



## 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 27 February 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.**

## **Deputations to Council – Guidelines**

- Deputations by members of the public may be made at Council meetings on matters included in the business paper.
- Deputations are limited to one speaker in the affirmative and one speaker in opposition.
- Deputations, per person, will be limited to a maximum of two items on the agenda.
- Requests to speak must be lodged in writing or by phone with the General Manager by noon on the day preceding the meeting.
- Deputations are given five minutes to address Council.
- Deputations on the same matter will be listed together with the opposition first and the speaker in affirmative second.
- Members of the public are advised that any documents tabled or given to Councillors during the meeting become Council documents and access may be given to members of the public in accordance with the requirements of the Government Information (Public Access) Act 2009.
- The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of five minutes allocated for the deputation.
- To avoid conflicts of interest, real or perceived, deputations will not be accepted from:
  - Tenderers during a public tender or request for quotation
  - Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
  - Consultants who are engaged by Council on the matter the subject of the deputation.

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

- A public question time has been set aside during the Ordinary meetings of the Council. The Ordinary meeting will be adjourned from 12.45 pm for Public Question Time. If the meeting does not extend to 12.45 pm Public Question Time will be held after the meeting closes.
- The period for the public question time is set at a maximum of 15 minutes.
- Questions are to be addressed to the Chairperson. The period is set aside for questions not statements.
- Questions may be on any topic, not restricted to matters on the Ordinary meeting agenda.
- The Chairperson will manage the questions from the gallery to give each person with a question, a "turn".
- People with multiple questions will be able to ask just one question before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, multiple questions can be invited and considered.
- Recording of the questions will not be verbatim and will not form part of the minutes of the Ordinary meeting.
- The standard rules of behaviour in the Chamber will apply.
- Questions may be asked from the position in the public gallery.

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

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

The National Anthem will be performed by Councillors and staff.

**2. Acknowledgement of Country**

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

**3. Apologies**

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 23 January 2020 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 23 January 2020.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

## **8.1 DA 2019/519 - Depot and Storage - 23 Northcott Crescent, Alstonville**

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

#### **8.1 DA 2019/519 - Depot and Storage - 23 Northcott Crescent, Alstonville**

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<b>Applicant</b>	Newton Denny Chapelle
<b>Property</b>	Lot 2 DP 1237064
<b>Proposal</b>	To establish a depot and storage premises and to undertake earthworks and retaining of the site.
<b>Effect of Planning Instrument</b>	The land is zoned IN1 General Industrial under the provisions of the Ballina LEP 2012.
<b>Locality Plan</b>	The subject land is depicted in Figure 1 and the locality plan in Attachment 1.

#### **Introduction**

Council is in receipt of DA 2019/519 to establish a depot and storage premises and to undertake earthworks and retaining of the site at Lot 2 DP 1237064, No. 23 Northcott Crescent, Alstonville.

The purpose of this report is to seek Council's determination of the subject application. Council resolved on 24 October 2019 to have this DA reported to the elected Council for determination.

To assist Council in determining this application, this report outlines the background of the subject lot and provides an assessment of 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**

Development consent is sought for the following:

- Demolition of an existing storage shed
- Completion of earthworks and retaining walls to maximise the available development footprint on the land and
- Use of the property as a depot and storage premises.

With respect to the earthworks proposed, the applicant has indicated that the site will be shaped to flatten out the existing grade across the site. The final landform will have a minimum grade of 1% to enable drainage.

The proposed design incorporates retaining structures up to 2.0m in cut and 2.5m in fill. The location of the retaining walls are detailed in the development plans in Attachment 3.

## 8.1 DA 2019/519 - Depot and Storage - 23 Northcott Crescent, Alstonville

The site will be finished with a gravel surface and will require approximately 500m<sup>3</sup> of additional material to be imported.

The proposed pad will be set behind a chainmesh security fence and gate.

Landscaping will be provided within the first three metres of the property setback.

With respect to the proposed use of the property, in the short to medium term, the property will primarily be utilised as a depot for the storage of empty skip bins associated with the proponent's business on the adjacent property at 19 Northcott Crescent. The applicant has advised that the bins will be empty whilst on the site.

Private storage of larger items (such as caravans and boats) may also occur on a commercial basis. Storage is to occur outside, in the open air.

### Description of the Subject Site

The subject property is Lot 2 DP 1237064 and is known as 23 Northcott Crescent, Alstonville. The property is located in the northern portion of the Russellton Industrial Estate in Alstonville.

The property is located approximately 150 metres to the south of the Bruxner Highway.

The subject land (as shown in Figure 1), is irregular in shape and 5,010m<sup>2</sup> in area.



Figure 1 – Aerial image of the subject site

The nearest rural dwelling is located approximately 230 metres to the northwest of the subject site.

The nearest residential area is located approximately 290 metres to the north of the subject site.

The subject site is directly adjoined by 19 Northcott Crescent to the north, being the location of North Coast Recycling (also operated by the proponent).

Undeveloped industrial land (with one allotment containing a dwelling house) is located to the north of the Russellton Industrial Estate. The subject site is directly adjoined by developed industrial land.

The subject property was created in 2017 as part of a boundary adjustment subdivision approved through DA 2016/357. Until recent times, the property contained a macadamia oil processing factory which was destroyed by fire in February 2018.

The site is largely vacant (other than a storage shed). The applicant has indicated that the site is currently utilised on an informal basis for parking and storage.

The site is currently set over several levels, providing a reduced available development footprint.

In this regard, one objective of the current application relates to completing earthworks to maximise the usable land available on the property.

The site is connected to reticulated water, sewer, stormwater, electricity and telecommunication services.

Vehicular access to the land is provided via Northcott Crescent.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **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 which are elaborated upon for the consideration of the 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

Local Environmental Plans (LEPs)

SEPP 55 – Remediation of Land SEPP 64 – Advertising and Signage	No issues are raised in relation to any applicable SEPP. Refer to Attachment 2 for further comment and assessment.
<p>Ballina Local Environmental Plan 2012</p> <ul style="list-style-type: none"> <li>• Clause 1.4</li> <li>• Clause 2.3</li> <li>• Clause 7.2</li> </ul>	<p>The proposal generally complies with the aims and objectives of the BLEP 2012. Refer to Attachment 2 for further comment and assessment.</p> <p>Clauses 1.4, 2.3 and 7.2 have been addressed below.</p> <p>Refer Attachment 2 for further comment and assessment of the other relevant controls (Clauses 1.2, 2.7, 4.3, 7.1 and 7.7).</p>
<b>Land use definition (Clause 1.4)</b>	
	<p><b>Depot</b> means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.</p> <p><b>Storage premises</b> means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.</p>
<b>Zoning under BLEP 2012, permissibility within zone and regard for zone objectives (Clause 2.3)</b>	
	<p>The site is zoned IN1 General Industrial under the BLEP 2012.</p> <p>Depots and storage premises are both permissible land uses within the IN1 General Industrial zone.</p> <p>The objectives of the IN1 zone are as follows:</p>

	<ul style="list-style-type: none"> <li>• To provide a wide range of industrial and warehouse land uses.</li> <li>• To encourage employment opportunities.</li> <li>• To minimise any adverse effect of industry on other land uses.</li> <li>• To support and protect industrial land for industrial uses.</li> <li>• To enable non-industrial uses that are compatible with the industrial nature of the locality.</li> <li>• To provide for the efficient use of industrial land.</li> <li>• To encourage development that achieves the efficient use of resources such as energy and water.</li> <li>• To ensure that development does not expose adjoining uses to hazard risks.</li> </ul> <p>Having regard for these objectives, the proposed development will enable for non-industrial uses (i.e. depot and storage premises) that are compatible with the industrial nature of the locality and not uncommonly located within zoned industrial land.</p> <p>With respect to adverse effects on other land uses, it is anticipated that the nature of the proposed use will result in minimal impact on surrounding development.</p>
<b>Earthworks (Clause 7.2)</b>	
	<p>The applicant has indicated that the site is currently set over several levels, providing a reduced available development footprint. Earthworks are to be carried out to maximise the useable land available on the property.</p> <p>The site will be shaped to flatten out the existing grade across the site. The final landform will have a minimum grade of 1% to enable drainage. The proposed design incorporates retaining structures up to 2.0m in cut and 2.5m in fill. The site will be finished with a gravel surface and is expected to require</p>

	<p>approximately 500m<sup>3</sup> of additional material to be imported.</p> <p>Clause 7.2(3) requires the consent authority to consider a number of matters. These are addressed as follows:</p> <p><i>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</i></p> <p>The site is not identified as containing a stream/drainage line on Council's 'River Catchments &amp; Drainage' map.</p> <p>With respect to impacts on drainage patterns in the locality, the proposed stormwater management approach on the site has been assessed and has deemed satisfactory by Council's Civil Services Division.</p> <p>With respect to soil stability, the subject site is not identified on Council's Landslip/Geotechnical Hazard map. The applicant has indicated that retaining walls will be suitably designed and certified by a practicing structural engineer.</p> <p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i></p> <p>The proposed earthworks will provide a level pad which will facilitate the use of the land for the purposes of a depot and storage premises. In this regard, the works are considered to have a positive impact on the future use of the land.</p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p> <p>The applicant has indicated that the earthworks are expected to require approximately 500m<sup>3</sup> of additional material to be imported. The applicant has indicated that this material will be certified in</p>
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	<p>accordance with EPA and Council requirements.</p> <p>A condition is recommended to be imposed on the consent requiring that any fill material imported to the site for the proposed development is obtained from fill sources that have an approved testing regime, with certification provided to the Principal Certifying Authority.</p> <p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p>The applicant has commented that the proposed earthworks will result in the main activities associated with the facility being located substantially below the street level.</p> <p>The proposed earthworks are not anticipated to impact upon the existing and likely amenity of adjoining properties.</p> <p>It is considered the modification of the site will not result in any additional impacts over and above the existing situation with respect to the existing and likely amenity of adjoining properties.</p> <p>Having regard for the stormwater management approach proposed, it is not envisaged that drainage or ponding issues will occur.</p> <p><i>(e) the source of any fill material and the destination of any excavated material,</i></p> <p>With respect to the source of fill material, the applicant has indicated that this material will be certified in accordance with EPA and Council requirements.</p> <p>A condition is recommended to be imposed on the consent requiring that any fill material imported to the site for the proposed development is obtained from fill sources that have</p>
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an approved testing regime. The supplier of the fill material is required to certify to the Principal Certifying Authority at the completion of construction that the material was free of contaminants, being natural or otherwise.

A condition is recommended to be imposed on the consent requiring all demolition, construction or the like waste (including fill material) to be transported and disposed of to an approved waste facility unless managed in accordance with a current resource recovery order and exemption.

*(f) the likelihood of disturbing relics,*

Council conducted an AHIMS search on 21 January 2020 (CM 20/5039) which revealed that there are no Aboriginal sites or places recorded on or near the subject site.

The applicant has commented that the Aboriginal Cultural Heritage Due Diligence Assessment carried out for the adjoining property as part of DA 2017/600 did not identify any issues of concern with respect to cultural heritage values.

In this regard, it is considered unlikely that relics will be disturbed as part of the proposed development.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

The subject site does not contain a waterway and is not located within a drinking water catchment or environmentally sensitive area. Minor streams (as mapped on Council's 'River Catchments & Drainage map) are located approximately 120 metres to the

	<p>northwest and southeast of the subject site.</p> <p>Council's Civil Services Division has carried out an assessment of the proposal and advised that the proposed stormwater management approach is suitable for the development.</p> <p>The applicant has indicated that sediment and erosion control measures will be implemented during construction, which is to be required by way of the recommended conditions.</p> <p style="text-align: center;"><i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p> <p>Conditions are recommended to be imposed on the consent with respect to the management of sediment and erosion on the site.</p> <p>Conditions are also recommended to be imposed to ensure stormwater management on the site occurs in accordance with the submitted stormwater management plan.</p> <p>Given the above, no concerns are raised with regard to the earthworks proposed as part of the subject application.</p>
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**State Environmental Planning Policies (SEPPs)**

SEPP 55 – Remediation of Land	<p>During the preparation of this application, NDC consulted with Council's Environmental Health Officer, concerning the information required to be provided with respect to the contamination status of the land. Council advised as follows:</p> <p><i>"Council's records, including the following documents, have been reviewed;</i></p> <ul style="list-style-type: none"> <li>• <i>Stockpiled Material Waste Classification Alstonville Macadamia Processing Plant</i></li> </ul>
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	<p><i>Site 23 – 25 Northcott Crescent, Alstonville (ENV Solutions, November 2018) BSC Ref# 18/85778,</i></p> <ul style="list-style-type: none"> <li>• <i>Contaminated Land Assessment 23-25 Northcott Crescent, Alstonville (Ardill Payne &amp; Partners, May 2018, job number 8636) BSC Ref# 18/36976).</i></li> </ul> <p><i>The previous investigations of the site have determined that the contaminated status of the site is suitable for a commercial/industrial land use without remediation. Council therefore has sufficient information to enable us to carry out a planning function for this site in good faith without further assessment of contamination”.</i></p> <p>As part of the assessment of the subject application, Council’s Environmental Health Officer provided the following comments:</p> <p><i>Previous Contamination Assessment as a result of fire at nearby macadamia nut processing facility CM 18/36976 prepared by Ardill Payne and Partners, May 2018 has determined the contamination status is suitable for commercial/industrial use and is therefore suitable for the proposed development.</i></p> <p><i>Details of the Assessment and determination is included in Council’s Contaminated Land Register – 130-2018-339-1.</i></p> <p>In this regard, no issues are raised in relation to the requirements of SEPP 55.</p>
SEPP 64 – Advertising and Signage	<p>The applicant has indicated that signage will comprise of business identification signs in accordance with the applicable exempt development provisions. In the event that the signage exceeds these criteria, a separate development application will be lodged. A condition is to be imposed ensuring no advertising signage is erected or</p>

	displayed without the prior consent of Council (unless the signage complies with the exempt development provisions contained in the Codes SEPP).
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**Section 4.15(1)(a)(ii) the provisions of any proposed instrument**

<ul style="list-style-type: none"> <li>• Draft Amendment to State Environmental Planning Policy 44 - Koala Habitat Protection.</li> <li>• Draft State Environmental Planning Policy - Remediation of Land.</li> <li>• Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.</li> <li>• Draft Amendment to State Environmental Planning Policy (Short-term Rental Accommodation) 2019.</li> </ul>	No issues raised in regard to any Draft SEPP.
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**Section 4.15(1)(a)(iii) provisions of any development control plan**

<b>Ballina Shire Development Control Plan 2012</b>	
Chapter 2 – General and Environmental Considerations  Part 3 General Controls  3.1 – Land Use Conflict 3.4 – Potentially Contaminated Land 3.5 – Land Slip/Geotechnical Hazard 3.6 – Mosquito Management 3.7 – Waste Management 3.9 – Stormwater Management 3.10 – Sediment and Erosion Control 3.11 – Provision of Services 3.13 – Drinking Water Catchments 3.15 – Crime Prevention through Environmental Design 3.19 – Car Parking and Access 3.20 – Vibration	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.  Refer to Attachment 2 for an assessment of the clauses that are relevant to this application.
Chapter 5 – Industrial Development  Part 3 General Development Controls  3.1 General controls applying to all industrial development  A. Element – Building Design Requirements	The overarching objectives have been considered in relation to the proposal. The proposal is for the establishment of a depot and storage premises and associated works. The proposed uses are permissible within the IN1 General Industrial zone. The proposal has satisfactorily demonstrated a general compliance



<p>B. Element – Landscaping and Screening                  C. Element – Car Parking and Access                  D. Element – Environmental Management                  E. Element – Sustainable Industrial Development</p>	<p>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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**Section 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**

Comment: None applicable.

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

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

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

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

**Section 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?	No. Further, no submissions were received.
If YES, how many submissions were received?	N/A

**Section 4.15(1)(e) – the public interest**

Comment: The proposal relates to the development of the site to facilitate land uses which are permissible in the IN1 General Industrial zone. In this regard, it is considered to be in the interest of the community. Refer to Attachment 2 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 proposal is suitable within the locality and is generally consistent with the objectives of the IN1 General Industrial zone. The proposed use of the land is a common form of use within zoned industrial land within the Shire.

## **8.1 DA 2019/519 - Depot and Storage - 23 Northcott Crescent, Alstonville**

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

### Option One – To Approve

That Council approve the development application to establish a depot and storage premises and to undertake earthworks and retaining of the site, subject to standard planning, civil and environmental health conditions.

### Option Two – To Refuse

That Council refuse the development application to establish a depot and storage premises and to undertake earthworks and retaining of the site.

The assessment of the application does not raise any issues that warrant the refusal of the subject application.

Approval is recommended for the reasons outlined in this report.

### **RECOMMENDATION**

That Development Application 2019/519 to establish a depot and storage premises and to undertake earthworks and retaining of the site at Lot 2 DP 1237064, No. 23 Northcott Crescent, Alstonville be **APPROVED** subject to standard planning, civil and environmental health conditions.

### **Attachment(s)**

1. [DA 2019/519 - Locality Map](#)
2. [DA 2019/519 - Section 4.15 Assessment](#)
3. [DA 2019/519 - Development Plans](#)

## 8.2 Building Information Certificate - 135 Riverside Drive, West Ballina

## 8.2 Building Information Certificate - 135 Riverside Drive, West Ballina

<b>Applicant</b>	G L & J S Colefax
<b>Property</b>	135 Riverside Drive, West Ballina
<b>Proposal</b>	Retaining wall forward of the rear building line to the canal
<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 below.



**Figure 1 - Locality Plan - 135 Riverside Drive, West Ballina**

### Introduction

DA 2018/773 was issued by Council on 21 January 2019 for the removal of an existing pontoon and jetty, and construction of a new pontoon and jetty at the subject property.

In May 2019 Council received a complaint regarding a retaining wall that had been constructed in the canal frontage at the property. On investigation of the complaint, it was determined that the construction of the retaining wall was of a nature that required the prior consent of Council.

This wall was not included or approved as part of DA 2018/773.

Subsequent discussions and correspondence with the owner have been continuing since that time. Council staff have requested that the retaining wall be removed or relocated as the location of wall is not compliant with the applicable building line.

## **8.2 Building Information Certificate - 135 Riverside Drive, West Ballina**

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The owner has chosen not to remove or relocate the retaining wall and instead has lodged a Building Information Certificate application to legitimise the structure and to allow the retaining wall to remain as it is, without Council taking any further actions in relation to it.

The retaining wall is further forward of the canal building line than staff would normally approve under delegated authority if it were included in a Development Application. However, should removal of the retaining wall be required by enforcement of a Development Control Order, it may have more widespread consequences for Council and other properties that have structures, such as retaining walls, in their canal frontage.

Therefore, the determination of the Building Information Certificate application has been referred to the Council for determination.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

Nil.

### **Public Exhibition**

The application is for a Building Information Certificate and not a Development Application, therefore the proposal has not been publicly notified.

### **Applicable Planning Instruments**

Environmental Planning and Assessment Act 1979  
Ballina Local Environmental Plan 2012  
Ballina Shire Development Control Plan 2012  
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

### **Report**

The retaining wall, is depicted in a plan provided by Richard Crandon following its construction. The wall is located approximately 4.4m forward of the existing kerb and approximately 1.0m inside the private property boundary. These dimensions have not been confirmed by a survey.

The plan and supporting documents provided by the applicant are included as Attachment 1.

The wall is constructed of "dry stack" masonry blocks and the plans indicate it has a compacted aggregate base with 20mm aggregate backfill and feature stone topping. The applicant has stated in their application that the cost of the wall is \$3,000.

At a meeting with the owner and Mr Crandon, it was stated that the retaining wall is necessary to provide structural support to the jetty and bracing piles. This claim has not been substantiated by the applicant or their consultant engineer.

## **8.2 Building Information Certificate - 135 Riverside Drive, West Ballina**

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The engineering design submitted by Aqua Pontoons for the construction of the pontoon and gangway depicts it as a free-standing structure supported and braced by reinforced concrete piles. There is no reference on the engineering details to any additional supporting wall of any kind.

These plans are included as Attachment 2.

As the wall was constructed without Council approval, the base and backfill were not able to be inspected during construction.

The applicant has stated that prior to construction of the retaining wall there was a smaller retaining wall located in a similar location as the new wall.

From the available aerial images, this appears to be correct.

It appears that the wall may have been a smaller timber wall.

In addition to that wall there was also a masonry wall located approximately 2.5m forward of the kerb. There are no records of approval being obtained for this masonry wall that appears to have been constructed in the period from 2004 to 2007.

The subject premises are zoned R2 Low Density Residential under the Ballina Local Environmental Plan 2012.

The land uses that are permissible without consent in this zone are Environmental protection works, Home-based childcare and Home occupations.

*Environmental protection works* does not include coastal protection works.

*Revetments* are included in the definition of coastal protection works. Therefore revetment work is not permissible without consent.

In addition, the works do not meet the criteria for exempt development under the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

The foreshore building line control of the Ballina Shire Development Control Plan 2012 is the same as previously included in the 2006 DCP.

The setback distance of 11.5m from the boundary fronting the canal was adopted from the exclusion zone that is referred to in the 88B Instrument to the title of the land that was established in 1983.

Development controls for Boat Ramps, Pontoons and Jetties are now contained within Clause 3.23 of Chapter 2 of the Ballina Shire Development Control Plan 2012.

These provisions were exhibited from 22 May 2019 to 21 June 2019, adopted on 26 September 2019 and became effective of 16 October 2019.

Council first inspected the site in relation to the retaining wall complaint on 1 May 2019, at which time the wall had already been completed.

## 8.2 Building Information Certificate - 135 Riverside Drive, West Ballina

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This means that the subject retaining wall was constructed before the recent formal DCP controls for retaining walls in the canal were exhibited or became effective.

However, the new provisions in the DCP are largely the same as have been used for many years by development assessment staff in determining Development Applications for structures in, and adjoining, waterways.

Had an application been lodged, as required, it is likely it would not have been approved under delegated authority due to the significant non-compliance with the building line control and the lack of justification for variance to the building line.

Council has invested considerable resources since 1995, undertaking studies of the canal to be able to manage the ongoing performance of the entire canal system.

A key part of the management of development along the canal beaches is to achieve a pre-determined and consistent alignment of structures within the canal.

A report to Council on 26 August 1999 detailed the background to how structures in the Ballina Quays canal have previously been addressed.

This report is included as Attachment 3.

The report included the matters identified by Council's consultants (WBM), including surveys of the upper beach erosion scarp, the original and desired gradient of the canal floor and tidal effects.

The report provided by WBM (included as Attachment 4) stated in part that that:  
*The construction of a small revetment wall along the upper beach profile up to about 2m seaward of the existing kerb would generally help formalise any intermittent or permanent erosion scarp in this zone and not cause any major problems as it would only be reached by high spring tides. Any such wall should be properly designed and constructed to withstand some scour of the beach in front of it. It would also be preferable (but not essential) for walls to be continuous and along a predetermined consistent alignment.*

The resolution of Council at the 26 August 1999 Ordinary meeting (included as Attachment 5) stated that:

*With respect to retaining wall structures, vertical retaining walls be permitted within the beach profile of the Ballina Quays canal system such that the face of the retaining wall be positioned parallel and a standard distance of 2.0 metres from the kerb line. This will ultimately provide a uniform profile along the canal.*

Although the 2.0m limitation has not been adopted into the DCP until recently, it has been long-standing practice to require that retaining walls are to be no more than 2.0m forward of the kerb.

The resolution also acknowledged that, as included in the report, at that time, 22 unauthorised retaining walls were present in the canal located at random and varied distances from the kerb line. Council resolved to allow these structures to remain in place with any reconstruction to comply with the 2.0m distance from the kerb.

## **8.2 Building Information Certificate - 135 Riverside Drive, West Ballina**

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The report to Council in 1999 also included a map depicting the location of the 22 unauthorised structures.

This is included as Attachment 6.

Also included in this attachment is a colour version and two tables that provide the details and locations of the walls in relation to the kerb.

These show a wide variation in the location of the walls with some up to 8.0m, and many at 4.0m, from the kerb.

However, it also shows that the vast majority of those constructed between January 1995 and November 1999 are at 2.0m, and only two are more than 2.5m forward of the kerb.

The property at 135 Riverside Drive that is the subject of this report is not one of the 22 properties identified on the 1999 map.

During the 20 years that have passed since that resolution, a number of retaining walls have been constructed in the canal, some with approval and some without approval.

Some have also been constructed further forward than the 2.0m limit with approval.

One such case is for four adjoining lots that lodged concurrent applications (2004/20 to 2004/23) to have a retaining wall on each Lot 3.0m forward of the kerb.

These applications were approved on 24 July 2003 under delegated authority by staff with a condition that the walls could be no further forward of the kerb than 2.0m.

However, following requests to have these determinations reviewed, on 10 September 2003, the elected Council approved the applications to allow the walls 3.0m forward of the kerb.

Council should also be aware of another modification to a development consent that is still under assessment pending the determination of this application. DA 2019/599 is for the demolition and removal of an existing boat ramp and construction of a new boat ramp and retaining wall.

Consent has been granted for DA 2019/599 with a condition that the retaining wall is not permitted to be more than 2.0m forward of the existing kerb fronting the canal.

However, the applicant has now lodged a Section 4.55 modification application to seek to have the retaining wall located 2.5m forward of the kerb to be in line with a previously approved pontoon gangway.

Unless a direction or resolution of Council is made to refuse all applications that do not strictly meet the 2.0m restriction, staff will consider the particulars of the modification to 2019/599, including the scale of the requested variation to the DCP, on merit.

## **8.2 Building Information Certificate - 135 Riverside Drive, West Ballina**

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In justifying why the retaining wall at 135 Riverside Drive should not be removed, the owner has cited other properties within the Ballina Quays canal system that also have retaining wall structures forward of the canal building line.

A review of aerial images of the canal in the immediate locality of the subject property has identified only one other property (66 Dolphin Drive) that has a retaining wall constructed at a similar distance from the kerb as indicated in Attachment 7.

The retaining wall at 66 Dolphin Drive appears to have been constructed in 2017 around the same time as a boat ramp and pontoon were constructed under DA 2015/606. This approval did not authorise the construction of any retaining walls.

For consistency, should Council resolve to require the subject wall at 135 Riverside Drive to be removed, Council staff would need to investigate further the circumstances of the construction of the wall at 66 Dolphin Drive with the view to also having it removed.

Given that the aerial images used are from 2018, it is possible that there other retaining walls that have been constructed in this locality and elsewhere in the Ballina Quay canals since that time.

Excluding properties that have only an access handle fronting the canal, there are 167 residential properties that have a frontage to Ballina Quays canals.

A Building Information Certificate is not an approval and does not operate in the same way as an approval for a Development Application.

The issue of a Building Information Certificate serves to prevent Council from making an order requiring a building or structure to be repaired, demolished, altered, added to or rebuilt.

Building Information Certificates are frequently requested by prospective buyers of properties, when, during the course of the conveyancing process, the purchaser becomes aware of a unauthorised structure and wants some certainty that Council will not require the structure to be repaired, demolished or altered.

To be able to issue the Building Information Certificate staff consider whether the structure:

- the structure is permissible in the land use zone,
- the structure is constructed adequately so as not to cause health, safety or amenity issues,
- the extent to which the structure may have unreasonable adverse impacts on other properties or the environment,
- the likelihood of the structure being approved had a development application for its construction been lodged.

If the Council refuses to issue a Building Information Certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.



## **8.2 Building Information Certificate - 135 Riverside Drive, West Ballina**

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The reasons must be sufficiently detailed to inform the applicant of any work that needs to be done to enable the Council to issue the Certificate.

In this case, there is no work to be done to the structure that would enable the Certificate to be issued. It is the location of the wall that prevents the certificate being issued.

If Council advised the applicant to relocate the wall, the Building Information Certificate application now before Council would be for a wall that no longer exists and Council could not issue the Certificate.

Therefore, if the application is refused, an order would need to be served for the removal of the wall.

Council can also issue Cost Compliance Notices to recover the costs of issuing Notices and Orders if the matter was to progress to that stage.

### **Options**

#### *Option 1 – Refuse the Building Information Certificate Application*

Under this option Council would refuse the application for the Building Information Certificate and proceed to serve a development control order on the owner of the land to remove the subject retaining wall and restore the canal profile to be consistent with its undeveloped profile.

If this option is chosen, it will be necessary for the owner to lodge a Development Application and obtain development consent and a Construction Certificate prior to the construction of any new retaining wall.

It would also likely require compliance action to be initiated against the owners of 66 Dolphin Drive for consistency now that Council is aware of this structure.

This is the recommended approach.

#### *Option 2 - Issue the Building Information Certificate*

Under this option Council would issue the Building Information Certificate as applied for and take no compliance action in relation to the existing retaining wall.

If this option is adopted, there is a risk of further uncontrolled construction of structures within the canal by other property owners.

If this wall is allowed to remain it would also be problematic enforcing compliance actions on other property owners for similar significant non-compliant structures (although scale can vary and each case of a non-conformance typically has particular circumstances).

If the Building Information Certificate is to be issued under this option, it is still possible for Council to issue a Penalty Infringement Notice on the owner of the property for carrying out Development without consent.

The current penalty for an individual is \$3,000.

### *Option 3 – Seek Further Information*

As an alternative to adopting option 1 or 2 at this time, Council could resolve to delay the decision on the application and receive a briefing or further information.

Such information might include details of all retaining walls in the entire canal system to determine if there are only isolated instances of significant non-compliance or the issue is more widespread.

Further investigation of structures within the canal system could be carried out in addition to option 1 or 2 if Council wishes to examine the extent of non-conformances in the canal system in more detail.

Any further investigation of the entire canal system would require consideration of resourcing and funding.

### **Conclusion**

The construction of the retaining wall 4.4m forward of the kerb on the subject premises is not in accordance with Council's historic requirements or development controls for the management of the canal and it is not something that would typically have been approved under delegated authority if a Development Application had been lodged prior to its construction.

Given the small cost of the wall as stated by the applicant and the probability that most of the materials could be reused if the wall was to be removed and reconstructed, the cost to rectify the non-conformance is unlikely to be a prohibitive financial burden on the owner.

There is a long history of unapproved and approved structures, particularly retaining walls, in the Quays canal system with varying setbacks that do not appear to be consistent with the original recommendations from the WBM report.

The degree of non-compliance with the recommendations of the WBM report and Council's previous and current assessment criteria for these types of structures is significant.

In this case though, the applicant has not been able to justify why they should not be required to comply with the recommendations of the WBM report and meet the current building line requirement.

Having regard for this and the particular circumstances, the recommended approach is to refuse the issue of a Building Information Certificate and require removal of the wall from its current location.

**RECOMMENDATIONS**

1. That the Building Information Certificate for a retaining wall as depicted in the plan by Richard Crandon, Job No. 2019/62 for 135 Riverside Drive, West Ballina be **REFUSED** for the following reasons:
  - a. The retaining wall has been constructed without prior development consent, it is not compliant with the canal building line and the degree of non-compliance is significant.
  - b. The retaining wall is not in accordance with the adopted resolution of Council on 26 August 1999.
  - c. The retaining wall is inconsistent with the recommendations of Council's engineering consultants in relation to managing the development of retaining walls in the canal system.
2. That Council commence compliance action to serve a Development Control Order on the owner of 135 Riverside Drive, West Ballina to remove the unauthorised retaining wall that is the subject of the Building Information Certificate application.

**Attachment(s)**

1. 135 Riverside Drive - Design by Richard Crandon and supporting documents
2. 135 Riverside Drive - Engineering design by Aqua Pontoons
3. 135 Riverside Drive - Background to Ballina Quays canal system
4. 135 Riverside Drive - Extract from report by WBM
5. 135 Riverside Drive - Council Resolution 26 August 1999
6. 135 Riverside Drive - Map and details of retaining walls
7. 135 Riverside Drive - Existing walls in locality

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

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

#### **Delivery Program**

Development Services

#### **Objective**

To provide Council with an update on the implementation of enforcement action in relation to works at The Beach House and seek direction on the enforcement approach to be applied.

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#### **Background**

In September 2019 Council considered enforcement action in relation to building activity and works at 70 Shelly Beach Road, East Ballina (Lot 1 DP 781525) that were commenced in August 2018. This property is now commonly known as The Beach House (formerly Gunundi and Dunes on Shelly Beach).

At that meeting, Council resolved to take action in the Local Court against the property owner in relation to certain building activity and works that Council identified as being unauthorised.

Since Council's resolution, staff have been in liaison with legal representatives Parker and Kissane in preparation for the commencement of the Local Court action.

Prior to the serving of Court attendance notices for offences identified by Council the property owner's solicitor, McCartney Young, presented an alternate option (on a Without Prejudice basis) for Council to consider.

The purpose of this report is to provide background to the enforcement action and the option presented by McCartney Young.

A confidential report that provides information from Council's legal representative is associated with this report. The legal advice is presented in a confidential report as its open discussion may prejudice enforcement action.

#### **Key Issues**

- Approach to enforcement action

#### **Information**

In preparing for Local Court proceedings, Council and Parker and Kissane have identified ten individual offences that form the basis of ten Court attendance notices.

