.

### Attachment(s)

Nil

## 9.1 Use of Council Seal

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## 9. Corporate and Community Division Reports

### 9.1 Use of Council Seal

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#### RECOMMENDATION

That Council affix the Common Seal to the following documents.

US 19/08	<p>Ballina Shire Council Sublease to P &amp; K Sinclair for premises being the café on that part of level 2 of the building known as Ballina Surf Club situated at 65 Lighthouse Parade, East Ballina for the five year option on the sublease.</p> <p>Ballina Shire Council Sublease to P &amp; K Sinclair for premises being the kiosk on that part of level 1 of the building known as Ballina Surf Club situated at 65 Lighthouse Parade, East Ballina for the five year option on the sublease</p> <p><b>Explanation:</b> P &amp; K Sinclair have exercised the option on the sublease for the Lighthouse Beach Café and Kiosk at the Ballina Surf Club. Due to changes to the Crown Lands Management Act the previous variations to sublease that were approved by Council in 2017 have not been able to be registered. As such it is proposed to incorporate the variations into a new sublease for both the café and kiosk. The commencing rental will be the current rent.</p>
US 19/09	<p>Ballina Shire Council Lease to Ballina Wealth Management Pty Ltd for premises being 135 River Street, Ballina for the three year option on the lease.</p> <p><b>Explanation:</b> Ballina Wealth Management P/L have exercised the option on the lease at 135 River Street, Ballina. In accordance with the terms of the lease the commencing rental will be a CPI review.</p>

#### Attachment(s)

Nil

## 9.2 Investment Summary - August 2019

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### 9.2 Investment Summary - August 2019

**Delivery Program** Financial Services

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

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#### **Background**

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a Council must provide a monthly report (setting out all money Council has invested), to be presented at the Ordinary meeting of Council, immediately following the end of the respective month. This report has been prepared for the month of August 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 and the Regulations. The investments breached Council's Investments Policy on 27 August 2019, when Standard and Poors lowered AMP's credit rating from A- to BBB+.

Council has \$11.5 million invested with AMP. This represented 13.0% of the total portfolio at 31 August. Clause 12.3 of the Investments Policy states that a maximum of 10% of the portfolio can be invested with one institution rated BBB and BBB+. The threshold is 20% for institutions rated A- or higher.

Clause 17.2 of the Investments Policy states that where this type of breach occurs no further investments will be made with the institution (i.e. AMP) until such time as they fall below 10% of the total portfolio. This means maturing AMP deposits will be placed with other organisations.

Clause 17.2 also states that: "*The objective will be to manage the portfolio back in accordance with the policy limits, within three months from the date the portfolio first exceeds the limit or threshold*". The subsequent AMP deposit renewals to bring the investments back into compliance are:

- \$1.0 million on 11/9/19 (already reinvested at time of writing this report)
- \$1.0 million on 17/10/19
- \$2.0 million on 13/11/19

This will bring the portfolio back into compliance within the three month period.

The total balance of investments as at 31 August was \$88,538,000. This was an increase of \$4m from July. Council's investments, as at 31 August, are at an average (weighted) rate of 2.44%, which is 1.46% above the 90 Day Bank Bill Index of 0.98%. The balance of the cheque account at the Commonwealth Bank, Ballina, as at 31 August 2019, was \$7,820,011. This balance is higher than the balance of \$3,958,812 as at 31 July 2019.

## 9.2 Investment Summary - August 2019

The combined movement of investments and bank balances was an increase of \$7,861,199. The overall increase is largely attributable to receipts for rates at the end of the month of approximately \$4m.

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	12.46%
Water Fund (incl developer contributions)	External	24.54%
Section 94 Developer Contributions	External	14.94%
Bonds and Deposits	External	3.37%
Other External Restrictions	External	5.13%
Carry Forward Works	Internal	5.03%
Bypass Maintenance Funding	Internal	4.32%
Landfill and Resource Management	Internal	0.08%
Employee Leave Entitlements	Internal	3.72%
Quarries	Internal	1.02%
Property Reserves	Internal	6.76%
Plant and Vehicle Replacement	Internal	1.55%
Road Works	Internal	4.76%
Indoor Sports Centre	Internal	1.79%
Miscellaneous Internal Reserves	Internal	2.50%
Financial Assistance Grant in Advance	Internal	2.78%
Unrestricted		5.25%
<b>Total</b>		<b>100%</b>

\* Reflects reserves held as at 30 June 2019.

### A. Summary of Investments by Institution

At the August 2019 Ordinary meeting clarification was sought in respect to the interest rates obtained and also the institutions where investments are placed. In respect to institutions, the Investments Policy provides the following credit risk benchmarks as per clause 12.3:

Maximum Thresholds – ADI Portfolio Limits			
ADI Credit Rating	Maximum % of Total Portfolio	Minimum % of Total Portfolio	Exposure to a Single ADI
A- or higher	100%	40%	20% of portfolio
BBB and BBB+	60%	n/a	10% of portfolio

ADIs refers to Authorised Deposit-taking Institutions (ADIs). Council adopted the current thresholds in April 2018, following advice from the NSW Treasury Corporation that their preference was for councils to only investment in ADIs rated BBB and above (refer to report to 17 April 2018 Finance Committee).

Prior to that amendment the thresholds were as follows:

Maximum Thresholds - Portfolio Limits		
Credit Rating	Maximum % of Total Portfolio	Exposure to a Single ADI
A or higher	100%	20% of portfolio
BBB to A-	60%	10% of portfolio
Unrated ADI	10%	\$1m

Many of the local credit unions are unrated, which means that Council can no longer investment with those institutions.

## 9.2 Investment Summary - August 2019

In respect to investment rates, there are service providers that provide reports on current rates on offer. The attachment to this report is an example of the report provided by RMS Securities for 17 September 2019.

That type of report provides a range of rates on offer, which allows staff to invest direct with one of the institutions listed, subject to compliance with the Investments Policy, or place a follow up call to seek rates where they are not quoted in the report.

The institutions where Council's investments were placed as at 31 August is as follows.

