

## 11.2 Water Service - 2 Ascot Place, Ballina.DOC

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**Delivery Program** Water and Wastewater

**Objective** To seek Council's review of a request for a water service.

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#### **Background**

Council has been requested to provide a new fire service main to Lot 71, DP 749501, 2 Ascot Place, located in the Canal Industrial Estate, Ballina. The request has come from Ardill Payne & Partners (APP) on behalf of their client.

The Estate was developed by Ballina Shire Council in 1979 (DA 79/384). An industrial building of approximately 1,500m<sup>2</sup> was developed on the site in 1987 under BA 239/1987. Subsequent approvals have been for a minor office extension (BA 1029/1988 - which did not change the site's fire loading), and a major renovation (BA 121/1995 – which was never constructed).

There are 79 lots in the Estate, including the Racecourse Precinct. A reticulated water service is provided throughout the Estate. Properties on Ascot Place are serviced via individual connections to the main on Racecourse Road. The water service to Lot 71 is from Racecourse Road via a drainage reserve to the rear of the lot. The existing connection is suitable to service fire hose reels, but is not suitable to service fire hydrants.

A site map of the area which also shows the location of water services is provided as an attachment to this report.

Fire hydrants are located at regular intervals along Racecourse Road, however the closest hydrant to Lot 71 being approximately 140m distant, does not meet current requirements according to AS2419.1.

APP now asserts that Council has a responsibility to provide a hydrant in Ascot Place to service Lot 71, and that Council is exposed to litigation in the event of a fire.

This request was initially declined by staff however APP has asked for a further review and the purpose of this report is to obtain the elected Council's position on the issue.

#### **Key Issues**

- Merits of APP assertion based on current Building Code of Australia (BCA) Standards and the Local Government Regulation (General)
- Does Council have an obligation, as either developer or approver, based on the pertinent requirements of the day (ie the now superseded requirements of the *Local Government - Ordinance 70 Building* under the *Local Government Act 1919 (LGA 1919)*, and possibly applicable Public Works guidance manuals)?
- Does the principal of 'buyer beware' apply that the owners should investigate the due diligence processes they went through during the purchasing of the building?

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**Information**

Ordinance 70 specified building requirements, and hence its requirements were chiefly the responsibility of the property owner. This is similar to the situation today where building owners meet the requirements of the BCA, which effectively replaced Ordinance 70 in the early 1990s.

In 1979, at the time of DA 79/384, the Local Government Act (LGA) 1919 required Council to supply water for "*domestic purposes, street watering, sewer flushing, and the maintenance of a suitable pressure for fire extinguishing*". However, there were no statutory requirements regarding distances to hydrants. It is understood that this was generally carried out by Council in accordance with Public Works guidance manuals at the time – however these have not been located.

At that time, *Part 27.4 (4)* of Ordinance 70 required building owners to ensure their development complied such that:

*"no point on any floor of the building shall be more than 90 m from a hydrant situated –*

*(a) in the road to which the site has frontage; or*

*(b) in the building; or*

*(c) within the site but external to the building."*

These building requirements would have been at the cost of the applicant.

There is the possibility that Council originally intended to extend the drinking water main along Ascot Place once the industrial estate extended to land to the north. This land has never been developed, Ascot Place remains a short dead-end road, and the water main has never been extended.

From 1986, the Public Works *Water Supply Investigation Manual* provided guidance to water supply authorities on *Provision for Fire-fighting in Water Supply Reticulation Networks*. It promoted a number of the technical requirements of *Part 27.4* of Ordinance 70, including *Part 27.4 (4)*, which should be followed.

This was the applicable requirement in 1987, but this requirement was not imposed by Council in the consent conditions of BA 239/1987. However, had the requirement been enforced, it is likely that the cost of compliance would have been at the cost of the applicant.

It is worth noting that similar fire and hydraulic conditions were imposed by Council in 1995 for the subsequent BA 121/1995. The cost of compliance would have been met by the applicant; however the development did not proceed.

Today, Council requires hydrants on its water supply network pursuant to s142 of the Local Government Regulation 2005 (General). These hydrants are required to be placed on the water mains as necessary and at suitable locations to extinguish fires and be maintained in effective working order.

According to *AS2419.1* the "as necessary" hydrant requirements for each lot depend on the lot's configuration.

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Council therefore aims to meet requirements by providing for hydrant spacing of approximate 60m intervals along its water mains. Council also has a target to inspect 50% of the hydrants in the network annually to ensure they are "maintained in effective working order".

The current situation at Ascot Place does not meet Council's current approach.

The cost to provide a drinking water main and hydrants to Ascot Place (including Lot 71) is estimated at approximately \$35,000.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Provision of a new hydrant may be seen as favouring one business over others, and may not be socially equitable. On the other hand this reduces a potential fire risk for this location.
- **Economic**  
Provision of a new hydrant supports one business at a moderate cost to Council.