In January 2020, Parker and Kissane received correspondence from McCartney Young indicating that their client is willing to accept three penalty notices.

This would equate to a fine in total of \$18,000.

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

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The approach put forward by McCartney Young is on the basis that Council would not take further action in relation to the matter and their client would not elect to have the penalty notices heard in Court.

From Council's perspective, this would mean the issuing of the fines and no further Local Court action.

The confidential report provides information on the advice from Council's legal representative in relation to the McCartney Young correspondence.

#### **Sustainability Considerations**

- **Environment**

A consistent application and enforcement of planning and development laws assists in achieving desired development and environmental outcomes.

- **Social**

A consistent application and information of planning and development laws assists in ensuring community confidence in relation to development activity in the Shire.

- **Economic**

Legal action typically comes at a net cost to the community.

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

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

#### **Consultation**

Council's legal representative, Parker and Kissane, has been consulted in relation to this matter.

#### **Options**

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

#### **RECOMMENDATION**

That Council notes the contents of this report in respect to enforcement action associated with 70 Shelly Beach Road, East Ballina.

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

Nil

## 8.4 Richmond River - Governance and Funding Project

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### 8.4 Richmond River - Governance and Funding Project

#### **Delivery Program**

Environmental and Public Health

#### **Objective**

To examine the options identified for improving governance of waterways and natural resource management in the Richmond River catchment through the Richmond River Governance and Funding Project.

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#### **Background**

The Richmond River, like many coastal catchments, has experienced wide scale and substantial landscape change over the past 200 years. Early logging of cedar and subsequent clearing of the landscape for settlement on fertile soils has meant that this change began earlier and was more extensive than for many catchments.

The 2014 Ecohealth Report provided a snapshot into the cumulative impacts these changes have made, with an overall score of D+ for the catchment. Large areas of the upper floodplain received a score of F, and the best score for catchments within Ballina Shire was a D+ for North Creek.

A number of actions in the Coastal Zone Management Plan for the Richmond River Estuary (CZMP), which was gazetted in 2012, were identified as fundamental to address the issues within the Richmond River. Action 1.1 was to 'Review estuary governance and administration'.

The Richmond River Governance and Funding Project (RRGFP) ran during 2018 and 2019, and sought to develop an agreed recommendation to the State Government regarding a preferred governance framework for the Richmond River catchment.

The project was financially supported with a project officer by the then Office of Environment and Heritage (OEH) North East Region Coasts and Estuaries section.

During the project, OEH was amalgamated with other NSW agency organisations to form the Department of Planning Industry and the Environment (DPIE). The Coasts and Estuaries staff are now employed by the Energy Environment and Science Branch (EES) of DPIE.

Ballina Shire Council, and other local government authorities (LGA's), contributed 50% of the cost of the project and the balance was funded through the Planning Stream of the State Government's Coasts and Estuaries Fund.

A Councillor workshop was held during 2019 introducing the RRGFP and foreshadowing the final report (refer to Attachment 1) and its recommendations.

The purpose of this report is to present to outcomes of the project and determine Council's preferred approach to a river governance model.

### Key Issues

- Existing management framework is complex, fragmented and underfunded
- Preferred governance model to optimize river health outcomes

### Information

Whilst projects have occurred on the Richmond River in various locations, over time, this work has rarely been coordinated either geographically or for the extended periods of time required to effect noticeable positive change in ecological habitat either within the river itself or along the riverbanks.

Planned, professional and coordinated natural resource management by the State Government was most recently delivered by the former Northern Rivers Catchment Management Authority (CMA). Their activities were significantly scaled back in 2012 as the CMA was amalgamated into North Coast Local Land Services.

Similarly, extension, advice and research activities formerly delivered by State Government agencies, such as NSW Agriculture and the Department of Primary Industries - Fisheries has also largely been discontinued at a regional level.

There is still a high latent community demand for many of these services, some of which are filled variously through privately funded agronomists, Landcare and consultancies.

The ability for landholders, industry, and local government to source information and support to improve land management on ground is only one component of the actions required for improvement to the health of the Richmond River.

Other components include:

- Consideration of the legislative and statutory framework as it applies to existing and desirable land use, particularly in riparian locations
- Sufficient and sustainable funding sources to effect the positive change required for measurable positive change across the catchment
- State Government policies and practices working logically and synergistically across program areas for on ground benefit
- A strategic operational plan that identifies priorities both geographically and by program area. This plan would ideally identify specific actions for execution by agency, industry or group providing accountability and transparency to the work to be undertaken
- A monitoring, evaluation, review approach should be applied to understand progress over time.

To address the governance concerns a specialist consultant was appointed to undertake an options review and run workshops with stakeholders across the catchment to develop the RRGFP.

## 8.4 Richmond River - Governance and Funding Project

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The workshops invited local and state government participants, industry representation and community groups including regional and local Landcare members.

Four workshops were held, with the final workshop asking for general agreement with respect to the recommendation made.

Councillor updates to each LGA and to Rous County Council were provided during 2019 as a precursor to the RRGFP report.

The report, as attached, provides an overview of the process.

The project was formulated in recognition of the difficulties in achieving collaborative and cohesive action aimed at improving the health of the Richmond River catchment, its tributaries and estuary.

Each council within the catchment was invited to participate, through staff involvement as well as via a financial contribution. 50% of the cost of the project was contributed by the State Government's Coasts and Estuaries Grants program.

The RRGFP has now delivered a final report with a recommended governance option and pathway for consideration by the State Government.

### Sustainability Considerations

- **Environment**

The Richmond River received a D+ as an overall ecological health score in the 2014 Ecohealth Report. Significant portions of the mid-catchment received an F.

Historic and cumulative land use management decisions in both urban and rural locations of the catchment have reduced the ability of the catchment to function as habitat across the range of locations which formerly existed.

- **Social**

The project included organisations across the geographic spread of catchment to ensure that options were developed and considered holistically.

These organisations included industry, community, local government and state government departments.

An outcome of the project thus far has been the invitation to Kyogle Council and Byron Shire Council to participate in the development of a Coastal Management Program for the Richmond River catchment.

Formerly, only LGA's with coastal or estuarine tributaries were included.

- **Economic**

Council has invested a cash contribution of \$15,000 as part of its participation in this project.

This was funded from the Healthy Waterways program budget.



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

The RRGFP project included consideration of the sustainable funding of both the governance framework as well as a sufficient operating budget.

This consideration recognised the importance to the community of having a consistent presence over time for projects to develop and roll out, for relationships to be built and for synergies between existing organisations and projects to be realised.

Consistency and presence is an important consideration of managing any natural resource management issue.

It is difficult for any one group, organisation or council to address the issues that are present within the Richmond River due to their scale.

The RRGFP asks the State Government to recognise this and meet the challenge presented.

EES is requesting Council's support in presenting the RRGFP report and its recommendations to the State Government.

EES has requested that councils within the Richmond River catchment consider a formal endorsement of the report's recommendation.

The objective of this endorsement is to emphasise that councils within the Richmond River catchment consider this issue extremely important, and that there is a collective request for assistance to help address the significant issues experienced within the Richmond River catchment.

The report does identify both local and state government funding sources, at least in the interim stages as being necessary for the framework to be successful.

Consideration of Council's ability to fund both short term and longer term contributions should form part of the consideration of the most appropriate option.

It is unlikely that local government can provide the scale of investment required to fully address the issues faced by the Richmond River catchment, particularly as there would be significant opportunity cost to other program areas for each council.

### **Consultation**

The preparation of the RRGFP included four workshops held with stakeholders from across the catchment.

These included Northern Rivers Meat Co-operative (grazing), Norco (dairy), NSW Farmers (general), Regional Landcare and a number of Landcare groups.

Other one on one discussions were held with industry representatives such as the NSW Macadamia Society and the local representatives for the NSW Irrigators Council.

## 8.4 Richmond River - Governance and Funding Project

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Some State Government departments chose not to attend, although staff from the Marine Estate Management Strategy, Regional Water Strategy development, NSW Premiers Department, North Coast Local Land Services and DPI Fisheries were in attendance and contributed to the discussion.

Staff from the EES team were also in attendance, as was their Regional Director.

Staff from Kyogle, Lismore, Byron, Richmond Valley, Rous County and Ballina councils were in attendance and participated in each workshop as well as providing detailed feedback on options and the final report.

### Options

Six options were examined in detail and reviewed in a multi criteria analysis.

The attached report provides the full context to these recommendations, but the two recommended options can be summarised as follows:

#### *Option 1 - Collaborative Partnership*

The workshop process identified a Collaborative Partnership as the overall preferred outcome, with an interim Coordinator employed by the Department of Planning, Industry and the Environment for a designated timeframe to establish the Partnership (up to three years).

This option was preferred by the workshop group as a way forward, although there are a number of significant considerations to be worked through for it to be successful. One of the most important includes ensuring the ongoing financial sustainability of the organisation.

A significant number of these types of Collaborative Partnerships expend large portions of time sourcing funds to keep themselves operational.

This takes away from the ability of staff to do the key work which needs to underpin the development of relationships within the partnership, to build their own expertise to support project development and delivery and to manage the delivery of desired on ground outcomes.

This recommendation includes consideration of the initial stages of funding the Collaborative Partnership utilising both local and state government funding.

There is a significant risk that without an ongoing source of substantial funding, the partnership will fail in the medium term.

The importance of addressing this issue has not been fully reflected in the formal recommendation made by the consultant.

This point was made to the Governance Project Team by a number of experienced professionals who had worked within a Collaborative Partnership style organisation.

There is a further risk that local government will ultimately bear the cost of the Collaborative Partnership if other investment is not available or withdrawn.

## 8.4 Richmond River - Governance and Funding Project

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Council may consider this risk to be acceptable in the interests of ensuring improvement over time but the scale of budget required to effect measurable change is significant.

### *Option 2 - Richmond River Coordinator*

An alternative pathway identified was that of a Richmond River Coordinator to work within the DPIE to improve its capacity in delivering agreed outcomes for the Richmond River (likely through the Coastal Management Program process, across the full catchment).

This option would ideally include a Coordinator, an assistant and potentially secretarial support, and would work either through Environment, Energy and Science (EES) or through the North Coast Local Land Services (NCLLS).

Again, sufficient funding was identified as necessary for the success of this option.

Although the Coordinator would be funded by DPIE, project funds for use within the catchment would be required to run forums and meeting events and to provide seed funding or support to groups in projects.

The Coordinator would work to support organisations to make contact with each other and work together to effect the substantial positive on-ground change required.

Interestingly, the RRGFP process has already assisted these kinds of projects to begin to develop with participants utilising the RRGFP workshops to make the necessary contacts.

This option would somewhat address the risk associated with a Collaborative Partnership by using a recurrent funded position, which is identified as the Richmond River Coordinator.

Discussions within EES and NCLLS are progressing as to the structure and function of such a position.

A guaranteed timeframe for funding of this, or any, option would be important to allow relationships to develop, trust to be built and cumulative outcomes to accrue.

A further risk is that whilst NCLLS have recently been supportive of reinstating natural resource management within the Richmond River catchment as core business, there was a degree of comment received from both the community and local government sectors observing the withdrawal of services from NCLLS in this sector since 2012.

This would be a barrier to be overcome in the first instance if this was the option taken up.

### *Further Considerations with Respect to the Preferred Options*

The process undertaken to develop the RRGFP report provided a valuable opportunity for groups to come together to discuss the health of the river and put forward issues for discussion.

## 8.4 Richmond River - Governance and Funding Project

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The model options put forward were varied in their focus, looking to consider new ways to address some longstanding issues.

The RRGFP notes that there are advantages and disadvantages to each of the models considered and that each model option could be successful.

However, it is important to identify which issues are the true barrier to change and how these can best be addressed.

The scoring presented in the multi criteria analysis presents the assumptions underlying their application.

Some of these assumptions are debatable, particularly with respect to the scoring relating to the ability of local government to undertake tasks, which typically lie within their day to day responsibilities.

### *Alternative Option Proposed*

The alternative option takes advantage of the longstanding role that Rous County Council has played in providing a service role to its constituent councils in various areas including floodplain management.

Rous is already leading the development of a new Coastal Management Program for the Richmond River Catchment as a whole (updating and replacing the former CZMP for the Richmond River Estuary) and has been convening an agency and local government forum for this purpose.

Rous has also worked extensively with various community organisations across its water supply catchments to deliver water quality and habitat outcomes, and has utilised various tools to do so.

It also works with various State Government Agencies to meet regulatory targets, or to protect public and environmental health within and as a result of its catchment management activities.

It is suggested that the Rous County Council option be put forward as the preferred option from Ballina Shire Council's perspective.

This support would be on the basis that the State Government direct funds toward that option, and that these funds would be a guaranteed minimum on a rolling three year program that is confirmed for a minimum timeframe such as 10 years.

The reason for this is to provide certainty with regard to forward planning for all sectors (industry, community, local government and state agencies) within the Richmond River.

Staff estimate that in the order of \$12m to \$15m per annum for at least 10 years is required to effect significant improvements across the entire Richmond River catchment.

The caveat recognises the reality that councils within the Richmond River catchment are variously able to support action both within the own LGA and in other sections of the catchment.

## 8.4 Richmond River - Governance and Funding Project

Local government in the Richmond River catchment is simply not able to provide the scale of resources to effect catchment wide, large scale, on ground change over a sustained period of time.

Recent newspaper reports put forward by staff working with the Marine Estate Management Strategy indicate that \$3.4m has been spent in revegetating creek banks and sealing roads in the Emigrant, Maguires and Houghlahans Creek locations.

This is only one small sub-catchment of the Richmond indicating the scale of resources required.

The following table compares this alternative option with those recommended in the RRGFP Report.

Option	Collaborative Partnership	DPIE Lead (either EES or NCLLS)	Rous County Council +
<b>Existing Framework</b>	No, will need to develop over 3 years with transitional coordinator. Examples such as Richmond Landcare Inc or in other catchments exist.	No, will need to develop. NCLLS have begun to consider possible methodology.	RCC has existing service relationships with LG and agencies. Has track record with some existing with community groups.
<b>Community Engagement</b>	A significant strength of this proposal. Decentralised delivery would need to be balanced with a plan to provide direction.	Will need to develop this aspect for this project. Will need to consider how best to engage on groups' terms to be most effective.	Will need to develop more substantial role in community collaboration specific to river management.  Will need to consider how best to engage on groups' terms to be most effective. Starting with a long term community engagement base associated with current functions and programs.
<b>Agency Engagement</b>	Attendance was at the discretion of the staff member from the agency for the RRGFP process.  Arguably, NSW Government funding would attract agency representation.  Risk this may result in non-attendance over time for the Collaborative Partnership.		

## 8.4 Richmond River - Governance and Funding Project

Option	Collaborative Partnership	DPIE Lead (either EES or NCLLS)	Rous County Council +
<b>Financial Sustainability</b>	Without government support, advice from experienced professionals indicates this is a substantial obstacle.	Dependent on whether government continues to support the position(s). Some risk where government priorities may change.	Dependent on external funding. Financial agreement signed with local and state government, and with a CMP in place provides a medium term level of sustainability.
<b>Hidden Costs</b>	Hidden costs are likely. These include extra hours worked by staff to find funds for project budgets, report on grants etc. Burnout, particularly of community leaders, is a risk.	Potential for hidden cost to other groups (community, LG etc) if sufficient funds not available throughout term of CMP.	Potential for hidden costs but is reduced with plan in place and the application of typical local government reporting requirements.
<b>Transparency and Accountability</b>	Other similar organisations utilise a report card format.	A report to catchment community could be developed. System for local engagement and community involvement could also be developed.	LG accountable to communities and NSW Government through annual reporting, also Rous accountable to constituent councils through service agreements.
<b>Speed of Entity Set Up</b>	Budgetary allocation would be required for transitional arrangements (likely 2021).	Budgetary allocation would be required for transitional arrangements (likely 2021).	Dependent on budgetary allocation from NSW Government, work could begin as of 1 July 2021.

The recommendation is for Council to support the Rous County Council led river governance model as its preferred approach. Alternatively, Council may wish to support one of the other options put forward in the RGFP report or not take a position and note the contents of this report.

### RECOMMENDATION

That Council confirms the Rous County Council Plus option (Option D) as the preferred governance and funding model for the Richmond River Governance and Funding Project Report.

### Attachment(s)

1. Richmond River Governance and Funding Report (Under separate cover)

## **8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell**

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### **8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell**

#### **Delivery Program**

Strategic Planning

#### **Objective**

To present the outcomes of the public exhibition of BSCPP 18/003 Attached Dual Occupancy Wardell and seek direction on the progression of the LEP amendment.

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#### **Background**

Council adopted the Wardell Strategic Plan (WSP) on 28 January 2016.

Action 23 of the WSP provides for the consideration of an appropriate mechanism to permit attached dual occupancy development within the R2 zoned areas of Wardell village on non - flood prone land.

Council subsequently considered the preparation of a planning proposal to permit attached dual occupancy development on certain Wardell village lots at the Ordinary meeting held 13 December 2018, resolving as follows:

1. *That Council endorses the Wardell Attached Dual Occupancy Planning Proposal (BSCPP 18/003 – Attached Dual Occupancy Wardell), as contained in Attachment 2 to this report.*
2. *That Council submit this planning proposal to the NSW Department of Planning and Environment for Gateway determination.*
3. *That the Department of Planning and Environment be advised that Council is seeking to exercise its delegated plan making functions for this LEP amendment.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That the planning proposal be reported to the Council for further consideration following the completion of the community consultation phase.*

Following the issue of a Gateway determination on 6 March 2019, the planning proposal was publically exhibited from 10 April 2019 to 17 May 2019.

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.

## **8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell**

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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).

This report considers the submissions received in response to the public exhibition of the planning proposal and the associated NSW Government agency consultation process.

Attachment 1 contains a copy of the exhibited planning proposal.

Attachment 2 contains copies of the submissions received.

Attachment 3 contains a copy of the attached dual occupancy DCP amendments adopted by Council in October 2019 and January 2020.

### **Key Issues**

- Attached dual occupancy development
- Exclusion of lots due to bush fire risk
- Exclusion of lots due to small lot size

### **Information**

The Gateway determination required that Council consult with the NSW Rural Fire Service (NSWRFS).

Consultation with the NSWRFS took place in March 2019.

The NSWRFS advised Council in May 2019 (Attachment 2) that it could not support the planning proposal in its current form for reasons related to bush fire risk impacts.

The issues raised by the NSWRFS were examined in a Bush Fire Hazard Assessment Report (BFHAR) prepared by specialist consultants Bushfire Risk.

The BFHAR is contained within Attachment 4.

The BFHAR concluded that some 27 properties, of the 87 properties originally considered as potentially suitable for attached dual occupancy development, were now considered to be unsuitable based on bush fire risk criteria.

The BFHAR was forwarded to the NSWRFS in September 2019.

It resulted in advice being received in December 2019, which indicates that based on the submitted information (BFHAR) the NSWRFS now has no objection to the planning proposal.

This is subject to the amendment of the planning proposal to reflect the results of the Bushfire Results Brief (BFHAR) prepared by Bushfire Risk and dated 9 September 2019.



## 8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell

Compliance with the requirements of the NSWRFs will require the planning proposal to be amended to remove reference to the 27 properties, which were found to be unable to meet the 'aims and objectives' of *Planning for Bushfire Protection 2006*.

It is also proposed to amend the planning proposal to remove two properties with site areas below 300m<sup>2</sup>.

These lots with respective areas of 256m<sup>2</sup> and 284m<sup>2</sup> are too small to support attached dual occupancy development.

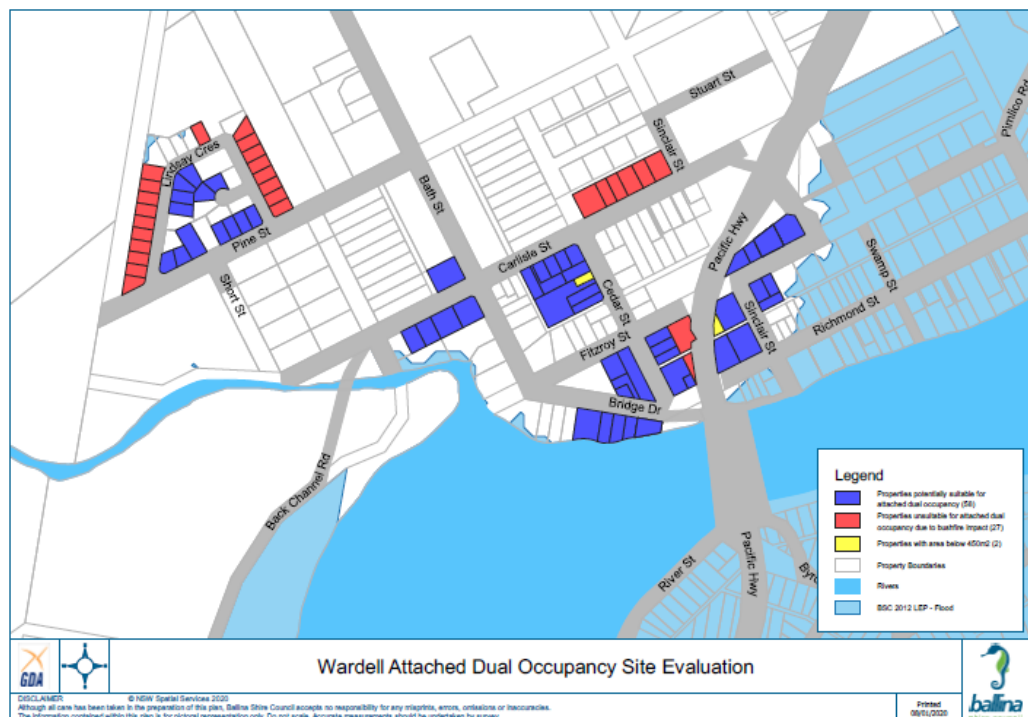
A minimum lot area for attached dual occupancy of 450m<sup>2</sup> has been also incorporated within the amended planning proposal.

This minimum lot size is the same as Council has already adopted for Wardell attached dual occupancy development in DCP amendments.

The properties proposed to be removed due to bush fire risk, and the two small properties are identified in red and yellow in the diagram below.

The remaining properties considered potentially suitable for attached dual occupancy development are shown by the dark blue colour.

A larger copy of the diagram below is contained within Attachment 5.



The amendments proposed to the planning proposal will require that the planning proposal be re-exhibited.

The Department of Planning Industry and Environment has advised that an altered Gateway Determination is not required in relation to the proposed amendments.

## **8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell**

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Attachment 6 contains the amended planning proposal which reflects the changes discussed above.

### **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 2012 Ballina Shire Growth Management Strategy. 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 construction.

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

Re-exhibition of the planning proposal to permit attached dual occupancy development on certain R2 zoned land at Wardell can be managed within existing staff resources. This matter is included in the current Strategic Planning work program.

The re-exhibition and subsequent finalisation of the proposed LEP amendment is proposed to be undertaken under delegation provided to Council by the Department of Planning Industry and Environment.

### **Consultation**

The planning proposal was publically exhibited from 10 April 2019 until 17 May 2019.

Consultation with the NSW Rural Fire Service (NSWRFS) occurred as required by the Gateway determination. The initial and final responses from the NSWRFS are discussed in the comments table below.

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

- Letters being forwarded to 87 property owners and 62 adjoining property owners.

## 8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell

- An advertisement being inserted in the Ballina Advocate newspaper
- The planning proposal being displayed at Council's community access points (libraries and the Customer Service Centre) as well as on council's web site.

In response, one community submission from the Wardell & District Progress Association and two Government agency submissions from the NSWRFSS were received.

Submissions are contained within Attachment 2.

**Table 1: Submissions - Summary of Issues**

Summary of Issues	Comments
<p>The Vice President of the Wardell and District Progress Association (WDPA) requested information as to why the 2100 1:100 year ARI flood level for climate change conditions was used to determine which properties were excluded from the planning proposal.</p> <p>Suggested that if the 2050 1:100 year ARI flood impact standard was used then more properties would have been included within the planning proposal.</p>	<p>A detailed response was provided to the WDPA in March 2019 (refer Attachment 2) which indicated that there is little difference between the two standards in terms of affected properties. The difference mainly related to flood height as opposed to affected properties.</p> <p>The 2100 1:100 year level for climate change conditions was used to determine flood prone land within Wardell village. The extent of properties affected by this flood level standard is substantially the same as that shown on the Flood Planning Map and designated to be within a Flood Planning Area under the provisions of Ballina LEP 2012.</p> <p>Strategic Action 23 of the Wardell Strategic Plan referenced the non-flood prone areas of Wardell village for attached dual occupancy consideration.</p> <p>In terms of determining the required flood planning level, for new building work such as dual occupancy development at Wardell, this is based on the 2050 climate change 1:100 year flood level under provisions contained in Ballina Shire DCP 2012 Chapter 2b Floodplain Management.</p>
<p>NSW Rural Fire Service (NSWRFS) – Submission 1 – May 2019</p> <p>Indicates that the NSWRFS does not support the planning proposal in its current form due to non-compliance with the aims and objectives of <i>Planning for Bush Fire Protection 2006</i>.</p> <p>Advise that the proposal will need to demonstrate that an increase in residential density will achieve the following principles:</p> <ul style="list-style-type: none"> <li>- APZ based on radiant heat threshold of 29kW/m<sup>2</sup> for new housing opportunities,</li> <li>- Suitable provision for construction, access, water and landscaping.</li> </ul>	<p>Following further discussion with the NSWRFS in May 2019 it was determined that for the planning proposal to be able to progress with support from the NSWRFS a Bush Fire Hazard Assessment Report (BFHAR) would need to be prepared.</p> <p>Specialist consultants Bushfire Risk were engaged to prepare the BFHAR. The BFHAR resulted in 27 of the originally identified 87 properties being found not able to meet the APZ radiant heat criteria. The majority of these properties (19) are located in Lindsay Crescent.</p> <p>The BFHAR was then submitted to the NSWRFS for additional comments.</p>

## 8.5 Planning Proposal - Attached Dual Occupancy Development, Wardell

Summary of Issues	Comments
NSW Rural Fire Service (NSWRFS) – Submission 2 – December 2019. Indicated that the NSWRFS now has no objection to the planning proposal providing it is amended to reflect the recommendations of the Bushfire Results Brief, prepared by Bushfire Risk, dated 9 September 2019.	The amended planning proposal contained in Attachment 6 has removed the properties identified as being unsuitable in the report prepared by Bushfire Risk.

### Options

*Option 1 - Council endorses the amended planning proposal as contained in Attachment 6, and then re-exhibit the planning proposal.*

This is the recommended option.

Adoption of this option will result in the number of properties affected by the planning proposal being reduced from the originally identified 87 to 58 (27 removed due to bushfire risk and two due small lot size). It will also result in a minimum lot area of 450m<sup>2</sup> being specified for attached dual occupancy development.

Following the planning proposal's re-exhibition, Council will then have a further opportunity to consider the proposal and determine whether it should progress to finalisation.

*Option 2 – Council discontinues the planning proposal and take no further action to finalise the planning proposal.*

This option is not recommended having regard to the history associated with the development of this planning proposal including it being referenced within the Wardell Strategic Plan 2015 - 2035.

This option is also not recommended based on the nature and number of submissions received. In particular the initial concerns of the NSWRFS related to bush fire risk have been resolved.

The implementation of this option would require Council to seek a determination from the Minister that the matter not proceed.

*Option 3 – Council defers further consideration of the planning proposal pending a Councillor briefing.*

This option is open to Council should additional information or clarification be required.

**RECOMMENDATIONS**

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.

**Attachment(s)**

1. [BSCPP 18/003 - Wardell Attached Dual Occupancy - Exhibition Material](#)
2. [BSCPP 18/003 - Submissions](#)
3. [Attached Dual Occupancy - Adopted DCP Amendments](#)
4. [BSCPP 18/003 - Bushfire Hazard Assessment Report](#)
5. [BSCPP 18/003 - Wardell Dual Occupancy Site Assessment Diagram](#)
6. BSCPP 18/003 - Wardell Attached Dual Occupancy - Amended (Under separate cover)

8.6 Planning Proposal - 26 Boeing Avenue, Ballina

**Delivery Program**

Strategic Planning

**Objective**

To present the outcomes of the public exhibition process for BSCPP 19/001 relating to 26 Boeing Avenue Ballina and seek direction on the finalisation of the planning proposal.

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**Background**

Council considered an LEP amendment request from the owners of the Harvey Norman Homemaker Centre at the Ordinary meeting held 27 June 2019.

The request sought inclusion of additional permitted uses in relation to the site via Schedule 1 of the Ballina LEP 2012.

Council resolved to proceed with a planning proposal on the basis of providing for 'Recreation facilities (indoor)' and 'Veterinarian Hospitals' as permissible with development consent via Schedule 1.

Further information regarding the consideration of this matter is provided in the June 2019 report, included in Appendix 3 of the planning proposal provided as Attachment 1 to this report.

Council endorsed the planning proposal at its August 2019 Ordinary meeting, resolving as follows:

1. *That Council endorses the planning proposal (BSCPP 19/001), as per Attachment 1 to this report.*
2. *That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.*
3. *That the Department of Planning and Environment be advised that Council is not seeking to exercise the functions of the local plan-making authority under Section 3.36(2) of the Environmental Planning and Assessment Act 1979 for this LEP amendment.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with the progression of the planning proposal be undertaken including public exhibition.*
5. *That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*

The public exhibition of the planning proposal has concluded and the technical assessment of the proposed LEP amendment is complete.

The purpose of this report is to present to Council the outcomes of the public exhibition process and seek direction on the finalisation of the planning proposal.

### Key Issues

- Range of commercial development within the B5 Enterprise Zone

### Information

The planning proposal was referred to the Department of Planning and Environment in accordance with Council's August 2019 resolution. A Gateway Determination dated 24 September 2019 was received allowing the planning proposal to proceed to public exhibition.

The public exhibition of the planning proposal occurred from 6 November 2019 to 6 December 2019. No public submissions were received.

The operator of the Ballina/Byron Gateway Airport was consulted in accordance with the terms of the Gateway determination. Airport management raised no objection to the planning proposal.

A copy of this correspondence is provided in Attachment 2 to this report.

The planning proposal giving effect to the Council's decision of August 2019 as publicly exhibited is included as Attachment 1 to this report.

The June 2019 and August 2019 reports considered by the Council with regard to this matter are included as Appendix 3 within the planning proposal.

### Sustainability Considerations

- **Environment**

The preparation of a planning proposal to enable additional uses on the subject land is not anticipated to have any significant implications for the natural environment.

- **Social**

The preparation of a planning proposal to enable additional uses on the subject land is not anticipated to have any significant implications for the community's wellbeing, beyond providing services and facilities beneficial to the community.

- **Economic**

The preparation of a planning proposal to enable additional uses on the subject land may have beneficial economic implications for the Homemaker Centre, provided the range of uses to be enabled do not undermine the viability of the specialised retail precinct and other commercial precincts in the Shire.

### Legal / Resource / Financial Implications

The preparation of a planning proposal to provide for additional uses on the subject site can be accommodated within existing resources, including through the receipt of associated fees.

The legal effect of the LEP amendment would be to enable the lodgment of development applications for the specified land uses enabled.

### Consultation

The planning proposal was publicly exhibited in accordance with the terms of the Gateway Determination issued by the Department of Planning and Environment.

No public submissions were received with respect to the proposal.

The management of the Ballina/Byron Gateway Airport were consulted in accordance with the terms of the Gateway Determination. Airport management did not raise any objection to the planning proposal proceeding.

In light of Council's financial interest in the land adjacent to the subject site, Council did not seek the delegation of plan-making powers from the Department of Planning and Environment with respect to this matter.

Notwithstanding, in issuing a Gateway Determination the Department authorised Council as the local plan-making authority with respect to the planning proposal.

Due to the relatively low risk for a conflict of interest to arise, it is considered acceptable that Council exercise its delegated plan-making functions with respect to this matter.

### Options

Council has the following options with regard to this matter:

*Option 1 – Council resolves to finalise the planning proposal.*

This option is recommended on the basis that the uses proposed would appear to have the potential to complement rather than compromise the viability of the specialised retail precinct without adversely impacting on other commercial areas where these uses are currently permitted.

Under this option, the planning proposal would be finalised through amendment to the Ballina Local Environmental Plan 2012.

Council could exercise its delegated plan-making functions with respect to this matter, which may have the effect of further expediting the finalisation of this matter.

Finalisation of the planning proposal utilising Council's delegated plan-making functions is the recommended approach.

In completing the planning proposal, the documentation will be updated to reflect the outcomes of the public exhibition and Council's decision.

*Option 2 – Council resolves to amend the planning proposal should it consider this appropriate.*

This approach is not recommended for the reasons outlined in the report considered at the June 2019 Ordinary meeting with regard to this matter.



## **8.6 Planning Proposal - 26 Boeing Avenue, Ballina**

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As has been previously considered by Council, additional uses (beyond those provided for in the attached planning proposal) have the potential to undermine the viability of the specialised retail precinct and other commercial precincts in the Shire.

Further, no information or justification for further amendment to the proposal has arisen in association with the public exhibition or Government agency consultation.

