



## 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 November 2020 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.

Due to COVID-19 - Social distancing and seat limits apply in the Public Gallery. Please call Sandra Bailey on 6686 1273 to book a seat.

You may access this meeting via our Live Streaming link  
[ballina.nsw.gov.au/agendas-and-minutes](http://ballina.nsw.gov.au/agendas-and-minutes)

### **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.

## **Recording and Livestreaming of Council Meetings**

- The meeting (with the exception of the confidential session) is being livestreamed and recorded for on-demand viewing via Council's website (***ballina.nsw.gov.au/agendas-and-minutes***) and a person's image and/or voice may be broadcast.
- Attendance at the meeting is taken as consent by a person to their image and/or voice being webcast.
- All speakers should refrain from making any defamatory comments or releasing any personal information about another individual without their consent.
- Council accepts no liability for any damage that may result from defamatory comments made by persons attending meetings. All liability will rest with the individual who made the comments.
- This meeting must not be recorded by others without the prior written consent of the Council in accordance with Council's Code of Meeting Practice.

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1. Australian National Anthem
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**1. Australian National Anthem**

The National Anthem will be played.

**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 October 2020 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 22 October 2020.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

## **8.1 DA 2020/446 - Two Storey Dwelling and Earthworks - 28 Mosman Chase**

### **8. Planning and Environmental Health Division Reports**

#### **8.1 DA 2020/446 - Two Storey Dwelling and Earthworks - 28 Mosman Chase**

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<b>Applicant</b>	Evolve Planning Services
<b>Property</b>	Lot 20 DP 1250165 – 28 Mosman Chase, Lennox Head
<b>Proposal</b>	Two Storey Dwelling and Earthworks
<b>Effect of Planning Instrument</b>	The land is zoned R2 – Low Density Residential under the provisions of the Ballina Local Environmental Plan (BLEP) 2012
<b>Locality Plan</b>	The subject land is depicted on the locality plan below.

#### **Introduction**

Council is in receipt of a development application (DA 2020/446) for the proposed construction of a two storey dwelling and associated earthworks at 28 Mosman Chase Lennox Head. The proposal includes a roof terrace which is not considered a storey.

Plans for the proposed development are contained in Attachment 2. The S.88B instrument applying to the subject land is contained in Attachment 3 (note this instrument does not contain the restrictions that are the subject of the objections received). This application is being reported to Council due to the nature of several submissions of objection that have been received.

The 800m<sup>2</sup> site, situated on the southern side of Mosman Chase, is presently vacant. The site is one of the few remaining vacant sites within the subdivision known as 'Visions Estate'. The subdivision estate comprises of one and two storey residential dwellings of similar scale, some of which enjoy partial ocean/land interface views. A plan of the locality is shown below with the subject allotment indicated in red.

## 8.1 DA 2020/446 - Two Storey Dwelling and Earthworks - 28 Mosman Chase



**Figure 1: Locality Plan – 28 Mosman Chase Lennox Head**

The proposed development generally complies with Council's planning controls with the exception of a minor encroachment to the Building Envelope and associated Building Height Plane (BHP) provisions contained within the Ballina Development Control Plan (DCP) 2012.

The purpose of this report is to seek Council's determination of the application.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The application was not required to be placed on public exhibition in accordance with Environmental Planning and Assessment Act 1979 or Environmental Planning and Assessment Regulations 2000, an Environmental Planning Instrument or Council's Community Participation Plan.

Although the application was not placed on public exhibition, seven submissions by way of objection were received from nearby residents. The issues raised in the submissions relate to:

- Proposed variation to a restriction on the Section 88B instrument;
- View loss;
- Building height and overshadowing; and
- Privacy loss.

The above issues are addressed in the report below. Confidential submissions are provided in Attachment 4. Other submissions are provided in Attachment 5.

The applicant has provided a Visual Impact Statement on the request of Council. This statement is provided in Attachment 6.

### **Report**

The proposed development has been assessed under the heads of consideration in Section 4.15 of the Environmental Planning and Assessment Act 1979.

The assessment has identified the following key issues in relation to this development application which are elaborated upon in this report. This report should be read in conjunction with the attached Section 4.15 assessment report in Attachment 1.

### **Provisions of the Ballina Local Environmental Plan 2012 (BLEP)**

The proposal complies with the aims of BLEP 2012. The subject land is zoned R2 Low Density Residential. Dwelling houses are permissible in this zone and consistent with the zone objectives (outlined below).

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The proposal is also compliant with the building height and floor space ratio standards set out under the LEP as outlined below.

#### **Clause 4.3 Height of Buildings**

- 1) *The objectives of this clause are as follows –*
  - a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
  - b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*
  - c) *to protect significant views from public places.*
- 2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*



The proposed building has a height of approximately 7.5m which is below the maximum 8.5m allowable in the BLEP.

Clause 4.4 Floor Space Ratio

- 1) *The objectives of this clause are as follows –*
  - a) *to ensure that buildings are compatible with the bulk, scale and character of the locality,*
  - b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.*
- 2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- 3) *Despite subclause (2), a dwelling house, a dual occupancy, a semi-detached dwelling or a secondary dwelling must not exceed a floor space ratio of 0.5:1.*

The proposed building has a floor space ratio of 0.255:1 which is less than 0.5:1 as allowable under the BLEP.

**Provisions of the Ballina Shire Development Control Plan 2012 (DCP)**

The application of the building envelope provisions of the DCP are a key aspect of the assessment of the application. The assessment in relation to this part of the DCP is summarised below.

**Chapter 4 – Residential and Tourist Development Part 3 – C. Element - Building Envelopes**

**Objectives**

- i. *Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views;*
- ii. *Ensure that the occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight;*
- iii. *Enhance opportunities for solar access to both the development site and adjoining properties;*
- iv. *Achieve varied and interesting streetscapes, good orientation of residential developments with regard to sun, shade, wind and neighboring development, and effective use of allotments to create usable private open space and courtyards;*
- v. *Ensure that buildings are compatible with the bulk, scale and character of the locality;*
- vi. *Minimise adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality; and*
- vii. *To provide flexibility for steeply sloping sites to best address streetscape, solar orientation and location for outdoor amenity areas.*

**Controls**

- i. Residential accommodation and tourist and visitor accommodation in Zone R2 Low Density Residential and Zone R3 Medium Density Residential must be contained within a building envelope measured as follows:
  - a. below a plane measured over the land at 45° from a point 1.8 metres above the side and rear boundaries,*
  - b. where the subject site has a frontage to a secondary street, below a plane measured over the land at 45° from a point 1.8m above a parallel line measured 2.0m inside the secondary street boundary,*
  - c. where the subject site has a frontage to a public reserve, below a plane measured over the land at 45° from a point 1.8m above the boundary to the public reserve, and*
  - d. below a plane measured 8.5 metres above ground level.**
- ii. The external walls of a residential accommodation or tourist and visitor accommodation must be setback a minimum of 900mm from the side and rear boundaries of the site (excluding internal strata title boundaries), subject to consideration of impact on privacy, private open space and solar access to adjoining properties;*
- iii. The external walls of garages, sheds and similar detached outbuildings with a floor area greater than 50m<sup>2</sup> must be setback a minimum of 2 metres from the side and rear boundaries of the site (excluding internal strata title boundaries);*
- iv. For dual occupancies, semi-detached dwellings, attached dwellings and multi dwelling housing developments and any residential accommodation or tourist and visitor accommodation that share a common wall, the building height plane as applied from side and rear boundaries of the site (excluding internal strata title boundaries), secondary frontages and public reserves applies to those parts of the development which interface with adjoining properties and public land.*

There is one minor building envelope encroachment on the western elevation in respect to the eave. However, Element C – Variations under the DCP provides a concession for eaves up to 700mm wide. The proposed encroaching eave width is 450mm and is therefore a permissible encroachment.

In support of the proposed variation shadow diagrams have been provided. These indicate the proposal does not negatively impact on optimum winter sunlight during the winter solstice or adversely impact the solar access of the adjoining properties. No detrimental impact on the surrounding properties by means of overshadowing, privacy impingement or the like is expected.

With respect to views, the objectives of Element C seek to prevent the unreasonable obstruction of views. The proposed variation to the building envelope, which is on the western side of the proposed building, does not contribute to any view loss from the properties of the objectors. Potential view loss is discussed in further detail below.

The proposed development conforms to the building envelope provisions of the DCP.

### Submissions

The key issues raised in the submissions received are outlined and addressed below.

### Variation to S.88B Restriction

Each submission in objection received referred to the proposed relaxation of Restriction 10 of the relevant S.88B instrument as noted below.

*'The owner of the Lot Burdened must not erect, construct, place or permit to remain on the Lot Burdened any building comprising more than a single storey and the floor level of that storey must not be elevated above natural ground level by any more than a metre'*

### **Comment:**

The S.88B lists Lots 9, 10, 11, 17 & 20 as being burdened lots. While Lots listed as being benefited are 5, 6, 7, 8, 9, 10, 12 & 13 as indicated in Figure 2.



**Figure 2: Lots burdened and benefited – S.88B instrument (red stars indicate lots burdened, green stars indicate lots benefited).**

Lot 11, from which an objection has been received, is not a benefited Lot under the S.88B.

Clause 1.9A - Suspension of covenants, agreements and instruments of BLEP provides:

- 1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

- 2) *This clause does not apply—*
  - a) *to a covenant imposed by the Council or that the Council requires to be imposed, or*
  - b) *to any relevant instrument within the meaning of section 13.4 of the Crown Land Management Act 2016, or*
  - c) *to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or*
  - d) *to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or*
  - e) *to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or*
  - f) *to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or*
  - g) *to any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act.*
- 3) *This clause does not affect the rights or interests of any public authority under any registered instrument.*
- 4) *Under section 3.16 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).*

The restriction is not a covenant imposed, or required, by Council and the underlying subdivision development consent carries no conditions that required the abovementioned restriction to be included in the S.88B. The restriction was imposed by the developer.

Therefore, in accordance with Clause 1.9A, the restriction does not apply to the extent necessary to serve the purpose of enabling development being carried out in accordance with the BLEP (as indicated above, the proposed development has been assessed as consistent with the objectives of the zone and conforming to the applicable building height and floor space ratio standards).

Clause 1.9A is designed to ensure the provisions of BLEP prevail over covenants, agreements and instruments imposed on the land (unless applied in particular circumstances set out in subclause 2).

In this instance, the height of the proposed two storey dwelling house and its floor space ratio comply with the provisions of the BLEP and so the development is to be assessed in accordance with merit considerations of Section 4.15 of the EP&A Act.

### **View Loss**

Submissions from the owners of Lots 9, 10 and 11 were received that highlighted view loss as being a primary concern should approval be granted.

At the time of writing this report, the owners of Lot 9 provided a further submission relating to suggestions for an alternate design which may mitigate any view loss impact. These points are addressed at the end of the view loss test for Lot 9.

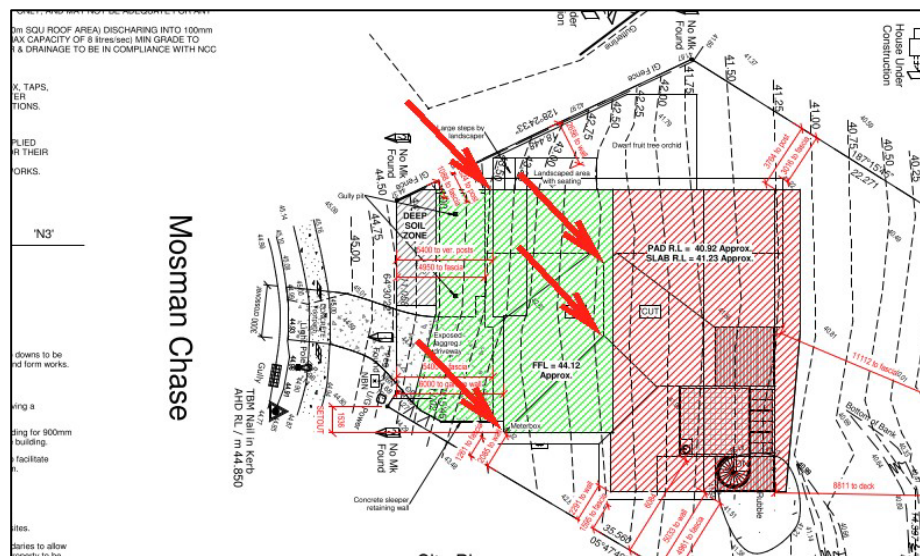
**Comment:**

Due to the nature of submissions of objection made against the proposed development, specifically with regard to view loss, a site inspection was conducted to determine any view sharing potential.

The New South Wales Land Environment Court Planning Principles – *Tenacity v Waringah* sets out a four part test when addressing view sharing potential – Principles of View Sharing.

The following assessment following Council’s site visit and conducting the four part test in accordance with the above referenced guidelines. Each ‘affected’ property is addressed in relation to the view sharing principles individually for clarity, including photos showing height poles.

To assist with visualisation of the proposed development, height poles were installed on the proposed development site at the request of Council. These poles have been installed at strategic locations relating to the proposed dwelling to depict the extreme points of the building’s roof line. The location of the poles are indicated by red arrows on the below plan.



**Figure 3: Location of height poles (indicated by red arrows)**

**Lot 9, 19 Mosman Chase**

**What is the view of?**

The subject allotment presently enjoys partial views of ocean/land interface to the east and south-east. The views to the south-east, while not ‘iconic’ are valuable. To the east the view is of the ocean through native bush and is not affected by the proposed development.

**Which part of the property are the views enjoyed from? Are the views obtained from a sitting or standing position?**

The ocean/land interface view is over the front (primary) boundary. A view of the ocean through the trees to the east is over the side boundary (secondary road frontage).

At present views are enjoyed from both seated and standing positions.

**The extent of impact, which rooms are the views enjoyed from?**

The lounge/dining/kitchen areas and master bedroom are the rooms on Lot 9 that enjoy views. However, the views from the dining/kitchen area are predominantly to the east due to the configuration of the dwelling.

At present the lounge room and master bedroom enjoy views from both seated and standing positions. There will be no impact through the proposal on the view obtained from the master bedroom.

Should the proposed development be approved, views from both seated and standing positions to the south-east from the lounge room will be reduced, though not completely lost due to the proposed dwellings side setbacks. The proposed dwelling's roof has a Relative Level (RL) of 48.87m Australian Height Datum (AHD) while Lot 9 has a Finished Floor Level (FFL) of 47.45m AHD at lounge room level (1.42m variance). The view to the east is unaffected by the proposal and is unlikely to be further compromised in the future.

**Assess the reasonableness of the proposal, is the proposed development unreasonable?**

The proposed development is permissible under the Ballina Local Environmental Plan (BLEP 2012) and meets the relevant controls of Ballina Development Control Plan (BDCP 2012), excluding a minor building envelope encroachment (which is a permitted encroachment under the DCP).

The scale of the proposed dwelling is relatively modest in comparison to other dwellings in this locality. Therefore, it is considered that the proposed development is reasonable.

**Quantify**

While there may be potential reduction in viewing plane from the lounge room of Lot 9 it is considered that views will be retained and/or shared especially from a standing position. Further consideration should be applied to the views to the east which are unlikely to be compromised.

The impact on view is considered minor having regard for the planning principles being applied.

At the time of writing this report, an additional submission (included in the Confidential Submissions provided at Attachment 5) relating to suggestions for an alternate design which may mitigate any view loss impact was provided from the residents of Lot 9 to the effect:

- Reducing the roof pitch from 25° to 22.5° degrees, the ridge will lower by approximately 300mm, resulting in a RL 48.30 (change in RL unverified);
- Reducing the roof pitch from 20° degree pitch roof to 18° degrees, the ridge will lower by approximately 250mm, resulting in a RL 48.62 (change in RL unverified); and,

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- Lower the floor level, change the roof design, changing the placement/orientation of the building on the lot or a combination of the above.
- The north/south ridge will obstruct views from Lots 9, 10 and 11.

With regard to the proposed changes, the question of whether providing a 'more skillful' design would reduce the impact, while providing the owners of the development Lot with similar outcomes, is relevant. In this instance it must be considered whether the severity of impact warrants a request for a redesign.

As the view loss summary concludes at the end of the view loss test, it is acknowledged that there will be a reduction in the viewing plane from Lots 9, 10 and 11. However, these views are not lost completely as a result of the development and the notion of view sharing is possible. Furthermore, the 'affected' views from Lots 10 and 11 are over side boundaries which are more difficult to protect.

Given the above it is considered unreasonable to request the applicant to revisit the design of the proposal.



**View from Lot 9 front patio (comparable to lounge room) – standing position. Red arrows indicate height poles.**





View from Lot 9 front patio (comparable to lounge room) – seated position. Red arrows indicate height poles.

#### **Lot 10, 22 Olivia Circuit**

##### **What is the view of?**

As with Lot 9 the subject allotment presently enjoys moderately expansive views of ocean/land interface to the south-east of Skennars Head headland, while not 'iconic' these views are valuable.

##### **Which part of the property are the views enjoyed from? Are the views obtained from a sitting or standing position?**

The view of Skennars Head and ocean are over the side boundary shared with Lot 9.

At present views are enjoyed from both seated and standing positions from areas referenced below.

##### **The extent of impact, which rooms are the views enjoyed from?**

The lounge/dining/kitchen areas, main deck and studio room and deck are the rooms on Lot 10 that enjoy views.

Should the proposed development be approved, views from both seated and standing positions, to the south-east from the lounge/dining/kitchen areas, main deck and studio deck area will be reduced, though not completely lost due to the proposed dwelling side setbacks. The proposed dwelling roof has a RL of 48.87m AHD while Lot 10 has a FFL of 48.05m AHD for the above areas (0.82m variance).



**Assess the reasonableness of the proposal, is the proposed development unreasonable?**

The proposed development is permissible under the Ballina Local Environmental Plan (BLEP 2012) and meets the relevant controls of Ballina Development Control Plan (BDCP 2012), excluding a minor building envelope encroachment (which is a permitted encroachment under the DCP).

The scale of the proposed dwelling is relatively modest in comparison to other dwellings in this locality. Therefore, is considered that the proposal is reasonable.

**Quantify**

While there will be view loss from the lounge/dining/kitchen area, main deck and studio room and deck of Lot 10 it may be considered that significant views may still be retained and/or shared especially from standing positions. Furthermore, it should be acknowledged retaining views over a side boundary is more difficult that over a front boundary.

The impact on view having regard for the planning principles being applied is considered to be minor.



**View from Lot 10 deck area – standing position. Red arrows indicate height poles.**



View from Lot 10 deck area – seated position. Red arrows indicate height poles.



View from Lot 10 dining area – standing position. Red arrows indicate height poles.



**View from Lot 10 Studio deck area – seated position. Red arrows indicate height poles.**

#### **Lot 11, 13 Mosman Chase**

##### **What is the view of?**

The subject allotment presently enjoys fragmented views of ocean/land interface to the south-east and south. The partial view south-east to the ocean and Skennars Head, while not 'iconic' are valuable. The view to the south is moderately expansive over bushland between Skennars Head and further to East Ballina, however, this view is not impacted through the proposal.

##### **Which part of the property are the views enjoyed from? Are the views obtained from a sitting or standing position?**

The view of Skennars Head and ocean is over the front and side boundaries. The side boundary is shared with Lot 10.

At present views are enjoyed from both seated and standing positions from areas referenced below. However, it should be noted that views are enjoyed more from a standing position in the lounge/dining areas. While the kitchen provides views from a seated position.

##### **The extent of impact, which rooms are the views enjoyed from?**

The lounge, dining and kitchen areas are the rooms on Lot 11 that enjoy views.

Should the proposed development be approved, views from both seated and standing positions, to the south-east from the above areas will be reduced, though not completely lost due to the side setbacks of the proposed development. The view loss impact is more significant on this property (compared to others examined) due to the proximity and acute angle of the development site and 'affected' property.



**Assess the reasonableness of the proposal, is the proposed development unreasonable?**

The proposed development is permissible under the Ballina Local Environmental Plan (BLEP 2012) and meets the relevant controls of Ballina Development Control Plan (BDCP 2012), excluding a minor building envelope encroachment (which is a permitted encroachment under the DCP).

Furthermore, the scale of the proposed dwelling is relatively modest in comparison to other dwellings in this locality. Therefore, it is considered that the proposal is reasonable.

**Quantify**

It is probable that substantial view loss will occur from the lounge/dining area of Lot 11. The view from the kitchen is largely unaffected. While the viewing plane will be reduced through the proposal there is still sufficient view sharing potential should the proposal be approved as the view will not be completely lost. Furthermore, it should be acknowledged retaining views over a side boundary is more difficult than over a front boundary.

The impact on view is considered moderate having regard for the planning principles being applied.



**View from Lot 11 lounge area – seated position. Red arrows indicate height poles.**



View from Lot 11 lounge area – standing position. Red arrows indicate height poles.

### View Sharing Summary

The New South Wales Land Environment Court Planning Principles – *Tenacity v Waringah* clearly sets out a four part test for considering impacts on views. The test addresses from which rooms a view may be enjoyed, the orientation of the view (over a front, side or rear boundary), whether the view is from a seated or standing position and whether or not the view is iconic or valuable.

In summary Lot 9 presently enjoys views of ocean/land interface over the front boundary. Lots 10 and 11 enjoy a similar view over their side boundaries. Views over side or rear boundaries are more difficult to protect than those over front boundaries.

Views are presently enjoyed from living areas, both from seated and standing positions, from the dwellings examined. Views from seated positions are more difficult to protect than from a standing position. Views from standing positions, while reduced, will not be lost entirely.

The views currently enjoyed are not considered iconic, however, they are of value to the owners of the above properties.

### *Tenacity v Waringah*

*'The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)...'*

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Given the above it is acknowledged that current views enjoyed will be reduced though not lost completely, therefore, the potential for view sharing occurs.

### **Building Height and Overshadowing**

Objections were received highlighting building height and shadowing as being grounds for concern. Building height is also associated with view loss and shadowing. Each of these elements are addressed individually below.

### **Building Height**

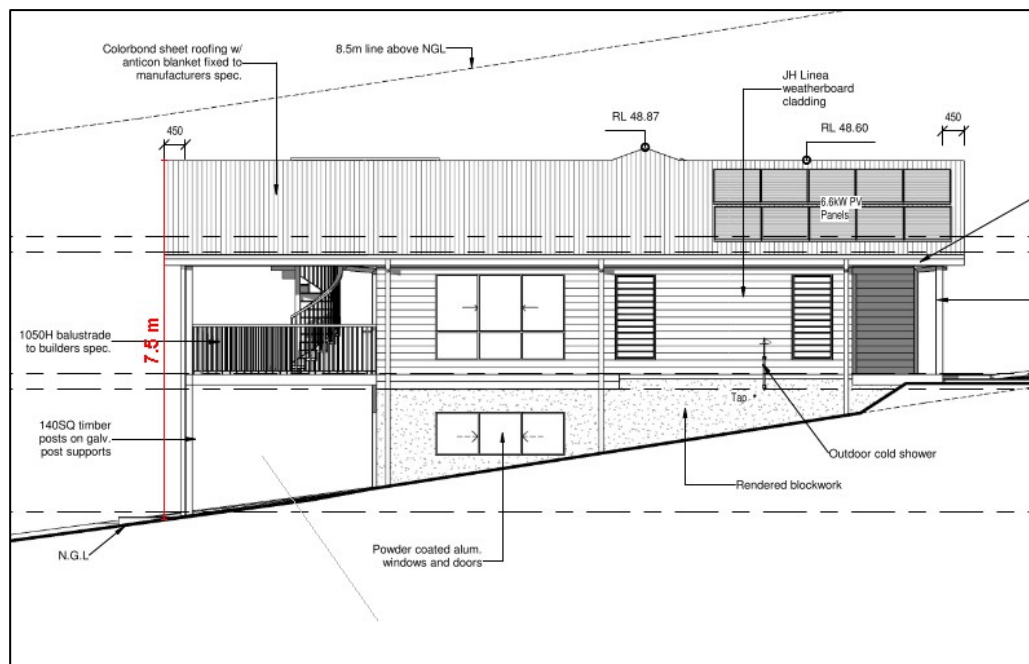
Clause 4.3 of BLEP provides the objectives for building height –

- 1) *The objectives of this clause are as follows—*
  - a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
  - b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*
  - c) *to protect significant views from public places.*
- 2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

### **Comment:**

The referenced map indicates a maximum building height of 8.5m in this locality.

Plans provided indicate that the proposed dwelling will have a building height of approximately 7.5m as indicated below.



**Figure 4: Proposed Building Height**

The proposed dwelling is compatible with the bulk, scale and character of the locality.

Furthermore, shadow diagrams provided indicate there will be no detrimental impact on private open space and/or habitable room windows of surrounding adjoining dwellings.

Clause 4.3(1)(c) requires views from public places to be considered. In this instance, view loss from public places is not an issue of concern. View sharing potential has been addressed extensively above in relation to privately owned properties.

### **Shadowing**

J Element – Solar Access, Chapter 4 of the DCP provides objectives and controls which mitigate overshadowing issues as follows.

#### **Objectives**

- a. *Ensure new dwellings have adequate direct sunlight to living areas (living rooms, lounge rooms, kitchens, dining rooms and the like) and private open space; and*
- b. *Ensure developments do not significantly overshadow living areas and the private open space of adjacent dwellings and areas of foreshore open space.*

#### **Controls**

- i. *Residential accommodation and tourist and visitor accommodation are to be designed so that dwellings are to be orientated with the main indoor and outdoor living spaces and major window areas facing towards the north and east;*
- ii. *The windows of living areas of dwellings and private open space facing north, north east or north west must receive at least three hours of direct sunlight between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*
- iii. *The solar access requirements in (i) and (ii) are not required for development comprising only backpackers accommodation, bed and breakfast accommodation, farm stay accommodation or hotel or motel accommodation.*
- iv. *New buildings must maintain at least three hours of direct sunlight to the windows of living areas that face north, north east or north west for existing adjacent dwellings and their areas of private open space between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*
- v. *Where existing overshadowing by buildings and fences does not provide the required amount of direct sunlight to existing adjacent dwellings and their areas of private open space as required in;*
- vi. *new buildings must not result in an unreasonable reduction of existing direct sunlight to adjoining dwellings;*



## 8.1 DA 2020/446 - Two Storey Dwelling and Earthworks - 28 Mosman Chase

vii. Buildings are to be designed, wherever practicable, to include a north or west facing roof where a solar hot water system or collector can be installed;

viii. New buildings must not result in overshadowing of beaches or adjoining public foreshore open space before 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice) or 6.30pm (Australian Eastern Daylight Saving Time) on 21 December (Summer Solstice).

### Comment:

With regard to overshadowing, shadow diagrams have been provided in support of the application.

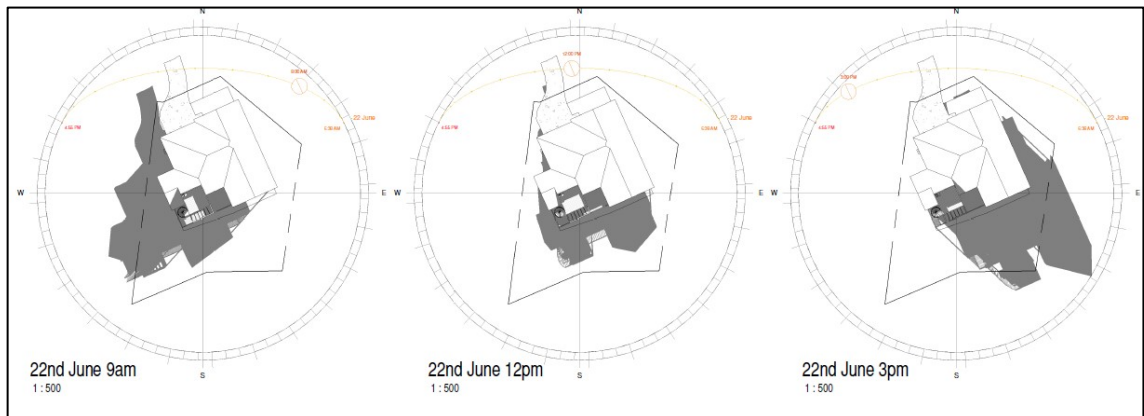


Figure 5: Shadow diagrams depicting shadow cast 22 June. Lot 21 to the west (left) & Lot 19 to the east (right).

The shadow diagrams indicate that all adjoining Lots will receive more than three hours continuous sunlight between 9am and 3pm at the winter solstice.

### Privacy Loss

Element I – Overlooking and Privacy, Chapter 4 of the DCP provides objectives and controls which seek to avoid and reduce privacy impacts.

### **Objectives**

- a. Ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views; and
- b. Provide visual privacy for internal and external spaces;

### **Controls**

- i. A window must have a privacy screen if:
  - a. it is a window in a habitable room, other than a bedroom, and
  - b. the wall in which the window is located has a setback of less than three metres from a side or rear boundary, and



- c. the window has a sill height of less than 1.5 metres and a floor level greater than 1.0m above ground level (existing).*
  - ii. A balcony, deck, patio, pergola, terrace or verandah must have a privacy screen if it:*
    - a. has a setback of less than three metres from a side or rear boundary, and*
    - b. has a floor area of more than three square metres and a floor level greater than 1.0m above ground level (existing).*
    - c. Balconies, decks, pergolas, terraces or verandahs that are within three metres of side or rear boundaries and require privacy screens are not permitted within the articulation zone.*
  - iii. For residential accommodation (excluding secondary dwellings on R2 zoned land) and tourist and visitor accommodation involving multiple dwellings on the same site, direct views between habitable rooms, other than bedrooms, shall be screened where:*
    - a. Ground and first floor windows are within a nine metre radius from any part of the window of an adjacent dwelling on the same site, and*
    - b. Other floor windows are within a 12 metre radius of an adjacent dwelling on the same site, and*
    - c. Direct views from habitable rooms, excluding bedrooms, of dwellings into the principal area of private open space of other dwellings on the same site shall be screened or obscured where they are within a 12 metre radius.*
  - iv. Details of privacy screening required in (i)-(iii) must be submitted with the development application and may consist of:*
    - a. Screening that has 25% openings (maximum), is permanently fixed and is constructed of durable materials, or*
    - b. A 1.8 metre high visually impervious fence or wall between a ground-level balcony, deck, patio, pergola, terrace, verandah or window where the floor level is not more than one metre above ground level (existing), or*
    - c. Landscape screening by using existing dense vegetation or new planting that can achieve a 75% screening effectiveness within three years (without affecting solar access or views), or*
    - d. Fixed opaque glazing in any part of a window below 1.5 m above floor level.*

**Controls – additional privacy requirements for roof terraces**

- i. Roof top terraces and associated structures shall be designed so their size and location does not impose upon or have unreasonable impacts on the privacy adjoining dwellings; and*

- ii. *Awnings and coverings on roof terraces must be located within the applicable height limits for structures and must not unduly obstruct views from surrounding properties; and*
- iii. *Roof terraces are to be appropriately located and screened to prevent direct views into habitable rooms or private open space of any adjoining dwellings.*

**Comment:**

Element I of Chapter 4 of the DCP sets out provisions addressing overlooking and privacy. The provisions specify that elevated deck areas or windows in habitable room windows (excluding bedrooms) with a floor level greater than 1m above ground level and within 3m of an allotment boundary are to include privacy controls.

The proposed design ensures all elevated windows in habitable rooms, other than bedrooms, and deck areas have a boundary setback greater than 3m.

The proposed development includes a roof terrace. Element I does not provide a numeric control criteria with regard to roof terraces.

The roof terrace has a setback distance of 6.3m to the western boundary, which is substantially the shortest setback distance. The adjoining dwelling has a setback of approximately 1.5m to private open space.

**Roof Terrace**

The New South Wales Land Environment Court Planning Principles – *Meriton v Sydney City Council* provides guidance on assessing privacy and suggests that any generalised numerical guidelines need to be applied with a great deal of judgement.

The Planning Principle from *Meriton v Sydney City Council* states:

*Taking into consideration density, separation, use and design. The following principles may assist.*

- a. *The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*
- b. *Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

- c. The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*
- d. Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*
- e. Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*
- f. Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*
- g. Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*
- h. In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

### **Density**

Although the lots are zoned low density residential, the FSR controls and required setbacks allow for a substantial building footprint and buildings to be constructed in close proximity to those on adjoining lots. Complete protection of privacy is not achievable in urban environments such as these.

### **Separation**

Although the planning principle refers to windows, in applying this to the roof terrace, the roof terrace is offset from the property boundaries and not directly facing the adjoining lots.

### **Use**

Due to the roof terrace being unroofed and small in size, is likely to be used infrequently and for short durations by only a small number of people at times when private open spaces are occupied on adjoining lots.

### **Design**

The roof terrace is not of a poor design.

The roof terrace, will be required to have a 1.0m high balustrade to comply with the Building Code of Australia. If this balustrade was to be of obscure glass, this would provide an increased level of privacy to adjoining lots from occupants using the roof terrace in a sitting position.

Additional privacy screening of the roof terrace has been indicated on revised plans. This will assist in improving privacy to both properties and would be unlikely to detract from any views.

### **Options**

The following options are available to Council:

*Option 1: Council could refuse the application for a Two Storey Dwelling and Earthworks on the grounds of view loss.*

*Option 2: Council could approve the application for a Two Storey Dwelling and Earthworks subject to conditions.*

*Option 3: Council could defer determination of the application to seek additional information.*

Option 2, to approve the application with conditions is the recommended option, for the reasons outlined in this report.

### **Conclusion**

The Section 88B restriction referred to in the objections is not a covenant imposed, or required, by Council and the underlying subdivision development consent carries no conditions that required the abovementioned restriction to be included in the S.88B. The restriction was imposed by the developer.

Furthermore, Council records indicate that elements of the same restriction have been relaxed previously on lots 10 and 17. In both instances dwellings on these allotments have floor levels that exceed 1m above natural ground level.

The view loss test concluded that at present views of ocean/land interface are enjoyed from lots 9, 10 and 11. The views are more substantial from Lots 9 and 10, with only a slender view available from Lot 11.

There is potential for viewing to be retained from the habitable areas of all of these properties.

Lot 11 has the greatest partial view loss due to the slender amount of views currently obtained. Due to its orientation, distance from the development site and existing obstructing vegetation, it is unreasonable to expect that this view would be maintained.

