

Agenda

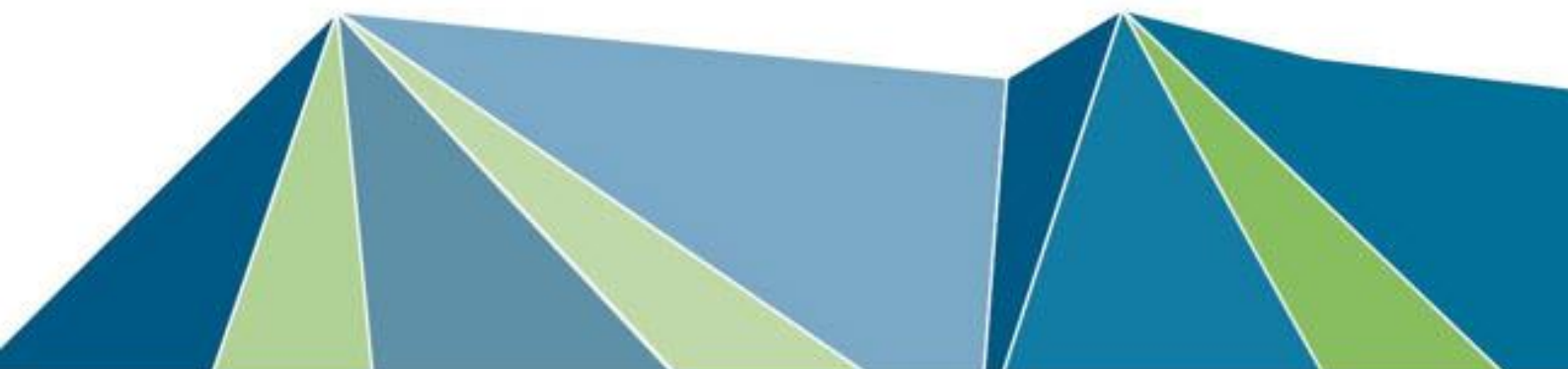
Ordinary Meeting 24 November 2022

An Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **24 November 2022 commencing at 9.00am.**

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 10.30am and a lunch break taken at 1.00pm.



Ethical Decision Making and Conflicts of Interest

A guide for Councillors, Council employees and community representatives

Ethical decision making

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

Conflict of Interest

A conflict of interest is a clash between private interest and public duty. There are two types of conflict:

- **Pecuniary** – an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to yourself or another person or entity defined in part 4 of the Council's Code of Conduct, with whom you are associated.
- **Non-pecuniary** – a private or personal interest that you have that does not amount to a pecuniary interest as defined in the Council's Code of Conduct.

These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.

The test for a conflict of interest

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- It is important to consider public perceptions of whether you have a conflict of interest.

Identifying problems

- Do I have private interests affected by a matter I am officially involved in?
- Is my official role one of influence or perceived influence over the matter?
- Do my private interests' conflict with my official role?

Disclosure and participation in meetings

Pecuniary Interests

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned, and who is present at a meeting of the Council or Committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - A person does not breach this clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Non-pecuniary Interests

Must be disclosed in meetings. There are a broad range of options available for managing non-pecuniary interests and the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary interests must be dealt with in one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.

- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as per the provisions in the Code of Conduct (particularly if you have a significant non pecuniary interest)

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:
 - a) Tenderers during a public tender or request for quotation
 - b) Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
 - c) Consultants who are engaged by Council on the matter the subject of the deputation.

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

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

Recording and Livestreaming of Council Meetings

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

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-

1. Australian National Anthem

The National Anthem will be performed by

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 27 October 2022 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 October 2022.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7.1 Mayoral Minute - Declaration of Statewide Road Emergency

7. Mayoral Minutes

7.1 Mayoral Minute - Declaration of Statewide Road Emergency

Councillor

Sharon Cadwallader

I move

That Ballina Shire Council joins with Local Government NSW and the Country Mayors Association of NSW in declaring a Statewide Road Emergency.

Mayoral Comments

We are all well aware the Shire has been hit by a seemingly relentless wave of flood events in the past 12 months.

And we are not alone. A total of 126 of New South Wales' 128 local government areas have had natural disaster declarations within the last 12 months, according to the President of Local Government NSW, Darriea Turley.

On 3 November 2022, Local Government NSW declared a Statewide Roads Emergency.

The declaration – and urgent call for the NSW and Federal governments to increase their existing road funding commitments in the wake of the floods – comes on the back of an estimated \$2.5 billion in road damages and a collapse of the local and regional road network.

I call on Ballina Shire Council to show our support for this move and wholeheartedly endorse the Local Government NSW declaration of Statewide Road Emergency.

The declaration has already been publicly supported by our peak regional body, the Country Mayors Association of New South Wales.

As part of the Statewide Roads Emergency, LGA NSW and Country Mayors Association of NSW are calling for:

- An acceleration and significant increase in funding for the \$1.1 billion Fixing Local Roads and Fixing Country Bridges program from the New South Wales Government
- A boost to Road Block Grant funding to compensate for the damage to the regional road network from the Federal Government
- New funding to provide councils with plant machinery and skilled workers to expedite road repairs from the Federal Government.

We have faced, and may continue to face, an unprecedented and unrelenting series of natural disasters that has seen residents and business owners cleaning up again and again, people isolated, workers unable to get to work, and students unable to get to training or school.

7.1 Mayoral Minute - Declaration of Statewide Road Emergency

Add to this our very real and immediate concern for our primary producers.

This latest rain event has hit at a critical time. Winter crops are ready to be harvested and the window for planting summer crops, including cotton, only lasts a matter of week. Cotton is the single largest contributor to our agricultural outputs. Livestock are ready to go to sale.

The local and regional road network is critically-enabling infrastructure. It is absolutely vital to our primary producers, and the key to keeping affordable food on the table across New South Wales and beyond.

Our road network, and the road network of shires across the state, have disastrous damage. We are facing a task that is beyond the reasonable scope of any local government authority. We face an unprecedented disaster that requires an unprecedented response.

We need help. Our community needs help. Other regional and rural communities across the state and beyond need help. We desperately need our leaders to lead.

We need to support our peak bodies in their declaration of Statewide Road Emergency.

This is an emergency, and it is time to seek help, and by supporting this Mayoral Minute you are endorsing that I write to the Prime Minister of Australia Anthony Albanese and the Premier of New South Wales Dominic Perrottet pleading for immediate action.

RECOMMENDATION

That Ballina Shire Council joins with Local Government NSW and Country Mayors Association of NSW in declaring a Statewide Road Emergency.

Attachment(s)

Nil

7.2 Mayoral Minute - Support for Public Post Office Bank

7.2 Mayoral Minute - Support for Public Post Office Bank

Councillor

Sharon Cadwallader

I move

That Council calls on the Commonwealth Parliament to pass the Commonwealth Postal Savings Bank Bill to establish a post office people's bank, fully guaranteed by the Commonwealth, as a dedicated postal savings bank, operating exclusively through Australia Post's corporate and licensed post offices, which will ensure basic banking services—including deposit-taking, business and personal lending, and access to cash— are available to all Australians, and will contribute to Australia's national economic development.

Mayoral Comments

Bank branch and ATM closures are leaving many communities without access to financial services, especially in regional Australia.

Since 1975 the number of bank branches in regional Australia has fallen by more than 60 per cent, and there are more than 1,500 communities across Australia with no bank branches at all.

A large proportion of the population, including the elderly, disabled, small businesses and local schools and charities, will always have a need for face-to-face financial services despite advances in technology.

For hundreds of communities, their only access to cash and financial services is through Bank@Post at their community Post Office.

Bank@Post is an essential service to all communities, but is vulnerable to commercial decision-making by the banks, which can choose to withdraw their participation.

RECOMMENDATION

That Council calls on the Commonwealth Parliament to pass the Commonwealth Postal Savings Bank Bill to establish a post office people's bank, fully guaranteed by the Commonwealth, as a dedicated postal savings bank, operating exclusively through Australia Post's corporate and licensed post offices, which will ensure basic banking services—including deposit-taking, business and personal lending, and access to cash— are available to all Australians, and will contribute to Australia's national economic development.

Attachment(s)

Nil

8. Planning and Environmental Health Division Reports

8.1 DA 2022/35 - Variation to Standard - 13 Loedna Place, Lennox Head

Applicant	Ardill Payne & Partners
Property	Lot 19 DP 791644, No. 13 Loedna Place, Lennox Head
Proposal	Strata Title Subdivision of an existing Dual Occupancy Development – approved via DA 1997/232
Effect of Planning Instrument	The land is zoned R2 Low Density Residential under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan contained in Attachment 1

Introduction

Council is in receipt of Development Application DA 2022/35 (PAN 189492) which proposes the Strata Title Subdivision of an existing dual occupancy development at Lot 19 DP 791633, No. 13 Loedna Place, Lennox Head.

The location of the land and existing development is shown in Attachment 1 and Figure 1. The existing dual occupancy development was approved via DA 1997/232, with additions to one dwelling approved via DA 2003/346.

The proposal seeks a variation to a development standard contained in Clause 4.1B of the Ballina Local Environmental Plan 2012 (BLEP 2012) -Minimum Subdivision Lot Size for Strata Plan Schemes in certain Residential, Rural and Waterway Zones. As the proposed variation to this development standard is greater than 10%, the application is required to be determined by Council.

Background

The subject Lot, being Lot 19 DP 791644, was created via DA 1988/351 which was approved on 15 December 1988 and comprised an 88 lot residential subdivision (Seaview Estate) including three public reserves. The subject Lot has an area of 1,824m².

At the time of assessment and determination of DA 1988/351, the land was zoned 2(a) Residential (Living Area) under the previous planning instrument applicable to the land, being the Ballina Local Environmental Plan 1987 (BLEP 1987) and was designated as L1 Low Density (Large Lots) via the former Development Control Plan No. 1 – Urban Land.

No minimum lot size was applicable to the land via the BLEP 1987, however DCP No. 1 had a preferred minimum lot size of 1,200m² for L1 designated lots.

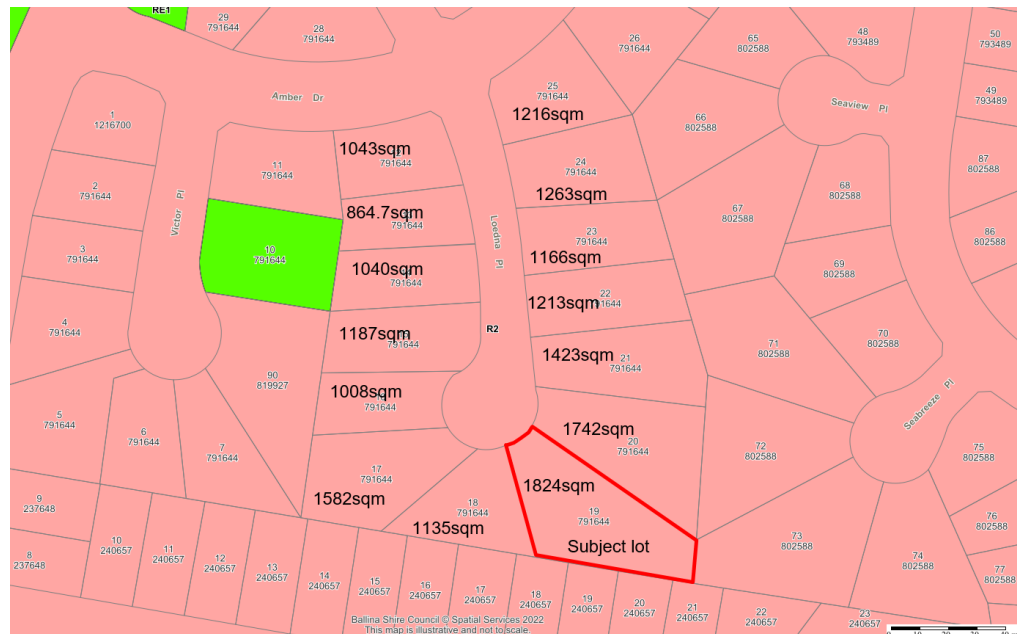


Figure 1: Lot sizes from original subdivision under DA 1988/351

Under the current applicable planning instrument, BLEP 2012, the subject land and surrounding Seaview Estate is zoned R2 Low Density Residential, with a minimum subdivision lot size of 1,200m² (as per Clause 4.1).

Council's Strategic Planning Section has advised that during the preparation of the BLEP 2012, the minimum subdivision lot size standard for the land was based on the former DCP standard (being 1,200m²). In this regard, the standards that were proposed for the BLEP 2012 were a "like for like" translation of the planning controls that were applicable at that time, via the former DCP.

The reason for this was that Council was keen to maintain the existing character of areas, and also provide for a diversity of different dwelling and lot types. The minimum subdivision lot size of 1,200m² was also considered to reflect the history of the subdivision pattern and planned character of the area, and to also take into account the visual prominence of the area, being visible from parts of the Coast Road.

In relation to the subject site, the following approvals have been granted by Council, since the creation of the subject lot (approved plans are shown in Attachments 2, 3, 4 and 5):

- DA 1997/232 (approved on 26 June 1997) and BA 703/1997 (approved on 3 July 1997) – to undertake a dual occupancy development
- DA 2003/284 (approved on 24 September 2002) – swimming pool
- DA 2003/346 (approved on 3 October 2002) – Additions and alterations involving the conversion of storeroom to a bedroom.

At the time of the assessment of DA 1997/232, DCP No. 1 – Urban Land identified that dwelling houses were the preferred land uses upon land designated as L1 Low Density. The L1 control plan area objectives were:

- To make provision for low density living options with single dwellings being the predominant form of housing on larger than normal lot sizes.

- To prevent the fragmentation of large lot estates which are important components in the range of housing types available in the Shire.
- To permit attached dual occupancy, but not the subdivision of such development in planned urban estates.

At that time, via DCP No. 1, a dual occupancy was defined as:

Dual Occupancy – means development permissible under clause 14 of the Ballina Local Environmental Plan that results in two attached dwellings on a single allotment which are required to remain unsubdivided from each other.

DCP No. 1 stated that the aims, in relation to dual occupancy developments, were to:

- *Allow the accommodation of family members in a self-contained dwelling unit attached to a dwelling; and*
- *Allow the residing owner to provide rental accommodation in a self-contained dwelling unit attached to a dwelling.*

DCP No. 1 also contained planning provisions in relation to duplex developments (which is now defined via the BLEP 2012 as a dual occupancy development) and this form of development was stated to be inconsistent with Council's planning objectives in the L1 Low Density designated areas at the time of approval of DA 1997/232.

There were concerns with the dual occupancy application and that it would imply duplex style living, which was prohibited within the zone as identified in the Council assessment report for DA 1997/232.

Under the prior applicable DCP, a duplex was defined as below:

Duplex – is a residential flat development containing two dwellings (whether attached or detached) on a single allotment of land (or which would have that result were it not for the fact that the allotment is to be subdivided as part of that development).

At the time of the assessment of DA 1997/232, and as referenced in the Council report for that proposed development, it was understood that the intention of the proposal was to enable elderly members of the occupant family to reside in relative independence in one of the dwellings with other family members, being able to provide a level of support, residing in the other.

A condition was imposed on the consent for DA 1997/232 which sought to restrict the development to a single ownership:

Any persons seeking to rely on this consent should be aware that under the terms of clause 14 of Council's Local Environmental Plan the subdivision of this land to provide for separate ownership of each dwelling must not be undertaken.

Details of the proposal

The applicant seeks the consent of Council for the Stata Title Subdivision of the subject land to create two Strata Title allotments (Proposed Lot 1 - area of 555m² and Proposed Lot 2 - area of 1,130m²), as shown in Figure 2 and Attachment 6.

Proposed Lot 1 will contain an existing two storey brick and timber dwelling. The lower floor of the dwelling contains a rumpus room, bathroom and bedroom 3. The upper floor of the dwelling contains the double garage, kitchen/lounge/dining room, laundry, wet closet, bedrooms 1 and 2, bathroom and balcony. Proposed Lot 1 also includes area for an open garden space, to the north of the dwelling.

Proposed Lot 2 will contain an existing two storey brick and timber dwelling. The lower floor of the dwelling contains study, rumpus, ensuite and storage. The upper floor of the dwelling contains the double garage, entry, laundry, bathroom, wet closet, bedroom 1 (with an ensuite), bedrooms 2 and 3, living/lounge/dining room and deck. Proposed Lot 2 also includes an open garden space with a swimming pool.

A common property lot with an area of 139m² is also proposed to be created, which is to contain the existing driveway and approximately a one metre wide walkway between the two dwellings.

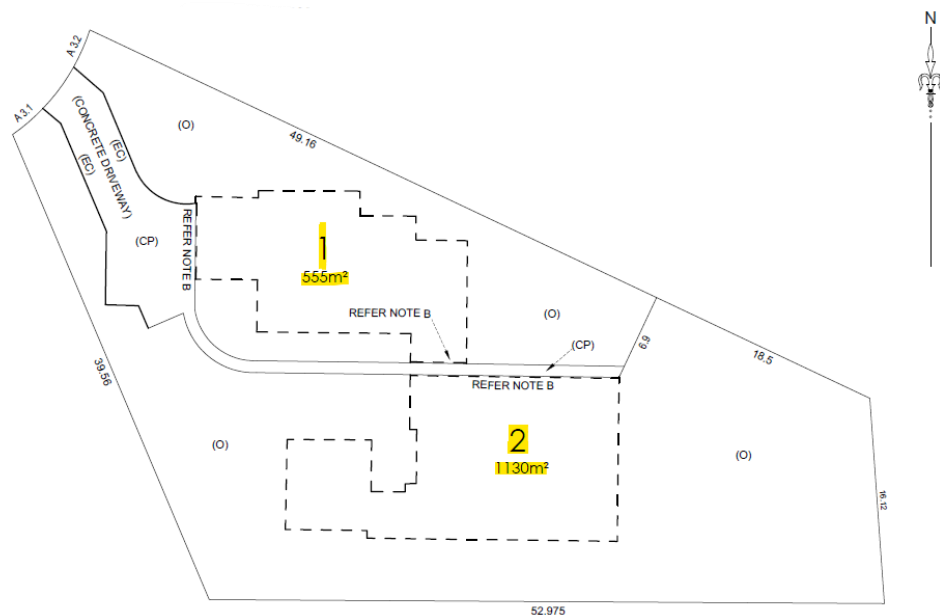


Figure 2: Proposed lot layout and lot size

The subject site has a total land area of 1,824m² and is zoned as R2 Low Density Residential under the BLEP 2012. Clause 4.1B sets a minimum subdivision lot size for Strata Plan Schemes in certain residential zones (which includes the R2 zone) as 1,200m² (Figure 3).

In this regard, both Proposed Strata Title Lots do not comply with the minimum subdivision lot size (strata) development standard.

The applicant has advised that both dwellings were approved and constructed with separation distances of approximately one metre between each dwelling and that there will need to be fire rating of the two dwellings for a small section of the building/s (approximately 3.5m). The following has been indicated by the applicant as being required:

1. Fire rate the wall of Dwelling 1 (Proposed Lot 1- northern dwelling).
2. This wall will have a FRL of 60/60/60 measured from the outside from the footing (ground level) to the underside of the roof covering. The existing cladding will be removed, 16mm Gyprock Fychek MR Plasterboard installed with the cladding reinstalled over the Fychek. Brickwork will be installed from the ground to the underside of the wall sheeting.
3. Roof eaves will be non-combustible with non-combustible fascia and gutter.
4. No windows are located on this elevation.

Council officers have requested a Performance Solution Report from an appropriately qualified person to address this existing non-compliance with the Building Code of Australia. The applicant has advised that the property owner/s are happy to provide a BCA report to address the fire separation requirements if Council determines that the application is worthy of support.

It is noted that the fire separation between the two dwellings is an existing issue that is not triggered through the subject development application and needs to be addressed regardless of the outcome of this proposal. In this regard, Council staff are able to follow this matter up separately and can do so if appropriate via an Order.

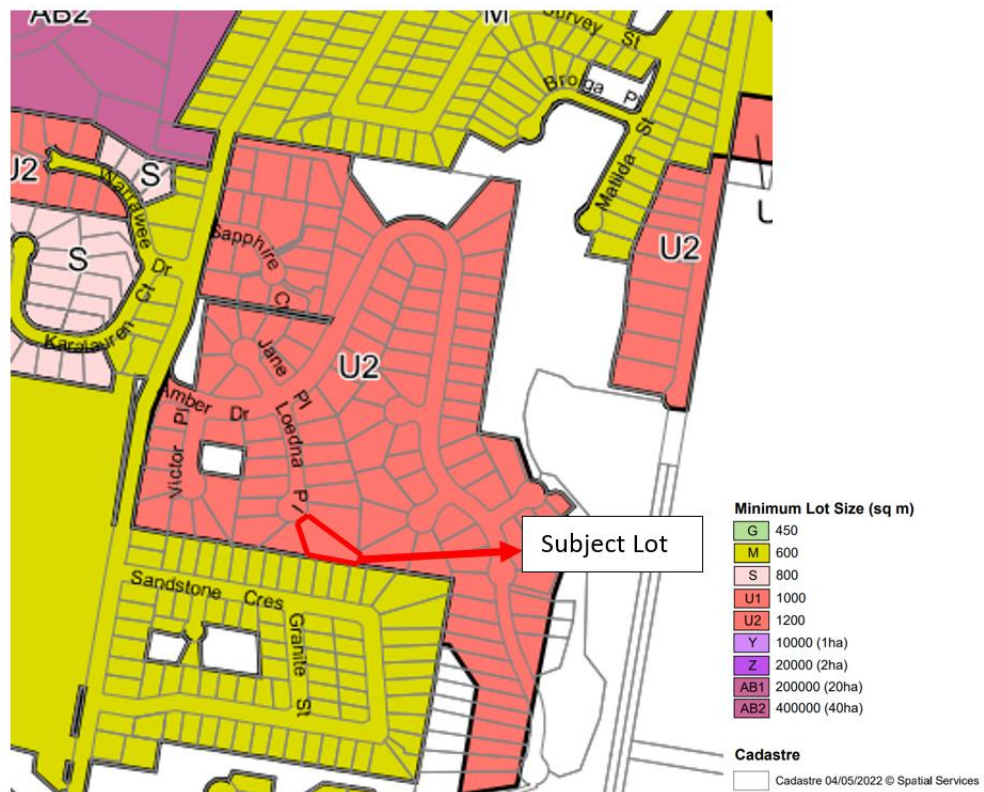


Figure 3: Colour code of minimum lot sizes within the immediate and surrounding locality

Description of the Subject Site

The subject land is irregular in shape, with the following dimensions and area:

- 67.66m north-east boundary (adjoining Lot 20 DP 791644).
- 16.12m eastern boundary (adjoining Lot 73 DP 802588).
- 52.975m southern boundary (adjoining Lots 18, 19, 20, 21 DP 240657).
- 39.56m western boundary (adjoining Lot 18 DP 791644).
- 10.19m (to Loedna Place).
- 1,824m² site area.

Existing on the land are two attached two storey brick and timber dwellings. Vehicular access to the site is via a single kerb crossing/driveway from Loedna Place.

The locality is characterised by a mix of single and double storey dwelling houses. It is noted that within the immediate locality there is only one other dual occupancy development, which is located at No. 5 Loedna Place (Lot 23 DP 791644), approved via DA 2002/48 (alterations to existing dwelling to convert to dual occupancy).

Figures 4 and 5 illustrate the locality.



Figure 4: Aerial of subject property and subdivision pattern within immediate locality



Figure 5: Aerial of subject property and subdivision pattern of Seaview Estate

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition in accordance with Council's Community Participation Plan. A Level 1 Targeted Notification was undertaken, and notification was provided to surrounding owners and occupiers of those properties which directly adjoined the proposed development.

No submissions were received.

Report

Matters for Consideration

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

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

This report should be read in conjunction with the attached Section 4.15 assessment report (Attachment 7).