Funds Invested With	Fossil Fuel Aligned	ADI Rating *	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
<b>Grandfathered Investments</b>							
National Australia Bank	Yes	BBB	1,788	1,788	0	2.0%	<b>2%</b>
<b>Rated Institutions</b>							
AMP Bank	Yes	BBB+	10,500	11,500	10%	13.0%	
Auswide Bank	No	BBB	4,000	4,000	10%	4.5%	
Bank Australia	No	BBB	0	0	10%	0.0%	
Bank of China	Yes	A	12,000	12,000	20%	13.6%	
Bank of Queensland	Yes	BBB+	6,000	6,000	10%	6.8%	
BankVic	No	BBB+	0	3,000	10%	3.4%	
BankWest	Yes	AA-	3,000	0	20%	0.0%	
Bendigo & Adelaide Bank	No	BBB+	5,000	2,000	10%	2.3%	
Beyond Bank	No	BBB	2,000	2,000	10%	2.3%	
Big Sky Building Soc	N/A	BBB	0	0	10%	0.0%	
Commonwealth Bank of Australia	Yes	AA-	4,000	4,000	20%	4.5%	
Credit Union Australia	No	BBB	4,100	4,100	10%	4.6%	
Defence Bank Ltd	No	BBB	3,500	3,500	10%	4.0%	
Greater Bank Limited	No	BBB	2,000	1,000	10%	1.1%	
Heritage Bank	No	BBB+	0	0	10%	0.0%	
IMB Bank	No	BBB	0	0	10%	0.0%	
ING Bank Ltd	Yes	A	0	0	20%	0.0%	
ME Bank	No	BBB	2,750	5,750	10%	6.5%	
My State Bank Ltd	No	BBB+	4,500	4,500	10%	5.1%	
National Australia Bank	Yes	AA-	6,000	10,000	20%	11.3%	
Newcastle Permanent Bld Society	No	BBB	4,700	4,700	10%	5.3%	
Rural Bank Ltd	No	BBB+	0	0	10%	0.0%	
Suncorp Limited	No	A+	0	0	20%	0.0%	
Teachers Mutual Bank Limited	No	BBB	1,700	1,700	10%	1.9%	
Westpac Banking Corporation	Yes	AA-	7,000	7,000	20%	7.9%	<b>98%</b>
<b>Total</b>			<b>84,538</b>	<b>88,538</b>	<b>100%</b>		
<b>Credit Rating Summary as per the Investment Policy</b>			<b>Maximum Allowed</b>		<b>Value</b>	<b>Value</b>	<b>%</b>
			<b>%</b>	<b>Value</b>	<b>Previous</b>	<b>Current</b>	<b>%</b>
A- or Higher			100%	88,538	42,500	44,500	50%
BBB			60%	53,123	42,038	44,038	50%
Total					84,538	88,538	100%

**B. Summary of Investments Fossil Fuel Aligned**

	Previous Month	Current Month
<b>Fossil Fuel Aligned</b>	47,288 <b>56%</b>	52,288 <b>59%</b>
<b>Non-Fossil Fuel Aligned</b>	37,250 <b>44%</b>	36,250 <b>41%</b>
<b>Not Classified</b>	0 <b>0%</b>	0 <b>0%</b>
<b>Total</b>	84,538 <b>100%</b>	88,538 <b>100%</b>

Classification based on advice from 'Market Forces'.

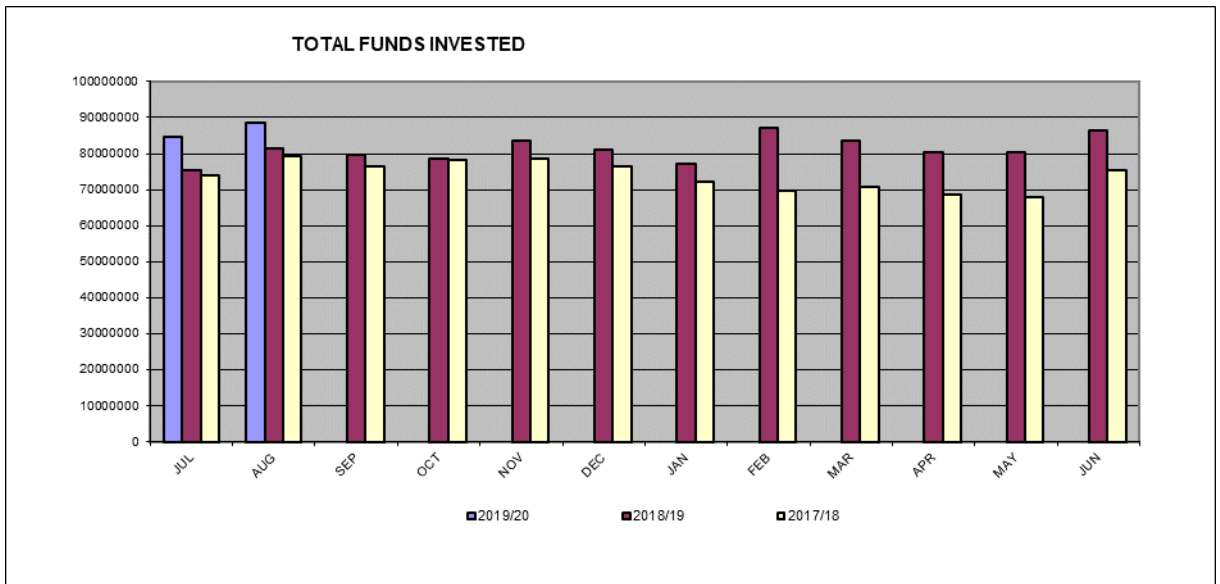
Of the five new investments totaling \$10m, in the month of August, two, totaling \$4m, were with non-fossil fuel aligned institutions.

The ability to take on such investments depends on the rates on offer on any day, as well as abiding with Council's parameters, which require no more than 60% of total investments to be in the BBB and BBB+ category.

Generally speaking, the non-fossil fuel aligned investments sit within that category.

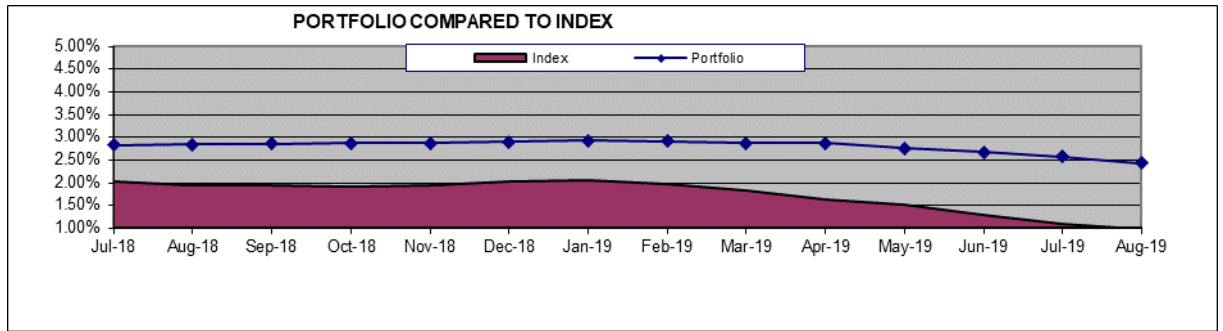
As shown in Table A, Council has 50% of total investments in the BBB and BBB+ category.