*Option 3 – Council resolves to discontinue the planning proposal.*

Under this option, Council would write to advise the landholder that the request is no longer supported. This option is not recommended for the reasons detailed with respect to Option 1.

The cessation of the planning proposal also requires the agreement of the Minister for Planning (or delegate).

### **RECOMMENDATIONS**

1. That Council exercise its delegated plan-making functions in accordance with section 3.36(2) of the *Environmental Planning and Assessment Act 1979*, with respect to the Planning Proposal for 26 Boeing Avenue, Ballina.
2. That Council authorises the General Manager to finalise and implement Planning Proposal BSCPP19/001, providing for additional permitted uses on land 26 Boeing Avenue as detailed in Attachment 1 to this report, under delegated authority.

### **Attachment(s)**

1. BSCPP 19/001 - No. 26 Boeing Avenue - Exhibition Material (Under separate cover)
2. [Ballina Byron Gateway Airport - Submission](#)

## 8.7 Planning Proposal - Farm Gate Retail Activity on Rural Land

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### 8.7 Planning Proposal - Farm Gate Retail Activity on Rural Land

#### Delivery Program

Strategic Planning

#### Objective

To present the outcomes of the public exhibition of BSCPP 19/004 and seek direction on the finalisation of the planning proposal to provide for small-scale retail activity in association with approved rural industry.

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#### Background

Council considered a report at the July 2019 Ordinary meeting with respect to a planning proposal to amend the Ballina Local Environmental Plan 2012 to provide for modest farm gate retail sale of value-added agricultural product.

The planning proposal seeks to achieve this by providing for 'industrial retail outlets' as permissible with development consent in association with approved rural industries located on land subject to the RU1 Primary Production zone and RU2 Rural Landscape zone in Ballina Shire.

In doing so, the proposal seeks to support the following strategic actions:

*"Facilitate low scale commercial activities in rural areas such as roadside stalls and rural food tourist activities through changes to the land use planning regime" - Ballina Shire Economic Development Strategy*

*"Develop policies that promote a vibrant and productive rural hinterland. Encourage primary production including the development of related income streams such as road side stalls, farmers markets, farm trails, farm stay accommodation and similar rural tourism activities". – Alstonville Strategic Plan*

Further information regarding this matter is contained in the July 2019 Council report on this matter, which is provided as Appendix 3 to the planning proposal provided as Attachment 1 to this report.

At the July 2019 Ordinary meeting, Council resolved as follows with respect to this matter:

1. *That Council prepare a planning proposal to introduce provisions into the Ballina Local Environmental Plan 2012 to enable 'industrial retail outlet' as permissible with development consent on land within the RU1 Primary Production zone and RU2 Rural Landscape zone.*
2. *That the planning proposal include 'industrial retail outlet' as a land use subject to clause 7.9 of the Ballina Local Environmental Plan 2012.*
3. *That the planning proposal introduce floor space area controls to apply to industrial retail outlets located on rural land consistent with the parameters outlined in this report.*
4. *That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.*

## **8.7 Planning Proposal - Farm Gate Retail Activity on Rural Land**

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5. *That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
6. *That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
7. *That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*
8. *That Council prepare complimentary amendments to the Ballina Shire Development Control Plan 2012 and include provisions to clarify the scope of activities considered to be ancillary to agriculture.*
9. *That the draft amendments to the Ballina Shire Development Control Plan 2012 be reported to Council for further consideration prior to proceeding with the public exhibition of the amendments.*

A planning proposal giving effect to the Council's decision was prepared and Gateway determination was sought from the Department of Planning, Industry and Environment.

The wording of the planning proposal was refined to clarify that the purpose of the planning proposal is to provide only for retail sales in association with rural industries and not home industries (which might include home potteries and the like). Consequently, the associated LEP amendment seeks to prohibit industrial retail outlets in association with home industries on rural land.

Complementary development control provisions were prepared to support the proposal, for inclusion in the Ballina Shire Development Control Plan 2012 (DCP). These proposed DCP provisions are provided in Appendix 1 of the planning proposal provided as Attachment 1 to this report.

Following the receipt of an affirmative Gateway determination (dated 2 October 2019), the planning proposal was placed on public exhibition from 6 November to 6 December 2019.

Four public submissions were received in response to the public exhibition. These submissions are addressed in the body of this report.

In addition, relevant Government agencies were consulted in accordance with the terms of the Gateway determination. The response received from the Department of Planning, Industry and Environment - Primary Industries (DPI Agriculture) is addressed in the body of this report.

The purpose of this report is to present the outcomes of the public exhibition process with respect to this matter and seek the Council's direction on the progress of the planning proposal.

### Key Issues

- Economic development
- Rural activity and industry
- Preserving agricultural production and rural amenity
- Infrastructure delivery

### Information

The subject planning proposal was publicly exhibited from 6 November to 6 December 2019. Four public submissions were received in response to the public exhibition. These submissions are provided in Attachment 2 to this report.

The submissions were received from:

- Ms Rebecca Zentveld of Zentveld's Roastery, Broken Head Road, Newrybar.
- Mr Frank Elsworth of Duck Creek Macadamias, Brooklet Road, Newrybar.
- Camille and Mark Awad, Winding Road Distilling Co, Tintenbar.
- Alstonville-Wollongbar Chamber of Commerce.

The submissions were supportive of the proposal, providing the following rationale (in summary):

- The proposal would support tourism in Ballina Shire by adding to the on-farm tourist experience
- Support the Northern Rivers Region fulfilling it's potential as a major 'Food Bowl' and
- Support diversification of farm income and support more sustainable land use practices.

Proposed provisions provided for in the planning proposal will not directly affect Duck Creek Macadamias, at this time, as that particular enterprise is located on land within the 7(c) Water Catchment zone of the Ballina Local Environmental Plan 1987, which is not subject to the planning proposal.

As noted in the Winding Road Distillery submission, it is anticipated that small food items not produced on the property may be sold to the extent required by Responsible Service of Alcohol (RSA) requirements specific to product tastings within licensed premises (for sales within industrial retail outlets). Such food service would not, however, comprise a café or restaurant or takeaway food premises where it is otherwise prohibited in the zone.

The submission from the Alstonville-Wollongbar Chamber of Commerce requests that Council extend the proposed controls to provide for a maximum floor area for the retail activity of up to 25% of the GFA area of the rural industry (rather than 10% as currently proposed) or 100m<sup>2</sup>, whichever is the lesser.

Such a change would benefit smaller rural industry as the upper limit of 100m<sup>2</sup> GFA would remain, thus ensuring such activity remains 'small-scale'.

This suggested change has been incorporated into the options of this report for Council's consideration.

## 8.7 Planning Proposal - Farm Gate Retail Activity on Rural Land

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The DPI Agriculture was consulted in accordance with the terms of the Gateway determination.

A copy of the response received from the Department is included in Attachment 3 to this report, with key points summarized below:

*“DPI Agriculture supports agricultural value-adding opportunities that complement on-farm primary production. It is important that such activities are small scale, associated with existing primary production activities and do not impact on agricultural resources or other agricultural activities being undertaken within the locality.*

*Due consideration has been given within the proposed LEP and Development Control Plan (DCP) provisions to the scale (including an appropriate floor-space ratio), association with an approved rural industry, and impacts to agricultural production, amenity and environmental features, however further provisions relating to land use conflict mitigation measures could be applied. Setback distances from property boundaries and separation distances from sensitive receptors could also be considered. This should apply to both the industrial retail outlet and the associated parking. The requirement for a Land Use Conflict Risk Assessment (LURCRA) at the development application stage may assist in determining appropriate mitigation measures should a prescribed distance not be desired.”*

DPI Agriculture is supportive of the proposal and the proposed measures for managing the scale of the activity and impact mitigation.

With respect to the determination of appropriate separation distances from other rural land use activities, it is noted that the existing provisions of the Ballina Shire DCP 2012 require that a development application for such activity would need to be supported by a Land Use Conflict Risk Assessment (LUCRA) to determine, among other things, appropriate set back distances.

The LUCRA approach is supported by the DPI Agriculture.

Further to the above, the proposed activity would be subject to the provisions of Clause 7.9 of the Ballina LEP 2012 which provides further statutory provisions requiring that Council be satisfied that the activity would not adversely impact on other legitimate rural activities in the locality, in assessing such proposals.

The NSW Rural Fire Service (RFS) and Roads and Maritime Service (RMS) were consulted in accordance with the terms of the Gateway determination. The response received from the RFS is included in Attachment 3 to this report. The RFS did not raise any objection to the planning proposal proceeding.

A response from the RMS was not received within the period of time provided for by the Gateway determination. However, it is not anticipated that the RMS would have particular concerns with the proposal at a policy level.

Notwithstanding, development proposals may be referred to State agencies, under existing referral arrangements.

### Sustainability Considerations

- **Environment**

No significant environmental impacts are anticipated in association with the land use planning amendments outlined in this report. Impacts associated with individual land use proposals would be considered through the development assessment process.

- **Social**

The provision of on-farm tourism in the manner outlined in this report may contribute to the “food culture” of the Shire.

The potential for adverse social impacts (particularly traffic) and amenity impacts is expected to be mitigated by the relatively modest scale of uses provided for by the planning proposal and the application of the provisions of Council’s DCP to individual development proposals.

- **Economic**

The provision of on-farm tourism in the manner outlined this report may contribute to the economic development of the Shire.

### Legal / Resource / Financial Implications

The land use planning amendments outlined in this report would enable the lodgment of development applications for farm based retail activity in association with rural industry.

No major legal, resource or financial implications are anticipated in association with the land use planning amendments outlined in this report.

### Consultation

The subject planning proposal was publicly exhibited in accordance with the terms the Gateway determination from 6 November 2019 to 6 December 2019.

Four public submissions were received in response to the public exhibition. The submissions are addressed in the body of this report.

The following Government agencies were consulted in accordance with the terms of the Gateway determination:

- NSW Rural Fire Service (RFS)
- Department of Planning, Industry and Environment (DPI Agriculture)
- Transport for NSW (RMS)

The RFS and DPI Agriculture did not raise any concerns with the planning proposal proceeding.

The RMS did not respond within the timeframe provided for by the Gateway determination. However, it is not expected that the planning proposal would present particular concerns for the agency at the policy level.

## 8.7 Planning Proposal - Farm Gate Retail Activity on Rural Land

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Notwithstanding, development proposals may be referred to the State Government agencies in accordance with existing referral arrangements, depending on particular circumstances.

### Options

The following options are presented for the Council's consideration.

*Option 1 - Council could resolve to finalise the planning proposal.*

This option would involve liaising with Parliamentary Counsel under delegation (pursuant to section 3.36 of the Act) to finalise the planning proposal through amendment to the Ballina LEP 2012.

Under this option, the Council may resolve to adjust the proposed development control provisions of the BLEP 2012 so as to provide for a maximum floor area for industrial retail outlets in association with rural industries of no more than 25% of the GFA of the rural industrial floor space or 100m<sup>2</sup> whichever is the lesser.

This option is recommended on the basis of the potential economic and social benefits associated with providing for limited retail activity in rural areas, where such activity is associated with rural based value-adding activities (rural industry).

Further, the proposed development control provisions provided for such development within the Ballina LEP 2012 and Ballina DCP 2012 have been formulated to address the potential for adverse impacts of such development in relation to land use conflict, traffic and access impacts and impacts on the environment.

*Option 2 - 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.

Council may pursue this option if it considers the potential for land use conflict to arise, notwithstanding the proposed development control provisions of the Ballina LEP 2012 and Ballina DCP 2012, is too great to warrant such uses being subject to consideration via the development assessment process.

This option is not recommended for the reasons set out under Option 1 above.

*Option 3 - Council could resolve to hold a Councillor briefing on this matter should the Council wish to receive further information on this matter.*

Whilst not recommended, this option is available to the Council should further deliberation be desired.

### RECOMMENDATIONS

1. That Council authorises the General Manager to finalise and implement Planning Proposal BSCPP 19/004 Farm Gate Retail Activity on Rural Land as generally detailed in Attachment 1 to this report, under delegated authority, with the following adjustment:
  - Apply a maximum floor space control for industrial retail outlets in association with rural industries such that the gross floor area must not exceed 25% of the gross floor area of the rural industry located on the same land as the retail outlet or 100m<sup>2</sup>, whichever is the lesser.
2. That Council adopts the publicly exhibited amendments to the Ballina Development Control Plan 2012, as detailed in Appendix 1 of the Planning Proposal contained in Attachment 1 to this report.
3. That those persons who made submissions be thanked for their contribution and provided with advice as to Council's decision with respect to this planning proposal and associated DCP amendments.

### Attachment(s)

1. [Planning Proposal BSCPP 19/004 - Farm Gate Retail Activity on Rural Land - Exhibition Version](#)
2. [BSCPP 19/004 - Submissions](#)
3. [Department of Primary Industry and Rural Fire Service - Responses](#)



## 8.8 LEP Amendments and Planning Proposals - Status

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### 8.8 LEP Amendments and Planning Proposals - Status

#### Delivery Program

Strategic Planning

#### Objective

To report on the status of Local Environmental Plan amendment requests and planning proposals that are currently under consideration.

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#### Background

Council has an ongoing program of processing requests to amend the Ballina Local Environmental Plans 1987 and 2012 (LEPs) and associated planning proposals. This report provides an update of matters currently pending.

#### Key Issues

- Status of rezoning and LEP amendment requests.

#### Information

##### *LEP Amendment Requests and Planning Proposals Status*

Table 1 provides an overview of the LEP amendment requests and planning proposals currently being considered and processed by Council. The term planning proposal refers to the documentation prepared to describe a request to amend the Ballina Local Environmental Plan/s.

Requests are typically referred to as planning proposals once Council has agreed to progress the initial LEP amendment request and has prepared the required planning proposal documentation for Gateway determination by the NSW Department of Planning, Industry and Environment (DPIE).

**Table 1: Status of LEP amendment requests and planning proposals**

Item	Name and Status	Summary and Notes	Completion Due
13/005	Southern Cross Industrial Estate Expansion, Ballina (Stage 6)	Proposal by Ballina Shire Council for the rezoning of land northward of the existing Southern Cross Industrial Estate from its current rural zoning to enable a mixture of industrial and employment-type land uses.  Awaiting submission of amended planning proposal documentation for Stage 1 (5 lots) of the Southern Cross expansion area.	30/10/2020
17/009	Byron Bay Road (No.9) and the adjoining Telstra exchange site, Lennox Head (Complete)	Proposal to amend the LEP 2012 to rezone land from RU1 Primary Production to R2 Low Density Residential, and to apply a minimum lot size of 600m <sup>2</sup> .  The amendment was completed via Amendment No.41 to the Ballina LEP 2012 on 29 November 2019.	Complete

## 8.8 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
17/012	Compton Drive (No. 23), East Ballina (Stage 5)	<p>Proposal to amend the LEP to rezone part of the land and all or part of the adjacent Council-owned land from Deferred Matter to R2 Low Density Residential, and to apply a minimum lot size of 600m<sup>2</sup>.</p> <p>Public exhibition of the planning proposal concluded on 14 February 2020. Consultation with government agencies is underway.</p>	06/06/2020
18/002	Attached Dual Occupancy Lots, Alstonville (Complete)	<p>Proposal to amend the LEP to permit attached dual occupancy development, with consent, on certain R2 zoned lots in Alstonville having a minimum area of 900m<sup>2</sup> and a slope of less than 20%.</p> <p>The amendment was completed via Amendment No.43 to the Ballina LEP 2012 on 13 December 2019.</p>	Complete
18/003	Attached Dual Occupancy Lots, Wardell (Stage 5)	<p>Proposal to amend the LEP to permit attached dual occupancy development, with consent, within the non-flood prone areas of Wardell Village located in the R2 zone.</p> <p>The planning proposal requires amendment to comply with the requirements of the NSW Rural Fire Service (RFS). The proposed amendments will require the planning proposal to be re-exhibited but will not require an altered Gateway determination to be issued by the Department of Planning, Industry and Environment (DPIE).</p> <p>This matter is the subject of a separate report elsewhere in this business paper.</p>	06/09/2020
18/004	Reservoir Hill Site, 20 North Creek Road, Lennox Head (Stage 6)	<p>Proposal to amend the LEP to make minor zone boundary adjustments to reflect an amended subdivision design and to permit subdivision for drainage purposes.</p> <p>Public exhibition of the planning proposal has concluded. Assessment of issues arising from the public exhibition underway.</p>	12/05/2020
18/005	Function Centres in Rural Areas (Stage 2)	<p>Proposal to amend the LEP to permit function centres on land within the RU2 zone.</p> <p>At its meeting held in October 2018, Council resolved to prepare a planning proposal and to refer the planning proposal back to Council for endorsement prior to seeking a Gateway determination.</p> <p>Currently awaiting the outcome of the Byron Shire Council's planning proposal for function centres in rural areas before finalising planning proposal documentation.</p>	#
19/001	26 Boeing Avenue, Ballina (Stage 5)	<p>Proposal to amend the LEP to provide for a broader range of uses as permissible with consent on the site through Schedule 1 (Additional Permitted Uses). The site comprises the Harvey Norman Homemaker Centre complex and is zoned B5 Business Development zone.</p> <p>The planning proposal was publicly exhibited from 6 November 2019 until 6 December 2019.</p> <p>This matter is the subject of a separate report elsewhere in this business paper.</p>	24/06/2020

## 8.8 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
19/002	Lennox Rise, Lennox Head (Stage 1)	Proposal to amend the LEP minimum lot size standard applying to parts of the site zoned R3 Medium Density zone from 600m <sup>2</sup> (currently) to 450m <sup>2</sup> (proposed).  On 27 June 2019 Council resolved to prepare a planning proposal subject to the proponent providing further information regarding measures to protect a heritage listed rock wall located on the site.  Further information recently submitted by the proponent is being considered by staff.	#
19/003	246-250 Lismore Road, Wollongbar (Stage 7)	Proposal to amend the LEP to permit with development consent a service station and 1 retail premises with a gross floor area (GFA) not exceeding 100m <sup>2</sup> on the land.  The final draft opinion from Parliamentary Counsel has been obtained. Currently awaiting mapping approval from the DPIE's GIS mapping section to enable finalisation.	02/07/2020
19/004	Farm Gate Retail Activity on Rural Land (Stage 6)	Proposal to amend the LEP to permit industrial retail outlets as permissible with development consent on land within the RU1 and RU2 zones.  Public exhibition of the planning proposal has now concluded.  This matter is the subject of a separate report elsewhere in this business paper.	02/07/2020
19/005	Rural Industry Definition BLEP 1987 (Stage 5)	Proposal to substitute the definition of rural industry applicable to Ballina LEP 1987 with the definition of rural industry contained within the Standard Instrument LEP.  Public exhibition of the planning proposal concluded on 21 February 2020. Further report to Council to be prepared.	14/07/2020
<p><b>LEP Amendment Request/Planning Proposal Processing Stages</b></p> <ol style="list-style-type: none"> <li>1. Initial Concept - Proponent submits initial amendment concept for review and reporting to the Council.</li> <li>2. Planning Proposal - Preparation of a planning proposal for the Council's consideration (if the initial concept is supported by the Council).</li> <li>3. Gateway determination - DPIE determination as to whether the planning proposal may proceed (if the Council resolves to submit the planning proposal for determination).</li> <li>4. Study Preparation - Relevant technical information to enable complete assessment compiled and considered. This step may also involve pre-exhibition public authority consultation.</li> <li>5. Community Consultation - Planning proposal and associated technical assessment material exhibited for public comment.</li> <li>5a. Public Hearing - Public Hearing held, where required.</li> <li>6. Submissions Assessment and Council Decision - Reporting of community consultation outcomes and Council decision regarding finalisation of the planning proposal.</li> <li>7. Finalisation - DPIE finalisation (or Council finalisation under delegation) of the LEP amendment based on the planning proposal. Note: the Minister for Planning and Public Spaces may finalise, alter or terminate the amendment.</li> </ol> <p># Denotes proposal number and due date subject to Gateway determination.</p> <p>The completion due date is a date for completion determined by the Department of Planning, Industry and Environment.</p>			

### **Sustainability Considerations**

- **Environment**  
Environmental, social and economic considerations form part of the Council's assessment of all planning proposals and LEP amendments.
- **Social**  
As above
- **Economic**  
As above

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

The work program is being undertaken within existing resources or on a fee for service basis for specific proposals.

### **Consultation**

Community consultation (including Government agency referrals) is, has been, or will be undertaken in relation to individual planning proposals.

### **Options**

The status of the LEP amendments outlined is provided for information only. All matters are being processed in accordance with decisions of Council.

### **RECOMMENDATION**

That Council notes the contents of this report on current LEP amendments and planning proposals.

### **Attachment(s)**

Nil

## 8.9 Policy (Review) - Liquor Licence Application

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### 8.9 Policy (Review) - Liquor Licence Application

#### **Delivery Program**

Development Services

#### **Objective**

To review the Liquor Licence Application Policy.

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#### **Background**

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

This policy provides guidelines to assist in the management of Liquor Licence Applications and Council first adopted this policy in July 2012.

#### **Key Issues**

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

#### **Information**

This review of this policy identified only minor text edits for clarity and changes relating to the following:

- Inclusion of current Division naming as adopted by Council
- Updated legislation and
- Additional considerations for concurrence with liquor licenses within Ballina Shire.

The additions to the amended policy have been marked in yellow with deletions marked in red.

Otherwise the policy is still considered to be contemporary and reflects current legislation therefore no further changes are recommended.

A copy of the amended policy is attached to the report.

#### **Sustainability Considerations**

- **Environment**  
Promote compliance with liquor licensing regulations.
- **Social**  
Appropriate licensing and enforcement action supports a cohesive society.

## **8.9 Policy (Review) - Liquor Licence Application**

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### **Economic**

Application of this Policy can assist the community in their liquor licensing applications.

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

Nil.

### **Consultation**

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received raising issues of significance, then this matter will be reported back to Council. If not, there will not be a need for any further report to Council.

### **Options**

Council may accept or amend the proposed changes to the policy. The changes included are essentially a minor update. Therefore it is recommended that the policy be adopted as presented.

## **RECOMMENDATIONS**

1. That Council adopts the amended Liquor Licence Application Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment. Should any submission raising an issue of significance be received, then the matter will be reported back to Council. If no such submissions are received then no further action is required.

### **Attachment(s)**

- 1 [🔗](#). Liquor Licensing Application Policy (Review)

## 8.10 Policy (Review) - Management of Contaminated Land

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### 8.10 Policy (Review) - Management of Contaminated Land

#### Delivery Program

Environmental and Public Health

#### Objective

To examine options in respect to the review of the Management of Contaminated Land Policy.

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#### Background

All Council policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements.

The Contaminated Land Policy is made under State Environmental Planning Policy No 55 - *Remediation of Land* (SEPP 55) and its associated *Managing Contaminated Land Planning Guidelines* in order to implement a contaminated land management framework within the planning and development process of Council.

The Management of Contaminated Land Policy provides the information, processes and support to ensure that council appropriately considers the potential for land contamination when exercising its functions. This policy is scheduled for review in May 2020.

A copy of the current policy is contained in Attachment 1.

#### Key Issues

- Timing of the policy review

#### Information

SEPP 55 has been in force for more than 20 years and is currently under review by the NSW Department of Planning, Industry and Environment (DPIE).

Public comment on an explanation of intended effect for a new Remediation of Land SEPP and draft planning guidelines closed in 2018. NSW DPIE are yet to identify the next steps in the consultation and plan.

The revised new SEPP proposes significant changes to the state-wide planning framework for the remediation of land.

Given Council's Management of Contaminated Land Policy is made under SEPP 55, the full revision of the Council policy should be delayed until the new SEPP 55 is finalised and implications are further understood.

Council (on behalf of the six Northern Rivers Joint Organisation member councils) successfully applied for NSW Environment Protection Authority (EPA) grant funding under the Council Regional Capacity Building (CRCB) program.

This three year (2019-2022) NSW EPA grant funded program, referred to as the Northern Rivers Contaminated Land Program, is designed to:

## **8.10 Policy (Review) - Management of Contaminated Land**

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- Improve the management of contaminated land in our region
- Improve the contaminated land technical capacity of Council staff
- Develop a regionally consistent approach to contaminated land.

Regional consistency will facilitate the improved standard of contamination assessments across the region. This will improve Council efficiency as well as reduce the degree of risk surrounding current Council processes.

A key program objective is the development of a model regional contaminated land policy appropriate for the six Northern Rivers Contaminated Land Program Councils. The model policy will form the template for each Council to adopt as their contaminated land policy.

The NSW EPA approved Northern Rivers Contaminated Land Program plan has scheduled the completion of a model regional contaminated land policy for May 2022. This was designed to support the program priorities and avoid uncertainty associated with the proposed revision to SEPP 55.

### **Sustainability Considerations**

- **Environment**  
Council's contaminated land policy will provide the framework to ensure that the potential for land contamination is considered and appropriately managed during the development assessment process to ensure protection of human health and the environment.
- **Social**  
Not Applicable
- **Economic**  
Development of a regional contaminated land policy will ensure that the potential for land contamination is considered in the most effective and cost effective way.

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

The development and consistent application of a local contaminated land policy by Council provides a valuable tool to ensure and demonstrate adherence to the Planning Guidelines. Its implementation will directly assist councils to ensure they act in "good faith" with their legislative obligations.

Development of the model regional contaminated land policy is resourced through the Northern Rivers Contaminated Land Program.

### **Consultation**

The development of a model regional contaminated land policy will include consultation with councils in the region, industry stakeholders and the broader community.

Consultation has not been undertaken in relation to reviewing Council's current policy.



## 8.10 Policy (Review) - Management of Contaminated Land

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### Options

There are two options available to Council.

#### *Option 1 – Complete a full review of Council’s Management of Contaminated Land Policy*

Council can undertake a full review the Management of Contaminated Land Policy by May 2020 as scheduled. This is an inefficient option as the Policy will require additional revision once SEPP 55 is updated and will be superseded once the model Regional Contaminated Land Policy is developed.

#### *Option 2 – Delay the full review of Council’s Management of Contaminated Land Policy*

Delay a comprehensive revision of the current Management of Contaminated Land Policy (C12) until SEPP 55 is finalised and then proceed in consultation with the Northern Rivers Contaminated Land Program, produce a new Contaminated Land Policy based on the endorsed model Regional Contaminated Land Policy, once developed.

Option two is the recommended approach. To facilitate this it is recommended that Council endorses the current Management of Contaminated Land Policy (C12) with no changes, with the policy to be next reviewed having regard for the model regional contaminated land policy that is being prepared.

### RECOMMENDATIONS

1. That Council endorses the existing Management of Contaminated Land Policy with no changes at this time.
2. That Council’s Management of Contaminated Land Policy be next reviewed having regard for the model regional contaminated land policy that is being prepared through the Northern Rivers Contaminated Land Program.

### Attachment(s)

1. [Policy \(Existing\) - Management of Contaminated Land](#)

## 8.11 Development Applications - Works in Progress - February 2020

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### 8.11 Development Applications - Works in Progress - February 2020

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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
2018/51	2/2/2018	Ballina Island Development Pty Ltd	Subdivision of land to create 118 residential lots and five super lots, construction or roads, stormwater management and drainage (including detention basins and piping of creek), infrastructure servicing, earthworks, vegetation clearing, open space and temporary signage – 20 North Creek Road, Lennox Head	Awaiting additional information
2018/74	13/2/2018	Ardill Payne & Partners	Amended Proposal: Demolition of Existing Residential Flat Building and Erection and Strata Title Subdivision of a six storey Residential Flat Building containing 12 (originally 14) dwellings, associated car parking and works. The proposed building has a height of 18.6m (originally 18.3) with the lift over run at a height of 19.3m which is above the building height allowance of 18m under the Ballina Local Environmental Plan 2012 – 8 Grant Street, Ballina	Being assessed

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2018/554	13/9/2018	Ardill Payne & Partners	Change of Use to Establish a Depot – Removalist Business and Associated Signage – 6 Waverley Place, West Ballina	Awaiting additional information
2018/616	9/10/2018	Northern Rivers Land Solutions	To undertake bulk earthworks associated with the subdivision consented to under DA 2016/184 – 658 Tamarind Drive, 33 Mitchell Close, 52 Albert Sheathers Lane & 88 Sandy Flat Road, Cumbalum (Banyan Hill)	Subject to Land & Environment Court appeal – hearing dates 31 January 2020 & 10-12 February 2020
2018/746	5/12/2018	Ardill Payne & Partners	Alterations and Additions to the Ballina Central Shopping Centre, comprising the addition of one pad site, new commercial floor space and alterations to the car parking area – 44 Bangalow Road, Ballina	Determination pending
2018/747	6/12/2018	Ardill Payne & Partners	Staged Torrens Title Subdivision and Boundary Adjustment to create 18 x residential lots, 1 x residual lot, 1 x drainage reserve, associated infrastructure works, earthworks and revegetation/rehabilitation works (Avalon Estate Stages 6a and 6b) - Rifle Range Road & 22 Scarlett Court, Wollongbar	Awaiting additional information
2019/21	21/1/2019	Ardill Payne & Partners	Amended Proposal: Establishment of a detached dual occupancy involving the relocation of a dwelling, and the erection of a new holiday cabin and associated works – 208 Fernleigh Road, Tintenbar	Referred to Government Departments

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/123	28/2/2019	Newton Denny Chapelle	Demolition of all structures on-site and erection and Strata Title subdivision of a mixed use development comprising a three storey 9.7m high building (above the 9.0m height of buildings development standard) including food and drink premises and retail premises at ground and second floors, business premises at second floor and shop top housing consisting of two residential dwellings on the third floor, on-site car parking, vegetation removal and associated works. A pedestrian walkway linking Ballina Street and Park Lane is proposed - 74 Ballina Street, Lennox Head	Draft VPA on Exhibition  To be reported to Council for determination (Resolution 281119/15)
2019/133	4/3/2019	Ardill Payne & Partners	Subdivision to create eight residential Torrens Title lots varying in size from 690sqm to 1,200sqm and one residue 2.72 hectare allotment and associated works – 44-52 Blue Seas Parade, Lennox Head	Determination pending
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

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/170	19/3/2019	MP & MJ Veronesi	Two Lot Boundary Adjustment Subdivision to create one x 78ha and one x 5ha allotments – 987 & 937 Wardell Road, Meerschaum Vale	Subject to Land and Environment Court appeal
2019/223	11/4/2019	Tim Fitzroy & Associates	Expansion of the existing solid waste transfer station with a processing capacity of up to 28,000 tonnes per annum. The proposed expansion will allow for sorting of construction/demolition waste, general mixed waste, recycling, paper/cardboard, green waste, steel, timber, waste oil and community recycling centre for household chemicals. The transfer station is proposed to operate 6.00am to 6.00pm Monday to Friday and 7.00am to 4.00pm Saturdays and Sundays and the waste transfer (haulage) operations to occur 24 hours Monday to Sunday.– 2 Northcott Crescent, Alstonville	Being assessed  To be reported to Council for determination (Resolution 241019/18)
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
2019/316	20/5/2019	RJ Westblade	Establishment of a multi dwelling housing development comprising the staged construction and Strata Title Subdivision of two detached dwellings - 20 Canal Road, Ballina	Awaiting additional information

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/376	11/6/2019	Newton Denny Chapelle	Erection of five greenhouses to be used for the propagation of potted plants, expansion of farm dam, and associated earthworks and other civil works – 348 Rous Road, Rous Mill	Awaiting Additional Information
2019/402	19/06/2019	Northern Rivers Land Solutions	Subdivision of Two Existing Lots to Create Two Modified Lots being one 18.45 ha and one 49.9ha allotments – Tamarind Drive & Ballina Heights Drive, Cumbalum	Determination pending
2019/438	03/07/2019	Ardill Payne & Partners	To undertake the Torrens Title Subdivision of 4 x existing vacant lots to create 10 x vacant residential lots – 25-39 Fitzroy Street, Wardell	Awaiting additional information
2019/465	18/7/2019	Newton Denny Chapelle	To establish a warehouse or distribution centre for the storage of road base material pending its sale – Teven Road, West Ballina	Being assessed
2019/487	29/7/2019	Ardill Payne & Partners	Erection of five pole signs associated with the Ballina RSL – 1 Grant Street, Ballina	Being assessed
2019/498	2/8/2019	Ardill Payne & Partners	Alterations and additions to an existing dwelling 1 attached dual occupancy and use as a transitional group home – 2 Jamie Place, Ballina	Determination pending
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