There will be ocean and land views remaining across the development site from Lots 9 and 10, over and past the proposed development.

Lot 9 will also continue to have the partial ocean view to the east, that will be unaffected by the proposed development.

## **8.1 DA 2020/446 - Two Storey Dwelling and Earthworks - 28 Mosman Chase**

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The applicant has provided privacy control measures for the roof terrace in the form of a solid balustrade for the whole terrace and privacy screening on its western elevation.

Should consent be granted, these measures will be indicated on the approval plans in conjunction with a condition being applied to the consent that any privacy measures are provided prior to the release of an Occupation Certificate.

The subject development is permissible with consent in the R2 - Low Density Residential zone of the BLEP.

The development has been assessed against the relevant considerations under the Section 4.15 of the Environmental Planning and Assessment Act 1979, including the provisions of BLEP and the DCP.

### **RECOMMENDATION**

That Development Application 2020/446 to construct a two storey dwelling and undertake earthworks at Lot 20 DP 1250165, 28 Mosman Chase, Lennox Head be **APPROVED** subject to standard conditions for this type of development.

### **Attachment(s)**

1. Section 4.15 Assessment
2. Revised DA Plan Set Including Privacy Measures & BASIX Requirements - 28 Mosman Chase, Lennox Head
3. Section 88B - 28 Mosman Chase, Lennox Head
4. Confidential Submissions
5. Submissions
6. Visual Impact Statement

## 8.2 DA 2019/669 - Two Lot Torrens Title Subdivision - 23 Skinner Street

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## 8.2 DA 2019/669 - Two Lot Torrens Title Subdivision - 23 Skinner Street

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<b>Applicant</b>	Victor Holmes Town Planning
<b>Property</b>	Lot 1 587542, No. 23 Skinner Street, Ballina
<b>Proposal</b>	Two lot Torrens Title subdivision to create one x 600 m <sup>2</sup> allotment and one x 539m <sup>2</sup> allotment (below the 600 m <sup>2</sup> minimum lot size development standard of the Ballina LEP 2012), demolition of gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works
<b>Effect of Planning Instrument</b>	The land is zoned R2 Low Density Residential under the provisions of the Ballina LEP 2012
<b>Locality Plan</b>	The subject land is depicted on the locality plan contained in Attachment 1

### Introduction

Council is in receipt of Development Application DA 2019/669 to undertake a two lot Torrens Title Subdivision to create one x 600 m<sup>2</sup> allotment and one x 539m<sup>2</sup> allotment at Lot 1 587542, No. 23 Skinner Street, Ballina.

The purpose of this report is to seek Council's determination of the subject application, given the proposal seeks a variation to *Clause 4.1 Minimum lot size* under the Ballina Local Environmental Plan (BLEP) 2012, which relates to a numerical development standard and the proposed variation is greater than 10%.

To assist Council in its consideration and determination of this application, this report outlines the background of the subject lot and provides an assessment of the variation to a development standard via Clause 4.6 of the BLEP 2012 and the key relevant matters of the proposal under Section 4.15 of the Environmental Planning and Assessment Act (EP & A Act) 1979.

The full Section 4.15 report, which provides an assessment of all required matters under the EP & A Act 1979, is contained in Attachment 2.

### Details of Proposal

The proposal seeks to create two Torrens Title lots with proposed Lot 111 having an area of 539 m<sup>2</sup>. This lot will contain the existing dwelling.

Proposed Lot 112 has an area of 600 m<sup>2</sup> and will be vacant land. The subject site has a total area of 1,139 m<sup>2</sup> and is zoned R2 Low Density Residential under the Ballina Local Environmental Plan (BLEP) 2012.

The proposal also involves the demolition of a gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works.

8.2 DA 2019/669 - Two Lot Torrens Title Subdivision - 23 Skinner Street

A plan of the proposed vegetation management works is provided below (Figure 1):

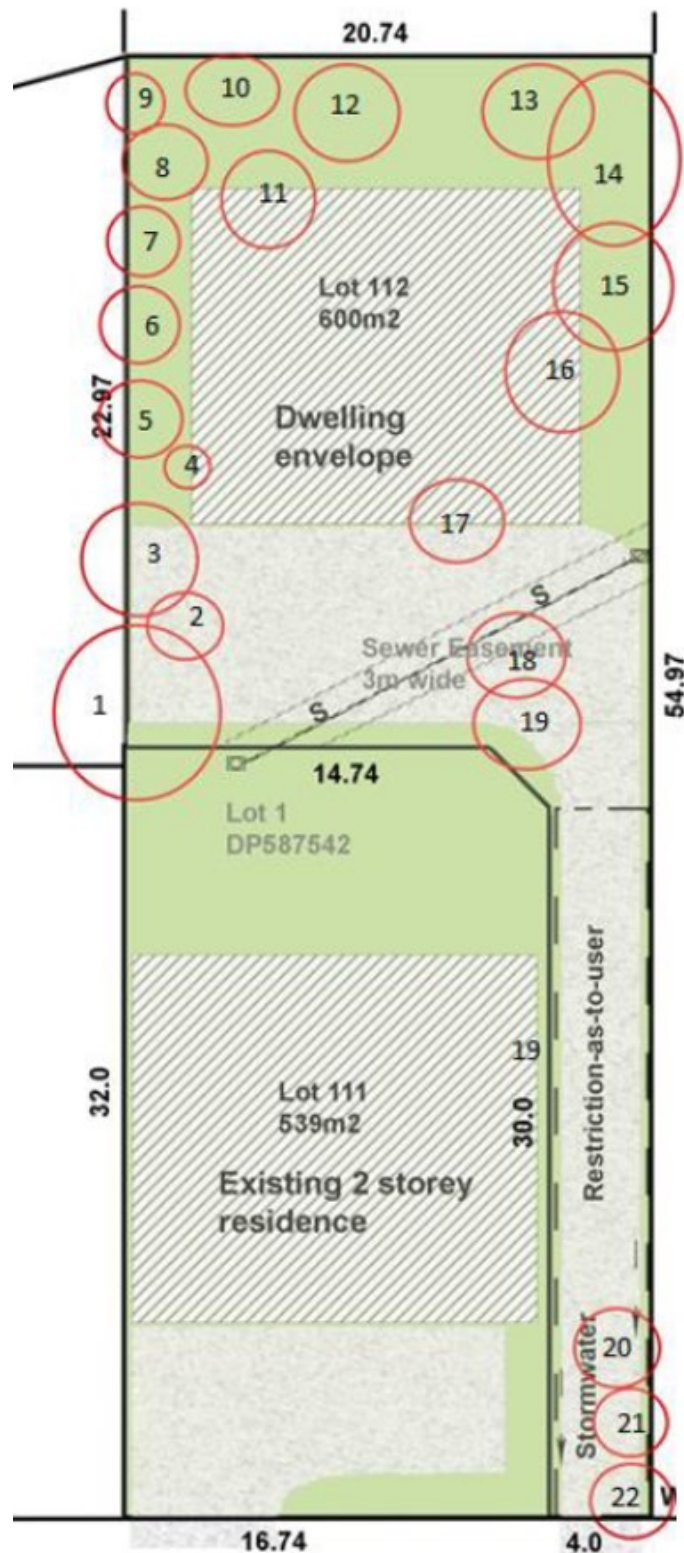


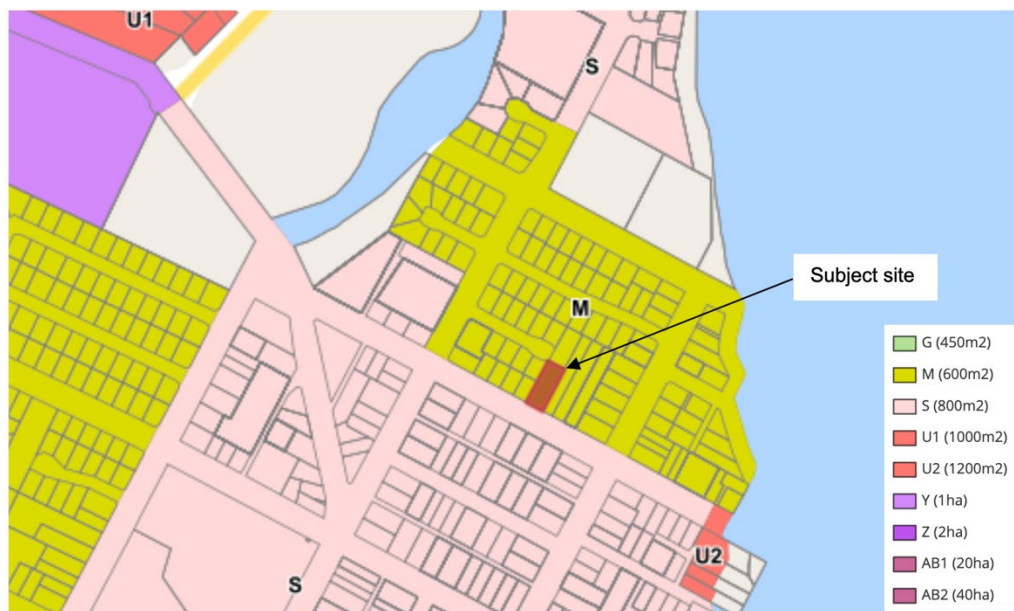
Figure 1: Plan of proposed vegetation management works

## 8.2 DA 2019/669 - Two Lot Torrens Title Subdivision - 23 Skinner Street

The proposal will result in the following lot areas:

Proposed Lot	Area and Shape	Improvements	Road Frontage	Access
111	539m <sup>2</sup>	Existing dwelling house	Skinner Street	Via existing kerb crossing/driveway to Skinner Street
112	600m <sup>2</sup>	Vacant (carport, swimming pool and gazebo to be demolished)	Skinner Street	Via new battle-axe access handle from Skinner Street

The subject site has a minimum lot size standard of 600m<sup>2</sup> under the provisions of the BLEP 2012 (Figure 2). Proposed Lot 111 with an area of 539m<sup>2</sup> does not comply with the development standard.



**Figure 2: Colour code of minimum lot sizes within the immediate and surrounding locality. Key within figure identifies the colour code of the minimum lot sizes (i.e. M – 600m<sup>2</sup>)**

Despite the departure from the minimum lot size, the applicant has demonstrated that proposed Lot 112 is sufficient in size and dimension in order to accommodate a future dwelling house by providing a concept building envelope (refer to Figure 3):



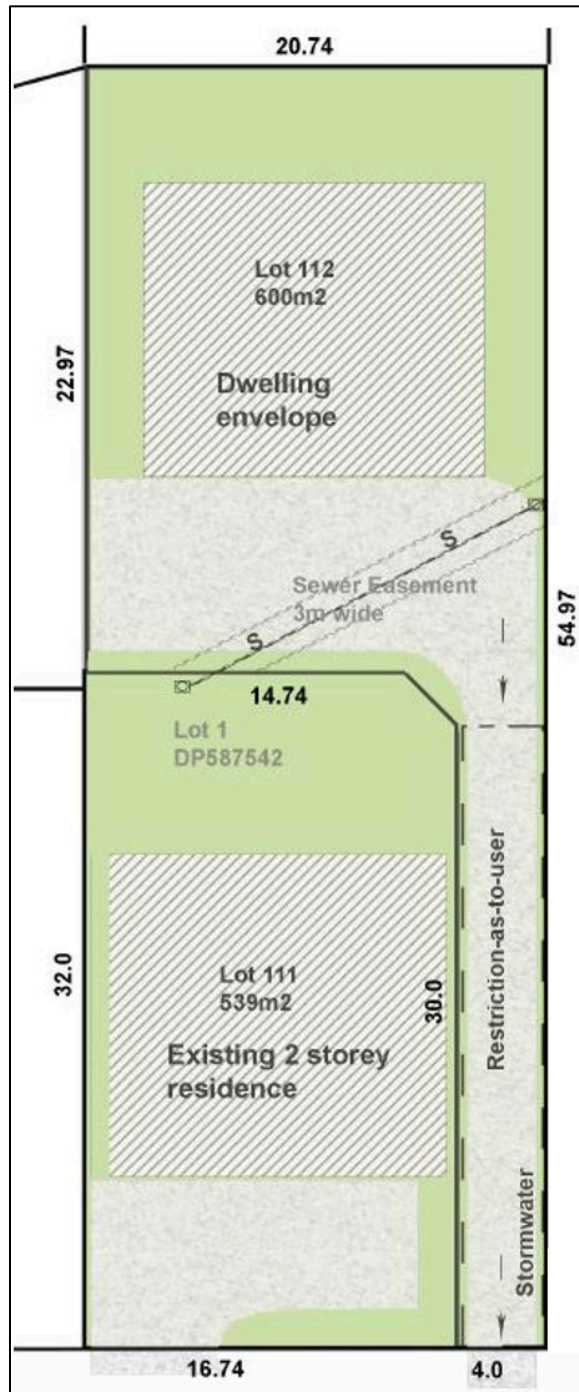


Figure 3: Proposed lot layout and lot size

### Description of the Subject Site

The subject land (as shown in Attachment 1) is rectangular in shape, with the following dimensions and area:

- 20.739m northern boundary (adjoining Lot 2 DP 587542)
- 54.976m eastern boundary (adjoining Lot 2 DP 500728)
- 54.876m western boundary (adjoining Lot 17 DP 238257 and Lot 5 DP 232807)
- 20.739m southern boundary (to Skinner Street)
- 1,139m<sup>2</sup> site area

## **8.2 DA 2019/669 - Two Lot Torrens Title Subdivision - 23 Skinner Street**

Existing on the land is a two storey brick and tile dwelling house and carport with a gazebo, mature domestic landscaping and swimming pool.

Vehicular access to the site is currently obtained via two kerb crossings/driveways to Skinner Street.

The locality is characterised by a mix of single and double storey dwelling houses.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

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

### **Public Exhibition**

The application was placed on public exhibition in accordance with Council's Community Participation Plan. Council received three submissions in relation to the proposal. The main concerns raised in the proposal relate to stormwater and drainage and vegetation removal.

The key matters raised within the three submissions are summarised and addressed in the Matters for Consideration section of this report.

The submissions received are provided in Attachment 4.

### **Report**

#### **Matters for Consideration**

The proposed development has been assessed under the heads of consideration in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The assessment has identified the following key issues in relation to this development application which are elaborated upon for the consideration of the elected members of Council.

This report should be read in conjunction with the attached Section 4.15 assessment report (Attachment 2).

#### **Section 4.15(1)(a)(i) provisions of any environmental planning instrument**

SEPP 55 – Remediation of Land SEPP (Coastal Management) 2018	No issues are raised in relation to any applicable SEPP. Refer to Attachment 2 for further comment and assessment.
Ballina Local Environmental Plan 2012	The proposal generally complies with the aims of the BLEP 2012. The application seeks a variation to Clause 4.1 – Minimum Lot Size for proposed Lot 111 via Clause 4.6 of the BLEP 2012.

	<p>Clause 4.1 is discussed below.</p> <p>The assessment of the request for variation via Clause 4.6 has been elaborated upon for Council's consideration.</p> <p>Refer to Attachment 2 for further comment and assessment of the relevant controls (Clauses 1.2, 1.4, 2.3, 2.6, 2.7, 7.1, 7.2, 7.3, 7.7).</p>
<p>Clause 4.1 Minimum Lot Size</p>	
	<p>Clause 4.1 provides that the size of any lot resulting from subdivision of any land is not to be less than the minimum lot size shown on the Lot Size Map. The subject land has a minimum lot size of 600m<sup>2</sup>.</p> <p>Proposed Lot 111 (existing dwelling lot) will result in an area of 539m<sup>2</sup>, which does not comply with the development standard.</p> <p>Proposed Lot 112 (vacant lot) will result in an area of 600m<sup>2</sup>, which complies with the standard.</p> <p>The applicant has submitted a written request to vary the standard pursuant to Clause 4.6 of the BLEP 2012. Refer below for comment in relation to Clause 4.6.</p>
<p>Clause 4.6 – Exceptions to development standards</p>	
<p>a) What is the development standard being varied?</p>	<p>Clause 4.1 – Minimum lot size. The minimum lot size as shown on the Lot Size Map for the land is 600m<sup>2</sup>.</p> <p>Proposed Lot 112 has an area of 600m<sup>2</sup> and complies with the minimum lot size development standard, within Clause 4.1. No further discussion in the context of Clause 4.6 is required in relation to Proposed Lot 112, given its compliance with the standard.</p> <p>Proposed Lot 111 has an area of 539m<sup>2</sup> and as a result does not comply with the minimum lot size.</p> <p>In relation to the assessment of Proposed Lot 111 and Clause 4.6, the following comments are made.</p> <p>The objectives of Clause 4.1(1) are as follows:</p> <p>(a) To ensure that subdivision is compatible with the character of the locality,</p>

	<p>(b) To ensure that in the case of urban areas –</p> <ul style="list-style-type: none"> <li>(i) The subdivision pattern reflects and reinforces the current or planned subdivision pattern of the locality, and</li> <li>(ii) Lot configurations are suitable to enable development that is consistent with relevant development controls.</li> <li>(iii) Not applicable in this instance.</li> </ul> <p>Proposed Lot 111 will result in a total land area of 539m<sup>2</sup>, which is below the minimum lot size for the land. The numerical departure is 61m<sup>2</sup> and the percentage departure is 11.3%.</p>
<p>b) What is the underlying objective of this development standard?</p>	<p>The underlying objective is to ensure that the proposed lot size is reflective of the existing and planned subdivision pattern and that the lot size and configuration is adequate to accommodate development that is capable of compliance with Council's controls.</p>
<p>c) In accordance with Clause 4.6 of the BLEP 2012:</p> <ul style="list-style-type: none"> <li>• Has the applicant's written request adequately addressed the matters required to be demonstrated by subclause (3) of Clause 4.6? (i.e. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard)?</li> </ul>	<p>To determine whether there are sufficient grounds to support the Clause 4.6 objection, it is necessary to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.</p> <ul style="list-style-type: none"> <li>• The applicant has submitted: <ul style="list-style-type: none"> <li>- The proposal will be entirely compatible and consistent with the general range of adjoining and adjacent lot sizes in the immediate locality of the site.</li> <li>- The proposal achieves an acceptable planning outcome in accommodating existing</li> </ul> </li> </ul>

<ul style="list-style-type: none"><li>• Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, as required pursuant to subclause (4) of Clause 4.6?</li></ul>	<p>development and use as proposed.</p> <ul style="list-style-type: none"><li>- The proposal makes every provisions for services installation, off-street car parking, site filling mitigate flooding and ponding impacts, and, with exception for the proposed variation, complies in all other respects with applicable development standards.</li><li>- Although having an area less than the minimum lot size, proposed Lot 111 is configured around existing development and comprises sufficient land area to accommodate resident and visitor vehicular parking and access, private open space, drying and waste storage areas and building line and side boundary setbacks (with the exception for the proposal of a zero side boundary setback justified by the proposal to include restrictions-as-to-user burdening the access handle to adjoining Lot 112. This matter is further discussed in Attachment 2.</li><li>- The lot sizes proposed are compatible and consistent with the surrounding subdivision pattern and provide opportunity for the construction of a range of building styles and footprints.</li></ul> <p>With regard to the above, Council is satisfied that the applicant has adequately justified the departure from the minimum lot size and has satisfied the requirements of Clause 4.6(3).</p>
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	<ul style="list-style-type: none"><li>• The objective of the minimum subdivision lot size standard is as follows:<ul style="list-style-type: none"><li>(a) To ensure that subdivision is compatible with the character of the locality,</li><li>(b) To ensure that in the case of urban areas<ul style="list-style-type: none"><li>(i) The subdivision pattern reflects and reinforces the current or planned subdivision pattern of the locality, and</li><li>(ii) Lot configurations are suitable to enable development that is consistent with relevant development controls.</li></ul></li></ul></li></ul> <p>The creation of one additional residential lot with a land area of 539m<sup>2</sup> is reflective of the existing subdivision pattern within the immediate locality. As mentioned previously, the allotments within the locality range from 461m<sup>2</sup> to 1,522.6m<sup>2</sup> (excluding the subject site) and only 23% of these allotments comply with the minimum lot size development standard. Further to this, the average lot size is 576.15m<sup>2</sup>.</p> <p>The proposal to create one additional lot which is consistent with the average lot size within the immediate locality is compatible with the character of the locality and reflects the current subdivision pattern. In view of the above, it is therefore considered that the proposal is consistent with the objectives of the minimum lot size standard.</p> <p>In relation to the objectives of the R2 zone, it has been satisfactorily demonstrated that the proposed subdivision layout is adequate in size and dimension for low density residential development. The</p>
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	<p>proposed lot layout is consistent with the existing subdivision layout in the immediate locality. As stated previously, the proposed lot layout is consistent with the average lot size in the locality and therefore will be compatible with the existing character and amenity of the locality.</p> <p>The proposal is considered to be consistent with the objectives of the R2 zone by providing for additional land for the housing needs of the community within a low density residential environment.</p> <p>Having regard for the above, the development is considered to be in the public interest.</p>
<p>d) Will the cumulative effect of similar approvals undermine the objective of the development standard or the objectives of the zone?</p>	<p>The circumstances of the proposal are such that the vast majority of the allotments within the immediate and surrounding locality do not have the land available or of an area to allow for subdivision in the same manner (refer to Figure 3).</p> <p>It has been satisfactorily demonstrated that proposed Lot 111 meets the objectives of the standard and the objectives of the zone, despite non-compliance with the standard. Further to this, the proposed subdivision layout is consistent with the character of the locality and proposed Lot 111 will have sufficient area to contain the existing dwelling. Refer to Attachment 2 for discussion regarding the distance of the existing dwelling to be retained to the new boundary.</p> <p>Therefore, it is unlikely that this proposal would set a precedent that would undermine the objective of the standard or the objectives of the zone.</p>
<p>e) The Five Part Test (Note: Established by the NSW Land and Environment Court). Only one test needs to be satisfied.</p> <p>1.</p>	<p>Proposed Lot 111 involves the creation of one lot with an area of 539m<sup>2</sup>, which is an 11.3% departure from the minimum lot size of 600m<sup>2</sup>. Therefore, to determine a variation to a development standard under Clause 4.6, Council needs to be satisfied that compliance with the</p>

	<p>standard is unreasonable and unnecessary in the circumstances. To demonstrate the above, Council can apply one of the justifications (Five Part Test) established in <i>Wehbe v Pittwater Council</i> [2007] NSWLEC 827. The applicant has not specifically identified the test in which they rely to support the Clause 4.6 request. However, Council is to assume that Test 1 is of relevance as the applicant has justified the departure on the basis that proposed Lot 2 is consistent with the objectives of the standard. Test 1 provides whether the objectives of the standard can be achieved despite the non-compliance with the development standard specified by Clause 4.1. The objectives of Clause 4.1 are specifically stated and are as follows:</p> <ul style="list-style-type: none"><li>(a) To ensure that subdivision is compatible with the character of the locality,</li><li>(b) To ensure that in the case of urban areas –<ul style="list-style-type: none"><li>(i) The subdivision pattern reflects and reinforces the current or planned subdivision pattern of the locality, and</li><li>(ii) Lot configurations are suitable to enable development that is consistent with relevant development controls.</li></ul></li></ul> <p>Proposed Lot 2 is consistent with the size, shape and subdivision pattern within the locality. Further to this, the proposal will result in a lot layout that is reflective of the existing character of the locality. This is on the basis that the residential allotments in the immediate locality range from 461m<sup>2</sup> to 1,522.6m<sup>2</sup> (excluding the subject land) and the subject land is 1,139m<sup>2</sup>, which significantly exceeds the lot sizes within the immediate locality.</p>
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	<p>Proposed Lot 111 is generally consistent with the objectives of the standard in that it will provide for a lot that is compatible with the existing subdivision layout in the immediate vicinity and surrounding locality. It has been demonstrated that proposed Lot 111 is of sufficient area to contain the existing dwelling and proposed Lot 112 is of a suitable size and dimension to enable a future dwelling house that can comply with Council's development controls.</p> <p>Given that only one test within the Five Part Test needs to be satisfied, the remaining tests have not been assessed further to support the justification of the application.</p>
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**Section 4.15(1)(a)(ii) the provisions of any proposed instrument**

<p>Draft State Environmental Planning Policy – Remediation of Land</p> <p>Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019</p>	<p>No issues raised in relation to any Draft SEPP.</p>
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**Section 4.15(1)(a)(iii) provisions of any development control plan**

<b>Ballina Shire Development Control Plan 2012</b>	
<p>Chapter 2 – General and Environmental Considerations</p> <ul style="list-style-type: none"> <li>• 3.4 – Potentially Contaminated Land</li> <li>• 3.6 – Mosquito Management</li> <li>• 3.7 – Waste Management</li> <li>• 3.9 – Stormwater Management</li> <li>• 3.10 – Sediment and Erosion Control</li> <li>• 3.11 – Provision of Services</li> <li>• 3.19 – Car Parking and Access</li> </ul>	<p><u>Part 2 Chapter Planning Objectives</u></p> <p>The proposed development is generally consistent with the planning objectives and controls of this chapter. There are no issues raised in this section that would specifically preclude the development from being granted development consent, subject to the imposition of conditions, where relevant.</p> <p>Refer to Attachment 2 for an assessment of the clauses that are relevant to this application.</p>
<p>Chapter 3 – Urban Subdivision</p>	<p><u>Chapter 3 Minor Subdivision Elements</u></p> <p>The overarching objectives have been considered in relation to the</p>

	<p>proposal. The proposal is for a two lot Torrens Title subdivision of an existing residential lot, which is zoned R2 Low Density Residential under the BLEP 2012. The proposal has satisfactorily demonstrated a general compliance with the relevant controls of this chapter and as such, no issues are raised that would specifically preclude the development from being granted consent. Refer to Attachment 2 for an assessment of the controls that are relevant to this application.</p>
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**4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

None applicable.

**4.15 (1) (a) (iv) – any matters prescribed by the regulations**

No issues raised. Refer to Attachment 2 for further comment.

**4.15 (1) (b) – the likely impacts of that development**

The proposal is not expected to result in adverse impacts to the environment or broader locality, subject to compliance with conditions. Refer to Attachment 2 for further assessment in relation to the likely impacts of the development.

**4.15 (1) (c) – the suitability of the site for the development**

The subject site is considered to be suitable for the proposed two lot subdivision. Refer to Attachment 2 for further assessment of the suitability of the site for the development.

**4.15 (1) (d) – any submission made in accordance with this Act or the Regulations?**

Is advertising required because the development is designated or “advertised” development?	No
Is advertising required in accordance with established Council policy and practice?	Yes
If YES, how many submissions were received?	Three

<b>Public Submissions:</b>	
<b>Issues Raised:</b>	<b>Response:</b>
Runoff and drainage impacts on adjoining properties	<p>Concerns were raised regarding impacts on adjoining properties as a result of site filling. Specific reference was made to the impacts resulting from a five unit development at No. 17 Skinner Street, approved via DA 1996/4.</p> <p>On 7 December 2019, Council requested the applicant provide an assessment of the existing surface levels and drainage paths in the allotments directly adjoining the development (i.e. No. 25 Skinner Street, No. 9 Prosper Place, No. 14 Prosper Place and No. 21 Skinner Street).</p> <p>The levels are required to be determined by survey to establish the existing overland drainage arrangements at and around the development. Sufficient information must be provided to demonstrate that the development will not have a negative impact on stormwater drainage in the adjoining properties.</p> <p>This information was included in a report from the applicant prepared by Peter Lucena &amp; Associates, Titled: Engineering Assessment for Stormwater, Dated: 20 July 2020.</p> <p>The report identifies that some areas of the surrounding properties currently drain towards and through the development site. The design proposed for the development therefore includes a 1,100mm wide concrete dish drain along the entire perimeter of the site to ensure stormwater from these sites continues to be conveyed to the street drainage system. Conditions are recommended in this regard.</p> <p>Council's Civil Services Division has commented that the properties in this locality have relatively low</p>

	<p>ground heights and therefore will always experience some localised flooding during heavy rainfall events. However, the proposed design ensures a suitable drainage flow path is provided for the adjoining properties.</p>
<p>Overhanging vegetation</p>	<p>The proposal includes the pruning and removal of existing vegetation within the rear of the property, including a number of trees along the property boundaries (refer to Figure 1).</p> <p>12 trees are to be removed in total.</p> <p>The submissions received have requested consideration be given to the pruning of vegetation overhanging into adjoining properties, in addition to the removal of the 12 trees.</p> <p>Within the documentation submitted with the application, the applicant has indicated that considerable pruning of existing Lilly pillys lining the boundaries of proposed Lot 112 forms part of the proposal.</p> <p>The applicant has also provided the following response to this concern on 2 March 2020:</p> <p style="text-align: center;"><i>On the matter of vegetation overhanging adjoining properties, this is proposed to be cleared as part of the overall work to develop the site and will accord with the vegetation management plan submitted with the DA.</i></p> <p>This pruning will assist in alleviating these concerns.</p> <p>It should be noted that while Council is the appropriate regulatory authority for the removal of vegetation on urban land which is subject to the provisions of Chapter 2a of the Development Control Plan 2012, Council is</p>

	<p>unable to order or require the pruning or removal of vegetation on private land.</p> <p>Overhanging vegetation is a civil matter between neighbours. In the case of any disputes, parties should seek their own legal advice.</p>
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#### 4.15(1) (e) – the Public Interest

The proposal will result in additional housing stock into the market and is considered to be in the interest of the community, with the approval of the variation to the development standard. Refer to Attachment 2 – Section 4.15 Assessment for further comment.

#### Conclusion

The application has been assessed having regard to the relevant matters for consideration prescribed by Section 4.15 of the *Environmental Planning and Assessment Act 1979*, including the provisions of the *Ballina Local Environmental Plan 2012*, the *Ballina Development Control Plan 2012* and the submissions made in response to the exhibition of the proposal.

The applicant has satisfactorily demonstrated that there are sufficient environmental planning grounds to justify the variation to the development standard.

The proposal is suitable within the locality and is generally consistent with the objectives of the R2 Low Density zone and the objectives of the standard can be achieved, despite the variation to Clause 4.1 Minimum lot size.

The matters raised within the three submissions received in relation to the proposal have been adequately addressed with this assessment and the Section 4.15 assessment report contained in Attachment 2.

Having regard for the outcomes of the assessment undertaken, Council has the following options with regard to determining the application.

#### *Option 1 - Approve the Application*

Council approves the development application for a two lot Torrens Title subdivision and demolition of a gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works, subject to standard planning, building, civil and environmental health conditions.

Approval would be on the basis that Council is satisfied that the proposal has adequately demonstrated that the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.1 minimum lot size will be achieved despite the variation to the minimum lot size for proposed Lot 112.

Option 1, being to grant consent to the application, is recommended for the reasons outlined in this report.

*Option 2 - Refuse the Application*

Council refuse the development application. This option could be taken if Council considers that the departure from the minimum lot size is excessive and is not satisfied that the proposal is consistent with the objectives of the standard or the objectives of the R2 Low Density Residential zone.

It may be difficult defending an appeal in this regard, given the objectives of the development standard and the objective of the R2 zone have been met despite the non-compliance.

Further to this, the existing subdivision layout in the locality contains a number of allotments that do not comply with the applicable 600m<sup>2</sup> minimum lot size standard.

This approach is not recommended.

**RECOMMENDATION**

That Development Application 2019/669 to undertake a two lot Torrens Title Subdivision to create one x 600m<sup>2</sup> allotment and one x 539m<sup>2</sup> allotment and demolition of gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works at Lot 1 587542, No. 23 Skinner Street, Ballina be **APPROVED** subject to application of conditions referred to within this report and standard planning, civil engineering and environmental health conditions.

**Attachment(s)**

1. Locality Map
2. Section 4.15 Assessment Report
3. Variation Request
4. Public Submissions
5. Subdivision Plan
6. Draft Conditions

### 8.3 Dog Management - Lennox Head Surf Club Reserve

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#### 8.3 Dog Management - Lennox Head Surf Club Reserve

**Delivery Program**

Environmental and Public Health

**Objective**

To review dog access and restrictions for the foreshore reserve area adjacent to the Lennox Head Surf Club.

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#### **Background**

Council considered a Notice of Motion regarding dog management adjacent to the Lennox Head Surf Club at the Ordinary meeting held 27 August 2020 and resolved as follows:

*'That Council hold a briefing with the aim of expanding the on-leash dog area north of the Lennox Surf Club that links up with the existing dog on-leash beach entrance.'*

A briefing and on-site inspection was held on 15 September 2020.

This report seeks direction on the management approach to be applied to the reserve area in the vicinity of the surf club.

#### **Key Issues**

- Dog access and restrictions
- Compliance and regulatory action
- Operation and uses at the Surf Life Saving Club
- Reserve amenity and facilities

#### **Information**

In October 2019 Council considered a report on the dog access arrangements for the Lake Ainsworth Precinct including the foreshore reserve adjacent to the Lennox Head Surf Club and Seven Mile Beach.

The arrangements that are currently in place at the Lennox Head Surf Club foreshore reserve are those that were adopted at that time.

The existing configuration of the reserve in relation to dog access is showing in Figure 1.

This area is continuing to become popular and frequented by a range of users. There is concern regarding the accessibility and congestion by different user groups, including in relation to the presence of dogs in the reserve.

The changes in 2019 sought to balance access to, and the use of, the foreshore reserve and to support ongoing management of the area from a compliance perspective for Council's rangers.

### 8.3 Dog Management - Lennox Head Surf Club Reserve

In the early months post implementation of the changes, compliance and understanding in the area was good. However current performance indicates an increase in disregard for the current rules.



**Figure 1: Current dog access arrangements – surf club foreshore reserve  
Lennox Head**

A significant portion of the people that frequent this area with dogs appear to do so in order to use the pathway to access the off leash dog exercise area on Seven Mile Beach. Additionally there are dog owners that also want to recreate and access the kiosk and foreshore reserve.

The kiosk operations continue to be popular and there is regular activity of a variety of scales associated with the surf club.

Currently there are compliance matters relating to the surf club building and use of the reserve under investigation, with staff expecting to issue correspondence to the surf club as the occupier of the building and a user of the reserve shortly. Some of the matters being reviewed relate to how the building is being used and use of the reserve.