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

<ul style="list-style-type: none"> SEPP 55 – Remediation of Land 	<p>No issues are raised in relation to land contamination. Refer to Attachment 7 for further comment and assessment.</p>
<ul style="list-style-type: none"> Ballina Local Environmental Plan 2012 Clause 4.1B Clause 4.6 	<p>The proposal is not considered to comply with the aims and objectives of the BLEP 2012.</p> <p>Specifically, as detailed in this report, the proposal is not consistent with aims 2 (b) to 2 (d), which are:</p> <p><i>(b) to provide for development that is consistent with Council's established strategic planning framework for Ballina,</i></p> <p><i>(c) to achieve the objectives of the land use zones set out in Part 2 of this Plan,</i></p> <p><i>(d) to promote the orderly and efficient use of land having regard to the social and environmental characteristics of the land,</i></p> <p>In addition to this, the proposal does not achieve all of the objectives of the R2 Low Density Residential zone, in that the proposal will not <i>provide for development that is compatible with the character and amenity of the surrounding neighbourhood.</i></p> <p>The application seeks a variation to Clause 4.1B - Minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones for both proposed lots via Clause 4.6 Exception to development standards of the BLEP 2012.</p> <p>Clause 4.1B has been addressed below.</p> <p>The assessment of the request for variation to the minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones via Clause 4.6 has been elaborated upon below for Council's consideration.</p> <p>Refer to Attachment 7 for further comments and assessment of the relevant controls in the BLEP 2012, applicable State Environmental Planning Policies and applicable chapters of the Ballina Development Control Plan 2012.</p>

Clause 4.1B Minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones	
	<p>Clause 4.1B (3) provides that</p> <p>“The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the <i>Strata Schemes (Freehold Development) Act 1973</i> or <i>Strata Schemes (Leasehold Development) Act 1986</i>) is not to be less than the minimum size shown on the Lot Size Map in relation to that land”.</p> <p>The subject land has a minimum size as shown on the Lot Size Map of 1,200m².</p> <p>Proposed Strata Lot 1 is to have an area of 555m².</p> <p>Proposed Strata Lot 2 is to have an area of 1,130m².</p> <p>Both proposed Strata lots are less than the minimum size as shown on the Lot Size Map.</p> <p>The applicant has acknowledged this and has submitted a written request to vary the development standard pursuant to Clause 4.6 of the BLEP 2012 (Attachment 8). Refer below for comment in relation to Clause 4.6.</p>

Clause 4.6 – Exceptions to development standards										
a) What is the development standard being varied?	The development standard being varied in this instance is Clause 4.1B – Minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones. The variation is of a numerical value.									
	The objective of Clause 4.1B is as follows									
	<i>“to ensure that land to which this clause applies is not fragmented by inappropriate subdivisions.”</i>									
	<table><tr><td>Minimum Lot Size (m²)</td><td>Proposed Lot Size</td><td>Percentage Variation</td></tr><tr><td rowspan="2">1,200m²</td><td>Proposed Lot 1 - 555m²</td><td>53.75%</td></tr><tr><td>Proposed Lot 2 – 1,130 m²</td><td>5.83%</td></tr></table>			Minimum Lot Size (m ²)	Proposed Lot Size	Percentage Variation	1,200m ²	Proposed Lot 1 - 555m ²	53.75%	Proposed Lot 2 – 1,130 m ²
Minimum Lot Size (m ²)	Proposed Lot Size	Percentage Variation								
1,200m ²	Proposed Lot 1 - 555m ²	53.75%								
	Proposed Lot 2 – 1,130 m ²	5.83%								
b) What is the underlying objective of this development standard?	The underlying objective is to ensure that the existing low density character of the land (and respective locality) is retained through preserving and consistently applying the minimum subdivision lot size standard.									

<p>c) In accordance with clause 4.6 of BLEP 2012:</p> <ul style="list-style-type: none"> Has the applicant's written request adequately addressed the matters required to be demonstrated by subclause (3) of Clause 4.6? (i.e. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard)? Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, as required pursuant to subclause (4) of Clause 4.6? 	<p>To determine whether there are sufficient grounds to support the Clause 4.6 request for variation, it is necessary to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>The applicant has submitted the following comments on how the proposal achieves the sole objective of the development standard:</p> <ul style="list-style-type: none"> <i>Fundamentally, strata subdivision of land ensures Torrens title lots continue to maintain the visual appearance of a single lot. The existing dual occupancy has been present in the street since the late 1990s. This dual occupancy has a shared driveway and shared landscaping. This street appearance will not alter in anyway as a result of the strata subdivision. No changes will be made to the existing lot with the shared driveway becoming common property.</i> <i>The use of common property for the dual occupancy for the shared driveway provides additional security that the strata subdivision will cause inappropriate fragmentation.</i> <i>The streetscape will not change in anyway given the dual occupancy is approved and existing with no works required to facilitate the strata subdivision.</i> <i>The strata subdivision will include an area of common property for a shared driveway. The common property is existing and does not require modifications to facilitate the strata subdivision.</i> <i>The strata subdivision will not provide any future potential for additional development nor increase the existing lot or dwelling density in the locality.</i> <i>This variation request will not result in any perceptible change to the existing development onsite given this application seeks strata subdivision only of an existing dual occupancy with existing use rights.</i> <p>With regard to the above, it is considered that the applicant has not sufficiently justified the proposed departure from the minimum subdivision lot size for strata plan schemes in certain residential zones, rural and waterway zones and therefore has not satisfied the requirements of Clause 4.6 (3).</p> <p>The applicant's arguments centre around and have a clear reliance on the circumstance that the physical development on the subject site will remain in the same form to that which has been approved via DA 1997/232, DA 2003/284 and DA 2003/346, in that the two dwellings will remain as two dwellings and all that is being introduced is a new 'strata boundary' and therefore two strata lots as part of the proposal.</p>
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	<p>The applicant states that strict compliance with the minimum Lot size development standard required by Clause 4.1B of BLEP 2012 is unreasonable and unnecessary in the circumstances because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard (and references case law (<i>c/s. 4.6(3)(a)</i>); <i>Wehbe v Pittwater Council</i> at [42] and [43]).</p> <p>Notwithstanding the applicant's position, it is considered that the objectives of the development standard have not been achieved. The objective of Clause 4.1B is to ensure that land to which this clause applies is not fragmented by inappropriate subdivisions.</p> <p>The creation of proposed Strata Lot 1, in particular, given its proposed area is to be 555m², is not reflective of the existing subdivision pattern within the immediate locality.</p> <p>The average lot size within the immediate locality (Loedna Place) is 1,269m², and in this regard, the proposal, specifically, proposed Lot 1 is not compatible with the character of the locality and does not reflect the current subdivision pattern. It is further noted that whilst there are a number of allotments in the immediate locality (7 in total out of 13) that are below the 1,200m² lot size, Council has previously had the opportunity to review the lot size within this locality upon the making of the BLEP 2012. In maintaining this 1,200m² lot size requirement (as had been adopted from former DCP controls), Council considered that the larger allotment size was appropriate in the context of the locality and preservation of the character of this area within Lennox Head.</p> <p>The provisions of Clause 4.1B enable the creation of strata lots in the R2 Low Density zone that are compliant with the minimum subdivision lot size for the land. In the event that the proposal comprised the strata title subdivision of a dual occupancy development whereby both proposed lots complied with the requirements of Clause 4.1B (i.e. both allotments had an area of at least 1,200m²), then the grounds to restrict or refuse the proposal would be limited.</p> <p>It is also considered that in the circumstance that the proposal more closely complied with the minimum subdivision lot size for the land (i.e. comprised a variation of less than 10%), it is highly likely that support could be provided for a proposed Strata Title subdivision. In this regard, the area of proposed Lot 2 is generally consistent with the development standard.</p> <p>The applicant has provided additional information (Attachment 9) to further support their request for variation to the requirements of Clause 4.1B, which</p>
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	<p>refers to a recent Land and Environment Court Judgement relating to Strata subdivision and minimum lot size (<i>Albert Square NSW Pty Ltd v Randwick City Council [2021] NSWLEC 1401</i>). The premise of the argument within the applicant's correspondence is that the Court in that case had interpreted a strata lot area as containing the land area and also any part of a proposed strata lot that is above or below ground level.</p> <p>The consequence of this in calculating the proposed Strata Lot areas is that:</p> <ul style="list-style-type: none"> Proposed Lot 1 would have an overall combined area of 633m² (ground floor/land area of 555m² + lower ground floor area approved via DA 2003/346 of 78m²) Proposed Lot 2 would have an overall combined area of 1,228m² (ground floor/land area of 1,130m² + lower ground floor area of 98m²). <p>The applicant has concluded that if this interpretation is adopted, Proposed Lot 2 would be compliant with the provisions of Clause 4.1B and Proposed Lot 1, despite not being compliant with these provisions as applicable to the land/subject site, would be compliant with the minimum subdivision lot size standard for land to the south of the site.</p> <p>Refer to Figure 3, which shows the subject site and immediate locality, including land to the south fronting Sandstone Crescent.</p> <p>As can be seen on Figure 3, the subdivision pattern to the south of the land is significantly different from that in Loedna Place, with the minimum subdivision lot size standard for the land fronting Sandstone Crescent being 600m².</p> <p>This land had a previous land use designation of L1 – Low Density (Dwellings and Dual Occupancy) under the former DCP applicable to the land and, similar to the case for the Loedna Place locality (as discussed above), in making the BLEP 2012, there has been a transferral of the planning controls that were applicable to the land at that time (via the former DCP). The reasons for this would also relate to maintaining the existing character of the area and a reflection of the existing subdivision pattern.</p> <p>Council had the opportunity at the time of the making of the BLEP 2012, to consider whether the controls applicable to the Sandstone Crescent area would be appropriate for the Loedna Place locality and made a conscious decision at that time to maintain the larger lot controls/development standards, so as to avoid the fragmentation of the land in the locality and protect its existing character.</p>
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	<p>In the context of a proposal which includes a significant variation to a development standard, if Council were mindful to consider and support the applicant's position, then any consideration of whether a smaller lot size is appropriate should not be made in an ad hoc manner as part of a single development application and is better dealt with in a more strategic and planned approach.</p> <p>This would be appropriately done through a review of the minimum subdivision lot size standard for the locality and there would need to be sufficient grounds and reasoning on needing to carry out this work more broadly for the locality (i.e. is a higher density of development considered appropriate and is the existing development standards outdated and inappropriate). As part of this review, considerations of locality character, and infrastructure provision will be relevant and there would need to be community engagement around such a significant policy change.</p> <p>In relation to objectives of the R2 zone and the proposed variation, the applicant has based their discussion on the circumstance that the physical development (i.e. two dwellings) on the subject site will remain in the same form to that which has been approved and that the introduction of a new 'strata boundary' will not change that.</p> <ul style="list-style-type: none"> • <i>The proposed development will not impact the existing dual occupancy in anyway. The development will continue to meet the needs of the community in a low-density residential environment.</i> • <i>The development is entirely consistent with the various types of residential properties in the Lennox Head locality given the surrounding dwellings are a mix of single dwellings and dual occupancies of 1, 2 story construction.</i> • <i>With respect to the third objective, the existing dual occupancy is entirely consistent with the character of the surrounding neighbourhood. The development will have no adverse impact on the existing amenity of the locality, given there will be no perceptible changes to the dwellings nor the land.</i> • <i>The variation to the minimum lot size will not compromise the existing development that will continue to meet the social and cultural needs of the community.</i> • <i>The strata subdivision will not impact the existing development in regard to the current use of energy and water. No changes will be required nor made to the existing dual occupancy relating to energy use or water.</i> <p>In the circumstances of the proposal and the extent of variation for proposed Lot 1, it is not agreed that</p>
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	<p>the housing needs of the community within the R2 zoned area will continue to be met. Additionally, it is questionable as to whether the development is compatible with the character and amenity of the neighbourhood (as discussed above) or that the proposal will meet the social and cultural needs of the community.</p> <p>Whilst the constructed development on the site is not to be noticeably modified or be altered as a result of the proposal, there will be a discernible change (which has not been addressed by the applicant) in that the two dwellings would be able to be separately owned, each dwelling being on its own Strata Title lot. In this regard, it could be argued that there is a reduced potential for one of the dwellings to be available for rental purposes (in that both owners could choose to occupy the dwellings, as opposed to the current situation which provides for at least one dwelling available for rental purposes). There is a social need in the community for rental housing stock, at which the proposal has the potential to impact on.</p> <p>Therefore, the proposal is not considered to be consistent with the objectives of the zone and is not in the public interest.</p>
<p>d) Will the cumulative effect of similar approval undermine the objective of the development standard or the objectives of the zone?</p>	<p>The majority of the allotments within the immediate and surrounding locality are benefitted by dwelling houses. It is noted that there are two other approved dual occupancy developments within the Seaview Estate, comprising No. 5 Loedna Place [via DA 2002/48 – conversion of an existing dwelling house (under construction) to a Dual Occupancy] and No. 25 Amber Drive [via DA 2005/200 - construct a single storey dwelling to create an attached dual occupancy].</p> <p>Whilst there would not be a high number of future applications that could be lodged in the immediate and surrounding locality for a Strata Title Subdivision of an existing dual occupancy development (as a limited number of this development type exists), an approval of a variation to the extent proposed as part of DA 2022/35 would have an impact more broadly on the Clause 4.1B development standard across the Shire. There are a number of dual occupancy developments that were approved in urban areas within the Shire prior to the introduction of the BLEP 2012, that are now zoned R2 Low Density. The approval of the proposed variation to the Clause 4.1B development standard for DA 2022/35 could result in a precedence argument for these developments and would therefore be used as a justification for future approvals.</p> <p>The objective of Clause 4.1B could be compromised in this situation, in that there would be a fragmentation of R2 low density land through inappropriate subdivisions. Additionally, as</p>

	<p>discussed above, with regard to the proposal and its compliance with the objectives of the R2 zone, it cannot be guaranteed that the housing and social needs of the community will continue to be met. It is on this basis that concerns are raised that the proposal would set a precedent that would undermine the objective of the Clause 4.1B development standard and the objectives of the R2 Low Density zone.</p>
<p>e) The Five Part Test (Note: established by the NSW Land and Environment Court). Only one test needs to be satisfied.</p> <p>1. Are the objectives of the standard achieved notwithstanding non-compliance with the development standard?</p> <p>2. Is the underlying objective or purpose of the development standard not relevant to the development and therefore compliance is unnecessary?</p> <p>3. Will the underlying object of the purpose be defeated or thwarted if compliance was required and therefore is compliance unreasonable?</p> <p>4. Has the development standard been virtually abandoned or destroyed by Council's actions in granting consent departing from the development standard and therefore is compliance with the development standard unnecessary and unreasonable?</p> <p>f) Is compliance with the development standard unreasonable or inappropriate due to the existing use of the land and current environmental character of the subject property (should this</p>	<p>The proposal involves the Stata Title Subdivision of the subject land to create two Strata Title allotments, with areas of 555m² (Proposed Lot 1) and 1,130m² (Proposed Lot 2). Proposed Lot 1 comprises a significant departure of the Clause 4.1B development standard. Therefore, to determine a variation to a development standard under Clause 4.6, Council needs to be satisfied that compliance with the standard is unreasonable or unnecessary in the circumstances.</p> <p>To demonstrate the above, Council can apply one of the justifications (five part test) established in <i>Wehbe v Pittwater Council</i> [2007] NSWLEC 827. The applicant has not specifically identified the test in which they rely on to support their Clause 4.6 request. However, Council is to assume that Test 1 is of relevance as the applicant has justified the departure on the basis that proposed lots are consistent with the objectives of the standard.</p> <p>Test 1 provides whether the objectives of the standard can be achieved despite the non-compliance with the development standard specified by Clause 4.1B.</p> <p>The objective of the clause is to ensure that land to which this clause applies is not fragmented by inappropriate subdivisions.</p> <p>The requested variation is, with respect to Proposed Lot 1, a significant numerical departure from the development standard and, in this instance, it is not considered to be reasonable to vary the standard for the reasons as outlined above. The creation of proposed Strata Lot 1 with an area of 555m², is not reflective of the existing subdivision pattern within the immediate locality and is not considered to be compatible with the character of the locality.</p> <p>It is considered that there is not sufficient planning grounds to justify the variation to the Clause 4.1B development standard in this instance. The proposal does not achieve the underlying objective of Clause 4.1B and, the proposal, particularly Proposed Lot 1, are not consistent with the size, shape and subdivision pattern within the immediate and broader locality.</p> <p>In relation to the remaining tests:</p>

property have been included in the current zone)?	<ul style="list-style-type: none"> - Test 2 – the underlying objective/purpose of the Clause 4.1B development standard is clearly relevant to the proposal. In this regard, the applicant could not rely on meeting this test. - Test 3 – the underlying object of the purpose would not be defeated or thwarted if compliance with the Clause 4.1B development standard was required and therefore is compliance reasonable. In this regard, the applicant could not rely on meeting this test. - Test 4 - the Clause 4.1B development standard has not been virtually abandoned or destroyed through prior Council approvals and therefore is compliance with the development standard not considered unnecessary and unreasonable. In this regard, the applicant could not rely on meeting this test. - Test 5 - compliance with the Clause 4.1B development standard is not considered unreasonable or inappropriate due to the existing use of the land and current environmental character of the subject property. It is clear that the property is utilized for low density uses and therefore should be retained in the R2 zone. In this regard, the applicant could not rely on meeting this test.
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Section 4.15(1)(a)(ii) the provisions of any proposed instrument

<ul style="list-style-type: none"> • Draft Amendment to State Environmental (Mining, Petroleum Production and Extractive Industries) 2007 • Draft State Environmental Planning Policy – Remediation of Land 	No issues raised in regard to any Draft SEPPs.
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Section 4.15(1)(a)(iii) provisions of any development control plan

Ballina Shire Development Control Plan 2012	
Chapter 2 – General and Environmental Considerations	<u>Part 2 Chapter Planning Objectives</u>
<ul style="list-style-type: none"> • 3.4 – Potentially Contaminated Land • 3.6 – Mosquito Management • 3.7 – Waste Management • 3.9 – Stormwater Management • 3.10 – Sediment and Erosion Control • 3.11 – Provisions of Services • 3.19 – Car Parking and Access 	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.
Chapter 3 – Urban Subdivision	The proposal is for the Strata Title subdivision of an approved dual occupancy only therefore this Chapter is not applicable.

Chapter 4 – Residential and Tourist Developments <ul style="list-style-type: none">• G Element – Landscaping and Open Space• H Element – Vehicular Access and Parking• I Element – Overlooking and Privacy	The overarching objectives have been considered in relation to the proposal. 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. Refer to Attachment 7 for an assessment of the clauses that are relevant to this application.
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4.15 (1) (a) (iia) – 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.

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

Comment: No issues raised. Refer to Attachment 7 for further comment.

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

Comment: The proposal is expected to result in negative impacts to the environment or broader locality. Refer to Attachment 7 for further assessment in relation to the likely impacts of the development.

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

Comment: The subject site is not considered to be suitable for the proposed two lot strata title subdivision. Refer to Attachment 7 for further assessment of the suitability of the site for the development.

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

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

4.15 (1) (e) The Public Interest

Comment: The proposal would potentially result in a reduction in rental housing stock in the locality and there is a social need in the community for rental housing stock, at which the proposal has the potential to impact on.

The primary concern however, is the proposed extent of variation to the Clause 4.1B development standard in relation to Proposed Lot 1, and that the approval of an allotment with such a significant departure, is not consistent with the subdivision pattern within or character of the locality.

This is an undermining of Council’s planning provisions and strategic vision for the area.

In this regard, the proposal is not considered to be in the public interest.

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* and the *Ballina Development Control Plan 2012*.

The proposal is not considered to be suitable within the locality as discussed within this report, is not consistent with the aims of the BLEP 2012, does not achieve the objectives of the R2 Low Density zone and is not consistent with the objectives of the Clause 4.1B - Minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones development standard. The requested variation under Clause 4.6 of the BLEP 2012 to this development standard is therefore not warranted in the circumstances.

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

Option One – To Grant Consent

That Council approve the Strata Title Subdivision of the existing dual occupancy development, subject to standard planning conditions on the basis that Council is satisfied that the proposal has adequately demonstrated that the aims of the BLEP 2012, the objectives of the R2 Low Density zone and objectives of Clause 4.1B minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones will be achieved despite the variation to the minimum lot size.

Concurrent with any approval, Council would need to separately resolve to support the Clause 4.6 variation to the Clause 4.1B development standard.

In considering this option, Council needs to be mindful of the potential for a significant number of future applications that could be lodged across the urban R2 zoned areas of the Ballina Shire. This will undoubtedly have an impact on the application and use of the Clause 4.1B development standard, with a precedence argument utilised for those developments.

This development standard therefore has the potential to be eroded/ abandoned or destroyed by Council's actions in granting consent of a significant departure from the development standard. In turn this could have flow on impacts on the form and character of other low density areas.

Provision for dual occupancy development and associated strata subdivision is more appropriately considered through a broader strategic planning process (rather than via an individual development application).

With strata subdivision in R2 zones Council has deliberately inserted a very particular provision into the Ballina LEP 2012 requiring strata subdivision to conform to minimum subdivision lot size standards to reflect the underlying planning approach to these low density areas and the character that has been established, or is intended.

Council is currently preparing a housing strategy for the shire and the form and diversity of housing in the shire is a key consideration. The approach to dual occupancy development and housing in low density areas in Lennox Head will also be informed by the outcomes of the current Lennox Head Strategic Plan process (of note dual occupancy has been examined in a strategic planning sense in Wardell, Wollongbar and Alstonville based on place based strategic planning that informs policy decisions). Through these processes Council will have opportunity to consider housing form and density policy from an overarching perspective.

Approval of the application is not recommended.

Option Two – To Refuse the DA

That Council refuse the development application. The departure from the Clause 4.1 B minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones is excessive and the applicant has not suitably justified that the proposal achieves the aims of the BLEP 2012, the objectives of the relevant development standard or the objectives of the R2 Low Density Residential zone.

Alternatively, Council could defer its decision on this matter to seek further information.

Refusal is recommended for the reasons outlined in this report.

RECOMMENDATION

That Development Application 2022/35 for the Strata Title subdivision of an existing Dual Occupancy Development – approved via DA 1997/232 at Lot 19 DP 791644, No. 13 Loedna Place, Lennox Head be **REFUSED** for the following reasons:

1. The proposed development is inconsistent with the aims of the BLEP 2012, as it will not provide for development that is consistent with Council's established strategic planning framework and will not result in an efficient use of land having regard to the environmental characteristics of the land.
2. The proposed development does not achieve the objectives of the R2 Low Density Residential Zone of the BLEP 2012 as the proposal involves a subdivision that is not compatible with the character and amenity of the surrounding neighbourhood.
3. The proposed development will not result in a subdivision pattern that reflects and reinforces the existing low density and large lot character of the locality and will result in the inappropriate fragmentation of land. Therefore, the proposal does not achieve the objectives of the R2 Low Density Residential Zone and Clause 4.1B of the BLEP 2012.
4. Proposed Strata Lot 1 does not achieve the underlying objective of the development standard prescribed in Clause 4.1B of the BLEP 2012.

5. The proposed variation under Clause 4.6 of the BLEP 2012 to the minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones prescribed by Clause 4.1B of the BLEP 2012, in relation to proposed Strata Lot 1, is not well founded as it has not been adequately demonstrated that the compliance with the development standard is unreasonable or unnecessary in this instance, and that there are sufficient environmental planning grounds to justify contravening the development standard.
6. The proposed development is not in the public interest because it is inconsistent with the objectives of the minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones standard and does not achieve the objectives for development within the R2 Low Density Residential zone.

Attachment(s)

1. Locality Plan [⇒](#)
2. DA 1997/232 - Development Application Approved Plans [⇒](#)
3. BA 703/1997 - Building Application Approved Plans [⇒](#)
4. DA 2003/284 - Development Application Approved Plans [⇒](#)
5. DA 2003/346 - Development Application Approved Plans [⇒](#)
6. Proposed Strata Subdivision Plan [⇒](#)
7. Section 4.15 Assessment Report [⇒](#)
8. Clause 4.6 Variation Request [⇒](#)
9. Clause 4.6 Variation additional comments [⇒](#)

8.2 DA 2021/218 - Lennox Head Rural Fire Service Facility

8.2 DA 2021/218 - Lennox Head Rural Fire Service Facility

Applicant	Newton Denny Chappelle
Property	Lot: 1 DP: 1270999 and adjoining road reserve 9 Byron Bay Road LENNOX HEAD
Proposal	Erection of the Lennox Head Rural Fire Service Facility and associated earthworks, vegetation management works, car parking, vehicular access, and infrastructure servicing.
Effect of Planning Instrument	The land is zoned R2 under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan included as Figure 1 in this report

Introduction

Council is in receipt of DA 2021/218 for the erection of a Rural Fire Service (RFS) facility and associated earthworks, vegetation management works and infrastructure servicing and including earthworks, car parking and vehicular access at 9 Byron Bay Road and an adjoining road reserve, Lennox Head.

Newton Denny Chapelle is the applicant on behalf of Ballina Shire Council.