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

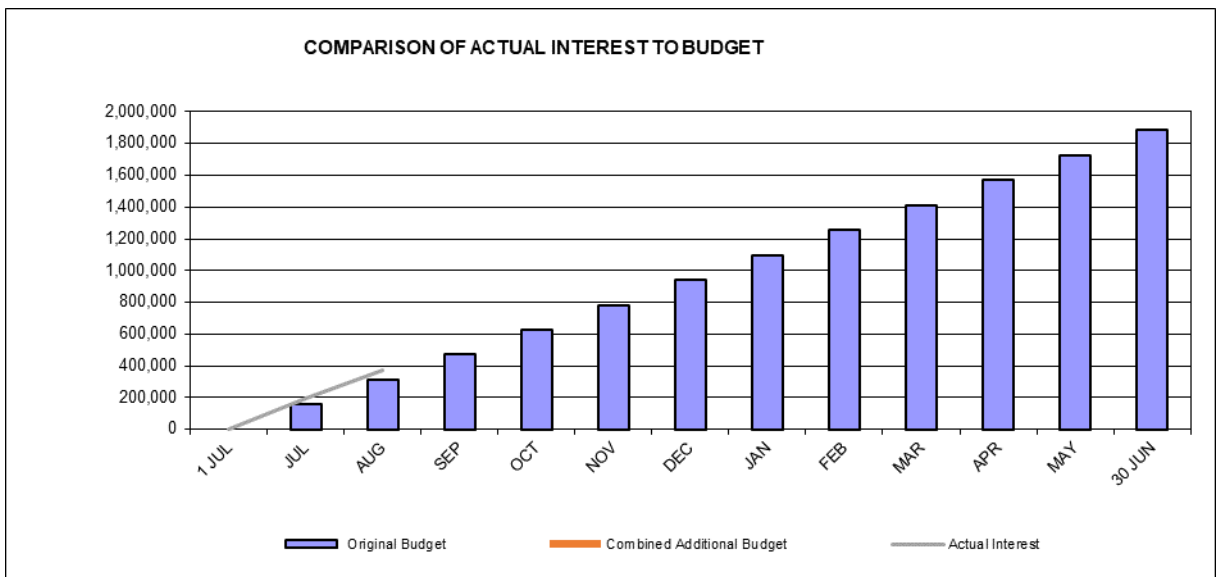


## 9.2 Investment Summary - August 2019

### D. Comparison of Portfolio Investment Rate to 90 Day BBSW



### E. Progressive Total of Interest Earned to Budget



### F. Investments held as at 31 August 2019

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
20/09/04	National Australia Bank (ASX Listed)	FRN	2.89%	Perpetual	1,788	1,788
17/06/16	Commonwealth Bank of Australia	FRC	2.35%	17/06/21	1,000	1,000
30/06/16	Commonwealth Bank of Australia	FRC	2.25%	30/06/21	1,000	1,000
26/07/16	Commonwealth Bank of Australia	FRC	2.09%	26/07/21	1,000	1,000
24/12/17	Greater Bank Limited	FRN	2.41%	24/02/20	1,000	1,002
29/06/17	Teachers Mutual Bank Limited	FRN	2.63%	29/06/20	1,000	1,007
18/08/17	Westpac Banking Corporation	FRC	2.02%	18/08/22	1,000	1,000
09/01/17	ME Bank	FRN	2.22%	09/11/20	750	754
06/02/18	Newcastle Permanent Bld Society	FRN	2.41%	26/07/21	700	708
02/07/18	Teachers Mutual Bank Limited	FRN	2.55%	02/07/21	700	706
06/09/18	Newcastle Permanent Bld Society	FRN	2.41%	26/07/21	1,000	1,011
06/02/19	Westpac Banking Corporation	FRC	2.04%	26/07/24	2,000	2,000
07/09/18	ME Bank	TD	2.75%	07/09/19	1,000	1,000
10/09/18	AMP Bank	FRN	2.45%	10/09/21	1,500	1,498
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

## 9.2 Investment Summary - August 2019

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'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
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
11/01/19	Commonwealth Bank of Australia	FRN	2.26%	11/01/24	1,000	1,018
15/01/19	My State Bank Ltd	TD	2.86%	15/01/20	1,000	1,000
08/02/19	Westpac Banking Corporation	FRC	2.02%	08/02/24	2,000	2,000
12/02/19	Beyond Bank	TD	2.81%	11/02/20	2,000	2,000
19/02/19	AMP Bank	TD	2.85%	19/11/19	2,000	2,500
21/02/19	Newcastle Permanent Bld Society	FRC	2.03%	22/02/21	2,000	2,000
22/02/19	Newcastle Permanent Bld Society	FRC	2.03%	22/02/21	1,000	1,000
06/09/18	Credit Union Australia	FRN	2.64%	06/09/21	600	606
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
30/04/19	Westpac Banking Corporation	FRC	1.94%	26/07/23	1,000	1,000
30/04/18	Westpac Banking Corporation	FRC	1.94%	26/07/23	1,000	1,000
17/05/19	AMP Bank	TD	2.60%	13/11/19	2,000	2,000
19/06/19	Auswide Bank	TD	2.20%	17/12/19	3,000	3,000
24/06/19	Bank of Queensland	TD	2.10%	23/10/19	3,000	1,000
24/06/19	Bendigo & Adelaide Bank	TD	1.95%	21/11/19	2,000	1,000
24/06/19	ME Bank	TD	2.00%	29/11/19	1,000	1,000
28/06/19	National Australia Bank	TD	2.00%	07/01/20	3,000	3,000
02/07/19	BankVic	TD	2.10%	22/01/20	3,000	3,000
04/07/19	National Australia Bank	TD	1.95%	08/10/19	3,000	3,000
16/07/19	Bank of Queensland	TD	1.95%	21/01/20	2,000	2,000
25/07/19	Bank of Queensland	TD	1.95%	28/01/20	1,000	1,000
31/07/19	AMP Bank	FRN	2.45%	10/09/21	2,000	1,997
07/08/19	National Australia Bank	TD	1.72%	04/08/20	4,000	4,000
16/08/19	AMP Bank	TD	2.00%	17/08/20	1,000	1,000
19/08/19	ME Bank	TD	1.75%	20/02/20	3,000	3,000
26/08/19	AMP Bank	FRN	2.45%	19/09/21	1,000	999
27/08/19	Defence Bank Ltd	TD	1.75%	27/08/20	1,000	1,000
	Totals				88,538	86,094
	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 August 2019.

### Attachment(s)

1. Investment Rates - Sample



### 9.3 Deputy Mayor - Election

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### 9.3 Deputy Mayor - Election

**Delivery Program**      Communications

**Objective**                      To determine whether Council wishes to appoint a Deputy Mayor and if so, how that position is to be elected.