### **8.3 Dog Management - Lennox Head Surf Club Reserve**

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Specifically in relation to dog access to the reserve there have been ten submissions to Council over the last month.

A petition, attached to the 27 August 2020 Notice of Motion requesting a greater dog on leash area on the reserve, has also been received.

There are a variety of options for the configuration of the dog access arrangements within the reserve ranging from prohibition of dogs throughout the reserve (aside from on the beach access path) to enabling dogs on leash throughout the reserve.

With a mixture of dog prohibition and on leash access, there are numerous ways this could be done each with advantages and disadvantages.

Examples include options raised by Councillors including a widening of the pathway corridor for dogs on leash by 18m and allowing dogs on leash north of the pathway.

Having distilled the options, staff have identified two particular options for consideration as shown in the following plans.

One option seeks to create an extended area adjacent to the beach access path and the other provides for a greater area of dog on leash access between the path and the surf club.

These options have been proposed on the basis of enabling a greater area for dogs on leash and practicality of defining the on leash areas to support community understanding and ultimately enforcement.

No fencing to delineate dog access areas within the reserve is proposed under either option. Demarcation of areas would be by way of signage and on ground markers (set into the ground).

The proposal to have a nominated area on the reserve as indicated in Figure 3 and highlighted in yellow (or similar) is not supported by staff because of the disconnection and isolation of this area in the reserve from the existing on leash area and the kiosk.

It has been suggested that a dog parking station where dogs can be tied or hitched maybe an option.

These dog stations are not supported as they contravene the Companion Animals Act and present a public liability to Council.

Under the Act a dog must be under the effective control at all times by a competent person when in an on leash area and this means the dog must be on an adequate chain, cord or leash that is attached to the dog and that is being held by or secured by a person.

Consequently, after consideration of all the limiting factors it may be a better compromise to allow dogs in the reserve north of the surf club as indicated in Figure 2, with the addition of improved on ground measures/indicators so it is clear where dogs are permitted.

### 8.3 Dog Management - Lennox Head Surf Club Reserve

This would enable a better spread of people and dogs in the reserve and also ensure clearer compliance for the rangers. Consistency and clarity are key principles to encourage optimal compliance outcomes in this locality. Regulations need to consider the enforceability and willingness of the community to also comply.

This change to have the northern part of the reserve an on leash dog area has been weighed up against community concerns and requests, compliance action and current and future reserve uses.

This arrangement can be reconsidered in relation to any future changes to reserve management and operation such as the location of toilet facilities within the area.

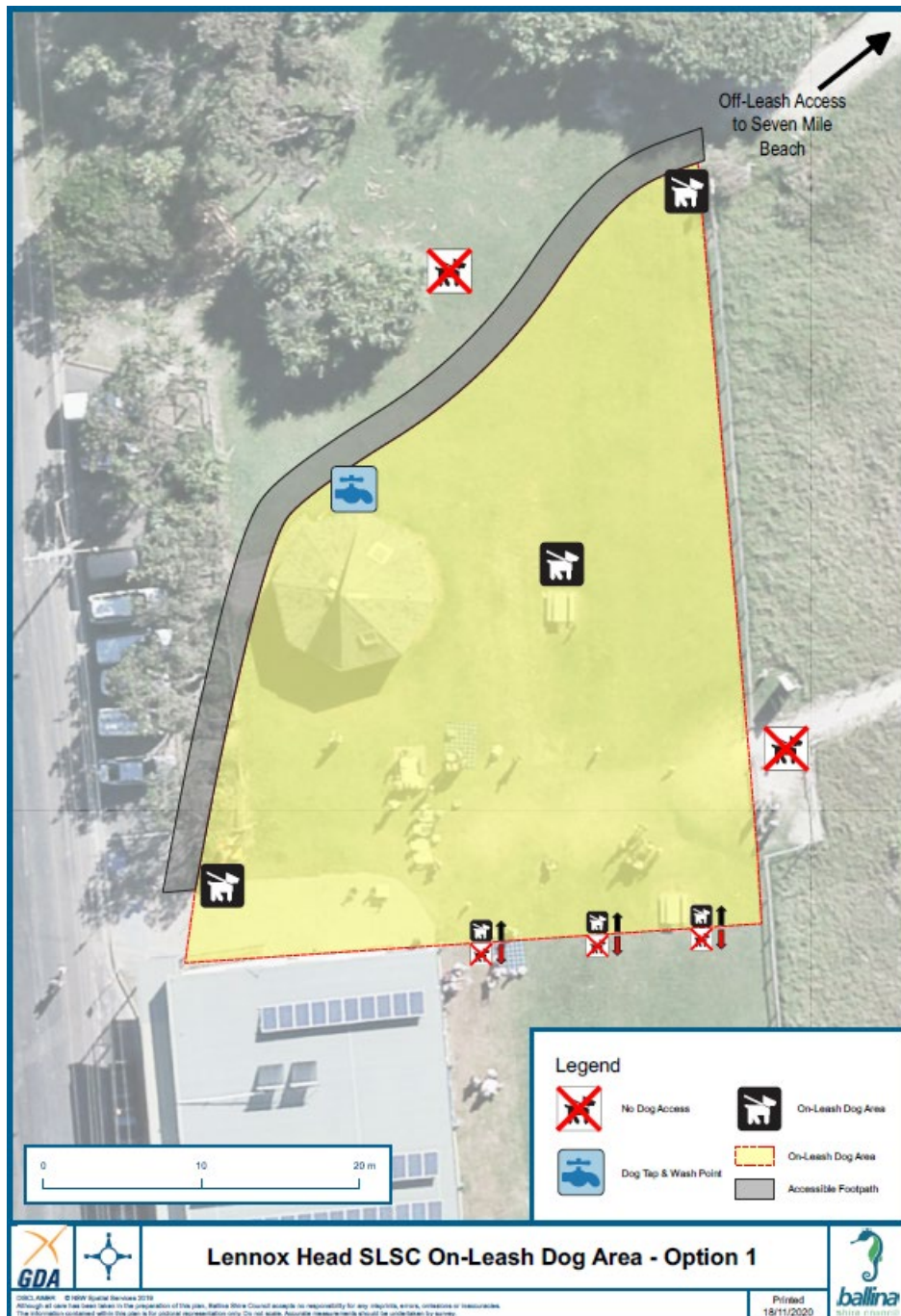
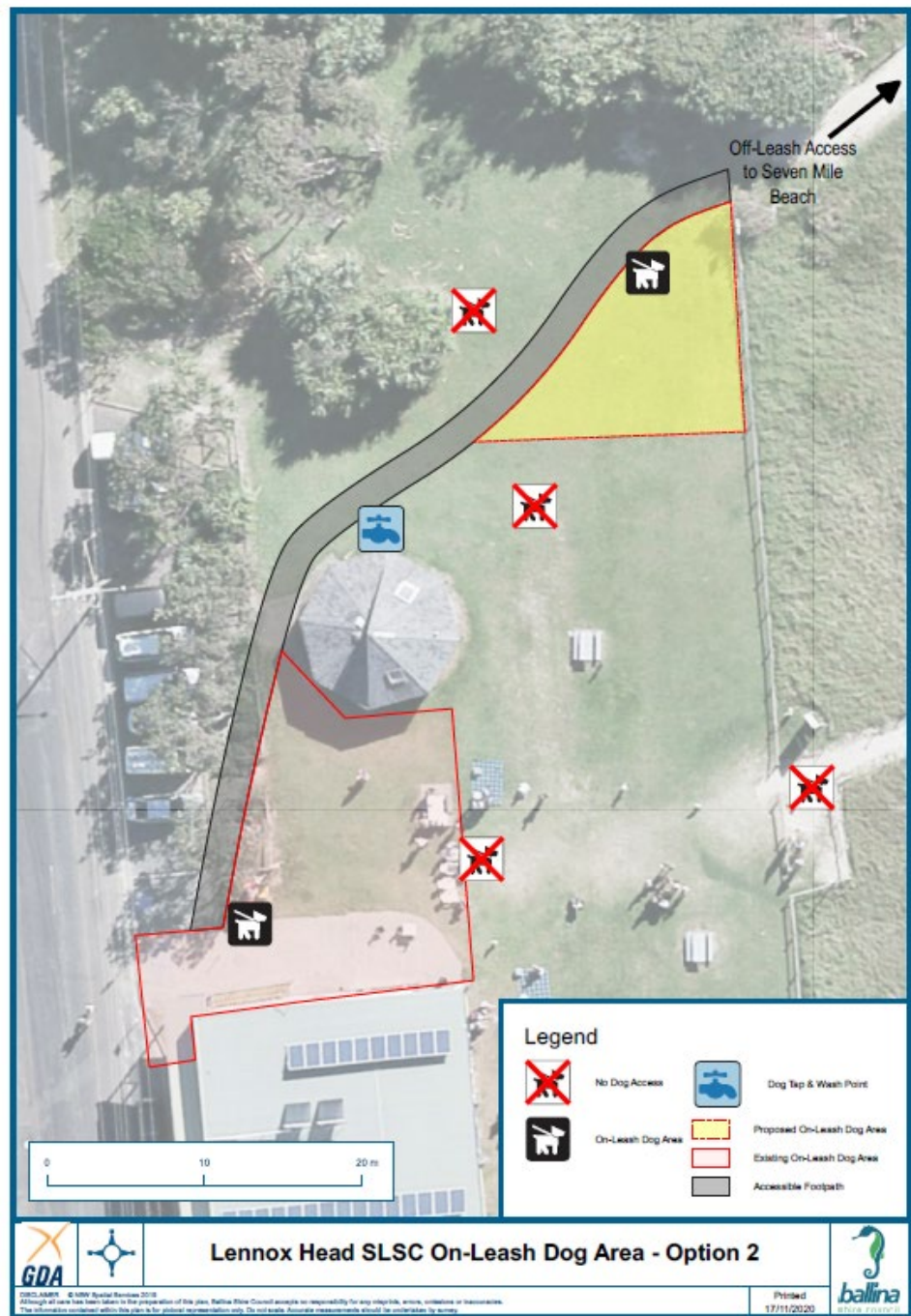


Figure 2: Option 1 – Southward Expansion of Dog On Leash Area

## 8.3 Dog Management - Lennox Head Surf Club Reserve



**Figure 3: Option 2 - Current Dog On Leash Area and Proposed New On Leash Area Adjacent to Pathway**

Council staff recently met again with executive officers of the Reflections Holiday Park about their future plans for the park and options regarding further parking and access to toilet facilities in the precinct. This may lead to changes in the operation and management of the reserve and surrounds in future.

Council's Companion Animals Management Plan sets the strategic and holistic approach to dog management in the Shire and these principles should be considered as part of this process. Council has many proactive programs to support responsible pet ownership and a variety of areas across the Shire to exercise dogs on leash and off leash.

### 8.3 Dog Management - Lennox Head Surf Club Reserve

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Council is seen as a leader in pet ownership programs and acknowledged by other local councils and industry as having excellent access to on leash and off leash area for the whole region.

Any decision in relation to the reserve should have regard for the principles of the Companion Animals Management Plan.

The options listed are provided to facilitate discussion, with option 2 presenting the recommended approach.

However there are various ways in which to configure dog access arrangements within the reserve, and the difficulty is getting the right balance for a wide range of stakeholders.

#### **Sustainability Considerations**

- **Environment**

Protection of the natural and built environment through the introduction of clear guidelines for the management of dogs and cats.

- **Social**

Dog ownership brings both great benefits and significant adverse impacts for people living in the community.

Irresponsible owners of dogs can be the cause of many neighbourhood disputes. Dog attacks cause serious injury to people and other animals and have occasioned death.

Dogs provide great support and companionship to owners and help with loneliness and assist in the rehabilitation of people, particularly the elderly.

- **Economic**

Additional funding will be required to undertake more formal arrangements and infrastructure works for example concrete accessible path, dog shower and water station.

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

The responsibility and cost to Council in managing dogs is substantial and there is a need to balance the allocation of resources to meet the requirements of the Act and the demands of the local community.

Requests to provide additional ranger activities and further presence in the community on dog matters is increasing.

This has an impact on Council's ability to resource other functions carried out by the rangers.

If the existing arrangements in the reserve are changed, there will be costs to install new signage and demarcation infrastructure. Such costs are estimated to be in the order of \$1,500 to \$3,000 and would be met from within existing operating budgets.

### Consultation

Consultation regarding this review and proposed changes has been undertaken with various internal sections of Council and in response to community concerns and requests.

Feedback from the community has also been considered. This feedback has been in the form of correspondence to Council and discussions between staff and members of the community that occurred as part of the community education program implemented when the first change to dog management in the reserve was made at the end of 2019.

The Lake Ainsworth Coastal Management Program was adopted through extensive community consultation. Feedback obtained through that process has also been considered in the formulation of the contents of this report.

### Options

#### 1. *Amend the dog management in the precinct as illustrated in Figure 2.*

This approach is recommended on the basis that it provides for a balance between reserve users who wish to have dogs with them and those who do not. The approach recommended provides for a reasonable level of area definition to support community understanding and enforcement.

Formalising the pathway through the reserve with a 2.4m wide accessible pathway to facilitate access to the dog off leash exercise area at Seven Mile Beach will proceed under this option.

This approach may not resolve the conflict between all users of the area but with improved signage and separation measures/indicators may provide clarity for dog users and other members of the public in relation to dog access and management arrangements in the reserve area at the front of the surf club and adjacent to the surf club kiosk. It will allow members of the public that wish to use this area with their dogs to have a greater spatial separation.

This option could be trialed for 12 months to monitor compliance and the workability of the changes, but given the works need to be undertaken that involve significant costs such as signage, fencing and pathway this is not recommended. There is also more likely to be compliance and success where there is consistency applied in relation to the management approach adopted.

#### 2. *The current dog access arrangements remain in place and continue with communication to the public as to rules in the area as illustrated in Figure 1.*

Under this approach, there would be no change to the dog access arrangements currently in place.

Formalising the pathway through the reserve with a 2.4m wide accessible pathway to facilitate access to the dog off leash exercise area at Seven Mile Beach will proceed under this option.

### **8.3 Dog Management - Lennox Head Surf Club Reserve**

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3. *Amend the dog management in the precinct as prescribed in the report and illustrated in Figure 3 (highlighted yellow), being the creation of a small on leash area further east on the reserve.*

This option is not recommended primarily due to the disconnection and isolation of this area in the reserve from the existing on leash area and the kiosk (compared to option 1 which allows for a greater dog on leash area in closer proximity to the surf club). If dogs are to be allowed in more of the reserve, an area that allows good spacing is also preferred.

4. *Defer any changes and maintain current dog arrangements until such a time further consideration is given to the reserve management and on site uses, including any future infrastructure works relating to the toilet amenities.*

Given the issues raised in relation to the use of the reserve at present, it is advantageous to provide a clear direction on the approach to dog management. Unless there is particular additional information that Councillors are seeking or an alternate option is to be explored, this approach is not recommended.

There may also be further options (or variations) to the approaches outlined. An alternate approach could also be adopted by Council.

The recommendation that follows is to apply option 1 (being the approach set out in Figure 2) as this seeks to provide a best compromise, compliance balance and outcome for different reserve users.

#### **RECOMMENDATIONS**

1. That Council endorses the implementation of the changes to the dog access and management arrangements in the reserve adjacent to the Lennox Head Surf Club as set out in Figure 2.
2. That Council supports on site works to implement the approach in Figure 2 including formalising the beach access through the reserve with an accessible pathway 2.4m wide, a dog water station and measures to highlight the separated areas in the reserve (on leash and dog prohibited areas) by way of signage and in ground markers.
3. That Council supports ongoing community education and compliance action regarding dog related matters in the reserve.

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

Nil



## 8.4 Planning Proposal - Wardell Attached Dual Occupancy

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### 8.4 Planning Proposal - Wardell Attached Dual Occupancy

#### Delivery Program

Strategic Planning

#### Objective

To present the outcomes of the public exhibition of BSCPP18/003 Wardell Attached Dual Occupancy and seek Council's direction with respect to the finalisation of the proposed LEP amendment

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#### Background

Council resolved to prepare a planning proposal to permit attached dual occupancy development on non-flood prone R2 zoned lots within Wardell village in December 2018. This resolution was in response to Strategic Action No. 23 of the Wardell Strategic Plan which is to:

*'consider the desirability, and an appropriate mechanism, for permitting attached dual occupancy development within the R2 zoned, non-flood prone areas of Wardell Village.'*

Some 87 lots were initially incorporated into this planning proposal. Following the issue of a Gateway determination on 6 March 2019, the planning proposal was publically exhibited from 10 April – 17 May 2019.

In accordance with the requirements of the Gateway determination, consultation was undertaken with the NSW Rural Fire Service (NSW RFS). In response, the NSW RFS advised in May 2019 that it could not support the planning proposal in its form at the time for reasons relating to bush fire risk.

The issues raised by NSW RFS were examined in a Bush Fire Hazard Assessment Report (BFHAR) prepared by specialist consultants Bushfire Risk. The BFHAR recommended the exclusion of 27 properties from the planning proposal due to the lots being unsuitable for attached dual occupancy development based on bushfire risk criteria.

The BFHAR was forwarded to the NSW RFS for comment in September 2019. In December 2019, NSW RFS advised that based on the BFHAR, the agency no longer objected to the planning proposal, provided it was amended to reflect the recommendations of the BFHAR.

In compliance with the recommendations of the BFHAR and subsequent advice of the NSW RFS the planning proposal was amended to exclude the 27 properties that were found to be unable to meet the 'aims and objectives' of *Planning for Bushfire Protection 2006*. A further two properties were also removed from the planning proposal due to their small size.

The matter was discussed at Council's Ordinary meeting in February 2020 and Council resolved:

1. *That Council approves re-exhibition of the Wardell Attached Dual Occupancy Planning Proposal (BSCPP 18/003 – Attached Dual Occupancy Wardell) as amended and as per Attachment 6 to this report.*
2. *That the amended planning proposal be reported to the Council for further consideration following its re-exhibition.*



## **8.4 Planning Proposal - Wardell Attached Dual Occupancy**

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The amended planning proposal was re-exhibited from 25 March – 1 May 2020. Two public submissions were received and are discussed in this report. Copies of the submissions are included as Attachment 2 to this report.

A range of DCP amendments relating to attached dual occupancy development at Wardell and Alstonville were also authorised for exhibition and adopted by Council in October 2019 and January 2020.

The DCP amendments made now apply to Alstonville as the dual occupancy LEP amendment for Alstonville is now complete.

In respect to Wardell, the DCP amendments endorsed by Council at its October 2019 meeting, and those subsequently endorsed at its January 2020 meeting, will become effective once the Wardell attached dual occupancy LEP amendment is published on the NSW Government Legislation web site (assuming Council resolves to finalise this LEP amendment).

### **Key Issues**

- Consideration of the outcomes of the re-exhibition process.
- Re-inclusion of lots previously excluded due to bushfire risk.
- Finalisation of LEP amendment.

### **Information**

The Department of Planning, Industry and Environment issued an extension of time for the Gateway determination on 3 February 2020.

The amended draft planning proposal was exhibited from 25 March – 1 May 2020 for public comment.

Two submissions were received, one in support and one objecting to the removal of six lots (42-54 Carlisle Street, Wardell) from the proposal. In response to the submissions, detailed assessment of lot suitability has been undertaken. It is recommended that these lots be included within the planning proposal (i.e. added back into the proposal).

The original planning proposal impacted 87 lots, as shown in Figure 1. To comply with the recommendations made in the BFHAR, 27 lots were removed from the planning proposal (shown red in Figure 1). Two further lots were removed due to small lot size (shown yellow in Figure 1). The lots which were subject to rezoning in the re-exhibited planning proposal are shown in blue.

Figure 2 shows the lots which are proposed for rezoning following the re-exhibition period and further consultation with Department of Planning, Industry and Environment and the NSW RFS. This includes the six lots located at 42-54 Carlisle Street.

The rationale for the inclusion of the six lots located at 42-54 Carlisle Street is outlined in the Consultation section of this report.

## 8.4 Planning Proposal - Wardell Attached Dual Occupancy



Figure 1 - Diagram showing lots subject to Wardell Attached Dual Occupancy Planning Proposal, as exhibited



Figure 2 - Diagram showing lots subject to Wardell Attached Dual Occupancy Planning Proposal, following re-exhibition and further agency consultation

### Sustainability Considerations

- **Environment**

The proposal to permit attached dual occupancy infill residential housing within part of the R2 zone located within Wardell village is consistent with the existing urban planning policy for Wardell (Wardell Strategic Plan 2015-2035).

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 2012. Further, the proposal is consistent with the North Coast Regional Plan direction relating to increasing housing diversity and choice.

Infill development is generally considered to have a lesser impact on the natural environment relative to greenfield development.

- **Social**

The proposal is likely to have positive social impacts resulting from the provision of greater housing choice. It is also acknowledged that infill development can sometimes result in conflict over amenity issues.

- **Economic**

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

### Legal / Resource / Financial Implications

Finalisation of the LEP amendment can be accommodated within the work program of the Strategic Planning Section.

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

### Consultation

The original planning proposal was exhibited between 10 April 2019 and 17 May 2019. Following preliminary consultation with NSW RFS and after making the required revisions, the amended planning proposal was re-exhibited between 25 March and 1 May 2020.

The community engagement strategy associated with the public re-exhibition of the planning proposal included:

- Letters were sent to property owners who were impacted by the re-exhibition including owners of:
  - Lots removed from original planning proposal
  - Lots included in planning proposal
  - Lots abutting those included in the planning proposal
- An advertisement was placed in the Ballina Shire Advocate.
- The planning proposal was displayed at the Customer Service Centre.

## 8.4 Planning Proposal - Wardell Attached Dual Occupancy

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Due to the time of exhibition in relation to the COVID-19 restrictions, other community access points were closed. The proposal was available on Council's website.

In response to the re-exhibition, two community submissions were received as well as a formal response from NSW RFS. The submissions received are contained in Attachment 2.

In response to the amended planning proposal and the BFHAR, the NSW RFS stated: *The NSW RFS has no objection to the planning proposal providing the planning proposal is amended to reflect the recommendations of the Bushfire Results Brief, prepared by Bushfire Risk, dated 9 September 2019.*

Based on this advice, the planning proposal received the Secretary's agreement that inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is justified.

One public submission was supportive of the proposal and raised no objection.

One public submission objected to the omission of lots at 42-54 Carlisle Street, Wardell (the lots), which were excluded from the planning proposal based on the findings of the Bushfire Hazard Assessment Report (BFHAR) relating to the lots including:

- *These lots are approximately 40m in length, therefore new construction is unlikely to meet the requirements due to a small remaining potential building footprint.*
- *Many of these lots however have existing structures which encroach into the APZ locality, therefore are unlikely to achieve dual occupancy requirements when considering the existing structures*
- *An existing road is mapped at the rear of the lots i.e. 6m north & 30m west; if this area was cleared of vegetation and/or managed as an APZ in perpetuity with a legally binding easement i.e. s88b instrument, including ongoing management guidelines, this area may be utilized as an off-site APZ if council owned for example.*
- *It is NOT recommended to re-zone lots at 42-54 Carlisle Street for dual occupancy.*

The submission was unsupportive of the proposal to exclude the lots and requested that they be included in the planning proposal on the following grounds:

1. *The vegetation at the rear of the lots has been incorrectly classified as Forest, and should be instead classified as Tall Heath (Scrub).*

Vegetation classified as Forest requires an Asset Protection Zone (APZ) of 20m, whereas vegetation classified as Tall Heath (Scrub) requires an APZ of 15m. Based on the requested reclassification, the required APZ in relation to the lots would be 15m.

Council response: A site visit undertaken by Council staff confirmed that the dominant vegetation meets the definition of forested wetland as stated in the BFHAR and therefore the vegetation was correctly classified as Forest by the BRHAR, and the required APZ is 20m.

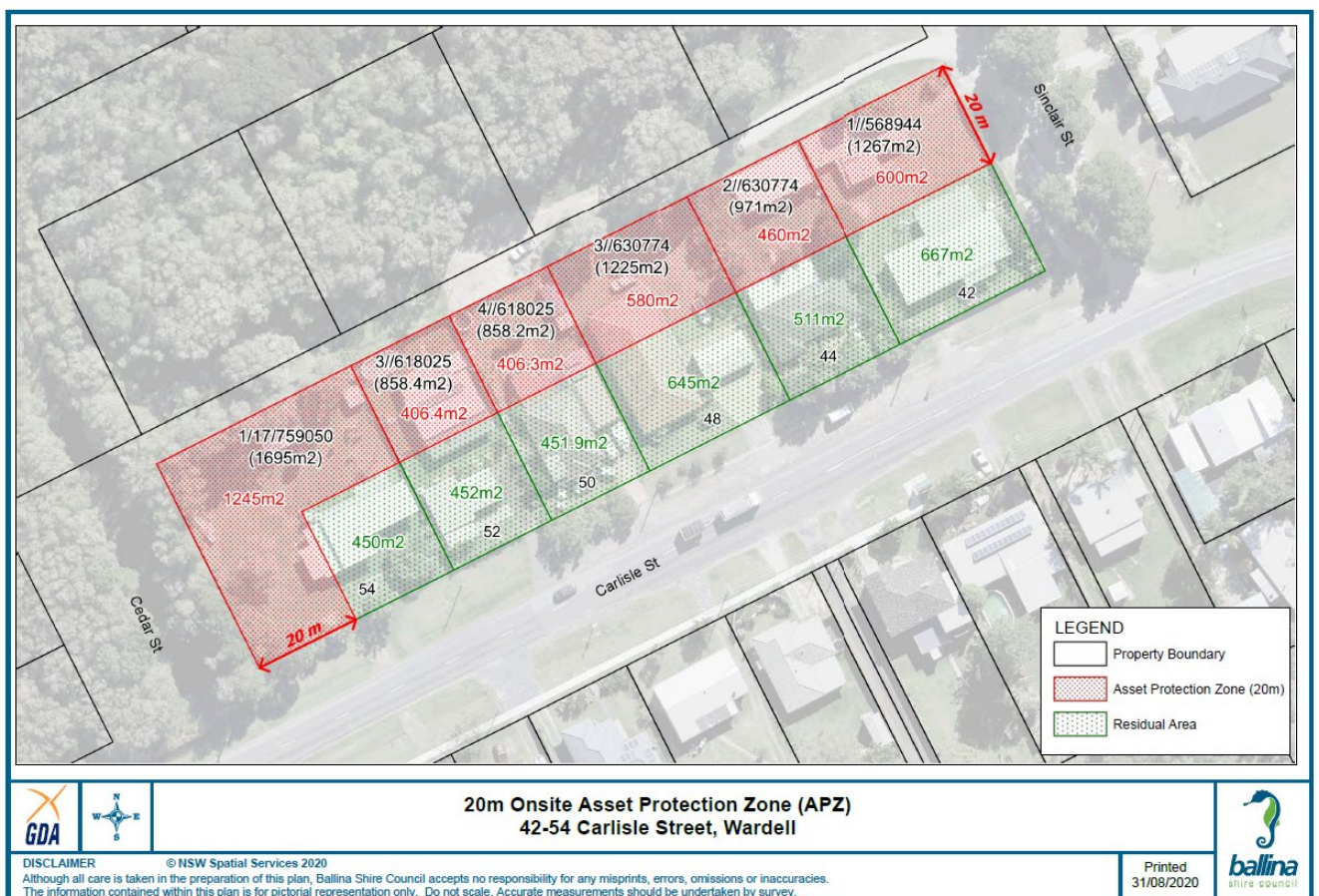
## 8.4 Planning Proposal - Wardell Attached Dual Occupancy

### 2. The report did not recognize an existing Asset Protection Zone.

The submission indicates that an existing road and fire trail at the rear of the lots is maintained and should be recognized as an APZ.

Council response: As stated in Council's *Fire Asset Protection Zones Private Use of Public Land* policy, development on private land requires all APZs to be located entirely within the boundary of the development. The unformed road at the rear of Carlisle Street is not maintained by Council.

Upon further investigation, it was found that the lots could in fact support the required 20m on-site APZ and meet the requirements of *Planning for Bushfire Protection 2006*, whilst still each achieving a minimum area of land on each lot of 450m<sup>2</sup>, unconstrained by the required APZs. This is demonstrated in Figure 3.



**Figure 3 - Diagram showing achievement of required onsite APZ and residual lot areas of minimum 450m<sup>2</sup> unconstrained by APZ on lots 42-54 Carlisle Street, Wardell**

The BFHAR was subsequently reviewed by Council staff and it was determined that no further lots were identified as able to achieve the required minimum 450m<sup>2</sup> of land area unconstrained by required on-site APZs.

As NSW RFS's initial support was dependent on the proposal adhering to the recommendations of the BFHAR, Council re-referred the matter to NSW RFS for further comment in September 2020.



## 8.4 Planning Proposal - Wardell Attached Dual Occupancy

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NSW RFS advised Council to seek agreement from Bushfire Risk that the re-included lots could achieve the requirements of *Planning for Bushfire Protection 2006*.

The rationale and supporting documentation was sent to Bushfire Risk to seek agreement that the lots could meet the requirements of *Planning for Bushfire Risk 2006* and the Ballina DCP 2012.

In correspondence dated 30 September 2020, Bushfire Risk stated “*I agree that lots, 42 - 54 Carlisle Street, Wardell bushfire requirements are able to be met, including setbacks, water, landscaping and access. Specifically in relation to the attached map entitled 'Map\_APZ\_CarlisleStWardell', [Figure 3] which accurately demonstrates a 20m onsite APZ (setback) within each lot can be provided. Therefore, I have no objection and support the re-inclusion of these lots in the Wardell planning proposal for these dual occupancy lots.*”

This agreement was then forwarded to the NSW RFS. The RFS advised in correspondence dated 12 November 2020 that “*The NSW RFS has no objection to the amended planning proposal with the inclusion of the lots [42-54 Carlisle Street, Wardell]*”. Correspondence from the RFS is contained in Attachment 3.

Council has been advised by the Department of Planning, Industry and Environment that an altered Gateway determination is not required should Council seek to finalise the amendment with the re-inclusion of the lots.

### Options

*Option 1 – Council could resolve to vary the exhibited planning proposal to re-include lots at 42-54 Carlisle Street, Wardell.*

Council can seek to alter the planning proposal to include the lots at 42-54 Carlisle Street. Council would then forward the amended proposal to the Minister under s3.35 of the *Environmental Planning and Assessment Act 1979* for consideration.

Council would also request the Minister not require further community consultation due to the re-included lots having been included in the first exhibited iteration of the planning proposal.

If the Minister determines that no further consultation is required, Council would proceed to complete the amendment under the plan making authority granted to Council by the Department of Planning, Industry and Environment.

If a further public exhibition is required, then this would be carried out in accordance with any terms set by the Minister.

This is the recommended option.

*Option 2 – Council could resolve to finalise the planning proposal without the inclusion of lots at 42-54 Carlisle Street, Wardell.*

## **8.4 Planning Proposal - Wardell Attached Dual Occupancy**

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Council may resolve to complete the amendment with the lots included as per the re-exhibited proposal. However, due to the demonstrated compliance of the lots at 42-54 Carlisle Street, Wardell and the support of NSW RFS and the Department of Planning, Industry and Environment, this option is not recommended.

*Option 3 – Council could resolve to discontinue the planning proposal.*

This option would involve Council taking no further action with respect to the matter, other than advising submitters to the public exhibition and the Department of Planning, Industry and Environment of Council's decision.

Discontinuation is subject to the agreement of the Minister for Planning and Public Spaces. This option is not recommended.

*Option 4 – Council could resolve to defer the matter.*

Council may defer consideration of the matter to seeks additional information.

Having regard for the analysis undertaken and the completion of two public exhibition periods, this option is not recommended.

### **RECOMMENDATIONS**

1. That Council amend planning proposal BSCPP 18/003 to re-include the lots at 42-54 Carlisle Street, Wardell to permit attached dual occupancy on this land.
2. That Council forward the revised planning proposal to the Minister for Planning and seek a determination that the amended planning proposal not require further community consultation.
3. That, if required by the Minister, Council re-exhibit the amended planning proposal and then reconsider the proposal after exhibition.
4. That Council, upon obtaining Ministerial advice that re-exhibition is not required, authorises the General Manager to finalise and implement Planning Proposal BSCPP 18/003 – Wardell Attached Dual Occupancy in relation to the Ballina Local Environmental Plan 2012, under delegated authority.
5. 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.

### **Attachment(s)**

1. BSCPP 18/003 - Planning Proposal (Exhibition Copy)
2. Submissions - BSCPP18-003
3. RFS Referral Response 12.11.2020

## 8.5 LEP Amendment Request - 12 Gilmore Close, Wollongbar

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### 8.5 LEP Amendment Request - 12 Gilmore Close, Wollongbar

#### Delivery Program

Strategic Planning

#### Objective

To seek Council's direction on a request to amend the Ballina Local Environmental Plan 2012 to rezone land from rural to residential.

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### Background

Robert Shacklady of Coopers Advisors, submitted a request to amend the Ballina Local Environmental Plan 2012 in August 2020. The request was submitted on behalf of the proponent and nominated owner of Lot 18 DP 1046117 and Lot 3 DP 1128207, 12 Gilmore Close Wollongbar (the site), Mr John Damian Mudge.

The LEP amendment request seeks Council's support to amend the Ballina LEP 2012 to rezone the site from RU1 Primary Production to R3 Medium Density Residential. It also seeks to replace the 40ha minimum lot size with a 600m<sup>2</sup> minimum lot size requirement. In summary, the proposed amendment seeks to enable urban subdivision of the land.

The site has an area of approximately 49ha. The site is located to the north of the Wollongbar Urban Expansion Area and is identified by red outline in Figure 1.



**Figure 1: Site Location – 12 Gilmore Close Wollongbar**

The site is in possession of a Court appointed Receiver and Manager.



## **8.5 LEP Amendment Request - 12 Gilmore Close, Wollongbar**

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The Receiver and Manager, Marcus Ayres, Business Finance Pty Ltd, has been made aware of the LEP amendment request. Council has been advised that they consider that it may be in their interests to co-operate with the process to determine if Mr Mudge's planning proposal is viable and fit for approval.