A copy of the plans for the proposed development are contained in Attachment 1.

The application is being reported to Council for determination having regard for differing professional opinions about the likely environmental impacts associated with the proposed development, the conclusion of Council's technical officer assessment that the proposal is likely to have a significant impact on ecological attributes present on the site and public interest considerations associated with the proposal for the RFS facility.

The key biodiversity considerations, including the different viewpoints regarding impacts, were the subject of reporting to Council's 14 September 2022 Facilities and Finance Committee meeting.

The recommendation of the Committee was adopted by the Council at the 27 October 2022 Ordinary meeting, as follows:

That Council notes the ecological assessment completed by Blackwood Ecological Services is preferred for the purpose of completing the assessment of DA 2021/218 and further Council notes this preference has regard for the following:

- The reporting by Blackwood Ecological Services has been completed by a competent, experienced and properly briefed consultant.*
- The reporting by Blackwood Ecological Services has been reviewed by a specialist legal advisor.*

- *The reporting by Blackwood Ecological Services has been peer reviewed by Planit Consulting.*
- *The reporting provides appropriate mitigation measures to address environmental impacts and the development will need to comply with any consent conditions.*
- *The public interest in the development of a new Rural Fire Service facility and Preschool.*
- *Currently no alternative site options have been identified for either project.*
- *Council has a statutory requirement to provide the Rural Fire Service shed.*

This planning assessment report prepared by Council's technical staff provides a statutory assessment of the key relevant matters under Section 4.15 of the Environmental Planning and Assessment Act (EP & A Act) 1979. This report is contained in Attachment 2.

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

In the event that Council elects to grant consent to the proposed development, a set of recommended non-standard conditions of consent is contained in Attachment 3.

Background Details of Proposal and Proposed Development on the Land

There are two development proposals presently relating to 9 Byron Bay Road, Lennox Head.

One is to construct a Rural Fire Service (RFS) facility as proposed by the current DA 2021/218.

The second is for a future community preschool in the northern section of the site. Assessment of the second proposal (DA 2021/792) has not yet been undertaken.

This application has not been assessed in detail pending Council's decision of the RFS facility given its implications for the urban footprint on the land.

Also, further details and supporting information relevant to the preschool is required to progress the assessment of this application.

A site map for 9 Byron Bay Road and an extract of the design layout are shown in figures 1 and 2.

Figure 2 shows the location of the RFS facility relative to both 9 Byron Bay Road and the adjoining road reserve to the south.



Figure 1: Site Location Plan

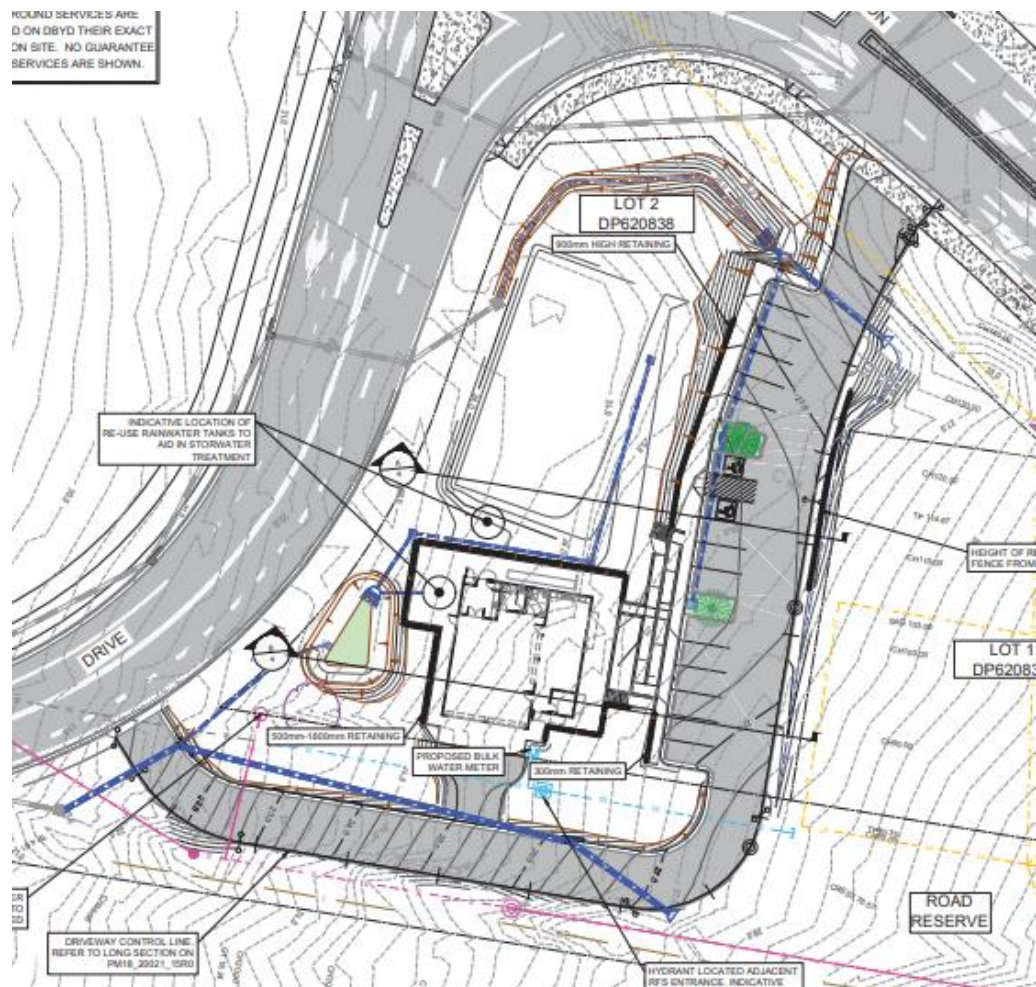


Figure 2: Design Layout for RFS Shed, driveways, carparking, and pad for future Preschool

The site is Council owned. A design has been prepared by Council's project team and lodged as DA 2021/218. Construction of the RFS facility requires earthworks, vegetation management works, infrastructure servicing, car parking and two points of vehicular access.

A vacant pad will be created for the future community preschool.

This is shown to the north of the RFS building site, and closer to the intersection of Byron Bay Road and Hutley Drive.

The applicant engaged 'Blackwood Ecological Services' to provide an ecological assessment to accompany the current DA.

An important biodiversity issue associated with this assessment is whether the proposed development results in a significant impact on the littoral rainforest and/or *Macadamia tetraphylla* trees present on the land.

The decision on significance determines the pathway to address biodiversity issues associated with the current DA for the RFS and the future use of the northern part of the site (currently the proposed location for a new preschool).

Based on the reporting prepared by Blackwood Ecological Services and technical assessment by Council staff it has been identified that two threatened entities listed under the Biodiversity Conservation (BC) Act 2016 occur on this site and the adjoining road reserve to the south.

The identified threatened entities are:

- 2,117m² of littoral rainforest listed as an Endangered Ecological Community (EEC); and
- Two Rough shelled bush nut (*Macadamia tetraphylla*) - a species of plant listed as vulnerable.

The assessment has concluded that, while the *Macadamia tetraphyllas* will be retained, the development will remove 25% of the littoral rainforest's "local occurrence".

The location of the threatened species vegetation is shown in Figure 3



Figure 3: 9 Byron Bay Road and Adjoining Road Reserve - Vegetation Mapping

In Figure 3, littoral rainforest is shown in orange, the *Macadamia tetraphylla* on the site are shown by yellow circles and the 9 Byron Bay Road boundaries are shown by a black and white dotted line.

Land to the east of the subject site (9 Byron Bay Road) also includes the littoral rainforest and a Telstra exchange.

Land immediately to the south of 9 Byron Bay Road is a road reserve. Works associated with the current DA are also proposed within the unmade road reserve. Land beyond this to the south is the site of 'The Crest' subdivision development.

On 14 September 2022 Council's Finance and Facilities Committee considered the matter and recommended proceeding with the RFS facility based on a preference for the advice provided by Blackwood (i.e., that the removal of the rainforest and impacts on the macadamia trees do not result in a significant impact).

The minutes of the Committee meeting were endorsed by Council at the 27 October 2022 Ordinary meeting.

Parts of the reporting relating to the biodiversity matters are reproduced below for the purposes of providing a complete overview of key issues within this report.

The full reporting to the Committee, including a report addressing biodiversity considerations and a report on the provision of the proposed RFS and preschool facilities, can be found at [Agendas and Minutes | Ballina Shire Council \(nsw.gov.au\)](#)

Provisions of the Biodiversity Conservation (BC) Act 2016

Under the Biodiversity Conservation (BC) Act 2016, Council as the consent authority, is required to assess the impact of a development on threatened species and/or ecological communities.

Council needs to form a view on the significance of impact arising from a proposed development.

Under Section 7.2 of the BC Act, a significant affect is triggered by a development in three ways, being:

- (a) the development is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- (b) the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or
- (c) the development is carried out in a declared area of outstanding biodiversity value as defined on land mapped on the Biodiversity Values Map (BV).

Section 7.2(a) of the BC Act is administered by way of what is called a 5-part test, or a “test of significance” as described in Section 7.3 of the Act.

Section 7.7(2) of the BC Act requires that if a development is “likely to significantly affect threatened species” an applicant is required to enter into the Biodiversity Offset Scheme (BOS) via the preparation of a Biodiversity Development Assessment Report (BDAR).

The Principles of Serious and Irreversible Impacts (SAIL)

The preparation of a BDAR also requires the applicant to assess the concept of Serious and Irreversible Impacts (SAIL) on threatened species and/or communities.

For a species and/or a community to be considered a SAIL it must adhere to one of the following four principles:

- Principle 1 – species or ecological community currently in a rapid rate of decline
- Principle 2 – species or ecological communities with a very small population size
- Principle 3 – species or area of ecological community with very limited geographic distribution
- Principle 4 – species or ecological community that is unlikely to respond to management and is therefore irreplaceable

The consideration of the SAIL principles is particularly important, because if it is determined by the consent authority under Section 7.1(2) of the BC Act that a development will have an SAIL, the consent authority must refuse a development application.

While an applicant is required to prepare ecological reports to assess the ecological impact of a development, the decision whether a development will have a significant impact on a threatened species and / or ecological community is the statutory responsibility of Council as the consent authority and not the applicant.

Council's assessing officers have considered the submitted ecological reports in accordance with principles and definitions of the "Threatened Species Test of Significance Guidelines" published by the former NSW and Office of Environment and Heritage.

For DA 2021/218, the point of contention is the likely significance of the impact on threatened species arising from the rural fire service facility being built and operated as proposed.

It is agreed that elements b) and c) under section 7.2 of the BC Act are not triggered in this instance.

The consultant ecologist engaged by the applicant has concluded that the development will not result in a significant impact on the threatened species identified.

However, Council's development assessment staff are of the view that the development will likely result in a significant impact and therefore a BDAR and an analysis of SAI is necessary.

Rationale for Different Viewpoints on SAI

The following provides a comparison of the key reasons for the conclusions reached by Blackwood Ecological Services and Council's Environmental Scientist (as the assessment officer informing Council as the planning authority).

Blackwood Ecological Services

With respect to the littoral rainforest, Blackwood Ecological Services concludes that the proposed development will not have a significant impact for the following reasons.

- The loss of less than 25% of the contiguous local occurrence of littoral rainforest will not place the local occurrence of the littoral rainforest at risk (the Blackwood report concludes 486m² of littoral rainforest will be removed from 9 Byron Bay Road and the adjoining road reserve with 499m² retained and there is a further 1,142m² of littoral rainforest of the adjacent Lot 1 – the percentage loss under the Blackwood report is 23%).
- The local occurrence is already fragmented and isolated and the proposed development will not substantially increase the levels of fragmentation and isolation, or the degree of degradation, and weed infestation.
- Tuckeroo is the most common native tree species in the vegetation on the site. Tuckeroos regularly occur as isolated trees, or in small patches, and remain healthy in similar conditions.

- Fauna species that forage on the Tuckeroo and other vegetation on the site will likely be able to continue to forage on the retained vegetation.
- Dispersal and genetic exchange is unlikely to be substantially affected. Of the flora species proposed for removal, all are represented elsewhere on the site (which includes the adjoining vegetation outside 9 Byron Bay Road).
- The vegetation to be removed does not form part of an intact forested wildlife corridor that is needed for fauna movement. The vegetation does not play an important role in sustaining habitat connectivity.

This conclusion is reliant on the consideration of the vegetation loss on the site, relative to the littoral rainforest vegetation on adjoining land (the area considered is known as the local occurrence and this is a point of difference with the Council officer assessment).

With respect to SAI criteria, Blackwood Ecological Services concludes the development will not result in a serious and irreversible impact on the littoral rainforest.

In relation to the *Macadamia tetraphylla* trees, Blackwood Ecological Services concludes that the proposed development will not have a significant impact for the following reasons.

- The larger tree and small sapling will not be removed because the development and construction impacts will be located outside the Tree protection zone for these trees.
- Protective fencing can be established around the specimens to protect them from impacts during the construction phase.

The proponent has also sought legal advice in relation to the suitability of the consultant ecological report. The legal advice regarding the process associated with applying the BC Act aligns with the understanding and practice of Council's assessment staff. A copy of this advice is included as an attachment to Council's Finance and Facilities Committee September meeting agenda.

Further, the proponent also obtained a peer review of the Blackwood Ecological Services reporting by Planit Consulting with the resulting advice summarised as follows:

I refer to your recent request for Planit to undertake a peer review of ecological services provided to Ballina Shire Council by Blackwood Ecological Services in respect to the proposed Lennox Head Rural Fire Service facility. In our opinion, the Blackwood Ecological reports are robust and address relevant legislative requirements.

The methodology and overall presentation of the reports appears sound.

I advise, following a thorough assessment of Blackwood's reports, we conclude, there are no significant shortcomings or glaring deficiencies.

Applying the Blackwood Ecological Services conclusion means Council can proceed to determine the development application favourably from an ecological perspective. On considering the different viewpoints and technical information, Council has previously indicated a preference for the approach applied by Blackwood Ecological Services at 27 October Ordinary meeting.

Under a scenario where Council decides to grant consent to the development application (having also considered the other matters of relevance to the planning assessment), conditions of consent requiring compensatory plantings are recommended, consistent with Council's biodiversity offset policy. Compensatory plantings are addressed in the recommended non-standard conditions in Attachment 3.

Council Officer Technical Assessment

In contrast to the conclusion made by Blackwood Ecological Services, the Council officer conclusion is that a 25% impact (as the best-case scenario) represents a significant impact to the rainforest's "local occurrence" especially when it appears these impacts are avoidable (e.g., the RFS facility can be constructed elsewhere on the lot away from the forest area).

This is because:

- In most cases where threatened species are involved avoidance and retention are the first principles. Where avoidance is not achievable 15-20% impact to the vegetation's "local occurrence" is usually considered the upper threshold (this is the approach typically applied by Council staff). However, the impact threshold is not a fixed standard, and each case does need to be assessed differently based on the individual circumstances e.g., vegetation type, size, and potential impacts etc.

- The clearing of the vegetation can be avoided to construct the RFS facility (although this appears not to be the case when the preschool is also considered).

- Given the adjoining Lot 1 (large area of orange rainforest depicted in Figure 3) is under a different ownership (Telstra), avoidance of impact on the littoral rainforest growing on that property is appropriate. The submitted EAR concluded the 1,142m² of littoral rainforest growing on the adjacent Lot 1 will not be impacted by the development.

However, given the relatively small size of the retained area of littoral rainforest, the impacts of weed invasions and edge effects will likely be exacerbated.

Adverse impacts on the adjoining littoral rainforest on Lot 1 cannot be easily mitigated by undertaking activities such as ongoing weed eradication works.

- The clearing of the rainforest will likely increase the level of weed infestation in the retained littoral rainforest on the development site.
- While the submitted test of significance focuses on the removal of the Tuckeroos, this is considered to be an incorrect way to conduct an impact assessment.
- The impact assessment, including genetic exchange, is required to be undertaken for all species of flora and fauna known and/or having the potential to occur within the subject vegetation community. This has not occurred to the extent necessary to suitably demonstrate the extent of impact.
- The submitted test of significance does not assess critical thresholds of remnant size, and species and structural composition required to maintain ecological functioning as recommend by the Guidelines.

Further, the impact of the development on the rainforest is considered to be an underestimate given:

- The ecological assessment has not identified a new water main is to be installed in the rainforest nominated for retention (although subsequent information provided indicates under boring could be suitable to avoid impacts).
- The ecological assessment does not fully consider the impact of the earthworks (cut and fill works) required for the driveway upgrade on the littoral rainforest (EEC) growing on the adjoining Lot 1.
- The impact of installing the new stormwater lines and swale system have not been assessed in detail.
- The ecological assessment appears to inaccurately map the extent of the rainforest canopy.
- While the ecological report identifies tree protection zones, it remains unknown how these zones were derived.
- The adjoining Lot 1 does not form part of the “study area” so the development will remove at least approximately 49% of the rainforest’s “local occurrence” on the “subject site” (i.e., the rainforest on the 9 Byron Bay Road land parcel).

It is also concluded, the development as proposed will have a significant impact on the local *Macadamia tetraphylla* population. This conclusion is based on several factors including:

- Due to fragmentation, the “local population” of the *Macadamia* is restricted to 9 Byron Bay Road. This conclusion is consistent with findings of the previous Part V application for the Hutley Drive extension.
- If the development proceeds, as proposed, the *Macadamia* trees will become part of an urban setting where natural germination, regeneration and recruitment will not be possible.
- Due to the level of clearing, the retained *Macadamia* trees will be subjected to ongoing edge effects.
- Due to the level of clearing, the extent of retained littoral rainforest will become unviable. The existing rainforest helps protect the trees from salt laden winds.
- Water mains and a stormwater basin are to be established on the border or within the tree’s protection zone (root protection area). As the trees are relatively young these works present a threat to the trees long-term health. Although the submitted EAR confirms the retained *Macadamia* trees require “active management” it remains unclear what active management is proposed. However, given the issues discussed, any proposed active management actions are likely to be fruitless.

Applying the Council officer conclusions means that unless the applicant modifies the application there is a requirement to prepare a BDAR.

The preparation of the BDAR brings in the hierarchy concept of avoid, minimise, and offset. In this instance, avoidance can be achieved by siting the fire station away from the threatened entities that exist on the development site. However, this will impact on the future preschool proposal.

As indicated above, the preparation of a BDAR also requires the applicant to assess SAILs.

Although a BDAR has not been submitted, an initial assessment against the four SAIL principles indicates that there continues to be a difference of view in relation to the littoral rainforest between Council's assessment staff and the information provided by Blackwood Ecological Services.

Potential Offsetting Arrangement/Rates

Council adopted its Biodiversity – Compensatory Habitat and Offsets Policy on 23 September 2021.

A compensatory habitat offset is a replacement of habitat removed because of development or works in another location (can be on or away from the development site).

Where an offset is determined to be appropriate, the policy establishes ratios that are to be applied.

In the case of DA 2021/218, the Blackwood Ecological Services report concludes that 486m² of littoral rainforest will be removed as a consequence of the development.

Under Council's policy, an offset ratio of 10:1 is applied for threatened ecological communities.

This means that revegetation of 4,860m² of land is required in association with the RFS facility development.

In this instance, this revegetation work can be accommodated on public land.

Reportable Political Donations

Details of known reportable political donations are as follows:

Nil

Public Exhibition

DA 2021/218 was publicly exhibited in accordance with Council's Community Participation Plan.

No public submissions were received in relation to the development proposal.

Applicable Planning Instruments

Relevant State Environmental Planning Policies (SEPPs)	
<ul style="list-style-type: none">• Resilience and Hazards SEPP (previously SEPP 55 – Remediation of Land)• Biodiversity and Conservation SEPP (previously SEPP – Coastal Management 2018 and SEPP Vegetation in Non-Rural Areas 2017)	<p>No issues are raised in relation to Resilience and Hazards or Transport and Infrastructure SEPPs.</p> <p>Refer to background in this report and Attachment 2 for further comment and assessment in relation to Biodiversity and Conservation SEPP issues.</p>

<ul style="list-style-type: none"> Transport and Infrastructure SEPP (previously SEPP Infrastructure 2007) 	
Local Environmental Plans (LEPs)	
<ul style="list-style-type: none"> Ballina LEP 2012 (BLEP 2012) 	<p>The proposed development is permitted within the R2 zone applying under the LEP.</p> <p>The proposal is consistent with the overall aims and objectives of the zone.</p> <p>The technical assessment is that the proposal does not suitably address the earthworks requirements set out in Clause 7.2, subclause 3(g) which requires Council to consider the proximity to and potential for adverse impacts on environmentally sensitive areas. Further, subclause 3(h) requires Council to consider any appropriate measures to avoid, minimize, or mitigate the impacts of the development.</p> <p>However, as outlined above the applicant has submitted documentation that offers an alternate viewpoint, being that the nature and extent of the impact on Littoral rainforest and <i>Macadamia tetraphylla</i> specimens on site is acceptable. In this regard various measures can be put in place to minimise and mitigate impact such as erosion and sedimentation controls, identification of 'no go' areas for works and provision of compensatory habitat.</p> <p>The biodiversity considerations are discussed in further detail elsewhere in this report.</p> <p>The development complies with the relevant building height standard set out in Clause 4.3 and the consideration regarding connection to essential services.</p> <p>Refer to Attachment 2 for further comment and assessment of the other relevant LEP provisions.</p>

Section 4.15(1)(a)(ii) the provisions of any proposed instrument

Draft Environmental Planning Instruments or Planning Proposals	
<ul style="list-style-type: none"> Draft State Environmental Planning Policy - Remediation of Land. Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007. 	<p>No issues raised regarding any Draft EPIs.</p>

Section 4.15(1)(a)(iii) provisions of any development control plan

Ballina Shire Development Control Plan 2012	
<p>Chapter 2 – General and Environmental Considerations</p> <ul style="list-style-type: none"> • 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 • 3.15 – Crime Prevention through Environmental Design • 3.19 – Car Parking and Access • 3.22 – Road Noise Mitigation 	<p>The proposed development is acceptable when assessed against the relevant provisions of Chapter 2 of the Ballina DCP 2012.</p> <p>There are no issues raised in this section that would preclude the development from being granted development consent, subject to the imposition of conditions where relevant.</p> <p>Refer to the Attachment 2 for an assessment of the clauses that are relevant to this application.</p>
Chapter 2a – vegetation Management	Consent is needed for vegetation management works in the R2 zone and an ecological assessment has been submitted. As outlined above there are different professional views regarding the nature of the impact on vegetation arising from the development.
Chapter 8 – Other Uses	There are no issues raised in this section that would preclude the development from being granted development consent, subject to the imposition of conditions where relevant. Refer to Appendix 2.

4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

None applicable.

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

No issues raised.

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

Council's Environmental Scientist considers that the proposal should be amended to avoid adverse impacts on the environment in this locality. Refer to background section of this report and Attachment 2 for further assessment in relation to the likely impacts of the development.

Alternative advice provided by the applicant and in particular, Blackwood Ecological Services, considers that the likely impact is acceptable without amendment.

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

The subject site can accommodate the proposed development, however the proposed RFS facility could be moved further to the north away from identified environmentally sensitive lands in the southern section of the site and in the adjoining unmade road reserve. This would impact plans for a future preschool. Alternative advice provided by the applicant, and in particular Blackwood Ecological Services, considers that the current location is suitable for the development.

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

No public submissions were received during the exhibition period for this application.

4.15(1) (e) The Public Interest

The development will provide an emergency services facility that is required for the Lennox Head area.

The proposal could be amended to avoid environmentally sensitive land in and adjacent to the southern end of the site. The current site plan does not avoid these lands, however, there are differing views about the significance of the impact on the ecological attributes present on the land.

In relation to biodiversity considerations, advice provided by Blackwood Ecological Services considers that the proposal is acceptable without amendment.

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 specialist ecological advice provided in response to requests for further information.

Council's assessing officers consider that the proposed development is likely to significantly affect a Littoral Rainforest EEC. Council's Environmental Scientist considers that, unless the proposal is amended to avoid the EEC, the DA should be accompanied by a biodiversity development assessment report (BDAR) prepared by an accredited person in accordance with the Biodiversity Assessment Method (BAM) and that the Significant and Irreversible Impact (SAIL) test also needs to apply to the application.

Alternative advice provided by Blackwood Ecological Services considers that the likely impact is acceptable without amendment.

Blackwood Ecological Services considers that the development application does not need to be accompanied by a BDAR and that the SAIL test is not required in this case.