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

There is no budget for this work. If approved the funds would be sourced from the reserves held within Council's water operations, or by transferring funds from other areas such as the water mains maintenance program.

Given the time and the number of owners since the original subdivision, it is considered unlikely that Council would be liable in the event of a fire.

There is a risk that other similar and as yet unknown situations exist elsewhere within the Shire. If Council proceeds with these works, there is a risk of setting a precedent whereby Council would be expected to solve all historical instances where insufficient hydrants have been provided. The potential financial cost of this is unknown, but could be substantial.

#### **Consultation**

Council staff have held discussions and corresponded with APP on behalf of their client. These discussions have been lengthy and more recently they have been delayed due to change in the management position for the water and wastewater section.

The correspondence and discussions held to date have not been able to resolved. The document exchange is attached to this report.

#### **Options**

Council could:

1. Refuse to accept any responsibility for the requested works. The owner could then make an application for an extension of the water main either

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as developer supplied infrastructure or via a private works contract with Council.

2. Consider some responsibility as the original developer and approval authority, but recognise the responsibilities of the owner under "buyer beware" principals, and carry out the works to the drinking water system through a shared cost arrangement with the owner.
3. Acknowledge as the original developer and approval authority that Council may have intended to extend the water main into Ascot Place and carry out the works to the drinking water system at Council's cost.

If the Council is inclined to support either options two or three, those deliberations should take into account the possibility of other requests to Council to address potential issues arising from old approvals issued by Council or work undertaken by Council as a developer.

It was also noted that if Council was not the developer it would be unlikely that a claim would be made to, or considered by, a private developer (even assuming the enterprise still existed). Therefore, it is suggested that Council should deal with this issue as a water utility, not as a former developer of the site.

The information in this report indicates that typically the cost of these works would be met by the developer as a condition of development consent. After that, responsibilities for improvements and compliance would normally reside with the title of the land. While there is some uncertainty about the history and the standards applicable at the time, the research by Council staff has not identified any conclusive reason why Council should accept any or all of the liability to undertake these works.

Therefore, the recommendation to this report is option one, that is, deny liability for the reasons set out in this report.

In recommending this option, it is also noted that Council staff have thoroughly considered the submission and it remains open to the applicant to conduct their own further research to provide sufficient evidence that justifies the allocation of public money to their request.

Council's decision in this matter will be forwarded to our insurer for their information.

#### **RECOMMENDATION**

That Council advise Ardill Payne and Partners that it does not accept liability for the provision of a fire service at Lot 71, DP 749501, 2 Ascot Place for the reasons as outlined within this report.

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

1. Site locality map showing water services
2. Letter from Ardill Payne & Partners 20 May 2013
3. Response from BSC 8 October 2013
4. Letter from Ardill Payne & Partners 6 December 2013

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**ARDILL PAYNE**  
& Partners  
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20 May 2013

General Manager  
Ballina Shire Council  
PO Box 450  
**BALLINA NSW 2478**

**Attention: Paul Hickey**

Dear Mr Hickey

**RE: FIRE SERVICE TO LOT 71 DP 749501  
2 ASCOT PLACE, BALLINA**

RECORDS  
SCANNED  
21 MAY 2013  
Doc No.....  
Batch No.....

Lot 71 Ascot Place is located in the Canal Industrial Estate, Ballina. The estate was developed by Ballina Shire Council in 1979 (DA 79/384). There are 79 lots in the estate, including the Racecourse Precinct.

A reticulated water service is provided throughout the estate, however there is no water main in Ascot Place. Fire hydrants are located at regular intervals along Racecourse Road. All 79 lots in the estate, with the exception of Lot 71, have a fire hydrant in close proximity. The nearest fire hydrants to Lot 71 are located approximately 140m distant, on the southern side of Racecourse Road (see **Figure 1**). The water service to Lot 71 is from Racecourse Road via a drainage reserve to the rear of the lot. We understand that this connection is suitable to service fire hose reels, but is not suitable to service fire hydrants.

In 1987, Council granted development consent 239/1987 to T.A and T.J Martin to construct an industrial building on the site. The approximate ground floor area of the building is 1540m<sup>2</sup>. In accordance with the BCA, the building is classified as a Class 8 building. Clause E1.3(a) of the BCA states that, for a Class 8 building over 500m<sup>2</sup> in floor area, and where a fire brigade is available to attend the building, a fire hydrant system must be provided to service the building.