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/505	6/8/2019	Newton Denny Chapelle	Construction of Multi Dwelling Housing development comprising three detached single-storey dwellings and associated earthworks, driveways and landscaping, and Strata Title Subdivision – 12 Cowrie Street, Lennox Head	Being assessed
2019/535	21/8/2019	Ardill Payne & Partners	To undertake a development in four stages comprising: Stage 1 - Three Lot Torrens Title Subdivision (Proposed Lots 1 and 2 – area of 801m <sup>2</sup> and Proposed Lot 3 – area of 1090m <sup>2</sup> ), Stage 2 - Erection of a Two Storey Dwelling on Proposed Lots 1, 2 and 3 Stage 3 - Strata Subdivision of Proposed Lots 1, 2 and 3 Stage 4 – Erection of a New Dwelling on each Vacant Strata Lot to create a Detached Dual Occupancy – 26-30 Fitzroy Street, Wardell	Awaiting additional information
2019/617	25/9/2019	Jamie Hoile	Vegetation management works comprising the removal of one tree – 2 Sunrise Crescent, Lennox Head	Being assessed
2019/639	3/10/2019	Petal Niemack	Vegetation management works comprising the removal of two trees – 110 Ballina Road, Alstonville	Being assessed
2019/643	4/10/2019	DJ Hauenstein	Vegetation management works comprising the removal of 13 trees – 67 Northumberland Drive, East Ballina	Being assessed

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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
2019/667	16/10/2019	Northern Rivers Land Solutions	Temporary Storage Premises, Truck Depot and Landscape Material Supplies – 14 Kays Lane, Alstonville	Awaiting additional information
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	Awaiting additional information
2019/672	17/10/2019	Ardill Payne & Partners	Change of use of two of the existing industrial units (units 1c and 2b) to warehousing and unit 2c to gymnasium – 40 De-Havilland Crescent, Ballina	Awaiting additional information
2019/691	28/10/2019	Planners North	Multi Dwelling Housing Development comprising the erection and Strata Title subdivision of 10 two storey dwellings – Lot 6 DP 1225206 (approved Lot 345 in DA 2017/244) The Coast Road, Skennars Head	Awaiting additional information



## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/694	28/10/2019	Planners North	Tourist and Visitor Accommodation comprising eight holiday cabins, communal recreation building and an information education facility for the purposes of a cooking school - 841 Fernleigh Road Brooklet	Awaiting additional information
2019/696	29/10/2019	Luke Shay	Strata Title subdivision of an existing dual occupancy – 7 Farrelly Avenue, Cumbalum	Being assessed
2019/697	29/10/2019	Luke Shay	Strata Title subdivision of an existing dual occupancy – 9 Farrelly Avenue, Cumbalum	Awaiting additional information
2019/702	31/10/2019	Ardill Payne & Partners	Residential subdivision to create four lots ranging in size from 1,023sqm to 2,367sqm and associated infrastructure servicing - 81 Teven Road, Alstonville	Being assessed
2019/717	6/11/2019	Ardill Payne & Partners	Construction of a slip lane to Tamarind Drive including consequential modifications to the northern car parking area – 84 Kerr Street, Ballina	Being assessed
2019/729	15/11/2019	Ardill Payne & Partners	Erection of self-storage unit complex – 74 De-Havilland Crescent, Ballina	Awaiting additional information
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	Referred to Government departments

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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
2019/758	29/11/2019	A Henderson	Vegetation management works comprising the removal of one pine tree – 4 Ambrose Lane, Alstonville	Determination pending
2019/762	29/11/2019	RCS Group	Subdivision by way of boundary adjustment of two existing allotments to create one x 1.2ha and one x 14.9ha allotments - 225 & 249 Moylans Lane, Empire Vale	Awaiting additional information
2019/764	2/12/2019	Ardill Payne & Partners	Erection of a multi-dwelling housing development involving the construction of two x two storey attached dwellings at the rear of the existing dwelling, demolition of existing garage and Strata Title subdivision – 43 Pacific Parade, Lennox Head	Awaiting additional information

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/765	2/12/2019	Viru Investment Holdings Pty Ltd	Intensification of existing intensive horticulture facility and establishment of associated agricultural processing facility to be carried out as a staged development including construction of additional greenhouse, alteration to existing greenhouse, construction of agricultural processing industry building, construction of farm dam, construction of car park , erection of security fencing and associated landscaping works – 167 Rous Road, Rous	Referred to Government departments
2019/776	11/12/2019	Planit Consulting Pty Ltd	Change of use to establish a Vehicle Sales or Hire Business and Warehouse or Distribution Premises - 2/38 De-Havilland Cres, 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	Referred to Government department
2019/799	16/12/2019	P & E Hudson	To formalise and expand an agricultural produce industry (macadamia nut processing and value adding facility) and to carry out associated works – 18 Johnston Road, Newrybar	Awaiting additional information
2019/812	20/12/2019	Ardill Payne & Partners	Erection of an industrial building for general industrial purposes – 64 De-Havilland Crescent, Ballina	Awaiting additional information

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/814	20/12/2019	McDonalds Australia Pty Ltd	Erection of Two Pylon signs for McDonalds one facing the Bruxner Highway with a maximum height level of 10.5m AHD and one facing the Pacific Highway with a maximum height level of 14.5m AHD. The sign facing the Pacific Highway exceeds the 10.7m AHD height of building allowance prescribed under the Ballina Local Environmental Plan 2012 – 41 Bruxner Highway, West Ballina	On exhibition
2019/819	23/12/19	Newton Denny Chapelle	Alterations to the roof and external cladding of the Lennox Head Community and Cultural Centre. The proposed works exceed the established height standard of 8.5m under Clause 4.3 of the Ballina Local Environmental Plan 2012. The proposed parapet to the roof will be set at 9.2m being lower than the existing turrets to the hall which are at a height of 9.65m – 3 Park Lane, Lennox Head	Determination pending
2020/4	6/1/2020	QSR Pty Limited	Alterations and additions including part demolition to existing food and drink premises with drive-thru facility (Ballina Taco Bell) – 107-109 Fox Street, Ballina	Being assessed

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/5	7/1/2020	Newton Denny Chapelle	Subdivision of land by way of boundary adjustment and consolidation of three existing allotments to create one 45ha and one 3.5ha allotments – 39 Pearces Creek Road & 721 Houghlahans Creek Road, Pearces Creek	Being assessed
2020/15	16/1/2020	Anthony Lolohea	Erection of Signage – 166 River Street, Ballina	Awaiting additional information
2020/23	21/1/2020	Newton Denny Chapelle	To establish the Wollongbar District Park including the Skate Park –93 Rifle Range Road & 55 Avalon Avenue, Wollongbar	On exhibition
2020/25	22/1/2020	Planners North	Multi Dwelling Housing Development comprising the Erection and Strata Title Subdivision of 15 Two Storey Dwellings – The Coast Road, Skennars Head	On exhibition Referred to Government department
2020/28	22/1/2020	PRG Architects	Alterations and additions to the Alstonville Medical Centre - 15 Bugden Avenue, Alstonville	Being assessed
2020/33	28/1/2020	Planners North	To undertake the use of an outdoor area adjacent to bowling green No. 2 for outdoor seating and dining during Club opening hours and including every Sunday during daylight saving hours between 4pm and 7pm with amplified music – 10 Stewart Street, Lennox Head	On exhibition
2020/35	29/1/2020	M A Fahey	Vegetation management works comprising the removal of two trees - 11 Byron Street, East Wardell	Being assessed

## 8.11 Development Applications - Works in Progress - February 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/37	29/1/2020	B R Kirkwood	Vegetation management works comprising the removal of two trees - 55 North Creek Road, Lennox Head	Being assessed
2020/42	30/1/2020	Lennox Head Tree Care	Vegetation management works comprising the removal of one tree - 7 Kalinga Street, West Ballina	Being assessed

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

DA No.	Date Rec'd	Applicant	Proposal	Status
2016/2	4/1/2016	21st Century Builders Pty Ltd	Amended Proposal: To undertake the first stage of the urban subdivision of the new Cumbalum Urban Release Area – Precinct B comprising a total of 166 allotments and including road construction and intersection works at Ross Lane, extensive earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works - 246 Ross Lane, 47 Dufficys Lane & Ross Lane, Kinvara	Awaiting additional information

## 8.11 Development Applications - Works in Progress - February 2020

2016/524	16/9/2016	Planners North	Amended Proposal: Seniors Living Development pursuant to SEPP (Housing for Seniors and People with a Disability) 2004 comprising amended layout, 147 (previously 211) serviced, self-care housing with associated clubhouse, recreation facilities, roads and associated infrastructure and environmental management and protection works – 67 Skennars Head Road, Skennars Head	Subject to NRPP's decision on Site Compatibility Certificate following Land and Environment Court's findings.  Council was not a participant in the LEC proceedings.
2016/746	23/12/2016	Ringtank Pty Ltd	Erection of three dwelling houses, 10 site caravan park, equine facilities including stables, veterinary facility, quarantine stalls, horse float and equipment shelters and two equestrian exercise lawns, private outdoor recreation facilities including go-kart track, shooting range, associated buildings, roadworks, earthworks including dam and landscaping - Carrs Lane, Empire Vale Road, Reedy Creek Road- Keith Hall/Empire Vale	Awaiting additional information

## 8.11 Development Applications - Works in Progress - February 2020

2018/321	13/6/2018	Palm Lake Works Pty Ltd	Staged erection of an extension to an existing Seniors Housing Development under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 comprising of 156 self-care dwellings, recreation facilities and associated car parking, infrastructure works, site filling and associated works – 120 North Creek Road, Ballina	Subject to Land and Environment Court appeal - s56A of the Land and Environment Court Act 1979 – Appeal on decision made. Listed for hearing on 17 April 2020
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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 February 2020.

### Attachment(s)

Nil



## 9.1 Use of Council Seal

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## 9. Corporate and Community Division Reports

### 9.1 Use of Council Seal

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#### RECOMMENDATION

That Council affix the Common Seal to the following documents.

US 20/01	<p>Licence Agreement for part of 4 in DP1130300 (Shed 1 at 486 Gap Road Alstonville) between Council and Lions Club of Alstonville Inc, for a three year period at a nominal licence fee.</p> <p><b>Explanation:</b> Lions Club of Alstonville have been using an existing shed (Shed 1) on Council operational land at 486 Gap Road, Alstonville. Previously the arrangement has not been documented. We propose to issue them with a 3 year licence to use the shed at an annual licence fee of \$1, so that both parties have clarity about the terms of use of the shed by the Club. The shed is used for storage of equipment and items used in relation to the Club's charitable activities.</p>
US 20/02	<p>Licence Agreement for part of 4 in DP1130300 (Shed 2 at 486 Gap Road Alstonville) between Council and Quota International of Alstonville-Wollongbar Incorporated, for a three year period at a nominal licence fee.</p> <p><b>Explanation:</b> Quota Club Alstonville have been using an existing shed (Shed 2) on Council operational land at 486 Gap Road, Alstonville. Previously the arrangement has not been documented. We propose to issue them with a 3 year licence to use the shed at an annual licence fee of \$1, so that both parties have clarity about the terms of use of the shed by the Club. The shed is used for storage of equipment and items used in relation to the Club's charitable activities.</p>
US 20/03	<p>Licence Agreement for part of 4 in DP1130300 (Shed 4 at 486 Gap Road Alstonville) between Council and Rotary Club of Alstonville Inc, for a three year period at a nominal licence fee.</p> <p><b>Explanation:</b> The Alstonville Rotary Club have been using an existing shed (Shed 4) on Council operational land at 486 Gap Road, Alstonville. Previously the arrangement has not been documented. We propose to issue them with a 3 year licence to use the shed at an annual licence fee of \$1, so that both parties have clarity about the terms of use of the shed by the Club. The shed is used for storage of equipment and items used in relation to the Club's charitable activities.</p>
US 20/04	<p>Licence Agreement for part of 4 in DP1130300 (Shed 5 at 486 Gap Road Alstonville) between Council and Alstonville Croquet Club Incorporated, for a one year period at a nominal licence fee.</p>

## 9.1 Use of Council Seal

	<p><b>Explanation:</b> The Alstonville Croquet Club have been using an existing shed (Shed 5) on Council operational land at 486 Gap Road, Alstonville. Previously the arrangement has not been documented.</p> <p>We propose to issue a one year licence to use the shed at a licence fee of \$1, so that both parties have clarity about the terms of use of the shed by the Club.</p> <p>The Club has applied for a building development approval to construct a new shed/clubhouse next to the existing croquet lawn on this property. If that development approval is obtained, then the Club is likely to construct its new shed/clubhouse.</p> <p>For that reason, a licence of only one year is being prepared for Shed 5, as the Club may have constructed its new shed/clubhouse within that one year period, and may no longer need to use Shed 5.</p> <p>Shed 5 is currently used for storage of the Club's croquet equipment.</p>
US 20/05	<p>The following documents for the River Street Children's Centre (Lots 5 and 6 DP758047, 12 River Street, Ballina):</p> <ol style="list-style-type: none"><li>1. Crown Sublease to Ballina River Street Children's Centre Inc (Three year period, \$1 per annum rent)</li><li>2. Crown Sublease to Ballina Toy Library Inc (Three year period, \$1 per annum rent)</li><li>3. Crown Sublease to Playgroup NSW (Three year period, \$1 per annum rent)</li></ol> <p><b>Explanation:</b> Council entered into a head lease (as tenant) from The State of New South Wales (as landlord) in 2011 (lease 485718, registered dealing AG514373Q) for a term of 20 years.</p> <p>The head lease commenced on 04/09/2011 and expires 03/09/2031.</p> <p>The head lease area includes the Library, Visitor Information Centre, the Richmond Room, and the facility known as the River Street Children's Centre. In that facility, there are three existing subtenants – Ballina River Street Children's Centre Inc (operating a preschool and occasional care service), Ballina Toy Library Inc (operating a toy library service) and Playgroup NSW (operating a playgroup service).</p> <p>Subleases provide clarity to those existing subtenants on sublease areas and subtenant obligations.</p> <p>Each sublease is subject to obtaining Crown's consent</p>

## 9.1 Use of Council Seal

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US 20/06	<p>Ballina Shire Council Sublease to Paradise FM for term of five years with a five year option for premises being part of the Old Ballina Library at Part Lot 2 DP 1153927, 42 Cherry Street Ballina with a commencing rent of \$17,000 p.a. + GST + outgoings.</p> <p><b>Explanation:</b> Paradise FM have subleased part of the old Ballina Library Building at 42 Cherry Street Ballina since 2009. The sublease has now expired and Paradise FM has requested a new sublease.</p>
US 20/07	<p>Ballina Shire Council Lease to C Reid for Shop 11 Wigmore Arcade Ballina for a term of three years with a three plus three year option at current market rent + outgoings + GST.</p> <p><b>Explanation:</b> The Lessee of Shop 11 Wigmore Arcade has agreed to surrender his lease on the premises effective 31 January 2020. Works will then be undertaken during the month of February when the shop is vacant to deal with damp penetration issues.</p> <p>The new lease has a proposed commencement date of 1 March 2020.</p>

### Attachment(s)

Nil

## 9.2 Investment Summary - January 2020

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### 9.2 Investment Summary - January 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 January 2020.

#### Key Issues

- Compliance with Investment Policy and the return on investments.

#### Information

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 January was \$82,038,300, decreasing by \$1 million from December. Council's investments, as at 31 January, were invested at an average (weighted) interest rate of 1.862%, which was 0.969% above the January average 90 Day Bank Bill Index of 0.893%. The balance of the Commonwealth Bank cheque account as at 31 January 2020 was \$4,017,397 decreasing by \$1,564,100 from December.

The total movement of investments and bank balances was a decrease of \$2,564,100 due to large creditor payments and loan repayments occurring in January, continuing from December 2019.

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

Reserve Name	Restriction	% Portfolio*
Wastewater (incl developer contributions)	External	12.46%
Water (incl developer contributions)	External	24.54%
Section 7.11 Developer Contributions	External	14.94%
Bonds and Deposits	External	3.37%
Other External Restrictions	External	5.13%
Carry Forward Works	Internal	5.03%
Bypass Maintenance	Internal	4.32%
Landfill and Resource Management	Internal	0.08%
Employee Leave Entitlements	Internal	3.72%
Quarries	Internal	1.02%
Property Reserves	Internal	6.76%
Plant and Vehicle Replacement	Internal	1.55%
Road Works	Internal	4.76%
Indoor Sports Centre	Internal	1.79%
Miscellaneous Internal Reserves	Internal	2.50%
Financial Assistance Grant in Advance	Internal	2.78%
Unrestricted		5.25%
<b>Total</b>		<b>100.00%</b>

\* Reflects reserves held as at 30 June 2019

## 9.2 Investment Summary - January 2020

### 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	2.2%	<b>2%</b>
<b>Rated Institutions</b>								
AMP Bank	Yes	BBB+	A2	7,500	7,500	10%	9.1%	
Australian Unity Bank	n/a	BBB+	-	5,000	7,000	10%	8.5%	
Bank of China	Yes	A	A1	3,000	3,000	20%	3.7%	
Bank of Communications	Yes	A-	A2	1,000	1,000	20%	1.2%	
Bank of Queensland	Yes	BBB+	A3	3,000	-	10%	0.0%	
BankVic	No	BBB+	Baa1	3,000	-	10%	0.0%	
Beyond Bank Australia Limited	No	BBB	-	2,000	2,000	10%	2.4%	
Commonwealth Bank of Australia	Yes	AA-	Aa3	4,000	4,000	20%	4.9%	
Credit Union Australia	No	BBB	Baa1	600	600	10%	0.7%	
Defence Bank Limited	No	BBB	-	2,500	2,500	10%	3.0%	
Greater Bank Limited	No	BBB	-	1,000	1,000	10%	1.2%	
ING Bank (Australia) Limited	Yes	A	A3	-	1,000	20%	1.2%	
Macquarie Bank Limited	Yes	A+	A2	12,500	12,500	20%	15.2%	
ME Bank	No	BBB	Baa1	5,750	5,750	10%	7.0%	
My State Bank Limited	No	BBB+	Baa1	7,000	6,000	10%	7.3%	
National Australia Bank	Yes	AA-	Aa3	10,000	13,000	20%	15.8%	
Newcastle Permanent Bld Society	No	BBB	A3	4,700	4,700	10%	5.7%	
Teachers Mutual Bank Limited	No	BBB	Baa1	1,700	1,700	10%	2.1%	
Westpac Banking Corporation	Yes	AA-	Aa3	7,000	7,000	20%	8.5%	<b>98%</b>
<b>Total</b>				<b>83,038</b>	<b>82,038</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%	82,038	37,500	41,500	45%	51%
BBB			60%	49,223	45,538	40,538	55%	49%
<b>Total</b>					<b>83,038</b>	<b>82,038</b>	<b>100%</b>	<b>100%</b>

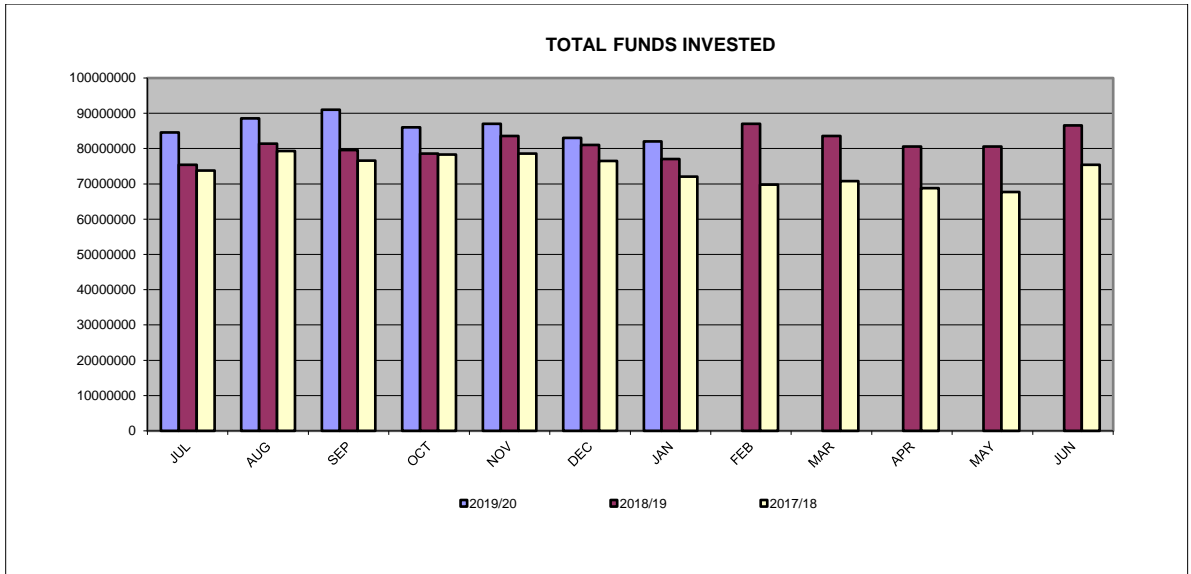
### B. Summary of Investments Fossil Fuel Aligned

	Previous Month (\$'000)	Current Month (\$'000)
<b>Fossil Fuel Aligned</b>	49,788 <b>60%</b>	50,788 <b>62%</b>
<b>Non-Fossil Fuel Aligned</b>	28,250 <b>34%</b>	24,250 <b>30%</b>
<b>Not Classified</b>	5,000 <b>6%</b>	7,000 <b>9%</b>
<b>Total</b>	<b>83,038</b> <b>100%</b>	<b>82,038</b> <b>100%</b>

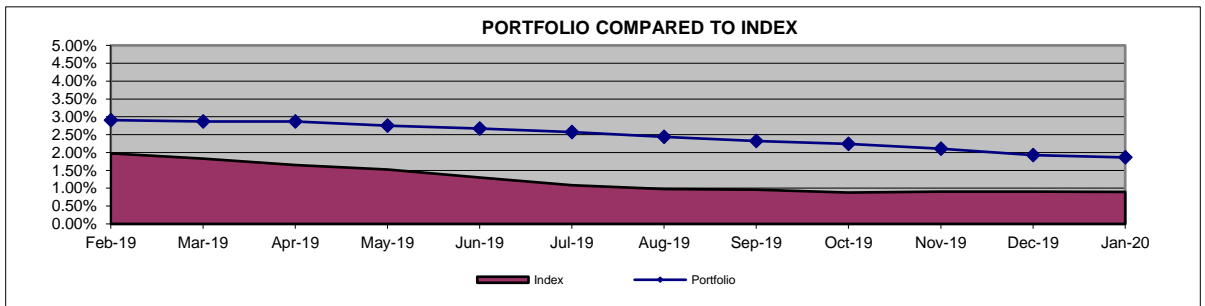
Classification based on advice from 'Market Forces'.

**9.2 Investment Summary - January 2020**

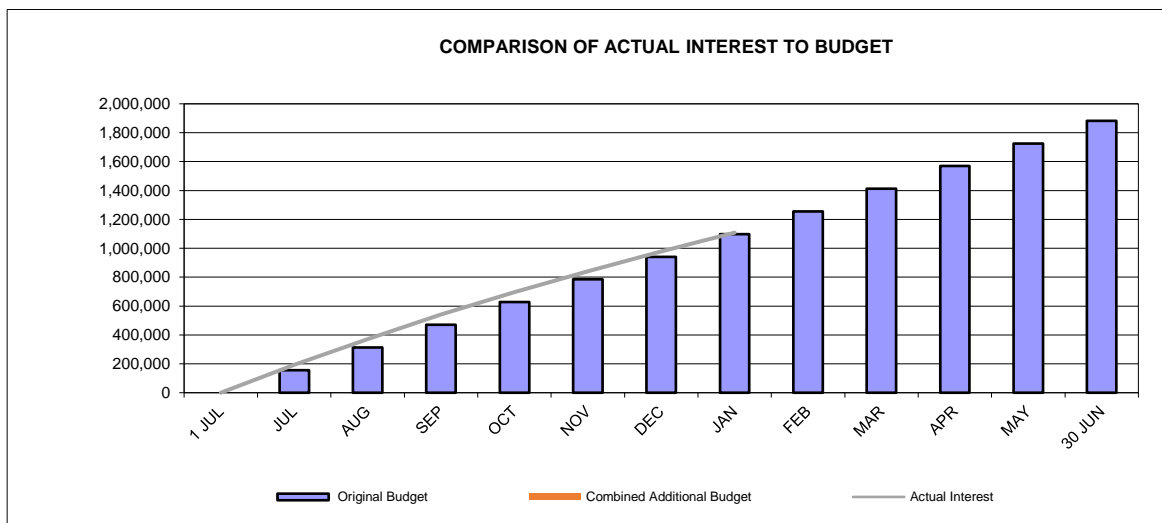
**C. Monthly Comparison of Total Funds Invested**



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



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



## 9.2 Investment Summary - January 2020

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

PURCH DATE	ISSUER	TYPE	RATE	MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
20/09/2004	National Australia Bank (ASX Listed)	FRN	2.83%	Perpetual	1,788	1,706
17/06/2016	Commonwealth Bank of Australia	FRN	1.95%	17/06/21	1,000	1,000
30/06/2016	Commonwealth Bank of Australia	FRN	1.96%	30/06/21	1,000	1,000
26/07/2016	Commonwealth Bank of Australia	FRN	1.93%	26/07/21	1,000	1,000
24/02/2017	Greater Bank Limited	FRN	2.33%	24/02/20	1,000	1,000
29/06/2017	Teachers Mutual Bank Limited	FRN	2.34%	29/06/20	1,000	1,000
3/08/2017	Westpac Banking Corp	FRN	1.98%	03/08/22	2,000	2,000
18/08/2017	Westpac Banking Corp	FRN	1.95%	18/08/22	1,000	1,000
9/11/2017	ME Bank	FRN	2.18%	09/11/20	750	750
6/02/2018	Newcastle Permanent Bld Society	FRN	2.34%	26/07/21	700	700
2/07/2018	Teachers Mutual Bank Limited	FRN	2.30%	02/07/21	700	700
30/07/2018	Westpac Banking Corporation	FRN	1.82%	31/07/23	1,000	1,000
31/07/2018	Westpac Banking Corporation	FRN	1.81%	02/08/23	1,000	1,000
6/09/2018	Newcastle Permanent Bld Society	FRN	2.34%	26/07/21	1,000	1,000
6/09/2018	Credit Union Australia	FRN	2.14%	06/09/21	600	600
10/09/2018	AMP Bank	FRN	1.97%	10/09/21	1,500	1,500
11/01/2019	Commonwealth Bank of Australia	FRN	2.03%	11/01/24	1,000	1,000
8/02/2019	Westpac Banking Corp	FRN	1.98%	08/02/24	2,000	2,000
12/02/2019	Beyond Bank	TD	2.81%	11/02/20	2,000	2,000
21/02/2019	Newcastle Permanent Bld Society	FRN	1.94%	22/02/21	2,000	2,000
22/02/2019	Newcastle Permanent Bld Society	FRN	1.94%	22/02/21	1,000	1,000
1/08/2019	AMP Bank	FRN	1.97%	10/09/21	2,000	2,000
7/08/2019	National Australia Bank	TD	1.72%	04/08/20	4,000	4,000
16/08/2019	AMP Bank	TD	2.00%	17/08/20	1,000	1,000
19/08/2019	ME Bank	TD	1.75%	20/02/20	3,000	3,000
26/08/2019	AMP Bank	FRN	1.97%	10/09/21	1,000	1,000
27/08/2019	Defence Bank Ltd	TD	1.75%	27/08/20	1,000	1,000
4/09/2019	Macquarie Bank Ltd	TD	1.75%	03/03/20	3,000	3,000
17/09/2019	Macquarie Bank Ltd	TD	1.75%	17/03/20	1,000	1,000
20/09/2019	Macquarie Bank Ltd	TD	1.75%	24/03/20	1,000	1,000
26/09/2019	Macquarie Bank Ltd	TD	1.70%	28/04/20	1,500	1,500
1/10/2019	Macquarie Bank Ltd	TD	1.65%	22/04/20	2,000	2,000
16/10/2019	National Australia Bank	TD	1.60%	10/03/20	3,000	3,000
28/10/2019	Bank of Communications	FRN	1.77%	28/10/22	1,000	1,000
5/11/2019	My State Bank Ltd	TD	1.70%	04/02/20	2,000	2,000
6/11/2019	My State Bank Ltd	TD	1.70%	05/03/20	2,000	2,000
7/11/2019	Defence Bank Ltd	TD	1.65%	10/03/20	1,500	1,500
20/11/2019	Macquarie Bank Ltd	TD	1.60%	20/05/20	2,000	2,000
26/11/2019	My State Bank Ltd	TD	1.70%	15/04/20	2,000	2,000
26/11/2019	ME Bank	TD	1.60%	26/08/20	2,000	2,000
28/11/2019	Macquarie Bank Ltd	TD	1.60%	03/06/20	2,000	2,000
28/11/2019	Australian Unity Bank	TD	1.70%	25/11/20	2,000	2,000
28/11/2019	Australian Unity Bank	TD	1.70%	10/06/20	1,000	1,000
29/11/2019	Bank of China	TD	1.60%	24/06/20	3,000	3,000
3/12/2019	Australian Unity Bank	TD	1.75%	05/05/20	2,000	2,000
17/12/2019	AMP Bank	TD	1.80%	10/06/20	2,000	2,000
7/01/2020	National Australia Bank	TD	1.60%	07/04/20	3,000	3,000

## 9.2 Investment Summary - January 2020

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22/1/2020	National Australia Bank	TD	1.60%	21/04/20	3,000	3,000
28/01/2020	ING Bank (Australia) Ltd	TD	1.65%	21/01/21	1,000	1,000
30/01/2020	Australian Unity Bank	TD	1.65%	11/08/20	2,000	2,000
<b>Totals</b>					<b>82,038</b>	<b>81,956</b>
CDA = Cash Deposit Account		FRN = Floating Rate Note				
FRTD = Floating Rate Term Deposit		TD = Term Deposit				

### RECOMMENDATION

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

### Attachment(s)

Nil



### 9.3 Councillor Expenses - Six Monthly Review

### 9.3 Councillor Expenses - Six Monthly Review

#### Delivery Program

Communications

#### Objective

To provide the six monthly report on Councillor Expenses for the period from 1 July 2019 to 31 December 2019.

#### Background

Clause 15.2 of the Councillor Expenses and Facilities Policy requires a report to Council every six months outlining the provision of expenses and facilities to each Councillor. The information is also published on Council's website.

#### Key Issues

- Overview of expenditure and policy allowances

#### Information

This report details the expenditure incurred for the period 1 July 2019 to 31 December 2019. This expenditure excludes the Councillor and Mayor annual allowances. The expenditure is based on claims submitted and paid.

#### Councillor Expenses and Facilities Expenditure (\$ inc. GST)

Councillor	General Travel and Expenses	Corporate Training (1)	Prof Dev / Conference	ICT	Home Office	Incidentals/ Northern Star etc	Mayor Vehicle (2)	JRPP	Totals
Cadwallader	1,334.32	435.00	1,248.50	1,074.00	23.94	293.88	0.00	600.00	5,009.64
Johnson	95.04	435.00	0.00	863.91	0.00	410.33	0.00	0.00	1,804.28
Johnston	1,152.36	435.00	0.00	554.72	0.00	466.13	0.00	0.00	2,608.21
McCarthy	0.00	928.10	0.00	644.17	0.00	246.91	0.00	0.00	1,819.18
Meehan	472.08	435.00	673.80	953.32	0.00	326.08	0.00	0.00	2,860.28
Parry	825.17	435.00	0.00	0.00	0.00	422.20	0.00	0.00	1,682.37
Smith	0.00	435.00	0.00	301.45	0.00	274.00	0.00	0.00	1,010.45
Williams	0.00	435.00	0.00	552.31	0.00	77.45	0.00	0.00	1,064.76
Willis	140.00	435.00	4,747.40	340.60	136.29	0.00	0.00	0.00	5,799.29
Wright	0.00	435.00	0.00	515.92	102.15	317.40	6,000.00	0.00	7,370.47
<b>Total</b>									<b>31,028.93</b>

(1) Corporate training represents training organised by the General Manager for specific topics as identified in the Councillor Training and Development Policy (Planning 101 – 31 July 2019 - all Councillors and Financial Issues in Local Government – 26 August 2019 - Cr McCarthy attended).

(2) Six month internal plant charge for the provision of the mayoral vehicle.

The Mayor has paid \$192.36 during this period for private fuel.

The Councillor Expenses and Facilities Policy provides the following limits:

- \$3,000 annual limit (excluding GST) on general travel arrangements expenses

### **9.3 Councillor Expenses - Six Monthly Review**

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- \$5,000 annual limit (excluding GST) on professional development and conferences (excluding induction training)
- \$80 per month for reimbursement of certain Information and Communication Technology (ICT) expenses, which is in addition to the cost of providing the Council ICT.
- \$1,000 on Home Office Expenses (excluding GST).
- There is no cap on corporate training subject to annual budget limits.

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

Council has funding allocated in the Long Term Financial Plan for this expenditure.

#### **Options**

This report is for noting.

#### **RECOMMENDATION**

That Council notes the contents of this update on the Councillor expenses, as per the Councillor Expenses and Facilities Policy, for the six month period 1 July to 31 December 2019.

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

Nil

## 9.4 Australia Day 2020 - Review

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### 9.4 Australia Day 2020 - Review

#### **Delivery Program**

Communications

#### **Objective**

To review the program of events for Australia Day 2020 and to confirm the preferred format for 2021.

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#### **Background**

Council coordinates an Australia Day event each year that includes a citizenship ceremony, an awards ceremony and a special guest address. This is a free public event where the community is encouraged to attend by a promotional campaign. The event concludes with a morning tea with the guest speaker, new citizens and award winners.