Council staff have previously expressed the view that the site does not have sufficient merit to warrant consideration as an extension to the Wollongbar Urban Expansion Area.

Consideration of the site by Council has occurred recently as part of the Wollongbar Planning and Environmental Study (2019), and also as a consequence of submissions to the Ballina Shire Local Strategic Planning Statement 2020 – 2040 (LSPS). Council did not support the identification of the subject land as a potential urban development site through these planning processes. Further, the land is not identified in State or local strategic planning policy as a potential urban land release area.

Having regard to the above Mike Svikis Planning was engaged to undertake an independent review of the merits of the planning proposal request.

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

Attachment 2 contains a copy of the *Merit Assessment of the Planning Proposal for 12 Gilmore Close Wollongbar* report prepared by Mike Svikis Planning.

Attachment 3 contains a copy of a letter to Robert Shacklady, Coopers Advisors, dated 8 July 2020. This letter was prepared in response to a submission to the LSPS. The letter details the rezoning application process. This letter is also referenced in the planning proposal request submission prepared by Coopers Advisors where it is stated that Council had invited his client to lodge a Planning Proposal / LEP Amendment Request.

The purpose of this report is to seek direction on the progression of this amendment proposal.

### **Key Issues**

- Compatibility with strategic planning framework
- Planning merit of the proposal

### **Information**

The Mike Svikis Planning (MSP) report contains a Strategic Merit Assessment as well as a Site Specific Merit Assessment. The report structure and assessment tests are noted as being consistent with the NSW Department of Planning, Infrastructure and Environment assessment requirements.

MSP indicates that passing the Strategic Merit Test is fundamental to supporting the planning proposal.

Strategic Merit Test

The conclusion reached by MSP is that:

*The planning proposal is not consistent with the North Coast Regional Plan 2036. It is also not consistent with the Ballina Shire Growth Management Strategy 2012, Ballina Shire Local Strategic Planning Statement 2020 – 2040 and the Wollongbar Strategic Plan 2019 – 2039.*

*Ballina LEP 2012 has been updated regularly and remains contemporary. It has an adequate supply of residential zoned land, both in greenfield areas and infill development opportunities. Council monitors land development and is aware of supply and demand trends. There is no evidence of changed circumstances that would warrant rezoning the subject land from rural to residential.*

*This planning proposal cannot be supported based on an assessment of strategic merit.*

Site Specific Merit Test

The conclusion reached by MSP is that:

*The planning proposal is not supported by any substantive reports or assessments of the subject land that address environmental issues. It is not the intention of this report to recommend that such reports or assessments be undertaken. The site-specific merit assessment would normally only be undertaken for a planning proposal that passed the strategic merit test. This planning proposal has not passed the strategic merit test. The site-specific merit assessment has been undertaken in this case to ensure the planning proposal is considered to the fullest extent based on available information.*

*A specific study of the vegetation on this site has not been undertaken. The site inspection on 16 October 2020 indicated that there may be trees of significance such as the mature fig plus some rainforest remnants in the gullies and eucalypts along the northern edge. On balance, however, the site does not appear to contain extensive areas of native vegetation as result of past clearing for grazing and recent forestry plantings.*

*Council's contour mapping supports observations during the site inspection on 16 October 2020 that parts of the site in proximity to the dwelling and the boundary with the UPS land (in part) are relatively flat and similar to other land already zoned for urban purposes. It was also observed (and is supported by contour mapping) that much of the site is quite steep and affected by multiple gullies. Significant parts of the site may be too steep to service or construct dwellings or roads and may be predisposed to landslip when cleared or disturbed.*

*Council identifies the site as being partly affected by bushfire hazard Vegetation Category 2 and buffer, and it is adjacent to land in Vegetation Category 1 and its buffer. This mapping does not appear to reflect the forest plantings that cover most of the site. Current and accurate mapping of this constraint would assist in identifying its effect on potential future residential development of the site.*

*The Northern Rivers Farmland Protection Project maps all of Lot 18 DP 1046117 as regionally significant agricultural land. The presence of regionally significant farmland is a major constraint to urban expansion. It is not normally considered to be appropriate for urban use. Using it for residential purposes is not consistent with advice from the NSW Department of Primary Industries regarding the need to protect important agricultural land and to avoid land use conflicts that stem from urban encroachment. It is also not consistent with NSW DPIE advice and policy.*

*The site is elevated and not mapped as flood prone. However, it does contain multiple small waterways which would each have an area that is affected by flooding in high rainfall events. These gully areas would each have an area of land that is unsuitable for urban use due to flooding.*

*No site-specific contaminated land analysis of the subject land has been provided and the history of land use on this site and its potential to be contaminated is unknown. This is a major constraint to urban expansion that would need to be addressed before any rezoning could proceed.*

*No site-specific assessment of the Aboriginal cultural heritage of the subject land has been provided. An AHIMS search was conducted on 30 October 2020 for Lot 18 DP 1046117 with a 200-metre buffer. It shows that there is likely to be at least one Aboriginal site located on or near the subject land.*

*There is no evidence of contact with the relevant LALC or any site assessment by a qualified archaeologist. This is a significant constraint to urban expansion that would need to be addressed before any rezoning could proceed.*

*This planning proposal cannot be supported based on an assessment of site-specific merit.*

### **Sustainability Considerations**

- **Environment**

Insufficient information has been submitted relating to the environmental consequences of the proposed residential zoning.

- **Social**

Insufficient information has been submitted relating to the likely social consequences of the proposed rezoning.

- **Economic**

The proponent claims that the proposed rezoning would result in positive economic consequences through its potential for job creation. The shire has significant zoned residential land to meet land supply for at least the next 20 year period.

In this context it is questionable whether any significant additional economic benefits would arise from rezoning land which is considered to be surplus to demand and not included within an overall land release strategy.

### Legal / Resource / Financial Implications

Council is the planning proposal authority (PPA) for Ballina Shire. Council may determine whether or not to support the proposed LEP amendment. If the amendment is supported then a planning proposal must be prepared and be submitted to the Minister for a Gateway determination.

There are no significant resource considerations associated with the determination of the planning proposal application.

There are no significant financial implications associated with the processing of the planning proposal application. The cost for the independent assessment of the application by MSP has been met from the strategic planning budget.

### Consultation

No consultation associated with the planning proposal application has been undertaken at this stage. Consultation would typically occur following a planning proposal receiving a conditional Gateway determination (if the matter is to progress).

### Options

The following options are presented for the Councils consideration.

*Option 1 – Council resolves to not support the application for a planning proposal / LEP amendment.*

This is the recommended option.

The specific proposal has been assessed as not meeting the Strategic Merit Test. This being the case Council has no legitimate mechanism through which to support the proposal. In addition when the Site Specific Merit Test was applied to the proposal it was found that there were significant site issues that would likely impact on the site's capacity to support a residential rezoning.

This is also consistent with Council's consistently held position on previous requests to rezone this land for urban purposes and the land is not identified in either State Government or local planning policy as a potential urban land release area.

*Option 2 – Council resolves to prepare a planning proposal and seek a Gateway determination to allow the proposal to proceed to agency consultation and public exhibition.*

This option is not supported.

As outlined above, the LEP amendment request is not justified relative to State and local planning policy.

*Option 3 - Council could resolve to defer this matter to a Councillor briefing.*

It is open to the Council to defer consideration of this matter to obtain further information.

**RECOMMENDATIONS**

1. That Council declines the request to amend the Ballina Local Environmental Plan 2012 to apply an R3 Medium Density Residential zone and 600m<sup>2</sup> minimum lot size to Lot 18 DP 1046117 and Lot 3 DP 1128207, 12 Gilmore Close Wollongbar for the reasons outlined in this report.
2. That the proponent and the Department of Planning Industry and Environment be advised of Council's decision to decline the LEP amendment request.

**Attachment(s)**

1. Planning Proposal / LEP Amendment Request - 12 Gilmore Close Wollongbar
2. Merit Assessment of Planning Proposal - 12 Gilmore Close Wollongbar - Mike Svikis Planning
3. Letter to Robert Shacklady, Coopers Advisors, 8 July 2020 - 12 Gilmore Close Wollongbar

## 8.6 Development Applications - Works in Progress - November 2020

### 8.6 Development Applications - Works in Progress - November 2020

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

Further information relating to each application listed is available via Council's DAs online portal (accessible via [www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au)).

Dwelling house and dual occupancy applications are not included in this report.

DA No.	Date Rec'd	Applicant	Proposal	Status
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	Being assessed
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	Being assessed
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
2019/145	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
2019/283	7/5/2019	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

## 8.6 Development Applications - Works in Progress - November 2020

2019/376	11/6/2019	Newton Denny Chapelle	Amended Proposal: Erection of two , six shade house structures, two sheds, eight rainwater tanks, earthworks, access driveways, vegetation removal and landscaping – 348 Rous Road, Rous Mill	Awaiting additional information
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
2019/535	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 1,090m <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	Awaiting additional information
2019/666	16/10/2019	GHD Pty Ltd on behalf of Ballina Shire Council	Upgrades to the Marom Creek Water Treatment Plant – 65 Weis Lane, Rous	Being assessed
2019/669	17/10/2019	Victor Holmes Town Planning	Two lot Torrens Title Subdivision to create one x 600m <sup>2</sup> allotment and one x 539m <sup>2</sup> allotment (below the 600m <sup>2</sup> minimum lot size development standard of the Ballina LEP 2012), demolition of gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works – 23 Skinner Street, Ballina	Subject of a report elsewhere in the November business agenda.
2019/736	19/11/2019	D & S Greeney	Proposed two lot Torrens Title subdivision, erection of dwelling house and associated swimming pool, earthworks, vegetation removal, access driveway and change of use of existing dwelling to a secondary dwelling – 16 Tara Downs, Lennox Head	Being assessed

## 8.6 Development Applications - Works in Progress - November 2020

2019/743	22/1/2019	Ardill Payne & Partners	Refurbishment and expansion of the existing caravan park to provide a total of 87 long-term sites and one site for the manager residence/office. The proposal comprises demolition works, earthworks, removal of short-term and camping sites, removal of access from River Street and construction of new driveway access from Emigrant Lane, construction of new amenities and facilities, internal roadworks and car parking - 586 River Street & 21 Emigrant Creek Road, West Ballina	Awaiting additional information
2019/794	12/12/2019	Ardill Payne & Partners	Two lot subdivision by way of boundary adjustment to create one x 42.46ha and one x 1.47ha allotments – Palm Lake Resort, 120 North Creek Road, Ballina	Being assessed
2020/56	7/2/2020	Ballina Shire Council	Construction of a new sewer rising main extending 1,465m from the intersection of North Creek Road and Skennars Head Road to an existing sewer pump station east of Castle Drive, Lennox Head. The proposed new pipeline will replace an existing dilapidated main – North Creek Road, Skennars Head Road and Castle Drive, Lennox Head	Referred to Government Departments
2020/76	14/2/2020	Newton Denny Chapelle	Proposed filling of land to establish a building pad for future development purposes and associated works – 210 Southern Cross Drive and Corks Lane, Ballina	Awaiting additional information
2020/83	18/2/2020	Newton Denny Chapelle	Demolition of existing structures and the erection and Strata Title subdivision of a multi-dwelling housing development comprising nine single storey dwellings, earthworks, retaining, servicing and vegetation management works – 167 and 169 Tamar Street, Ballina	Determination pending
2020/153	13/3/2020	Planners North	Erection of a mixed use development comprising recreation facility (indoor) and information and education facility and associated works – 68 De-Havilland Crescent, Ballina	Awaiting additional information



## 8.6 Development Applications - Works in Progress - November 2020

2020/194	30/3/2020	Ardill Payne & Partners	To undertake the construction of a car park and associated access driveway to service an existing seniors housing development – 148 & 120 North Creek Road, Ballina	Being assessed
2020/199	1/4/2020	Newton Denny Chapelle	Alterations and additions to an existing industrial building and associated works – 6 Piper Drive, Ballina	Awaiting additional information
2020/242	23/4/2020	Planners North	Multi dwelling housing development comprising the erection and Strata Title subdivision of 44 two storey dwellings and associated works - Lot 6 DP 1225206 The Coast Road, Skennars Head	Awaiting additional information
2020/244	23/4/2020	Northern Rivers Land Solutions	Three lot Torrens Title Subdivision to create one x 800m <sup>2</sup> , one x 860m <sup>2</sup> and one x 1,084m <sup>2</sup> allotments, filling and retaining works, vegetation removal, riverbank stabilisation works, infrastructure servicing and associated works – 23 Richmond Street, Wardell	Awaiting additional information
2020/270	4/5/2020	R & J Harris Consulting Pty Ltd	Alterations and Additions to an existing waste management facility comprising the erection of a waste transfer shed used for the storage of excavation drilling mud and the transfer of recycled containers (Container Deposit Scheme Materials) and parking of vehicles – 540 Pimlico Road, Pimlico	Determination pending
2020/284	12/5/2020	Ballina Island Developments Pty Ltd	Subdivision of proposed Super Lot 102 in DA 2018/51 comprising the creation of 17 Torrens Title residential lots and one super lot, road construction, installation of infrastructure and services, earthworks and vegetation clearing – 20 North Creek Road, Lennox Head	Being assessed
2020/292	15/5/2020	Newton Denny Chapelle	Subdivision of land involving the creation of 12 Torrens Title lots, road and infrastructure servicing, bulk earthworks, retaining walls and vegetation removal. 11 of the residential lots range in size from 825sqm to 1,200sqm and one lot having an area of approximately 3,800sqm. – 180 & 190 North Creek Road, Lennox Head	Being assessed

## 8.6 Development Applications - Works in Progress - November 2020

2020/358	11/6/2020	Newton Denny Chapelle	Extension to the existing junior school Discovery Centre to include two Additional classrooms and an outdoor covered learning area and associated earthworks and infrastructure servicing – 62 Horizon Drive, West Ballina	Determination pending
2020/364	12/6/2020	Ardill Payne & Partners	Boundary adjustment subdivision of two lots to create two modified lots comprising one proposed 1.3ha and one 17.3 ha allotments - 13 Kamala Place, Tintenbar	Being assessed
2020/399	26/6/2020	RLA Building Design	Multi Dwelling Housing Development comprising the demolition of existing dwelling house and the erection of three x three bedroom single storey dwellings, vegetation removal and associated works – 110 Ballina Road, Alstonville	Determination pending
2020/431	8/7/2020	Ardill Payne & Partners	Change of Use of part of the existing operation of a general industry – brewery to an artisan food and drink industry - 2/188-202 Southern Cross Drive, Ballina	Being assessed
2020/439	14/7/2020	Newton Denny Chapelle	Erection of Industrial Building and associated infrastructure and earthworks and the use of Unit 1 for the purpose of a warehouse or distribution centre and Units 2 to 5 for the purpose of general industry - 46 Kays Lane, Alstonville	Being assessed
2020/450	20/7/2020	Ray Cavill	Establishment of an Information and Education Facility (art gallery and studio) comprising conversion of existing church building to gallery space, erection of pottery studio, kiln shed, ancillary amenities including caretaker's accommodation and associated infrastructure works – 36 Rous Mill Road, Rous Mill	Awaiting additional information  To be determined by Council Resolution No: 270820/10
2020/485	5/8/2020	Templar Designs	Conversion of part of an existing industrial building to self-storage sheds, erection of business identification sign and associated works – 12 Northcott Crescent, Alstonville	Determination pending
2020/518	14/8/2020	T Fitzroy	Extensions to existing industrial building and associated works and change in use of existing premises from a vehicle repair station to light industry – 11 Owens Crescent, Alstonville	Being assessed

## 8.6 Development Applications - Works in Progress - November 2020

2020/529	21/8/2020	Ardill Payne & Partners	To establish a detached dual occupancy and associated works involving the change of use of a shed to a dwelling (retrospective). The application is supported by a variation to a development standard request to enable the proposed dual occupancy to be detached rather than attached to the existing dwelling house as required by Clause 14 of the Ballina Local Environmental Plan 1987 – 76 Phillips Road, Newrybar	Awaiting additional information
2020/540	26/8/2020	Ardill Payne & Partners	Subdivision involving the staged creation of three Torrens Title Lots, demolition of dwelling house and associated infrastructure works – 71 Teven Road, Alstonville	Awaiting additional information
2020/542	26/8/2020	Newton Denny Chapelle	Expansion of an existing rural industry involving the processing of natural extracts and including the erection of a new shed and the carrying out of associated earthworks, services and driveway access- 226 Hinterland Way, Knockrow	Being assessed
2020/548	27/8/2020	Tim Fitzroy & Associates	Erection of an Industrial Building and associated works- 66 De-Havilland Crescent, Ballina	Being assessed
2020/562	3/9/2020	Newton Denny Chapelle	Temporary earthworks stockpile and rock crushing - Super Lot 5 DP 1239938 Montwood Drive at EPIQ, Lennox Head	Being assessed
2020/566	3/9/2020	Ardill Payne & Partners	Subdivision to create 10 Torrens Title residential lots and associated infrastructure services – Approved Lot 605 (as per DA 2015/468) DP 1265586 Ballina Heights Drive, Cumbalum	Being assessed
2020/568	4/9/2020	Planners North	Construction of a dwelling and associated earthworks and vehicular access - Lot 3 DP 611002 Midgen Flat Road, Newrybar	Being assessed
2020/582	8/9/2020	L Cramp	To undertake vegetation removal – 400 Old Byron Bay Road, Newrybar	Being assessed
2020/591	14/9/2020	Newton Denny Chapelle	Subdivision comprising the creation of 25 industrial lots ranging in size from 1181sqm to 4,493sqm, one residue lot of 4.13hectares and associated infrastructure servicing and bulk earthworks – 25-39 Boeing Avenue and Corks Lane, Ballina	Being assessed

## 8.6 Development Applications - Works in Progress - November 2020

2020/596	15/9/2020	Ardill Payne & Partners	Industrial development comprising the demolition of one existing industrial building and the construction of two new industrial buildings to be used for a combination of general industrial purposes and warehousing and the carrying out of associated works – 14-16 Southern Cross Drive, Ballina	Being assessed
2020/618	23/9/2020	Newton Denny Chapelle	Multi-Dwelling housing development comprising the erection of 25 two storey dwellings, Strata Title subdivision and associated works. A variation is sought to the 8.5m height of building development standard contained in Clause 4.3 of the Ballina Local Environmental Plan 2012 for a number of the proposed dwellings – 2, 6 & 12 Anchorage Avenue, Lennox Head	Awaiting additional information
2020/625	23/9/2020	H Nguyen	Change of use to establish a beauty/nail salon and associated fit out works – 127-129 River Street, Ballina	Being assessed
2020/632	25/9/2020	Newton Denny Chapelle	Warehouse or distribution centre involving the construction of a 40m x 40m shed and associated civil, car parking and landscaping works. A variation to the 8.5m Height of Building development standard is being sought for the proposed shed – Lot 228 DP 1121079 Teven Road, West Ballina	Being assessed
2020/641	20/9/2020	Northern Rivers Land Solutions	Two lot boundary adjustment subdivision to create one x 17.1ha and one x 36.7 ha allotments – 9 Houghlahans Creek Road & 1668 Eltham Road, Teven	Referred to Government Departments
2020/647	1/10/2020	K Whiting	Vegetation management works comprising the removal of one tree – 125 Links Avenue, East Ballina	Being assessed
2020/649	2/10/2020	Ardill Payne & partners	Subdivision to create three Torrens Title Residential allotments and associated infrastructure servicing – 30 Kellie-Ann Crescent, Lennox Head	On exhibition
2020/657	7/10/2020	O Ben Harush	Strata Title Subdivision of an Existing Dual Occupancy – 38 Calnan Crescent, Cumbalum	Awaiting additional information
2020/668	13/10/2020	P Sammut	Erection of an industrial building for the purposes of general industry – 16 Ascot Road, Ballina	Awaiting additional information

## 8.6 Development Applications - Works in Progress - November 2020

2020/672	13/10/2020	Ardill Payne & Partners	To establish temporary stockpiles of soils and rock surplus to the subdivision works in the western precinct of Ballina Heights Estate – Mitchell Close, Cumbalum	Awaiting additional information
2020/681	15/10/2020	Ardill Payne & Partners	Change of use to general industry and alterations and additions to the industrial premises - 15 Clark Street, Ballina	Being assessed
2020/682	15/10/2020	Newton Denny Chapelle	Multi dwelling housing development comprising three dwellings, Strata Title subdivision and associated earthworks – 62 Avalon Avenue, Wollongbar	On exhibition
2020/687	16/10/2020	R Hammond	Change of use to establish a mixed use development comprising a vehicle repair station with ancillary sales of spare parts and tyres and vehicle sales or hire premises - 16-18 Owens Crescent, Alstonville	Being assessed
2020/705	27/10/2020	J Brady	Alterations and Additions to existing shop (Hair Dressing Salon) – 66 Ballina Street, Lennox Head	Being assessed

### Regional Development (Determined by Northern Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
2016/524	16/9/2016	Planners North	Seniors living development pursuant to SEPP (Housing for Seniors and People with a Disability) comprising amended layout, 147 (previously 211) self-care housing, clubhouse, recreation facilities, roads and infrastructure, environmental management and protection works – 67 Skennars Head Road	Being assessed

## 8.6 Development Applications - Works in Progress - November 2020

2020/192	27/3/2020	Planners North	Establishment of a proposed 300 site Manufactured Home Estate with associated manager's residence, club house, recreation facilities, roads, utility services, earthworks and other associated works. The application seeks a variation to Clause 4.3 Height of Buildings development standard under the Ballina Local Environmental Plan 2012. A Section 82 Objection under the Local Government Act 1993 has been submitted to enable the onsite construction of manufactured homes in variance to Clause 41 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 requiring construction offsite – 550-578 River Street, West Ballina	Class 1 Appeal – Deemed Refusal
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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 the report on the status of outstanding development applications for November 2020.

### Attachment(s)

Nil

## 9.1 Investment Summary - October 2020

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### 9. Corporate and Community Division Reports

#### 9.1 Investment Summary - October 2020

##### **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 investments report setting out Council's cash and investments.

The report is to be presented at the Ordinary Council meeting, immediately following the end of the respective month.

This report has been prepared for the month of October 2020.

#### **Key Issues**

- Compliance with Investment Policy

#### **Information**

As at 31 October 2020, Council's investments are in accordance with Council's Investment Policy and the Local Government Act and Regulations.

The total balance of investments as at 31 October 2020 was \$86,538,300. This was a decrease of \$3,000,000 from September. Council's investments, as at 31 October, were invested at an average (weighted) interest rate of 1.065%, which was 0.992% above the October average 90 Day Bank Bill Index of 0.073%.

The balance of the Commonwealth Bank business account as at 31 October 2020 was \$5,624,761. This is an increase of \$1,002,580 from the balance as at 30 September 2020.

The total movement in investments and bank balances was a net decrease of \$1,997,420 due to significant creditor payments and loan repayments, offset by improved rates debtor collections.

TCorp's weekly economic commentary report for the week ending 26 October 2020 can be reviewed online using the following link:

<https://www.tcorp.nsw.gov.au/resource/261020.pdf>

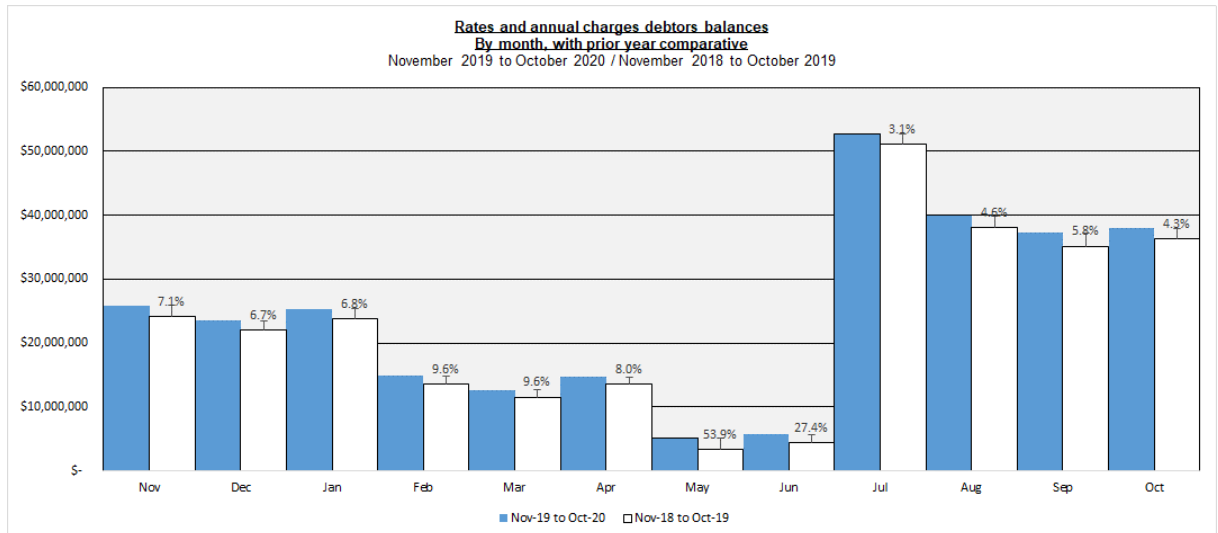


## 9.1 Investment Summary - October 2020

### *Rates and Charges Debtor Balances*

Due to the potential for the COVID 19 pandemic, and the nil interest rate on overdue rates and charges, to impact on Council's cash flow streams, this report also includes an analysis of debtor balances.

The next chart shows the monthly balance of rates and annual charges debtors for the year ended 31 October 2020, in comparison to the year ended 31 October 2019.



The percentages shown in the table represent the change from the monthly balance in the current year compared to the previous year.

This analysis highlights the debtor balances at June 2020 were significantly higher (27.4%) than as at June 2019. This was reflected in an increase in Council's Rates and Charges Ratio as reported in the 2019/20 Financial Statements.

There is no doubt this outcome resulted from the financial uncertainty posed by the COVID 19 pandemic, combined with the 0% overdue interest charge for the last quarter of 2019/20 and all of 2020/21.

From a review of the comparatives for the months subsequent to June 2020, it is pleasing to note the current balances have moved into line with the previous year, with outstanding balances at 31 October 2020 being comparable (4.3% higher) to 31 October 2019.

This provides a level of comfort that cash inflows from rates and charges have moved to similar levels to pre-COVID 19. Rating staff also issued reminder letters in September to encourage ratepayers not to fall behind in their payments.

### *Green Investments*

There has been some recent interest at B Ward meetings in respect to Council's Investment Policy's 'green' credentials. As a byproduct of this Council officers have investigated further options in respect to environmentally responsible investments.

## 9.1 Investment Summary - October 2020

One example identified is investments that are certified by the Climate Bond Initiative (CBI) as meeting the Climate Bonds Standard criteria. The CBI is “an investor-focused not-for-profit, promoting large-scale investment in low-carbon economy”, with more information available at their website (<https://www.climatebonds.net/region/australia>)

These ‘green term deposits’ mobilise capital towards assets that facilitate and support the transition to a low carbon economy – such as renewable energy projects and low carbon initiatives.

Similar products are offered by a number of banks, including fossil fuel aligned institutions, and it may be far more effective from an environmental outcome perspective to invest in green term deposits, rather than focusing the Council’s Investment Policy on a more negative approach of not investing in fossil fuel aligned institutions.

Staff are now actively seeking opportunities to invest in these products, subject to compliance with the Investment Policy, and will report on the level of ‘green’ deposits in the Investment Summary report going forward.

### A. Summary of Investments by Institution

Funds Invested With	Fossil Fuel Aligned	Rating S&P	Rating Moody	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
<b>Grandfathered Investments</b>								
National Australia Bank	Yes	BBB	-	1,788	1,788	0	2.1%	<b>2%</b>
<b>Rated Institutions</b>								
AMP Bank	Yes	BBB	A2	6,500	6,500	10%	7.5%	
Australian Unity bank	n/a	BBB+	-	3,000	3,000	10%	3.5%	
Auswide Bank	No	BBB	Baa2	2,000	2,000	10%	2.3%	
Bank of China	Yes	A	A1	5,000	5,000	20%	5.8%	
Bank of Communications	Yes	A-	A2	1,000	1,000	20%	1.2%	
Bank of Queensland	Yes	BBB+	A3	6,000	6,000	10%	6.9%	
Bendigo & Adelaide Bank	No	BBB+	A3	4,000	6,000	10%	6.9%	
Commonwealth Bank Aus	Yes	AA-	Aa3	11,000	11,000	20%	12.7%	
Credit Union Australia	No	BBB	Baa1	600	600	10%	0.7%	
Defence Bank Ltd	No	BBB	-	5,500	5,500	10%	6.4%	
ING Bank (Australia) Ltd	Yes	A	A3	1,000	1,000	20%	1.2%	
ME Bank	No	BBB	Baa1	1,750	1,750	10%	2.0%	
Macquarie Bank Limited	Yes	A+	A2	1,000	1,000	20%	1.2%	
My State Bank Ltd	No	BBB+	Baa1	3,000	3,000	10%	3.5%	
National Australia Bank	Yes	AA-	Aa3	15,000	9,000	20%	10.4%	
Newcastle Perm Bld Soc	No	BBB	A3	4,700	4,700	10%	5.4%	
Suncorp Limited	No	A+	A1	3,000	4,000	20%	2.6%	
Teachers Mutual Bank Ltd	No	BBB	Baa1	700	700	10%	0.8%	
Westpac Banking Corp	Yes	AA-	Aa3	13,000	13,000	20%	15.0%	<b>98%</b>
<b>Total</b>				<b>89,538</b>	<b>86,538</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>%</b>	<b>Value</b>	<b>Previous</b>	<b>Current</b>	<b>Previous</b>	<b>Current</b>		
A- or Higher	100%	86,538	50,000	45,000	56%	52%		
BBB	60%	51,923	39,538	41,538	44%	48%		
<b>Total</b>			<b>89,538</b>	<b>86,538</b>	<b>100%</b>	<b>100%</b>		

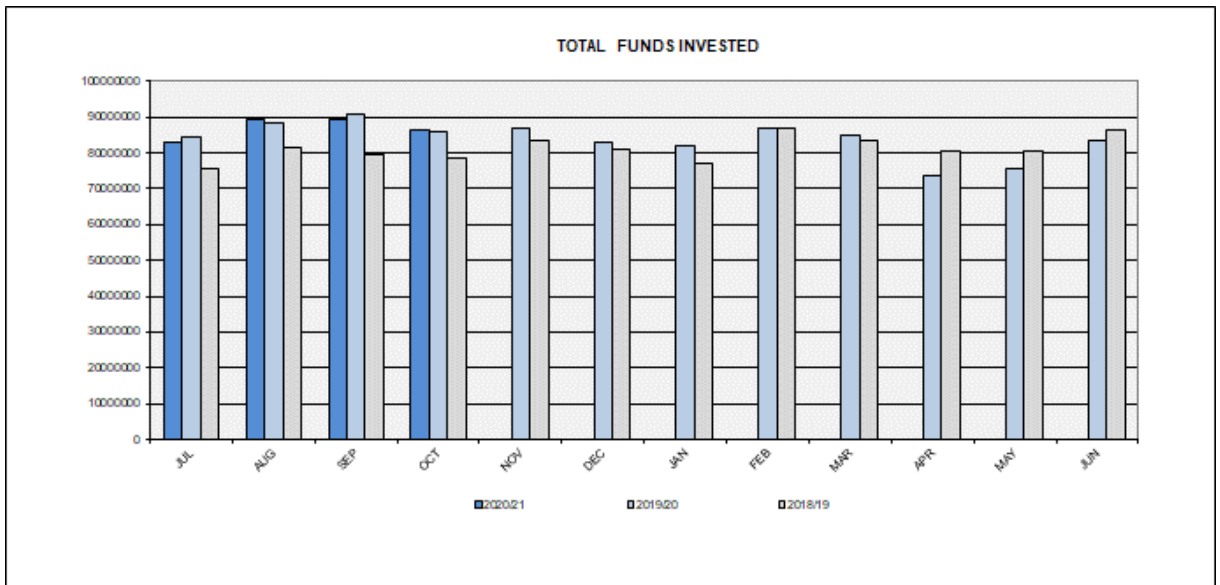
**9.1 Investment Summary - October 2020**

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

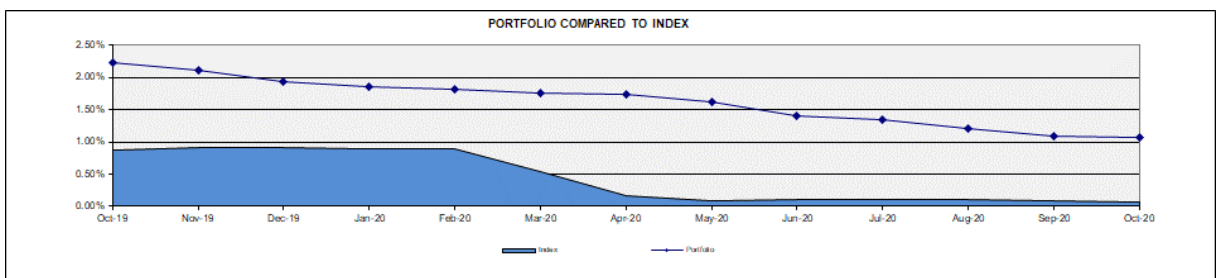
	Previous Month (\$'000)	Current Month (\$'000)
<b>Fossil Fuel Aligned</b>	61,288 <b>68%</b>	55,288 <b>64%</b>
<b>Non-Fossil Fuel Aligned</b>	25,250 <b>28%</b>	28,250 <b>33%</b>
<b>Not Classified</b>	3,000 <b>4%</b>	3,000 <b>3%</b>
<b>Total</b>	<b>89,538</b> <b>100%</b>	<b>86,538</b> <b>100%</b>

Classification based on advice from 'Market Forces'.