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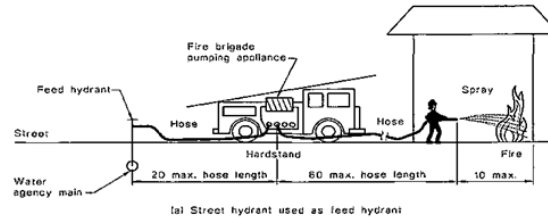
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AS 2419.1 'Fire Hydrant Installations – Part 1: System Design, Installation and Commissioning' states that street fire hydrants are considered as external (feed) fire hydrants provided they meet current standards for flow, pressure and location. There is no water main in Ascot Place and there are no street fire hydrants within 140m of Lot 71. Consequently, there is no provision for the extension of a hydrant service to Lot 71. Coverage requirements from street hydrants is specified in AS 2419.1 (extract shown below).



On 5<sup>th</sup> April 2013, APP's Chris Mulder discussed the issue with Council's Andrew Swan. Mr Swan advised that an extension of the water main into Ascot Place does not appear in future Council works programs under DSP funding. On behalf of the owners, we request that the provision of a water main in Ascot Place be urgently placed on Council's DSP funding program.

It is our opinion that Council, as the developer of the estate, has not satisfied its own development standards by not providing a suitable fire hydrant service to Lot 71, as it has for the other lots in the estate. In the event of a fire at Lot 71, this could leave Council exposed to litigation. The current landowners are concerned about the implications of a substandard water service in the event of a fire.

On behalf of the landowner, we request that Council take immediate action to provide a water main to the road frontage of Lot 71, including a fire hydrant, on the basis that:

- Council should have provided a water main in Ascot Place in the original development of the estate
- the existing supply does not meet BCA or Australian Standards for fire protection, and

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- it would be unreasonable for Council to expect the landowner to fund the extension of a water main to the property, as the Council was the original developer of the estate.

Yours faithfully



Tony Cromack  
**ARDILL PAYNE & PARTNERS**

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Andrew Swan

13/60432

8 October 2013

Tony Cromack  
Ardill Payne and Partners  
79 Tamar Street  
BALLINA NSW 2478

Dear Mr Cromack

**Re: FIRE SERVICE TO LOT 71 DP 749501, 2 ASCOT PLACE, BALLINA**

Thank you for your letter of 20 May 2013 where you request provision of a fire service main by Ballina Shire Council to Lot 71, DP 749501, 2 Ascot Place, Ballina.

As you know Council's water supply network has hydrants installed at numerous locations pursuant to s142 of the Local Government Regulation (General). These hydrants are required to be placed on the water mains at necessary and suitable places to extinguish fires and be kept in effective working order.

Council undertakes both these tasks by providing for hydrant spacing of approximate 60m intervals along the main and has a target to inspect 50% of the hydrants in the network annually.

The provision of fire protection services in accordance with AS2419.1 is the responsibility of the property owner and subsequently Council wishes to advise you that it will not be agreeing with your request to provide those services for the owner.

The role of Council as either the developer or the approval authority of the original development is not considered to be relevant to this issue and you have not provided evidence that there was an unacceptable breach of the relevant standards at the time of construction.

Council is open to an application by the owner for an extension of the water main either as developer supplied infrastructure or via a private works contract with Council.

If you have any enquiries in regard to this matter please contact me on 0415 788 517.

Yours faithfully

Andrew Swan  
**Acting Manager, Water and Wastewater  
Civil Services**

# ARDILL PAYNE

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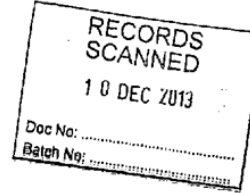


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6 December 2013

General Manager  
Ballina Shire Council  
PO Box 450  
**BALLINA NSW 2478**

**Attention: Paul Hickey**



Dear Mr Hickey

**RE: FIRE SERVICE TO LOT 71 DP 749501  
2 ASCOT PLACE, BALLINA**

We refer to your letter dated 8 October 2013 (your ref 13/60432) in respect of the subject matter.

We wish to express our disappointment in Council's response to our original letter dated 20 May 2013. Firstly, it took Council almost 5 months to provide a written response, and secondly the response provided was contrary to a prior verbal assurance by a Council officer, that the situation of concern to the landowner would be addressed by Council.

Our original discussions in this matter were handled by Council's Rod Dawson, who we understand has since left Council's employ. After detailed discussions between APP's Tony Cromack and Chris Mulder and Council's Rod Dawson, we were verbally advised by Mr Dawson that Council would extend the Council water main such that a suitable fire service could be provided to the subject lot. Mr Dawson further advised that a letter would be forthcoming from Council to that effect. Subsequent to Mr Dawson's departure from Council, further discussions were held between Tony Cromack and Council's Andrew Swan.

Whilst we concede that a verbal assurance from a Council officer does not confirm Council's commitment, at no time in discussions with Mr Swan were we led to believe that Council's position was going to change. We made repeated approaches to Council by phone and

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email, both before and after Mr Dawson's departure, requesting confirmation in writing of Council's commitment.