The purpose of this report is to review the 2020 event and confirm the preferred format for 2021.

#### **Key Issues**

- Awards category review
- Event program

#### **Information**

Council completed a major review of the categories for the Australia Day Awards during 2019 adding the Environmental Award Category and changing the Local Hero to a Volunteer Award. The approved categories for the 2020 program were:

- Young Citizen of the Year (30 years or under)
- Senior Citizen of the Year (60 years or over)
- Sports Award
- Volunteer Award
- Community Event of the Year
- Arts and Cultural Award
- Environmental Award

Council selects the Citizen of the Year from the nominations for all of the Award categories.

The 2020 event was a full program including a Welcome to Country performed by Aunty Julia Paden, a flag raising ceremony and a special address by Liz Ellis, AO. We welcomed 30 new citizens and celebrated 45 Australia Day Award nominations. These figures are significantly higher than the 2019 awards.

The length of the ceremony was longer than previous years due to the additional award category and number of award nominations. Although the duration was longer, community feedback and anecdotal evidence identified that the 2020 Australia Day program was well received.

## 9.4 Australia Day 2020 - Review

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Based on the positive response and number of nominations continuation of the current award categories is recommended for 2021.

Due to the trending increase in new citizens and nominations, staff will review the format and length of the 2021 ceremony once all nominations have closed in December 2020.

This year there was a change in venue from the Lennox Head Community Centre (LHCC) to the Ballina Indoor Sports Centre (BISC). This temporary change in location was required due to the renovations being undertaken at LHCC. The upgrade of the LHCC facility will enable the 2021 Australia Day Awards to be undertaken in an air-conditioned environment.

In previous years Council has arranged a courtesy bus to assist members of the public with transportation to Lennox Head for the ceremony. In 2019 it was reported that only five people utilised this free service compared to approximately 20 persons in 2018.

The courtesy bus was not arranged this year due to the ceremony being held in Ballina and based on the low take up of the bus service in 2019. There has been no feedback (positive or negative) received on the provision of a courtesy bus.

Council's Australia Day Committee (consisting of all Councillors) was re-established at the 29 September 2016 Ordinary meeting (as part of the review of all Council committees with the newly elected Council), with the Committee having delegated authority to determine the award recipients for Australia Day. This process will again occur in September 2020 following the election.

### **Sustainability Considerations**

- **Environment**  
The Australia Day Awards provides an opportunity to showcase the efforts of those who work to protect and conserve our environment.
- **Social**  
The Awards and associated activities are an excellent way of bringing the shire together and promoting social cohesion.
- **Economic**  
The Australia Day budget is approximately \$22,000.

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

The Australia Day Awards and associated activities are coordinated, promoted and delivered within the resources provided by Council.

### **Consultation**

Nominations for Awards are promoted extensively throughout the Shire, with the process normally commencing around April. The majority of nominations occur closer to the nomination deadline in December each year.

### Options

The options available relate to changing the Award categories, location and structure of the ceremony.

Council has, at times, changed the categories, with items such as the Volunteer Award and Environmental Award being a new category in 2020.

Due to the categories undergoing an extensive review in 2019, together with the positive response received, it is recommended that Council retain the current Award categories for 2021.

Given the success of the Australia Day event in 2020, Councillors may wish to give consideration to the choice of venue for the 2021 event.

The LHCC has in recent years been the supported permanent location for the Australia Day Awards due the excellent facilities and protection from adverse weather. Due to the success of the most recent Awards, there is the option to continue with the Australia Day Awards being held at the BISC.

While the BISC is larger and can accommodate more people it is not air conditioned. The newly renovated LHCC will have acoustic enhancements and air conditioning.

LHCC is recommended for the 2021 event given the new refurbishments (including air conditioning) as Australia Day is typically a very hot humid day.

Council has previously provided a courtesy bus free of charge to encourage those without transport to attend the ceremony. The bus included pick up and drop off locations in Alstonville, West Ballina, Ballina and East Ballina. The service was not provided in 2020 based on the Awards being held in Ballina and poor usage of this service in 2019.

The option available to Council is to reintroduce this service to LHCC for 2021 or to discontinue the service. Based on the fluctuations in known usage data for 2018 and 2019 Australia Day Award ceremonies, it is recommended that the service be reintroduced for 2021 Australia Day Awards with a further review of the need for this service to be considered by Council in February 2021.

### RECOMMENDATIONS

1. That Council confirms that the categories for the 2021 Ballina Shire Australia Day Awards are to remain unchanged, with citizen of the year selected from one of the categories; i.e.
  - Young Citizen of the Year (30 years or under)
  - Senior Citizen of the Year (60 years or over)
  - Sports Award
  - Volunteer Award
  - Community Event of the Year
  - Arts and Cultural Award
  - Environmental Award

#### **9.4 Australia Day 2020 - Review**

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2. That Council host the 2021 Australia Day event at the Lennox Head Community Centre due to the availability of air-conditioning.
3. That Council provide a courtesy bus service for the 2021 Australia Day event.

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

Nil

## 9.5 Council Fees - Reimbursement

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### 9.5 Council Fees - Reimbursement

#### Delivery Program

Communications

#### Objective

To consider the reimbursement of Council fees for the Ballina Community Men's Shed and Mental Health Support Group.

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#### Background

Two Ballina Shire community organisations are seeking reimbursement of Council fees.

The first is the Ballina Community Men's Shed who are a community group seeking to have their development application fees reimbursed. These fees relate to a proposed new shed on Council owned land at 44 Fishery Creek Road, Ballina.

The second is the Mental Health Support Group, who are a not for profit community based group established in the region for over 20 years. They are seeking a reimbursement of development application fees relating to a proposed new shed on Council owned land at Gap Road, Alstonville.

#### Key Issues

- Equitable and transparent use of council funds

#### Information

The Ballina Community Men's Shed has been operating since 2010 and provides a place where men work together on projects and socialize. Its aim is to improve the health and wellbeing of members.

The Ballina Men's Shed has been looking for a new location in recent years, and consequently lodged a number of development applications for various sites. They have a lease with Council at 44 Fishery Creek Road and have lodged a new development application with Council to build a shed on this site.

Council is in receipt of a request from Ballina Community Men's Shed for a refund of their development application fees in the amount of \$2,665.04. Evidence of payment has been included in Attachment 1 to this report.

A breakdown of the fees is as follows.

Fee Description	Amount (\$)	Comment
DA Fee – Planning	1,300.90	Council fee
Advertising	366.00	third party fee
Compliance Levy	426.39	Council fee
Information and Technology Services Fee	298.47	Council fee
Planning Reform Levy	273.28	third party fee
<b>Total</b>	<b>2,665.04</b>	

## 9.5 Council Fees - Reimbursement

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The Mental Health Support Group (MHSG) provides a service to the community who are rehabilitating from mental illness as well as support through provision of household goods. MHSG is a volunteer run organisation that receives no government funding.

MHSG is currently located on Council owned land at Gap Rad, Alstonville where the nursery and sportsfields are located. They currently have a three year licence to occupy this land that commenced 23 December 2019. MHSG has lodged a development application with Council to build a new shed on this land.

Council is in receipt of a request from MHSC for a refund of their development application fees in the amount of \$1,192.63. Evidence of payment has been included in Attachment 2 to this report.

A breakdown of the fees is as follows.

<b>Fee Description</b>	<b>Amount (\$)</b>	<b>Comment</b>
Construction Certificate	914.84	Council fee
DA Fee – Building	239.00	Council fee
Compliance Levy	22.82	Council fee
Information and Technology Services Fee	15.97	Council fee
<b>Total</b>	<b>1,192.63</b>	

The *Donations – Assistance with Council fees for Community Groups Policy* provides assistance to community groups to deliver capital projects by the reimbursement or waiver of certain fees. The guidelines for selection include:

1. The recipient organisation must be not for profit and provide a community service within the Ballina Shire local government area.
2. Consideration must be given to the frequency of the event and / or the nature of the capital project. Regular (i.e. more than once per annum) events or projects will not be eligible for reimbursement.
3. The nature of the fee to be reimbursed/waived will relate to either the delivery of a capital project for the community group, or alternatively where that community group is undertaking a major fund raising event.
4. Fee reimbursements/waivers for capital works must be provided on Council owned or controlled land.
5. The event or works shall occur on public land.

The requirements for the policy identify that:

1. Council shall allocate in the annual Operational Plan, an amount for the purpose of providing financial assistance to community groups through the reimbursement or waiver of Council fees.
2. The Council will determine any application for fee reimbursement / waiver.
3. As a guide fees to be reimbursed will normally relate to development applications (excluding developer contributions and fees paid to external parties such as advertising and long service levies), waste charges, entrance fees, provision of Council products and hire charges.



## 9.5 Council Fees - Reimbursement

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4. The maximum amount reimbursed is to be capped at \$3,000 per event/project.
5. Where fees are reimbursed/waived the expense will be allocated against the fee reimbursement account in Council's records to ensure a register of all reimbursements is maintained.

Both requests align with the policy framework.

The recommendation that follows supports the reimbursement of the development application fees, with the exception of third party fees.

The budget allocated for *Donations – Assistance with Council fees for Community Groups Policy* is \$3,000 per annum. The combined requests total \$3,218.39, which is \$218.39 in excess of the budget.

The MHSG are also requesting a donation of \$6,000 to contribute to the new building costs.

Given that this request is not for assistance with Council fees, MHSG have been asked to submit an application to the Community Donations program for 2020/21 later in the year.

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
The two groups contribute to the social fabric of the Ballina Shire
- **Economic**  
Not Applicable

### Legal / Resource / Financial Implications

The 2019/20 budget for Donations – Assistance with Council fees for Community Groups policy has \$3,000 unallocated.

Any reimbursement of fees represents foregone income by Council.

### Consultation

This has not been the subject of community consultation.

### Options

The options available to Council are to:

1. support the full reimbursement of Council related fees only with any third party fees to continue to be met by the organisation.
2. provide partial reimbursement of fees within existing budget provisions

## 9.5 Council Fees - Reimbursement

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3. not support either request

Option one is supported based on both requests aligning with the objectives of the policy.

### RECOMMENDATIONS

1. That Council approves the reimbursement of Council development application fees amounting to \$2,025.76 to the Ballina Community Men's Shed.
2. That Council approves the reimbursement of Council development application fees amounting to \$1,192.63 to the Mental Health Support Group.

### Attachment(s)

1. [Ballina Community Men's Shed - Receipt for DA fees](#)
2. [Mental Health Support Group - Council extract for proof of payment of DA fees](#)

## 9.6 Policy (Review) - Investments

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### 9.6 Policy (Review) - Investments

#### **Delivery Program**

Financial Services

#### **Objective**

To review the Investments policy.

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### **Background**

The Investments policy is reviewed annually, as a minimum, in accordance with the Office of Local Government's Investment policy guidelines, to ensure it remains appropriate given any changes that may occur to the economic, investment and legislative environments.

The Investments policy sets out Council's investment objectives and includes specific criteria to frame investment decisions, risk management parameters, and investment governance standards to ensure transparency, internal controls and performance management.

The scope of Council's investments is mandated under the Local Government Act 1993, through a Ministerial Investment Order, that constrains the type of investments to deposits and / or bonds in Federal, State or Local Governments and in Approved Deposit Taking Institutions under the Banking Act 1959.

Councils are not permitted to invest in specific prohibited investments such as equities and derivatives.

The Investments policy was last reviewed in October 2019, following the formal annual review in February 2019. In October 2019, Council adopted a policy revision intended to encourage a greater level of fossil free investments by specifying a margin of 0.05% to apply when determining whether to invest in fossil free institutions.

### **Key Issues**

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

### **Information**

The current review of the existing Investments policy did not identify any requirements for amending the policy due to there being no change in the economic, investment and legislative environments.

The provision within the policy providing a margin of 0.05% for fossil fuel free investments has not had a noticeable change in the proportion of fossil fuel free investments since introduction in late October 2019, although this represents only three months as at the time of writing this report.

This is due to the differential between the interest rates that have been offered by institutions who invest in fossil fuel investments and those who offered fossil free investments, and the relative small size of the policy margin.

## 9.6 Policy (Review) - Investments

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Maintaining the status quo for a further year would allow a more informed view as to the effectiveness of the existing 0.05% margin.

A copy of the existing policy is included as an attachment to this report.

### **Sustainability Considerations**

- **Environment**  
The Policy includes a margin of 0.05% for non-fossil fuel aligned institutions.
- **Social**  
Not Applicable
- **Economic**  
No impact.

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

Investment returns over the past nine years have gradually reduced, reflecting lower interest rates and the more limited investment opportunities available under the Ministerial Investment Order as reflected in the Investment policy.

Investment portfolio returns are expected to remain reasonably low, that is between 1.50% and 2.50% for at least the next year.

The Investments policy maintains an investment portfolio that is conservative and comprises investments in institutions with high investment credit ratings, whilst allowing for flexibility for investment opportunities that enhance Council's financial returns.

### **Consultation**

It is recommended that Council adopts the Investments policy (unchanged) as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

### **Options**

Council may accept or amend the Investments policy. It is recommended that the policy be adopted as is and if no submissions are received from the public exhibition process, no further action is required.

### **RECOMMENDATIONS**

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

### **Attachment(s)**

- 1  Policy (Review) - Investments

## 9.7 Policy (Review) - Social Media

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### 9.7 Policy (Review) - Social Media

#### Delivery Program

Communications

#### Objective

To review the Social Media Policy

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#### Background

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

Council first adopted this policy 22 March 2012, and it was last reviewed 29 March 2016.

The objective of the policy is to provide guidelines for Council staff to engage in social media activities as part of their role in community building and discussing and promoting Council services, activities and resources.

#### Key Issues

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

#### Information

This review of this policy identified only minor changes required to terminology and one significant change in relation to the records management of social media posts and commentary.

The current policy instructs that material published on Council's social media sites must be recorded and archived on a monthly basis. The application of this requirement is proving impractical and ineffective.

Real-time, accurate archiving of social media is not possible because content is shared, viewed, retweeted, replied, or addressed through private or public comments.

Postings are generally made up of multiple types of media including text, image, video, or hyperlink that can be edited at any time.

Information resharing changes the context of the post and the credibility of the record. Therefore to record and archive Council's posts would not be a complete record and only a snapshot in time.

Council's social media pages form part of Council's overall promotional/communications mix. The information posted to Council's social media pages is generally duplicated elsewhere, such as media releases, print advertising, posters, website and factsheets. These materials are routinely registered in Council's Electronic Document Management System (EDMS).

## 9.7 Policy (Review) - Social Media

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Council's Communication's Section assess content and proactively export and maintain social information that has an ongoing business value.

Where possible, community members are directed to provide feedback and comments via an online survey. This feedback is registered into Council's EDMS as part of Council's procedure for handling and reporting submissions.

If members of the public are commenting on posts that require Council intervention, the commentator may be requested to provide further information off-line so that their request can be lodged and registered through Council's Customer Request Management Module in Authority and/or EDMS.

The policy has been updated under Section 10 – Records Management to reflect current and effective practice.

The remainder of the policy only requires minor changes. Additions are marked in yellow, and deletions are marked in red.

Otherwise the policy is still considered to be contemporary and reflects current practice. A copy of the amended policy is attached to the report.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Social Media is seen as an important tool for Council to engage with sections of the community where traditional methods of media do not reach. It is important that our community is satisfied with the level of communication from Council as the higher the satisfaction, the more informed our community is.
- **Economic**  
Not Applicable

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

There are no direct legal, resource or financial implications arising from this report.

### **Consultation**

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

### **Options**

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

## **9.7 Policy (Review) - Social Media**

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

- 1 [📎](#). Policy (Review) - Social Media

## 9.8 Legal Matters - Update

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### 9.8 Legal Matters - Update

#### Delivery Program

Communications

#### 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 examine legal matters in which the Council is, or has been, involved, with reference to the current or most recent financial year.

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

Council Solicitor	Parties	Description	Cost Estimate	Expenses to Date
Allens Linklaters	Planners North v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2016/184.	1,200,000	1,232,000
<b>Comment</b> <p>The applicant appealed the deemed refusal of DA 2016/184 (Cumbalum views Estate) for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A) originally comprising a total of 642 residential allotments, four future development lots, eight residual rural lots, 18 open space lots, road construction, earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works.</p> <p>A decision on the matter was handed down on 22 June 2018 with the development application approved with conditions.</p> <p>The approved development (now 457 residential lots) is different from that originally proposed reflecting the address of a variety of issues that were raised by Council as concerns both pre the Court action and during the Court proceedings.</p> <p>Allens Linklaters are currently addressing the matter of the recovery of costs in line with Council's June 2018 resolution in this regard.</p> <p>An application for costs has been filed in the Supreme Court and the outcome of this application should be known shortly.</p>				



## 9.8 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Expenses to Date
CH Law	Ballina Shire Council v The Beach	Land and Environment Court - Class 4 Civil Enforcement Proceedings	50,000	46,000
<p><b>Comment</b></p> <p>At the April 2019 Ordinary meeting Council resolved to grant consent to the two development applications. Subsequently, the building information certificate was issued. Class 4 Proceedings have now been discontinued at the agreement of both parties. No further action in relation to these Class 4 Proceedings is planned although Council still has options available in respect to enforcement action. This matter is the subject of a separate report in this agenda.</p>				
CH Law	Palmlake 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	717,000
<p><b>Comment</b></p> <p>DA 2018/321 comprises the staged erection of an extension to an existing Seniors Housing Development (Palm Lake Resort) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 comprising of 156 self-care dwellings, recreation facilities and associated car parking, infrastructure works, site filling and associated works at Lot 2 DP 1155600, 120 North Creek Road Ballina.</p> <p>The application has a CIV of \$37.8 million and is deemed to be regionally significant development. As such, the Northern Joint Regional Planning Panel (JRPP) is identified as the determining authority. Although this is a JRPP matter, Council is required to attend to the appeal. The application was lodged on 13 June 2018. Council has sought additional information in relation to the application through various items of correspondence.</p> <p>On 24 October 2018, the applicant lodged Class 1 proceedings in the Land and Environment Court for a deemed refusal of development application 2018/321. The proceedings were lodged on the basis of not requiring that Council prepare its facts and contentions as to the case, as the applicant would be preparing amended plans for the development. Council has received legal advice and Counsel has been briefed as to the Class 1 proceedings.</p> <p>On 9 November 2018, the applicant filed a notice of motion containing an amended proposal and a request for expeditious proceedings in relation to this matter.</p> <p>Council prepared its Facts and Contentions by 17 December 2018. The applicant failed to provide its response to the facts and contentions by the nominated date of 15 February 2019.</p> <p>The applicant subsequently sought leave on 16 April 2019 to further amend their application. An order for the applicant to pay Council's costs thrown away as a result of the amendment has also been made.</p> <p>The matter was set down for Hearing from 15 to 22 July 2019. The hearing was then extended to 19 and 20 August 2019.</p> <p>A decision on the matter was handed down on 4 October 2019 with the amended development application approved with conditions.</p> <p>The decision is now subject to an appeal to be heard in the NSW Land and Environment Court on 17 April 2020.</p>				

## 9.8 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Expenses to Date
CH Law	Ballina Shire Council v Ballina Sands	Ballina Local Court - Class 5 Prosecution Proceedings	41,000	41,000
<p><b>Comment</b></p> <p>Council resolved at the November 2018 Ordinary meeting to commence legal proceedings against Ballina Sands in relation to over extraction of sand from the Ballina Sands quarry located on Newrybar Swamp Road. Following the preparation and service of Court Attendance Notices on the quarry operators, the matter was listed for mention at Ballina Local Court on Thursday 14 February 2019. There was no appearance by the quarry operators however they were legally represented in Court. Council provided evidence that it would seek to rely on for the prosecutions to the quarry operators through their solicitors, McCartney Young Solicitors. McCartney Young sought and was granted an adjournment to consider the Council's evidence.</p> <p>A Plea of Not Guilty was initially entered. A pre-directions hearing was held on 15 May 2019 at which time Ballina Sands changed their plea to Guilty. The matter was set down for a formal Hearing on 26 July 2019. The formal hearing was vacated and Ballina Sands was sentenced to a Community Release Order to be of good behavior for two years and to pay fines totaling \$20,000. The matter has now been finalised.</p>				
CH Law	Wayne Millar v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge refusal of development application 2018/189	15,000	6,000
<p><b>Comment</b></p> <p>DA 2018/189 involves a proposal for a steel framed metal clad storage shed located on a residential lot at 4 Page Court Lennox Head. Council determined the application by way of refusal at the December 2018 Ordinary meeting.</p> <p>The matter was set down for a Section 34AA Conciliation and Hearing on 30 and 31 July 2019 in Ballina. The matter was, however, resolved in advance of the conciliation and hearing (by way of the granting of development consent) based on the applicant submitting revised plans that suitably addressed the concerns that formed the basis of the refusal of the application. This matter has now been finalised.</p>				
CH Law	Ardill Payne and Partners v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge refusal of development application 2017/707	45,000	46,000
<p><b>Comment</b></p> <p>DA 2017/707 involves a proposal for the demolition of an existing dwelling and ancillary structures, and construction of a new dwelling containing two storeys above ground level, a basement storey for carparking and storage, a swimming pool, and boundary fences on a residential lot at 5 Rayner Lane Lennox Head. Council determined the application by way of refusal at the August 2018 Ordinary meeting.</p> <p>The matter was set down for a Section 34AA Conciliation and Hearing on 12 and 13 September 2019 in Murwillumbah and Sydney. This matter was not resolved during the Conciliation Conference. The applicant subsequently prepared amended plans to which Council was satisfied addressed key issues. By agreement between both parties, the Court ordered the grant of development consent to the amended application. This matter has now been finalised.</p>				

## 9.8 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Expenses 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	100,000	122,000
<p><b>Comment</b></p> <p>The applicant has appealed the deemed refusal of three modification applications and an associated construction certificate application to DA 2016/184 for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A) as approved by the Court.</p> <p>An appeal has also been lodged against the deemed refusal of DA 2018/616 to undertake bulk earthworks across the site.</p> <p>The need to obtain separate approval for the bulk earthworks is a condition of the 2016/184 consent as ordered by the court.</p> <p>The applicant filed a notice of motion requesting for expeditious proceedings in relation to this matter.</p> <p>On 4 July 2019 the Court set the matter down for hearing on 31 January 2020 and 10-12 February 2020. The outcome of this hearing was that the bulk earthworks DA 2018/616 and the modification applications to DA 2016/184 were not capable of approval and the Applicant has been required to make all the changes required by Council.</p> <p>Furthermore, the Applicant has been required to withdraw the construction certificate application.</p>				
Parker Kissane	Stephen Plummer v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge refusal of development application 2018/546	30,000	0
<p><b>Comment</b></p> <p>DA 2018/546 involves a proposal for a change of use of the approved two bedroom manager's residence on the ground floor of unit 7 to tourist and visitor accommodation and to create an additional studio apartment within the office area of unit 7 at first floor level for residential use by the manager at the existing Lennox Holiday Apartment 20-21 Pacific Parade, Lennox Head.</p> <p>The building, plumbing and drainage works associated with the creation of the studio residential apartment had been completed prior to Council's initial inspection and determination of the application.</p> <p>In the absence of adequate information to support the proposed development and the works undertaken without the consent of Council the application was determined under delegation by way of refusal.</p> <p>The matter was set down for its first directions hearing on 16 September 2019. However, the Applicant withdrew its appeal prior to the first directions hearing.</p>				

## 9.8 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Expenses to Date
Parker 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	0
<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 Russelton Industrial estate.</p> <p>The application was granted consent by the Northern Region Planning Panel in November 2019.</p> <p>The matter is set down for the first directions hearing on 2 March 2020.</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	0
<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.</p> <p>The matter is set down for a S.34AA conciliation conference and hearing on 14 and 15 September 2020.</p>				
Parker Kissane	Veronesi v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2019/170.	100,000	
<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.</p> <p>In an attempt to have a number of outstanding issues satisfactorily resolved, the application has remained undetermined.</p> <p>The matter is set down for the first directions hearing on 3 March 2020.</p>				

### Legal / Resource / Financial Implications

This section provides an update on legal costs for recent years and for the year to date (mid-February 2020).

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

Description	2016/17	2017/18	2018/19	2019/20
Byron Highlander – DA 2017/557 (Function Centre)	0	2,800	9,500	0
Planners North / Northern Rivers Land Solutions – DA 2016/184 (CURA A), 2018/616	273,000	832,100	78,400	160,000
Skennars Head – DA 2017/244	0	1,100	31,100	0
Tara Downs – DA 2017/223	0	0	2,200	0
Ballina Sands – Newrybar Swamp Road	0	4,000	22,100	15,000
Northcott Crescent - Resource Management Facility	0	0	12,300	0
The Beach House	0	0	31,600	14,000
White (404 Old Byron Bay Road)	0	0	900	0
Michael Young – DA 2017/321	0	0	22,600	0
Ardill Payne – 5 Rayner Lane – DA 2017/707	0	0	9,300	37,000
Palm Lakes – DA 2018/321	0	0	256,600	461,000
Water Extraction – DA 2018/597	0	0	6,400	0
Page Court – Shed DA 2018/189	0	0	0	6,000
Seabreeze Caravan Park	25,000	104,500	0	0
Parrington Advice – DA 2016/140 – 47 Ellis Road	0	4,800	0	0
Complex Field – DA 2015/377 (51 Blue Seas Parade)	0	300	0	0
Quays Drive Advice – DA 2016/690	0	9,800	0	0
Retail Fuel – DA 2016/25	5,000	0	0	0
North Creek – Wall	6,000	0	0	0
Riveroaks / Ferngrove Consent	6,000	0	0	0
Fire Safety Statements	0	0	9,200	6,000
Misc including insurance and planning agreements	38,000	7,800	10,900	32,000
<b>Total Expenditure</b>	<b>353,000</b>	<b>967,200</b>	<b>503,100</b>	<b>731,000</b>
<b>Expenditure Budgets</b>	<b>167,500</b>	<b>1,005,000</b>	<b>220,000</b>	<b>622,000</b>
<b>Legal Budget – Surplus / (Overdrawn)</b>	<b>(185,500)</b>	<b>37,800</b>	<b>(29,300)</b>	<b>(109,000)</b>

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

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

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

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

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

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

The expenditure budget of \$622,000 is made up of \$550,000 for Development Services, \$61,000 for Building Services and \$11,000 for Environmental and Public Health.

## 9.8 Legal Matters - Update

In respect to a revised budget for 2019/20, the Financial Review report included later in this agenda includes a recommendation to increase the Development Services budget from \$550,000 to at least \$850,000, an increase of \$300,000.

### Contract Disputes

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

- Haslin Constructions – Ballina Wastewater Treatment Plant Design

Council has not awarded completion of this contract as the works are not considered to be defect free. The Contractor disputes this position and the issues were referred to Expert Determination. The Expert Determination report was decided substantially in Council's favour.

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

A separate report regarding this matter is included in this agenda. As per that report, this disputed 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 \$562,000 as per the following summary.

**Table Three – 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	96,100	423,000
Council staff travel, meals etc	1,300	100	2,000	1,100	4,500
Field staff time at the plant	2,800	1,300	0	700	4,800
Expert Determination	27,500	57,100	12,200	0	96,800
Misc including works / testing at plant	9,200	18,300	5,500	0	33,000
<b>Total</b>	<b>299,600</b>	<b>117,600</b>	<b>47,000</b>	<b>97,900</b>	<b>562,100</b>

These figures exclude office based staff time, which is not directly charged to the dispute.

- Ridgemill Pty. Ltd – Ballina Swimming Pool Electrical

Council issued Ridgemill with a letter of demand in respect to the additional costs to Council after Council relied on the advice of the designer in regards to the electrical infrastructure needs for both pool sites. Council has considered the response from Ridgemill and advised Ridgemill Council's position remains that Ridgemill did not provide the works and services as set out in the consultancy agreement. It would be very expensive to undertake litigation in respect to this matter and no further action is proposed.

### Consultation

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

**Options**

This report is provided for public information.

**RECOMMENDATION**

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

**Attachment(s)**

Nil

9.9 Financial Review - 31 December 2019

**Delivery Program**

Financial Services

**Objective**

To provide a quarterly review of the 2019/20 financial year budget based on the known results to 31 December 2019.

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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 second quarter of the 2019/20 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 variance as at 31 December 2019.

The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Office of Local Government (OLG).

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

Commentary on the variations is provided after the tables.

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

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

**Section Two - Capital Budget** - Outline the capital expenditure budgets.

**Section Three - Cash and Investment Statement** - Provide details on the projected movements in the cash reserve balances.

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



**Section Five - Contractors/Consultants/Legal Expenses** - Details specific expenses incurred and contracts entered.

**Section Six - Other – Proposed Amendment to Workforce Plan** - Discussion on the resourcing needs of the Building Services section of Council and recommends an amendment to the existing Workforce Plan.

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

**Section 1 – Operating Income and Expenditure**

*General Fund – Operating Income and Expenses*

This section deals with the General Fund operations.

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

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

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

Operating Income	Original Budget	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
<b>Planning and Environmental Health Division</b>							
Strategic Planning	170	170	0	170	11	181	38
Development Services	630	630	0	630	0	630	350
Building Services	1,570	1,570	0	1,570	330	1,900	992
Env and Public Health	483	669	0	669	0	669	364
Public Order	265	265	0	265	0	265	142
<b>Sub Total</b>	<b>3,118</b>	<b>3,304</b>	<b>0</b>	<b>3,304</b>	<b>341</b>	<b>3,645</b>	<b>1,887</b>
<b>Civil Services Division</b>							
Asset Management	313	315	0	315	0	315	118
Depot and Anc Building	0	0	0	0	0	0	0
Stormwater and Env Protect	485	488	0	488	0	488	402
Roads and Bridges	770	819	0	819	0	819	375
Ancillary Transport Services	761	1,511	0	1,511	2	1,513	419
RMS	783	783	0	783	0	783	521
Open Spaces	900	1,000	0	1,000	(1)	999	543
Fleet Mgmt and Workshop	238	238	0	238	0	238	122
Emergency Services	204	175	0	175	1	176	113
Quarries and Sandpit	67	67	0	67	0	67	47
Landfill and Resource Mgmt	2,102	2,192	0	2,192	145	2,337	3,279
Domestic Waste Mgmt	6,962	6,962	0	6,962	125	7,087	7,472
<b>Sub Total</b>	<b>13,585</b>	<b>14,550</b>	<b>0</b>	<b>14,550</b>	<b>272</b>	<b>14,822</b>	<b>13,411</b>
<b>Corporate and Community Division</b>							
Governance	28	28	0	28	0	28	30
Communications	15	15	0	15	(3)	13	29
Financial Services	257	257	0	257	(15)	242	77
General Purpose Revenues	29,770	29,977	0	29,977	1,030	31,007	27,063
Information Services	201	201	0	201	0	201	66
People and Culture	122	147	0	147	27	174	158
Property Management	2,615	2,615	0	2,615	8	2,623	1,710
Airport	7,174	7,174	0	7,174	(130)	7,044	3,679
Community Facilities	810	787	0	787	(66)	721	364
Library Services	81	166	0	166	0	166	166
Swimming Pools	1,069	1,069	0	1,069	0	1,069	642
Tourism	65	155	0	155	0	155	137
<b>Sub Total</b>	<b>42,207</b>	<b>42,591</b>	<b>0</b>	<b>42,591</b>	<b>852</b>	<b>43,443</b>	<b>34,120</b>
<b>Total Operating Income</b>	<b>58,910</b>	<b>60,445</b>	<b>0</b>	<b>60,445</b>	<b>1,465</b>	<b>61,910</b>	<b>49,417</b>

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

Operating Expenses	Original Budget	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
<b>Planning and Environmental Health Division</b>							
Strategic Planning	1,239	1,525	0	1,525	10	1,535	657
Development Services	1,739	2,068	0	2,068	300	2,368	1,359
Building Services	1,290	1,333	0	1,333	30	1,363	756
Env and Public Health	1,631	2,330	50	2,380	0	2,380	756
Public Order	574	574	0	574	12	586	328
<b>Sub Total</b>	<b>6,473</b>	<b>7,830</b>	<b>50</b>	<b>7,880</b>	<b>352</b>	<b>8,232</b>	<b>3,855</b>
<b>Civil Services Division</b>							
Asset Management	2,606	2,688	0	2,688	4	2,692	1,458
Depot and Anc Building Mgmt	1,938	1,915	0	1,915	3	1,918	1,044
Stormwater and Env Protection	1,008	1,031	0	1,031	0	1,031	335
Roads and Bridges	3,537	3,631	(5)	3,626	0	3,626	1,579
Ancillary Transport Services	1,983	2,734	5	2,739	4	2,743	1,548
Roads and Maritime Services	783	783	0	783	0	783	382
Open Spaces	4,260	4,517	0	4,517	30	4,547	2,130
Fleet Mgmt and Workshop	(1,129)	(1,125)	0	(1,125)	(212)	(1,337)	(525)
Emergency Services	540	518	0	518	(29)	489	266
Quarries and Sandpit	44	44	0	44	0	44	24
Landfill and Resource Mgmt	1,707	1,737	0	1,737	996	2,733	2,720
Domestic Waste Mgmt	6,606	6,966	0	6,966	(303)	6,663	3,788
<b>Sub Total</b>	<b>23,883</b>	<b>25,439</b>	<b>0</b>	<b>25,439</b>	<b>493</b>	<b>25,932</b>	<b>14,747</b>
<b>Corporate and Community Division</b>							
Governance	2,045	2,035	0	2,035	14	2,049	1,390
Communications	1,419	1,369	0	1,369	4	1,373	734
Financial Services	(4,974)	(5,019)	0	(5,019)	20	(4,999)	(2,418)
General Purpose Revenues	0	0	0	0	0	0	0
Information Services	3,109	3,386	0	3,386	0	3,386	2,315
People and Culture	156	234	0	234	27	261	650
Property Management	1,561	1,633	(146)	1,487	24	1,511	794
Airport	5,202	5,202	0	5,202	(224)	4,978	2,405
Community Facilities	1,920	2,010	0	2,010	19	2,029	1,050
Library Services	1,539	1,606	0	1,606	0	1,606	1,129
Swimming Pools	1,834	1,834	0	1,834	0	1,834	832
Tourism	524	566	0	566	0	566	248
<b>Sub Total</b>	<b>14,335</b>	<b>14,856</b>	<b>(146)</b>	<b>14,710</b>	<b>(116)</b>	<b>14,594</b>	<b>9,129</b>
<b>Total Operating Expenses</b>	<b>44,691</b>	<b>48,125</b>	<b>(96)</b>	<b>48,029</b>	<b>729</b>	<b>48,758</b>	<b>27,731</b>
<b>Result Before Dep</b>	<b>14,219</b>	<b>12,320</b>	<b>96</b>	<b>12,416</b>	<b>736</b>	<b>13,152</b>	<b>21,686</b>
Depreciation and Non Cash	14,779	14,779	0	14,779	0	14,779	7,390
<b>Net Operating Result</b>	<b>(560)</b>	<b>(2,459)</b>	<b>96</b>	<b>(2,363)</b>	<b>736</b>	<b>(1,628)</b>	<b>14,297</b>

## General Fund Working Capital Forecast

Operating Expenses	Original Budget	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
Working Capital Surplus / (Deficit)	(185,900)	(191,800)	0	(191,800)	1,600	(190,200)	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.