---

#### **Background**

Section 231 of the Local Government Act states:

- (1) *The councillors may elect a person from among their number to be the deputy mayor.*
- (2) *The person may be elected for the mayoral term or a shorter term.*
- (3) *The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.*
- (4) *The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.*

It is normal practice for Ballina Shire Council to elect the Deputy Mayor for one year although Section 231(2) allows the election to be for any period up to the entire term of Council.

Nominations for the office of Deputy Mayor are to be submitted in writing to the General Manager, signed by the nominee and at least one other Councillor, prior to this report being discussed at the Ordinary meeting.

Copies of the nomination forms are attached under separate cover.

The Deputy Mayor can be paid an allowance for such time as the Deputy Mayor acts in the office of the Mayor. The Office of Local Government has advised that such an allowance cannot be established on an annual basis and paid as an annual figure. It must reflect actual time acting as the Mayor.

This means the Deputy Mayor will only receive an allowance if the Mayor is on a period of extended leave and Council has resolved to pay an allowance.

#### **Key Issues**

- To determine whether Council wishes to appoint a Deputy Mayor
- If yes, Council must determine the method of voting

#### **Information**

An election must be held if more than one nomination is received. Council must determine whether the voting is to be by preferential ballot (if three or more candidates nominated), ordinary ballot (secret ballot) or open voting.

### 9.3 Deputy Mayor - Election

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Section 251(5) of the Local Government (General) Regulation states as follows:

*Voting at a council meeting, including voting in an election at such a meeting, is to be by open means (such as on the voices or by show of hands). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot. (Reg 251)*

*Note: Part 11 of this Regulation provides that a council is to resolve whether an election by the councillors for mayor or deputy mayor is to be by preferential ballot, ordinary ballot or open voting (clause 394 and clause 3 of Schedule 7). Clause 3 of Schedule 7 also makes it clear that "ballot" has its normal meaning of secret ballot.*

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
It has been a long-standing tradition that Council elects a Deputy Mayor.
- **Economic**  
Not Applicable

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

There is no legal obligation for Council to elect a Deputy Mayor.

#### **Consultation**

Not applicable.

#### **Options**

The options are to have, or not have, a Deputy Mayor and the method of voting. The recommendation reflects Council's traditional practices.

#### **RECOMMENDATIONS**

1. That Council elect a Deputy Mayor for the period to September 2019.
2. That the method of voting for the election of Deputy Mayor be by way of ordinary (secret) ballot.
3. That the number of votes at the ballot be revealed at the meeting and that the General Manager, following the meeting, destroy the ballot papers.

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

1. Deputy Mayor Nomination Form (Under separate cover)

## 9.4 Legal Matters - Update

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### 9.4 Legal Matters - Update

**Delivery Program**      Communications

**Objective**                      To provide an update on litigation involving Council.

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#### **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 legal case(s) are as follows:

<b>Solicitor for Council</b>	<b>Parties</b>	<b>Description</b>	<b>Cost Estimate</b>	<b>Expenses to Date</b>
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	1,196,000
<b>Comment</b> <p>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.</p> <p>A decision on the matter was handed down on 22 June 2018 with the development application approved with conditions.</p> <p>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.</p> <p>Allens Linklaters are currently addressing the matter of the recovery of costs in line with Council's June 2018 resolution in this regard.</p>				

## 9.4 Legal Matters - Update

CH Law	Ballina Shire Council v The Beach	Land and Environment Court - Class 4 Civil Enforcement Proceedings	35,000	32,000
<p><b>Comment</b></p> <p>Council has been investigating building works at 70 Shelly Beach Road East Ballina (Lot 1 DP 781525) since August 2018. 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.</p> <p>At the April 2019 Ordinary meeting Council resolved to grant consent to the two development applications. Subsequently, the building information certificate was issued. Class 4 Proceedings have now been discontinued at the agreement of both parties. No further action in relation to these Class 4 Proceedings is planned although Council still has options available in respect to enforcement action. This matter is the subject of a separate report in this agenda.</p>				
CH Law	Palm Lake 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	512,000
<p><b>Comment</b></p> <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) is 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 failed to provide its response to the facts and contentions by the nominated date of 15 February 2019.</p> <p>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 was set down for Hearing from 15 to 22 July 2019. The hearing was then extended to 19 and 20 August 2019.</p> <p>The Commissioner has now reserved her judgement.</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><b>Comment</b></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. Council provided evidence that it would 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 was initially entered. A pre-directions hearing was held on 15 May 2019 at which time Ballina Sands changed their plea to Guilty. The matter was set down for a formal Hearing on 26 July 2019. The formal hearing was vacated and Ballina Sands was sentenced to a Community Release Order to be of good behavior for two years and to pay fines totaling \$20,000. The matter has now been finalised.</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	6,000
<p><b>Comment</b></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 the December 2018 Ordinary meeting.</p> <p>The matter was set down for a Section 34AA Conciliation and Hearing on 30 and 31 July 2019 in Ballina. The matter was, however, resolved in advance of the conciliation and hearing (by way of the granting of development consent) based on the applicant submitting revised plans that suitably addressed the concerns that formed the basis of the refusal of the application.</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	19,000
<p><b>Comment</b></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.</p> <p>The matter was set down for a Section 34AA Conciliation and Hearing on 12 and 13 September 2019 in Murwillumbah and Sydney. This matter was not resolved during the Conciliation Conference and Council is now awaiting further directions from the Court as to how this matter is to proceed.</p>				

## 9.4 Legal Matters - Update

Allens Linklaters	Northern Rivers Land Solutions v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of three modification applications to development application 2016/184 and associated construction certificate application and deemed refusal of development application 2018/616	100,000	35,000
<p><b>Comment</b></p> <p>The applicant has appealed the deemed refusal of three modification applications and an associated construction certificate application to DA 2016/184 for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A) as approved by the Court.</p> <p>An appeal has also been lodged against the deemed refusal of DA 2018/616 to undertake bulk earthworks across the site.</p> <p>The need to obtain separate approval for the bulk earthworks is a condition of the 2016/184 consent as ordered by the court.</p> <p>The applicant filed a notice of motion requesting for expeditious proceedings in relation to this matter.</p> <p>On 4 July 2019 the Court set the matter down for hearing on 31 January 2020 and 10-12 February 2020.</p>				
Parker Kissane	Stephen Plummer v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge refusal of development application 2018/546	30,000	0
<p><b>Comment</b></p> <p>DA 2018/546 involves a proposal for a change of use of the approved two bedroom manager's residence on the ground floor of unit 7 to tourist and visitor accommodation and to create an additional studio apartment within the office area of unit 7 at first floor level for residential use by the manager at the existing Lennox Holiday Apartment 20-21 Pacific Parade, Lennox Head.</p> <p>The building, plumbing and drainage works associated with the creation of the studio residential apartment had been completed prior to Council's initial inspection and determination of the application.</p> <p>In the absence of adequate information to support the proposed development and the works undertaken without the consent of Council the application was determined under delegation by way of refusal.</p> <p>The matter is set down for its first directions hearing on 16 September 2019.</p>				

### Legal / Resource / Financial Implications

This section provides an update on legal costs for recent years and for the year to date (early September 2019).