Having regard for the outcomes of the assessment undertaken, Council has the following options available when determining the development application.

Option 1 – Grant consent to the application

Council could grant consent to the application subject to standard planning, building, engineering, environmental health and building conditions, and non-standard conditions contained in Attachment 3, including conditions requiring implementation of a littoral rainforest restoration program on an alternate site based on a Compensatory Plan applying an offset ratio of 10:1.

In considering this, biodiversity matters are the key matter in reaching a conclusion on the determination of the application. The technical assessment has not identified any other matters that warrant refusal of the application.

Recognising that the elected Council has previously specifically considered the biodiversity issues and the basis for differing professional viewpoints, and in doing so has indicated a preference for the advice provided by Blackwood Ecological Services, the granting of consent with conditions is the recommended approach.

This is on the basis that Council as determining authority is satisfied that in this particular instance the development will not result in a significant impact on the occurrence of Littoral rainforest or the *Macadamia tetraphylla* population.

Option 2 – Refuse the application

Council could determine the application by way of refusal. This option aligns with the technical assessment by Council's development assessment officers. However, this is not the recommendation of this report having regard for Council's previous specific consideration of the biodiversity matters associated with the proposal.

If though Council wishes to determine the application by way of refusal, the following wording for a resolution is suggested:

*That Development Application 2021/218 for the erection of the Lennox Head Rural Fire Service Facility and associated earthworks, vegetation management works, car parking, vehicular access, and infrastructure servicing be **REFUSED** for the following reasons:*

- 1. The development is likely to significantly affect threatened species (local *Macadamia tetraphylla* population and Littoral Rainforest) and the application has not been accompanied by a Biodiversity Development Assessment Report, as required under the Biodiversity Conservation (BC) Act 2016.*
- 2. The design and siting of the proposed development is not suitable for the subject property, having regard of the environmental constraints of the site.*
- 3. The application has not addressed the specific requirements in Clause 7.2 – Earthworks in the Ballina LEP 2012.*

Option 3 – Defer determination of application

Council could defer determination of the application to obtain additional information and/or hold a Councilor briefing of the matter.

Having regard to the previous considerations of the biodiversity matters by Council and the completion of the technical assessment (with no outstanding matters that prevent determination of the application identified), this option is not recommended.

RECOMMENDATION

That Development Application 2021/218 for the erection of the Lennox Head Rural Fire Service Facility and associated earthworks, vegetation management works, car parking, vehicular access, and infrastructure servicing be **APPROVED** subject to the application of standard planning, building, engineering and environmental health conditions for this type of development as well as non-standard conditions as set out in Attachment 3.

Attachment(s)

1. Proposed Plans [⇒](#)
2. Section 4.15 Assessment [⇒](#)
3. Draft Non-standard Conditions of Consent [⇒](#)

8.3 Planning Proposal Request - Ballina Heights Commercial Centre

Section Strategic Planning

Objective To outline the progress of negotiations regarding a voluntary planning agreement related to the proposed relocation of the Ballina Heights Commercial Centre, Cumbalum.

Background

Council considered a report at the 24 March 2022 Ordinary meeting in relation to a proponent request to amend the Ballina Local Environmental Plan 2012 to enable the relocation of the Ballina Heights Commercial Centre, from the Existing Commercial Site on Ballina Heights Drive to the Proposed Commercial Site located on the corner of Power Drive and Ballina Heights Drive.

The previous Council report is provided as Attachment 1 to this report.

Council resolved as follows in relation to that matter:

1. *That Council prepare a planning proposal to amend the Ballina Local Environmental Plan 2012 to apply the B2 Neighbourhood Commercial zone to part of Lot 66 D 1276775 and apply the R3 Medium Density Residential zone to part of Lot 497 of DP 1261230 as well as associated adjustments to related planning provisions, as outlined in this report.*
2. *That the General Manager is authorised to progress voluntary planning agreement negotiations with the proponent addressing affordable housing and commercial development timing in association with the proposed changes to land use zoning.*
3. *That following the finalisation of negotiations set out in point 2, Council refer the planning proposal referred to in point 1 to the Department of Planning, Industry and the Environment for Gateway determination.*
4. *That following the receipt of a Gateway determination, that any voluntary planning agreement and the planning proposal be reported to Council for endorsement, prior to public exhibition.*
5. *That the developers of the Ballina Heights Estate be encouraged to proceed with the development of the neighbourhood commercial centre, as a matter of urgency.*
6. *That Council liaise with the developers of Banyan Hill to explore options for the designation of a neighbourhood shop site within the northern part of the residential estate.*
7. *That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
8. *That Council negotiate further with the developers to increase the area of land dedicated to attainable housing within the Voluntary Planning Agreement.*

A draft planning proposal has been prepared to give effect to the Council resolution, which is provided as Attachment 2 to this report.

8.3 Planning Proposal Request - Ballina Heights Commercial Centre

The purpose of this report is to present the outcomes of the voluntary planning agreement negotiations and seek Council direction.

It is noted that the NSW Government's Employment Zones Reforms will have the effect of amending the B1 Local Centre zone to become the E1 Local Centre zone, which are equivalent in functional terms. References in this report and the associated documentation should be read having regard to the employment zones reforms. The planning proposal documentation will be updated to reflect these reforms as they come into effect.

Key Issues

- Neighbourhood commercial facilities
- Affordable housing
- Voluntary Planning Agreement provisions
- Effectiveness of the Agreement to ensure the outcomes are delivered

Discussion

Council staff have entered into negotiations with the developers of the Ballina Heights Estate, being Vixsun Pty Ltd the owner of the Existing Commercial Site being Lot 497 of DP1261230) and the Lismore Diocese of the Roman Catholic Church (LDRCC) the owner of the Proposed Commercial Site being Lot 667 of DP 1280013), as per the Council's resolution.

The existing and proposed commercial sites are shown in the following map.

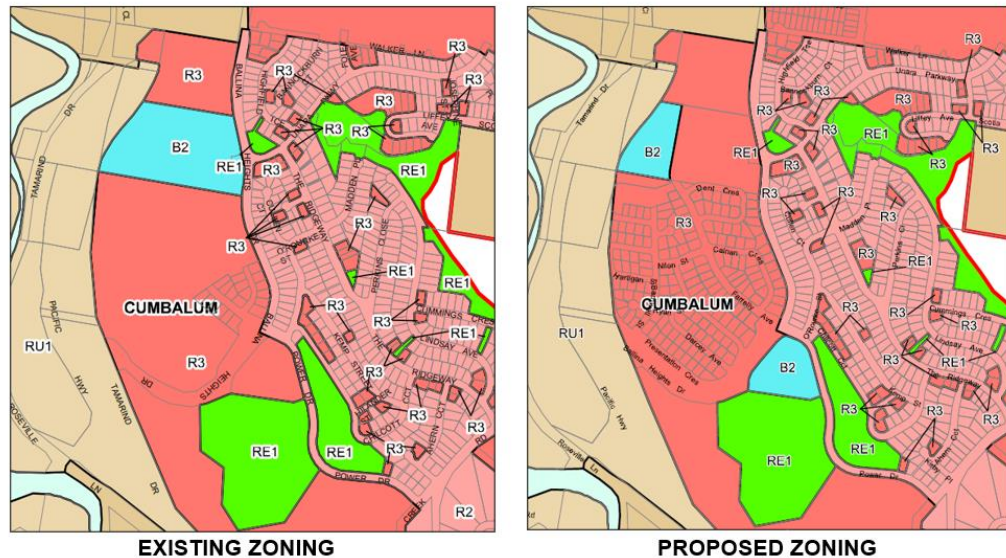


The key purpose of the Voluntary Planning Agreement (VPA) negotiations, from Council's perspective, is to ensure the developers of the land construct the neighbourhood commercial centre, as a matter of priority.

8.3 Planning Proposal Request - Ballina Heights Commercial Centre

In addition, the agreement seeks to deliver affordable housing outcomes in recognition of the additional development opportunities that would be provided to the developer of the land in association with the zoning amendments to be enabled by the planning proposal.

The proposed zoning outcome associated with the planning proposal is shown in the following map.



The negotiations have progressed to the point of having resolved, to the reasonable satisfaction of all parties, the key functional elements of the agreement. Notwithstanding, some disagreement remains regarding some aspects of the agreement.

The key elements of agreement are outlined below, following by details regarding the nature and consequences of the disagreement.

Key Elements of Agreement

The main mechanism to achieve the timely development of the commercial centre has been to require that a minimum of 1,000sqm of commercial floor-space be developed prior to the subdivision of the land that would be zoned (from B2 Local Centre to R3 Medium Density Residential) as a consequence of the planning proposal.

This requirement aims to ensure the developers remain motivated to deliver on the construction of the commercial centre, before proceeding with the residential subdivision. This approach has been agreed to by the developers of the land.

In relation to affordable housing, the voluntary planning agreement would obligate the LDRCC to develop 1,500sqm of land for the purpose of five affordable rental dwellings, which are to be rented through a registered community housing provider as affordable housing.

The agreement would also involve the placement of a 'Restriction on User' on the title of the land (per Section 88B of the *Conveyancing Act* 1919) that the land be used for the provision of affordable housing in perpetuity.

8.3 Planning Proposal Request - Ballina Heights Commercial Centre

The agreement outlines the timeframe for the delivery of the affordable housing, to be within five years from the date the planning proposal has been made.

The agreement also provides for an alternative course whereby the LDRCC could dedicate the affordable housing land to Council (at no cost) for Council to construct affordable housing, at the LDRCC's election.

As security, the agreement also provides that Council may acquire 1,500sqm of land from LDRCC for \$1 for Council to deliver the housing, should the developer not deliver on their obligations with respect to the delivery of affordable housing (as per the above).

This approach, in relation to the delivery of affordable housing, has been agreed to by the developers of the land, in particular the LDRCC (upon whom these obligations fall).

Matters to be resolved

The substantive elements of the voluntary planning agreement have been settled to the satisfaction of the developers of the land and Council staff.

Notwithstanding, several details remain under contention, for which Council is invited to provide guidance to direct the finalisation of the VPA negotiations.

Some of these outstanding details relate to Council's requirement to have the voluntary planning agreement registered on the title, in accordance with s7.6 of the *EP&A Act 1979*, of the land that comprises the Existing Commercial Site.

Section 7.6(3) of the Act provides that:

A planning agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.

Council's Voluntary Planning Agreements Policy requires that voluntary planning agreements be registered on title. In relation to this, Council's policy notes the following:

Registration

Section 7.6 of the Act provides for the registration of a VPA on the title to land. Registration requires the agreement of all persons having a registered interest in the land. Such persons include mortgagees, charges, lessees and the like.

The Council will require VPAs to be registered on the title unless the Council is satisfied there is a good reason not to do so and the Council's interests under the VPA will not be prejudiced. For this reason, the landowner, if different to the Developer, will generally be required to be an additional party to a VPA.

The Council will generally agree that registration can be removed on any part of the subject land in conjunction with the issuing of a subdivision certificate to create lots that are to be sold to end-purchasers or otherwise created for separate occupation, use and disposition. Registration will ordinarily be required to be undertaken by the Developer immediately upon commencement of the VPA. This means that the Council will generally not execute a VPA unless and until the landowner has produced evidence to the Council's satisfaction of the agreement of all third parties to its registration on title.

The landowner, at its cost, will be required to submit to the Council in registrable form all documents necessary to enable the Council effect registration of the VPA, and to assist the Council to address any requisition from Land and Property Information relating to any dealing lodged for registration.

It is also standard practice, in the drafting of VPAs, for a 'Restriction on Dealings' clause to be included which requires that, if the land is to be sold the existing owner is obligated to ensure that the new owner becomes a party to the agreement, unless the VPA has been registered to the title of the land.

The registration to title of the VPA means that any future owner of the land, whilst the VPA remains on the title, would be subject to the obligations of the agreement.

Without the registration to title, a change to the ownership of the land (over which the planning proposal would apply the R3 Medium Density Residential zone) by sale or otherwise, could occur without the new owner being subject to the obligations under the agreement.

Without the registration to title, the residential subdivision could potentially proceed without the neighborhood commercial site being constructed.

Vixsun has now agreed to the registration of the agreement to the title of the land. The obligations on the LDRCC under the agreement are adequately addressed by the restrictions on the title under section 88B (Restriction on User) and other clauses relating to the delivery of affordable housing, as outlined above.

Due to the significance of this issue, particularly in relation to the Vixsun land, Council is invited to confirm that the registration of the agreement over the Land Title of the Existing Commercial Site is to occur prior to finalization of the planning proposal, as a condition of the VPA and the planning proposal.

The key outstanding issues in the finalization of the agreement with Vixsun, are two-fold, namely:

- circumstances for the release of the registration of the VPA from the respective land titles.
- timeframes and processes around the finalization of the planning proposal.

In relation to the first point above, Vixsun has proposed to include a clause by which the developer would advise Council that it has satisfied its obligations under the VPA, upon which Council would agree to release the Registration of the agreement to the land title.

8.3 Planning Proposal Request - Ballina Heights Commercial Centre

Council's legal advice is that the agreement should clearly outline the circumstances by which the registration would be released, being upon the satisfactory completion (as determined by Council) of the obligations under Clause 6.1(a) of the VPA, being:

6.1 To facilitate the Planning Proposal, The First Applicant agrees to the following terms:

- (a) Subject to the Provisions of Recital K (i) and (ii) in this Deed, no subdivision certificate under section 6.16 of the EPA Act shall be sought for the Existing Commercial Site until such time that:*
 - i. Approval has been received for a commercial development with a minimum Gross Floor Area of 1000m²; and*
 - ii. Development has substantially commenced on the Proposed Commercial Site; and*
 - iii. Occupation certificate has been issued for that commercial development pursuant to section 6.10 of the EPA.*

Clause 10.4 provides for this preferred approach as per the following:

10.4 Release

Council must execute and give to the Applicant any forms required by NSW Land Registry Services to remove the registration of this Deed from the folio/s for the Land referred to under Clause 10.1) after the Applicant has complied with its obligations under Clause 6.1(a) to Council's satisfaction.

In relation to the second point above, Vixsun has proposed that the VPA include obligations on Council relating to timeframes for the finalisation of the planning proposal (to amend the zoning of the land).

It is noted, however, that Section 7.4 of the EP&A Act includes the following provisions:

- (9) A planning agreement cannot impose an obligation on a planning authority—*
 - (a) to grant development consent, or*
 - (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.*
- (10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.*
- (11) A reference in this section to a change to an environmental planning instrument includes a reference to the making or revocation of an environmental planning instrument.*

Having regard to the above, the VPA cannot include obligations upon the Council with respect to exercising its planning functions under the EP&A Act 1979.

8.3 Planning Proposal Request - Ballina Heights Commercial Centre

In addition, with respect to the timeframe for the LDRCC to elect whether it will construct the affordable housing or dedicate the affordable housing land to Council, the developers wish to have this timeframe reflect any delays in Council issuing a development consent for the affordable housing.

In response, given this clause relates only to the timeframe by which the developer is to elect whether or not to proceed to construct the affordable housing, or dedicate the land to Council, a period of 12 months from the execution of the agreement by all parties is a reasonable condition.

It is also noted a separate clause (Clause 6.6(b)) requires that the developer obtain all relevant consents within five years, which has been agreed to.

Further, Clause 6.11 of the agreement acknowledges that “...*Council must act reasonably having regard to the circumstances surrounding the failure by the Second Applicant [LDRCC] to deliver the Affordable Rental Housing...*”.

Delays in the determination of development consent relating to the affordable housing would be a matter Council would reasonably take into account in determining whether the LDRCC is in breach of the timeframe for the delivery of the affordable housing, per Clause 6.11.

Having a specified timeframe for the election regarding the affordable housing is preferred as it makes the obligations abundantly clear, particularly as it effects related clauses, should Council need to avail itself of breach clauses under the agreement due to non-performance.

Vixsun has also proposed the inclusion of a sunset clause that would enable the proponents to opt-out of the VPA should the rezoning process not be completed within two years.

Staff propose the following process for the finalization of the planning proposal, which may address the concerns raised by Vixsun:

1. Following the conclusion of the VPA negotiations as outlined in this report, the proponents would be required to execute the agreement prior to the planning proposal being referred to the Department of Planning for Gateway Determination. This will obligate the developers, per the agreement, should the planning proposal be finalised.
2. The planning proposal would be referred to the Department of Planning and Environment for Gateway Determination. The Department will determine whether further information is required to be provided prior public exhibition. Should such material be required by the Department, Council will make the particulars known to the developers for their response. Whilst Staff do not anticipate the need for significant additional documentation to be provided, this is ultimately a matter for the Gateway process to determine and for the proponent to provide, given the planning proposal arises on the basis of a landholder request.
3. The planning proposal would be publicly exhibited in accordance with the requirements of the Act, incorporating whatever additional information is required of the Department, provided by the proponent in support of the planning proposal.

4. At any point in this process, should the proponents seek to withdraw from the planning proposal and voluntary planning agreement, due to concerns over timing delays, Council would be invited to discontinue the planning proposal. This would retain the existing zoning over the site.
5. Subject to point 4, Council would consider any submissions raised during the public exhibition process. Should Council resolve to proceed with the finalization of the planning proposal, Council could also resolve to execute the VPA upon the making of the LEP amendment. This would then bind the developers, per the agreement, and commence timeframes under the agreement relating to seeking development consent for the Neighborhood Centre and undertaking the affordable housing, in association with the zoning (and related) amendments.

Having regard to the above, the advanced draft VPA incorporating Council's preferred approach with respect the matters outlined is provided as Attachment 3 to this report, incorporating the following:

- Clause 10 requiring the Registration of the agreement (and related Restriction on Dealings clause) to the Land Title of the Existing Commercial Site.
- Clause 6.4 clarifying that the LDRCC must elect whether to construct the affordable housing or dedicate the affordable housing land to Council within 12 months of the execution of the VPA by all parties.
- Clause 10.4 clarifying that Council will agree to the release of the registration of the VPA to the Land Title of the Existing Commercial Site following the satisfaction of Clause 6.1(a).

Delivery Program Strategy / Operational Plan Activity

Advancing the delivery of the commercial area in the Ballina Heights locality is a specific action for the 2022/23 year under the current Operational Plan and Delivery Program (action PE 1.2b – Support the delivery of commercial and retail shops in the Ballina Heights Estate).

In relation to this action it is important to recognise that the provision of commercial facilities is at the discretion of the landowner. Council's approach to advancing this action has been to enter into negotiations with the developers of the Ballina Heights Estate in accordance with the Council's March 2022 resolution on this matter.

Community Consultation Policy

Should Council proceed with further assessment of an LEP amendment, community engagement will be undertaken in accordance with Council's Community Participation Plan, consultation requirements associated with voluntary planning agreements and any requirements specified by the Department of Planning, Industry and Environment Gateway determination.

Financial / Risk Considerations

The matters set out in this report have legal implications with respect to land uses for which development consent may be sought on the land as set out in the body of this report.

Should Council resolve to proceed with an LEP amendment, the processing of the associated planning proposal would be subject to fees and charges. On this basis, processing the planning proposal request can be accommodated within existing resources.

The developer may also have options to seek a review of the Council's planning proposal decision through the Department of Planning and Environment.

Options

Option 1 – Council could resolve to progress the planning proposal, subject to Vixsun and the LDRCC agreeing to the voluntary planning agreement, provided as Attachment 3, and as outlined in this report.

This option is recommended on the basis that the VPA provides the most suitable means to secure the outcomes sought by the proponent and the Council, per the March 2022 resolution, as set out in the body of this report.

Under this option, following a final review of the VPA by Council's solicitor and subject to Vixsun and the LDRCC executing the agreement incorporating the matters set out in the Council report, the planning proposal (provided as Attachment 2 to this report - updated to incorporate the decision of the Council) would be sent to the Department of Planning and Environment for Gateway Determination.

Following the receipt of an affirmative Gateway Determination and provision of any additional information required by the Gateway Determination by the proponents, the planning proposal would be placed on public exhibition before being reported back to the elected Council for further consideration.

It is noted in relation to this option, that the planning proposal to amend the zoning arrangement over the land, would not be finalised until the VPA has been registered on the title of the Existing Commercial Site, as per the agreement and Council's policy.

Under this option, should the proponents advise Council that they wish to withdraw from the VPA and the planning proposal, at any point prior to the finalisation of the planning proposal, this matter would be reported to the Council for further consideration.

Option 2 – Council could resolve to progress the planning proposal and voluntary planning agreement on the basis of the proponents' request.

Under this option Council would endorse the VPA (as provided in Attachment 2 to this report) with amendment of the following:

- Amendment of Clause 6.4 to include an allowance for delays in the issuing of a development consent to the timeframe by which the LDRCC must elect whether to construct or dedicate the affordable housing.

- Amendment of Clause 10.4 to allow the proponent to determine when the obligations under the agreement have been met, sufficient to enable the release of the registration of the agreement over the land title of the Existing Commercial Site.

This option is not recommended on the basis that the amendments proposed by the developer in this case, would significantly undermine the delivery of outcomes the VPA seeks to achieve and weaken Council's ability to require compliance with the terms of the VPA.

Option 3 – Council could resolve to decline the planning proposal request.

Under this option, Council would write to the developers advising them that the planning proposal does not have Council's support.

This option is not recommended on the basis that, the outcome negotiated with respect to the voluntary planning agreement and planning proposal represents provides the most appropriate mechanism for delivering the outcomes sought by the Council's March 2022 resolution, subject to the proponent's execution of the VPA and subject to the registration of the VPA to the title of the Existing Commercial Site, as outlined in this report.

RECOMMENDATIONS

1. That Council endorses the finalisation of the Voluntary Planning Agreement on the basis of Attachment 3 to this report, and subject to final legal advice for the purposes of proceeding to Gateway determination and public exhibition of the planning proposal.
2. That subject to Vixsun agreeing to the Voluntary Planning Agreement, the Planning Proposal, provided as Attachment 2 to this report, to amend the Ballina Local Environmental Plan 2012, be referred to the Department of Planning and Environment for Gateway Determination.
3. That Council advise the Department of Planning and Environment that Council wishes to exercise its delegation functions with respect to the planning proposal.
4. That subject to Council receiving an affirmative Gateway Determination, the planning proposal and voluntary planning agreement be placed on public exhibition in accordance with Council's standard procedures.
5. That the Council receive a further report on this matter following the conclusion of the public exhibition.
6. That Council advise the Ballina Heights developers that Council requires the Registration of the Voluntary Planning Agreement to occur prior to the finalisation of the planning proposal as per Council's Voluntary Planning Agreements Policy.

Attachment(s)

1. Previous Council Report - 24 March 2022 [⇒](#)
2. Draft Planning Proposal [⇒](#)
3. Draft Voluntary Planning Agreement [⇒](#)

8.4 Lennox Park - Shelter Shed Options

8.4 Lennox Park - Shelter Shed Options

Section

Strategic Planning

Objective

To confirm the preferred option for the shelter shed in Lennox Park in relation to long term planning for the foreshore and works associated with the Lennox Village Vision upgrade.

Background

The shelter shed in Lennox Park on Ballina Street in Lennox Head is thought to be one of the oldest pieces of built infrastructure remaining in the public domain in Lennox Head village centre.

It is a built form element, which has divided community sentiment. During the development of the Lennox Village Vision concept plans (adopted by Council in 2020) it was identified by some people in the community that there is an opportunity for removal to facilitate better views to the water and use of the reserve. Since adoption of this plan, removal of the shelter shed has remained a point of contention within the community, with opinions in support of, and in opposition to, its removal.

Based on the community design charrette and the submissions received during and after the Lennox Village Vision village centre upgrade exhibition process, reasons for removal and retention can be summarised as follows.

Reasons for removal	Reasons for retention
Opening up the park views, improving the outlook/blocks views from the street and businesses towards the ocean	Cultural relevance as an informal meeting place
Room available for better and new amenities (toilet and change room)	Personal significance attached to memories
A bigger and uncluttered open space for events	Sheltered picnic destination which provides for larger groups to gather
Poor aesthetic / unsightly / barely used. Council's Open Spaces section report that they have repeated issues with anti-social behaviour in these shelters which results in additional maintenance and cleaning.	Based upon current submissions and observations of social media post exhibition, some community members associate the shelter with fond memories of when they were younger. The shelter is used at Christmas time as a montage photo opportunity.
The only remaining original parts of the shelter are the floor slab and brick walls which have been rendered. The original tile roof was replaced with colourbond sheeting after storm damage. Retaining the shelter in its current condition is not an option. As a minimum structural repair works would be required to the roof as there is evidence of deterioration of non- stainless-steel fixings.	The shelter is used by some people as a sheltered place to wait for the bus although it is not ideally positioned to support the existing or new bus bay location in terms of visibility (the new plans would provide another new protected location to wait for the bus)

8.4 Lennox Park - Shelter Shed Options

Whilst the shelter may have personal value to some members of the community it is not "heritage listed" and is not listed in Council's Shire Wide Community Based Heritage Study (2008) as being of significance.	This is one of the only public buildings which were part of the original urban fabric of Lennox Head village centre remaining.
The current furniture placement does not allow for AS 1428 compliant accessibility circulation. The placement and design of furniture would need to be reconsidered to make it compliant which would likely result in a significant reduction in furniture provision.	