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

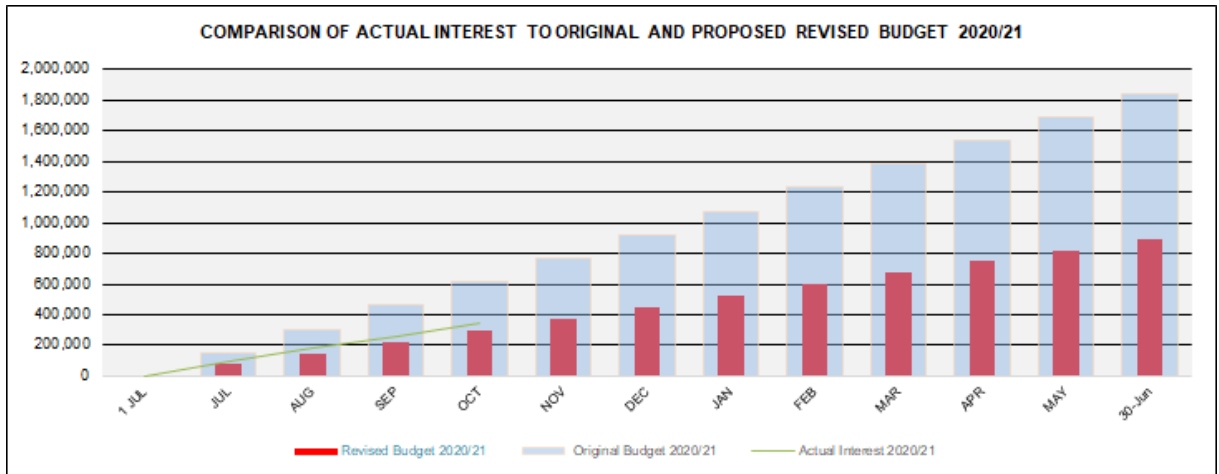


**D. Comparison of Portfolio Investment Rate to 90 Day BBSW**



## 9.1 Investment Summary - October 2020

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



As part of the quarterly budget review, the forecast interest income has been reduced by \$949,000. The lower investment yields that continue to adversely impact Council's portfolio return are from market conditions including the low official cash rate. In addition, Council's cash inflows have been negatively impacted as a result of COVID-19. Lower cash balances combined with lower rates of returns on investments necessitate the revised forecast.

### F. Investments held as at 31 October 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
20/09/04	National Australia Bank (ASX Listed)	FRN	1.3200%	Perpetual	1,788	1,743
17/06/16	Commonwealth Bank of Australia	FRN	1.1400%	17/06/21	1,000	1,000
30/06/16	Commonwealth Bank of Australia	FRN	1.1300%	30/06/21	1,000	1,000
03/08/17	Westpac Banking Corporation	FRN	1.1500%	03/08/22	2,000	2,000
18/08/17	Westpac Banking Corporation	FRN	1.1513%	18/08/22	1,000	1,000
09/11/17	ME Bank	FRN	1.3550%	09/11/20	750	750
06/02/18	Newcastle Permanent Building Society	FRN	1.5000%	06/02/23	700	700
02/07/18	Teachers Mutual Bank Limited	FRN	1.4600%	02/07/21	700	700
30/07/18	Westpac Banking Corporation	FRN	0.9868%	31/07/23	1,000	1,000
31/07/18	Westpac Banking Corporation	FRN	0.9868%	02/08/23	1,000	1,000
06/09/18	Newcastle Permanent Building Society	FRN	1.5000%	06/02/23	1,000	1,000
06/09/18	Credit Union Australia	FRN	1.3400%	06/09/21	600	600
10/09/18	AMP Bank	FRN	1.1700%	10/09/21	1,500	1,500
11/01/19	Commonwealth Bank of Australia	FRN	1.2101%	11/01/24	1,000	1,000
08/02/19	Westpac Banking Corporation	FRN	1.1521%	06/02/24	2,000	2,000
21/02/19	Newcastle Permanent Building Society	FRN	1.1485%	22/02/21	2,000	2,000
22/02/19	Newcastle Permanent Building Society	FRN	1.1596%	22/02/21	1,000	1,000
26/07/19	Commonwealth Bank of Australia	FRN	1.1100%	26/07/21	1,000	1,000
01/08/19	AMP Bank	FRN	1.1700%	10/09/21	2,000	2,000
26/08/19	AMP Bank	FRN	1.1700%	10/09/21	1,000	1,000
28/10/19	Bank of Communications	FRN	0.9456%	28/10/22	1,000	1,000
28/11/19	Australian Unity Bank	TD	1.7000%	25/11/20	2,000	2,000
28/01/20	ING Bank (Australia) Ltd	TD	1.6500%	21/01/21	1,000	1,000
11/02/20	Auswide Bank	TD	1.6500%	04/02/21	2,000	2,000
26/02/20	Defence Bank Ltd	TD	1.6500%	23/02/21	1,000	1,000
27/02/20	MyState Bank Ltd	TD	1.6500%	20/11/20	1,000	1,000
03/03/20	Defence Bank Ltd	TD	1.6500%	02/03/21	1,000	1,000

## 9.1 Investment Summary - October 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
05/03/20	MyState Bank Ltd	TD	1.6500%	03/03/21	1,000	1,000
07/03/20	Defence Bank Ltd	TD	1.6000%	08/12/20	1,500	1,500
17/03/20	Macquarie Bank Limited	TD	1.6000%	22/12/20	1,000	1,000
17/03/20	MyState Bank Ltd	TD	1.7500%	16/12/20	1,000	1,000
24/03/20	Defence Bank Ltd	TD	1.8500%	23/03/21	1,000	1,000
04/06/20	Bank of China	TD	0.9500%	01/06/21	2,000	2,000
04/06/20	National Australia Bank	TD	0.9900%	18/05/21	3,000	3,000
10/06/20	Australian Unity Bank	TD	1.0500%	08/04/21	1,000	1,000
10/06/20	Bank of China	TD	0.9200%	08/06/21	1,000	1,000
10/06/20	AMP Bank	TD	1.5500%	10/12/20	1,000	1,000
24/06/20	Bank of China	TD	0.9500%	23/06/21	2,000	2,000
29/06/20	Bank of Queensland	TD	1.0500%	28/06/21	2,000	2,000
29/06/20	Bank of Queensland	TD	1.0500%	22/06/21	1,000	1,000
29/06/20	Commonwealth Bank of Australia	TD	0.7400%	05/01/21	4,000	4,000
30/07/20	Commonwealth Bank of Australia	TD	0.7200%	04/02/21	3,000	3,000
04/08/20	National Australia Bank	TD	0.8500%	03/08/21	4,000	4,000
04/08/20	National Australia Bank	TD	0.8500%	28/07/21	2,000	2,000
11/08/20	Bank of Queensland	TD	0.8500%	10/08/21	3,000	3,000
11/08/20	Bendigo & Adelaide Bank	TD	0.7500%	05/08/21	2,000	2,000
17/08/20	AMP Bank	TD	0.8000%	17/08/21	1,000	1,000
20/8/20	Westpac Banking Corporation	TD	0.7500%	21/07/21	4,000	4,000
27/8/20	Defence Bank Ltd	TD	0.9000%	26/08/21	1,000	1,000
31/08/20	Suncorp Limited	TD	0.7000%	09/03/21	2,000	2,000
31/08/20	Westpac Banking Corporation	TD	0.7600%	03/09/21	2,000	2,000
02/09/20	Suncorp Limited	TD	0.7000%	02/03/21	1,000	1,000
02/09/20	Bendigo & Adelaide Bank	TD	0.7000%	01/09/21	2,000	2,000
16/09/20	ME Bank	TD	0.6500%	16/03/21	1,000	1,000
08/10/20	Suncorp Limited	TD	0.5500%	14/04/21	1,000	1,000
14/10/20	Bendigo & Adelaide Bank	TD	0.6000%	13/10/21	2,000	2,000
<b>Totals</b>					<b>86,538</b>	<b>86,493</b>
TD = Term Deposit		FRN = Floating Rate Note				

### RECOMMENDATION

That Council notes the record of banking and investments for October 2020.

### Attachment(s)

Nil

## 9.2 Flat Rock - Tent Park Fees and Charges 2021/22

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### 9.2 Flat Rock - Tent Park Fees and Charges 2021/22

#### Delivery Program

Commercial Services

#### Objective

To seek Council's approval to exhibit the draft fees and charges for the Council operated tent park for the period 1 February 2021 to 31 January 2022.

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#### Background

The NSW Local Government Act requires councils to publically exhibit and adopt their fees and charges prior to implementation. The majority of Council's fees are set each June as part of the Operational Plan however Flat Rock Tent Park's fees are set for the twelve months from 1 February each year.

It is important that Flat Rock Tent Park guests are informed in advance of the fees for their next holiday this timeline also enables the fees and charges to be included in holiday and camping publications.

This report seeks Council approval for setting Flat Rock Tent Park's fees and charges for the period 1 February 2021 to 31 January 2022.

#### Key Issues

- Variation in fees
- Conditions attached to the fees

#### Information

The occupancy rates and revenue for the park are monitored on a regular basis to ensure that it is both sustainable and meeting customer expectations.

The following table provides a summary of the revenue collected as per Council's financial records.

Year	Income (\$)
2019/20	338,400
2018/19	462,500
2017/18	406,306
2016/17	402,374
2015/16	410,926
2014/15	422,312

Income for 2019/20 is significantly lower as a result of COVID-19 and the forced closure of Flat Rock Tent Park from 24 March 2020 to 1 July 2020.

It is unknown how COVID-19 may affect the park's income for 2020/21. Since the park re-opened on 1 July 2020 trading continues to be adversely affected by state border closures, particularly Queensland.

## 9.2 Flat Rock - Tent Park Fees and Charges 2021/22

Flat Rock Tent Park has limited facilities and occupancy is heavily dependent on external factors such as weather and marine activity.

The proposed fees take into account factors such as park facilities and standards, feedback from the Park Managers and guests, as well as industry comparisons with similar parks on the NSW North Coast and the latest Consumer Price Index (CPI).

A new premium site fee for the 2021/22 year is proposed to differentiate between the unpowered sites and the beachfront sites that are closest to the beach access track. These sites are in a favourable location, are relatively flat and also the most popular.

The new fee will assist in providing additional income to the Park to enable upgrading of the Park and assist in the Park's profitability. The proposed pricing is reflective of the high demand of these sites.

A copy of the proposed fees, charges and cancellation policy is included in Attachment 1. The key fee changes are set out below:

<b>Current Fees</b>	<b>Off Peak</b>	<b>Shoulder</b>	<b>Peak</b>
Unpowered site (based on 2 people)	\$37.00	\$42.00	\$49.00
Adult (extra)	\$16.00	\$16.00	\$16.00
Child (4-16 years incl)	\$9.00	\$9.00	\$9.00

<b>Proposed Fees</b>	<b>Off Peak</b>	<b>Shoulder</b>	<b>Peak</b>
Unpowered site (based on 2 people)	\$38.00	\$43.00	\$50.00
Unpowered premium site (based on 2 people)*	\$45.00	\$51.00	\$60.00
Adult (extra)	\$16.00	\$16.00	\$16.00
Child (4-16 years incl)	\$9.00	\$9.00	\$9.00

\* Premium sites are situated at Site numbers 34 to 43 (refer to Attachment 1).

### Sustainability Considerations

- **Environment**  
Council needs to operate the tent park in a sustainable manner, taking into account any environmental impacts.
- **Social**  
The tent park plays a social role in that people holidaying in the tent park come from broad socio-demographic groups, this creates a large social interaction of people.
- **Economic**  
The tent park provides economic benefits to both Council and the broader business community.

### Legal / Resource / Financial Implications

Council is legally required to exhibit and adopt its fees.

## **9.2 Flat Rock - Tent Park Fees and Charges 2021/22**

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The small increase in proposed fees will have positive financial implications for the operation of Flat Rock Tent Park.

### **Consultation**

The draft fees and charges are to be exhibited for public comment.

### **Options**

The options are to either adopt the proposed fees or amend the fees.

The recommended option is to exhibit the proposed fees and charges as the changes are consistent with industry trends and competitors. The fees will be re-submitted to Council for adoption following the exhibition period.

### **RECOMMENDATION**

That Council authorises the exhibition of the draft Flat Rock Tent Park fees and charges for 1 February 2021 to 31 January 2022, as per Attachment 2 to this report, for public comment.

### **Attachment(s)**

1. Site Plan - Flat Rock Tent Park
2. Draft Fees and Charges - Flat Rock Tent Park 2021- 2022



### 9.3 Legal Matters - Update

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### 9.3 Legal Matters - Update

#### Delivery Program

Governance

#### Objective

To provide an update on litigation involving Council.

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#### Background

This report provides an update on current or recent legal matters to ensure that Councillors and the community are informed on litigation involving Council.

#### Key Issues

- Type, outcomes and cost of litigation

#### Information

This report provides an opportunity to review contemporary legal cases involving Council. Details of the case(s) are as follows:

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Allens Linklaters	Planners North v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2016/184 (Intrapac Pty. Ltd.)	1,200,000	1,232,000 (Council awarded and paid \$493,816 in costs)

#### Comment

The applicant appealed the deemed refusal of DA 2016/184 (Cumbalum Views Estate) for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A). This application originally comprised 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.

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

Council was awarded certain costs and an application for costs was filed in the Supreme Court. The cost determination was issued to Council on 5 August 2020. The total determination is \$493,816.99 (no GST).

A copy of the “Certificate of Determination” is included as Attachment 1 and the first 16 pages of the 66 page “Costs Assessment Reasons” is included as Attachment 2.

The “Cost Assessment Reasons” highlight the changes to the application as the court action, initiated by the applicant, progressed along with the basis for the \$493,816.69 calculation.

Council has now been paid the cost assessment with the funds transferred to an internal reserve to assist with future litigation.

### 9.3 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Parker and Kissane	Ballina Shire Council v The Beach	Land and Environment Court - Class 4 Civil Enforcement Proceedings	50,000	54,000
<p><b>Comment</b></p> <p>At the April 2019 Ordinary meeting, Council resolved to grant consent to the two development applications lodged by The Beach. Subsequently, a building information certificate was also issued. Class 4 Proceedings were discontinued at the agreement of both parties.</p> <p>Council issued the owner with three \$6,000 Penalty Infringement Notices, and the principal building contractor with one \$6,000 Penalty Infringement Notice on 16 April 2020.</p> <p>The owner paid \$18,000 to finalise the three Penalty Infringement Notices.</p> <p>The principal building contractor elected to have the matter heard at Ballina Local Court on 11 November 2020. On 11 November 2020 a plea of guilty was entered by the principal building contractor and an explanation was provided to the Court. The Magistrate found the matter proven and fined the company \$1,000 with an order to pay Council's legal costs of \$770.</p>				
Parker and Kissane	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	750,000	759,000
<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>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.</p> <p>A decision on the matter was handed down on 4 October 2019 with the amended development application approved with conditions.</p> <p>Council then resolved to appeal the decision in the NSW Land and Environment Court.</p> <p>The appeal judgement was issued on 29 April 2020 and the Court found that Council established five (out of six) grounds of error on questions of law. The appeal was upheld. As part of Chief Judge Preston's decision, it was ordered that the proceedings be remitted to Commissioner Dickson to be determined according to the reasons (as detailed by Chief Judge Preston) for his judgment.</p> <p>On 22 June 2020 a motion from the applicant regarding the reopening of the proceedings was heard. On 26 June 2020 Commissioner Dickson ruled in Council's favour with the decision being that the case would not be reopened.</p> <p>On 30 June 2020, Council received advice from the applicant seeking to discontinue the proceedings. This proposed discontinuance was accepted and a formal Notice of Discontinuance was lodged in the Land and Environment Court shortly after.</p> <p>The discontinuance now concludes the matter except for the issue of costs. Council's legal representative is pursuing costs in line with orders in Council's favour.</p>				

### 9.3 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
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 (Intrapac Pty. Ltd.)	300,000	303,000
<p><b>Comment</b></p> <p>The applicant 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. An appeal was also lodged against the deemed refusal of DA 2018/616 to undertake bulk earthworks across the site. The need to obtain separate approval for the bulk earthworks is a condition of the 2016/184 consent as ordered by the court. The Court's decision was handed down on 5 March 2020.</p> <p>Two of the modification applications were determined by Council in advance of the Court hearing. The outcome of the hearing was the approval of the bulk earthworks DA 2018/616 and the remaining modification to DA 2016/184 following the applicant's further address of a number of issues raised by Council. The construction certificate was not determined by the Court. Following various changes to the construction certificate documentation to meet applicable conditions of consent, Council issued the construction certificate for works associated with stages 2 and 3 of the Banyan Hill development. The legal proceedings in relation to this matter have concluded.</p>				
Parker and Kissane	Jeffrey Gibbs v Ballina Shire Council and North Coast Recycling Pty Ltd	Land and Environment Court - Class 1 Appeal Proceedings – Third Party Challenge to Consent Granted by the NRPP to development application 2017/600.	200,000	27,000
<p><b>Comment</b></p> <p>DA 2017/600 is a 'designated development' for the expansion of an existing resource recovery facility at Northcott Crescent in the Russellton Industrial estate. The application was granted consent by the Northern Regional Planning Panel in November 2019.</p> <p>An amended Class 1 Application was filed in the NSW Land and Environment Court on 11 February 2020. Council is the first respondent and North Coast Recycling Pty Ltd is the second respondent. The matter is set down for hearing from 18 to 22 January 2021.</p>				
Lindsay Taylor Lawyers	Jason and Joanne White v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge Council's Refusal of development application 2018/381.	100,000	33,000
<p><b>Comment</b></p> <p>DA 2018/381 involves the decommissioning of an existing dwelling and construction of a new two-storey dwelling and swimming pool and the upgrading of an existing internal access way at 404 Old Byron Bay Road, Newrybar. Council refused the application at the December 2019 Ordinary meeting. A third party has been joined to the proceedings, with this party raising issues additional to those set out in Council's statement of facts and contentions.</p> <p>A Section 34AA conciliation conference and hearing was held on 14 and 15 September 2020. The matter was not resolved and the hearing is scheduled to resume on 3 and 4 December 2020.</p>				

### 9.3 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Parker and Kissane	Veronesi v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2019/170.	100,000	11,000
<p><b>Comment</b></p> <p>DA 2019/170 involves a proposal for a two lot boundary adjustment subdivision at 987 and 937 Wardell Road, Meerschaum Vale. On 28 January 2020 the applicant filed an appeal with the NSW Land and Environment Court on the basis of a deemed refusal. The application had remained undetermined in an attempt to have a number of outstanding issues satisfactorily resolved. A conciliation conference was held on 3 July 2020, with Council and the applicant reaching agreement. Orders were made on 24 July 2020, with the application approved with conditions. Key matters associated with the proposal were able to be addressed through conditions of consent. This matter has now concluded.</p>				
Lindsay Taylor Lawyers	Griffani and Griffani v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge Council's refusal of development application 2019/30.	100,000	31,000
<p><b>Comment</b></p> <p>DA 2019/30 involves the erection of eight holiday cabins and the temporary use of the land for the purposes of wedding ceremonies. Council determined the application by way of refusal at the December 2019 Ordinary meeting. A third party (closest neighbour) joined the appeal and attended the Section 34 Conference on 11 November 2020. The Applicant had provided further material in the shape of turning circles and a traffic management plan, which was satisfactory to Council and its consultant traffic engineer. This was subject to agreement on the conditions. The third party was not in agreeance on the further material, with additional issues raised as to permissibility in terms of the acoustic impact of the temporary use, and the use of the communal facility had also not been addressed. The draft conditions addressing some of these concerns were not acceptable to the third party.</p> <p>Further suggestions were made as to the possible relocation of the communal facility, closer to the tourist and visitor accommodation, in order to resolve the concerns of the third party. This was encouraged by the Senior Commissioner, as otherwise the third party would be forced to incur the cost of a full hearing. The third party was not willing to accept that the moving of the facility would resolve their concerns and insisted upon the removal of the facility and the reduction in tourist cabins from eight to three. The Applicant rejected this. Subsequently, the Senior Commissioner terminated the conciliation conference.</p> <p>The proceedings have been adjourned to allow the Applicant to put on a notice of motion to amend the Griffani's application so that it incorporates the traffic management plan and changes to the access way, which are the basis for the resolution of the traffic issues from Council's perspective. That motion is to be filed mid-November. A hearing date may be set for 17 December, 2020, with that date to be confirmed.</p>				
Lindsay Taylor Lawyers	Intrapac Skennars Head Pty. Ltd. v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge to deemed refusal of modification application relating to developer contributions payable under conditions of consent for development application 2017/244.	250,000	73,000
<p><b>Comment</b></p> <p>The applicant has lodged an appeal in the NSW Land and Environment Court on the basis of deemed refusal of a modification to the development consent that would have the effect of reducing the developer contributions payable by Intrapac in relation to the Aureus development. The matter was part heard by the Court on 10 to 12 November 2020. The hearing was adjourned until 24 November 2020</p>				

### 9.3 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Parker & Kissane	Monica and Allan Anderson v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge to Council's refusal of DA 2020/49.	TBC	4,000
<b>Comment</b>				
DA 2020/49 proposes subdivision of two existing rural zoned lots to create three lots, including one split lot. Council staff determined the application by way of refusal under delegated authority on 22 July 2020. On 22 October 2020 the applicant was granted leave by the Court to amend the proposed plans. The matter is set down for a Section 34 Conference on 24 March 2021.				
Parker & Kissane	Martin Kenny vs Ballina Shire Council	NSW Civil & Administrative Tribunal – Application under Government Information (Public Access) Act 2009	10,000	7,000
<b>Comment</b>				
Mr Kenny has appealed to NCAT in relation to Council's decision to withhold documentation relating to compliance action associated with 404 Old Byron Bay Road Newrybar. A case conference was held on 11 August 2020. Following the conference, the applicant withdrew. This matter has now concluded.				

#### Legal / Resource / Financial Implications

This section provides an update on legal costs for recent years and for the current financial year to early November.

**Table 1 – Legal Expenditure 2017/18 to 2020/21**

Description	2017/18	2018/19	2019/20	2020/21
DA 2016/184, 2018/616 - CURA A - Planners North / Northern Rivers Land Solutions – Intrapac	832,100	78,400	337,000	3,600
Seabreeze Caravan Park	104,500	0	0	0
DA 2017/244 - Skennars Head – Aureus – Intrapac	1,100	31,100	28,000	12,000
DA 2017/557 - Byron Highlander (Function Centre)	2,800	9,500	0	0
DA 2017/321 – 34 Willowbank Drive (Michael Young)	0	22,600	0	0
DA 2017/600 – 19-21 Northcott Crescent (Gibbs)	0	0	7,000	7,400
DA 2017/707 - 5 Rayner Lane (Ardill Payne)	0	9,300	37,000	0
Ballina Sands – Newrybar Swamp Road	4,000	22,100	15,000	0
The Beach House	0	31,600	16,000	6,000
DA 2018/189 – 4 Page Court (Millar)	0	0	6,000	0
DA 2018/321 - Palm Lake	0	256,600	497,000	6,700
DA 2018/381 - 404 Old Byron Bay Road (White)	0	900	22,000	11,000
404 Old Byron Bay Road (Kenny NCAT)	0	0	0	7,500
DA 2018/597 – Water Extraction	0	6,400	0	0
DA 2019/30 – 43 Tuckombil Lane (Griffani)	0	0	17,000	13,700
DA 2019/170 – 937/987 Wardell Road (Veronesi )	0	0	0	11,200
DA 2020/49 – 38 Newrybar Swamp Road (Anderson)	0	0	0	4,400
Fire Safety Statements	0	9,200	6,000	0
Misc including insurance and planning agreements	22,700	25,400	54,000	6,100
<b>Total Actual Expenditure</b>	<b>967,200</b>	<b>503,100</b>	<b>1,042,000</b>	<b>89,600</b>
Legal Expenditure Budgets	1,005,000	290,000	1,036,000	325,000
<b>Expenditure Budget Result – Surplus / (Shortfall)</b>	<b>37,800</b>	<b>(213,100)</b>	<b>(6,000)</b>	<b>235,400</b>
Legal Actual Income from Costs Recovered / Fines	108,000	61,000	157,000	503,200
Legal Income Budget	85,000	70,000	140,000	60,000
<b>Income Budget Result – Surplus / (Shortfall)</b>	<b>23,000</b>	<b>(9,000)</b>	<b>17,000</b>	<b>443,200</b>
<b>Net Income and Expenditure Budget Result</b>	<b>60,800</b>	<b>(222,100)</b>	<b>11,000</b>	<b>678,600</b>

### 9.3 Legal Matters - Update

As per this summary \$89,600 has been expended to date out of a total legal expenditure budget of \$325,000. Legal costs recovered are \$443,200 in excess of budget due to the costs recovered from the CURA Intrapac Property Pty. Ltd. litigation.

From an expenditure perspective there are a number of cases still underway and there is little doubt that the legal expenditure budget of \$325,000 will be exceeded. This will then result in the costs recovered having to be transferred back out of reserve.

Legal expenditure can vary significantly from year to year as shown in the following table, which provides a ten year summary of actual results, with the last three years having been exceptionally high and 2020/21 trending in a similar direction.

**Table 2 – Legal Expenditure – Ten Year Period 2010/11 to 2019/20 (\$'000)**

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Expense	710	136	149	266	103	88	353	967	503	1,042
Income	353	8	19	34	5	20	90	108	61	157
<b>Net</b>	<b>357</b>	<b>128</b>	<b>130</b>	<b>232</b>	<b>98</b>	<b>68</b>	<b>263</b>	<b>859</b>	<b>442</b>	<b>885</b>

#### Contract Disputes

Contract disputes, can at times involve legal action, and there is currently one major on-going dispute in respect to contractual obligations 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. This dispute is now being litigated in the Supreme Court. Council is the defendant in this matter.

Legal and related expenditure on this dispute to date is approximately \$569,000 as per the following summary. These figures exclude office based staff time, as that time is not directly charged to the dispute.

**Table 3 – Haslin Dispute – Expenditure for 2016/17 to 2019/20**

Description	2016/17	2017/18	2018/19	2019/20	Totals
Maddocks Lawyers	258,800	40,800	27,300	144,900	471,800
Expert Determination	27,500	57,100	12,200	0	96,800
<b>Total</b>	<b>286,300</b>	<b>97,900</b>	<b>39,500</b>	<b>144,900</b>	<b>568,600</b>

Council last considered a report regarding this matter at the February 2020 Ordinary meeting. Following this meeting Council has responded to further hearing preliminaries, however importantly Council has again indicated to Haslin we would agree to participate in commercial settlement negotiations or mediation. As part of their defence, Haslin commenced a cross claim with a key subcontractor.

### **9.3 Legal Matters - Update**

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The proceedings have again been delayed by several months due to the process of filing the required statements of cross claim by those parties. The delay has not been an additional cost to Council and overall the joining of the third party is potentially advantageous to Council's position.

Council has continued to press for a mediation process to be conducted prior to the commencement of the hearing. Haslin has now agreed to participate in the mediation, however originally this agreement was subject to their subcontractor being a party to the mediation.

The subcontractor has not agreed to this, at this point in time, although their participation still remains a possibility (and is preferred from Council's perspective).

There is now agreement by Haslin to Council's position that the mediation should proceed, with or without the subcontractor's agreement.

The mediation is arranged for February 2021.

In the event Council and Haslin reach an agreement and the subcontractor does not attend the mediation, Haslin will be able to continue their cross claim and Council would no longer be a party to the proceeding.

#### **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 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 public information.

#### **RECOMMENDATION**

That Council notes the contents of this update on legal matters.

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

Nil

## 9.4 Financial Statements - 2019/20

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### 9.4 Financial Statements - 2019/20

#### **Delivery Program**

Financial Services

#### **Objective**

To present the audited financial statements.

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#### **Background**

Council considered the annual financial statements for the financial year ended 30 June 2020 at the October 2020 Ordinary meeting. Council's auditor, Mr Geoff Dwyer, Contract Auditor for the Audit Office of New South Wales also addressed Council at that meeting.

The audit opinion was that Council's accounting records had been kept in accordance with the requirements of the Local Government Act and Australian accounting standards. The records fairly presented the Council's financial position and the results of operations. The audit was unqualified. Council subsequently endorsed the reports.

In accordance with Section 419 of the Local Government Act the Council must then formally present the financial reports to the public. This public presentation must be advertised as per Section 418. The advertising process has been completed and this report complies with the Local Government Act.

#### **Key Issues**

- Compliance with the Local Government Act
- Content of the financial reports
- Submissions to the advertised reports

#### **Information**

In accordance with the Local Government Act and Council's resolution the reports were advertised for public comment. No submissions were received.

Councillors may wish to bring their copy of the annual financial reports, as distributed at the October meeting, in case there is any further discussion on the matter. A copy is also available on the Councillor hub.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
The Financial Statements summarise the financial position of Council.



**Legal / Resource / Financial Implications**

The annual financial statements detail the financial position of Council.

**Consultation**

Notice of the reports was advertised on Council's website.

**Options**

Council may adopt the annual financial reports presented to the public or choose not to adopt the reports. The recommendation is to adopt the reports.

**RECOMMENDATION**

That Council adopts the annual financial reports and auditor's reports for the financial year ended 30 June 2020, as publicly exhibited.

**Attachment(s)**

Nil

## 9.5 Financial Review - 30 September 2020

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### 9.5 Financial Review - 30 September 2020

#### Delivery Program

Financial Services

#### Objective

To provide a quarterly review of the 2020/21 financial year budget based on the known results to 30 September 2020.

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#### Background

In accordance with Clause 203 of the Local Government (General) Regulations, the Responsible Accounting Officer of a council must, not later than two months after the end of each quarter, prepare and submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year. This report provides the review for the first quarter of the 2020/21 financial year.

#### Key Issues

- Variations to the budget and financial performance of Council

#### Information

The purpose of this report is to provide information on known budget variances as at 30 September 2020. The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Office of Local Government (OLG).

To comply with these guidelines an Operating Statement, Capital Budget, Cash and Investment Statement, Key Performance Indicators, Contractors, Consultants, Legal Information and Certification by the Responsible Accounting Officer are required.

Commentary on the variations is provided after the tables. A brief overview of the information provided in the report is as follows:

#### **Section One – General Fund Long Term Financial Plan**

This section provides an overview of the General Fund providing a high level summary of the Ten Year Long Term Financial Plan.

#### **Section Two - Operating Income and Expenditure Budgets 2020/21**

These tables outline the 2020/21 operating income and operating expenditure budgets for the Funds (General, Water and Wastewater).

#### **Section Three - Capital Budgets 2020/21**

Outlines the 2020/21 capital expenditure budgets.

#### **Section Four - Cash and Investment Statement**

Provide details of the projected movements in the cash reserve balances.

#### **Section Five - Key Performance Indicators**

The ratios provide an indication of the financial health of the organisation.

**Section Six - Contractors/Consultants/Legal Expenses**

Details specific expenses incurred and contracts entered.

**Section Seven – Other Matters**

A new fee is proposed for the Domestic Waste Management operations, for the sale of kitchen caddies.

**Section Eight – Certification**

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

**Section One – General Fund Long Term Financial Plan**

The following tables provide an overview of how the General Fund Long Term Financial Plan (LTFP) has changed since the budget carry forwards as reported to the August 2020 Ordinary meeting.

**LTFP Forecasts Following Carry Forwards Adopted August 2020 (\$'000)**

Year	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
Operating Income	65,177	70,976	74,500	76,363	78,204	79,997	82,411	84,910	86,920	88,833
Operating Expenses	71,366	73,256	75,658	77,616	79,382	80,664	82,186	84,090	86,004	87,449
<b>Result (Deficit)</b>	<b>(6,188)</b>	<b>(2,281)</b>	<b>(1,158)</b>	<b>(1,253)</b>	<b>(1,179)</b>	<b>(667)</b>	<b>225</b>	<b>820</b>	<b>917</b>	<b>1,384</b>
WC Result	(780)	(793)	(671)	(396)	(254)	(18)	227	449	788	1,066
<b>WC Balance</b>	<b>3,928</b>	<b>3,135</b>	<b>2,464</b>	<b>2,068</b>	<b>1,814</b>	<b>1,796</b>	<b>2,023</b>	<b>2,472</b>	<b>3,260</b>	<b>4,326</b>

**LTFP Revised Forecasts September 2020 Review (\$'000)**

Year	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30
Operating Income	67,055	71,603	74,636	76,368	78,074	79,891	82,013	84,250	86,344	88,603
Operating Expenses	75,035	75,934	78,006	79,929	81,440	82,547	83,844	85,528	87,200	88,441
<b>Result (Deficit)</b>	<b>(7,981)</b>	<b>(4,331)</b>	<b>(3,370)</b>	<b>(3,561)</b>	<b>(3,366)</b>	<b>(2,656)</b>	<b>(1,831)</b>	<b>(1,278)</b>	<b>(856)</b>	<b>162</b>
WC Result	(854)	(844)	(755)	(523)	(271)	17	341	647	1,074	1,444
<b>WC Balance</b>	<b>3,854</b>	<b>3,009</b>	<b>2,255</b>	<b>1,732</b>	<b>1,460</b>	<b>1,477</b>	<b>1,818</b>	<b>2,466</b>	<b>3,540</b>	<b>4,984</b>

The future year forecasts indicate the General Fund not reaching an operating surplus until 2029/30.

It is necessary to restrain and attempt to reduce operating expenditure (i.e. service levels) in order to ensure the General Fund reaches a healthy operating position.

Council's depreciation expense increased significantly during 2019/20 as a result of the revaluation of road and transport assets, with the total depreciation for Council's consolidated operations for 2019/20 being \$22.4m as compared to \$18.9m for 2018/19, an increase of 18%.

The ever expanding asset base, and associated increase in the annual depreciation expense, makes it a continual struggle for Council to fund the renewal of infrastructure, in a timely manner.

The following section provides commentary in relation to the forecast changes impacting on the General Fund.

**Section Two – Operating Income and Expenditure Budgets 2020/21**

*General Fund – Operating Income and Expenses*

This section deals with the General Fund operations. The **Forecast Operating Result as at September** is a loss of \$7,980,500. This compares to a forecast loss of \$6,188,300 following the carry forwards as reported to the August Council meeting.

The estimated movement in **Unrestricted Working Capital** has deteriorated, with a forecast deficit **as at September** now \$854,400. This compares to a forecast deficit of \$780,000 following the carry forwards as reported to the August meeting.

The next two tables detail operating income and operating expenses including recommended variations to budget.