## 9.4 Legal Matters - Update

**Table One – Legal Expenditure 2016/17 to 2019/20**

Description	2016/17	2017/18	2018/19	2019/20
Byron Highlander – DA 2017/557 (Function Centre)	0	2,800	9,500	0
Planners North / Northern Rivers Land Solutions – DA 2016/184 (CURA A), 2018/616	273,000	832,100	78,400	35,600
Skennars Head – DA 2017/244	0	1,100	31,100	0
Tara Downs – DA 2017/223	0	0	2,200	0
Sand Quarry Advice – Newrybar Swamp Road	0	4,000	22,100	0
Northcott Crescent - Resource Management Facility	0	0	12,300	0
The Beach House	0	0	31,600	0
White (404 Old Byron Bay Road)	0	0	900	0
Michael Young – DA 2017/321	0	0	22,600	0
Ardill Payne – 5 Rayner Lane – DA 2017/707	0	0	9,300	9,900
Palm Lakes – DA 2018/321	0	0	256,600	255,200
Water Extraction – DA 2018/597	0	0	6,400	0
Page Court – Shed DA 2018/189	0	0	0	5,600
Seabreeze Caravan Park	25,000	104,500	0	0
Parrington Advice – DA 2016/140 – 47 Ellis Road	0	4,800	0	0
Complex Field – DA 2015/377 (51 Blue Seas Parade)	0	300	0	0
Quays Drive Advice – DA 2016/690	0	9,800	0	0
Retail Fuel – DA 2016/25	5,000	0	0	0
North Creek – Wall	6,000	0	0	0
Riveroaks / Ferngrove Consent	6,000	0	0	0
Fire Safety Statements	0	0	9,200	2,400
Miscellaneous	38,000	7,800	10,900	3,300
<b>Total Expenditure</b>	<b>353,000</b>	<b>967,200</b>	<b>503,100</b>	<b>312,000</b>
<b>Expenditure Budgets</b>	<b>167,500</b>	<b>1,005,000</b>	<b>220,000</b>	<b>222,000</b>
<b>Legal Budget – Surplus / (Overdrawn)</b>	<b>(185,500)</b>	<b>37,800</b>	<b>(29,300)</b>	<b>(90,000)</b>

Legal expenditure can vary significantly from year to year as shown in the following table, which combined with the above table provides a ten year summary of actual results. The last three years have been exceptionally high and this is continuing for 2019/20.

**Table Two – Legal Expenditure 2009/10 to 2015/16**

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

These expenditure figures exclude legal costs relating to lease documentation, property matters and contracts.

As per Table One, the legal budget for 2019/20 is already overdrawn.

Council is pursuing costs recovery for the CURA A matter and based on our legal opinion should receive cost reimbursement in the hundreds of thousands of dollars. The preference is not to include a budget for that reimbursement until it is paid as there is still some risk as to when and how much Council will collect in costs.

The expenditure budget of \$222,000 is made up of \$200,000 for Development Services and \$11,000 each for Building Services and Environmental and Public Health.

## 9.4 Legal Matters - Update

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In respect to a revised budget for 2019/20, it will be necessary to increase the Development Services budget from \$200,000 to at least \$500,000, an increase of \$300,000. This recognises there are still costs being incurred for the Palm Lakes matter, ongoing CURA A appeals and various other matters as noted in the earlier tables.

This report does not identify a funding source for this budget increase and this will be confirmed as part of the September 2019 Quarterly Budget Review, which will be submitted to the November 2019 Ordinary meeting.

### **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.

The Expert Determination report was decided substantially 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 separate report regarding this matter is included in this agenda.

- 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 was issued reinforcing our claim, however Cardno continue to deny the claim.

After consideration of the amount in dispute, the disputed technical facts and expected legal and expert costs, it is not considered commercially advisable to initiate proceedings in respect of this 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.

Council has considered the response from Ridgemill and advised Ridgemill Council's position remains that Ridgemill did not provide the works and services as set out in the consultancy agreement.



## **9.4 Legal Matters - Update**

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Council has advised Ridgemill it is considering the commercial benefits of taking further action.

### **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 items 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, although it is noted that there will be a budget adjustment for legal expenditure as part of the September 2019 Quarterly Budget Review report to the November 2019 Ordinary meeting.

### **RECOMMENDATION**

1. That Council notes the contents of this report on legal matters.
2. That Council notes that there will need to be a budget increase for legal expenses of at least \$300,000 as part of the September 2019 Quarterly Budget Review report to the November 2019 Ordinary meeting, based on actual and forecast legal expenditure as outlined in this report.

### **Attachment(s)**

Nil

## **9.5 Policy (Review) - Website - Direct Links and Commercial Advertising**

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### **9.5 Policy (Review) - Website - Direct Links and Commercial Advertising**

**Delivery Program**      Communications

**Objective**                      To review the Website - Direct Links and Commercial Advertising Policy.

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#### **Background**

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Website – Direct Links and Commercial Advertising policy. Council first adopted this policy in October 2004.

The policy was developed in response to a large number of requests that Council was receiving to provide website links on Council's corporate website that were of a commercial nature. In summary the policy does not support these links unless there is a subordinate connection to Council's operations (i.e. airlines, tourism etc).

#### **Key Issues**

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

#### **Information**

This review of this policy identified only minor changes as follows:

- Extension to organisations added to the list of 'allowable' organisations
- Additional subordinate websites listed
- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.

The new information is marked in yellow and deleted information is highlighted in red strikethrough. Otherwise the policy is still considered to be contemporary and reflects current legislation therefore no further changes are recommended. A copy of the amended policy is attached to the report.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The corporate website is an important conduit to the community of Council information.
- **Economic**  
Not Applicable

## **9.5 Policy (Review) - Website - Direct Links and Commercial Advertising**

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

There are no legal or resource implications in adopting this policy.

### **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 and it is recommended that the policy be adopted as presented.

It is also recommended that if no submissions are received from the exhibition process no further action is required.

### **RECOMMENDATIONS**

1. That Council adopts the amended Website – Direct Links and Commercial Advertising Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions to be reported back to Council. If no submissions are received then no further action is required.

### **Attachment(s)**

1. Policy (Review) - Websites Direct Links and Commercial Advertising

## 9.6 Policy (Review) - Property Reserves

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### 9.6 Policy (Review) - Property Reserves

**Delivery Program**      Communications

**Objective**                      To review the Property Reserves policy.

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#### **Background**

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Property Reserves policy.

Council first adopted this policy in 2006.