In April 2022 Council resolved to retain the shelter shed in Lennox Park, as per the following resolution:

- 1. That Council amend the Lennox Village Vision Concept Plan to retain the Beach Pavilion / shelter shed in Lennox Park due to its historical significance and cultural value within the local community.*
- 2. That Council receive a report on options for undertaking refurbishments of the building to improve its function and accessibility, and educating the community about its history, with that report outlining the preferred funding source(s). This report is to include consideration of heritage elements as part of any design.*

This report provides:

- An overview of the key outcomes of the Lennox Village Vision Design Charette Process, in particular those relating to Lennox Park and the shelter shed
- Discussion on the existing shelter shed and the key architectural language and features and structural condition assessment
- Design criteria important to consider in any refurbishment of the shelter shed, and
- Options for refurbishment of the shelter shed in accordance with the resolution above.

Councillors received a briefing on this matter on Wednesday 12 October 2022.

Key Issues

- Key outcomes of the Lennox Village Vision process
- Existing shelter shed condition
- Options for refurbishment of the shelter shed
- Costs and funding availability

Discussion

The Community Vision (in a nutshell)

Lennox Village - The Place We Want

The Lennox Village Vision (village centre upgrade plan) was the result of an extensive community engagement program building upon engagement activities undertaken prior to 2018 and intensifying between 2018 and 2020 with the undertaking of community online surveys, traffic data collection and traffic and parking audits, one-way traffic trials and place-based “Care Factor” and “Place Experience” assessments.

The detailed data from these activities was used to inform an intensive, facilitated community-led design process which was undertaken over 2 days in March 2020. As a part of this process, the community told us that “The Place We Want” is a “*Slow and Social Coastal Village*”:

- Slow – Celebrates our slower and more relaxed lifestyle, pedestrian focus and safety for all ages and abilities
- Social – Places for the community to pause, connect and gather
- Coastal – Celebrates and protects our unique ecosystem and environment, informal and unstructured, natural materials and vegetation, yet playful and relaxed
- Village – Low scale, local, intimate and connected.

Place Directions

The group also defined “Place Directions” which are the community values and priorities that act as an overarching brief to help guide decision making moving forward. The Place Directions act as “criteria” for prioritising investments that will achieve the most positive impacts. The Place Directions are as follows:

1. *Minimise negative impacts on the environment and maximise climate mitigation.*
2. *Offer a diversity of open spaces offering a wide range of activities and amenities for all ages / interest.*
3. *Celebrate what makes Lennox Head Village special; environmentally, socially, economically and culturally.*
4. *Re-balance priority between people and cars to make it safer and more comfortable for all.*
5. *Create a physical environment that supports self-sustaining community social activity and events.*
6. *Support local business diversity and fine-grain shop frontages to build attractiveness of the centre for jobs and nighttime economy – support diverse housing choices.*

Prior to exhibition of the Draft Concept Plans, 1,953 responses to engagement activities had been received with an additional 112 being received during public exhibition via written submission and via an online feedback form (just over 30% of the Lennox Head population at the time).

8.4 Lennox Park - Shelter Shed Options

Council adopted the concept plan for Lennox Village Vision at the August 2020 meeting. This included removal of the existing brick shelter in Lennox Park as part of the design outcomes.

Lennox Park – The Place We Want

The community design charrette determined that the place they wanted Lennox Park to be was:

“Predominantly passive green space for day-to-day recreation and low impact community events”.

The community identified the primary function of the park as:

- During weekdays - A place with active and passive recreation for adults and families.
- During the weekend - A place with active open spaces axed around surfing and events connected to the surf club.

Elements the community would like to see in the park include:

- *Accessible pathway to allow access to everyone.*
- *Views to the ocean from Ballina Street.*
- *Safety.*
- *Improved amenities (as the current amenities are inadequate)*
- *Shade trees and structures.*
- *Greenspace and seating to make it more inviting and help people stay for longer.*
- *Cultural and historical signage.*

Any further design in Lennox Reserve Park should consider this community brief.

The key outcomes of this community engagement are included in Appendix 01 of Attachment 1 to this report.

The Existing Shelter Shed

Structural Condition Assessment

To support this reporting process, a condition assessment was undertaken on 19 May 2022. The assessment identified significant structural and cosmetic deterioration internally and externally, including the following key items:

- External Areas
 - Corrosion to metal components such as guttering and brackets and roof screws and sheeting.

- Internal Areas
 - Significant cracking throughout various parts of the floor slab near pillars and columns including in the concrete flooring slab at the northern end which would tend to indicate that some settlement has occurred to the rendered pillars at the northern end of the structure.
 - The texture coating that has been applied to the floor slab has deteriorated and conceals further slab cracking.
 - Paint delamination.
 - Significant corrosion in the roof truss metal bolt fixings and rafter and batten nail fixings.

The assessment notes that with the extent of corrosion evident the structural integrity of the tie down of the roofing would likely be compromised.

Photographs of the existing shelter shed are contained in Appendix 02 and the Structural Assessment report is in Appendix 09 of Attachment 1.

Design Compliance

- Access and Mobility

Australian Standard 1428.1 – Design for Access and Mobility prescribes the requirements for physical access which should be considered in planning and design to enable equitable access to facilities.

The existing shelter shed contains six table settings. The placement of these settings does not achieve compliance with the circulation requirements of AS 1428. If retrofitted to comply with this standard the shelter shed fits two standard table settings only (typically being 8-12 people over two table settings). Alternatively custom designed furniture which maintains circulation requirements but accommodates additional people could be considered. This could potentially accommodate 12-16 people over a single long table setting.

- Crime Prevention through Environmental Design (CPTED)

Crime Prevention Through Environmental Design is a multi-disciplinary approach to crime prevention which uses design techniques to manage crime risk associated with built environments and landscapes. The 4 key design techniques include:

- Natural surveillance
- Natural access control
- Territorial reinforcement
- Image / maintenance and management

The 'enclosed' form of the structure means that there is limited natural surveillance for users of the shed and the park areas behind the structure.

8.4 Lennox Park - Shelter Shed Options

Opening up the shelter shed to better passive surveillance is an outcome that supports the CPTED objectives.

The shed is also referred to by some in the community as a bus shelter. The position of the shed with respect to the existing and new bus bay does not provide suitable visibility for the passenger or bus driver.

Architectural Language and Features

- **Historical Plans**
Council is in possession of the original design plans for the shelter shed (see Appendix 03 of Attachment 1). These plans are dated 23 May 1949. Therefore, it is likely that the shed was constructed in the early 1950s. They also include plans for a lavatory building which was does not appear to have been built.

The shelter shed has no statutory heritage listing and was not identified by the community as a significant heritage item as part of the Ballina Shire Wide Community Based Heritage Study (2008).

- **Key Built Form Elements**

The original shelter shed was made from a variety of materials:

- walls – double face, multi-coloured brick in a stretcher bond pattern;
- windows - windows for light access made from fixed square glass blocks;
- roof – corrugated asbestos cement sheeting/tiles (exposed rafters).

These materials are typical of the low-cost materials of the time. The roof was a low-pitched and hipped shape. Its visual mass was bulky with arched entrance ways a feature of the structure.

The lavatory building which is shown on the original design plans and never built, was symmetric in design with curved brick protrusions typical of the Art Deco architecture era (1930 – 1950). It is unclear from the plans if the lavatory building was intended to be constructed near the shelter shed in Lennox Park or in another location in Lennox Head.

The shelter shed has been substantially damaged in the past by weather events. This has resulted in many changes to the materials and textures of the structure over time and an altered shed aesthetic. The only remaining built form elements that are key to the architectural language of the original design include the hipped roof shape and the arches.

The key changes to the structure are shown in Appendix 04 of Attachment 1.

Let's Get Thinking!

There are many ways that the shelter shed could be renovated or adapted which improve functionality and accessibility and provide opportunities for educating the community about its history (as per the Council resolution).

8.4 Lennox Park - Shelter Shed Options

In exploring these options there are a variety of design standards, which should be met including, but not limited to:

- Australian Standard 1428.1 – Design for Access and Mobility
- Crime Prevention Through Environmental Design (CPTED)

Also, to ensure a coordinated design and avoid architectural clutter, any exploration of options should consider the built form relationship between the existing shelter shed and the proposed new toilet/change building and bus shelter.

Some precedents of public shelters of a similar scale from other areas are shown in Appendix 05 of Attachment 1.

This report explores the following options:

- A. Minimalist
- B. Restoration
- C. Embellishment / Refurbishment
- D. Adaptation / Re-imagining

To accommodate retention of the shelter shed, the concept plan developed as part of the Lennox Village Vision process has been revised. The proposed plan revision is contained in Appendix 06 of Attachment 1.

'Conversation starters' relating to the above options are contained in Appendix 07 of Attachment 1.

This report should be read in association with the plan appendices.

As previously noted, the Structural Condition Assessment identifies significant structural and cosmetic deterioration, in particular possible subsidence, and settlement of the rendered pillars at the northern end of the structure and also degradation of the roof structure.

A key action to progress any of the above-mentioned options for the shelter is to seek further detailed structural engineering advice to determine the extent of the works required to ensure the shelter shed is structurally sound into the future, and the undertaking of these structural works.

Description of the Options Explored

A. Minimalist

Design Intent:

- Undertake the minimal works to repair and renovate the shelter shed to a form and finish similar to the status quo.

Key Design Features:

- Essential structural repairs – underpinning the footings all around, new roof made from standing seam zinc sheeting (similar to the cultural centre walls).
- Re-rendering the walls.
- Repainting the walls.
- Repair cracking floor slabs and resurface the concrete.

Issues and Challenges:

- The structural condition of the shelter shed may impact the ability to undertake some works.
- The roof finish includes an upgrade to zinc sheeting which performs better than colourbond in a coastal setting.
- In this option the shelter shed would have minimal design synergies with the new toilet block / bus shelter building which would be constructed from modern and durable materials that fit with the village centre upgrade.
- This option does not provide improvements to accessibility which is a key requirement of the funding grant.
- The enclosed nature of the shelter shed structure does not effectively incorporate Crime Prevention through Environmental Design principles.
- No scope for further embellishment such as new furniture, lighting, interpretative signage or art has been included.

B. Restoration

Design Intent:

- Restore the shelter shed, as much as possible to its original 1949 design.

Key Design Features:

- Essential structural repairs – underpinning the footings all around, new roof made from tiles.
- Infill brick walls and install glass blocks.
- If possible, remove some render to reveal original brickwork. If this is not possible without unmanageable damage to the brickwork, re-render the walls.
- Repaint remaining wall render inside and outside.
- Repair cracking floor slabs and resurface the concrete.
- New furniture.
- New lighting.

Optional Design Features:

- Interpretative art wall inside the shelter shed (subject to community art brief/tender process).

Issues and Challenges:

- The structural condition of the shelter shed may impact the ability to undertake works which restore the structure in a form that re-creates the original design intent. A compromise is likely to be required.
- It is unlikely that the render will be able to be removed from the brick surface.
- Alternative materials to asbestos will need to be used for roofing. The plans show a tile option.
- In this option the shelter shed would not have design synergies with the new toilet block / bus shelter building which would be constructed from modern and durable materials that fit with the village centre upgrade.
- This option does not provide improvements to accessibility which is a key requirement of the funding grant.
- The enclosed nature of the shelter shed structure does not effectively incorporate Crime Prevention through Environmental Design principles.

C. Embellishment / Refurbishment

Design Intent:

- Retain the architectural language and intent of the structure as a shelter shed and undertake works to improve the functionality and aesthetics of the structure in place.

Key Design Features:

- Essential structural repairs – underpinning the footings all around, new roof made from modern and durable materials with exposed rafters.
- Render and repaint walls.
- Install timber battens to the southern wall end to match the toilet block / bus shelter building and Ross Park.
- Repair cracking floor slabs and infill the cracks with coloured epoxy or resin ('Kintsugi' style).
- Install a pathway around the perimeter of the shelter shed to improve accessibility.
- New furniture (long table with chess table inserts).
- New lighting.

Optional Design Features:

- Interpretative art wall inside and / or outside the shelter shed (subject to community art brief/tender process). This could be coordinated with art opportunities on the face of the toilet block / bus shelter building.
- Other art or interpretative signage opportunities.

Issues, Challenges and Opportunities:

- The structural condition of the shelter shed may impact the ability to undertake some works.
- The roofing material is consistent with the Lennox Head Cultural Centre materials located on the east-west visual axis between Ballina Street and Park Lane.
- In this option the shelter shed would have a design aesthetic consistent with the new toilet block / bus shelter building.
- The enclosed nature of the shelter shed structure does not effectively incorporate Crime Prevention through Environmental Design principles, although maintains the status quo. Embellishment of the shelter shed may encourage additional use and passive surveillance.
- Provision of chess tables presents opportunities for regular communal use.

D. Adaptation / Re-Imagine

Design Intent:

- Retain the basic building structure and some of the key architectural features and renovate to improve functionality, aesthetics and connectivity to the other built elements proposed in the park. This option explores alternative uses for the shelter shed (e.g. leased for a café, restaurant or shopfront, urban library, leasable pop-up shop or gallery space etc) - retains the purpose of the shed as a meeting place.

8.4 Lennox Park - Shelter Shed Options

Key Design Features:

- Essential structural repairs – underpinning the footings all around, new roof made from modern and durable materials with exposed rafters.
- Render and repaint walls including a community chalk board
- Arches retained and doors incorporated to enable locking.
- Provision of electricity and water services to support pop-up activities
- Install timber battens to the southern and northern wall ends to match the toilet block / bus shelter building and Ross Park.
- Repair cracking floor slabs and infill the cracks with coloured epoxy or resin ('Kintsugi' style).
- Install a pathway around the perimeter of the shelter shed to improve accessibility.

Optional Design Features:

- Interpretative art wall inside and / or outside the shelter shed (subject to community art brief/tender process). This could be coordinated with art opportunities on the face of the toilet block / bus shelter building.
- Other art or interpretative signage opportunities.
- Internal fit out to support certain pop-up uses.

Issues, Challenges and Opportunities:

- The structural condition of the shelter shed may impact the ability to undertake some works.
- The roofing material is consistent with the Lennox Head Cultural Centre materials located on the east-west visual axis between Ballina Street and Park Lane.
- In this option the shelter shed would have a design aesthetic consistent with the new toilet block / bus shelter building.
- The shelter shed would be able to be securely locked to manage vandalism and other undesirable use.
- If locked the shelter shed would not be available for general community use as a picnic shelter unless the doors were to be locked open when not being used for pop-ups.
- Some licensing or leasing may be required for certain pop-up uses.

Removal of the Shelter Shed

Appendix 08 of Attachment 1 includes a design development based upon the original Council adopted Lennox Village Vision Concept plan where the shelter shed was removed.

This scenario included two new picnic shelters out of the key lines of sight north of the pedestrian crossing pathway in Lennox Reserve Park.

Whilst the current resolution is "*that Council amend the Lennox Village Vision Concept Plan to retain the Beach Pavilion / Shelter Shed in Lennox Park due to its historical significance and cultural value within the local community*", removal of the shelter shed, as shown in the original adopted concept design remains an option for consideration, particularly within the context of the now visible changes in the streetscape emerging as part of the village centre upgrade works.

Some reasons for considering this as an option include:

8.4 Lennox Park - Shelter Shed Options

- The structural assessment of the existing shelter shed undertaken after the above resolution was made has identified some structural issues with the shed which would require addressing if the shed was to be retained. These also add to the cost of retaining the shed.
- There has been mixed sentiment in the community about the shelter shed with many people stating that they found it to be unsightly and not well used, being in favour of its removal;
- Removing the shelter shed allows for views to be opened up to the ocean. The benefits of opening the vista to the ocean from the street can be seen with the redevelopment of Ross Park as in the photograph below.
- A new shelter structure or combination of smaller structures could be provided in a location away from the toilet block for improved amenity;
- Any new shelter structures could be designed to be accessible and with good passive surveillance for improved behaviour management.



Subject to the specific design of new picnic shelters this is one of the lower cost scenarios to implement.

This has been included as a comparative reference and staff remain of the view that removal of the shelter provides for a better overall design and amenity outcome for the foreshore by opening the green space and ocean views.

Options Assessment

The following table provides an assessment of each option based upon some key considerations:

Key Considerations	Assessment				Original concept plan (remove shelter)
	Option A	Option B	Option C	Option D	
Options					
Consistent with the overall community vision 'The Place we Want'	2	2	2	2	Yes
Consistent with the community 'Place Directions'	2	1	2	2	Yes
Consistent with the community vision for Lennox Park "Predominantly passive green space for day-to-day recreation and low impact community events".	2	2	2	2	Yes
Essential structural repairs undertaken	3	3	3	3	N/A

8.4 Lennox Park - Shelter Shed Options

Key Considerations	Assessment				
Options	Option A	Option B	Option C	Option D	Original concept plan (remove shelter)
Retains built form elements that are key to the architectural language of the original design.	2	3	2	2	N/A
Improves accessibility to and around the shelter (pathways and navigation)	1	1	3	3	Yes for new shelter
Improves accessibility and user experience within the shelter (lighting, furniture, tactile and sensory experiences)	2	2	3	3	Yes for new shelter
Improves safety as per the CPTED criteria and beyond the status quo	2	1	2	3	Yes for new shelter
The architectural style will have synergies with new toilet block / bus shelter	1	1	3	3	N/A
Provides opportunities for public art	2	1	3	3	N/A
Unrestricted access to the general public	3	3	3	1	Yes for new shelter
Retains the purpose of the shelter shed as a meeting place	3	3	3	3	Yes for new shelter
Suitability of the materials for a coastal setting	3	2	3	3	Yes
Achieves key objectives of the grant funding – improved accessibility and tourism infrastructure	1	1	3	2	Grant fund to be amended
Cost	Lowest	Middle	Middle	Highest	Low
Assessment Score	29	26	37	35	

1 = Fails to address the key considerations

2 = Partially addresses the key considerations

3 = Addresses the key considerations to best potential

Based upon this assessment, of the four options that retain the shelter shed, Option C best addresses the key considerations.

It is also noted that the staff interpretation of the general sentiment of the Councillor briefing was a preference for option C.

Each of these strategies also presents several opportunities for incorporation of community interventions or art.

Some of these opportunities are outlined further in Appendix 07 of Attachment 1.

Such interventions were desirable features identified by the design charette team during the Lennox Village Vision engagement process.

The planning pathway and permissibility of each option has not been investigated in detail as part of the preparation of this report.

Delivery Program Strategy / Operational Plan Activity

Renovation of the shelter shed is not included in the current DPOP as a specific action item. However, delivery of the Lennox Head Town Centre upgrade works is an Operational Plan Activity as follows:

Delivery Program Strategy: PE1.2 Provide Opportunities for New Business

8.4 Lennox Park - Shelter Shed Options

Operational Plan Activity: PE1.2a "Deliver Lennox Head Town Centre Village Renewal".

Community Consultation Policy

Extensive engagement has been undertaken with stakeholders and the general community.

The engagement methodology was based upon the project having a potentially high-level impact upon the local government area and used an "Involve" approach. Under the policy, this approach seeks to work directly with stakeholders and the public throughout the process to ensure that concerns and aspirations are consistently understood and considered and directly reflected in the Master Plan.

There has been extensive engagement specific to the upgrading of the Lennox Head Village Centre. Removal of the shelter shed has remained a recurrent point of contention within the community, with strongly voiced opinions in support of, and opposition to, its removal.

Financial / Risk Considerations

Costs

The following tables provide an estimate of costs to undertake the works on the shelter shed as proposed in each scenario. These estimates may vary subject to detailed structural investigations and design and assumes that the work would be undertaken as a part of the Lennox Reserve Park refurbishment and therefore does not include additional design, project management, site establishment and preliminaries costs.

The estimates have been generated from industry cost guides or discussions with suppliers and include a 15% contingency factor.

Minimalist – Option A	(\$ Ex GST)
Demolition and disposal of existing roof	7,100
Engineering assessment and underpinning of footings	12,880
New standing seam zinc roof	27,300
External render finish to all vertical surfaces	9,900
Exterior paint finish to all vertical surfaces	5,400
Floor surfacing	10,000
Standard table settings (2)	5,000
Sub-total	77,580
Contingency (15%)	11,637
Total	89,217

Restore – Option B	(\$ Ex GST)
Demolition and disposal of existing roof	7,100
Engineering assessment and underpinning of footings	12,880
New tile roof	17,940
Floor refinishing	14,000
Other construction works to restore building as per "Restore" option including glass blocks, re-rendering, painting, lighting, furniture	53,836
Internal analogue wall art (community art brief / tender)	20,000
Sub-total	125,756

8.4 Lennox Park - Shelter Shed Options

Contingency (15%)	18,863
Total	144,619

Embellishment / Refurbishment – Option C	(\$ Ex GST)
Demolition and disposal of existing roof	7,100
Engineering assessment and underpinning of footings	12,880
New standing seam zinc roof	27,300
Brickwork repairs, re-rendering and painting	17,275
Floor surfacing	10,000
Other construction works to restore building as per “Refurbish” option including timber battens to end wall, paved pathway surround, lighting, furniture	46,218
Internal analogue wall art (community art brief / tender)	20,000
Sub-total	140,773
Contingency (15%)	22,115
Total	162,888

Adaptation / Re-Imagine – Option D	(\$ Ex GST)
Demolition and disposal of existing roof	7,100
Engineering assessment and underpinning of footings	12,880
New standing seam zinc roof	27,300
Other construction works to restore building as per “Adaption” option including brickwork infill to support battens, floor surfacing, re-rendering, painting including chalk wall, timber battens to end wall, lighting, paved pathway surround, furniture, lockable timber doors	110,361
Internal analogue wall art (community art brief / tender)	20,000
Sub-total	177,641
Contingency (15%)	26,646
Total	204,287

Original Concept Plan Scenario / Remove the Shelter and Install a New Large Shelter or Shelters	(\$ EX GST)
Demolition and disposal of shelter shed building	25,000
New picnic shelter or shelters to accommodate at least 12 people (including concrete slab and electrical)	46,000
Timber batten panels (or similar) to 2 sides of each shelter	2,000
Table settings	9,000
Sub-total	82,000
Contingency (15%)	12,300
Total	94,300

Specific allowances for cost escalations have not been included.

Other opportunities such as digital immersive wall art have not been included in the costing.

Funding

The construction of the works in Lennox Park is largely funded though Council being successful with a Regional Tourism Activation Fund (RTAF) grant. The funds allocated in that grant are \$700,297 with Council having to provide a co-contribution of \$67,220, for a total project value of \$767,517, with the project to be completed by 30 June 2023.

8.4 Lennox Park - Shelter Shed Options

There are no other Council funds allocated to the Lennox Park works, as part of the Lennox Village Vision (LVV) project. Certain elements of the LVV remain unfunded due to the overall magnitude of the cost of the entire LVV project (i.e. Park Lane).

The RTAF fund aims to accelerate the development of new and enhanced tourism infrastructure, providing visitors with unique and high impact experiences while visiting regional NSW.

A key objective of the funding is increased visitation, expenditure and length of stay as well as improving accessibility and inclusion to enhance the visitor experience for people with disability.

Outcomes identified in the signed grant agreement, include demolition of the toilet facility, offset through the provision of a new all access toilet facility, along with accessible pathways, accessible furniture, structures and features, planting works, new accessible viewing platform and improvements to the shade pavilion with improved accessibility features.

The RTAF grant application was based on the original concept plan, which has an estimated cost of \$94,300, and additional funds will need to be allocated to the full refurbishment of the shelter shed, as outlined in the four scenarios.

In addition to the funds allocated to Lennox Park in 2022/23, which form part of the Open Spaces Capital Works Program, Council also has \$4,601,000 allocated to the LVV project in 2022/23, in the Engineering Works program, which includes grant funding of \$480,000 from the Local Roads and Community Infrastructure Program (Round Three) for the Byron Street works, which are yet to commence.