## Comments - General Fund

The **forecast operating result as at December** is a loss of \$1.6m, which is an improvement of \$832,000 from the forecast at September of a loss of \$2.4m. This “improvement” is distorted by the receipt of a \$1m bushfire recovery grant, which improves the operating income (with no corresponding increase in operating expense).

That income has been transferred to a reserve for future use. Had that grant not been included, the operating result would in fact show a deterioration.

The estimated movement in **unrestricted working capital** has improved slightly, from an anticipated deficit of \$191,800 to an anticipated deficit of \$190,200.

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

### **General Fund - Operating Revenues**

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

##### *Strategic Planning*

The budgeted income for rezoning fees/DCP amendments has increased by \$10,000, to \$35,000, based on income received to date.

##### *Building Services*

There has been a sustained and significant upturn in building activity within the shire.

This is discussed further in Section Six of this report, which provides details of the historical income for this section.

Based on the trending to date, together with the view that this will be sustained past the end of this financial year, it is proposed that the total budgeted income figure be increased by \$330,000 to \$1,900,000.

##### *Public Order*

There is a nil net impact of proposed budget adjustments.

The budget for parking fines income has increased by \$10,000 to \$165,000, based on trend.

The budget for companion animal registrations has decreased by \$10,000 to \$42,000, also based on trend. The 2019/20 may have been set too high, in view of the prior year actual of \$40,000 achieved.

#### ***Civil Services Division***

##### *Landfill and Resource Management*

Income of \$100,000 has been received for the Return and Earn (CDS) Scheme.

Forecast income from waste disposal inert fees has increased by \$40,000, to a revised forecast of \$740,000, based on trending to date.

Forecast income from business waste management charges has increased by \$7,000 based on income levied.

The impacts of the above overall increase in operating income is more than offset by significant variations to operating expenses for the Landfill and Resource Management business unit, discussed later in this report.

The net impact of proposed adjustments to operating budgets is a deterioration of \$851,000 to the bottom line operating result.

### *Domestic Waste Management*

Forecast income from annual charges has increased by \$125,000 based on income levied.

### **Corporate and Community Division**

#### *Financial Services*

The forecast income budget for legal cost recovery has reduced by \$15,000, to \$56,000.

The final 2018/19 income recovery came in at \$37,000, and it would appear from last year's history and recovery for the year to date that the budget needs revision down.

This represents a continued improvement in the level of outstanding rates debtor balances, lessening Council's associated legal costs and the associated recovery of costs.

This improvement is reflected in the Council's outstanding debt ratio, which has shown improvement year on year and is very favourable in comparison to most NSW Councils.

#### *Financial Services - General Purpose*

A Federal Government Bushfire Recovery Grant of \$1m has been provided to Council. This funding can be broadly utilised for various things, including future proofing.

This amount has been transferred to a specific reserve, awaiting Council's determination of how to allocate these funds.

The budget for Rates revenue has increased by \$30,000, based on actual rates levied to date, bringing the total gross rates income to \$24.75m.

#### *People and Culture*

The income budget for maternity leave contributions has increased by \$16,000, to \$26,000, based on contributions received to date.

The income budget for long service leave contributions has increased by \$8,000, to \$48,000, based on contributions received to date.

An offsetting increase is proposed to the employee entitlement expense budgets.

*Property Management*

Forecast income for Wigmore Arcade lease income has increased \$13,200, to a revised income budget of \$515,000.

Forecast income for residential property leases has decreased by \$5,000, to \$25,000, as Council only holds one such property now.

*Ballina Byron Gateway Airport*

Forecast operating income has decreased by \$130,000 in total.

The income budget for the mandated security charges has decreased by \$100,000 to \$1,411,000.

The income budget for airline contribution to CAGRO expenditure has decreased by \$30,000 to \$330,000.

Revisions to a number of expenditure budgets for the airport are discussed later in this report.

The net impact of proposed adjustments to operating budgets is an improvement of \$94,000 to the airport bottom line.

*Community Facilities*

Revisions are proposed to the forecast incomes for the Ballina Indoor Sports Centre (BISC), the Lennox Head Cultural & Community Centre (LHCC) and the Alstonville Leisure & Entertainment Centre (ALEC).

The adopted budgets for the new BISC, which opened in October 2019, were preliminary and best estimate at the time.

Income budgets totalling \$173,000 in total were proposed, consisting of stadium income of \$95,000, casual room hire and equipment of \$60,000 and kiosk sales of \$18,000.

A review of operations for the BISC to date proposes revised budgets for stadium income of \$85,000, casual room hire and equipment of \$10,000 and Kiosk sales (vending machines) of \$2,000.

This represents a total downward revision of \$76,000, from \$173,000 to \$97,000, for 2019/20 and reflects the timing of the opening of the facility, as well as usage.

The forecast income for LHCC has decreased by \$10,000, to a revised total income of \$65,000.

The forecast income for ALEC has decreased by \$10,000, to a revised total income of \$30,000.

Gallery grant income of \$26,900 and \$5,000 has been raised for FACS Youth Opportunity and for CASP Regional Art, respectively.

Corresponding expenditure budgets have been raised for these amounts.

## **General Fund - Operating Expenses**

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

#### *Strategic Planning*

The budget for the Lennox Head Village Renewal has increased by \$10,000, to \$47,000. This has been funded from Strategic Planning reserves.

#### *Development Services*

Discussion of legal matters and related legal cost expenditure was provided within the 30 September 2019 Financial Review report provided to the November ordinary meeting. The Development Services budget was increased at that time from \$200,000 to \$550,000.

As at the date of writing this report, the legal costs incurred and invoiced amount to approximately \$680,000, with further known costs still to be incurred.

The outcome in relation to Council's pursuit of costs recovery for the CURA A matter is still unknown.

Based on this information it is proposed that the legal budgets be increased by a further \$300,000.

Of this increase, an amount of \$133,300 has been funded from the PEHD Salaries and Legals Reserve, utilising all of the remaining balance of this reserve.

#### *Building Services*

As discussed further in this report in Section Six of this report, the current level of building activity is placing a significant strain on staff resources.

A proposal included in this report is to approve an increase of one additional Building Surveyor, and vehicle, to the Workforce Plan.

Corresponding to this increased level of resource for the later part of this financial year, the budget for Building Services Legal salary expenses has increased by \$30,000, to \$1,243,000.

#### *Public Order*

A budget of \$12,000 has been raised for internal motor vehicle costs, being costs associated with a vehicle used by Council's ranger.

### ***Civil Services Division***

#### *Asset Management*

The budget for sundry office administration has increased by \$4,000 to \$15,000.

A large part of the original adopted budget was transferred to the Information Services section in the September quarterly financial review, with the centralisation of printing costs.

Further review of the remaining budget for the Asset Management Section has identified that it was insufficient to meet ongoing needs.

### *Depot and Ancillary Building Management*

The budget for depot cleaning costs has increased by \$3,000, to \$25,000.

This required increase is identified from a review of costs for the year to date and a review of total costs for the previous year indicating that the adopted budget was inadequate.

### *Open Spaces*

A new operating budget of \$22,400 has been raised for the Hutley Drive North compensatory (vegetation) works, with this budget transferred from the Roads section Hutley Drive North project.

The Hutley Drive North works are section 7.11 funded.

The budget for Crawford House has increased by \$5,000 for the current year only, to cover part of the costs incurred for the installation of a new fire shutter.

### *Fleet Management and Workshop*

Plant charged to works and internal income for motor vehicles are both included as negative expenditures.

The budget for plant charged to works has increased by \$200,000, to a revised forecast of \$3,900,000.

This increase is based on trend to date.

The budget for internal income for staff motor vehicles has increased by \$12,000, for plant hire income for a vehicle provided for the Public Health section.

### *Emergency Services*

The expenditure budget for the Emergency Services Levy (ESL) has decreased by \$37,800.

All NSW Councils had been previously advised of increases to the ESL for 2019/20 and subsequent years, attributable to new workers compensation arrangements for fire fighters. This increase was subsequently allowed for in the 2019/20 adopted budgets.

The NSW Government recently announced that the Government will now fund the first year of this increase and has remitted the amount of \$37,800 back to Council.

The Office of Local Government advises that the Government is exploring options to better manage the impacts of the ESL on councils' budgeting cycles. It is unknown at this stage as to the impact for future years.

The budget for Council's contribution to the RFS headquarters has increased by \$8,000, to \$12,000.

The revised budget meets the actual expenditure incurred for the 2019/20 year and is consistent with the previous year.

### *Landfill and Resource Management*

Forecast costs for transport of mixed waste have increased by \$560,000, to \$1,630,000.

Forecast costs for bulk waste exportation construction and demolition waste have increased by \$320,000, to \$805,000.

The cost of transport and disposal to South East Queensland landfill has significantly increased due to the introduction of a \$75 per tonne landfill levy as of 1 July 2019.

The actual realised budgetary impact of this levy has been remodelled to provide the above revised forecasted expenditure for 2019/20.

The forecast income for waste disposal (council) fees has decreased by \$230,000, from \$1,900,000 to \$1,670,000.

This item is included as a negative within expenditure for LRM. This adjustment also has a corresponding impact on the Domestic Waste Management business unit.

Forecast costs for green waste loading and transportation has decreased by \$90,000, to a revised budget of \$130,000.

This reflects operational savings realised from the diversion of garden waste material to a local processing facility.

The operating budget of \$50,000 for remediation works for the Wardell Tip has been deferred to the following year.

The waste management salaries budgets have increased by \$26,000, to \$115,000, to reflect the actual salary expenditure under new branch structure.

### *Domestic Waste Management*

Plant charged to works is included as a negative expenditure.

This budget has increased by \$240,000, to \$900,000, based on trend.

It was noted earlier in this report, within the Landfill and Resource Managements section, that forecast income for waste disposal (council fees) had been revised downward.



The above has a corresponding impact on the expenditure of the Domestic Waste Management business unit.

The forecast expenditure for kerbside collection tip fees has been revised down by \$230,000, to \$1,670,000.

Forecast expenditure budgets for waste bin and recycle bin purchases have increased by \$60,000 and \$37,000, respectively.

These increased budgets are due to the increased volume of bin repairs and replacements associated with the educational sticker application project.

A new expenditure budget of \$70,000 has been raised for the kerbside bin composition audit.

This budget is funded from the restricted reserve.

### ***Corporate and Community Division***

#### *Governance*

The budget for audit fees has been increased by \$14,000 to cover additional fees incurred for the audit of the year ended 30 June 2019, primarily due to additional audit time associated with the asset revaluations in that year.

#### *Communications*

The budget for sundry expenses has increased by \$4,000, to \$20,000.

This budget is required to cover costs including \$5,500 for subscription for delegations database, \$3,500 for subscription for legislation compliance database, \$4,000 for copyright licences, as well as numerous other sundry expenses.

#### *Financial Services*

Salaries budgets have been increased by \$50,000, to \$1,163,000.

The majority of this expenditure is in relation to a contract position, with additional costs incurred to cover across a maternity leave position.

Additional staff time has also been incurred in implementation of the new accounts payable workflow, which is expected to provide efficiencies to the council as a whole in the longer term.

Of the above increase to budget, \$20,000 is recouped through the overhead charges (shown as a negative expense within Financial Services) to the water and wastewater funds.

The expenditure budget for debt recovery and legal expenses has been further decreased by \$10,000, with continued improvement in the level of outstanding rates debtor balances.

*People and Culture*

An increase of \$24,000 to the employee entitlement expense budgets to offset the increased long service leave and maternity leave contributions received.

*Property Management*

The maintenance budget for the 89 Tamar St building has increased by \$7,000 to cover costs incurred for emergency works due to falling water pipes.

The advertising budget has increased by \$8,000, to \$9,000, for this year only.

This additional budget is to cover expenditure incurred for new signage at the park.

The general maintenance budget has increased by \$8,000, to \$14,000. Current year expenditure includes repairs to the hot water system and air conditioning.

The above increases are offset partially by a reduction of \$5,000 to the rates budget, which was higher than required.

For the Flat Rock Tent Park, a net increase of \$10,000 to operating budgets is proposed.

*Ballina Byron Gateway Airport*

Forecast operating expense has decreased by \$224,000 in total.

The expenditure budget for security costs has decreased by \$200,000 to \$1,311,000.

The expenditure budget for CAGRO has decreased by \$25,000, to \$380,000.

The insurance budget has decreased by \$25,000 to \$31,000, as Council is no longer paying separately for the Major Airport Owner/Operator insurance.

Offsetting partially above increases, the budget for cleaning contracts has increased by \$25,000, to \$335,000.

*Community Facilities*

Revisions are proposed to the forecast expenditures for the Ballina Indoor Sports Centre (BISC) and the Alstonville Leisure & Entertainment Centre (ALEC).

Forecast expenditure for BISC is increased by a net of \$6,000.

The cleaning contracts budget has increased by \$20,000 to \$40,000, as the adopted budget has proven to be grossly under requirements.

Expenditure associated with kiosk sales has decreased from \$15,000 to \$1,000, consistent with the decrease in budgeted kiosk income.

Forecast expenditure for ALEC is increased by \$11,000.

## 9.9 Financial Review - 31 December 2019

This increase is to the cleaning contracts for the current year budget, not ongoing, as it represents a catch-up of late billing by the contractor of invoices from the 2018/19 year.

### 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	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
Operating Income	12,951	13,121	0	13,121	405	13,526	5,911
Operating Expenses (excl. dep)	10,485	10,489	0	10,489	75	10,564	5,663
<b>Operating Result Before Dep</b>	<b>2,466</b>	<b>2,632</b>	<b>0</b>	<b>2,632</b>	<b>330</b>	<b>2,962</b>	<b>248</b>
Depreciation and Non-cash	1,500	1,500	0	1,500	0	1,500	750
<b>Net Operating Result</b>	<b>966</b>	<b>1,132</b>	<b>0</b>	<b>1,132</b>	<b>330</b>	<b>1,462</b>	<b>(502)</b>

The **forecast operating position** (inclusive of depreciation) **as at December** is a surplus of \$1,462,000, which is an improvement of \$330,000 from the surplus as at September of \$1,132,000.

Forecast operating income has increased by \$405,000, with the major adjustments being increases to residential consumption and non-residential consumption.

Review of water consumption shows this income is significantly trending up and consumption levels are much higher than the previous financial year.

The budget for residential water consumption is increased by \$300,000, to \$5,869,000.

Residential consumption for the first two quarters of 2019/20 is 699,300 KI, compared to 561,300 KI for the same period of 2018/19.

This is an increase in volume of almost 24.5% from the previous year.

The budget for non-residential water consumption is increased by \$100,000, to \$2,146,000.

Non-residential consumption for the first two quarters of 2019/20 are 194,100 KI, compared to 167,600 KI for the same period of 2018/19.

This is an increase in volume of almost 15.8% from the previous year.

The above budget adjustments are quite conservative, with current trending indicating that the actual income to be received for this year may be much higher and forecasts will be reviewed again next quarter.

The final two quarters may trend back downwards due to the impact of water restrictions, which has now been followed by significant rain.

The forecast for tapping fees has increased by \$50,000, to \$419,500, based on trending.

The budget for plant charged to works has decreased by \$45,400, to a revised forecast of \$175,000, also based on trend to date.

Forecast expenditure for mains maintenance and other maintenance have decreased by \$100,000 and \$35,000, to revised budgets of \$380,000 and \$100,000, respectively.

### 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	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
Operating Income	19,539	20,039	0	20,039	191	20,230	17,036
Operating Expenses (excl. dep)	13,833	13,840	0	13,840	(389)	13,451	6,274
<b>Operating Result Before Dep</b>	<b>5,706</b>	<b>6,199</b>	<b>0</b>	<b>6,199</b>	<b>580</b>	<b>6,779</b>	<b>10,762</b>
Depreciation and Non-cash	3,969	3,969	0	3,969	0	3,969	1,985
<b>Net Operating Result</b>	<b>1,737</b>	<b>2,230</b>	<b>0</b>	<b>2,230</b>	<b>580</b>	<b>2,810</b>	<b>8,777</b>

The **forecast operating position** (inclusive of depreciation) **as at December** is a surplus of \$2,810,000 which is an improvement of \$580,000 from the surplus as at September of \$2,230,000.

Forecast operating income has increased by \$190,000, all of this increase being for user charges.

The larger components of this increase was an increase of \$150,000 for the residential recycled water consumption, with usage levels mirroring that of the potable water consumption increases in the water fund.

The forecast for non-residential wastewater usage charges has increased by \$30,000, based on trend to date.

Forecast operating expenditure has decreased by \$390,000.

The forecast expenditure for energy costs, a very significant cost for the wastewater fund, has decreased by \$150,000, to \$1,066,900.

Forecast expenditure for pumping stations maintenance has decreased by \$100,000, to \$800,000.

These savings may reflect the upgrades completed in recent years.

Forecast expenditure for treatment operations and treatment scheduled maintenance have decreased by \$79,000 and \$70,000, to revised budgets of \$1,300,000 and \$600,000, respectively.

**Section Two – Capital Budget**

This section of the report looks at capital expenditure.

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

Capital Funding / Expenditure	Original Budget	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
<b>General Fund Funding</b>							
General revenue	6,600	6,130	(382)	5,748	0	5,748	
Reserves	17,213	22,088	(2,856)	19,232	(41)	19,191	
Loans	15,520	11,769	(2,000)	9,769	300	10,069	
Section 7.11 contributions	5,101	5,264	(205)	5,059	261	5,320	
Grants and contributions	11,102	9,471	(446)	9,025	260	9,285	
<b>Total Funding</b>	<b>55,536</b>	<b>54,722</b>	<b>(5,888)</b>	<b>48,834</b>	<b>780</b>	<b>49,614</b>	
<b>General Fund Expenditure</b>							
<b>Planning and Environmental Health Division</b>							
Environment and Public Health	700	868	(550)	318	0	318	124
Public Order	40	40	0	40	0	40	14
<b>Civil Services Division</b>							
Asset Management	0	20	0	20	0	20	3
Depot and Anc Building Mgmt	920	881	0	881	0	881	31
Stormwater and Env Protection	765	851	0	851	0	851	215
Roads and Bridges	22,022	21,858	75	21,933	561	22,494	9,975
Ancillary Transport Services	3,529	2,612	0	2,612	(23)	2,589	1,048
Water Transport and Wharves	41	51	0	51	0	51	0
Roads and Maritime Services	185	185	0	185	0	185	66
Open Spaces – Parks/Reserves	2,494	2,944	(2,212)	732	0	732	179
Open Spaces – Sporting Fields	2,700	3,516	0	3,516	260	3,776	1,805
Fleet and Plant	1,246	3,114	0	3,114	31	3,145	286
Waste Management	2,475	2,600	0	2,600	(120)	2,480	97
<b>Corporate and Community Division</b>							
Information Services	20	20	0	20	20	40	1
Property	10,364	7,470	(1,984)	5,486	0	5,486	3,159
Flat Rock Tent Park	100	179	0	179	50	229	116
Ballina-Byron Gateway Airport	3,600	3,562	(567)	2,995	0	2,995	1,626
Community Facilities	4,227	3,797	(650)	3,147	0	3,147	843
Swimming Pools	80	126	0	126	0	126	376
Community Gallery	28	28	0	28	0	28	12
<b>Total Capital Expenditure</b>	<b>55,536</b>	<b>54,722</b>	<b>(5,888)</b>	<b>48,834</b>	<b>780</b>	<b>49,614</b>	<b>19,975</b>

**General Fund**

The capital works program was reviewed at the January 2020 Ordinary meeting.

Further adjustments to capital budgets are as follows.

**Corporate and Community Division**

*Information Services*

There is an increase of \$20,000 to capital budgets to fund building works completed on the ground floor of the administration building.

These works were predominantly undertaken to accommodate additional workspaces, whilst also improving meeting room spaces.

These works were funded from the Information Services reserve.

*Property Management – Flat Rock Tent Park*

There is a proposed increase of \$50,000 to capital budgets, bringing the revised budget to \$228,600.

Works on the residence have been completed. Works to the amenities building that will include ramp access have now been costed.

Due to requirements for essential services within the Park, an additional three fire hose reels were installed as part of the capital works.

**Civil Services Division**

*Roads and Bridges*

Budgets increased by a net total of \$560,600.

The more significant components of this are the River Street Four Lane upgrade of \$410,000, which is s7.11 funded, and an increase to the River Street Beautification of \$300,000, which is loan funded.

A budget of \$23,000 has been transferred from the Ancillary Transport Services section, with the above increases offset by a transfer of \$22,400 to the Vegetation Management operating budgets.

The changes are as follows:

Description of Works	Adjustment (\$)	Comments
River St 4 Lane Upgrade Concept Design Preconstruction	+50,000	Additional budget of \$50,000 for concept design preconstruction, revising the existing 2019/20 budget to \$150,000. Funded from s7.11.
River St 4 Lane Upgrade Stage 2 Preconstruction	+210,000	Revision of River St 4 Lane Upgrade timing of works, with preconstruction phases for Stages, 2, 3 and 4 brought forward to 2019/20. Funded from s7.11.
River St 4 Lane Upgrade Stage 3 Preconstruction	+120,000	Revision of River St 4 Lane Upgrade timing of works, with preconstruction phases for Stages, 2, 3 and 4 brought forward to 2019/20. Funded from s7.11.
River St 4 Lane Upgrade Stage 4 Preconstruction	+30,000	Revision of River St 4 Lane Upgrade timing of works, with preconstruction phases for Stages, 2, 3 and 4 brought forward to 2019/20. Funded from s7.11.
River St Beautification	+300,000	Additional budget of \$300,000. Revised budget of \$2,560,100. Funded by an increase to borrowings, from initially approved loan of \$2,700,000 to revised loan of \$3,000,000.
Howards Rd Seg 40	+37,000	Additional budget of \$37,000. Revised budget \$87,000. \$10,000 of the additional budget funded from Marine Estate Management Strategy; Budget of \$23,000 transferred from Ancillary Transport Services section; Budget of \$4,000 transferred from Cumbalum Rd Seg 40.
Cumbalum Rd Seg 40	-4,000	Transfer of budget to Howards Rd Seg 40
Cherry St / Fox St	+5,000	Additional budget of \$5,000. Revised budget \$15,000.
Urban Rd Heavy Patching	-5,000	Transfer of budget to Cherry St / Fox St. Revised budget \$492,000.
Grays Lane Seg 20	+33 000	New budget, \$33,000 funded from Marine Estate Management Strategy.
Gap Rd Seg 20	+55,000	New budget, \$55,000 funded from Marine Estate Management Strategy.
Howards Rd Seg 20	+64,000	New budget, \$64,000 funded from Marine Estate Management Strategy.

## 9.9 Financial Review - 31 December 2019

Marine Estate Management Strategy (unallocated)	-162,000	Allocation of funds for projects noted above. Revised (unallocated) budget of \$269,200.
Hutley Drive Northern Connection	-22,400	Transfer of funds to Vegetation Management operating budgets, for North Hutley Drive compensatory works. Revised budget \$4,407,800.
Tamarind Dr Nth Ck / Kerr St – 4 lanes	-150,000	Deferral of budget, revised budget for 2019/20 of \$50,000. Funded from s7.11.
<b>Total</b>	<b>+560,600</b>	

### Ancillary Services

Budgets decreased by a total of \$23,000, representing a transfer of budget to the Roads and Bridges section above.

The changes are as follows:

Description of Works	Adjustment (\$)	Comments
Freeborn Place, Alstonville	-23,000	Transfer of budget to Roads and Bridges section. Revised budget \$4,000.
<b>Total</b>	<b>+23,000</b>	

### Open Spaces – Sporting Fields

A new budget of \$260,000 is proposed for the amenities at the Kingsford Smith Park. Insurance proceeds of \$333,000 are to be received by Council following the destruction of the previous facilities by fire.

Of these proceeds, \$260,000 is proposed to be dedicated to the amenities, with the remaining \$73,000 placed into the sporting fields reserve for future works to be determined.

### Fleet and Plant

Additional budget of \$30,600 raised for plant purchases, for the purchase of vehicle for airport management. This is funded from the Airport reserve.

## Water Fund

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

Capital Funding / Expenditure	Original Budget	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
<b>Water Fund Funding</b>							
Reserves	4,364	4,568	(1,719)	2,849	0	2,849	
Section 64 contributions	855	1,100	170	1,270	0	1,270	
<b>Total Funding</b>	<b>5,219</b>	<b>5,658</b>	<b>10</b>	<b>5,668</b>	<b>0</b>	<b>5,668</b>	
<b>Water Fund Expenditure</b>							
Main Renewal	713	692	(219)	473	0	473	97
Reservoirs	475	548	0	548	0	548	0
Pressure Management	0	0	0	0	0	0	0
Water pump and bores	665	910	170	1,080	0	1,080	364
Trunk mains	540	425	0	425	0	425	359
Treatment Plant	1,857	1,857	(1,330)	527	0	527	115
Plant	0	0	0	0	0	0	0
Connections	490	490	0	490	0	490	254
Other	479	746	(170)	576	0	576	318
<b>Total Capital Expenditure</b>	<b>5,219</b>	<b>5,668</b>	<b>(1,549)</b>	<b>4,119</b>	<b>0</b>	<b>4,119</b>	<b>1,507</b>

The water capital works was reviewed at the January 2020 Ordinary meeting.

Further adjustments to capital budgets are as follows.

Description of Works	Adjustment (\$)	Comments
Pipeline Replacement Burnett St	+120,000	New budget, funded from Renewals Recurrent Budget.
Realignment of water main Lake Ainsworth	+30,000	New budget, funded from Renewals Recurrent Budget.
Renewals Recurrent Budget	-150,000	Transfer of budgets to above projects. Revised budget \$50,000.
<b>Total</b>	<b>Nil</b>	

### Wastewater Fund

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

Capital Funding / Expenditure	Original Budget	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget	Actual to Dec
<b>Wastewater Fund Funding</b>							
Reserves	4,077	3,921	(766)	3,155	0	3,155	
Section 64 contributions	2,761	2,761	(70)	2,691	0	2,691	
<b>Total Funding</b>	<b>6,838</b>	<b>6,682</b>	<b>(836)</b>	<b>5,846</b>	<b>0</b>	<b>5,846</b>	
<b>Wastewater Fund Expenditure</b>							
Pumping stations	1,708	1,717	(286)	1,431	0	1,431	170
Treatment Plants	2,280	2,056	(90)	1,966	0	1,966	112
Trunk Mains	95	95	(95)	0	0	0	0
Mains renewals	1,371	1,374	(89)	1,285	0	1,285	770
Service Connection	60	60	(60)	0	0	0	0
Plant	282	340	0	340	0	340	0
Reuse program	891	889	(216)	673	0	673	0
Other	151	151	0	151	0	151	0
<b>Total Capital Expenditure</b>	<b>6,838</b>	<b>6,682</b>	<b>(836)</b>	<b>5,846</b>	<b>0</b>	<b>5,846</b>	<b>1,052</b>

The wastewater capital works program was reviewed at the January 2020 Ordinary meeting.

No further adjustments are proposed.

### Section Three – Cash and Investment Statement

The next table shows the projected (30 June 2020) externally and internally restricted reserves.

#### Forecast Restricted Reserves as at 30 June 2020 (\$'000)

Description	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget
<b>Externally Restricted</b>					
Section 7.11	10,842	381	11,223	(410)	10,813
Domestic Waste Management	1,147	0	1,147	428	1,575
Section 64 Water	9,891	(170)	9,721	0	9,721
Water	8,549	1,719	10,268	330	10,598
Section 64 Wastewater	6,078	70	6,148	0	6,148
Wastewater	1,532	766	2,298	580	2,878
<b>Total Externally Restricted</b>	<b>38,039</b>	<b>2,766</b>	<b>40,805</b>	<b>928</b>	<b>41,733</b>
<b>Internally Restricted</b>					
Employee Leave Entitlements	2,994	0	2,994	0	2,994
Financial Assistance Grant	2,339	0	2,339	0	2,339
Insurance Reserve	151	0	151	0	151
Community Infrastructure Reserve	3,181	(40)	3,141	(8)	3,133
Property Development Reserve	984	146	1,130	(15)	1,115
Wigmore Arcade	386	0	386	0	386



## 9.9 Financial Review - 31 December 2019

Description	Sept Budget	Approved Changes	Current Budget	Changes for Approval	Revised Budget
Flat Rock Tent Park	410	0	410	(60)	350
Crown Properties Rental	91	0	91	0	91
Council Elections	200	0	200	0	200
Airport	1,121	567	1,688	63	1,751
Community Centre Halls	52	0	52	0	52
Swimming Pools Capital	(0)	0	(0)	0	0
Ballina Indoor Sports Centre	(78)	0	(78)	0	(78)
Library Special Projects	133	0	133	0	133
Other Corporate and Community	674	650	1,324	(20)	1,304
Strategic Planning	341	0	341	(10)	331
Sec 7.11 Plan Reviews	365	0	365	0	365
Shaws Bay / Lake A Mgmt Plans	39	200	239	0	239
PEHD Salaries and Legal	133	0	133	(133)	0
Richmond River Mgmt Plan	98	0	98	0	98
Other Planning and Env Health	179		179	(0)	179
Vegetation Grants	49	0	49	0	49
Open Spaces	85	1,812	1,897	73	1,970
Boat Ramps and Infrastructure	135	0	135	0	135
Plant Renewal/Replacement	65	0	65	212	277
Quarries	880	(50)	830	0	830
Cemeteries	405	0	405	0	405
Bushfires Recovery (new)	0	0	0	1,000	1,000
Admin Centre and Depot	120	0	120	0	120
Landfill and Resource Mgmt	719	0	719	(731)	(12)
Ancillary Footpaths	480	0	480	0	480
Roadworks	2,454	(35)	2,419	(0)	2,419
Bypass Funds	3,464	0	3,464	0	3,464
Canal Dredging	144	0	144	0	144
Stormwater capital	153	0	153	0	153
Stormwater and Env Mgmt Plans	330	0	330	0	330
Other Civil	168	0	168	0	168
<b>Total Internally Restricted</b>	<b>23,442</b>	<b>3,250</b>	<b>26,692</b>	<b>371</b>	<b>27,062</b>
<b>Total Restricted</b>	<b>61,480</b>	<b>6,016</b>	<b>67,496</b>	<b>1,299</b>	<b>68,795</b>

A critical figure in this table is that the LRM budget is forecast to be overdrawn as at 30 June 2020.

This highlights the precarious financial position of LRM following changes in transport and disposal costs and Council needs to be mindful of this when considering changes to service levels such as “free vouchers”.

### Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for December 2019, funds invested amounted to \$83,038,300. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 31 December the amount of \$5,581,497.
4. Actual year to date cash and investments amounted to \$88,619,797 at 31 December 2019.

This amount includes cash at bank of \$5,581,497 and funds invested of \$83,038,300 which has been reconciled to bank statements and investment reports.