The policy was created to clarify the purpose and function of Council's property reserves as they have been a substantial source of revenue for Council over many years.

#### **Key Issues**

- Whether the policy meets the requirements of Council and current legislation

#### **Information**

The review of this policy resulted in a large number of changes to better explain how the property reserves operate. Due to the number of changes the existing policy and the rewritten policy have been included as attachments to this report.

The new document more accurately reflects how the property reserves operate.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
The property reserves have funded numerous community infrastructure projects and helped to reduce Council's reliance on rate income.

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

There are no legal or resource implications in adopting this updated policy as it reflects current operations.

### **Consultation**

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 more accurately reflect current operations and it is recommended that the policy be adopted as presented.

It is also recommended that if no submissions are received from the exhibition process then no further action is required.

### **RECOMMENDATIONS**

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

### **Attachment(s)**

1. Policy (Existing) - Property Reserves
2. Policy (Review) - Property Reserves

## **10.1 Ballina Wastewater Treatment Plant Upgrade - Contract Dispute**

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### **10. Civil Services Division Reports**

#### **10.1 Ballina Wastewater Treatment Plant Upgrade - Contract Dispute**

**Delivery Program** Water and Wastewater

**Objective** To provide an update to Council regarding a contract dispute.

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#### **Background**

As previously reported, most recently in April 2019, and advised in a Councillor briefing, a number of issues in relation to the contract for the construction of the West Ballina Wastewater Treatment Plant are the subject of a dispute between the Contractor (Haslin) and Council.

As litigation regarding this matter has now commenced, information has been provided to Council in a separate confidential report. The aspects of this matter that can be reported publically are set out in the information below.

#### **Key Issues**

- Achieving defect free completion
- Contractor and Council liability

#### **Information**

In 2017, in accordance with the Contract, a number of issues were referred to Expert Determination by the Contractor and Council. The Expert released their determination on 9 October 2017, finding in favour of Council in five out of six issues, and making a 50/50 determination in relation to the final issue.

The 50/50 determination resulted from the Expert's recognition that the actions of both parties contributed to defects in the membranes of the treatment plant. This determination refers to an amount of \$582,583 for our portion of the membrane replacement, however the determination does not cover all the membranes that may require replacement.

Following receipt of the Expert Determination, Council issued Haslin with a letter pursuant to the contract, again requiring rectification of the identified Defects. Haslin indicated that they didn't accept the findings of the determination and would consider litigation, but also that they would rectify the defects.

This position meant that Council was obliged to follow two avenues of project and contract management in parallel:

- contractual management of Haslin's rejection of the Expert Determination findings
- a series of operational meetings as well as facilitated negotiations in a bid to progress defect rectification and achieve contract completion

## **10.1 Ballina Wastewater Treatment Plant Upgrade - Contract Dispute**

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Council's position has always been to accept the findings of the Expert Determination as the appropriate way to resolve this dispute.

Under Clause 75.6 of the Contract's general terms and conditions, either party has a right to litigate findings of the Expert Determination, provided the litigation commences within 56 days after receiving the determination.

In response to requests from Haslin, Council has granted extensions to the time available to commence litigation of the Expert Determination findings.

These extensions were issued to allow the opportunity for the Contractor to attend to the defects and negotiate the commercial aspects of the dispute.

The final extension of time has now expired and Haslin filed proceedings in the Supreme Court. These proceedings have now commenced.

Council's focus in this process remains on resolving the defects to deliver a wastewater treatment plant capable of supplying recycled water of a quality that can be supplied to our dual reticulation scheme.

Staff are confident, based on technical advice, the Expert Determination, and legal advice, that the defects are repairable, and that our contractual position is reasonable.

### **Sustainability Considerations**

- **Environment**  
The upgrade to the Ballina Wastewater Treatment Plant provided significant environmental benefits.
- **Social**  
Not Applicable
- **Economic**  
This was a large financial contract for Council and further costs will be incurred in respect to this contract dispute.

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

The confidential report provides more information in respect of the legal and financial implications of this matter.

### **Consultation**

There has been extensive negotiations to date.

### **Options**

This report is for information and further details are provided in the confidential section of this agenda.

## **10.1 Ballina Wastewater Treatment Plant Upgrade - Contract Dispute**

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### **RECOMMENDATION**

That Council notes the contents of this report in respect to the Ballina Wastewater Treatment Plant Upgrade Contract Dispute.

### **Attachment(s)**

Nil



**10.2 Policy (Review) - Unused Public Roads - Short Term Leases**

**Delivery Program**      Asset Management

**Objective**                      To review the Unused Public Roads – Short Term Leases Policy.

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**Background**

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Unused Public Roads – Short Term Leases policy.

As a roads authority, Council is responsible for managing public roads within the Shire, however many public roads, or a large portion of a road reserve, are unformed and unused. Short term leases are permissible under the Roads Act, 1993, subject to certain conditions. Short term leases provide opportunities for residents to utilise and manage responsibly and efficiently land that would otherwise be unused and managed within the limited resources available to Council.

Council first adopted this policy on February 2007 and subsequently reviewed it in June 2011 and July 2015.

The policy has been helpful to encourage the use of unused public roads and the recommendation to this report is to continue to manage this process with the guidance provided in the policy.

**Key Issues**

- Whether the policy meets the requirements of Council and current legislation

**Information**

This review of this policy identified only minor formatting changes were required. The changes have been marked in yellow.

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

**Sustainability Considerations**

- **Environment**  
The policy encourages more active management of land and this provides environmental benefits.
- **Social**  
The policy encourages the utilisation of unused public roads and therefore it assists adjoining landowners to maximize the enjoyment and amenity of their area.

## **10.2 Policy (Review) - Unused Public Roads - Short Term Leases**

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- **Economic**

The utilisation of unused public roads can provide economic benefits to both the adjoining landowners and Council.

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

The leasing of unused public roads can provide some financial return on otherwise unused roads and can formalise an existing occupation or use of an unused road.

All costs to establish the lease are met by the applicant and the lease of unused public roads.

Leasing of unused public roads reduces Council's maintenance liabilities.

The leasing process must follow the requirements contained in the Roads Act 1993 to ensure all interested parties are adequately informed.

### **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 and it is recommended that the policy be adopted as presented.

It is also recommended that if no submissions are received from the exhibition process that no further action is required.

### **RECOMMENDATIONS**

1. That Council adopts the amended Unused Public Roads – Short Term Leases Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions to be reported back to Council. If no submissions are received then no further action is required.

### **Attachment(s)**

1. Policy (Review) - Unused Public Roads - Short Term Leases

## **11.1 Notice of Motion - Emergency Services Levy - Permanent Firefighters**

### **11. Notices of Motion**

#### **11.1 Notice of Motion - Emergency Services Levy - Permanent Firefighters**

**Councillor**

Cr Willis

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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 future increase in the Emergency Services Levy will increase these original estimates however there still remains significant leverage for the Council contribution.