Council has, to date, expended \$2.5m of the \$4,601,000 and there are concerns that the final works, will be significantly over budget, due to extended periods of wet weather, construction cost increases etc.

The Council's 2022/23 budget also has \$120,000 allocated to the finalization of the Ross Park works, which forms part of the total LVV project, within the Open Spaces Capital Works Program.

Including the 2021/22 actual expenditure and the budgets allocated in 2022/23, the total funding allocated to the LVV project, to date, between Open Spaces and Engineering Works, is approximately \$9m.

This excludes the \$1.5m commitment from the Federal Government, as part of the 2023 Federal Election, which appears to now be confirmed, with Council staff coordinating the signing of that funding agreement.

Once that deed is signed, the total LVV project budget can be increased by \$1.5m, and it will then be a matter of determining the exact nature of the works that can be completed, based on the total funds available, expenditure to date and signed grant agreements.

8.4 Lennox Park - Shelter Shed Options

Whether or not the Lennox Park shelter works can be undertaken as part of the total funding package, will depend on the Lennox Park option confirmed by Council, as well as the final costs, or estimates, for the elements of the LVV where Council has existing commitments.

Risks

The following risks have been identified:

- The structural condition of the shelter shed may impact upon the ability to fully realise some of the options. This will require further detailed assessment and design.
- Cost estimates provided are subject to detailed design and may vary as a result of specific design challenges or features or cost escalations.
- The works are subject to funding criteria and deadlines which need to be met.
- Community sentiment and objection may occur with any option selected.

Options

The options, as listed in this report, are identified as Option A, Option B, Option C and Option D.

The other option is the previously adopted concept plans.

From a technical and financial management perspective the previously adopted concept plan remains the preferred option, as it is cost effective and provides the best design and amenity outcome for the park and streetscape overall. However, based on the adopted position of Council, Option C, is the preferred approach, as per the contents of this report.

The recommendation supports Option C, with funding for this element of the Lennox Park work still to be confirmed once further information on the estimated final costs for the works currently underway, or committed to, along with grant commitments (i.e. Byron Street) is known, to ensure adequate funding is available for the Option C works. If the available funding is insufficient, then Council will need to confirm other funding sources.

This financial update can be provided as part of the next quarterly Capital Works – Update report, which is scheduled for the February 2023 Ordinary meeting.

RECOMMENDATION

That Council confirms the preferred design for the refurbishment of the Lennox Park shelter shed is Option C, referenced as the embellishment / refurbishment option, as detailed in this report, and as outlined on page 14 of Attachment 1 to this report.

Attachment(s)

8.4 Lennox Park - Shelter Shed Options

1. Lennox Reserve Park Shelter Shed Report on Options - Appendices 1-9
 [!\[\]\(a22ba4e13c745edbf29e51af246c4c12_img.jpg\)](#)

8.5 **Ballina Shire Biodiversity Strategy - Draft**

Section	Strategic Planning
Objective	To present the draft Ballina Shire Biodiversity Strategy to Council and seek approval for public exhibition.

Background

Loss of biodiversity is a significant issue in Ballina Shire (as it is across NSW and Australia). It is the responsibility of all levels of government to protect biodiversity.

There is strong community interest and support for biodiversity conservation in Ballina Shire. This is reflected in the *Ballina Shire Community Strategic Plan 2022 – 2032* (CSP), through the Healthy Environment (HE) direction.

Council's Delivery Program and Operational Plan lists the preparation of a Biodiversity Strategy as an item for completion in 2022/23.

The draft Ballina Shire Biodiversity Strategy (the Strategy) is included as Attachment 1 to this report.

The Strategy seeks to promote understanding of the biodiversity values of Ballina Shire and set out actions that contribute to conserving and enhancing biodiversity in the Shire for future generations.

A stable, long term funding source will be critical to ensure Council has adequate resources to implement the strategy.

Current state of biodiversity loss

The [2021 National State of the Environment Report](#) published by the Commonwealth Government found that Australia supports nearly 600,000 native species, and a very high proportion of these are found nowhere else in the world.

Key findings from the report include:

- more mammal species have become extinct in Australia than any other continent and Australia continues to have one of the highest rates of species decline globally.
- there now are now more foreign terrestrial plant species in Australia than native species.
- at least 19 Australian ecosystems have been reported as showing signs of collapse or near collapse.

In NSW, the [2021 NSW State of the Environment Report](#) concluded:

- an average of 35,000 ha of native vegetation is cleared in NSW each year – an increase from 13,000 ha annually between 2009 and 2015.
- NSW is home to 1,043 threatened species; an increase of 2% since 2017.

- 116 of these species are listed as critically endangered and face an extremely high risk of extinction in Australia in the immediate future.

On a regional scale, the [2016 North Coast Regional State of the Environment Report](#) concluded:

- the overall habitat quality for plants and animals in Ballina Shire is 'very poor'.
- Ballina Shire has the least amount of native vegetation cover in the North Coast region at only 20%. In comparison, Byron and Tweed Local Government Areas had 37% and 50% native vegetation cover respectively.
- overall river health in Ballina Shire received a score of D minus, with rivers and creeks displaying signs of high nutrient and sediment loads (i.e. dirty water).
- the greatest pressure on vegetation in the North Coast region of NSW is land clearing.

Ballina Shire contains a variety of significant biodiversity assets, including threatened ecological communities (e.g. Big Scrub Rainforest, Wetlands), a nationally significant koala population and various threatened flora (e.g. Coastal Fontainea, Davidson's plum) and fauna species (e.g. Long-nosed Potoroo, Albert's lyrebird), that are protected under State and Federal conservation instruments.

Notably, Council is undertaking a variety of projects aimed at including waterway health through its Healthy Waterways Program.

Community feedback

The environment is stated as one of the main reasons why people like living in Ballina Shire.

During consultation for the *Ballina Shire Community Strategic Plan 2022 – 2032* (CSP), around half of respondents noted that the best thing about living in Ballina Shire is the beautiful environment, the relaxed lifestyle, and access to open spaces and recreation.

Indicative quotes from CSP consultation included:

- "Environmental protection and rural landscape protection should be high."
- "Healthier rivers and creeks."
- "Preserve and protect the environment."
- "A healthy environment with lots of outdoor spaces and facilities that encourage health, well-being and social connectedness."

As a result of the strong recurring theme from community feedback, regarding the health and preservation of our natural environment, one of the four directions in the CSP is Healthy Environment (HE).

At present, Council has a variety of policies and initiatives aimed at supporting positive biodiversity outcomes, but Council does not have an overarching Strategy to guide the protection and enhancement of biodiversity in Ballina Shire.

This is recognised in Action HE3.2i of Council's *Delivery Program and Operational Plan 2022 – 2026* which lists the preparation of a Biodiversity Strategy as an item for completion in the 2022/23 period.

Key Issues

- Protection and enhancement of the Shire's biodiversity assets
- Options for Strategy implementation

Discussion

Scope of Strategy

The loss of biodiversity in Ballina Shire (including NSW and Australia more broadly) is rapidly increasing and it is the responsibility of all levels of government to protect biodiversity.

Northern NSW is within one of the most diverse landscapes in the country.

The region supports over 40% of NSW's threatened species and around 20% of Endangered Ecological Communities.

Ballina Shire is home to more than 300 threatened plant and animal species.

The Ballina Shire community is passionate about protection of the environment; it is one of the main reasons why people like living in Ballina Shire.

Subsequently, an action to develop a Biodiversity Strategy was included in Council's *Delivery Program and Operational Plan 2022 – 2026*.

The Strategy will provide an overarching framework to guide the protection and enhancement of biodiversity in Ballina Shire.

The draft Strategy (Attachment 1) is structured around four themes:

- **Protect** – PROTECT biodiversity values in Ballina Shire through strategic and statutory planning, and local policy and processes.
- **Manage** – We ensure that the natural environment in Ballina Shire is being MANAGED to improve ecological resilience and reduce threats to biodiversity.
- **Enhance** – Our actions ENHANCE and conserve biodiversity in urban and rural areas through revegetation and habitat rehabilitation.
- **Collaborate** – We COLLABORATE with stakeholders and the community to encourage participation and engagement in conservation initiatives, whilst raising awareness of the importance of biodiversity.

There are many processes which contribute to the loss of biodiversity. Threatening processes relevant to Ballina Shire include:

- loss of important habitats,

- clearing of native vegetation,
- alteration of natural flows in waterways and groundwater,
- negative impacts from invasive species,
- inappropriate fire regimes, and
- climate change.

The draft Strategy aims to create meaningful actions which will reduce the impacts of each of these threatening processes.

Due to various factors including the scope of impact from a threatening process, legislative context, regulatory requirements and/ or influence of other stakeholders, Council has a greater influence on reducing the impact of some of these threatening processes (e.g. loss of important habitats, clearing of native vegetation), in comparison with others (e.g. climate change, inappropriate fire regimes).

The actions within the draft Strategy consider Council's influence (or lack thereof) with regard to reducing impacts of a threatening process.

In particular, actions aimed at reducing the loss of important habitats and clearing of native vegetation will be implemented by Council and involve a combination of amendments to regulatory or policy instruments and / or on-ground management/ enhancement works.

In comparison, processes which contribute to the loss of biodiversity in Ballina Shire, but where Council has a lesser influence (e.g. climate change, inappropriate fire regimes or management of invasive species) have actions which are less management based, instead placing a greater focus on stakeholder collaboration and advocacy efforts by Council.

The draft actions ensure that Council implements projects, or programs, which relate to core Council business, while also acknowledging that collaboration and advocacy efforts by Council are important in raising awareness for threatening processes which are causing significant impacts to biodiversity in Ballina Shire.

Implementation of the Strategy and funding considerations

Successful implementation of a biodiversity strategy requires adequate financing and resourcing to ensure actions are implemented and ultimately the aim and objectives of the strategy achieved.

Adoption of a Biodiversity Strategy can be a mechanism through which grant funding can be achieved, although this cannot provide a reliable long-term funding stream.

The table below indicates how other councils in our region have funded ongoing implementation of their strategies.

LGA	Funding stream	Notes
Byron	Environmental Levy (Special Rate Variation)	<p>Following the adoption of the Byron Biodiversity Conservation Strategy in 2004, Council received approval from the NSW government to apply a special rate variation of 2% over four years.</p> <p>In 2008, this Biodiversity Levy was replaced with an Environmental Levy that continues to support the implementation of the Byron Biodiversity Conservation Strategy as well as Council's sustainability and coastal programs.</p>
Lismore	Special Rate Variation	<p>In May 2015, Lismore City Council adopted the Lismore Biodiversity Management Strategy (BMS).</p> <p>Council applied to the NSW Government for a Special Rate Variation (SRV) to fund implementation of the BMS.</p> <p>The SRV was approved in 2016. The percentage increase was 4.3% of Council's total rating income, which includes an assumed annual rate-peg increase of 2.5% and 1.8% to fund the BMS.</p>
Coffs Harbour	Environmental Levy (Special Rate Variation)	<p>Council applies a 'base amount' and a rate in the dollar (ad valorem rate) to land valuations when determining 'Residential' and 'Farmland' ordinary rates.</p> <p>Council applies an ad valorem rate (with minimum) to land valuations when determining 'Business' and 'Business City Centre' ordinary rates.</p> <p>The environmental levy is calculated in two parts:</p> <ul style="list-style-type: none"> the Base Amount (\$22.93), which is the same for everyone, and the ad Valorem amount (0.0000997 in the \$), using a rate per dollar multiplied by the property's land valuation.
Tweed	Special Rate Variation for Koala Beach, Cobaki Lakes and Kings Forest.	<p>Tweed Shire Council operates a special rate levy for residents who live in estates including Koala Beach, Cobaki Lakes and Kings Forest, to fund the ongoing maintenance and protection of environmental lands on these estates.</p>

The main forms of funding used by councils to implement their biodiversity strategies include:

- Special Rate Variation (SRV) [*Environmental levy*]
- Grant Funding
- Allocation of existing Council funding.

Each funding avenue comes with benefits and limitations, varying from council to council, depending on community needs and the actions to be implemented.

8.5 Ballina Shire Biodiversity Strategy - Draft

Special Rate Variation (SRV) [Environmental levy]

A Special Rate Variation (SRV) allows a council to increase its general income above the rate peg, under the provisions of the *Local Government Act 1993* (NSW). A SRV can be temporary or permanently retained in the rates base.

A SRV is commonly used by councils to raise funds to implement a strategy.

Council, through the Healthy Waterways program, has had success in using a 1.5% SRV to fund projects which deliver positive outcomes to the environment.

Between 2018 – 2021, \$2 million in additional grant funding was secured by Council through the Healthy Waterways program, while Council contributed approximately \$2.18 million over the three-year period from the SRV.

The estimated average 2023/24 annual rate for the three different categories of rated property in Ballina Shire is as follows:

Residential	\$1,214
Business	\$4,008
Farmland	\$1,892

Three SRV scenarios are provided below showing the additional charge to the estimated average annual 2023/24 rates under a 1.0%, 1.5% and 2.0% SRV.

Rating Category	SRV of 1.0% Average Rates 2023/24	Additional charge to average 2023/24 rate at SRV of 1.0%	SRV of 1.5% Average Rates 2023/24	Additional charge to average 2023/24 rate at SRV of 1.5%	SRV of 2.0% Average Rates 2023/24	Additional charge to average 2023/24 rate at SRV of 2.0%
Residential	\$1,225	\$11	\$1,231	\$17	\$1,237	\$23
Business	\$4,047	\$39	\$4,066	\$58	\$4,086	\$78
Farmland	\$1,910	\$18	\$1,919	\$27	\$1,928	\$36

The additional total estimated annual income provided for the 2023/24 financial year under the different SRV scenarios is as follows:

1.0%	\$273,000
1.5%	\$409,000
2.0%	\$546,000

An SRV can be applied temporarily (i.e., just for a year or set time frame) or it can be permanent (i.e. applied in all years, in perpetuity).

Positives

- An environmental levy or a SRV can provide stable, long term and sufficient recurrent funding to effectively implement the Strategy
- Council would not have to reallocate current budgets from other programs
- The community may be supportive, given the direction of the Healthy Environment in the CSP and the consistent community feedback around the importance of the environment
- The availability of funding is likely to provide sufficient leverage to attract additional external grant funding, as most State and Commonwealth grants require like-for-like cash contributions from Council

8.5 Ballina Shire Biodiversity Strategy - Draft

- Will improve Council's capacity to deliver the strategy outcomes and Council's ability to sequentially program for project delivery over an extended timeframe.

Negatives

- The community may resist a rate increase, although this could be determined via community consultation / education
- Cost of living pressures are a challenge for many in our community at present.

The Independent Pricing and Regulatory Tribunal of NSW (IPART) approved [Coffs Harbour City Council's application](#) for a SRV in 2015-16, to operate the permanent environmental levy.

Regarding the impact on affected ratepayers (Criterion 3 of IPART's assessment criteria), IPART determined:

Vulnerable socio-economic groups, including pensioners, are covered under the council's hardship policy and its voluntary pensioner concessions on the environmental levy and domestic waste charge.

Should Council consider a SRV to assist in implementing the Ballina Shire Biodiversity Strategy, consideration should be given to Council's *Financial Assistance (Hardship) - Rates and Charges* policy.

Rate payers who may experience financial hardship caused by any SRV should be covered by this policy.

Grant Funding

Positives

- Minimal impact on Council's existing budget allocations aside from cases where matching funds are necessary
- Can be utilised in conjunction with other funding sources

Negatives

- Does not provide a reliable, long-term funding stream
- Significant staff time required to apply for and manage grant funds
- Reliance of grant funding in isolation means projects will be delivered on an ad hoc basis dependent on uncertain funding and likely over long timeframe

Existing Council Budget

Positives

- No additional expenditure outside existing budget or levying of charges

Negatives

- If existing funds are relied on in isolation, actions would be likely implemented on an ad-hoc basis as funding and resources became available
- Requires allocation of funds from other Council programs
- Long timeframes required to realise actions of the Strategy

In summary, the draft Strategy has been prepared with significant projects and outcomes in mind, as opposed to a lower scale plan based on current resource limitations.

The challenge though is that it is not likely that the actions of the Strategy can be delivered in a timely fashion without additional funds being applied to a biodiversity program in a manner similar to the healthy waterways program.

Once Council has the benefit of community feedback, Council will need to further consider funding arrangements or alternatively alteration to reduce the scope of the Strategy to align with available resources.

Delivery Program Strategy / Operational Plan Activity

Action HE3.2i of Council's *Delivery Program and Operational Plan 2022 – 2026* lists the preparation of a Biodiversity Strategy as an item for completion in the 2022/23 period.

Community Consultation Policy

Following three Councillor workshops throughout 2022, a series of workshops were held in late October 2022 with community stakeholders.

In addition to Council staff, representatives from organisations with an environmental, industry and/or business interest, as well as Ward Committee representatives, were engaged to provide feedback on the actions within the draft Ballina Shire Biodiversity Strategy.

The input from these workshops concentrated on the draft actions and has helped to refine the draft Strategy contained at Attachment 1.

Four workshops were held in late October 2022 for community stakeholders and organisations with an environmental, industry and/or business interest in Ballina Shire, including Council Ward Committee members.

Workshop participants were provided with action tables contained within the draft Strategy.

Participants were then asked to provide feedback via questions and activities focused around what the participants liked about the actions in the Strategy, how the actions could be improved and their opinion on how the Strategy could be implemented and funded.

Generally, all groups were in support of the Strategy and results of the workshops are as follows, with all groups noting:

- The Strategy should set actions that will assist Council in developing clear and consistent policy and/ or guidelines which will facilitate positive biodiversity outcomes in Ballina Shire
- Council should encourage the community to take ownership of the environment by increasing community awareness and pride in local biodiversity and celebrate the environmental champions in Ballina Shire
- For the Strategy to be implemented, it must be adequately resourced. A stable long-term funding stream (via a Special Rate Variation (SRV)) is likely the most suitable funding method to assist in implementing the Strategy. Although, existing Council budgets and grant funding opportunities should also contribute to the implementation of the Strategy.
- Council should monitor implementation of the Strategy, make adaptive changes where required and remain transparent with the community.

This report recommends that the draft Ballina Shire Biodiversity Strategy be publicly exhibited for a period of three months (December 2022 – February 2023). The extended exhibition period is recommended to account for the public exhibition timeframe spanning across the Christmas/New Year period.

Advertisements and media content will be published via hardcopy and online mediums to alert the public of the exhibition. Engagement techniques such as markets stalls, information sessions, etc. are also proposed in early 2023 to provide information on the draft document.

An online feedback form will be prepared and be used to canvass the level of support for the Strategy and its implementation.

This approach is consistent with Council's Community Consultation Policy.

Financial / Risk Considerations

Options to fund the implementation of the Strategy will be provided to Council in a subsequent report, which will be presented after public exhibition of the draft Strategy having regard for the community feedback received.

Options

Option 1 - Exhibit draft Ballina Shire Biodiversity Strategy

Endorse the exhibition of the draft Ballina Shire Biodiversity Strategy (Attachment 1) in accordance with the community engagement approach outlined in this report. This will enable the documents to be reviewed by the community and comments received to be considered by the Council post exhibition.

This option would include questions in the online feedback form to canvass the community about the level of willingness to contribute monetarily to implementation of the strategy.

This is the recommended option.

8.5 Ballina Shire Biodiversity Strategy - Draft

As a variation to this option, Council could endorse the Strategy for public exhibition with amendments as it sees fit. If this is preferred, any amendments should be specified in Council's resolution.

Option 2 – Defer exhibition of the draft Ballina Shire Biodiversity Strategy

Council may wish to defer consideration of the draft Ballina Shire Biodiversity Strategy to obtain further information or request a briefing on the matter.

Given the community engagement and Councillor briefings to date, this option is not recommended in favour of now inviting broader community feedback.

Option 3 – Cease preparation of the Ballina Shire Biodiversity Strategy

This would involve bringing the current project to an end and not pursuing completion of a Strategy further at this time.

Given the level of community interest in environmental attributes in the Shire and the feedback from stakeholders to date, as well as the benefits of having a strategy in place, this approach is not recommended.

RECOMMENDATION

That Council approves the public exhibition of the draft Ballina Shire Biodiversity Strategy, as per Attachment 1 to this report, for a period of at least three months.

Attachment(s)

1. Ballina Shire Biodiversity Strategy 2023 - Draft (Under separate cover) [⇒](#)

8.6 Plan of Management for Community Land - Public Exhibition

Section Strategic Planning

Objective To inform Council of the preparation of an updated draft Plan of Management for Community Land and seek direction for the public exhibition and adoption of the POM. The report also seeks endorsement for Council to become Crown Land Manager for reserve R49156 and seek Ministerial consent for that land to be classified as Operational.

Background

At the May 2021 Ordinary meeting, Council considered community feedback on a draft Plan of Management (POM) for Community Land and resolved to adopt the Plan, subject to advice from NSW Department of Planning and Environment – Crown Lands that the Plan could be implemented.

The need for the POM came about following changes to the *Crown Land Management Act 2016* (CLM Act), which required local councils appointed to manage reserved Crown land to do so in accordance with the public land provisions of the *Local Government Act 1993* (LG Act).

The draft POM, therefore, intended to update the Ballina Shire Council *Plan of Management for Community Land 2015* to incorporate Crown Reserves managed by Council together with Council-owned land classified as 'community'.

The draft POM was provided to Crown Lands for their consideration in mid-2021. Crown Lands responded in November 2021 raising several issues and requiring that the draft POM be updated and resubmitted for their approval prior to further public exhibition.

Based on the changes required by Crown Lands, some content of the draft POM is now different to the document that was exhibited for public comment in early 2021, albeit that the fundamentals of the plan and framework for managing community land remain essentially the same.

By letter dated 19 October 2022, Crown Lands has provided consent for Council to exhibit the updated draft POM and adopt it if no substantive changes are required as a result of public exhibition.

The updated draft POM is therefore ready for further public review and input.

In preparing the POM, it was identified that part of the Council administration buildings (i.e. part of the covered car park and portion of the Council office building above it) remain Crown Land that is not managed by Council.

This report recommends that Council request Crown Lands to appoint Council as the Crown Land Manager for this reserve and seek Ministerial consent for it to be classified as Operational Land.

Key Issues

- Categorisation of Council-managed Crown Land
- Development and use of community land
- Appointment of Council as Crown Land Manager for reserve R49156 and classification as Operational

Discussion

The main change to come from the Crown Land reforms is a requirement that councils manage Crown Reserves for which they are responsible in accordance with the public land management provisions of the *Local Government Act 1993* (LG Act).

This requires that, in the first instance, Council-managed Crown Reserves be classified as either 'community land' or 'operational land'.

Community land is land which is dedicated for use by the public and may include a wide variety of properties, ranging from small recreation reserves to large parks, and in some instances buildings.

Community land is defined as a public place under the provisions of the LG Act, and is characterised as being land that:

- is retained for community use
- cannot be sold
- cannot be leased for more than 21 years without Ministerial consent
- cannot be leased unless public notice is given, and
- can only be used for purposes which are consistent with a plan of management.

Prior to preparing the draft POM, Crown Lands provided direction as to which Council-managed Crown Reserves were to be classified as 'community', as reported to Council in 2019.

The draft POM was then prepared to update the 2015 Plan of Management for Community Land to include these Crown Reserves together with Council-owned parcels classified as community.

The original draft POM sought to incorporate existing plans of management for Hampton Park (R54004) and Williams Reserve (R82927). However, following further feedback from Crown Lands, these sites will retain their existing stand alone POMs, at this time.

A review of the Hampton Park plan is scheduled for the 2023/24 year under Council's adopted Delivery Program and Operational Plan. Future planning for Williams Reserve is currently being considered as part of the Lennox Head Strategic Plan preparation process.

The plan of management for the Ballina Coastal Reserve (R101068) is separate to the plan of management for community land.

8.6 Plan of Management for Community Land - Public Exhibition

Ballina Shire Council is one of the first local government areas in the State to prepare a new POM incorporating the requirements of the updated CLM Act.

Given that, the nature and extent of comments from Crown Lands on the draft reflected a steep learning curve for Council and the Department.

Following further discussion, an updated draft POM was developed and sent to Crown Lands in May 2022.

By letter dated 19 October 2022, Crown Lands has now provided consent for Council to adopt the POM under clause 70B of the Crown Land Management Regulation 2018, following public exhibition.

The draft POM is included as Attachment 1 to this report.

Due to large document sizes, Appendix 1 of the draft POM (details of Council owned reserves and maps) is included as Attachment 2 and Appendix 2 of the draft POM (details of Council managed Crown owned reserves and maps) is included as Attachment 3 to this report.