**General Fund – Operating Income (\$'000)**

Operating Income	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
<b>Planning and Environmental Health Division</b>								
Strategic Planning	165	0	165	0	165	279	444	124
Development Services	552	0	552	0	552	670	1,222	696
Building Services	1,611	0	1,611	0	1,611	450	2,061	581
Env and Public Health	539	50	589	0	589	10	599	183
Public Order	213	0	213	0	213	0	213	40
Open Spaces	870	0	870	0	870	29	899	368
NRCG Gallery	56	0	56	0	56	0	56	18
Open Spaces Buildings	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>4,006</b>	<b>50</b>	<b>4,056</b>	<b>0</b>	<b>4,056</b>	<b>1,438</b>	<b>5,494</b>	<b>2,010</b>
<b>Civil Services Division</b>								
Asset Management	270	0	270	0	270	0	270	39
Stormwater and Env Protect	396	67	463	0	463	2	465	365
Roads and Bridges	1,007	0	1,007	77	1,084	(66)	1,018	183
Ancillary Transport Services	676	0	676	0	676	152	828	200
Transport for NSW	1,040	0	1,040	(77)	963	0	963	520
Emergency Services	179	0	179	0	179	108	287	108
Quarries and Sandpit	68	0	68	0	68	0	68	32
Landfill and Resource Mgmt	6,030	0	6,030	0	6,030	707	6,737	2,352
Domestic Waste Mgmt	8,298	0	8,298	0	8,298	32	8,330	7,591
<b>Sub Total</b>	<b>17,964</b>	<b>67</b>	<b>18,031</b>	<b>0</b>	<b>18,031</b>	<b>935</b>	<b>18,966</b>	<b>11,390</b>
<b>Corporate and Community Division</b>								
Governance	30	0	30	0	30	0	30	10
Communications	15	0	15	0	15	20	35	4
Financial Services	194	0	194	0	194	0	194	41
General Purpose Revenues	31,048	0	31,048	0	31,048	(559)	30,489	25,947
Information Services	141	0	141	0	141	60	201	58
People and Culture	127	0	127	0	127	0	127	13
Property Management	2,089	0	2,089	0	2,089	(23)	2,066	791
Airport	2,795	0	2,795	0	2,795	0	2,795	567
Community Facilities	442	0	442	0	442	6	448	91
Library Services	110	0	110	0	110	0	110	0
Swimming Pools	1,020	0	1,020	0	1,020	0	1,020	191
Tourism	51	0	51	0	51	0	51	10
Fleet Mgmt and Workshop	5,029	0	5,029	0	5,029	0	5,029	1,158
Admin Centre and Depot	0	0	0	0	0	0	0	11
<b>Sub Total</b>	<b>43,091</b>	<b>0</b>	<b>43,091</b>	<b>0</b>	<b>43,091</b>	<b>(496)</b>	<b>42,595</b>	<b>28,892</b>
<b>Total Operating Income</b>	<b>65,061</b>	<b>117</b>	<b>65,178</b>	<b>0</b>	<b>65,178</b>	<b>1,877</b>	<b>67,055</b>	<b>42,292</b>

## General Fund – Operating Expenses (\$'000)

Operating Expenses	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
<b>Planning and Environmental Health Division</b>								
Strategic Planning	642	369	1,011	0	1,011	318	1,329	141
Development Services	1,958	0	1,958	0	1,958	50	2,008	452
Building Services	1,537	0	1,537	0	1,537	50	1,587	341
Env and Public Health	1,909	462	2,371	0	2,371	0	2,371	343
Public Order	601	4	605	0	605	0	605	148
Open Spaces	4,331	682	5,013	0	5,013	31	5,044	981
NRCG Gallery	378	36	414	0	414	0	414	112
Open Spaces Buildings	793	0	793	0	793	12	805	272
<b>Sub Total</b>	<b>12,149</b>	<b>1,553</b>	<b>13,702</b>	<b>0</b>	<b>13,702</b>	<b>461</b>	<b>14,163</b>	<b>2,790</b>
<b>Civil Services Division</b>								
Asset Management	1,487	0	1,487	0	1,487	33	1,520	290
Stormwater and Env Protect	1,056	56	1,112	0	1,112	100	1,212	335
Roads and Bridges	3,510	60	3,570	0	3,570	(24)	3,546	967
Ancillary Transport Services	1,991	38	2,029	0	2,029	(3)	2,026	335
Transport for NSW	963	0	963	(140)	823	(12)	811	94
Emergency Services	518	0	518	0	518	108	626	145
Quarries and Sandpit	42	0	42	0	42	0	42	21
Landfill and Resource Mgmt	5,920	19	5,939	0	5,939	183	6,122	1,273
Domestic Waste Mgmt	8,303	24	8,327	0	8,327	75	8,402	2,048
<b>Sub Total</b>	<b>23,790</b>	<b>197</b>	<b>23,987</b>	<b>(140)</b>	<b>23,847</b>	<b>460</b>	<b>24,307</b>	<b>5,508</b>
<b>Corporate and Community Division</b>								
Governance	992	0	992	0	992	56	1,048	796
Communications	442	100	542	0	542	20	562	211
Financial Services	382	0	382	0	382	(22)	360	185
General Purpose Revenues	0	0	0	0	0	0	0	0
Information Services	2,572	0	2,572	0	2,572	94	2,666	1,284
People and Culture	132	47	179	0	179	0	179	316
Property Management	1,352	56	1,408	30	1,438	10	1,448	459
Airport	3,641	0	3,641	(30)	3,611	0	3,611	1,108
Community Facilities	1,663	0	1,663	0	1,663	51	1,714	763
Library Services	1,563	0	1,563	0	1,563	0	1,563	406
Swimming Pools	1,846	0	1,846	0	1,846	0	1,846	314
Tourism	541	0	541	0	541	0	541	110
Fleet Mgmt and Workshop	3,072	0	3,072	0	3,072	0	3,072	1,013
Admin Centre and Depot	(69)	(38)	(107)	0	(107)	12	(95)	51
<b>Sub Total</b>	<b>18,129</b>	<b>165</b>	<b>18,294</b>	<b>0</b>	<b>18,294</b>	<b>221</b>	<b>18,515</b>	<b>7,016</b>
<b>Total Operating Expense</b>	<b>54,068</b>	<b>1,915</b>	<b>55,983</b>	<b>(140)</b>	<b>55,843</b>	<b>1,142</b>	<b>56,985</b>	<b>15,314</b>
<b>Result Before Dep</b>	<b>10,993</b>	<b>(1,798)</b>	<b>9,195</b>	<b>140</b>	<b>9,335</b>	<b>735</b>	<b>10,070</b>	<b>26,978</b>
Depreciation and Non-Cash	15,382	0	15,382	0	15,382	2,670	18,052	4,513
<b>Net Operating Result</b>	<b>(4,389)</b>	<b>(1,798)</b>	<b>(6,188)</b>	<b>140</b>	<b>(6,047)</b>	<b>(1,935)</b>	<b>(7,981)</b>	<b>22,465</b>

A material adjustment to the Net Operating Result for the General Fund is a review of the Depreciation and Non-Cash line item.

Historically, forecasts have included an estimate for depreciation, however have not included an allowance for accounting losses on disposal of assets.

With the level of asset renewals and replacements that the General Fund undertakes each year, the accounting loss on disposal is a material item impacting on the Net Operating Result. Inclusion of an estimated loss on disposal provides a more accurate forecast of the Net Operating Result and also improves the accuracy of forecast ratios.

An increase to the Depreciation and Non-Cash line item for the General Fund, of \$2,670,000, is an estimate based on averaging of prior year actual loss on disposal of assets. A similar estimate has been included in the LTFP for future years.

## 9.5 Financial Review - 30 September 2020

A more detailed review of the depreciation charge for all funds will also be completed as part of the December quarterly budget review.

For the General Fund, the actual depreciation charge for 2019/20 as reported in the Financial Statements was \$16,909,000. The 2020/21 adopted forecast for depreciation is currently \$15,382,000.

The revised LTFP ten year forecast included earlier in this report has an increased depreciation expense for 2021/22 onwards, however the 2020/21 expense also needs to be increased. This means the December 2020 Financial Review will likely see a further deterioration in the forecast operating result.

The more significant adjustments to the Operating Result Before Depreciation proposed for the General Fund include a review of interest income. The forecast for interest is based on assumptions in relation to the level of cash and investments as well as the interest rate to be earned. With several cuts to the official Reserve Bank of Australia (RBA) cash rate having occurred, the interest rate being achieved is significantly lower than that used for the original budget estimates.

The impact on the General Fund is a loss of income of \$699,000, of which \$559,000 impacts on the operating cash deficit (with the balance of \$140,000 impacting on transfers to various reserves).

It is foreseeable that a further small revision may also be required in subsequent quarterly reviews, with a further rate cut announced in the week prior to the writing of this report.

Substantially offsetting the negative impact of the interest review, favourable items included adjustments to Development Services income, Building Services income and Landfill and Resource Recovery income. These income streams had been set at conservatively low levels, however are proving to demonstrate strong performance.

The large favourable adjustment to Development Services income includes an amount of \$490,000 which represents a one off reimbursement of legal costs from Intrapac Property Pty. Ltd. These funds are recommended to be transferred to an internal reserve to assist with future legal matters.

### General Fund Working Capital Forecast (\$'000)

Item	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Working Capital (Deficit)	(780)	0	(780)	0	(780)	(74)	(854)	N/A

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

This year has an exceptionally high deficit due to the COVID-19 pandemic and this will need to be adjusted closer to break-even for 2021/22 onwards.

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

### **General Fund - Operating Income**

#### ***Planning and Environmental Health Division***

##### *Strategic Planning*

Planning proposal income budgets, totalling \$60,000, have been raised for 6-20 Fitzroy Street, Wardell \$20,000; 12 Gilmore Close, Wollongbar \$20,000; and Teven Road \$20,000.

Budgeted operating grant income for \$37,000 has been raised. This amount is part of total confirmed funding of \$180,000 from the NSW State Government Streets as Shared Spaces funding program. The remaining \$143,000 is raised as a capital income budget, as it relates to capital works.

Grant funding of \$145,000 has been confirmed for the Cultural Ways Project, funded by Australian Trade and Investment Commission (Austrade) Regional Tourism Bushfire Recovery Grants program. This funding is to be used for the development of Aboriginal Cultural Heritage interpretive materials along the Coastal Recreational path, from Rocky Point Road, Skennars Head to Pat Morton Lookout, Lennox Head.

Grant funding of \$45,000 has also been confirmed for SOS Koala Projects. This is funded from the NSW State Government, with the funds directed through Tweed Shire Council who received the grant money as part of a regional project, which Ballina Shire Council is part of. This funding is to be used for koala road strike mitigation projects.

These budgets have offsetting expenditure budgets raised also.

A review of total forecast interest income is complete as part of this quarterly review. As such, a review of the allocation of interest earnings across Council and its reserves is also complete. The forecast interest allocation to Section 7.11 reserves has decreased by \$10,000.

##### *Development Services*

Actual legal expenses recovered, as at the end of this quarter, exceed \$500,000 due to costs awarded totalling \$493,800 received from Intrapac Property Pty Ltd. The budget has increased by \$490,000, to \$550,000 for the 2019/20 year, with a corresponding transfer to reserves for future legal expenses.

Other income for this section is trending well, with the adopted budgets for 2020/21 conservatively revised down due to unknown impacts of the COVID-19 pandemic.

Increases of \$180,000 are proposed, with the largest areas of increase being \$60,000 for Compliance Levy Development application fees, \$55,000 for Section 149 Certificates and \$30,000 for Development application fees.

The adjustments, excluding the one off increase for legal expenses recovered, bring total operating income for this section to \$732,000.

*Building Services*

Income for this section is trending well over adopted budgets, which were conservatively low for the unknown impacts of the COVID-19 pandemic.

Increases of \$450,000 are proposed.

The increases are \$200,000 for Builders Development Application Compliance fees, \$160,000 for Development application fees, \$50,000 for Plumbing and Drainage, and \$40,000 for Construction Certificates.

The adjustments bring total operating income for this section to \$2,061,000.

*Environmental and Public Health*

Forecasts for the On-site Septic Management (OSSM) Annual Fee and the OSSM Approval Renewals income has increased by \$10,000 in total, bringing the budgets to meet the actual income that has been realised this year.

*Open Spaces*

Budgeted income for Seven Mile Beach 4WD permits has been increased by \$20,000 to \$75,000, based on trend.

Budgeted income of \$11,000 for Community Land Lease income has been removed as this budget had been duplicated in error.

An income budget of \$20,000 has been raised for contributions for compensatory works to be received in relation to filming at Killen Falls.

These compensatory works are to be completed over a four year period, with an expenditure budget of \$5,000 proposed for 2020/21 and the remaining \$15,000 placed into reserve for future works.

***Civil Services Division***

*Roads and Bridges*

Interest budgets for the bypass reserves have been revised down by \$77,000 from \$26,000. The revised forecasts are calculated based on a reviewed interest rate and reviewed forecast reserve balances.

An income budget of \$11,000 has been raised for anticipated Natural Disaster funding to be received for expenditure incurred for the Marom Creek Road landslip.

*Ancillary Transport Services*

An operating income budget of \$90,000 has been raised for grant funding confirmed under the Boating Now Program Round 3, for the Martin Street Boat Harbour Concept Design.



## 9.5 Financial Review - 30 September 2020

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The budget for Ferry Toll Fees has been increased by \$70,000, to \$425,000, based on trend.

The budget for the Subsidiary Street Lighting grant has been revised down by \$8,000, to \$98,000, based on the actual amount received for 2019/20.

This amount is estimated each year and is not confirmed until the June of each year, with the previous year actual the best estimate to use.

### *Emergency Services*

An income budget of \$107,800 has been raised, being payment received from the Office of Local Government under the COVID-19 Economic Stimulus Package. This funding has been provided to assist councils in meeting the cost of the 2020/21 increase in the Emergency Services Levy.

A corresponding increase has been made to the expenditure budgets.

### *Landfill and Resource Management*

Income budgets increased by \$707,000 in total.

Waste disposal fees (external customers) increased by \$175,000 to \$800,000, and disposal fees for Inert Waste increased by \$260,000 to \$800,000. These increases are due to an increase in residential and commercial customers at the waste management facility.

Council (internal) waste disposal fees increased by \$176,000 to \$700,000, with an increase in waste material deposited at the waste management centre generated from capital works and operational programs.

A new budget of \$85,000 for Waste Park Bin Waste/Recycling has been proposed. This represents the gate fee for the disposal of the waste generated from Council's public place bin network.

Historically this income has been incorporated into the domestic and commercial waste budgets. Separating the income and cost enables a more granular understanding of the true cost of this service.

Budgeted income from annual charges increase by \$16,000, based on amounts received.

### *Domestic Waste Management*

Income budgets increase by \$32,000 in total.

Income from annual charges has increased by \$58,000 based on income levied.

Budgeted Interest has been revised down by \$23,000 to \$15,000.

***Corporate and Community Division***

*Communications*

An income budget of \$20,000 has been raised for the Australia Day COVID-Safe grant funds which have been received.

*General Purpose Revenues*

The forecast income budget for interest has been reduced by \$559,000 to \$320,000.

*Information Services*

The budgeted income for Information Fee income has been increased \$60,000 based on trend, to bring the combined GIPA and other information services income budget to \$190,000.

*Property Management*

The budget for Waterway Structure lease income has been increased by \$7,000 to \$15,000, based on income received.

Budgeted interest has been revised down by \$13,000 to \$32,000 for the Community Infrastructure Reserve and by \$17,000 to \$8,000 for the Property Development Reserve.

*Community Facilities*

Community facility incomes have been revised up by a net \$6,000.

The forecast income for the Alstonville Cultural Centre has been increased by \$10,000 to \$20,000.

The forecast income for the Lennox Head Cultural Centre (LHCC) is revised down by \$20,000 to \$77,000.

Income budgets have been raised for rates and charges recovered for Crawford House and the property occupied by the TS Lismore Australian Navy Cadets, of \$6,000 and \$10,000, respectively. These income budgets are offset by expenditure budgets raised.

A further detailed review of Community Facilities incomes and expenditures will be completed for the December quarterly budget review.

**General Fund - Operating Expenses**

***Planning and Environmental Health Division***

*Strategic Planning*

As noted earlier in this report, expenditure budgets matching income budgets have been raised for planning proposal projects, \$60,000; Shared Spaces grant expenditure, \$37,000, Cultural Ways grant expenditure, \$145,000 and SOS Koala projects, \$45,000.

Additional budget of \$20,000 has been raised for the Climate Action Strategy/Environment Action Plan, funded from Strategic Planning reserves.

Additional budget of \$8,000 has been raised for the finalisation of the Biodiversity Stewardship Pilot Project, funded from Strategic Planning reserves.

*Development Services*

Salary budgets have been increased by \$50,000 for 2020/21 (\$100,000 for 2021/22 and subsequent) to fund an additional Compliance Officer commencing the second part of this financial year.

This position was approved in the Workforce Plan and with compliance income well above budget, the position is now being recruited.

*Building Services*

Salary budgets have been increased by \$50,000 for 2020/21 to fund temporary staff requirements for the current year to meet the enormous workload in this section.

*Open Spaces*

The Open Spaces General budget has been reduced by \$20,000, to a revised budget of \$1,380,000. This reduction is based on trend and assists with offsetting an increase to the Sporting Grounds budget.

A budget of \$5,800 is proposed for insurance costs incurred.

As noted previously in this report, an expenditure budget of \$5,000 is raised in 2020/21 for compensatory works to be completed at Killen Falls.

The budget for Sporting Grounds operational expenses has been increased by \$40,000, to a revised budget of \$152,000. This reflects actual expenditures in previous years, and with the expansions in fields in recent years (Skennars Head, EPIQ and Wollongbar Sportsfields).

This increase has been partially offset by a reduction of \$20,000 in the Open Spaces General budget.

*Open Spaces Buildings*

The budgets for insurance have been increased by \$11,700 in total, to match actual cost incurred.

***Civil Services Division***

*Asset Management*

The salaries budgets have been increased by \$32,500 for 2020/21, being the pro-rata budget required (\$65,000 per annum) for a trainee engineer.

This increase has been funded \$22,500 from Roads and Bridges capital budgets, \$5,000 from Stormwater capital budgets and \$5,000 from Gravel Roads Maintenance budgets.

Trainees, which are temporary positions, are not specifically identified in the Workforce Management Plan, as they can vary significantly during the year as new training programs commence, and as some trainees finish their training or leave prematurely.

Council has always been committed to having trainees as part of the organisation and this position has been identified for the Engineering Works Section to assist with managing the road network and capital works program.

Following the retirement and resignation of two very experienced staff an opportunity has arisen for a trainee engineer to assist the remaining qualified engineering staff by undertaking the more routine matters. Typically trainee positions are charged direct to jobs, however the budget for this position will form part of the Engineering Works Office Salaries budget, with the funding sourced from existing stormwater and roads budgets.

*Stormwater*

The budget for the Ballina Floodplain Management Plan has been increased by \$100,000, to a revised budget of \$175,000, based on the expected commitment for consultancy costs to be incurred this financial year. This increase to budget is funded from the Floodplain Management Reserve which is included in Council's stormwater reserves.

*Roads and Bridges*

A budget of \$11,000 has been raised for expenditure incurred for the Marom Creek Road landslip. This is offset by an income budget for Natural Disaster funding noted earlier in this report.

Budget of \$30,000 has been transferred from the Gravel Roads Maintenance budget to the Roads and Bridges capital budget for Burnett Street.

A further budget of \$5,000 has been transferred from the Gravel Roads Maintenance budget as a contribution to the salary costs for the trainee within the Asset Management section.

*Ancillary Transport Services*

Adopted budgets include a budget of \$125,000 for lighting improvements for Lighthouse Parade. The timing of works to be completed is unknown, with Crown Land investigations continuing, and so this amount has been placed into reserve until needed.

An operating expenditure budget of \$120,000 has been raised for the Martin Street Boat Harbour Concept Design. This is grant funded \$90,000 from the Boating Now Program Round 3, and \$30,000 Council contribution from the Pontoon/Boat Ramp Reserve.

*Transport NSW*

Expenditure budget of \$12,000 has been transferred to the Roads section capital expenditure section, to fund eligible expenditure on the Byron Street Lennox Head turning lane.

*Emergency Services*

Budgets for Council's contributions to the NSW Rural Fire Service, State Emergency Services and Fire and Rescue NSW, have been increased by \$83,800, \$16,400 and \$7,600 respectively.

These increases, totalling \$107,800, have been funded by the Office of Local Government under the COVID-19 Economic Stimulus Package.

*Landfill and Resource Management*

Expenditure budgets increased by a net \$183,000.

The budget for kerbside collection costs of CBD and street bins increased by \$145,000 to \$300,000, based on a review of costs to date and revised forecast for the year remaining.

The budget for the Emptying of Transfer Bins increased by \$35,000 to \$75,000. There has been higher than anticipated expenditure due to increased customers and volume of waste at the waste management centre.

These increases have been offset by increases in income.

*Domestic Waste Management*

Expenditure budgets increased by a net \$75,500.

The budget for the kerbside collection audit has been increased by \$38,000 to \$61,900. This audit had been planned to be conducted in the 2019/20 year, however was postponed due to COVID-19.

The insurance budget has been increased by \$9,500 to \$39,500, to meet actual costs incurred. The insurance costs for the new fleet of vehicles was higher than had been anticipated.

***Corporate and Community Division***

*Governance*

The budget for Public Risk Insurance has been increased by \$53,200 to \$653,200, to meet actual costs incurred.

As part of this cost relates to the water and wastewater funds, \$24,000 of this increase has been funded by an increase to the overheads charged to the water and wastewater funds.

### *Communications*

As per the income item, there is a new budget, of \$20,000, for the Australia Day COVID-Safe grant funds.

### *Financial Services*

Overheads recovered, which shows as negative expenditure within this section, has been increased by \$24,000.

This adjustment reflects the additional charges of \$12,000 to both the water fund and the wastewater fund, as contribution to the increase in public risk insurances.

### *Information Services*

The information services salaries budget has been increased by \$60,000, to \$1,481,000. This increase is to fund an additional position for the second half of the 2020/21 year, as part of a transition to retirement plan for an existing employee.

As this is a critical position for the operation of the entire network the replacement position is being recruited prior to the existing employee retiring, to ensure there is a smooth handover upon retirement.

The budget for software has been increased by \$34,000 to \$60,000. This increase is to cover costs incurred for the NSW Department of Planning e-planning portal integration and is funded from Strategic Planning reserves.

### *People and Culture*

The budget for superannuation has been increased by \$130,000 to \$2,851,000, based on trend.

Overheads recouped (which is income) increased by \$130,000 to a revised budget of \$7,658,000, based on trend.

Due to the magnitude of these budgets, these are difficult to forecast. The above adjustments represent movements of less than 5%.

### *Property Management*

The budget for Property Assessment and Evaluation has been increased by \$6,000 to \$11,000. This budget increase is for costs incurred for the revaluation of properties for financial statement reporting purposes.

These costs had not been anticipated to be incurred this year, however were necessitated due to the potential economic impacts of COVID-19 on the value of properties to be reported in the financial statements.

## 9.5 Financial Review - 30 September 2020

A budget of \$4,000 has been raised for the rates for Snapper Drive, Lennox Head. This expense was previously costed to the Strategic Planning section but has been moved to the Property Management section.

### *Community Facilities*

Community facility expenses have been revised up by a net \$50,500.

Expenditure budgets totalling \$16,000 have been raised for the rates and charges on Crawford House and the property occupied by TS Lismore Australian Navy Cadets, as noted previously in this report.

Forecast expenses for the Lennox Cultural Centre have been increased \$33,000. Increases of \$15,000 each are proposed for Cleaning Contracts and Maintenance.

The budget for insurance has also been increased by \$3,000 to meet actual costs incurred.

### *Administration Centre and Depot*

Expenditure budgets have been revised up by a net \$12,000.

Increases are proposed for Cleaning Contracts, Security and Insurance of \$7,000, \$3,000 and \$3,000, respectively.

### **Water Operations**

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

The following table details the forecast operating result for the Fund.

#### **Water - Statement of Operating Income and Expenses**

Item	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Operating Income	13,657	0	13,657	0	13,657	(234)	13,423	3547
Operating Expenses (excl. dep)	11,268	0	11,268	0	11,268	62	11,330	2743
<b>Operating Result Before Dep</b>	<b>2,389</b>	<b>0</b>	<b>2,389</b>	<b>0</b>	<b>2,389</b>	<b>(296)</b>	<b>2,093</b>	<b>804</b>
Depreciation and Non-cash	1,570	0	1,570	0	1,570	700	2,270	393
<b>Net Operating Result</b>	<b>819</b>	<b>0</b>	<b>819</b>	<b>0</b>	<b>819</b>	<b>(996)</b>	<b>(177)</b>	<b>412</b>

The **Forecast Operating Result** (inclusive of depreciation) **as at September** is a deficit of \$176,700, a deterioration of \$996,000 from the forecast surplus of \$819,000 as reported to the August meeting.

To note, future year forecasts show the Water Fund Operating Result as returned to surplus.

A notable and material adjustment to the Net Operating Result for the Wastewater Fund is a review of the Depreciation and Non-Cash line item.

Historically, forecasts have included an estimate for depreciation, however had not included an allowance for accounting losses on disposal of assets.

## 9.5 Financial Review - 30 September 2020

With the level of asset renewals and replacements the Water Fund undertakes each year, the accounting loss on disposal can be a material item impacting on the Net Operating Result.

Inclusion of an estimated loss on disposal provides a more accurate forecast of the Net Operating Result and also improves the accuracy of forecast ratios.

An increase to the Depreciation and Non-Cash line item for the Water Fund in 2020/21, of \$700,000, is an estimate based on known disposals of reservoirs to take place in the 2020/21 year.

No estimates have been included in the LTFP for future years.

Forecast Operating Income has decreased by a net \$234,000.

Amongst the more significant adjustments proposed for the Water Fund is a review of interest income. The forecast for interest is based on assumptions in relation to the level of cash and investments as well as the interest rate to be earned.

With several cuts to the official RBA cash rate and a revision of expected reserve balances based on confirmed balances at 30 June 2020, the forecast interest to be received is significantly lower than that used for the original budget estimates.

The impact on the Water Fund is a loss of income of \$234,000.

Forecast Operating Expenses have increased by \$62,000.

A budget of \$50,000 has been raised as Water Fund's contribution to the Integrated Water Cycle Management Strategy. This is the key strategic document under the NSW Best Practice Management Framework.

This project is identified in Council's 2020/21 Operational Plan and is required in order to obtain approval from DPIE for key water and wastewater capital works.

Overheads charged to the Water Fund have been increased by \$12,000, as contribution towards the increases in Public Risk Insurance.

### Wastewater Operations

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

The following table details the forecast operating result for the Fund.

#### Wastewater- Statement of Operating Income and Expenses

Item	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Operating Income	20,602	0	20,602	0	20,602	279	20,881	16,680
Operating Expenses (excl. dep)	13,383	0	13,383	0	13,383	220	13,603	3,267
<b>Operating Result Before Dep</b>	<b>7,219</b>	<b>0</b>	<b>7,219</b>	<b>0</b>	<b>7,219</b>	<b>59</b>	<b>7,278</b>	<b>13,413</b>
Depreciation and Non-cash	3,750	0	3,750	0	3,750	670	4,420	1,105
<b>Net Operating Result</b>	<b>3,469</b>	<b>0</b>	<b>3,469</b>	<b>0</b>	<b>3,469</b>	<b>(611)</b>	<b>2,858</b>	<b>12,308</b>



## 9.5 Financial Review - 30 September 2020

The **Forecast Operating Result** (inclusive of depreciation) as at **September** is a surplus of \$2,857,500, a deterioration of \$611,000 from the surplus forecast as reported to the August Council meeting.

As per the Water Fund a material adjustment to the Net Operating Result for the Wastewater Fund is a review of the Depreciation and Non-Cash line item.

An increase to the Depreciation and Non-Cash line item for the Wastewater Fund, of \$670,000, is an estimate based on averaging of prior year actual loss on disposal of assets. A similar estimate has been included in the LTFP for future years.

Forecast Operating Income has increased by \$279,000.

The forecast for residential access charges increased by \$295,000, based on actual amounts levied.

Forecast interest to be received is lower than that used for the original budget estimates. The impact on the wastewater fund is a loss of income of \$16,000.

Forecast Operating Expenses have increased by \$220,000.

A budget of \$100,000 has been raised as wastewater fund's contribution to the Integrated Water Cycle Management Strategy.

Mains maintenance has been increased by \$200,000, with a partial offset of \$100,000 reduction to the Scheduled Maintenance budget.

Overheads charged to the Wastewater Fund have been increased by \$12,000, as contribution towards the increases in Public Risk Insurance.

### Section Three – Capital Budgets 2020/21

This section of the report looks at capital expenditure.

#### General Fund - Capital Budget - Source and Application of Funds

Capital Funding / Expenditure	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
<b>General Fund Funding</b>								
General revenue	7,259	(307)	6,952	196	7,148	15	7,163	7,163
Reserves	12,692	3,889	16,581	323	16,904	90	16,994	16,994
Loans	10,900	0	10,900	500	11,400	0	11,400	0
Section 7.11 contributions	5,136	438	5,574	0	5,574	0	5,574	1,717
Grants and contributions	10,499	1,352	11,851	250	12,101	233	12,334	1,748
<b>Total Funding</b>	<b>46,486</b>	<b>5,372</b>	<b>51,858</b>	<b>1,269</b>	<b>53,127</b>	<b>338</b>	<b>53,465</b>	<b>27,622</b>
<b>General Fund Expenditure</b>								
<b>Planning and Environmental Health Division</b>								
Environment and Public Health	895	325	1,220	0	1,220	0	1,220	127
Public Order	20	0	20	0	20	0	20	0
NRCG Gallery	0	91	91	0	91	0	91	0
Open Spaces –Parks /Reserves	3,479	53	3,532	92	3,624	0	3,624	140
Open Spaces - Sporting Fields	600	860	1,460	(200)	1,260	0	1,260	603
Open Spaces Buildings	160	139	299	0	299	0	299	106
Strategic Planning	0		0	0	0	143	143	0
<b>Civil Services Division</b>								
Asset Management	0	0	0	50	50	0	50	50
Stormwater and Env Protection	1,048	189	1,237	200	1,437	(5)	1,432	68

## 9.5 Financial Review - 30 September 2020

Roads and Bridges	22,233	2,069	24,302	(173)	24,129	20	24,149	2,974
Ancillary Transport Services	1,839	630	2,469	0	2,469	0	2,469	740
Water Transport and Wharves	0	0	0	0	0	180	180	0
Transport for NSW	77	0	77	63	140	0	140	0
Emergency Services	900	25	925	0	925	0	925	25
Waste Management	505	0	505	25	530	0	530	11
<b>Corporate and Community Division</b>								
Property	4,440	220	4,660	212	4,872	0	4,872	240
Flat Rock Tent Park	20	35	55	0	55	0	55	25
Ballina-Byron Gateway Airport	4,405	315	4,720	1,000	5,720	0	5,720	35
Community Facilities	1,689	131	1,820	(30)	1,790	0	1,790	763
Swimming Pools	400	(108)	292	10	302	0	302	303
Fleet and Plant	2,727	467	3,194	0	3,194	0	3,194	283
Admin Centre and Depot	924	56	980	20	1,000	0	1,000	49
<b>Total Capital Expenditure</b>	<b>46,361</b>	<b>5,497</b>	<b>51,858</b>	<b>1,269</b>	<b>53,127</b>	<b>338</b>	<b>53,465</b>	<b>6,542</b>

### General Fund

Council reviewed the capital works program at the October 2020 Ordinary meeting. Further adjustments to capital budgets are as follows.

### Planning and Environmental Health Division

#### Strategic Planning

A capital budget of \$143,000 has been raised. This amount is part of total confirmed funding of \$180,000 from the NSW State Government Streets as Shared Spaces funding program. The remaining \$37,000 is raised as an operating income budget, as not relating to capital expenditure. The capital expenditure component includes a temporary (re-usable) roundabout at Allens Parade/Ballina Street, the installation of parklets (seating) and installation of a footpath extension.

### Civil Services Division

#### Stormwater and Environmental Protection

Budgets decreased by a total of \$5,000, being a transfer to the Asset Management operating budgets. The changes are as follows:

Description of Works	Adjustment (\$)	Comments
Stormwater Asset Data Collection	-2,500	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$2,500, future years transfer of \$5,000. Revised 2020/21 budget of \$60,500.
Urban Stormwater Reticulation	-2,500	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$2,500, future years transfer of \$5,000. Revised 2020/21 budget of \$97,500.
<b>Total</b>	<b>-5,000</b>	

#### Roads and Bridges

Budgets increased by a net total of \$19,500. Capital budgets of \$22,500 have been transferred to the Asset Management operating budget, offset by increases of \$42,000 to capital budgets funded from operational budgets.

The changes are as follows:

## 9.5 Financial Review - 30 September 2020

Description of Works	Adjustment (\$)	Comments
Urban Roads Reseals	-5,000	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$5,000, future years transfer of \$10,000. Revised 2020/21 budget of \$364,100.
Rural Roads Reseals	-5,000	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$5,000, future years transfer of \$10,000. Revised 2020/21 budget of \$484,000.
Bridges - Other	-2,500	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$2,500, future years transfer of \$5,000. Revised 2020/21 budget of \$112,500.
Urban Road Heavy Patching	-5,000	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$5,000, future years transfer of \$10,000. Revised 2020/21 budget of \$342,100.
Rural Road Heavy Patching	-5,000	Transfer of budget to Asset Management Engineering Works Salaries budget for trainee. Transfer for 2020/21 (pro-rated) of \$5,000, future years transfer of \$10,000. Revised 2020/21 budget of \$288,000.
Burnett St, segment 30	+30,000	Increase to budget, funded from Gravel Roads operating budgets. Scope changed to include parking at tennis club. Revised 2020/21 budget of \$245,000.
Byron St, Lennox Head, Turning Lane	+12,000	Increase to budget, funded from Regional Roads budgets. Revised 2020/21 budget of \$67,000.
<b>Total</b>	<b>+19,500</b>	

### Water Transport and Wharves

A capital budget of \$180,000 has been raised, for the North Creek Boat Ramp at Lennox Head. This is funded by \$90,000 from the Boating Now Program Round 3, with a corresponding Council contribution of \$90,000 from Council's Boat Ramp Reserves.