**Comment on Cash and Investment Position**

The changes proposed in this report increase the reserves by a net \$1,299,000, resulting in the current forecast restricted reserves of \$68.795 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 below.

*Section 7.11*

There is a net decrease of \$410,000 from section 7.11 reserves, as described in the Roads and Bridges capital budgets of this report.

*Domestic Waste Management*

There is an increase of \$428,000 to this reserve representing the increase from operating surplus.

*Water Reserves*

Net reserves have been increased by \$330,000 the net of adjustments made to operating budgets within this report.

*Wastewater Reserves*

Net reserves have been increased by \$580,000 being the net of adjustments made to operating budgets within this report.

*Flat Rock Tent Park*

There is a decrease of \$60,000 to this reserve, with \$10,000 being from an increase to operating budgets and \$50,000 being from an increase to capital expenditure budgets.

*Airport*

There is a net increase of \$63,000 to the reserves with \$94,000 from changes to the operating budgets, offset by a transfer of \$31,000 to the Fleet and Plant section for car purchase for airport management.

*Other Corporate and Community Reserves*

An amount of \$20,000 from the Information Services reserve has been utilised for capital expenditure for building works.

*Salaries and Legals Reserve*

The balance of this reserve, being \$133,300 had been used to fund towards the increase in the legals expenditure budget.

*Other Open Spaces*

As noted in the Open Spaces-Sporting Fields Capital Budgets section of this report, insurance proceeds were received in relation to the Kingsford Smith Park.

Of the proceeds received, \$73,000 has been placed into reserve for future works yet to be determined.

*Plant Renewal/Replacement*

The balance of this reserve has increased by \$212,000, being the improvement in the operating result.

*Bushfires Recovery*

The grant funding of \$1,000,000 received has been placed into this (new) internal reserve.

*Landfill and Resource Management (LRM)*

There is a net decrease of \$731,000 to this reserve being a deterioration in the operating result of \$851,000, offset by a reduction to capital budgets of \$120,000.

This reserve has gone into negative, to the amount of \$12,000.

**Section Four - Key Performance Indicators**

This section of the report takes selected financial benchmarks and compares the 30 June 2018 and 2019 ratios with the forecast at December to 30 June 2020.

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

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

**Key Performance Indicators - Description**

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

Measured: as a ratio

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

Indicator type: Financial Position

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

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

Measured: as a ratio

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

Indicator type: Financial Performance

Benchmark: = > 0: 1 (NSW Code of Accounting Practice)

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

Measured: as a ratio

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

Indicator type: Financial Position

Benchmark: >2:1 (NSW Code of Accounting Practice)

**Benchmark Indicators – General Fund**

1. **Unrestricted Current Ratio – General Fund**

Benchmark: >1.5:1

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
4.60:1	3.11:1	1.88:1
Pass	Pass	Pass

**Comment**

The General Fund is expected to meet this benchmark. Movements in the ratio reflect timing of loans to be drawn, which impacts on liabilities.

2. **Operating Performance Ratio – General Fund**

Benchmark: >0

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
0.41%	3.11%	-1.88%
Pass	Pass	Fail

**Comment**

This is a key ratio for “Fit for the Future” assessments and has historically been a difficult benchmark to achieve. The ratio is affected by many variables. The strategy to improve this ratio is to continue to closely monitor, maintain and even reduce operating expenses and increase income. The ratio is expected to be negative in 2019/20, due to the forecast operating result being a deficit. The forecasts for 2020/21 and onwards are expected to be positive.

**3. Debt Service Cover Ratio – General Fund**

Benchmark: > 2

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
3.86	4.03	3.32
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.

**Benchmark Indicators - Water**

**1. Unrestricted current ratio - Water**

Benchmark: >1.5:1

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
117.77:1	94.28:1	100.27:1
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

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
11.71%	15.47%	10.81%
Pass	Pass	Pass

**Comments**

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

**3. Debt Service Cover Ratio - Water**

Benchmark: >2

2017/18	2018/19	2019/20 Dec
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

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
0.99:1	0.89:1	1.87:1
Fail	Fail	Pass

**Comments**

This ratio is expected to meet the benchmark for the 2019/20 year and is expected to remain around the benchmark moving forward.

**2. Operating Performance Ratio - Wastewater**

Benchmark: >0

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
5.89%	12.18%	13.89%
Pass	Pass	Pass

**Comments**

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

**3. Debt Service Cover Ratio - Wastewater**

Benchmark: > 2

2017/18	2018/19	2019/20 Dec
Actual	Actual	Estimate
1.14	1.30	1.46
Fail	Fail	Fail

**Comments**

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

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

**Section Five – Contractors/Consultants/Legal Expenses**

**Contractors**

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

Contractor Name	Purpose	Amount (GST Incl)	Award Date	Duration of Contract	Incl in Budget Yes/No
AGS Commercial	Lennox Head Cultural and Community Centre Enhancements	\$2,275,014	24/10/19	8 months	Yes
Parker and Kissane Solicitors	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Marsden's Law Group	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Maddocks	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Bartier Perry	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Sparke Helmore	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Allens	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Lindsay Taylor Lawyers	Provision of Legal Services	Schedule of Rates	19/12/19	60 months	Yes
Eire Constructions Pty Ltd	Skennars Head Sewer Pump Station upgrade	\$481,481	19/12/19	6 months	Yes
Integral Tree Care	Provision of Arboriculture Services	Schedule of Rates	19/12/19	25 months	Yes
Tallow Tree Services	Provision of Arboriculture Services	Schedule of Rates	19/12/19	25 months	Yes
Dynasaw Tree Services	Provision of Arboriculture Services	Schedule of Rates	19/12/19	25 months	Yes
Asplundh Tree Experts	Provision of Arboriculture Services	Schedule of Rates	19/12/19	25 months	Yes
Swing Tree Service	Provision of Arboriculture Services	Schedule of Rates	19/12/19	25 months	Yes
North Coast Tree Services	Provision of Arboriculture Services	Schedule of Rates	19/12/19	25 months	Yes
Traffic Control Services	Traffic Control Services	Schedule of Rates	19/12/19	25 months	Yes
Spinifex Recruiting	Traffic Control Services	Schedule of Rates	19/12/19	25 months	Yes
Altus Traffic	Traffic Control Services	Schedule of Rates	19/12/19	25 months	Yes
Lack Group	Traffic Control Services	Schedule of Rates	19/12/19	25 months	Yes
Universal Cranes Ballina Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Ballina Concrete Pumping	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Field Directional Drilling	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes

## 9.9 Financial Review - 31 December 2019

Contractor Name	Purpose	Amount (GST Incl)	Award Date	Duration of Contract	Incl in Budget Yes/No
Holcim Aust Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Ballina Pipeline Constructions	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
WR & WR Assets	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Earthworks Landscaping	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Kinerson Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Rough Range Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Greenstar Earthmoving	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Peter & Faye Kurrle	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
DB & CA O'Neill	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
The Control Group Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Mega Waste Industries	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Simple Plant Hire Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Bitrom / Southerncross Sands & Soils	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
North Coast Tree Services	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Conlan Enterprises	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Summerland Environmental	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
North East Cranes	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
S&L Sand and Gravel	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Tallow Tree Services	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Compass Equipment Hire	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Solo Resource Recovery	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
RoDaw Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Ezyquip Hire	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Hazell Bros Plant Hire	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Kyogle Earthworx	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
Pipe Management Australia Pty Ltd	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 months	Yes
HR & ME Wilson	Hire of Trucks and Plant	Schedule of Rates	19/12/19	25 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 decisionmaking by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors”.

Total expenditure to 31 December 2019 on consultants that meet this definition is as follows.

Item	Expenditure YTD (excl GST)	Included in Budget Y/N?
Consultancies	\$181,800	Yes

**Legal Expenses**

The next table summarises the expense incurred to the end of December 2019 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	\$661,000	Yes (following adjustments)

**Section Six – Other – Proposed Amendment to Workforce Plan**

There has been a sustained and significant upturn in building activity within the shire. This is demonstrated by the following table which provides the month to month cumulative income figures for the Building Services Section for the past five financial years, along with the 2019/20 financial year to 31 January 2020 (all figures in \$'000s).

Item	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June
2019/20	122	298	470	670	812	963	1,051					1,947
2018/19	145	260	403	542	693	798	847	1,074	1,209	1,361	1,567	1,728
2017/18	84	231	396	495	613	680	773	909	1,005	1,112	1,259	1,418
2016/17	114	243	486	578	728	840	872	976	1,088	1,215	1,386	1,479
2015/16	96	218	372	478	630	747	816	971	1,054	1,203	1,332	1,426
2014/15	104	203	293	397	463	596	672	763	883	997	1,080	1,179
<b>Average % Collected</b>												
Last 3 years	7%	16%	28%	35%	44%	50%	54%	64%	71%	80%	91%	100%
Last 2 years	7%	16%	26%	33%	42%	47%	52%	63%	70%	79%	90%	100%
All years	8%	16%	27%	35%	43%	51%	55%	65%	73%	82%	92%	100%

The Average % Collected figures provide the percentage of the total income collected at month end, on average, for the last three years, last two years and for all five completed years.

## **9.9 Financial Review - 31 December 2019**

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The percentages are relatively consistent which then helps Council to forecast the likely income for the current year.

Based on \$1,051,500 collected to 31 January, with January representing an average of 54% of the total collected for the year for the last three years, this results in a likely income forecast of \$1,947,000 for 2019/20.

The existing budget is \$1,570,000. This Quarterly Financial Review has recommended an adjustment to \$1.9m, being an increase of \$330,000.

The current level of building activity is placing a significant strain on staff resources.

Council approved an extra trainee building position as part of the 2019/20 Workforce Plan, with this position now recruited, and in addition casual resources have been engaged, where available, to assist with the current workload.

Based on the number of available and future residential lots for the shire, it is likely that the high level of building activity could continue for another four or five years.

This being the case, rather than waiting for the 2020/21 Workforce Plan to be endorsed by Council, it is recommended that Council approve the appointment of an additional Building Surveyor, including vehicle, to help meet the current demand.

The annual cost of this position is approximately \$135,000 inclusive of oncosts and vehicle. Only a portion of this annual cost is likely to be incurred during 2019/20 due to recruitment timeframes, and as such this report includes a proposed increase to 2019/20 expenditure budgets of \$30,000.

There is always a risk that a downturn in economic activity will see forecast building income decrease, however on balance there is a high level of confidence that the current income figures are sustainable for at least the next few years.

The recruitment of an additional permanent position will help with this workload and also provide additional support to the existing building surveyors who are struggling to meet current demands.

This report includes a recommendation to approve an increase of one additional Building Surveyor, and vehicle, to the Workforce Plan to recognise the high level of building activity for the shire.

### **Section Seven - Certification**

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 31 December 2019 indicates that Council's projected financial position at 30 June 2020 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 December 2019 Quarterly Budget Review and approves the changes identified within this report;
2. That Council approves an increase of one additional Building Surveyor, and vehicle, to the Workforce Plan to recognise the high level of building activity for the shire, with a corresponding increase to the 2019/20 expenditure budgets of \$30,000, already included within this report.

### **Attachment(s)**

Nil

## 9.10 Tender - Kerbside Collection of FOGO

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### 9.10 Tender - Kerbside Collection of FOGO

#### **Delivery Program**

Waste Management

#### **Objective**

To report the outcomes of the tender evaluation for the kerbside collection of Food and Garden Organics (FOGO)

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#### **Background**

Council currently contracts out the kerbside collection of Food and Garden Organics (FOGO) to a third party provider. The transport and disposal of the collected materials was also contracted out under another contract.

It is proposed under this contract to combine the kerbside collection and the transport and disposal of the materials under the one contract.

Tenders were called for this contract during November and December 2019.

This report outlines the results of the tender assessment process and the tender submissions.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Assess value for money

#### **Information**

Tenders were received from:

- Cleanaway Pty Ltd; and
- The Trustee for Rico Family Trust T/a Solo Resource Recovery

The tender evaluation method included two stages of evaluation, Stage 1 - Pass/Fail Evaluation of Mandatory Non-Price Criteria, and Stage 2 - Evaluation of Total Price and the Contribution made to the Local Economy.

The weighting towards the Social and Community contribution was 15%, and Price represented 85% of the total weighted criteria for this second stage of the evaluation.

The tender submissions were assessed to ensure conformance with the conditions of tender and mandatory assessment criteria, being:

- Conforming Tender
- Satisfactory Financial Capacity
- Insurances
- Satisfactory WHS, Environment and Quality Systems
- Satisfactory past experience
- Nil or immaterial conflicts of interest and acknowledgement of business ethics

## 9.10 Tender - Kerbside Collection of FOGO

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Both tenders met the mandatory criteria, and were assessed using the following weighted selection criteria:

- Local and Community - 20%
- Total Price - 85%

Due the current uncertainty in the region with regard to processing facilities, the tender provided for either a two year or a seven year contract term.

Currently there are no processing facilities in the region, however there is potential for this to change over the next two years.

Therefore the two year term is considered the best option.

The Trustee for Rico Family Trust T/a Solo Resource Recovery has been selected as the preferred tenderer.

The details of the assessment have been provided to Councillors by a separate confidential memorandum.

### **Sustainability Considerations**

- **Environment**  
The collection of Food and Garden Organics and disposal to a processing facility helps reduce the quantity of material going to landfill.
- **Social**  
Not Applicable
- **Economic**  
During the next two years Council staff will be able to determine the most beneficial location for the processing of organics.

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

This report ensures Council meets its statutory requirements in regards to tendering and procurement.

### **Consultation**

A public tender process was conducted.

### **Options**

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulations 2005 which require 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*

## 9.10 Tender - Kerbside Collection of FOGO

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*(b) decline to accept any of the tenders.*

Based on the information in this report it is recommended that Council accept the tender from The Trustee for Rico Family Trust T/a Solo Resource Recovery.

### **RECOMMENDATIONS**

1. That Council accepts the tender from The Trustee for Rico Family Trust T/a Solo Resource Recovery for the kerbside collection and disposal of Food and Garden Organics (FOGO) at the tendered rates.
2. That Council authorises the Council seal to be applied to the contract documents

### **Attachment(s)**

Nil

## **10.1 Tender - Coastal Recreational Walk Construction**

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

#### **10.1 Tender - Coastal Recreational Walk Construction**

##### **Delivery Program**

Engineering Works

##### **Objective**

To report the outcomes of the tender evaluation for the construction of the next stage of the Coastal Shared Path.

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#### **Background**

Tenders were called for the construction of the Coastal Recreational Walk in December 2019.

This project will provide a Coastal Recreational Walk between Sharpes Beach and Pat Morton Lookout. The proposed works will upgrade the existing informal walking track connection between Sharpes Beach carpark and Pat Morton Lookout along the coastline corridor.

This report outlines the results of the tender assessment process and the tender submissions.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Assess value for money
- Project budget

#### **Information**

##### **Scope of Works**

The original planning consent for the project comprised a gravel walking path throughout, with a boardwalk at Boulders Beach plus viewing platforms.

The proposal was designed having regard to National Parks and Wildlife Service (NPWS) guidelines to ensure the path was as sympathetic to the natural environment as possible.

As it is some time since the consent was issued, during 2019 a review of the original design against current NPWS walking track design guidelines identified differing path surfacing for some of the different terrain types along the 3.0km path corridor.

This review was undertaken in consultation with the author of the original NPWS 'Walking Track Construction Guidelines', Mr Steve Gorrell, and subsequently with the landscape architect from the original design team GeoLINK.

## 10.1 Tender - Coastal Recreational Walk Construction

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Accordingly, the review of the original design is intended to maintain the very natural features of the walk together with improving access. This is achieved by leaving the path as-is where the existing path is suitably grassed and on flatter terrain.

However, where the existing path is currently showing signs of wear and erosion it is proposed to upgrade the path including a new section of path to connect to the Boulder Beach boardwalk.

The upgraded surfacing will comprise short sections of asphalt path adjacent to the carpark areas of Sharpes Beach and Iron Peg.

There will be gravel sections of path between Sharpes Beach carpark and Iron Peg, with some steeper sections of gravel path being stepped either side of Boulder Beach.

The sandy sections of the path around Boulder Beach will comprise a sand and hardwood chip material for a low key and aesthetic walking surface.

A boardwalk section around Boulders Beach adds a 'missing link' with the current track, plus there has been some short boardwalk sections added.

One of the boardwalk sections has been added as a result of ongoing consultation with the Registered Aboriginal Parties.

Ongoing maintenance will be required where the path is upgraded as it is not a sealed surface like the path south of Sharpes Beach.

The integrity of the various path surfacing types will be monitored and maintenance efforts assessed for future management of the path.

This may require modification of the path surfacing once more active use of the path is assessed.

The works included in the tender comprise eight viewing deck structures and / or sections of boardwalk plus path sections comprising:

- Asphalt paving (at Sharpes Beach carpark and Iron Peg carpark), totaling 264 metres
- Gravel pathway, totaling 694 metres
- Reinstatement of eroded areas
- Surface rock removal and surface rehabilitation (trip hazards etc.) within existing grassed path
- Rehabilitation and stabilisation of existing sand track, totaling 205 metres
- Sand and hardwood chip track, totaling 405 metres
- Repair of existing fence to sand track, totaling 55 metres
- Two sections of stone steps and gravel pathway, totaling 224 metres
- One section of steep pathway (>15%) including drainage controls, totaling 123 metres

The tender drawings showing the above path sections are provided as Attachment 1.

An extract of the current NPWS guideline dealing with track types is provided as Attachment 2.



## 10.1 Tender - Coastal Recreational Walk Construction

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Vegetation management and compensatory rehabilitation works also forms part of the project and will be a separate quotation process for a five year period following the path works.

### Tender Assessment

At the close of the tender period on 9 February 2020, tenders were received from three companies.

- NSW Soil Conservation Service (SCS)
- B & S Landscaping and Earthworks (B&S)
- Aussie Rock Landscape & Construction (OzRock)

The tenders were assessed by a panel in accordance with Council's internal tendering procedures and the specific Tender Evaluation Plan.

The Tender Evaluation Plan established certain mandatory criteria comprising insurance requirements and capability, experience and references for similar and identical works to that proposed under this tender.

The evaluation also considered weighted price and non-price criteria with the non-price criteria also comprising Methodology and Program, and Local and Community assessments.

The details of the assessment have been provided to Councillors by a separate confidential memorandum.

This memorandum includes the reconsideration of the scope of the works to achieve the completion of majority of the upgraded walking path, without additional viewing platforms at this stage, due to funding limitations.

As per that memorandum the recommended approach, due to funding constraints, is to remove a number of finger paths / platforms and reduce the overall works, by deleting the following items:

- Structure 1 – Chainage 2980 – savings range from \$298,000 to \$348,000
- Structure 2 – Chainage 3270 - savings range from \$32,000 to 40,000
- Structure 5 – Chainage 5760 - savings range from \$68,000 to \$117,000
- Structure 6 – Chainage 6010 - savings range from \$60,000 to \$70,000
- Various items for gravel pathway, sand track, rock removal and steep path works:
  - Chainage 3160 to 3584 – savings range from \$38,000 to \$92,000
  - Chainage 3620 to 3830 – savings range from \$24,000 to \$49,000
  - Chainage 3040 to 3160 - saving of \$15,000
  - Chainage 3584 to 3620 - saving of \$15,000
  - Chainage 4103 to 4100 - saving of \$15,000
  - Chainage 5120 to 5380 - saving of \$15,000
  - Chainage 5503 to 5802 - saving of \$15,000
  - Chainage 4210 to 4360 – savings range from \$8,000 to \$27,000
  - Chainage 5380 to 5503 – savings range from \$41,000 to \$70,000

The chainage references are available as per Attachment 1.

## 10.1 Tender - Coastal Recreational Walk Construction

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Even with the removal of these items the funding available is approximately \$300,000 less than required to complete the remaining works.

### Sustainability Considerations

- **Environment**  
The project has planning approval and will be constructed under an Environmental Management Plan.
- **Social**  
This project will support recreational walking and provide improved access to the Coastal Reserve, which increases social and health and welfare amenity of the Shire.
- **Economic**  
The Coastal Recreational Walk is a significant project and supports Council's objectives to promote the Shire as an attractive location to live and visit.

### Legal / Resource / Financial Implications

The latest budget for this project comprises the following:

Item	Amount (\$)
Preconstruction costs 2018/19	66,000
Preconstruction costs to-date 2019/20	45,000
Preconstruction costs to-go 2019/20	15,000
Recommended tender (as revised)	1,099,000
Contingency	40,000
Boardwalk supply	250,000
Contract supervision and management	25,000
Ecological	10,000
Cultural heritage	190,000
Revegetation	50,000
Signs and line marking	10,000
<b>Total</b>	<b>1,800,000</b>

The funding for this project comprises:

Item	Amount (\$)
State Govt - Regional Growth–Environment and Tourism Fund	750,000
Council Community Infrastructure Reserve	752,000
<b>Total</b>	<b>1,502,000</b>

This leaves a shortfall of \$298,000.

Funding allocated in the Long Term Financial Plan is as follows:

Item	2018/19	2019/20	2020/21
Amount	66,300	500,000	935,700

## 10.1 Tender - Coastal Recreational Walk Construction

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The original budget for the project was developed at the time of the concept design during 2014. This information was subsequently used for the grant application.

As this project is a high profile project that has been in development for many years, it is preferred to continue to advance the project by negotiating and awarding the tender with the reduced scope.

The existing budget allows for commencement of construction this financial year and the \$298,000 will be required for completion of the project during 2020/21.

In respect to 2020/21 the forecast movements in the Community Infrastructure Reserve will need to be reviewed.

Currently there is an amount of \$800,000 sourced from the Community Infrastructure Reserve in 2020/21 for the Lennox Head Rural Fire Shed.

With Council now having \$1.225m available in Federal Government funding available for bushfire related works, this may allow Council to re-direct part of the \$800,000 to the Coastal Recreational Walk.

This is subject to Federal Government sign-off on the allocation of the \$1.225m and there being no major budget variations for the Lennox Head Rural Fire Shed.

### Consultation

The development of this project included substantial community consultation over many years. The assessment process for the regulatory approval included a public exhibition. A public tender process was undertaken.

Additional consultation has also occurred with the Registered Aboriginal Parties with additional archaeological consultancy work completed.

This was undertaken in consideration of the experiences with the Coastal Shared Path project, and this has resulted in an Aboriginal Heritage Impact Permit (AHIP) now being issued with conditions.

These conditions include the requirement for site monitoring by the Registered Aboriginal Parties and the presence of an archaeologist during ground disturbing works. This item has increased the budget requirement significantly (cultural heritage allocation of \$190,000 as per earlier summary).

### Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulations 2005 which says the following;

*(1) After considering the tenders submitted for a proposed contract, the council must either:*

- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) decline to accept any of the tenders.*

## 10.1 Tender - Coastal Recreational Walk Construction

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Due to the tendered amounts and a shortfall in available funding, the recommendation to this report is to decline to accept any of the tenders and enter further negotiations with the preferred tenderer.

Sections 178 (3) and (4) of the regulations (reproduced below) provides further direction in the circumstances where a Council declines to accept any tenders in accordance with section 178 (1)(b).

*(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).*

For the reasons set out in the confidential memorandum to Councillors, 'B&S Landscaping and Earthworks' is recommended as the preferred tenderer for further negotiations.

The recommendations that follow comply with the Local Government (General) Regulations.

This company has demonstrated experience working with the composite fibre technology (materials) to be used in the construction of the boardwalks. They have previously successfully completed a similar project for Council being stage one of this project connecting Angels Beach to Sharpes Beach with a shared path, and are also currently undertaking construction of the shared path between Skennars Head and Pat Morton Lookout, Lennox Head.

### RECOMMENDATIONS

1. That Council, in accordance with the Local Government (General) Regulation 2005 Section 178 (1)(b), declines to accept any tenders for the RFT1204 Construction of Coastal Recreational Walk.
2. That Council, in accordance with the Local Government (General) Regulation 2005 Section 178 (3)(e) authorises the General Manager to enter into negotiations with 'B&S Landscaping and Earthworks' with a view to entering into a contract.
3. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(a) the Council records the following reasons for declining to invite fresh tenders:
  - the tenders received exceed the available funding
  - retendering exposes Council and the market to unnecessary cost and inconvenience
  - pricing and other terms are expected to remain in accordance with the tender schedule costs
  - it is expected Council will be able to execute a contract on terms generally consistent with the original tenders
  - it is unlikely retendering would result in a better advantage for Council.
4. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(b) the Council records it has determined to enter negotiations with 'B&S Landscaping and Earthworks' as they are the preferred tenderer following assessment against the mandatory and weighted evaluation criteria established for this tender.
5. That, upon the conclusion of any successful negotiations, Council authorises the Council seal to be applied to the contract documents.
6. That as part of the scheduled March and April 2020 Finance Committee meetings Council receive a report identifying the options available to fund the current budget shortfall of \$298,000, with that funding required during 2020/21 based on forecast cash flows for this project.

### Attachment(s)

1. Coastal Recreational Walk - Tender Drawings (Under separate cover)
- [2.](#) NPWS Walking Track Guidelines

## 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 pedestrian crossing in Crane Street, Ballina

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#### Background

In November 2017 a representative of Ballina Public School requested that the existing pedestrian crossing in Crane Street, east of Martin Street, be relocated to the west side of Martin Street to improve utilisation.

Council undertook pedestrian and vehicle counts of both the existing and suggested crossing locations in December 2017. These counts identified that neither the existing or proposed crossing locations met the NSW Roads and Maritime Services (RMS) warrant for a marked pedestrian crossing.

Following discussions with relevant parties, it was decided that Council would undertake additional counts of the crossing locations. These were to occur after the Ballina Coast High School became operational.

This report details the outcome of the warrant assessment.

#### Key Issues

- Pedestrian Safety

#### Information

##### Review of Existing and Relocated Marked Pedestrian Crossing Locations

A report presented to the Local Traffic Committee meeting held 11 December 2019 contained the results of a warrant assessment conducted on 14 November 2019. This assessment included potential impacts associated with the operation of the Ballina Coast High School.

Council has been progressively assessing the pedestrian crossings in the Shire to assess compliance with relevant standards to ensure the most appropriate safe crossing functions are provided.

##### The Role of Marked Pedestrian Crossings

Marked pedestrian (Zebra) crossings are provided to give pedestrians a legal right of way (over vehicular traffic) when crossing streets. They can be approved when there is minimum threshold levels of vehicle and pedestrian traffic volumes. These threshold volumes are documented by RMS and are known as a "warrant".

The warrant is the ratio relationship between vehicle volumes and pedestrian volumes.

## 10.2 Pedestrian Crossing - Crane Street, Ballina

There is considerable evidence that pedestrian crossings do not necessarily enhance pedestrian safety in circumstances where the warrant volumes are not achieved. 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, but, 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 RMS marked crossing warrants identify 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 appropriate.

### NSW Roads and Maritime Services - Marked Pedestrian Crossing Warrants

The RMS warrants for pedestrian crossings is 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 x 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 two periods a day immediately before and after school, and V > 199*

#### Pedestrian Crossing Counts

Traffic and pedestrian counts of the two sites on Crane Street (east and west of Martin Street) carried out on 14 November 2019 are tabulated below.

<b>Proposed Crossing West of Martin Street</b>						
West of Martin Street					<b>14/11/2019</b>	
Time	Pedestrians				Vehicles	PxV
	School	Aged impaired	Other	Total Ped		
8:30- 9:30	32	3	26	61	148	9028
12:30-1:30	-	-	-	-	-	-
3:00 - 4:00	45	1	18	64	141	9024
<b>Comment:</b> Near School						
<b>Assessment:</b> Does not qualify as Normal or Reduced Warrant						

## 10.2 Pedestrian Crossing - Crane Street, Ballina

Existing Crossing East of Martin Street						
East of Martin Street					14/11/2019	
Time	Pedestrians				Vehicles	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						

### Recommendation of the Local Traffic Committee

The Local Traffic Committee meeting held 11 December 2019 considered the pedestrian crossing counts and recommended:

*“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.”*

### Investigation of Pedestrian Refuge or Other Safe Crossing Device

In reviewing possible pedestrian treatments for Crane Street, west of Martin Street, it was identified that there is insufficient space to support a pedestrian refuge. Buses turning between Martin Street and Crane Street would conflict with a refuge at this location.

The pedestrian refuge would need to be located further to the west to avoid this conflict. However, the volume of pedestrians using the refuge would fall as their path deviation is increased.

Furthermore, Council has recently constructed a pedestrian refuge midblock between Cherry Street and Martin Street making such a refuge redundant.

In addition to the pedestrian refuge located midblock between Cherry and Martin Streets, Council has also constructed a kerb blister extension on Crane Street, west of Martin Street.

This treatment reduces the effective distance of carriageway that pedestrians are required to negotiate when crossing the road, resulting in an improved safety outcome.

A pedestrian refuge already exists at the existing marked pedestrian crossing location on Crane Street, east of Martin Street.

### **Sustainability Considerations**

- **Environment**  
Not Applicable



- **Social**

Removal of pedestrian crossings that do not meet required minimum pedestrian and vehicle volume thresholds will contribute to pedestrian safety and movement efficiency.

In locations where the majority of users are children or aged/impaired pedestrians, there may be the need to provide a crossing.

- **Economic**

Not Applicable

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

Council has a range of delegations from RMS for the regulation of traffic (including regulation of marked pedestrian crossings) that require the concurrence of the Ballina Local Traffic Committee.

This report provides information in respect of the level of compliance of the Crane Street marked pedestrian crossing with the relevant technical standards.

It is important for Council to have regard to those standards when making a decision and furthermore, a decision to undertake an action (or do nothing) that departs from the standard should be carefully documented.

### **Consultation**

Community consultation, specifically with local schools, about the proposed removal of the marked pedestrian crossing on Crane Street, east of Martin Street, is recommended.

### **Options**

Option 1 - Undertake community consultation for the proposed removal of the designated pedestrian crossing on Crane Street, east of Martin Street.

Option 2 - Take no further action for removal of this designated pedestrian crossing.

Option 1 is recommended on the basis that the assessments have identified that the existing crossing is not compliant with a warrant.

As per the information in this report, the warrant is the technical assessment to determine if a marked pedestrian crossing is preferred from a safety perspective compared to the use of pedestrian refuges, signage and line marking.

The response to the community consultation will assist in any decisions regarding the future requirements for pedestrians at this location.

If Council is not inclined to support this recommendation it is important to record, for public liability, the basis of the decision.

Such a basis could be that Council considers there is a merit in retaining the crossing at this location above the level needed by the technical assessment due to the long standing practice of having a crossing at this location.

**RECOMMENDATIONS**

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.

**Attachment(s)**

Nil

### **10.3 Ballina Wastewater Treatment Plant Upgrade - Contract Update**

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#### **10.3 Ballina Wastewater Treatment Plant Upgrade - Contract Update**

**Delivery Program**

Water and Wastewater

**Objective**

To provide an update to Council regarding a contract dispute.

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#### **Background**

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

As litigation regarding this matter has now commenced, information has been provided to Council in a separate confidential report.

The aspects of this matter that can be reported publicly are set out in the information below.

#### **Key Issues**

- Achieving defect free completion
- Contractor and Council liability

#### **Information**

In 2017, in accordance with the Contract, a number of issues were referred to Expert Determination by the Contractor and Council.

The Expert released their determination on 9 October 2017, finding in favour of Council in five out of six issues, and making a 50/50 cost apportion determination in relation to the final issue.

While Council's position has always been to accept the findings of the determination, Haslin did not. Despite an extended period of operational meetings, negotiations, and attempts by Council to manage the dispute contractually, Haslin initiated proceedings in the Supreme Court of NSW in August 2019.

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

Staff are confident, based on technical advice, the Expert Determination, and legal advice, that the defects are repairable.

Our legal advisors will be available at the Council meeting to report on our legal position and the current status of the proceedings.

### **Sustainability Considerations**

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

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

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

### **Consultation**

There have been extensive negotiations between the contract parties.

### **Options**

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

### **RECOMMENDATION**

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

### **Attachment(s)**

Nil

## 10.4 Community Land - Leases and Licences

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### 10.4 Community Land - Leases and Licences

#### Delivery Program

Open Spaces and Reserves

#### Objective

To seek direction in relation to the granting of leases and licences for properties within Council's community land portfolio.

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#### Background

The Community and Property Leasing and Licensing Policy was adopted at the July 2016 Ordinary meeting.

The Policy establishes Council's approach to the occupation of Council owned properties within its community property portfolio.

This report sets out the details of the properties and the proposed leases and licences to be granted in accordance with the policy.

#### Key Issues

- Occupation and use of community properties

#### Information

Table One below lists the relevant properties and the tenants, and includes the recommended proposals to grant a lease/licence for each property in accordance with the policy.

Each tenure is proposed at a rental of \$1 per annum.