The draft POM outlines the basis for management of relevant Council-owned and Council-managed community land, including categorisation in accordance with the requirements of the LG Act.

The LG Act defines five categories of community land:

- **Park** – for areas primarily used for passive recreation.
- **Sportsground** – for areas where the primary use is for active recreation involving organised sports or the playing of outdoor games.
- **General community use** – for all areas where the primary purpose relates to public recreation and the physical, cultural, social, and intellectual welfare or development of members of the public. This includes venues such as community halls, scout and guide halls, and libraries.
- **Cultural significance** – for areas with Aboriginal, aesthetic, archaeological, historical, technical, research or social significance.
- **Natural area** – for all areas that play an important role in the area's ecology. This category is further subdivided into bushland, escarpment, foreshore, watercourse and wetland categories.

Appendices to the draft POM identify the individual properties that are subject to the POM, assigning a categorisation to each.

Maps of all Council-managed Crown Reserves are included, as well as maps of Council-owned land subject to multiple categories.

The draft POM includes management principles, objectives and guidelines relevant to each of the LG Act categories.

It also specifies provisions relating to the future use and development of the land, including permissible uses for each category, and the authorisation of leases and licences over individual reserves.

The draft POM lists purposes that are expressly authorised for each LG Act category.

8.6 Plan of Management for Community Land - Public Exhibition

These provisions combine to provide the legislative framework for the management of Council-owned and Council-managed reserves that are governed by the POM.

A range of 'Special Provisions' are also outlined for various reserves to reflect specific uses authorised under the POM.

The original draft POM was exhibited for public comment in March/ April 2021. Six written submissions were received and reported to a Council meeting in May 2021.

Given the time that has elapsed, and the significant changes made to the document that was originally exhibited, it is important that the current version of the draft POM is exhibited for further community input.

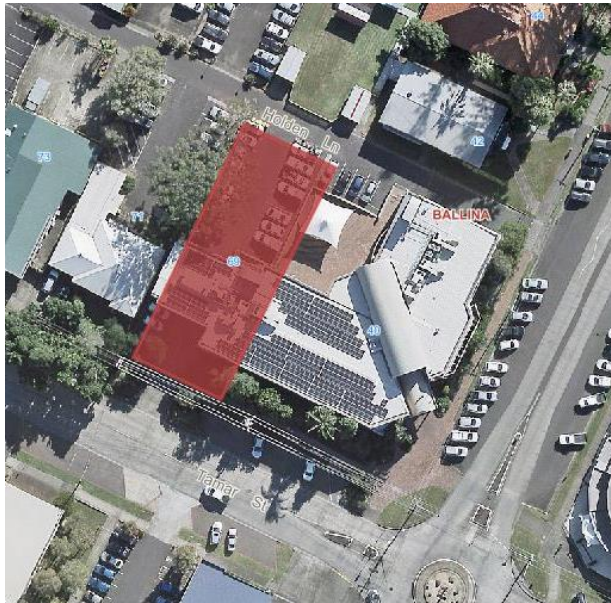
Reserve R49156

The property at 69 Tamar Street, known as Lot 4 Sec 59 DP 758047, is located as shown below.



The property is Crown Land but is not currently managed by Council.

As per the following image, part of the Council administration building occupies the property, being a covered car park and access way with the lunchroom/ amenities part of the Council offices above.



It is logical that this Crown Land land should have the same management arrangements as the adjoining land at 40 Cherry Street (occupied by Council's administration building).

There does not appear to be a particular reason as to why this land was not placed under Council management at the same time as the adjoining land.

That Reserve is classified as Operational Land, as is the Council-owned property immediately to the west, containing the cottage occupied by People and Culture staff.

Given Council's occupation of the property, it is appropriate that Council be appointed as Crown Land Manager. It is also appropriate that it be classified as Operational Land.

As such, it will not need to be included in the draft POM for Community Land.

Delivery Program Strategy / Operational Plan Activity

Preparation of the draft POM is consistent with Delivery Program Strategy HE3.1 *Implement plans that balance the built environment with the natural environment.*

Public exhibition of the draft is consistent with Strategy EL1.2 *Involve our community in our planning and decision-making processes.*

Community Consultation Policy

This report recommends that the updated draft POM be exhibited for public comment in accordance with Council's Community Consultation Policy, for at least 28 days.

Having regard for the approaching Christmas period, it is recommended that the exhibition proceeds on the basis of a minimum eight week period to provide interested parties additional time to respond over the Christmas and holiday period.

Financial / Risk Considerations

The initial draft POM was prepared using funding allocated in November 2018 to Council by the NSW Office of Local Government for the preparation of POMs to satisfy the requirements of the CLM Act. That funding has been exhausted.

The finalisation of the draft POM can be undertaken using existing staff resources.

Options

Option 1 – Exhibit the draft Plan of Management for Community Land and adopt the Plan if no substantive issues are raised.

The Department of Planning and Environment – Crown Lands has authorised Council to adopt the Plan after public exhibition if no substantive issues are raised.

If the POM is amended after public exhibition, other than for minor editorial and formatting changes, Council must resubmit the draft POM for the Minister's consent to adopt.

It is recommended that the draft POM be exhibited for a minimum of eight weeks and that for efficiency Council resolve to adopt the POM if no substantive issues are raised through the exhibition process. Practically the recommendation provides for staff to proceed with notification of adoption to bring the plan into effect unless submissions received raise issues that have the potential to impact the way the land is managed and therefore require a Council direction.

If substantive issues are raised, a further report will be provided before the adoption of the plan is publicly notified to enable further consideration of the content of the POM.

This is the recommended option, particularly noting that the plan has progressed through a previous public exhibition process and has now received endorsement from Crown Lands.

Option 2 – Defer further consideration of the draft POM

The legislative changes to the Crown Land Management Act require this updated POM.

Unless Council is seeking further information about particular aspects of the draft plan, this option is not recommended.

RECOMMENDATIONS

1. That Council adopts the Ballina Shire Plan of Management for Community Land, as attached to this report, with the plan to take effect on the date the adoption of the plan is publicly notified.
2. That prior to public notification of the adoption of the plan, Council place the Ballina Shire Plan of Management for Community Land on exhibition for public comment, with any substantial submissions received to be reported to Council. If no substantial submissions are received, then adoption of the plan is to be publicly notified.
3. That Council requests appointment as Crown Land Manager over Crown Reserve R49156 (Lot 4 Sec 59 DP 758047).
4. That Council endorses the classification of R49156 (Lot 4 Sec 59 DP 758047) as Operational Land in the event that Council is appointed Crown Land Manager.

Attachment(s)

1. Ballina Shire Plan of Management for Community Land (Revised) (Under separate cover) [⇒](#)
2. Community Land POM - Appendix 1 List of Council Reserves and Maps (Under separate cover) [⇒](#)
3. Community Land POM - Appendix 2 List of Crown Reserves and Maps (Under separate cover) [⇒](#)

8.7 Policy (Review) - Community Gardens

8.7 Policy (Review) - Community Gardens

Section	Strategic Planning
Objective	To review the Community Gardens Policy.

Background

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to provide an overview of a review the Community Gardens policy. The policy provides direction on the establishment of community gardens on Council owned and managed public land.

Council first adopted this policy in March 2010 and the policy was revised again in 2014 and 2018.

Key Issues

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

Discussion

The purpose of this policy is to provide a framework for incorporated community groups operating within Ballina Shire to establish a community garden on Council owned or managed land. This review of this policy identified only minor wording changes.

A copy of the amended policy is included as Attachment 1. Changes have been marked in yellow and proposed deletions have been marked in red and struck through.

The changes to the policy are minor and as follows;

- Addition of wording to clarify that a management group set up for the management of a community garden needs to be an 'incorporated' group.
- Clarification that a community garden management group needs to liaise with Council to ensure any internal group procedures and management plans developed by the group meets the requirements of section 2 of the policy, and any other requirements specified in a licence agreement with Council.
- Addition of wording to clarify that community garden groups and gardeners should not discriminate against anyone in the group due to differences in ability.
- Deletion of superfluous wording around the benefits of a community garden.

The policy is considered to be contemporary and reflects current legislation. Therefore no further changes are recommended.

Delivery Program Strategy / Operational Plan Activity

CC2.2 – Encourage community interaction, volunteering and wellbeing.

CC3.3 - Support improved health outcomes by providing equitable access to sporting, recreational and community facilities.

Community Consultation Policy

As the changes are only minor it is recommended that Council adopt the policy as presented.

However it is also recommended the document be exhibited for public comment. If any submissions are received, they can be reported back to Council. There will not be a need for any further report if there is no public comment.

Financial / Risk Considerations

The proposed changes to the policy do not create any additional risk or financial considerations.

Options

Council may accept or amend the proposed changes to the policy. The changes included are minor in nature and it is recommended that the policy be adopted as presented.

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

RECOMMENDATIONS

1. That Council adopts the amended Community Gardens 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) - Community Gardens [↗](#)

8.8 Policy (Review) - Donations - Insurance for Environmental Volunteer Groups

8.8 Policy (Review) - Donations - Insurance for Environmental Volunteer Groups

Section Open Spaces

Objective To review the Donations - Insurance for Environmental Volunteer Groups policy.

Background

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Donations – Insurance for Environmental Volunteer Groups policy.

Council first adopted this policy in July 2005, and reviewed the policy in September 2010, November 2014 and November 2018.

Key Issues

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

Discussion

The purpose of this policy is to regulate the provision of financial assistance to environmental volunteer groups undertaking work on behalf of Council.

The policy has successfully facilitated the reimbursement of public liability insurance to volunteer groups for a number of years, noting that personal accident insurance coverage has previously been included within the public liability insurance policy. The insurance industry has recently split the two insurance types into separate policies and charges for them separately. The industry charges for the two insurance types when combined are for a similar to the previous insurance cost and policy setting.

Our environmental volunteer workers provide significant contributions to Council and the community. As the land manager, it is reasonable for Council to ensure the groups are not financially impacted in an adverse manner and that they are adequately insured for the reserve maintenance works that they undertake. This should include being insured for impacts to others (public liability) and impacts on volunteers (personal).

Council also recognises that responsible pesticide use in accordance with Council's adopted policy and applicable legislation, in addition to worksite safety, are also important for our environmental volunteer groups. The provision of first aid and chemical handling certification at volunteer worksites additionally ensures the safety of our volunteers and adherence to best practices.

8.8 Policy (Review) - Donations - Insurance for Environmental Volunteer Groups

The cost for the support provided to volunteer groups can be met within existing Open Spaces budgets, noting savings have been made through the consolidation of some volunteer groups.

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

- Updated to reference insurance types and certification elements eligible for reimbursement.
- Minor text updates to improve policy wording.

The changes have been marked in yellow with the exclusions marked in red and strikethrough. Otherwise the policy is still considered to be contemporary and reflects current legislation therefore no further changes are recommended. A copy of the amended policy is included as Attachment 1.

Delivery Program Strategy / Operational Plan Activity

CC2.2 – Encourage community interaction, volunteering and wellbeing.

Community Consultation Policy

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.

Financial / Risk Considerations

Providing a level of support through certification and insurances assist our environmental volunteer groups undertake valuable work on Council managed land.

Options

Council may accept or amend the proposed changes to the policy. The changes included are largely housekeeping and it is recommended that the policy be adopted as presented. It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

RECOMMENDATIONS

1. That Council adopts the amended Donations – Support for Environmental Volunteer Groups 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) - Donations - Insurance for Environmental Volunteer Groups [⇒](#)

8.9 Development Applications - Works in Progress - November 2022

8.9 Development Applications - Works in Progress - November 2022

This report provides an overview of current development application activity. Year to date as well as comparative year data is provided to identify trends and key information.

The data for the current year is to the end of the month prior to the date of this report (i.e. this report provides data to the end of October 2022). A list of development applications, not yet determined, that have been under assessment for a period of greater than 90 days is attached.

The 90 day threshold has been chosen as it provides a good indication of the volume of DAs that are in progress and overall workload, noting that number of DAs are determined within a shorter timeframe.

The data and reporting is continually being refined and there may be adjustments that result in minor alterations to the data sets as the reporting is improved and reviewed.

Outstanding DAs by Month

The following tables for 2021 and 2022 provide an indication of the number of DAs (including modifications) under assessment with reference to various timeframes. This gives an indication of assessment timeframe trends.

Assessment Timeframe	2021											
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
Less than 90 days	97	93	84	90	87	77	50	61	64	107	144	192
90 to 180 days	61	71	100	126	143	146	142	142	152	125	102	87
180 to 365 days	58	60	68	74	85	98	94	89	83	78	65	60
More than 365 days	43	41	38	37	35	31	30	27	23	21	19	15
TOTAL	259	265	290	327	350	352	316	319	295	331	330	354

Assessment Timeframe	2022									
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct
Less than 90 days	107	150	109	147	113	140	92	115	107	142
90 to 180 days	159	140	163	127	131	93	117	99	113	92
180 to 365 days	67	63	82	71	97	87	85	69	82	69
More than 365 days	23	23	31	29	34	30	41	34	37	36
TOTAL	356	376	385	374	375	350	335	317	339	339

From July through to December last year there was a reduction in the numbers of applications under assessment for more than 90 days.

This reduction is a reflection of the introduction of the NSW Planning Portal and the way in which applications initially submitted on the portal are progressed

8.9 Development Applications - Works in Progress - November 2022

through an initial adequacy review prior to payment of fees and formal lodgement.

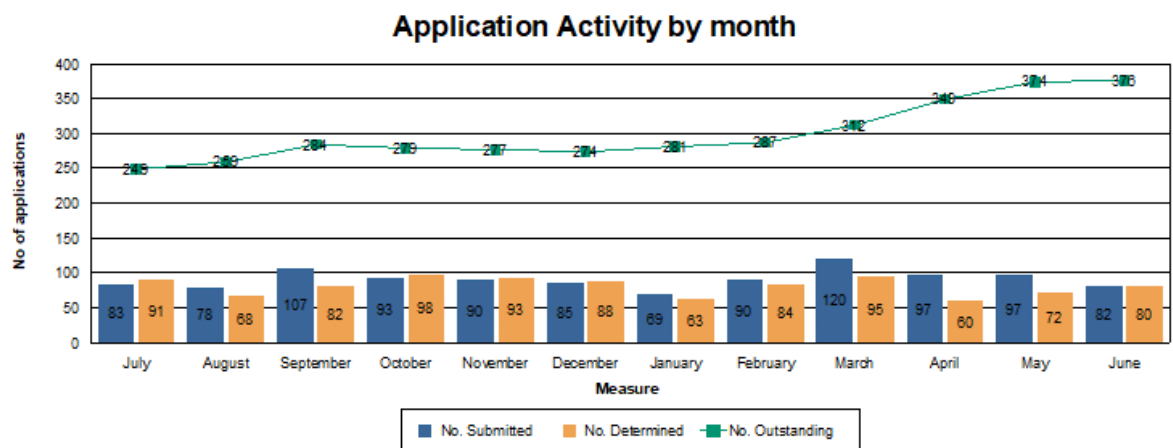
The volume of new applications started to rise again at the end of 2021 with the overall volume for 21/22 slightly down compared to 20/21 (although higher than 19/20).

The number of outstanding DAs have remained steady over the last five months.

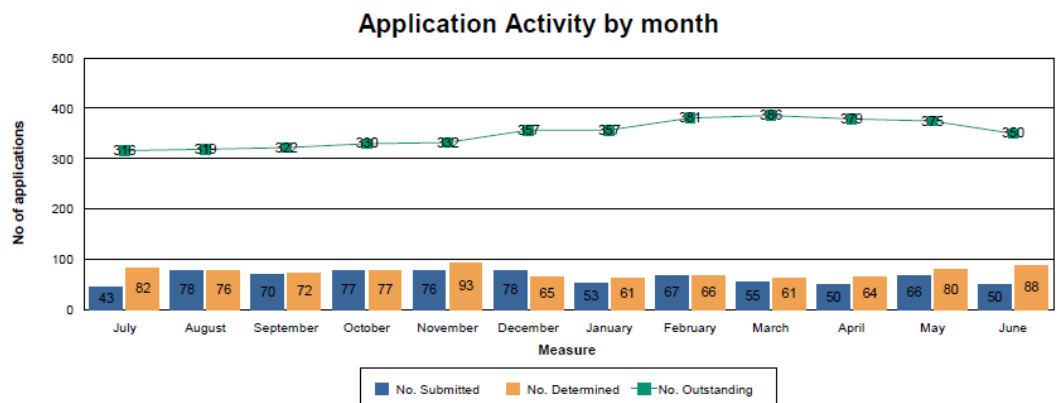
DA Determination Trend (Financial Year Comparison)

The following charts indicate the volume of DAs received and determined by month as well as the total number of applications not determined.

2020/2021

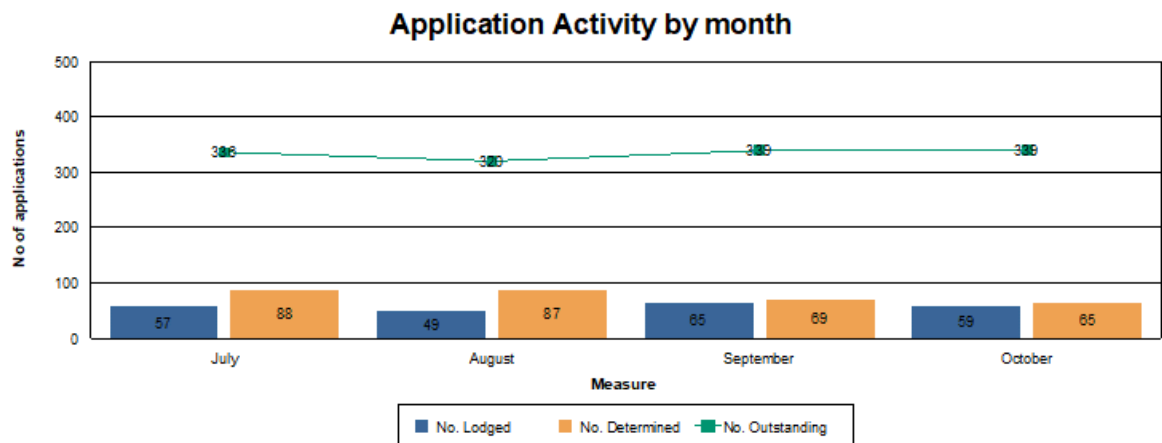


2021/2022



8.9 Development Applications - Works in Progress - November 2022

July 2022-October 2022



The number of DAs remaining undetermined in Council's assessment system is a reflection of continuing high volumes and complexity as well as some ongoing position vacancies throughout the year.

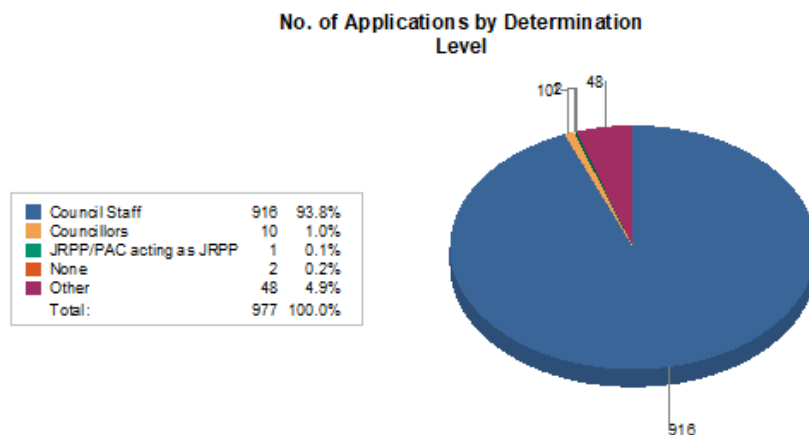
The current volume of undetermined DAs is consistent with numbers reported by Tweed and Byron Shire councils.

A significant number of DAs were determined from May through to August 2022. This is a reflection of ongoing efforts by staff to complete assessments, recruitment of staff completed earlier in the year and completion of a number of housing DAs using external consultants. However, with two more recent position vacancies, sustaining this trend is challenging.

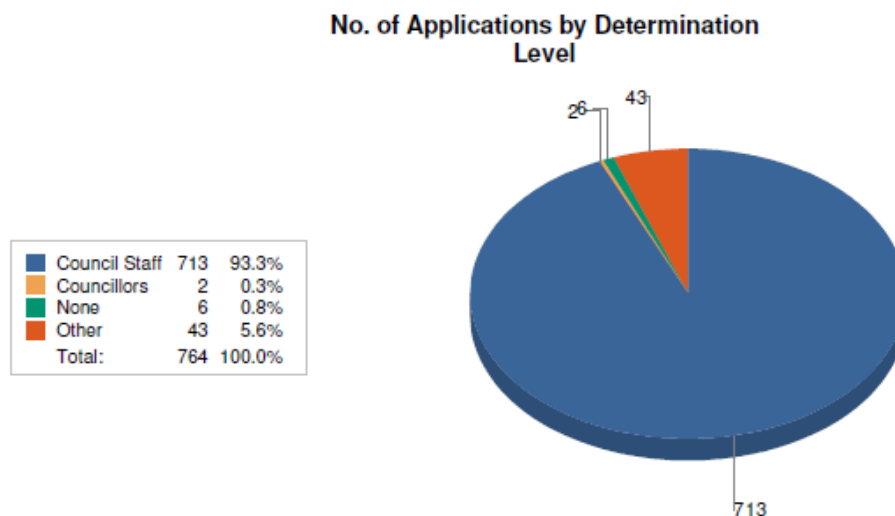
Determination Method

The following pie charts provide an overview as to how applications are being determined. 'Other' denotes applications withdrawn. 'None' denotes applications rejected. In both cases, the applications do not progress to determination.

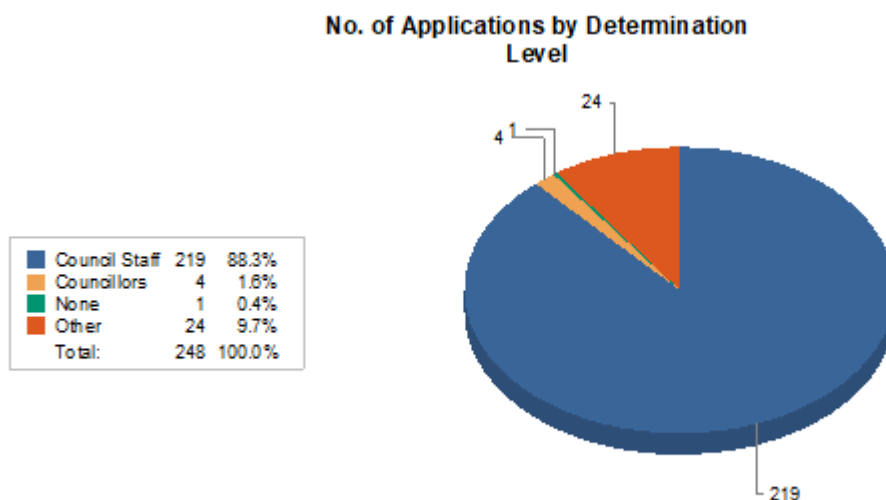
2020/2021



2021/2022



July 2022 to October 2022



In the current financial year to date, 98.4% of applications determined have been resolved by staff under delegation.

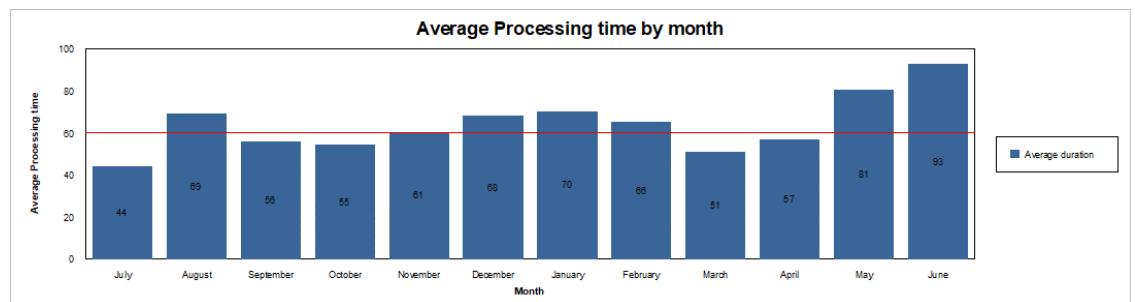
The target for the percentage of applications determined under delegated authority in the 2022/23 Delivery Program and Operational Plan is >95%.