## **11.1 Notice of Motion - Emergency Services Levy - Permanent Firefighters**

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### **Staff Comments**

This motion was debated at the 23 May 2019 Ordinary meeting when the motion was lost. As it has now been more than three months the motion can again be debated.

### **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

## 11.2 Notice of Motion - Lake Ainsworth Parking

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### 11.2 Notice of Motion - Lake Ainsworth Parking

**Councillor**

Cr Jeff Johnson

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I move

1. That Council receives a report on options to ensure that the overflow cars from the caravan park are not parked in the public car parking spaces or the surrounding residential streets.
2. As part of this report, Council to follow up on other matters previously agreed to by the caravan park including a boundary fence along the northern boundary to formally separate the public parking area/road network and the caravan park grounds.

#### **Councillor Comments**

I have a video available showing up to 100 cars parked at dawn during the Christmas school holiday period. Now that the Lake Ainsworth improvement program (Eastern Foreshore parkland) is almost complete it is important that the Reflections Holiday Park provides enough car parking spaces within its boundary for the cars generated by its guests.

As both the local population and visitor numbers continue to grow this issue will only become more pressing. It's my understanding that the Reflections Holiday Park used to have an overflow carparking area along its southern boundary (behind Barrett Drive).

There is also the additional issue of camper vans parking around the lake for extended periods. This also takes away the available spaces for locals and day visitors and can result in additional rubbish being left and ultimately ending up in the Lake.

One of the solutions that should be considered is a No Parking zone between 1.00 am – 5.00 am as occurs in other areas. This would be easily enforced during the holiday periods as our rangers already do morning patrols along the beaches.

#### **COUNCILLOR RECOMMENDATIONS**

1. That Council receives a report on options to ensure that the overflow cars from the caravan park are not parked in the public car parking spaces or the surrounding residential streets.
2. As part of this report, Council to follow up on other matters previously agreed to by the caravan park including a boundary fence along the northern boundary to formally separate the public parking area/road network and the caravan park grounds.

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

Nil

### **11.3 Notice of Motion - Ballina Island Traffic Modelling**

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### **11.3 Notice of Motion - Ballina Island Traffic Modelling**

**Councillor**

Cr McCarthy

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I move

That Council receive a report on the possibility, including the benefit and cost of:

- using the RMS access road that currently exists from Flat Head Lane to the Teven Road interchange; OR
- the Council road reserve that exists from Flat Head Lane to Barlows Road

as a short to medium term solution to allow traffic to move north and south (and vice versa) from areas such as Ballina Heights, the airport, and the Southern Cross Industrial Precinct, without the need to travel through the Ballina Island.

#### **Councillor Comments**

The community and Councillors are supportive of the proposed western arterial road being constructed to assist with traffic flow through Ballina. This new road, when built, will cost in the tens of millions of dollars and it will take many years for all the land acquisitions, planning approvals and funding to be confirmed before construction can take place.

In the meantime, it would be interesting to know whether it is a viable option for traffic to use the access road that the RMS constructed adjacent to the Ballina bypass to assist with the construction of the new freeway. From all reports the access road has a reasonable foundation and even though some sections have been removed it may be a more cost effective solution in the short to medium term to assist with traffic movements through Ballina.

If we could open this road, pre-construction of the proposed four lanes and bridges project into the Ballina island, we may be able to minimise traffic congestion into the Ballina island significantly. We would also create data to assist future decisions and modelling for the arterial road proposal to go forward, and justify its cost.

The other option is the Council road reserve from Flat Head Lane to Barlows Road, with this option having the benefit of the land being totally owned by Council.

#### **COUNCILLOR RECOMMENDATIONS**

That Council receive a report on the possibility, including the benefit and cost of:

- using the RMS access road that currently exists from Flat Head Lane to the Teven Road interchange; OR

### **11.3 Notice of Motion - Ballina Island Traffic Modelling**

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- the Council road reserve that exists from Flat Head Lane to Barlows Road as a short to medium term solution to allow traffic to move north and south (and vice versa) from areas such as Ballina Heights, the airport, and the Southern Cross Industrial Precinct, without the need to travel through the Ballina Island.

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

Nil

## 11.4 Notice of Motion - Western Arterial Road

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### 11.4 Notice of Motion - Western Arterial Road

**Councillor**

Cr Cadwallader

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I move

1. That Council amend the 2019/20 budget to include an amount of \$50,000, funded from developer contributions, to commence planning for the construction of the western arterial road.
2. That Council approach the relevant Federal and State Ministers, as well as our local parliamentarians, to seek funding for this project.

#### **Councillor Comments**

There is a lot of interest in Council's plans to expand the road network and with the Council's traffic model looking at development over the next 20 plus years it is important that we also have an understanding of how the improvements will be implemented during that timeframe. Our current Long Term Financial Plan is only for a period of ten years and this report will assist us in developing a financial plan for a period beyond that ten year timeframe.

#### **Staff Comments**

The adopted Long Term Financial Plan (LTFP) includes the following funding for road network improvements for the next four years:

<b>Description</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>
Hutley Drive - Connect to Byron Bay Road	4,430,200			
Hutley Drive - Southern Extension	32,500			
Angels Beach Dve / Bangalow Road - 4 Lanes	50,000	1,500,000		
River St – Tweed St to Fishery Ck - 4 Lanes	100,000	100,000	4,314,000	
River St - Fishery Ck to Bypass - 4 Lanes			11,006,000	
Fishery Creek Bridge - 4 Lanes			6,138,000	
River St - 4 Lanes - Land Acquisition			154,000	
Tamarind Dv - Nth Ck Rd to Kerr St - 4 Lanes	200,000	100,000	100,000	8,395,000
Canal Bridge - 4 Lanes				4,696,000

In summary, the current focus is on four laning River Street from Kerr Street to the bypass, four laning Tamarind Drive from Kerr Street to North Creek Road (including the duplication of the Fishery Creek and The Canal bridges), four laning the section of Bangalow Road from Angels Beach Drive to Kerr Street and the northern extension of Hutley Drive to Byron Bay Road.

The \$32,500 for Hutley Drive – Southern Extension relates to the pre-construction conditions for that extension, as the existing planning consent still has a significant amount of work required before construction activities can take place.

The current funding in the LTFP for the major construction works for 2021/22 and 2022/23 assumes Council will be able to secure \$12m in grant funding for the works, and there is also an assumption that Council will collect a significant amount of developer contributions for roads during the next few years.



## **11.4 Notice of Motion - Western Arterial Road**

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These are optimistic assumptions and should be used as a guide only. It may well be that Council will not have enough funding to commence that magnitude of works in the four year timeframe.