To address the main points of Council's letter of 8 October:

- We agree that it is Council's responsibility to ensure that fire hydrants are located on water mains at suitable places to extinguish fires. This spacing is at approximately 60m intervals along the main. It is therefore reasonable to expect that a street hydrant would be located no further than 60m from the subject lot. All other lots in this estate have access to a fire hydrant within the minimum distance. **The closest hydrant to Lot 71 is 140m distant, in Racecourse Road.**
- The objective of AS2419.1, as stated in Clause 1.2(a), is to specify the minimum requirements for the design, installation and commissioning of fire hydrant systems which will augment the efficient extinguishment of fire within the boundaries of the site. We agree that it is the owner's responsibility to provide fire services within the boundaries of the site, which would be connected to and extended from Council's water main service. **It is unreasonable to expect the landowner to extend Council's water main to the site in order to provide a compliant street hydrant system.**
- We consider that it is totally relevant that, as both developer and approval authority, Council has failed to comply with their own and statutory development standards for the provision of fire hydrants to an industrial estate. These development standards specify that fire hydrants shall be provided along a water main at approximately 60m intervals to ensure that all allotments have adequate fire coverage. **There is no water main or fire hydrant provided in Ascot Place.**
- Council has stated that we have not provided evidence that there was an unacceptable breach of relevant standards at the time of construction. As stated in our letter of 20 May 2013, Council in 1987 granted consent to DA 239/1987 for the construction of an industrial building on the site, with an approximate ground floor area of the building of 1540m<sup>2</sup>. In accordance with the BCA, the building is classified as a Class 8 building. Clause E1.3(a) of the BCA states that, for a Class 8 building over 500m<sup>2</sup> in floor area, and where a fire brigade is available to attend the building, a fire hydrant system must be provided to service the building. **Council has failed to enforce both the BCA and Australian Standards by approving the erection of this building without a compliant fire hydrant system.**

We have contacted the Station Commander at Ballina Fire Station (Fire & Rescue NSW), Captain Dennis Henry, to express our concerns regarding access to a fire hydrant in the event of a fire at the site. Captain Henry's response is attached. In summary, Fire & Rescue NSW has expressed concerns over:

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- the lack of a fire hydrant which satisfies the acceptable minimum separation distance
- the need for the Brigade to deploy additional fire fighting resources to provide appropriate coverage and water pressure in the event of a fire
- the unknown contents of the storage sheds and the potential fuel loads contained within
- the resultant complications in attacking the fire which would not exist if appropriate fire hydrant coverage was provided
- the consequent increase in the risk of significant property damage/loss and risk/injury to firefighting personnel.

In the event of a fire at Lot 71, this could leave Council exposed to litigation. The current landowners remain concerned about the implications of the lack of a street hydrant system at the site.

We request that Council reconsider its position as outlined in your letter of 8 October 2013, and again, on behalf of the owners, request that the provision of a water main in Ascot Place be urgently placed on Council's DSP funding program.

Yours faithfully



Tony Cromack  
**ARDILL PAYNE & PARTNERS**  
Encl. letter from Fire & Service NSW

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www.fire.nsw.gov.au info@fire.nsw.gov.au ABN: 12 593 473 110

File No:

25 November 2013

Mr Tony Cromack  
Ardill, Payne & Partners  
79 Tamar St  
Ballina NSW 2478

**Re: Ballina Self Storage Units, 2 Ascot Place, Ballina**

I refer to your recent enquiry regarding water hydrant locations and the concern of the availability of a decent water supply in the event of a fire at the above address.

Our mapping shows no hydrants located in Ascot Place, with the nearest hydrants located some 130 metres from the south-east boundary of the property in Racecourse Rd. The hydrant spacing is, on average about 60 metres which allows water to be delivered to a pumping appliance at adequate pressure for firefighting operations.

Following your enquiry Ballina Fire Brigade has conducted an inspection of the area and confirmed a lack of hydrants in the immediate vicinity, and has now formulated a pre incident plan for this address. Identified as a major concern for this structure is the unknown contents of such a large number of storage sheds and the fuel loads contained within.

The subject land is not serviced by a fire hydrant which satisfies the acceptable minimum separation distance (as per the relevant standards). In the event of a fire, this situation will require the deployment of additional firefighting resources (by the Brigade) to provide appropriate coverage and water pressure to enable a fire to be brought under control on the site. This situation will potentially result in complications in attacking the fire, which would not exist if appropriate fire hydrant coverage was provided, consequently increasing the risk of significant property damage/loss and risk/injury to firefighting personnel

I appreciate you bringing this matter to my attention.

Yours faithfully

**Captain Dennis Henry**  
Station Commander  
Ballina Fire Station  
Mobile: 0414 904912  
Email: dennis.henry@fire.nsw.gov.au

**PREVENT PREPARE PROTECT**