### Water Fund

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

Capital Funding / Expenditure	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
<b>Water Fund Funding</b>								
Reserves	2,611	599	3,210	(885)	2,325	4	2,329	2,329
Section 64 contributions	0	52	52	0	52	0	52	52
<b>Total Funding</b>	<b>2,611</b>	<b>651</b>	<b>3,262</b>	<b>(885)</b>	<b>2,377</b>	<b>4</b>	<b>2,381</b>	<b>2,381</b>
<b>Water Fund Expenditure</b>								
Main Renewal	470	112	582	290	872	4	876	434
Reservoirs	0	322	322	0	322	0	322	3
Water pump and bores	0	52	52	0	52	0	52	(3)
Trunk mains	0	32	32	0	32	0	32	0
Treatment Plant	1,708	0	1,708	(1,160)	548	0	548	0
Plant	123	0	123	0	123	0	123	0
Connections	300	0	300	0	300	0	300	96
Other	10	133	143	(15)	128	0	128	10
<b>Total Capital Expenditure</b>	<b>2,611</b>	<b>651</b>	<b>3,262</b>	<b>(885)</b>	<b>2,377</b>	<b>4</b>	<b>2,381</b>	<b>540</b>

Council reviewed the capital works at the October 2020 Ordinary meeting. Further adjustments to capital budgets are as follows:

Description of Works	Adjustment (\$)	Comments
Cawarra St Mains Renewal	+37,000	New budget, funded from Main Renewal Recurrent budget.
Kays Lane Mains Renewal	+4,000	New budget, funded from Refurbishment Reserve.
Main Renewal Recurrent budget	-37,000	Transfer of budget. Revised 2020/21 budget of \$103,000.
<b>Total</b>	<b>+4,000</b>	

**Wastewater Fund**

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

Capital Funding / Expenditure	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
<b>Wastewater Fund Funding</b>								
Reserves	2,400	417	2,817	(76)	2,741	0	2,741	2,741
Section 64 contributions	5,134	46	5,180	(1,300)	3,880	0	3,880	3,880
<b>Total Funding</b>	<b>7,534</b>	<b>463</b>	<b>7,997</b>	<b>(1,376)</b>	<b>6,621</b>	<b>0</b>	<b>6,621</b>	<b>6,621</b>
<b>Wastewater Fund Expenditure</b>								
Pumping stations	988	0	988	(76)	912	0	912	44
Treatment Plants	4,564	0	4,564	(1,170)	3,394	0	3,394	6
Trunk Mains	0	0	0	0	0	0	0	0
Mains renewals	1,000	171	1,171	0	1,171	0	1,171	16
Service Connection	0	0	0	0	0	0	0	9
Plant	191	231	422	0	422	0	422	33
Reuse program	775	25	800	(200)	600	0	600	15
Other	16	36	52	70	122	0	122	14
<b>Total Capital Expenditure</b>	<b>7,534</b>	<b>463</b>	<b>7,997</b>	<b>(1,376)</b>	<b>6,621</b>	<b>0</b>	<b>6,621</b>	<b>137</b>

Council reviewed the capital works at the October 2020 Ordinary meeting.

No further adjustments are proposed.

**Section Four – Cash and Investment Statement**

The next table shows the projected (30 June 2021) externally and internally restricted reserves.

**Forecast Restricted Reserves as at 30 June 2021 (\$'000)**

	After Carry Forwards Budget	Approved Changes	Revised Budget	Changes	Sept Budget
<b>Externally Restricted</b>					
Section 7.11	13,463	0	13,463	(1,087)	12,376
Domestic Waste Management	1,207	0	1,207	(44)	1,163
Section 64 Water	10,812	0	10,812	0	10,812
Water	9,441	885	10,326	(300)	10,026
Section 64 Wastewater	5,116	1,300	6,416	0	6,416
Wastewater	5,321	76	5,397	59	5,456
<b>Total Externally Restricted</b>	<b>45,360</b>	<b>2,261</b>	<b>47,621</b>	<b>(1,372)</b>	<b>46,249</b>
<b>Internally Restricted</b>					
Council Elections	300	0	300	0	300
Financial Assistance Grant	2,418	0	2,418	0	2,418
Legal/Audit/Revaluations	401	0	401	(6)	395
Employee Leave Entitlements	2,994	0	2,994	0	2,994
Risk Management/Insurance	181	0	181	0	181
Community Infrs Reserve	2,129	(92)	2,037	(13)	2,024
Property Development Reserve	601	(242)	359	(14)	345
Wigmore Arcade	496	0	496	0	496
Crown Properties Rental	40	0	40	0	40
Flat Rock Tent Park	206	0	206	0	206
Airport	(260)	57	(203)	0	(203)
Community Facilities	179	0	179	0	179
Library Special Projects	190	0	190	0	190
Plant Renewal/Replacement	(84)	0	(84)	0	(84)
Strategic Planning Studies	394	0	394	(43)	351
Sec 7.11 Plan Reviews	385	0	385	0	385
Public Art	89	0	89	0	89

## 9.5 Financial Review - 30 September 2020

	After Carry Forwards Budget	Approved Changes	Revised Budget	Changes	Sept Budget
Quarries Baseline Survey	43	0	43	0	43
Healthy Waterways	383	0	383	0	383
Coastal Management Plans	115	0	115	0	115
Other PEHD	87	0	87	(19)	68
Legal Services	0	0	0	490	490
Vegetation Works	202	0	202	15	217
Other Open Spaces	74	0	74	0	74
Sports Fields	73	0	73	0	73
Cemeteries	315	0	315	0	315
Stormwater Capital	226	0	226	0	226
Stormwater / Environ Mgmt Plans	362	0	362	(100)	262
Bypass Funds	3,372	0	3,372	0	3,372
Roadworks	1,153	0	1,153	0	1,153
Other Civil	75	(50)	25	0	25
Ancillary Footpaths	169	0	169	125	294
Boat Ramps and Infrastructure	145	0	145	(120)	25
Rural Fire Service	30	0	30	0	30
Quarries	738	0	738	0	738
Landfill, Resource Management	512	(25)	487	524	1,011
<b>Total Internally Restricted</b>	<b>18,733</b>	<b>(352)</b>	<b>18,381</b>	<b>839</b>	<b>19,220</b>
<b>Total Restricted</b>	<b>64,093</b>	<b>1,909</b>	<b>66,002</b>	<b>(533)</b>	<b>65,469</b>

### Statements

- Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
- As per the investments summary for September 2020, funds invested amounted to \$89,538,300. All restricted monies are included in these investments.
- Cash has been reconciled to the bank statement as at 30 September to the amount of \$4,622,181.
- Actual year to date cash and investments amounted to \$94,160,481 at 30 September 2020.

This amount includes cash at bank of \$4,622,181 and funds invested of \$89,538,300 which has been reconciled to bank statements and investment reports.

### Comment on Cash and Investment Position

The changes in this report decrease the reserves by a net \$533,000, resulting in the current forecast restricted reserves of \$65.469 million.

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

The larger changes made as part of this review, of \$20,000 or more, are summarised following.

#### Section 7.11

There is a decrease of \$1,010,000 to section 7.11 reserves.

An error was identified with the original forecast for contributions towards the Car Parking Developer Contributions plans. The adopted LTFP included capital income of \$1,000,000 in error. This figure is amended in this review to nil. A revision of forecast interest resulted in a decrease of \$10,000.

### *Domestic Waste Management*

There is a decrease of \$43,500 to this reserve representing a deterioration in forecast operating result.

### *Water Reserves*

Net reserves decreased by \$300,000, with \$296,000 being the net of adjustments made to operating budgets and \$4,000 being the adjustments made to capital budgets within this report.

### *Wastewater Reserves*

Net reserves increased by \$59,000 being the net of adjustments made to operating budgets within this report.

### *Strategic Planning Studies*

This reserve has a decrease of \$42,800, with \$34,000 for the NSW Department of Planning e-planning portal integration and \$8,800 for the finalisation of the Biodiversity Stewardship Pilot Project.

### *Legal Services*

Legal costs recovered, a sum of \$490,000, have been placed into reserve for future legal expenses.

### *Stormwater and Environmental Plans*

A decrease of \$100,000 represents funds committed to the Ballina Floodplain Management Plan.

### *Bypass Reserves*

A revision of forecast interest resulted in a decrease of \$77,000.

### *Ancillary Footpath*

An increase of \$125,000 represents funds allocated for Lighthouse Parade lighting, placed into reserve until timing of works known.

### *Boat Ramps and Infrastructure*

This reserve has a decrease of \$120,000 with \$90,000 for the North Creek Boat Ramp and \$30,000 for the Martin Street Boat Harbour Concept Design.

### *Landfill and Resource Management (LRM)*

There is an increase of \$524,000 to this reserve being an improvement in the operating result.

### Section Five - Key Performance Indicators

This section of the report takes selected financial benchmarks and compares the 30 June 2019 and 2020 ratios with the forecast at September to 30 June 2021.

The performance indicators have a short term focus, which suits the quarterly review. Each ratio typically contains numerous variables and the forecast should be viewed as a guide only.

#### Key Performance Indicators - Description

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

Measured: as a ratio

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

Indicator type: Financial Position

Benchmark: >1.5:1 (NSW Code of Accounting Practice)

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

Measured: as a ratio

Purpose: this percentage measures whether the Council is sustainable in terms of its operating result.

Council should not be recording recurring operating deficits or funding operating results from capital revenue.

Indicator type: Financial Performance

Benchmark: = > 0: 1 (NSW Code of Accounting Practice)

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

Measured: as a ratio

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

Indicator type: Financial Position

Benchmark: >2:1 (NSW Code of Accounting Practice)

**Benchmark Indicators – General Fund**

**1. Unrestricted Current Ratio – General Fund**

Benchmark: >1.5:1

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
3.18:1	2.51:1	1.63:1
Pass	Pass	Pass

**Comment**

The General Fund is expected to meet this benchmark, although it is noted that there has been a deterioration in this ratio in comparison to 2019/20.

The calculation of this ratio is based on the assumption that all expenditure identified, such as the capital works, in the 2020/21 budgets will be expended in that year, but in reality some deferrals to the following year may occur, and that would improve the resulting ratio.

**2. Operating Performance Ratio – General Fund**

Benchmark: >0

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
3.11%	-1.88%	-7.92%
Pass	Fail	Fail

**Comment**

This is a key ratio for “Fit for the Future” assessments and has historically been a difficult benchmark to achieve. The ratio is affected by many variables.

The General Fund failed this benchmark in 2019/20 and the current LTFP forecasts that this benchmark will not be met until 2025/26.

The strategy to improve this ratio is to continue to closely monitor, maintain and even reduce operating expenses and increase income.

**3. Debt Service Cover Ratio – General Fund**

Benchmark: > 2

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
4.03	3.59	2.56
Pass	Pass	Pass



**Comment**

The strategy to continue to meet the benchmark is to limit further borrowings, unless matched by offsetting revenues, and strengthen the operating result by a combination of increasing income and decreasing expense. Based on the current projections in the LTFP, the General Fund will fail this ratio in 2021/22 due to a significant increase in principal repayments associated with loans being taken at the end of this financial year. However 2022/23 and subsequent years ratios are currently forecast to meet the benchmark.

**Benchmark Indicators - Water**

**1. Unrestricted current ratio - Water**

Benchmark: >1.5:1

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
94.28:1	81.76:1	61.20:1
Pass	Pass	Pass

**Comments**

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

**2. Operating Performance Ratio - Water**

Benchmark: > 0

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
15.47%	8.14%	3.90%
Pass	Pass	Pass

**Comments**

The Water Fund has achieved a positive operating performance ratio and this trend is expected to continue for future years, although has deteriorated as the forecast surplus is lower than previous years.

**3. Debt Service Cover Ratio - Water**

Benchmark: >2

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
0.0	0.0	0.0
N/A	N/A	N/A

**Comments**

The Fund has no external borrowings.

**Benchmark Indicators - Wastewater**

**1. Unrestricted current ratio - Wastewater**

Benchmark: >1.5:1

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
0.89:1	1.45:1	1.17:1
Fail	Fail	Fail

**Comments**

This ratio is expected to improve and meet the benchmark in 2021/22.

**2. Operating Performance Ratio - Wastewater**

Benchmark: >0

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
12.18%	12.95%	13.68%
Pass	Pass	Pass

**Comments**

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

**3. Debt Service Cover Ratio - Wastewater**

Benchmark: > 2

2018/19	2019/20	2020/21 Sept
Actual	Actual	Estimate
1.30	1.43	1.77
Fail	Fail	Fail

**Comments**

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

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

**Section Six – Contractors/Consultants/Legal Expenses**

**Contractors**

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

## 9.5 Financial Review - 30 September 2020

Contractor Name	Purpose	Amount (GST Incl)	Award Date	Duration of Contract	Incl in Budget Yes/No
Synergy Resource Management	Dredging Shaws Bay & Associated Foreshore Works	\$963,587	24/08/20	4 months	Yes

### Consultants

The Office of Local Government defines a consultant as:

*A consultant is a person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision making by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors.*

Total expenditure to 30 September 2020 on consultants that meet this definition is as follows.

Item	Expenditure YTD (excl GST)	Included in Budget Y/N?
Consultancies	\$312,000	Yes

### Legal Expenses

The next table summarises the expense incurred to the end of September 2020 on legal fees.

For the purposes of the report legal fees have been included where there is a dispute situation.

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

Item	Expenditure YTD (excl GST)	Included in Budget Y/N?
Legal Fees	\$58,000	Yes

### Section Seven – Other Matters

#### New Fee Proposed for Domestic Waste Management Operations

A new fee for Kitchen Caddies is proposed, at \$10 each.

It is proposed that these items, available for purchase from Council's Administration Centre and the Waste Management Centre's weighbridge, will make it easier and more convenient for residents to sort and dispose of food waste into their organic bins.

This fee amount is set to represent full cost recovery.

This will assist Council achieve its waste management and resource recovery strategy objective to increase the diversion of organic waste material from landfill.

The recommendations at the end of this report include a recommendation to exhibit this fee.

### **Ballina-Byron Gateway Airport (BBGA)**

The review of the income and expenditure for the BBGA has not been completed in time for this review and will be subject of a separate report to a Commercial Services Committee or Council meeting. Pleasingly income is well above budget and this should help to reduce some of the forecast operating deficit for the General Fund.

### **Section Eight - Certification**

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 30 September 2020 indicates that Council's projected financial position at 30 June 2021 will be satisfactory at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

The satisfactory position is based on the short term (twelve month) outlook.



Signed Linda Coulter, Responsible Accounting Officer

### **Sustainability Considerations**

- **Environment**  
This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.
- **Social**  
As above
- **Economic**  
As above

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

This report informs Council of actual financial results to date in comparison to budget.

### **Consultation**

This report has been prepared to inform the community of budget variations. Staff have been consulted in the preparation of this report.

**Options**

Council may approve the budget amendments proposed, make changes or not approve any changes. It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

**RECOMMENDATIONS**

1. That Council notes the contents of the September 2020 Quarterly Budget Review and approves the changes identified within this report.
2. That Council approves the exhibition of the proposed fee for Kitchen Caddies, as discussed in Section Seven of this report, with any submissions to be reported back to Council. If no submissions are received then no further action is required.

**Attachment(s)**

Nil

## 9.6 Tender - Wollongbar District Park Construction

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### 9.6 Tender - Wollongbar District Park Construction

#### **Delivery Program**

Open Spaces

#### **Objective**

To report the outcomes of the tender evaluation for the design and construction of the Wollongbar District Park.

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#### **Background**

In May 2020, Council approved the development application for the establishment of the Wollongbar District Park. A copy of the concept design for the Park is included as Attachment 1.

The works to be undertaken under this contract are the detailed design and documentation and construction of the Park. Tenders were called in October 2020 and at the close of tenders two submissions were received. This report outlines the results of the tender process.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Obtain value for money

#### **Information**

Twenty one companies downloaded the documentation with tenders received from:

- Boyds Bay Landscaping Pty. Ltd.
- Eureka Landscapes Pty. Ltd.

The tender evaluation method included two stages of the evaluation, Stage 1 – Pass/Fail Evaluation of Mandatory Non-Priced Criteria and Stage 2 – Evaluation of Price and Local and Community.

The tender submissions were assessed to ensure conformance with the conditions of tender and the mandatory criteria, being:

- Experience and Capability
- Quality Management
- Environmental Management.

Both tender submissions met the mandatory assessment and were assessed using the following weighted assessment criteria:

- Pricing Structure – 85%
- Local and Community – 15%

## 9.6 Tender - Wollongbar District Park Construction

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Boyds Bay Landscaping Pty. Ltd. has been assessed as the preferred tenderer based on the evaluation. Details of the assessment and pricing options have been provided to Councillors by a confidential memorandum.

### Sustainability Considerations

- **Environment**  
The successful tenderer will be required to implement an environmental management plan for the works.
- **Social**  
The development of the Wollongbar District Park will provide for improved community infrastructure.
- **Economic**  
The establishment of essential community infrastructure improves the economic outlook for urban areas.

### Legal / Resource / Financial Implications

Council has undertaken a public tender process in accordance with Local Government (General) Regulations 2005.

Currently the tenders are in excess of the funds allocated to this project in the adopted Long Term Financial Plan; i.e. for 2020/21 the adopted budget is \$1,413,000 inclusive of the skate park and all other associated costs.

This project is primarily funded from Council's Community Infrastructure Reserve, with funds for that reserve largely sourced from commercial property revenue for the rental of 89 Tamar Street and the Fawcett Park Café ('The Wharf').

The other major revenue source for the reserve is the recoupment of monies from Section 7.11 developer contributions, where Council has funded projects that are identified in the adopted Section 7.11 Contribution Plans, initially from this reserve or general revenue, prior to the Section 7.11 contributions being collected.

As the contributions are collected, the Community Infrastructure Reserve is able to be reimbursed for the percentage of the project that is funded from developer contributions, as per the adopted Contribution Plans.

Examples of projects that meet this criteria include Wollongbar Sports Fields, Ballina indoor Sports Centre, Ballina Surf Club expansion, various components of the shared path network, Pop Denison Master Plan enhancements, Skennars Head Sports Fields expansion etc.

Also the Wollongbar District Park is 100% funded from developer contributions in the Ballina Shire Open Space and Community Facilities Plan, with that plan due for review during 2020/21. Again the contributions collected to date from that plan for this project are well short of the monies being expended this financial year so there will be recoupments in future years.

## 9.6 Tender - Wollongbar District Park Construction

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The Long Term Financial Plan includes a conservative estimate of \$450,000 per annum recouped to the Community Infrastructure Reserve, based on historical collections.

With the current high level of development activity, the Section 7.11 contributions collected and the recoupments allowed have been well above this estimate for the past two years. Pleasingly, with the 2019/20 annual financial statements now finalised, the net recoupment to the Community Infrastructure Reserve for 2019/20 is approximately \$1.1m.

What this means is that there are sufficient funds in the Community Infrastructure Reserve to finance the budget shortfall based on the tenders received. The exact amount of the required transfer from the Reserve is uncertain based on the recommendation to negotiate a revised contract.

As that is the case the recommendations approve the transfer of additional funds from the Community Infrastructure Reserve, with the final amount to be confirmed as part of the next Quarterly Capital Expenditure Status report, which is scheduled for the January 2021 Ordinary meeting.

### Consultation

A public tender process was undertaken.

### Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulation 2005, which requires that:

*(1) After considering the tenders submitted for a proposed contract, the council must either:*

- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) decline to accept any of the tenders.*

Based on the tender evaluation, Boyds Bay Landscaping Pty Ltd has been assessed as the preferred tenderer. However as the tenders are well in excess of the adopted budget the recommendation is to decline to accept any tenders and allow further negotiations, with either the two tenders, or other parties that expressed an interest in this contract, particularly when a total of 21 companies downloaded the documentation.

Sections 178 (3) and (4) of the regulations provide direction in the circumstances where a Council declines to accept any tenders in accordance with section 178 (1)(b); i.e.

*(3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

- (a) postpone or cancel the proposal for the contract,*



## 9.6 Tender - Wollongbar District Park Construction

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- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
  - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
  - (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
  - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
  - (f) carry out the requirements of the proposed contract itself.*
- (4) If a council resolves to enter into negotiations as referred to in subclause 3 (e), the resolution must state the following:*
- (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
  - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

This approach will enable staff, prior to the issue of a letter of award, to resolve any outstanding points in the contract, review the final scope of works with a preferred contractor, and limit the overall change required to the adopted budget.

### RECOMMENDATIONS

1. That Council in accordance with the Local Government (General) Regulation 2005 Section 178 (1)(b), declines to accept any tenders for the Design and Construction of the Wollongbar District Park as the tenders are in excess of the Council budget for the entire project.
2. That Council, in accordance with Local Government (General) Regulation 2005 Section 178 (3)(e) authorises the General Manager to enter into negotiations with Boyds Bay Landscaping Pty. Ltd, Eureka Landscapes Pty. Ltd., or any other interested party, with a view to enter into a contract for the detailed design and documentation and construction of the Wollongbar District Park.
3. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(a) the reason Council has declined to invite fresh tenders is that the tender process has established sufficient market interest and it is more efficient and timely to negotiate with interested parties than call for new submissions.

## **9.6 Tender - Wollongbar District Park Construction**

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4. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(b), Council has determined to negotiate with Boyds Bay Group, Eureka or any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter as the market indicated a strong initial interest, however only two formal responses were received. Further cost savings and competitive pricing could be obtained by returning to the interested parties that did and did not submit a tender response.
5. That Council authorises the General Manager to affix the Council seal to the contract documents.
6. That any shortfall in funding in the Council adopted budget as compared to the agreed contract is to be funded from an additional transfer from the Community Infrastructure Reserve, with that amount to be confirmed in the next Quarterly Capital Works – Status report, scheduled for the January 2021 Ordinary meeting.

### **Attachment(s)**

1. Wollongbar District Park - Concept Design Plan
2. Confidential Memorandum - Tender Assessment Report - Wollongbar District Park - Detailed Design and Construction (Under separate cover)

## **9.7 Tender - Wollongbar Residential Estate Stage 3 Construction**

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### **9.7 Tender - Wollongbar Residential Estate Stage 3 Construction**

#### **Delivery Program**

Commercial Services

#### **Objective**

To report the outcomes of the tender evaluation for the construction of the Wollongbar Residential Estate - Stage 3.

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#### **Background**

The work to be undertaken under this contract is the third stage of the Wollongbar Residential Estate development. The subdivision will create a further 31 residential allotments and associated infrastructure.

Tenders were called in August 2020 with two submissions. This report outlines the results of the tender process.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Obtain value for money

#### **Information**

Tenders were received from:

- Cambra Holdings Pty Ltd T/A Morgans Earthworks
- SK330 Trust T/A CD Excavations

The tender evaluation method included two stages of the evaluation, Stage 1 – Pass/Fail Evaluation of Mandatory Non-Priced Criteria and Stage 2 – Evaluation of Price, Capability, Relevant Experience and Local and Community.

The tender submissions were assessed to ensure conformance with the conditions of tender and the mandatory criteria, being:

- Conforming Tender (all schedules completed and compliance with the contract terms and conditions)
- Compliant Insurances
- Compliant Work Health and Safety Management Systems

Both tender submissions met the mandatory assessment and were assessed using the following weighted assessment criteria:

- Pricing Structure – 60%
- Capability and Relevant Experience - 25%
- Local and Community – 15%

SK330 Trust T/A CD Excavations has been assessed as the preferred tenderer. Details of the assessment and pricing options have been provided to Councillors by confidential memorandum.

### Sustainability Considerations

- **Environment**  
The successful tenderer will be required to implement an environmental management plan for the works.
- **Social**  
Additional residential land supply will assist in providing housing accommodation for the community.
- **Economic**  
The development of a further 31 residential allotments will provide for further growth in the Wollongbar area.

### Legal / Resource / Financial Implications

Council has undertaken a public tender process in accordance with Local Government (General) Regulations 2005.

The 2020/21 budget allocation for the Wollongbar Residential Land Development project covers the estimated costs associated with these works.

The works are loan funded with the loan principal to be repaid from future residential sales.

With the residential land market still very strong it is recommended that Council proceed with the construction of this subdivision.

### Consultation

A public tender process was undertaken.

### Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulation 2005, which requires that:

- (1) After considering the tenders submitted for a proposed contract, the council must either:*
- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
  - (b) decline to accept any of the tenders.*

Based on the tender evaluation, SK330 Trust T/A CD Excavations has been assessed as the preferred tenderer.

Sections 178 (3) and (4) of the regulations below, provides further direction in the circumstances where a Council declines to accept any tenders in accordance with section 178 (1)(b).

## 9.7 Tender - Wollongbar Residential Estate Stage 3 Construction

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- (3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:
- (a) postpone or cancel the proposal for the contract,
  - (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,
  - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
  - (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
  - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
  - (f) carry out the requirements of the proposed contract itself.
- (4) If a council resolves to enter into negotiations as referred to in subclause 3 (e), the resolution must state the following:
- (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),
  - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).

It is recommended that Council declines to accept any tenders and negotiate with SK330 Trust T/A CD Excavations to finalise the scope of works and total cost.

This recommendation will enable staff, prior to the issue of a letter of award, to resolve any outstanding points in the contract and review the final scope of works with the contractor.

### RECOMMENDATIONS

1. That Council in accordance with the Local Government (General) Regulation 2005 Section 178 (1)(b), declines to accept any tenders for the Construction of the Wollongbar Residential Estate – Stage 3 as there are opportunities to review the scope of works based on works currently underway at the site.
2. That Council, in accordance with Local Government (General) Regulation 2005 Section 178 (3)(e) authorises the General Manager to enter into negotiations with SK330 Trust T/A CD Excavations (ABN 25 308 895 106) with a view to enter into a contract for the Construction of the Wollongbar Residential Estate – Stage 3.

## **9.7 Tender - Wollongbar Residential Estate Stage 3 Construction**

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3. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(a) the reason Council has declined to invite fresh tenders is that the tender process has established a competitive market and it is more efficient to negotiate with the highest ranked tender than call for new submissions.
4. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(b), Council has determined to enter negotiations with SK330 Trust T/A CD Excavations as they are the preferred tenderer following assessment against the mandatory and weighted evaluation criteria established for the tender.
5. That Council authorises the General Manager to affix the Council seal to the contract and loan documents.

### **Attachment(s)**

1. Confidential Memorandum - Tender Assessment Report - Wollongbar Residential Estate - Stage 3 Construction (Under separate cover)

## **9.8 Tender - Body Scanning and Baggage X-Ray Screening Equipment**

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### **9.8 Tender - Body Scanning and Baggage X-Ray Screening Equipment**

#### **Delivery Program**

Commercial Services

#### **Objective**

To report the outcomes of the tender evaluation for the supply and installation of passenger body scanning and baggage x-ray screening equipment at the Ballina Byron Gateway Airport.

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#### **Background**

As a result of a review of security screening at Australian Airports, the Federal Government mandated upgrades to security screening equipment at airports throughout Australia. As part of the upgrade the Federal Government has provided funding through the Regional Airport Security Screening Fund.

Two tenders were called in October 2020 for the supply and installation of passenger body scanning and baggage x-ray screening equipment at the Ballina Byron Gateway Airport.

This report outlines the results of the tender process.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Obtain value for money
- Compliance with the Federal Government's Regional Airport Security Screening Funding agreement

#### **Information**

Tenders for the passenger scanning equipment were received from:

- Rapiscan Systems Pty. Ltd.
- Smiths Detection Australia Pty. Ltd.
- Leidos Security Detection and Automation

Tenders for the baggage x-ray screening equipment were received from:

- Rapiscan Systems Pty. Ltd.
- Smiths Detection Australia Pty. Ltd.

The tender evaluation method for both tenders included two stages of the evaluation, Stage 1 – Pass/Fail Evaluation of Mandatory Non-Priced Criteria and Stage 2 – evaluation of price, equipment, passenger and user experience, demonstrated understanding/project schedule and local and community.

The tender submissions were assessed to ensure conformance with the conditions of tender and the mandatory criteria, being:

## **9.8 Tender - Body Scanning and Baggage X-Ray Screening Equipment**

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- Conforming tender (all schedules completed and compliance with the contract terms and conditions)
- Equipment must be registered on the Aviation and Maritime Services Division's (AMSD) approved equipment list
- Compliant insurances
- Quality management ISO 9001 certification.

All tender submissions met the mandatory assessment and were assessed using the following weighted assessment criteria:

- Total price – 40%
- Equipment, passenger and user experience – 35%
- Demonstrated understanding/project schedule – 10%
- Local and community – 15%

Rapiscan Systems Pty. Ltd. has been assessed as the preferred tenderer for both the passenger scanning and baggage screening equipment.

Details of the assessment and pricing options have been provided to Councillors by confidential memorandum.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
Improved passenger screening will help facilitate passenger growth at the Ballina Byron Gateway Airport.

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

Council has undertaken a public tender process in accordance with Local Government (General) Regulations 2005.

Funding is provided by the Federal Government's Regional Airport Security Screening Fund (RASSF). The funding agreement provides a total of \$405,000 for the Passenger Screening and the Baggage X-Ray Equipment.

The total cost of the recommended tender is \$408,254.

### **Consultation**

A public tender process was conducted.



## **9.8 Tender - Body Scanning and Baggage X-Ray Screening Equipment**

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### **Options**

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulation 2005, which requires that:

- (1) *After considering the tenders submitted for a proposed contract, the council must either:*
  - (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
  - (b) *decline to accept any of the tenders.*

Based on the tender evaluation, it is recommended that Council accept the tenders from Rapiscan Systems Pty. Ltd.

### **RECOMMENDATIONS**

1. That Council accepts the tender from Rapiscan Systems Pty. Ltd. for the supply and installation of Passenger Body Scanning Equipment and Baggage X-Ray Screening Equipment at the Ballina Byron Gateway Airport for total amount of amount of \$408,254 (excl GST).
2. That Council authorises the General Manager to affix the Council seal to the contract documents.

### **Attachment(s)**

1. Confidential Memorandum - Tender Assessment Report - Supply and Installation of Passenger Body Scanning and Baggage X-Ray Screening Equipment (Under separate cover)

## 9.9 Tender - Basalt Court Reservoir Access Upgrade

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### 9.9 Tender - Basalt Court Reservoir Access Upgrade

#### **Delivery Program**

Water and Wastewater

#### **Objective**

To report the outcomes of the tender evaluation for the Basalt Court Reservoir Access Upgrade.

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#### **Background**

The provision of services under this contract are required for the ongoing management of Council's potable water supply network.

Tenders were called for access upgrade and roof maintenance works on the Basalt Court Reservoir in September 2020.

The scope of the proposed work includes:

- Erect and install the new access platform, access stair and new roof edge treatment
- Replace all roofing screws and undertake roofing maintenance
- Design and install appropriate door hardware at the base of the stair that will restrict unauthorised access
- Comply with all relevant safe work legislation and other requirements.

This report outlines the results of the tender process.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Obtain value for money

#### **Information**

One tender was received through the public tender process from Advanced Concrete Engineering Pty. Ltd.

The tender evaluation method included two stages of evaluation, Stage 1 – Pass/Fail Evaluation of Mandatory Non-Priced Criteria and Stage 2 – Evaluation of Price, Capability and Relevant Experience, Local and Community Value.

The tender submission was assessed against the conditions of tender and mandatory criteria, being:

- Conforming Tender (all schedules completed and compliance with the contract terms and conditions)
- Compliant Insurances
- Compliant Work Health and Safety Management Systems

## 9.9 Tender - Basalt Court Reservoir Access Upgrade

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The tender submitted by Advanced Concrete Engineering Pty. Ltd. met the mandatory criteria.

Assessment of the tender using the weighted assessment criteria, as listed below, was challenging as there was only one compliant tender submitted.

- Pricing Structure – 70%
- Capability and Relevant Experience – 15%
- Local and Community – 15%

The tender submitted by Advanced Concrete Engineering Pty. Ltd. scored highly in both the Capability and Relevant Experience Criteria as well as the Local and Community Criteria.

Details of the assessment and pricing options have been provided to Councillors by confidential memorandum.

The following information is presented as only one tender price has been submitted.

A pre-tender estimate prepared by Greg Alderson & Associates (GA&A) anticipated the cost of works to be \$213,774 (incl GST).

Included within the estimate was a note that the accuracy of estimate cannot be guaranteed as it was not prepared by a qualified quantity surveyor.

The contract value provided by ACE is approximately 27% higher than the pre-tender estimate prepared by GA&A.

While the cost differences are generally spread across all of the costed items, the largest difference can be attributed to the metalwork component.

This represents a cost increase of approximately \$33,000 compared to the pre-tender estimate.

GA&A who undertook the pre-tender estimate advised that there are inherent challenges in estimating these types of projects.

As the reservoir is not a typical building or structure it is difficult to benchmark at the pre-tender stage to verify estimates developed.

Reference checks of other water utilities (Rous County Council and Unity Water) who have engaged this contractor, indicated that value for money was achieved for their respective projects.

Should Council not proceed with awarding the tender, then there are both cost and time risks associated with delaying the contract.

Additional time spent by Council staff in preparing and assessing another tender will result in further cost to Council and may not increase the number of tenders submitted, or result in a lower tendered price.

The existing condition of the roof sheeting is poor and it is preferred to continue as quickly as possible as delays will result in an ongoing risk of contamination to the Basalt Court Reservoir.

### Sustainability Considerations

- **Environment**  
The project has been confirmed to be exempt development under the Infrastructure SEPP and will be constructed under an Environmental Management Plan.
- **Social**  
The project will support the delivery of safe and compliant drinking water which will help to maintain the health and welfare of the Shire.
- **Economic**  
Investment into Council's trunk water supply infrastructure is essential to ensure the continued delivery of safe and compliant potable water.

### Legal / Resource / Financial Implications

Council has undertaken a public tender process in accordance with Local Government (General) Regulations 2005.

The 2020/21 budget allocation is currently \$322,000 with \$3,000 expended or committed to date, leaving a remaining budget of approximately \$319,000 for 2020/21. The budget allocations cover the estimated cost of this contract.