**Table One – Grant of Leases/Licences – Community Property**

Doc No.	Property	Occupant/Lessee	Tenure
1	Lennox Head Community Garden (part of Ocean Breeze Reserve, Lennox Head)	Lennox Head Community Gardens Inc	Three years (licence)
3	20 Megan Crescent Sports Clubhouse, Lennox Head	Lennox Head Cricket Club Inc	Three years (lease)
4	Part of Wollongbar Hall at 25 Simpson Avenue, Wollongbar	Alstonville & District Cricket Club Inc <i>(The Club is the existing occupant of a lockable garage at the Wollongbar Hall, used for storage of sports equipment)</i>	Three years (licence)

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
There are significant social benefits provided to the community by the many occupants of Council community properties. The occupants listed in Table One provide a mix of physical, cultural, social and intellectual benefits to members of the community.
- **Economic**  
The waiving of commercial rents represents an economic loss to Council. However, the commercial rents are waived in exchange for the occupants carrying out day to day repair and maintenance of the properties, and providing the social benefits mentioned above.

### Legal / Resource / Financial Implications

In accordance with section 46 of the Local Government Act 1993, Council must only authorise occupation of community land by way of tenure agreements for a purpose consistent with the relevant plan of management.

The proposed use under each of the leases/licences listed in Table One is permitted for the particular properties under Council's Plan of Management for Community Land 2015.

When Council proposes to lease community land, Council is required to publicly advertise and exhibit the proposed lease information (in accordance with sections 47A and 47 of the Local Government Act 1993), and invite submissions from the public.

Each of the leases/licences in Table One are recommended for a three year term, which is consistent with Council's Community Property Leasing and Licensing Policy.

There are no negative resource impacts or financial impacts, other than the reduced rental noted above in the section on economic impacts.

### Consultation

Consultation has occurred with each tenant. Public notification of the proposed leases/licences in Table One will be carried out in accordance with the requirements of the Local Government Act 1993

### Options

1. Grant tenure as recommended in Table One (or otherwise as varied by Council)
2. Not grant tenure at all to some or all of the community groups listed in Table One
3. Defer some or all of the proposed leases/licences listed in Table One.

## **10.4 Community Land - Leases and Licences**

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Option one is recommended as this follows current arrangements and facilitates the renewal of the leases and licences.

### **RECOMMENDATIONS**

1. That Council, in accordance with the relevant provisions of the Local Government Act 1993 and associated Regulation, including public notification, enters into the leases/licences outlined in Table One of this report.
2. Council authorises the General Manager to affix the seal to the lease/licence documents and any other documents required to allow tenure to be granted in accordance with Table One.
3. That prior to points one and two being actioned, statutory public notification relating to the proposed leases/licences be undertaken, with a further report to be presented to Council in the event that an objection is received on a particular lease/licence.

### **Attachment(s)**

Nil

## **10.5 Policy (Review) - Fire Asset Protection Zones - Private Use of Public Land**

### **10.5 Policy (Review) - Fire Asset Protection Zones - Private Use of Public Land**

#### **Delivery Program**

Open Spaces and Reserves

#### **Objective**

To review the Fire Asset Protection Zones - Private Use of Public Land policy

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#### **Background**

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Fire Asset Protection Zones – Private Use of Public Land policy.

The objective of the policy is to regulate the use of public land in respect of its use as a fire asset protection zone. Essentially the policy requires new subdivisions to ensure adjoining public land is not included in the assessment for the required asset protection zones meaning these zones are provided and maintained on private land.

Council first adopted this policy in April 2007.

#### **Key Issues**

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

#### **Information**

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

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Legislative updates have been undertaken.

The changes have been marked in yellow.

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

#### **Sustainability Considerations**

- **Environment**  
Ensure that public land is not constrained by private uses
- **Social**  
Not Applicable



## **10.5 Policy (Review) - Fire Asset Protection Zones - Private Use of Public Land**

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- **Economic**  
Ensure that public land is not financially burdened by private uses

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

The NSW Rural Fire Service has requirements for asset protection zones around developments of identified bushfire prone land.

### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

1. That Council adopts the amended Fire Asset Protection Zones – Private Use of Public Land policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

### **Attachment(s)**

- 1 [➤](#) Policy (Review) - Fire Asset Protection Zones - Private Use of Public Land

## 10.6 Policy (Review) - Road Closing Applications for Public Roads

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### 10.6 Policy (Review) - Road Closing Applications for Public Roads

#### Delivery Program

Asset Management

#### Objective

To review the Road Closing Applications for Public Roads Policy.

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#### Background

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Road Closing Applications for Public Roads policy.

The objective of the policy is to provide guidelines on assessing road closing applications and to ensure that road reserves are managed such that community access and use of these road reserves is preferred. The process to close a road is a statutory process under the Roads Act 1993 and the policy assists by providing criteria to be assessed during the assessment of a road closing application.

Council first adopted this policy on 26 June 2008.

#### Key Issues

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

#### Information

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

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Roads Act 1993 legislation changes.

The changes have been marked in yellow.

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

#### Sustainability Considerations

- **Environment**

The use of unformed public roads may vary from maintained land to remnants of significant bushland. Road closing applications are considered on a case by case basis with access and vegetation connections with adjoining roads and public land being considered. The best and future use of this land is the desired outcome when assessing an application.

- **Social**

Public roads provide access for the community. Where these roads are unconstructed the physical access may be limited, however the legal access to other roads, public areas or waterways will remain. If there are public benefits in retaining ownership of a public road, the application may not be supported.

- **Economic**

As with any public land, there are costs to maintain the land. If the unformed road is contained within and maintained by the adjoining land owner, there are benefits in supporting the road closing and sale of the land.

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

Road closing application fees are listed in Council's fees and charges each year. There are only a few applications each year and funds from the sale of Council closed roads is not significant. In some cases the closed road land may be used as compensation for land acquired for other road actions.

### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

- 1⇒ Policy (Review) - Road Closing Applications for Public Roads

## 10.7 Policy (Review) - Weddings on Public Land

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### 10.7 Policy (Review) - Weddings on Public Land

#### **Delivery Program**

Open Spaces and Reserves

#### **Objective**

To review the Weddings on Public Land Policy.

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#### **Background**

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

Council first adopted this policy in December 2007, and it was reviewed in September 2011 and March 2016.

The purpose of this policy is to provide options for the use of public land for wedding ceremonies while ensuring that public land is retained for passive and active recreation for residents and visitors.

#### **Key Issues**

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

#### **Information**

This review of this policy identified only minor changes to ensure consistency with Council's current policy template. The policy is still considered to be contemporary and therefore no further changes are recommended. A copy of the amended policy is attached to the report.

#### **Sustainability Considerations**

- **Environment**  
Appropriate policy and management practice for public land supports the local environment.
- **Social**  
The provision of guidelines for conducting weddings on public land will assist in ensuring the value and amenity of public spaces is preserved.
- **Economic**  
Public weddings can provide economic benefits to the Shire.

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

There are no specific legal, resource or financial implications associated with this report.

## **10.7 Policy (Review) - Weddings on Public Land**

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### **Consultation**

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

### **Options**

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

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

### **RECOMMENDATIONS**

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

### **Attachment(s)**

1. [Policy \(Review\) - Weddings on Public Land](#)

## **11.1 Notice of Motion - Discontinuation of Ocean Pool Proposal**

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

#### **11.1 Notice of Motion - Discontinuation of Ocean Pool Proposal**

**Councillor**

Cr Smith

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I move

1. That Council acknowledge the significant issues raised around the ocean pool proposal from across the community.
2. In acknowledging the various issues raised by the community, Council discontinue its support for the ocean pool proposal.

#### **Councillor Comments**

A large portion of the community have raised a number of issues around the ocean pool proposal. Community objections to the proposal have come from vast sections of the community including environmentalists, public servants, surfers, engineers, families and many more hugely diverse community groups.

It's important to understand that the ocean pool proposal has never been subject to the rigor and community consultation processes that is standard for all major Council projects.

The ocean pool proposal is quite possibly the first major infrastructure project to sidestep this process, infrastructure of similar scale over the years, for example Ballina Indoor Sports Centre, Ballina/Alstonville Pool upgrades, River Street upgrades etc all first went out to community consultation and were part of an informed Delivery Program process to enter into the long term financial plan.

The current process has enabled the ocean pool proposal to develop to the point of near delivery without any formal community consultation at any point in the process by Council and little accountability to either Council or the community, who will ultimately be asked to pay \$4.5 million (either directly or indirectly) for such a proposal (based on a similar proposal in Port Macquarie, which received the same \$50,000 grant at the previous NSW election and also coincidentally a large portion of the community also don't want).

In addition to the massive upfront capital requirements, typical ocean pool maintenance costs run between \$50,000-\$250,000 per year based on data across Australia as per a previous Councillor bulletin.

The natural beauty and amenity of Shelly Beach will be adversely impacted when compared to the alternative, that being no ocean pool and instead to continue to upgrade our existing saltwater facilities.

No EIS will argue that an ocean pool is good for the environment, any further studies will simply discuss ways to minimise the damage done, given the alternative is no damage at all, there's no case to be made that further studies will provide a better environmental option than no ocean pool.

## **11.1 Notice of Motion - Discontinuation of Ocean Pool Proposal**

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Lastly and most importantly, Councillors who were present at the last Climate Change workshop, will be highly conscious of the importance of Council's future actions in relation to climate change.

Concentration of CO<sub>2</sub> hit a global high in February of 416ppm (source: National Oceanic and Atmospheric Administration, NOAA).

It's no longer good enough for Councillors to give lip service to climate change, where Council has the discretion to implement optional facilities in our shire that will have a negative effect on climate change, it must do the right thing for future generations by not proceeding, any other option is not only selfish, but is morally and ethically irresponsible.

### **COUNCILLOR RECOMMENDATIONS**

1. That Council acknowledge the significant issues raised around the ocean pool proposal from across the community.
2. In acknowledging the various issues raised by the community, Council discontinue its support for the ocean pool proposal.

### **Attachment(s)**

Nil

## **11.2 Notice of Motion - Federal and State Government Bushfire Funding**

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### **11.2 Notice of Motion - Federal and State Government Bushfire Funding**

**Councillor**

Cr Jeff Johnson

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I move

1. That Council write to the Federal and State Governments thanking them for their assistance in providing \$1.225m million and \$100,000 respectively for local councils impacted by the bush fires.
2. That Council receive a report on what other environmental actions can be taken in the area either directly impacted by the Wardell Fire and the adjoining Ngunya Jargoona Indigenous Protected Area.
3. That Council complete as many actions as practical as outlined in the Koala Management Plan.
4. That Council allocates part of the grant funding to improve the facilities and infrastructure for our rural fire stations and services.

#### **Councillor Comments**

Ballina Shire Council has been the recipient of significant funding as a result of the recent bushfires. Fortunately our community hasn't experienced the same level of impact that some of our surrounding Council areas have experienced. However the important environmental area surrounding Wardell has been devastated including the regionally significant Koala population and the Northern Long-nosed Potoroo.

In 2017 the Ballina Shire Koala Management Strategy was completed, however most of the actions remain unfunded. The construction of the Pacific Highway detour through the middle of this important Koala colony and the recent fire has put the long-term survival of this important Koala population in serious danger.

As this was the main area impacted by the recent fires, the availability of grant funding provide an opportunity to complete most of the actions identified in the Koala Management Strategy. In addition, a large proportion of the funding should be directed to our local Rural Fire Services who have spent thousands of hours assisting with the fires threatening homes both in Wardell other areas of the Northern Rivers.

There is an urgency in determining how this money will be allocated and this motion seeks to confirm that environmental works in the Ngunya Jargoona Indigenous Protected Area (near Wardell) and the adjoining core habitat area for the regionally significant Koala population and Northern Long-nosed Potoroo colony are a priority for part of the available funding. There have been some media reports that the Potoroo colony may have been completely wiped out.



### Staff Comments

The Federal and State Governments have allocated \$1.225m and \$100,000 respectively, with the information provided to Council included as Attachments 1 to 4.

In respect to the \$1.225m in Federal Government funding there is limited information on how the funds are to be expended, other than the correspondence provided in Attachments 1 and 2.

The \$100,000 State Government funding focuses on economic recovery and community resilience as per Attachments 3 and 4. Councils have until 31 March 2020 to complete applications for this funding.

Council has been fortunate in that the NSW Office of Emergency Management (OEM) bushfire impact assessment for Ballina Shire is one outbuilding destroyed and ten impacted rural landholders (as at 31 December 2019), which is significantly lower than many other councils.

This assessment does not recognize the destruction of flora and fauna in the area south and south-west of Wardell, along with the psychological and social impacts on property owners and residents who had to relocate during the fires, especially at Cabbage Tree Island.

A report is being prepared for the March 2020 Finance Committee meeting, outlining a preferred program of works and services for the available funding.

Items under consideration for that report include:

- Revegetation of areas, with a particular focus on actions identified in Council's Koala Management Strategy
- Infrastructure – Repairs and improvements. For example part of the funding could possibly assist Council in delivering the new Lennox Head Rural Fire Service Shed
- Tourism and promotion – Regional Development Australia (RDA) is having preliminary discussions with all councils in the region to undertake a joint marketing program to support business
- Proactive fire prevention measures – Council has been struggling to fund on-going Asset Protection Zone (APZs) works. The APZs help to reduce the available vegetation in proximity to private and public assets.
- Social support activities possibly in conjunction with JALI Land Council

Detailed discussions are still to occur with the Rural Fire Service as to their preferred priorities.

Discussions have been held with the Jali Aboriginal Land Council and there is preliminary agreement that part of the \$100,000 in State Government funding could help with delivering community resilience programs, especially seeing Cabbage Tree Island had to be evacuated during the Wardell fire.

In respect to the Koala Management Strategy (KMS), a very preliminary estimate is that around \$200,000 is required to implement at least one project for each of the main actions in the KMS.

## **11.2 Notice of Motion - Federal and State Government Bushfire Funding**

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Within the KMS, several actions focus on bushfire management including:

- updating the Bushfire Risk Management Plan to take into account the location and significance of koala habitat
- providing a GIS layer that maps fire history within the Ballina Shire
- hazard reduction in important koala population areas
- implementation of best practice fire management guidelines in relation to koala habitat by fire brigades and
- engaging with the broader community in matters relating to fire management and hazard reduction in relation to koala conservation.

Additional proposals already put forward that are not specifically mentioned in the KMS, although they do benefit the local koala population include:

- A Landscape Fire Management Plan for the important koala population area in conjunction with the Rural Fire Service, Jali and Council. This plan would map vegetation communities, cultural heritage sites and habitats at risk, map local fire history, identify locations for firebreaks and trails for access for cultural burning, hazard reduction works and emergency bushfire management. The plan would also include a bushfire response strategy that establishes a set of procedures to minimise impacts to biodiversity (including koalas) and cultural sites.
- Wildlife first aid in fire areas. Preparation of training and kit that covers emergency wildlife contacts, first aid, recovery of injured wildlife, fence, gate management etc. for local brigades
- Post fire assessment of Jali Lands within the important koala population area. Validation assessment of burnt and unburnt areas. Assessment of threatened species and other biodiversity (including koalas and other threatened flora and fauna species) and cultural assets.
- Recovery research on Jali Land – i.e. koala feed trees and leaf toxicity.

In summary the work being undertaken for the March Finance Committee meeting) is consistent with the contents of the notice of motion.

### **COUNCILLOR RECOMMENDATIONS**

1. That Council write to the Federal and State Governments thanking them for their assistance in providing \$1.225 million and \$100,000 respectively for local councils impacted by the bush fires.
2. That Council receive a report on what other environmental actions can be taken in the area either directly impacted by the Wardell Fire and the adjoining Ngunya Jargoan Indigenous Protected Area.
3. That Council complete as many actions as practical as outlined in the Koala Management Plan.
4. That Council allocates part of the grant funding to improve the facilities and infrastructure for our rural fire stations and services.

**Attachment(s)**

1. Prime Minister - Financial Support
2. Australian Government - National Bushfire Recovery Agency
3. Deputy Premier - Financial Support
4. NSW Government - Guidelines

### 11.3 Notice of Motion - Waste Management Centre Vouchers

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### 11.3 Notice of Motion - Waste Management Centre Vouchers

**Councillor**

Cr Meehan

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I move

That Council in the 2020/21 Operational and Delivery Plan implement a trial year for a 'free tip voucher' for each rate paying residential and rural property in Ballina Shire. This will involve each residence being able to access the Ballina Waste Depot for one drop off, free, for prescribed waste and amounts as determined by a Council model.

The preferred model of operation is to be reported back to Council by staff, with predicted costings for a range of 'take up' percentages, during the current Council finance and budget cycle.

#### **Councillor Comments**

A 'free tip voucher' is something that most of Ballina Shire's residents want. It is seen as a fair part of the rates package that each property is involved in. Many if not most of our surrounding Councils, and councils across NSW, provide this service annually as part of their mode of operation.

The service, if implemented, will compliment and support our current waste management and recycling strategies. People do use the Council recycling bin and many use on line sites to sell and give away unwanted items. This will remain undiminished. It is what people do!

The fact remains though, that residents are at times left with some items that they cannot have re-used in these ways. It is for this circumstance that the service will help on a 'once only' basis for each residence per annum.

The service will lead to a reduction in dumping which pollutes areas of our Shire and is an annual cost to Council in cleaning up.

#### **Staff Comments**

Council has considered motions similar to this on a number of occasions. The most recent debate was 28 February 2019. The notice of motion considered at that meeting is reproduced below.

- 1. That as part of the 2019/2020 Operational Plan and Delivery Program, Council receives a report on developing a system to provide kerbside pickup or one free drop off to the Ballina Waste Facility, to each residence, during the rating year.*
- 2. The free drop off service will have reasonable limits on weight, volume and the type of materials to be accepted.*

Council subsequently resolved as follows.

### 11.3 Notice of Motion - Waste Management Centre Vouchers

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1. *That Council develop an overall illegal dumping strategy that provides overall social and environmental benefits for the entire community.*
2. *That Council promotes the free options available for residents to recycle/dispose of bulky goods, such as Freecycle and provide a link to these on our website.*

The previous resolution was 27 March 2017 as follows:

1. *That based on the contents of this report Council resolves not to proceed with the introduction of either a bulky waste collection service or free landfill drop off system.*
2. *That Council records the reasons for its decision in point one above including:*
  - *The financial impact to Council is significant and would result in increased waste charges.*
  - *The proposal is inconsistent with Council's objectives for waste recovery and landfill diversion.*
  - *The proposal is inconsistent with the emerging regulatory regime for waste management.*
  - *Residents are able to access the landfill on a user pays system and local contractors and other service providers are able to assist residents with collection and haulage of bulky goods.*
  - *For the kerbside collection, there are significant risks associated with environmental pollution, scavenging, residential amenity and illegal dumping.*
  - *The programs require significant additional resources to establish and implement.*

At that meeting, Council also debated the following motion which was lost.

*That Council receive a report on option two, being the provision of one free tip voucher per residential property per year.*

Attachment 1 is a copy of the report to the 28 February 2019 Ordinary meeting.

Attachment 2 is a copy of the report to the 16 March 2017 Finance Committee meeting.

Attachment 3 is a copy of a fact sheet Council uses to explain the current policy position arising from these previous decisions.

The March 2017 Finance Committee meeting report discussed model options and associated implications for the implementation of both a bulky waste collection service and waste management system voucher system in the 2017/18 Operational Plan and Delivery Program.

The information remains contemporary, in particular, that the model in that report remains generally consistent with any preferred model that could be introduced and the recommendation against introducing waste management centre vouchers remains the same for the majority of the same reasons.

The following comments are provided as additional information.

**NSW and QLD regulatory environment and the China Sword policy**

At the time of the 2017 report, there was legislative uncertainty with regard to levy and operational requirements associated with proposed changes to the NSW Protection of the Environment Operations (Waste) Regulation 2014. The proposed changes would have significantly impacted on the cost of managing the waste associated with the bulky waste service.

Whilst the proposed changes to the NSW legislation did not eventuate (largely due to a focused lobbying effort by this Council and other Northern Rivers Councils), at the beginning of the 2019/20 financial year, the Queensland Government has now introduced a waste levy of \$75 per tonne.

Whilst remaining the most viable option for waste disposal, this levy has significantly increased the cost associated with disposal of our waste.

As such, there has been a significant resultant pressure on both the LRM and DWM waste budgets to respond to the challenge of providing an affordable and effective waste service (both at the kerbside and the Waste Management Centre).

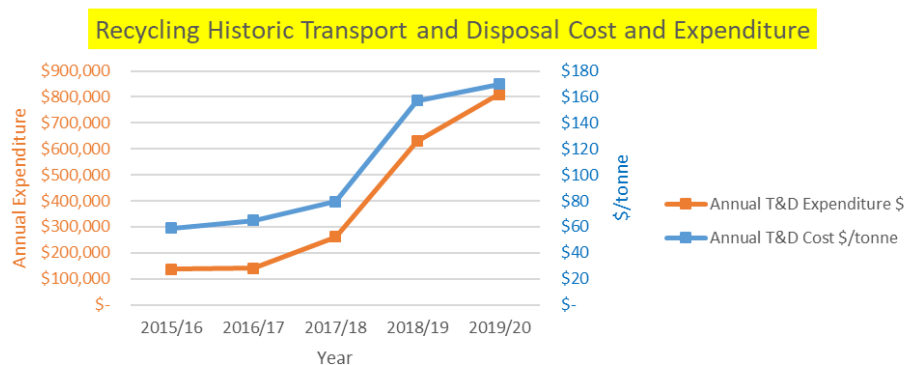
Introducing a service that places further expense and cost pressure on the waste budget will need to be fully funded via an increase in the annual Domestic Waste Management charge applied to every property.

As such, it will not be a 'free service', rather a service funded by all residents for only those who choose to use it.

Staff recently presented a briefing to Council, which highlighted the increasing costs to our operations from changes in the external environment. The impact from the China Sword policy for the whole of the recycling industry in Australia has been extensively documented.

In addition to this Council is incurring significant additional costs to process our food and organic waste stream as it was necessary to change our re-processor following the fire at the Lismore City Council facility.

The following chart shows the trend of increasing costs over the last few years for recycling materials. The costs for the disposal of waste show a similar impact.



### **11.3 Notice of Motion - Waste Management Centre Vouchers**

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The waste and recycling sector has always been dynamic and it is difficult to predict what further developments will continue in the future as markets and Government continue to respond to the challenges before us.

In light of the significant cost impacts, staff are currently finalising a major review of the Long Term Financial Plan as adjustments are required to ensure these operations remain financially sustainable in both the short term and the longer term.

The updated modelling will be presented to Council at an upcoming Finance Committee, however for present purposes, it is clear Council should avoid or minimise any policy initiatives or service delivery changes that add further significant cost or risk to these activities.

The implementation of a scheme proposed in the motion, or similar, can only be implemented by an increase in waste charges to generate the revenue required to offset the expense. This is not a free service as Council incurs an expense in dealing with the waste and that expense must be paid for by customers and ratepayers.

#### ***Weighbridge Hardware and Software System Upgrade***

As indicated in the 2017 report, a modelled barcoded voucher system would require an upgrade of the weighbridge hardware and software system. Whilst the current software program has the capacity to 'patch' in scanning hardware and software, the on-going administration of the system would be inefficient due to its age.

If Council were to proceed, it is recommended to upgrade the full weighbridge software/hardware system to accommodate the introduction of a voucher system.

This would cost in the vicinity of \$40,000 - \$60,000 and require a specific budget allocation and it would not be possible to complete the project prior to commencement of the new financial year.

Alternatively if Council proceeded to implement a voucher system for 2020/21, it would have to be administered initially via an upgrade of the existing weighbridge systems followed by a more comprehensive full system upgrade into the future.

This process would increase the cost and administrative work required to support the scheme, potentially resulting in delays in the customer service at the weighbridge.

As well as the inconvenience in a reduction in service, at peak demand times, there is a queue wait time for those residents seeking to use the waste facility.

Often these peak times are associated with traditional holiday periods and it is not unreasonable to expect a portion of the demand for the voucher service would occur at these peak times given the nature of the bulky waste it is targeting.

This has the potential to place further pressure on the customer service experience during these peak demand times.

**Cost Estimate Update**

Cost estimates are provided below for the weighbridge system upgrade. It is acknowledged these costs support improvements for the whole system and are not all directly attributable to the introduction of the proposed service, although it is noted Council was not planning to complete the upgrade, at this point in time.

Realistically the implementation of this proposal will have ongoing costs into the future as an investment of this scale and type cannot be considered a trial. Once such a service has been introduced, it will be extremely difficult to reduce or remove the service. As such, Council would need to be prepared to make an ongoing commitment to continue to fund this project.

The following table updates the annual cost figures from the previous reporting and adds in the additional startup costs.

Item	Cost (\$)
<b>Initial set up costs</b>	
Computer software, hardware and training (for vouchers)	14,000
Community education, print media	25,000
<b>Sub total</b>	<b>39,000</b>
<b>Ongoing annual costs (not including weighbridge system upgrade)</b>	
Administration	26,000
Waste fees for handling, transportation and disposal to landfill (based on 2,525 Tonnes @ \$260/tonne – 100% take up)	656,000
<b>Sub total</b>	<b>682,000</b>

**Service Take Up**

The waste fee component above assumes a 100% uptake of the service for an allocation of 150kg bulky waste per entitled residential property (as per model presented in the 2017 report).

The below table provides a summary of the costings for a range of uptake percentages based on the \$656,000.

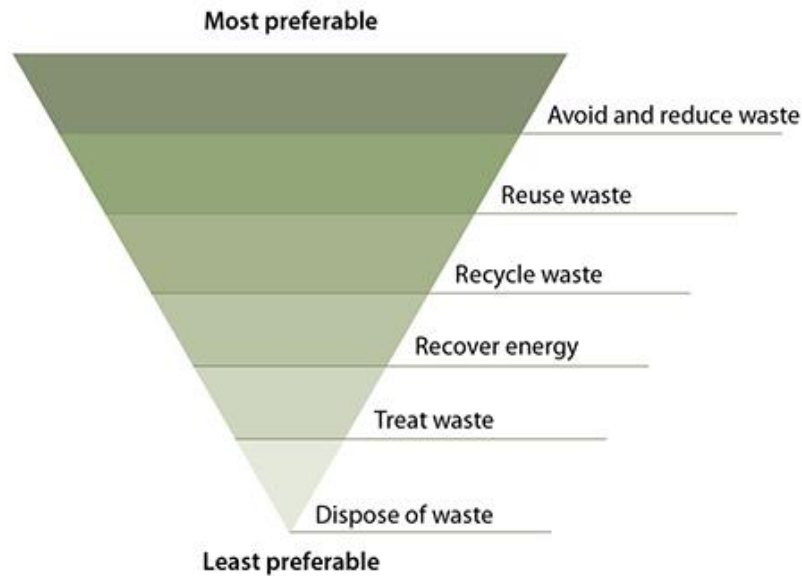
Percentage uptake of service	25%	50%	75%	100%
Annual Cost to Budget (20/21 FY)	\$164,000	\$328,000	\$492,000	\$656,000

Due to on-going increased external costs placing pressure on the waste management LRM and DWM budgets, any cost of the voucher service would be passed onto property that pays the DWM charge, regardless of whether they utilise the service or not.

**Council Strategy**

For Council, the NSW Government and industry best practice, waste and resource recovery strategies and legislation are underpinned by the Waste Hierarchy (depicted as follows) which is a set of priorities for the efficient use of resources.





In summary the waste hierarchy is as follows:

1. **avoidance** including action to reduce the amount of waste generated by households, industry and all levels of government
2. **resource recovery** including re-use, recycling, reprocessing and energy recovery, consistent with the most efficient use of the recovered resources
3. **disposal** including management of all disposal options in the most environmentally responsible manner.

Increasing the annual DWM charge for every residential property is inconsistent with Council's strategic 'user or polluter' pays structure, which, along with education, is an important policy to encourage waste minimisation.

As such Council should want to avoid penalising residents who try to minimise their bulky waste generation through their reuse and recycle efforts. Furthermore, the existing user/polluter pays arrangement represents the most equitable, efficient and least cost option to the whole community as it is paid for only when required.

Strategically Council should be avoiding any policy change that promotes an increase in the least preferable options within the waste hierarchy. Rather than introducing such a service, the emphasis should be on avoidance and resource recovery strategies.

Council should participate in actions to encourage State and Federal Governments to expand product stewardship schemes to help share the responsibility of the end of life management of a product among industry, government and consumers. Product stewardship places greater responsibility on the manufacturer or importer of a product and works to minimise the environmental impact of a product over its entire lifecycle from design, production, distribution, sale and use to disposal, recovery, reuse and recycling.

### 11.3 Notice of Motion - Waste Management Centre Vouchers

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Policy changes like this will assist residents deal with their waste products responsibly, however it is important in terms of building our case for this Council, and all councils, to ensure all of our activities are recognised as best practice waste minimisation.

#### ***Illegal Dumping***

Research conducted by the NSW EPA as part of their illegal dumping strategy indicates that an unwillingness to pay gate fees is only one of a number of reasons that people are motivated to illegally dump waste.

Other reasons include:

- convenience
- an uncaring attitude
- an opportunity to make money
- not realising dumping on the kerbside or around charity bin is wrong

Philosophically the link between introduction of a voucher system and reduced illegal dumping appears valid however in reality there is no evidence that such a system has any material impact on illegal dumping.

Councils throughout NSW that have voucher or bulky collection systems in place still have significant issues with illegal dumping.

In the 2018/19 financial year, Council spent approximately \$80,000 on the clean-up and disposal of illegally dumped waste. As such, even if the introduction of a voucher system reduces illegal dumping to some extent, the cost of introducing and administering the system will far outweigh any financial benefit realised from reduced illegal dumping.

With regard to addressing the on-going issue of illegal dumping in the Ballina Shire, staff are about to commence the review and development of a holistic Illegal Dumping Strategy, which is anticipated to be finalised prior to the end of the 2019/20 financial year. This is a key action identified in the 2019/20 Operational Plan.

#### **COUNCILLOR RECOMMENDATIONS**

1. That Council in the 2020/21 Operational and Delivery Plan implement a trial year for a 'free tip voucher' for each rate paying residential and rural property in Ballina Shire. This will involve each residence being able to access the Ballina Waste Depot for one drop off, free, for prescribed waste and amounts as determined by a Council model.
2. The preferred model of operation is to be reported back to Council by staff, with predicted costings for a range of 'take up' percentages, during the current Council finance and budget cycle.

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

1. [28 February 2019 - Notice of Motion](#)
2. [16 March 2017 - Report to Finance Committee](#)
3. [Fact Sheet](#)

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 January 2020 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
17/1/20	Meeting – Ballina Environment Society – New President
18/1/20	Launch of Light Graffiti - Lennox Head
20/1/20	Church Group
20/1/20	Meeting – Tuckombil Lane Project
21/1/20	Meeting – Darren Batty – National Manager Regional Sales and Development – Qantas Airways
22/1/20	Meeting – Bike Riders for Bunjum Transition House
23/1/20	Meeting – Byron Film Studios – Madam Xu
25/1/20	Alstonville Markets
31/1/20	Funeral – Nelson Family
31/1/20	Funeral – Digby Moran
1/2/20	Wollongbar Church Opening
2/2/20	Commemoration Park Markets
3/2/20	Briefing – River Street Parking
3/2/20	Briefing – Waste Management and Strategy
3/2/20	Briefing – Pesticide Use and Pesticide Notification Plan
5/2/20	Meeting – Chris Murphy Aria Masterclass
7/2/20	NRJO Board Meeting – Ballina
9/2/20	Commemoration Park Markets
9/2/20	Water for the Bush – Cherry Street Sports
10/2/20	Briefing – Drought Management
10/2/20	Presentation to Councillors – No 5G Network
11/2/20	Meeting – Chris Murphy – Aria Week
11/2/20	Meeting – 15 Pippi Place re Development Next Door
12/2/20	Local Traffic Committee
13/2/20	Meeting – CIVIQtm Public Use Products – Sustainability Goals
16/2/20	Commemoration Park Markets
16/2/20	Ballina Markets
17/2/20	Meeting – Refugees in Ballina Shire
18/2/20	Meeting – Orange Sky Laundry Van
18/2/20	Audit Risk and Improvement Committee
19/2/20	Seniors Week Concert RSL
19/2/20	Wardell and District Progress Association
20/2/20	Crowly Care 2020 Seniors' Festival
20/2/20	Meeting – Telstra GM – Mike Marom
23/2/20	Commemoration Park Markets
24/2/20	IPWEA NSW North Coast Forum Opening – Ramada
24/2/20	Briefing – Ozfish
27/2/20	Ordinary Meeting
29/2/20	Get Active Expo – BISC

#### **RECOMMENDATION**

That Council notes the contents of the report on Mayoral meetings.

**Attachment(s) - Nil**

**14. Confidential Session**

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

14.1 Ballina Wastewater Treatment Plant Upgrade - Contract Update

Refer to Item 10.3 of this agenda.

14.2 The Beach House - 70 Shelly Beach Road East Ballina

Refer to Item 8.3 of this agenda.

**RECOMMENDATION**

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

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

**Reason for Confidentiality**

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

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

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as this report provides advice concerning litigation.

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

**Reason for Confidentiality**

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

- e) information that would, if disclosed, prejudice the maintenance of law;  
and
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as the legal advice contained in the report is subject to legal privilege and its open discussion may prejudice enforcement action.