One of the major financial benefits of the four laning projects is that they can be completed in segments. This allows works to be completed without the total funding being available.

This is also the main disadvantage of the western arterial in that it cannot be completed in stages.

The Section 7.11 Roads Contribution Plan funds held by Council as at 30 June 2019 was \$7.5m. This means we have sufficient funds to progress the Hutley Drive connection to Byron Bay road project in the current financial year, although we are still a long way short of the total funding needed for all the four laning projects.

Council needs to be careful not to spread the limited funding available across too many projects as other priorities in the LTFP and the Section 7.11 Roads Contribution Plan prior to the western arterial include, but are not limited to:

- North Creek Road and Bridge Reinstatement - \$20m
- Ross Lane Improvements – West - \$4.7m
- Ross Lane Improvements – East - \$10.6m

These works are also a high priority for many residents.

A full summary of the works in the Roads Contribution Plan is attached, with the total value of works in that Plan estimated at \$163m in 2018/19 dollars.

### **COUNCILLOR RECOMMENDATIONS**

1. That Council amend the 2019/20 budget to include an amount of \$50,000, funded from developer contributions, to commence planning for the construction of the western arterial road.
2. That Council approach the relevant Federal and State Ministers, as well as our local parliamentarians, to seek funding for this project.

### **Attachment(s)**

1. Ballina Shire Roads Contribution Plan - Works Schedule

## **11.5 Notice of Motion - Lennox Head Car Parking**

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### **11.5 Notice of Motion - Lennox Head Car Parking**

**Councillor**

Cr Cadwallader

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I move

That the Crown Land Management Review of Williams Reserve, as required by the Crown Lands Management Act, also examine whether there are options available to extend the car park at the western end of the Lennox Head Cultural and Community Centre and / or at the southern end of the Reserve, to provide additional car parking for the Lennox Head village, so long as it does not impact on the current use of the Reserve.

#### **Councillor Comments**

As Council is reviewing Williams Reserve as part of the Crown Lands Management Act it is an opportune time to examine whether there are options to provide additional car parking on the Reserve, so long as there are no negative impacts on existing uses.

Car parking is at a premium in the Lennox Head village and there may be an opportunity to create a few additional car parks, which can complement the extra car parks provided once the Lennox Head Rural Fire Service shed is relocated to 9 Byron Bay Road.

#### **COUNCILLOR RECOMMENDATION**

That the Crown Land Management Review of Williams Reserve, as required by the Crown Lands Management Act, also examine whether there are options available to extend the car park at the western end of the Lennox Head Cultural and Community Centre and / or at the southern end of the Reserve, to provide additional car parking for the Lennox Head village, so long as it does not impact on the current use of the Reserve.

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

Nil

12. Advisory Committee Minutes

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**12. Advisory Committee Minutes**

Nil Items

## 13.1 Mayoral Meetings

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### 13. Reports from Councillors on Attendance on Council's behalf

#### 13.1 Mayoral Meetings

**Councillor** David Wright

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Activities I have attended, or propose to attend, as at the time of writing this report, since the August 2019 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
20/8/19	Meeting – Frank Lynch – Dragon Boat Club
23/8/19	Meeting – Kevin Lockrey – Software Solutions for the Community
23/8/19	Meeting – Les Saurine – Objector to 2-12 Greenwood Place DA
23/8/19	Meeting – Vaughan O'Connor 2-12 Greenwood Place
24/8/19	Light Horse Parade
25/8/19	Legacy Wreath Laying
25/8/19	Community Presentation – Rainbow Dragon Club
28/8/19	Meeting – Shaws Bay History
28/8/19	Meeting – St Vincent de Paul – Removal of Bins
28/8/19	Briefing – Club Lennox
30/8/19	Morning Tea – St Joseph's Alstonville
30/8/19	Meeting – Sheree Yeomans – Climate Change
1/9/19	Commemoration Park Markets
2/9/19	Meeting – Kevin Lockrey
2/9/19	Briefing – Sport and Recreation Plan
3/9/19	Briefing – Shelly Beach Kiosk – Development Consent
3/9/19	Alstonville/Wollongbar Chamber of Commerce – Village Herbalist
4/9/10	Red Cross Zone Conference – Wardell
5/9/19	Palm Lakes – Information Session
5/9/19	Meeting – Michael Albany – St Vincent De Paul
7/9/19	Fair Go Skate Comp
7/9/19	100 <sup>th</sup> Birthday Mr Gordon Elvery - Uniting Church
8/9/19	Fair Go Skate Comp
8/9/19	Commemoration Park Markets
8/9/19	Lennox Head Markets
8/9/19	Air Force Association Memorial Service and Wreath Laying
9/9/19	Church Group
10/9/19	Meeting – Surf Life Saving and DPI – Drone and Life Guard Deployment
10/9/19	'A' Ward Meeting
12/9/19	Ballina Lighthouse Day Club – Richmond Room
12/9/19	'C' Ward Meeting
12/9/19	25 <sup>th</sup> Anniversary Student Achievement Celebration – Learning Centre SCU – Deputy Mayor
13/9/19	Governor of NSW – Reception – Workers Club – Deputy Mayor
14/9/19	Alstonville Veterans' Advocacy Centre Fourth Birthday Celebrations
16/9/19	Meeting – Regional Director RMS – Anna Andrews – Tour – Alstonville Ramp
16/9/19	'B' Ward Meeting
17/9/19	Public Citizenship Ceremony (1) 2.00 pm

### **13.1 Mayoral Meetings**

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17/9/19	Public Citizenship Ceremony (2) 4.00 pm
18/9/19	Briefing – A Frame Signage
20/9/19	RSL LifeCare – Group Art Exhibition 11 Hackett Lane Owner’s Corner Café
22/9/19	Commemoration Park Markets
22/9/19	Ballina Lions Club Fun Run
23/9/19	CSPC Meeting
25/10/19	Northern Local Health District Board Meeting – Ballina Education Centre
25/9/19	Private Citizenship Ceremony
25/9/19	Ballina Shire Concert Band – AGM
26/9/19	Council Meeting
26/9/19	Master Builders Education Centre – Grand Opening - 2 Boeing Ave
26/9/19	NSW Police Force – Richmond District Command Presentation Ceremony - Surf Club
29/9/19	Lennox Head Markets
29/9/19	Commemoration Park Markets

#### **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 70 Shelly Beach Road East Ballina - The Beach House**

Refer to Item 8.2 of this agenda.

**14.2 Ballina Wastewater Treatment Plant Upgrade - Contract Update**

Refer to Item 10.1 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 70 Shelly Beach Road East Ballina - The Beach House**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest and is subject to legal privilege.

**14.2 Ballina Wastewater Treatment Plant Upgrade - Contract Update**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

14. Confidential Session

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- 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 report provides advice concerning litigation.