### Consultation

A public tender process was undertaken.

### Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulation 2005, which requires that:

- (1) After considering the tenders submitted for a proposed contract, the council must either:*
- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
  - (b) decline to accept any of the tenders.*

*A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

- (a) postpone or cancel the proposal for the contract;*
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details;*
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract;*

## 9.9 Tender - Basalt Court Reservoir Access Upgrade

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- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract;*
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender; and*
- (f) carry out the requirements of the proposed contract itself.*

The preference is to accept the tender as the public tender process has yielded a compliant tenderer, which demonstrates that the contractor has the requisite skills to complete the works at a price which is less than the allocated budget.

The other feasible option is to reject all tenders and authorise the General Manager to negotiate with the preferred tenderer (or other potential contractors).

Under this option, Council and the current tenderer (or another contractor) could examine whether a schedule of rates approach is a better risk allocation and provide an opportunity for a cheaper price.

On balance, for a project of this value and considering the comments above about the limitations of the pre-tender estimate, it is preferred to leave the pricing risk with the contractor and proceed based on the value for money assessment as reported.

### **RECOMMENDATIONS**

1. That Council accepts the tender from Advanced Concrete Engineering Pty Ltd for the access upgrade and roof maintenance works of the Basalt Court Reservoir based on the tendered amount of \$246,561.82 (excl GST and contingencies) (\$271,218 incl GST).
2. That Council authorises the Council seal to be attached to the contract documents.

### **Attachment(s)**

1. Confidential Memorandum - Tender Assessment Report - Basalt Court Reservoir Access Upgrade (Under separate cover)

## **9.10 Tender - Ballina WWTP Rectification Works and Gantry Crane Installation**

### **9.10 Tender - Ballina WWTP Rectification Works and Gantry Crane Installation**

#### **Delivery Program**

Water and Wastewater

#### **Objective**

To report the outcomes of the tender evaluation for the rectification of all outstanding defects for the original Ballina Wastewater Treatment Plant (WWTP) upgrade contract.

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#### **Background**

In 2003, Council adopted an integrated urban water management strategy (BSUWMS).

Based on the work completed, Council replaced the existing Ballina Wastewater Treatment Plant (WWTP) with a membrane bioreactor (MBR) treatment plant and increased the plant's capacity. The provision of a modern MBR based plant was to allow for the supply of high quality recycled water for dual reticulated recycled water.

The plant was constructed in 2011 and has been designed to integrate with Council's dual reticulation urban recycled water scheme, however regulatory approval has never been granted and Council is still in dispute with the original Contractor regarding outstanding defects.

In December 2019, Council notified the Contractor of its intent to rectify all outstanding contractual defects itself, and recover these costs from the Contractor.

The intent of this tender is to engage a suitably qualified Contractor to rectify all outstanding defects and allow the plant to generate recycled water of a quality fit for supply into Council's existing scheme.

This report outlines the results of the tender process.

#### **Key Issues**

- Comply with Local Government (General) Regulation 2005
- Compliance with Section 60 (c) Local Government Act 1993 to allow for supply of dual reticulated recycled water from the site
- Maintain Council's right to recover costs from the original Contractor
- Obtain value for money

#### **Information**

As it is proposed to recover costs associated with this tender from original contractor and this is subject to a litigated dispute, the information regarding the tender assessment is reported to Council in the confidential section of this agenda.

### Sustainability Considerations

- **Environment**  
This project is required for Council to achieve the 80% water recycling target as described in the 2007 Ballina-Lennox Head Recycled Water Master Plan.
- **Social**  
Not Applicable
- **Economic**  
This project will need to be delivered prior to the installation of a reverse osmosis plant for ultimate recycled water generating capacity to be reached on the site.

### Legal / Resource / Financial Implications

Council has undertaken a public tender process in accordance with Local Government (General) Regulations 2005.

A portion of this project cost is subject to cost recovery by Council against the original Contractor. This tender was drafted and reviewed by Council's legal representatives to ensure Council maintains its rights to recover costs.

An audit of the suitability of the preferred tender has also been conducted by a third party to ensure Section 60 (c) approval under the Local Government Act 1993.

The confidential report discusses the budget matters associated with this project.

### Consultation

A public tender process was undertaken. A Third Party technical auditor was engaged to determine submission compliance, with Section 60 (c).

The Department of Planning, Industry and Environment and NSW Health were consulted regarding compliance with regulatory requirements.

### Options

In accordance with Part 7 Clause 178 of the Local Government (General) Regulations 2005, Council must either:

1. *Accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
2. *Decline to accept any of the tenders.*

*A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

- (a) postpone or cancel the proposal for the contract;*

## **9.10 Tender - Ballina WWTP Rectification Works and Gantry Crane Installation**

- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details;*
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract;*
- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract;*
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender; and*
- (f) carry out the requirements of the proposed contract itself.*

Option 2(e) is recommended as the preferred option as the post tender review indicated that additional specific contract conditions are required to be negotiated with the preferred tenderer before proceeding.

### **RECOMMENDATION**

That Council notes the contents of this report regarding the tender for the Ballina Wastewater Treatment Plant Rectification Works and Gantry Crane Installation, with the tender evaluation and recommendation included in a confidential report later in this agenda due to on-going litigation arising from the original contract.

### **Attachment(s)**

Nil



## 10.1 Ballina SES Headquarters - Site Assessment

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### 10. Civil Services Division Reports

#### 10.1 Ballina SES Headquarters - Site Assessment

##### Delivery Program

Community Facilities

##### Objective

To determine a location for the new Ballina SES Headquarters.

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#### Background

Council resolved at the 23 April 2020 Ordinary meeting as follows:

1. *That Council authorises the General Manager to have further discussions with the Ballina SES in respect to the use of the land immediately to the south-west of the current site for a new building.*
2. *If this site is not deemed suitable following those discussions, Council is to receive a further report on the preferred site(s).*
3. *That Council approves an allocation of \$25,000 from the Strategic Planning Reserve to assist with the preparation of the concept designs and plans for the new Ballina SES building.*

The site proposed in the resolution is known as the Clark Street Reserve and has frontage to Bangalow Road, Hogan Street and Clark Street.

A planning assessment report has been prepared for the reserve. The purpose of this report is to assess the suitability of the site for an SES Headquarters, to assess the potential planning pathway options, and advise on the prospects for approval if Council and the SES decide to proceed.

The outcomes of the planning assessment report are explained as follows and direction is sought on how Council wishes to move forward with this project.

#### Key Issues

- Meet upgrade requirements for the Ballina SES Headquarters
- Determine most suitable site for the project
- Limited site options and impact on the community

#### Information

The Clark Street Reserve is classified as Community Land under Council's Plan of Management (PoM) for Community Land and it is specified as General Community Use.

The specified use of this site under the PoM is to promote, encourage and provide for the use of the land, and to provide facilities on the land to meet the current and future needs of the local community and the wider public.

## 10.1 Ballina SES Headquarters - Site Assessment

While the site is currently vacant, it does have a pedestrian footpath and a number of mature native trees located over the site. These site conditions are illustrated in Figure One.

**Figure One - Site Location**



A copy of the planning assessment report prepared by consultants Newton Denny Chappelle (NDC) is provided as Attachment 1.

The report notes the Reserve is zoned *IN1 – General Industrial* under the Ballina Local Environment Plan (BLEP) 2012. The development of this site for an SES Headquarters is likely to be assessed as compliant with the zone objectives.

Ballina SES has indicated the site is suitable from an operational perspective, particularly if direct access to Bengalow Road can be facilitated.

The primary constraints for using the site for the SES Headquarters relate to the removal of vegetation, loss of open space, loss of land for use by the general community and the relocation of existing services.

The site is vegetated with a number of mature native trees, and to facilitate the development over the site, a majority of the trees will require removal. The clearing would likely require compensatory planting and/or biodiversity offset credits to be paid.

Drinking water, recycled water, Telstra and a pedestrian footpath make up the existing services and infrastructure that traverse this site. Construction of buildings on this site would need to ensure they are located outside the zone of influence of these underground services.

Alternatively, these services may need to be relocated, although it may be possible with a two storey building design for these relocations to be avoided or reduced. The footpath will need to be relocated to facilitate the development.

## 10.1 Ballina SES Headquarters - Site Assessment

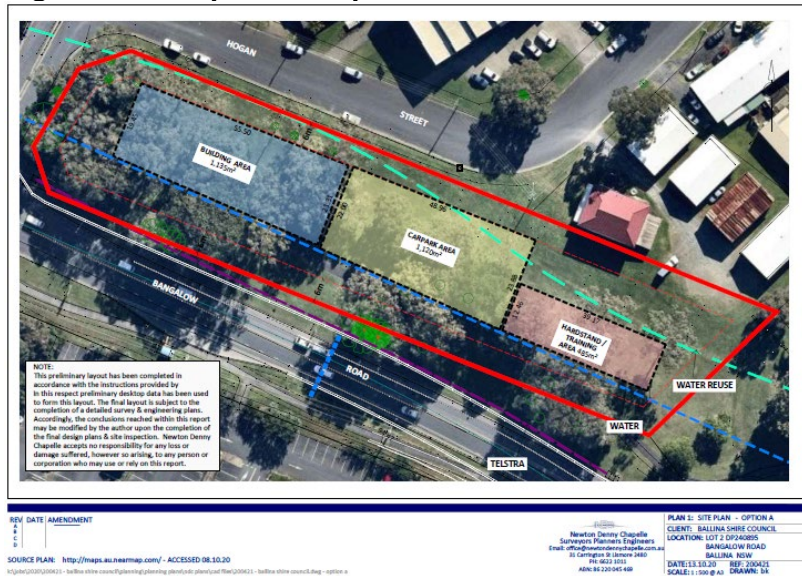
For planning purposes, the size of the headquarters has been determined using NSW Public Works guidelines.

Under these guidelines, the Ballina SES unit is rated as needing a medium to large facility, requiring a site large enough to accommodate a total floor area of 2,740 m<sup>2</sup> based on the following operational areas:

Building accommodation area (single story)	1,135 m <sup>2</sup>
Car parking area	1,120 m <sup>2</sup>
Hardstand and training area	485 m <sup>2</sup>

Figures Two and Three provide single story concept options.

**Figure Two - Option 1 - Spatial Illustration**



**Figure Three - Option 2 - Spatial Illustration**



Another option, which has not been assessed in the planning report, is to use a combination of the Clark Street Reserve and the existing site.

## 10.1 Ballina SES Headquarters - Site Assessment

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For example, it might be possible for the car parking and hardstand training area to be located on the existing site and the new headquarters located on the reserve with a suitable pedestrian connection provided between the two areas.

This would reduce the impact on the Clark Street Reserve and provide the SES with direct access to Angels Beach Drive (north) under the proposed road upgrade which will include the connection of Sheather Street to Angels Beach Drive.

The following is reproduced from the conclusion to the Planning Assessment Report.

*It is NDC's opinion that the proposal could proceed as development permitted without consent in accordance with Clause 48(1) of the ISEPP. This position would need to be confirmed with Council's Development Services section.*

*It is recommended that should Council wish to pursue the relocation of the Ballina SES Headquarters on the site, a detail survey is undertaken to determine the extent of filling required and locate all existing vegetation & services and a preliminary Ecological Assessment prepared to ascertain the likely compensation required for the removal of vegetation over this site.*

*In conclusion, whilst the site is suitably zoned and located for the intended use, the identified constraints, particularly vegetation and location of services, will present challenges moving forward.*

The SES has expressed a strong preference to continue to be located in the general area near the current site. This suits their operations and the volunteer membership has been recruited based on their availability to attend activities in this area.

Previous reporting to Council has not identified an alternative site acceptable to the SES, primarily as the SES has always expressed a strong preference to remain on Ballina Island.

If Council was not supportive of the Clark Street Reserve site the only remaining viable option is use of Council industrial land.

Even though the Southern Cross Industrial Precinct is not the preferred SES option, it still allows the SES to effectively operate, and it also allows Council to promptly proceed with the proposal, with the major financial impact being the foregoing of industrial land sale proceeds for the area occupied by the SES.

### **Sustainability Considerations**

- **Environment**

The proposal is likely to have significant impacts on the vegetation within the Clark Street Reserve. Further planning assessment will determine how these impacts could appropriately be mitigated.

- **Social**

From a social perspective Council has to balance the loss of the amenity provided by the Clark Street Reserve against the opportunity to provide improved emergency services facilities which clearly are also a benefit to the community.



- **Economic**

Maintaining a viable SES unit and services within a community can contribute to the Shire's economic opportunities.

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

The Long Term Financial Plan has a total allocation of \$1.5 million for the construction of the SES Headquarters with \$800,000 available in 2022/23 and \$700,000 in 2023/24.

If the Council elects to proceed with further investigations for the Clark Street Reserve, the remainder of the \$25,000 allocated to this site investigation can be used to continue the pre-construction activities. These activities would include preparing concept designs, cost estimates and planning application documentation.

The current budget does not contemplate the purchase costs for land or costs to relocate the infrastructure and services on the reserve site. Cost estimates for land purchase and infrastructure relocation have not been considered in the preparation of this report, however this work can be completed prior to making a decision if that is Council's preference.

### **Consultation**

Consultation regarding the suitability of this site has continued with the SES. As the project proceeds into the concept design phase, further consultation will continue with SES representatives will be required.

The proposal to use the Reserve for this purpose has not been subject to consultation with the community. It is an option for Council to invite feedback now in this regard, however as the proposal is consistent with the Plan of Management for the Reserve, it is reasonable for Council to continue to develop the concept and invite community feedback during the planning assessment phase when more details will be available about the proposal, including an understanding of the extent of the impacts and how they might be mitigated.

### **Options**

The purpose of this report is for Council to determine if the Clark Street Reserve is the preferred site or, having regard to the amenity of the area and the vegetation, it is preferred to investigate options involving the purchase / use of industrial land.

The first two options below represent these choices.

The third option defers a decision until further cost information is developed comparing the two options.

### **Option 1 - Develop on the Reserve**

The Clark Street Reserve land suits the SES from an operational perspective and does not involve land purchase costs, albeit utility relocation may be expensive. A building for emergency services is considered permissible under the land use zone and the proposed purpose is consistent with the Plan of Management.

There are constraints, being the utility and footpath relocation, the mitigation of the impacts associated with clearing mature, native vegetation and the loss of open space.

If Council prefers this option, the next step would be to commence the detail design and planning application phase for the project.

### **Option 2 - Investigate Industrial Land**

This option avoids the issues associated with Option 1 in respect of the existing infrastructure, vegetation and lost amenity. Subject to the investigation outcomes, it is likely the SES will still prefer the Clark Street Reserve site over any industrial land site given the Reserve's proximity to the existing site and major roads.

This option is presented if Council prefers to maintain the existing level of amenity of the Reserve.

If Council prefers this option, a report can be prepared fairly quickly assessing which land options may be feasible for this use. It would be open to Council to reconsider Option 1 if the investigation of industrial land did not yield a satisfactory result.

### **Option 3 - Assess Cost Difference between Options 1 and 2**

Option 1 has infrastructure relocation costs and vegetation management costs including the possibility of developing offsets or the payment of credits. Option 2 involves the possible cost of purchasing land or the opportunity cost of using Council owed industrial land. If Council selects this option, staff will prepare cost estimates and provide a further report.

### **Option 4 – Develop on Reserve however minimize impact by using as much of the existing site as possible.**

As touched on in the report there may be opportunities to use the existing site for the car parking and hardstand areas.

In reviewing figure three – option two, as outlined in this report, if the car parking and hardstand areas are removed, the impact on the Clark Street Reserve is significantly reduced. There may also be the possibility of providing a two storey building to further reduce the environmental impacts.

The layouts in figures two and three do have major negative impacts on the open space and vegetation and it is essential that Council retains as much open space as possible as it is a finite resource and contributes to the social fabric of the community.

## **10.1 Ballina SES Headquarters - Site Assessment**

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The eastern end of the site is the less vegetated area and if Council can minimize the construction on the Reserve it may be possible to deliver this essential infrastructure within minimal impact on the environment.

On balance this is the recommended approach, for further investigative purposes, as:

- the planning assessment report indicates the proposal is consistent with the planning framework and the Plan of Management applicable to the Clark Street Reserve.
- the site is highly regarded by the SES.
- further evaluation can confirm the likely impact on the Clark Street Reserve along with the infrastructure relocation costs.

If Council does not support the use of the Clark Street Reserve, option 2 (industrial land) is the recommended approach as this would then allow a further report to be submitted to Council that evaluates the likely cost of acquiring / using industrial land. Council could still ask for this to be completed as part of the further evaluation of the Clark Street Reserve.

### **RECOMMENDATION**

1. That Council provides in principle support for the construction of the proposed Ballina State Emergency Services (SES) Headquarters at the Clark Street Reserve site, subject to:
  - the proposal minimising any impacts on the Clark Street Reserve by reusing as much of the existing SES site as possible, particularly for the car park and hardstand / training areas; and
  - the next stage of the concept plan development is to also examine a two storey building area, located at the eastern end of the Clark Street Reserve, to further minimise environmental impacts.
2. That Council is to receive a further report back with updated concept plans based on point one, along with estimated costs for the relocation of existing utilities and the shared pathway, prior to proceeding to the detail design and planning stage of the project.

### **Attachment(s)**

1. Ballina SES Headquarters - Site Assessment - NDC

## 10.2 Pedestrian Crossing - Crane Street, Ballina

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### 10.2 Pedestrian Crossing - Crane Street, Ballina

#### Delivery Program

Engineering Works

#### Objective

To seek direction from Council on the removal of the marked pedestrian crossing in Crane Street, Ballina.

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#### Background

In December 2019 a report was prepared for the Ballina Local Traffic Committee (LTC) regarding the existing pedestrian crossing in Crane Street, east of Martin Street, Ballina. The report was initiated by a request to relocate the existing crossing in Crane Street from the east side of Martin Street to the west side of Martin Street.

The report advised that neither the existing crossing (east side) nor the proposed crossing (west side) met the required Transport for NSW (TfNSW - RMS) warrants. The recommendation from the LTC was as follows:

*“That subject to approval by the elected Council, the LTC support the removal of the existing Crane Street crossing east of Martin Street and progress design and installation of a pedestrian refuge or other safe crossing device west of Martin Street. “*

Further investigation of other safe crossing devices on the west side of Martin Street was undertaken and a report submitted to the 27 February 2020 Council meeting. The resolution of Council was as follows:

- 1. That based on the technical assessment outlined in this report, Council authorises community consultation to be undertaken for the proposed removal of the marked pedestrian crossing located on Crane Street, east of Martin Street.*
- 2. The results of the community consultation in point one are to be referred to the Ballina Local Traffic Committee for advice and reported to Council.*

The consultation process was delay due to COVID-19 pandemic restrictions and it has now been recently completed. The outcomes were reported to the LTC meeting held on 14 October 2020 and the recommendation from that meeting is as follows:

*That subject to approval by the elected Council, the Local Traffic Committee supports the removal of the existing Crane Street crossing east of Martin Street.*

The following report reviews the information provided to the LTC and seeks Council’s determination.

#### Key Issues

- Pedestrian safety and accessibility
- Public perceptions and TfNSW warrants



### Information

#### The Role of Marked Pedestrian Crossings

Marked Pedestrian (Zebra) Crossings give pedestrians a legal right of way (over vehicular traffic) when crossing streets. They can be approved when there is a minimum threshold level of vehicle and pedestrian traffic volume.

These threshold volumes are documented by TfNSW and are known as a *warrant*.

The *warrant* is a ratio relationship between vehicle volumes and pedestrian volumes.

Pedestrian crossings do not necessarily enhance pedestrian safety. This is because some pedestrians, knowing that they have legal right of way, do not exercise due care when crossing streets.

They may assume that drivers will see them in time and stop, and unfortunately this does not always happen.

Further, when there are low pedestrian numbers using marked crossings, regular motorists become used to the crossing being clear and can be slow to react when a pedestrian is present.

The purpose of the TfNSW marked crossing warrants are to identify those locations where significant numbers of pedestrians have difficulty in safely crossing busy streets because there are insufficient gaps in the traffic stream to permit a safe crossing movement.

In these cases, the legally enforceable pedestrian right of way provided by a marked pedestrian crossing is considered appropriate.

Where a zebra crossing is not preferred, a road authority can examine other infrastructure options to support safe pedestrian activity.

The TfNSW warrants for pedestrian crossings are expressed in a number of formulas combining pedestrian and vehicle traffic volumes.

In these formulas  $P$  = number of pedestrian using a crossing in an hour and  $V$  = number of vehicles crossing a marked pedestrian crossing in an hour.

The two types of warrants are described below.

#### Normal Pedestrian Crossing Warrant

$P > 29$  for 3 x 1 hr periods per day, and  $V > 499$  and  $P \times V > 60,000$ .

#### Reduced Pedestrian Crossing Warrant

*(Predominantly to be used where the proposed crossing is to be used by children or aged/impaired pedestrians)*

$P > 30$  for 2 x 1hr periods a day immediately before and after school, and  $V > 199$ .

## 10.2 Pedestrian Crossing - Crane Street, Ballina

### Pedestrian Crossing Counts

Traffic and pedestrian counts of the existing crossing (east of Martin Street) carried out on 14 November 2019 are tabulated in the following table.

**Table One - Crossing Count Data and Warrant Assessment**

Existing Crossing East of Martin Street						
East of Martin Street					14/11/2019	
Time	Pedestrians				Vehicle Nos.	PxV
	School	Aged impaired	Other	Total Ped		
8:30- 9:30	7	1	15	23	36	828
12:30-1:30	-	-	-	-	-	-
3:00 - 4:00	8	1	19	28	36	64
<b>Comment:</b> Near School						
<b>Assessment:</b> Does not qualify as Normal or Reduced Warrant						

The assessment is the crossing does not qualify for either the normal or reduced warrant.

In June 2015 the existing crossing (and two other ones) were recommended for removal by the LTC as it was found not to meet the RMS warrants.

This recommendation was presented to the elected Council in June 2015 and the Council resolution was as follows:

*That Council take no further action for removal of the three designated pedestrian crossings due to the high percentage of elderly persons using these crossings.*

### **Community Consultation**

Community consultation was held over due to the COVID-19 pandemic.

Once commenced, letters were sent to 53 nearby properties, including schools, seeking feedback regarding the proposed crossing removal. Attachment 1 to this report is the engagement map of the properties contacted. The letter requested feedback be sent to Council within a three week period.

The proposal to remove the pedestrian crossing was also reported in the Ballina Advocate in early March 2020 following Council's resolution.

Council received five submissions in response to the consultation process and each letter expressed views against the proposed crossing removal.

A copy of the submissions is provided in Attachment 2.

The concerns raised in the submissions are summarised as follows:

- Several people use the crossing when walking dogs.
- As an older person, one submitter feels safer using a marked crossing.

## 10.2 Pedestrian Crossing - Crane Street, Ballina

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- The existing crossing needs improvement as tree roots have led to an uneven surface and road patching has removed the paint work.
- Elderly citizens frequently use the crossing.
- The crossing is needed to cater for new development and growing schools in the area.
- The crossing is adjacent to schools and necessary for the safety of school children.
- Removing the crossing presents a safety issue for people in wheelchairs.
- The crossing in Martin Street is very dangerous with intending pedestrians partially hidden by large tree trunks.
- With a high usage of mobile phones by both motorists and pedestrians, it is important that this crossing be retained.
- The crossing ensures vehicles slow down at the intersection.
- It is a busy intersection making it dangerous for pedestrians.
- The crossing provides safety and sense of security to people on mobility scooters and wheelchairs.

The concerns raised regarding the condition of the adjacent Martin Street marked pedestrian crossing will be assessed by Council's Engineering Works Section.

The feedback obtained as part of the consultation process is strongly against the removal of the marked pedestrian crossing.

At the same time, the concerns raised do not alter the validity of applying the TfNSW warrants for the subject crossing. This means, from a technical perspective, the justification for the removal of the crossing remains.

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
Removal of pedestrian crossings that do not meet required minimum pedestrian and vehicle volume thresholds is a decision aimed at improving pedestrian safety and movement efficiency. However existing crossings also have a social benefit through potentially long term use of the crossing.
- **Economic**  
Not Applicable

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

Council has a range of delegations from TfNSW for the regulation of traffic (including regulation of marked pedestrian crossings) that require the concurrence of the Ballina LTC.

Through the LTC, TfNSW requested Council review all of its pedestrian crossings for compliance with the standard and this has occurred progressively. This crossing has now been assessed in 2015 and 2020 and on both occasions the assessment is the crossing does not meet the required warrant.

From a safety perspective and from a risk management perspective, it is important for the Council to have regard to the standards when making a decision and the reasons for any decision to undertake an action (including do nothing) that departs from a standard should be carefully documented.

### **Consultation**

Community consultation has been undertaken in accordance with Council's previous recommendation.

### **Options**

Option 1 - Remove the designated pedestrian crossing located on Crane Street, east of Martin Street, Ballina.

Option 2 - Take no further action for removal of this designated pedestrian crossing and continue to monitor the performance of the crossing.

It is acknowledged that some members of the community have stated their preference to retain the crossing in its current form. However, as per the information in the report, compliance with the standard is expected to improve the safety outcomes at this location and for this reason Option 1 is recommended.

### **RECOMMENDATIONS**

1. That, having regard to the noncompliance with the Pedestrian Crossing Warrant as the relevant standard, Council authorises the General Manager to arrange the removal of the marked pedestrian crossing located on Crane Street, east of Martin Street, Ballina.
2. That Council write and thank the members of the community who made a submission to this proposal, with that response to explain the technical reasons for the removal of the marked pedestrian crossing.

### **Attachment(s)**

1. Crane Street Pedestrian Crossing - Engagement Map
2. Submissions - Crane Street Pedestrian Crossing

## **11.1 Notice of Motion - Surveillance Cameras at Lake Ainsworth**

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

#### **11.1 Notice of Motion - Surveillance Cameras at Lake Ainsworth**

**Councillor**

Cr Cadwallader

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I move

That Council conduct a hidden surveillance camera trial at Lake Ainsworth to assess whether this can assist in reducing the ongoing vandalism from broken glass bottles, rubbish and fires.

#### **Councillor Comment**

I have brought this Notice of Motion to the Council today out of concern for the public, wildlife and environment.

Vandalism, rubbish, fire pits and broken glass strewn across the grass in the Lake Ainsworth precinct is becoming increasingly more difficult for the wonderful FOLA (Friends of Lake Ainsworth) to manage. These volunteers, along with staff, clean up around the lake every morning.

It was the recent incidence of making a fire pit out of copper logs that were taken from the boundary of the park that has spurred me into action. Burning of treated wood is an illegal activity and dangerous to humans, wildlife and the environment.

Treated wood contains Chromated Copper Arsenate and it can be deadly. Toxic fumes are harmful and one tablespoon of ash, if ingested, is enough to kill an adult. Remnants of ash is deadly to wildlife and companion animals with land and water contamination as well.

This Notice of Motion seeks to take action to try and find those responsible for this dangerous behaviour. In particular, the smashing of glass bottles and scattering them all through the grassed areas and the burning of treated fencing.

#### **Staff Comment**

Council staff are working in collaboration with NSW Police and the Richmond District Crime Prevention Officer to monitor and negate instances of vandalism at Lake Ainsworth. Actions being implemented include improving site access, additional and targeted Police patrols and surveillance throughout the reserve.

#### **COUNCILLOR RECOMMENDATION**

That Council conduct a hidden surveillance camera trial at Lake Ainsworth to assess whether this can assist in reducing the ongoing vandalism from broken glass bottles, rubbish and fires.

**Attachment(s) – Nil**

## **11.2 Notice of Motion - Unaccounted Water - Program Plan**

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### **11.2 Notice of Motion - Unaccounted Water - Program Plan**

**Councillor**

Cr Cadwallader

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I move

1. That Council prepare a strategic plan to improve the performance of our water supply network in respect of reducing the amount of unaccounted water with progress reported to Council on an annual basis.
2. That staff provide a report on how the Demand Management Areas and Pressure Management Zones are performing. That the report be inclusive of water consumption for each zone in ranking order: pressure reduction performance for each zone, non-revenue water for zone, water main failure history for each zone and the associated scheduled replacement date.

#### **Councillor Comment**

The Council has been investing in improvements to our infrastructure to reduce the amount of unaccounted water lost from the system due to an end of life pipe system. It is important for this investment to continue as the lost water is a direct cost to Council and it is also inefficient in terms of the management of the bulk water supply. Lost water represents a further pressure on the regional supply which already has the challenge of responding to population growth and climate change.

Water security is an important issue and the purpose of the proposed strategic plan is to demonstrate to the community Council's ongoing commitment to reducing the amount of unaccounted water.

Council's Delivery Program does include an activity completed annually, which is to implement a water loss reduction program. The Delivery Program also includes an activity to reduce the volume of unaccounted water. The purpose of a strategic plan is to assist the Council to understand the operational work planned to support these activities and to monitor progressive targets so that the Council can be informed and assess whether the investment level is sufficient and whether our progress is meeting community expectations.

#### **Staff Comment**

A strategic or operational plan as proposed by this motion would assist in further communicating the work being done under the relevant Delivery Program activities.

In recent years Council has made significant investments in infrastructure to support the water loss reduction program. In particular Council has commissioned Pressure Management Zones (PMZ) and Demand Management Areas (DMA). This work has assisted staff to investigate leaks.

Unfortunately the data collected to date from this program suggests the results are not related to readily identifiable hot spots or issues, rather the leakage is an accumulation of small losses aggregated across the wider network.

## 11.2 Notice of Motion - Unaccounted Water - Program Plan

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This makes a specific program of further works challenging to define.

To respond to this staff have recently commenced a project to pilot a series of actions in one DMA with the view to study the effects of reducing pressure and searching for small water losses.

The data from this work is planned to enable the Council to assess the balance between providing water pressure at a level higher than standard (which is generally preferred by residents) against the impact this has on water loss as extra mains pressure does influence leakage rates.

The objective of this work is also to try and identify works that are effective for the small system leaks or losses.

Another issue to consider in a strategic plan is the reliability of reporting from a benchmarking perspective. Typically our reporting against the activity to reduce the volume of unaccounted water notes results in the range of 13% to 16%.

The most recent data from the NSW Government's Local Water Utility Performance Report is for the period 2018-19. This report does not include a volume of unaccounted water which makes comparisons to other LWUs difficult.

The most relevant data is noted below, including the results from other councils in this region.

### **Unbilled Water – Potable (ML)**

Lismore	160
Ballina	3
Byron	0
Richmond Valley	15
Rous	56
Weighted Median	47

### **Real Losses Leakage (ML)**

Lismore	481
Ballina	498
Byron	216
Richmond Valley	371
Rous	82
Weighted Median	534

### **Apparent Losses (ML)**

Apparent losses are defined as the sum of unauthorized potable supply meter inaccuracies.

Lismore	Not available
Ballina	82
Byron	65
Richmond Valley	57
Rous	237
Weighted Median	131

## **11.2 Notice of Motion - Unaccounted Water - Program Plan**

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This data set shows Council's performance is probably not much different to other utilities and that there is likely to be some differences in how data is compiled and reported. For example, it is often the case councils use unmetered water in parks and reserves and this can be accounted in unbilled water, however would not be considered a water loss like leakage or apparent loss.

Therefore any strategy document will have some limitations in respect of reporting capability and it is preferred to develop the plan once the pilot project is completed as this will provide useful information regarding the potential works program going forward.

Work on a major project to assess our Water and Wastewater infrastructure is now in the final stages. The outcome of this project is a Water and Wastewater Network Master Plan. A key objective in this work is to identify the preferred renewal program for our reticulation networks.

Council's Delivery Program includes an activity to reduce water main breaks. The current target for reporting is less than one break per 30 km of main.

It is important to acknowledge that the Delivery Program and Operational Plan, as adopted by Council each year, set the priorities for staff. Ideally, due to the amount of work involved, the notice of motion should be a specific action in the next update of the Delivery Program / Operational Plan.

### **COUNCILLOR RECOMMENDATION**

1. That Council prepare a strategic plan to improve the performance of our water supply network in respect of reducing the amount of unaccounted water with progress reported to Council on an annual basis.
2. That staff provide a report on how the Demand Management Areas and Pressure Management Zones are performing. That the report be inclusive of water consumption for each zone in ranking order: pressure reduction performance for each zone, non-revenue water for zone, water main failure history for each zone and the associated scheduled replacement date.

### **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 October 2020 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
26/10/20	Church Group
28/10/20	Meeting – Lennox Head Kiosk Upgrade
28/10/20	Meeting – Byron Studios
30/10/20	Meeting – Judging Competition
1/11/20	Commemoration Park Markets
2/11/20	North Coast Region Waste Report – webinar
3/11/20	Cross Border – Teams
4/11/20	Meeting – Documentary Maker
5/11/20	Planning Panel – 120 North Creek Road – Via Teams
6/11/20	CSPC Meeting – Lismore
8/11/20	Commemoration Park Markets
9/11/20	Flag Raising Ceremony to mark NAIDOC Week
10/11/20	Briefing – Regional Water Strategy
11/11/20	Remembrance Day – Ballina
12/11/20	Tursa NAIDOC Ceremony
12/11/20	‘C’ Ward Committee
15/11/20	Commemoration Park Markets
15/11/20	Ballina Markets
15/11/20	Lennox Head – Surf Carnival
16/11/20	Bianca Ubina – Water Northern Rivers Alliance
16/11/20	‘B’ Ward Committee
17/11/20	Briefing – North Coast Investment Report
18/11/20	School Formal Presentation
20/11/20	Cross Border Commissioner
20/11/20	NRJO Board Meeting and MOU Signing – Casino
20/11/20	Ballina Art Society Exhibition – Tintenbar Hall
22/11/20	Commemoration Park Markets
23/11/20	2020 LGNSW Annual Conference
26/11/20	Council Meeting
26/11/20	Opening St Vincent de Paul Day Service
29/11/20	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 Tender - Ballina WWTP Rectification Works - Legal Components**

Refer to Item 9.10 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 Tender - Ballina WWTP Rectification Works - Legal Components**

**Reason for Confidentiality**

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

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business; and
- d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret; and
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

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