Processing Time

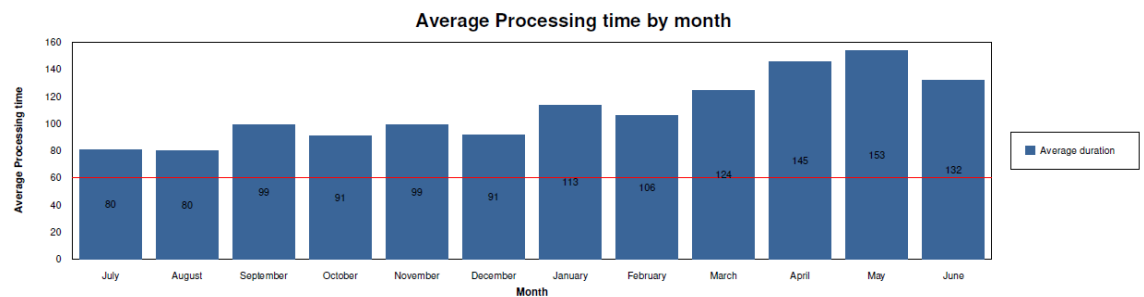
The following indicates average processing times for DAs by month. In the charts the red line depicts the average monthly processing time target adopted in the relevant years Operational Plan.

8.9 Development Applications - Works in Progress - November 2022

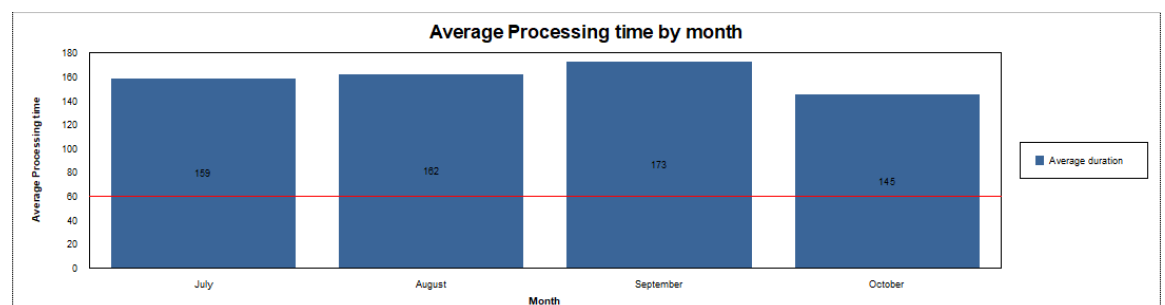
2020/2021



2021/2022



July 2022 to October 2022



Similar to the number of DAs remaining undetermined, the average assessment time is a reflection of continuing high volumes and complexity of incoming applications, ongoing management of a number of large development and subdivision projects and the determination of long outstanding DAs which significantly contribute to average processing times.

A long-term downward trend is dependent on a significant reduction in the number of DAs in the system that have been undetermined for a lengthy period.

The current resourcing strategy is aimed at reducing the volume of DAs held each month and in turn average processing times over a 12-18 month period.

Total DA Volume

The next table provides an indication of the total volume of DAs annually.

8.9 Development Applications - Works in Progress - November 2022

The figures are for DAs and section 4.55 modifications and do not include complying development certificates.

	Year					
	17/18	18/19	19/20	20/21	21/22	22/23 YTD
No. of DAs Submitted	861	890	976	1,093	1,020	303
% Change	N/A	+3.4%	+9.7%	+12%	-7.2%	N/A

Residential Subdivisions

There is substantial ongoing work in relation to residential subdivisions as reflected in the tables and charts below.

In particular, planning and engineering resources are being applied to the subdivisions known as Aureus, Epiq, The Crest, Lennox Rise, Banyan Hill, Ballina Heights, Riveroaks and private and Council land at Wollongbar.

These matters are at various stages of roll out with key areas of activity for Council relating to oversight of civil construction works, assessment of assets to be handed over to Council, monitoring of environmental and landscape works, monitoring of compliance with conditions of consent, processing of required applications (e.g. subdivision works certificates and subdivision certificates), responding to community enquiries and documentation of decisions.

Most recently, certificates were issued to enable registration of land in stage 4 and 5 at Banyan Hill and stages 5 and 6 at River Oaks.

In addition to the work associated with the roll out of these subdivisions and creation of registered lots, considerable council resources are applied to the subsequent dwelling approvals on these newly created allotments, building construction inspections and certification as shown in the dwelling approvals and construction certificate figures provided below.

Subdivision

Residential Lots Approved

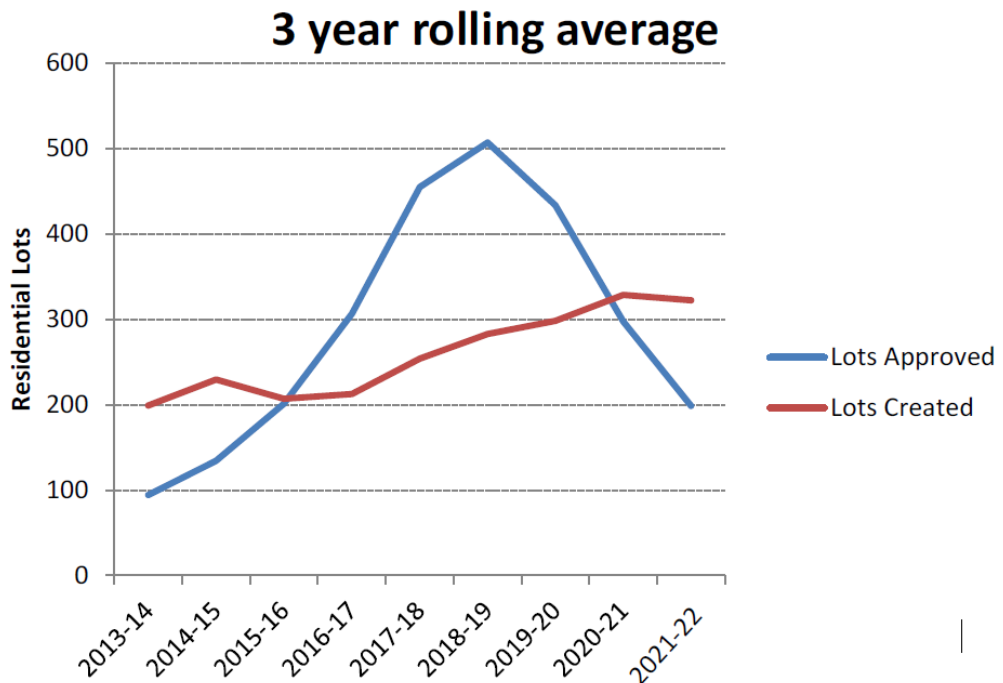
Locality	2018-19	2019-20	2020-21	2021-22
Ballina	29	11	18	6
Cumbalum	10	30	22	34
Lennox Head	127	57	220	35
Skennars Head	229	0	59	0
Alstonville	0	9	3	4
Wollongbar	4	42	7	27
Wardell	5	10	0	0

8.9 Development Applications - Works in Progress - November 2022

Locality	2018-19	2019-20	2020-21	2021-22
Rural	0	0	0	2
Total	404	159	329	108

Residential Lots Released (subdivision certificates issued – number of lots)

Locality	2018-19	2019-20	2020-21	2021-22
Ballina	85	41	32	25
Cumbalum	77	41	92	198
Lennox Head	171	89	148	47
Skennars Head	10	0	98	51
Alstonville	10	0	22	10
Wollongbar	15	41	10	20
Wardell	2	0	0	0
Rural	2	0	0	2
Total	372	212	402	353



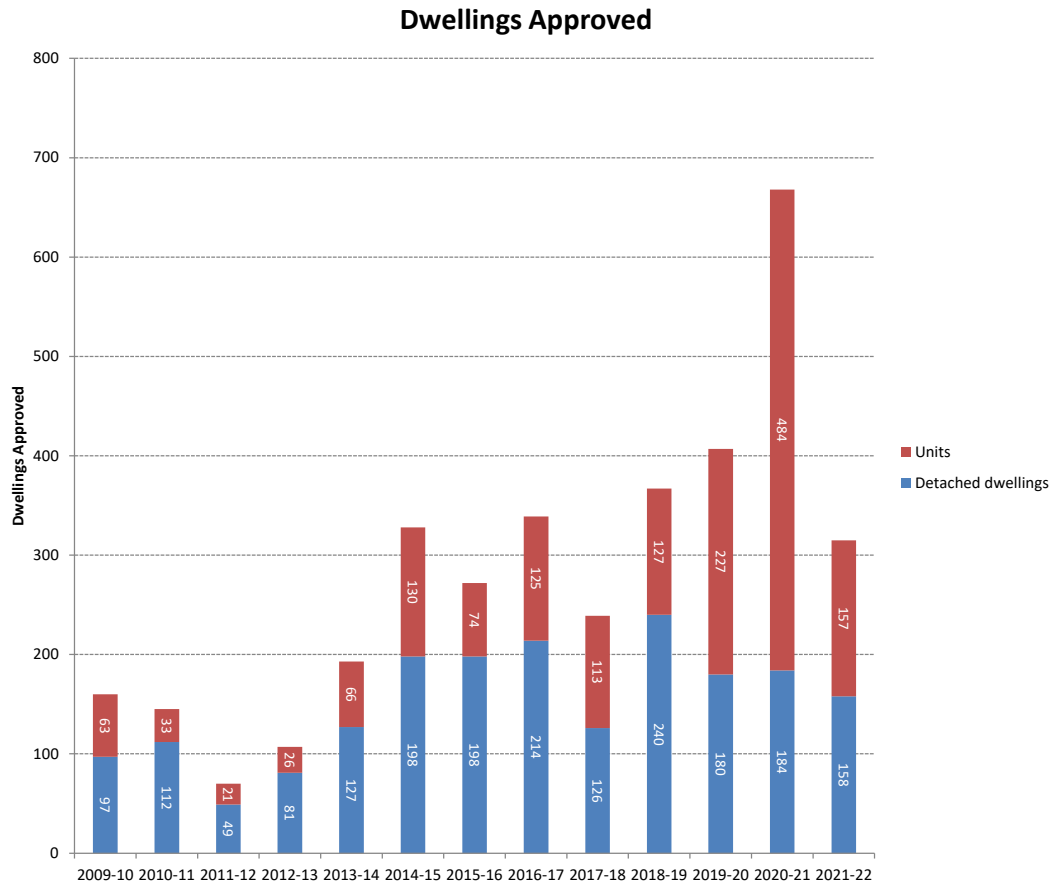
**Dwelling Approvals
Approvals - Separate Houses**

Locality	2017-18	2018-19	2019-20	2020-21	2021-22
Ballina	54	42	35	28	5
Cumalum	23	60	28	30	42
Lennox Head	18	82	75	56	30
Skennars Head	8	8	6	35	49
Alstonville	4	9	7	4	4
Wollongbar	6	28	18	20	2
Wardell	3	0	0	0	17
Rural	10	11	11	11	9
Total	126	240	180	184	158

Approvals – Units

Locality	2017-18	2018-19	2019-20	2020-21	2021-22
Ballina	47	34	21	20	19
Cumalum	14	24	38	42	39
Lennox Head	23	52	92	121	73
Skennars Head	2	0	11	270	3
Alstonville	5	4	25	10	7
Wollongbar	18	10	18	9	0
Wardell	0	0	1	2	10
Rural	4	3	21	10	6
Total	113	127	227	484	157

8.9 Development Applications - Works in Progress - November 2022



Dwellings Commenced (construction certificates issued – number of dwellings)

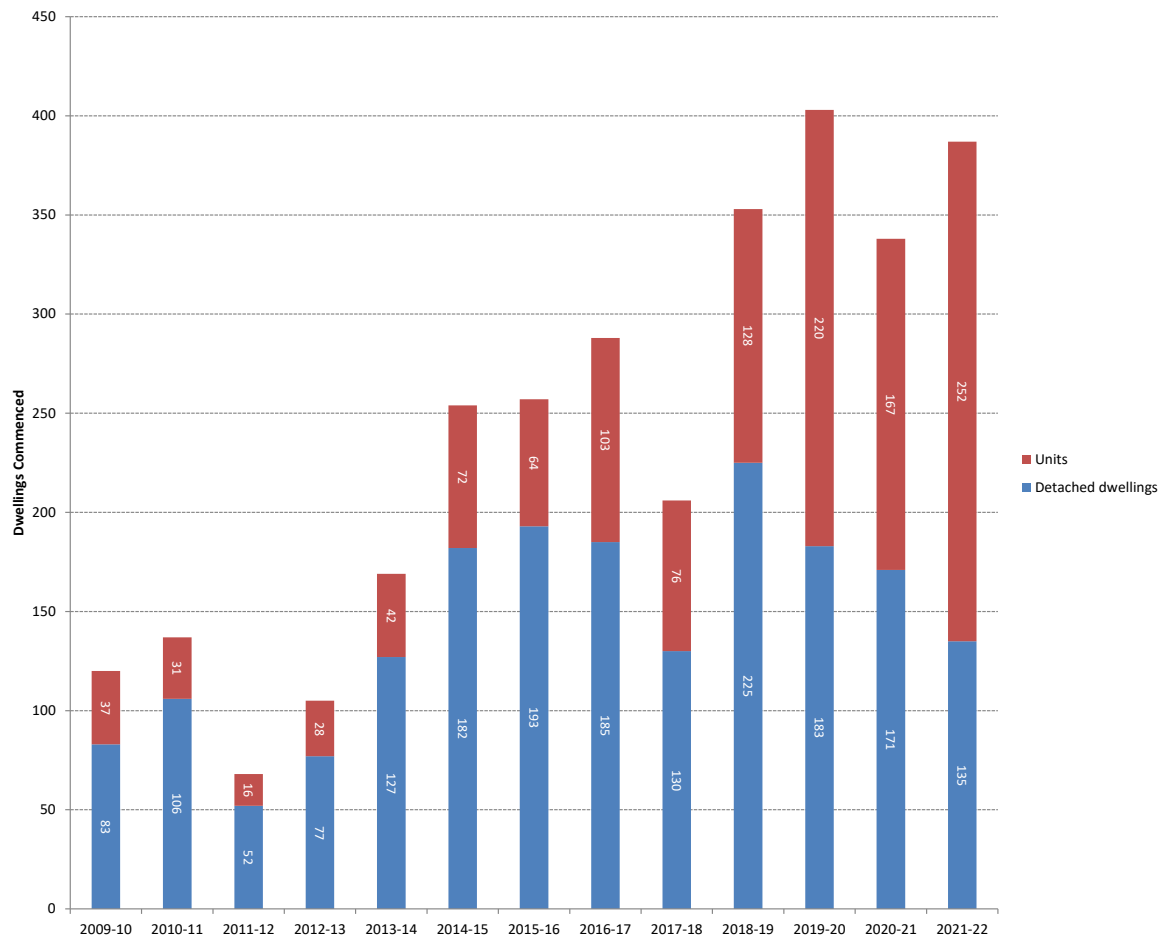
Dwellings Commenced – Separate Houses

Locality	2017-18	2018-19	2019-20	2020-21	2021-22
Ballina	54	32	44	22	6
Cumbalum	25	57	31	30	40
Lennox Head	20	77	71	57	20
Skennars Head	7	9	6	29	42
Alstonville	5	8	7	4	2
Wollongbar	3	31	18	18	1
Wardell	2	1	0	0	12
Rural	14	10	6	11	12
Total	130	225	183	171	135

Dwellings Commenced – Units

Locality	2017-18	2018-19	2019-20	2020-21	2021-22
Ballina	30	50	25	22	8
Cumalum	8	20	36	35	30
Lennox Head	16	38	89	85	54
Skennars Head	2	0	1	0	11
Alstonville	2	4	42	10	5
Wollongbar	17	12	17	6	1
Wardell	0	0	1	1	4
Rural	1	4	9	8	4
Total	76	128	220	167	117

Dwellings Commenced



Department of Planning and Environment, Port Stephens Council and Consultant Planners

Following the significant flood events earlier in the year, Council received some welcome external assistance with its assessment of DAs.

Two Sydney based planning consultancies engaged by the Department of Planning and Environment under the 'Regional Housing Flying Squad' program took on the assessment of 13 urban dwelling house DAs. This was a one-off assistance for the previous financial year under this program.

In addition, Port Stephens volunteered to assist Council in response to these flood events. They took on the assessment of a total of 18 DAs for urban dwelling and secondary dwelling applications. This assistance has finished but was very helpful and appreciated.

Since the commencement of the 2022/23 financial year external consultants have been assisting with the assessment of housing DAs.

External consultants will continue with assessment work for Council (through Council engagements) for at least the next six months to assist in reducing the volume of outstanding DAs, improving determination times and prioritising DAs for housing.

The Regional Housing Flying Squad recently announced a new round of assistance for 2022/23. The Department accepted two development applications currently with Council for assessment into the program.

RECOMMENDATION

That Council notes the contents of the report on the status of outstanding development applications for November 2022.

Attachment(s)

1. Undetermined DAs (Under Assessment >90 Days) ➡

9.1 Use of Council Seal

9. Corporate and Community Division Reports

9.1 Use of Council Seal

RECOMMENDATION

That Council affix the Common Seal to the following documents.

US2022/27	<p>That Council as Crown Land Manager affix the Common Seal to the following Crown Short-term licences:</p> <ol style="list-style-type: none">Short-term licence agreement between Council as Crown Land Manager of Reserve 71612 and the Country Women's Association of New South Wales Incorporated for Lot 8 Section 5A in DP 758047 (River Street, Ballina), at a statutory minimum rental (\$556.00), for the period 1 January 2023 to 31 December 2023. <p>Explanation The State Government has provided a transition period for councils managing Crown reserves under the Crown Land Management Act 2016, which commenced 1 July 2018. Under the new framework, Council as Crown Land Manager can issue a short-term licence under s 2.20 of the Act for a maximum period of 12 months.</p> <ol style="list-style-type: none">Short-term licence agreement between Council as Crown Land Manager of Reserve D540004 and Ballina Bowling and Recreation Club for occupation of land for Croquet Lawns and Clubhouse (Part Lot 561 DP119965), at a statutory minimum rental (\$556.00), for the period 1 August 2022 to 31 July 2023. <p>Explanation As reported to the May 2021 Ordinary meeting, the Department of Planning, Industry & Environment – Crown (DPIE-Crown) is in the process of consolidating the land for the croquet lawns and clubhouse, into the adjoining land (which Council does not manage) in a new lease direct with DPIE-Crown and the Ballina Bowling Recreation Club. This consolidation and new direct Lease is still in process, and while Council remains Crown Land Manager, a short-term licence is to be granted to authorise the occupation of the site. As resolved, Council will be removed as Crown Land Manager over Lot 561 DP119965 once this has been finalised.</p>						
US2022/28	<ol style="list-style-type: none">That Council enters into the following licence of Council owned operational land:<table><tr><th>Property</th><th>Licensee</th><th>Tenure</th></tr><tr><td>Storage Shed 1 and Storage Shed 3 at 486 Gap Road Alstonville (located on part of lot 4 DP1130300)</td><td>Mental Health Support Group Incorporated (INC9895667)</td><td>One year licence of both sheds at a total licence fee equal to the statutory minimum charged by Crown Lands (currently \$556 per annum plus GST)</td></tr></table>Council authorises the General Manager to affix the seal to the licence document in point one.	Property	Licensee	Tenure	Storage Shed 1 and Storage Shed 3 at 486 Gap Road Alstonville (located on part of lot 4 DP1130300)	Mental Health Support Group Incorporated (INC9895667)	One year licence of both sheds at a total licence fee equal to the statutory minimum charged by Crown Lands (currently \$556 per annum plus GST)
Property	Licensee	Tenure					
Storage Shed 1 and Storage Shed 3 at 486 Gap Road Alstonville (located on part of lot 4 DP1130300)	Mental Health Support Group Incorporated (INC9895667)	One year licence of both sheds at a total licence fee equal to the statutory minimum charged by Crown Lands (currently \$556 per annum plus GST)					

Attachment(s) - Nil

9.2 Investment Summary - October 2022

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

Background

In accordance with the Local Government (General) Regulation 2021, the Responsible Accounting Officer of a council must provide a monthly investment report setting out the council's cash and investments.

The report is to be presented at the ordinary meeting, immediately following the end of the respective month. This report has been prepared to confirm the cash and investments held as at 31 October 2022.

This report provides details of the total funds invested, where the investments are held and other related matters, to confirm that Council is complying with Council's Investment Policy and to ensure transparency.

Key Issues

- Compliance with Investment Policy

Discussion

Council's investments are in accordance with Council's Investment Policy, Section 625 of the Local Government Act 1993 and the Local Government (General) Regulation 2021. A copy of the Investment Policy is available on Council's website.

The total balance of investments, as at 31 October 2022 was \$102m which was \$4m less than the balance as at 30 September 2022.

Council's investments as at 31 October 2022 were invested at a weighted average interest rate of 2.450%, which was 0.562% lower than the October average 90 Day Bank Bill Index (BBSW) of 3.012%.

The balance of Council's Commonwealth Bank business account as at 31 October 2022 was \$14,329,876 which compares to a balance of \$12,368,217 as at 30 September 2022.

Total combined cash and investments, as at 31 October 2022 was \$116,329,876, compared to \$118,368,217 as at 30 September 2022.

The net decrease of \$2.04m in cash and investments from September to October is the result of significant quarter end creditor payments during October, offset by redeemed investments and a large developer contribution payment.

9.2 Investment Summary - October 2022

TCorp's monthly Economic Commentary report for October 2022 can be viewed using the following link:

<https://www.tcorp.nsw.gov.au/resource/011122.pdf>

Restricted Reserves

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

The next table reflects the portfolio percentages based on balances as at 30 June 2022.

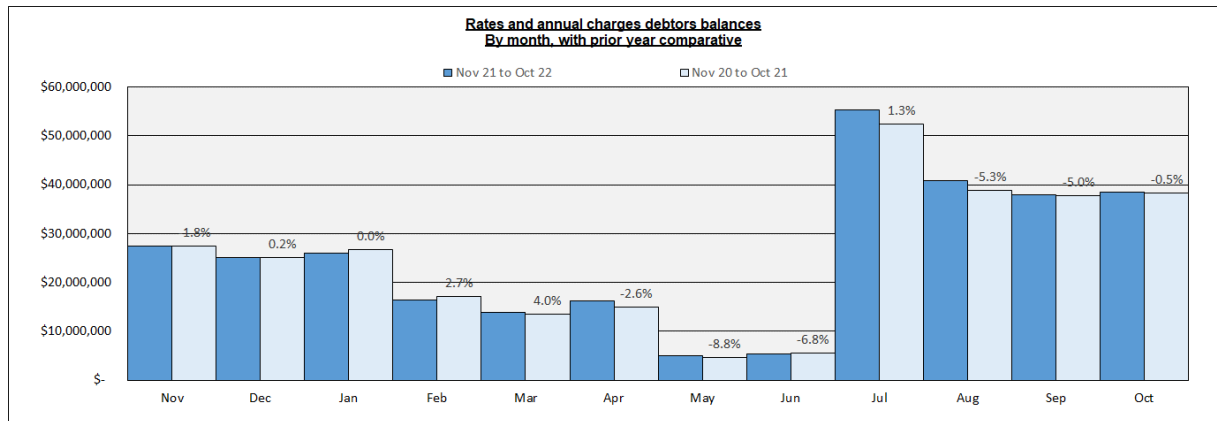
Reserve Name	Restriction	% Portfolio*
Wastewater (incl developer contributions)	External	20.99%
Water (incl developer contributions)	External	18.10%
Section 7.11 Developer Contributions	External	12.85%
Bonds and Deposits	External	6.10%
Specific Purpose Unexpended Grants	External	5.81%
Carry Forward Works	Internal	2.76%
Bypass Maintenance	Internal	3.09%
Management Plans / Studies	Internal	1.48%
Airport	Internal	1.16%
Landfill and Resource Management	Internal	2.24%
Employee Leave Entitlements	Internal	2.56%
Quarries	Internal	0.63%
Property	Internal	4.06%
Plant and Vehicle Replacement	Internal	1.36%
Road Works	Internal	4.79%
Open Spaces	Internal	1.30%
Miscellaneous Internal Reserves	Internal	2.08%
Community Facilities	Internal	0.83%
Financial Assistance Grant in Advance	Internal	3.32%
Unrestricted		4.51%
Total		100.0%

Debtors

The following chart presents the month end balance of rates and annual charges debtors for the 12-month period ended 31 October 2022, and the percentage variance, in comparison to the prior year.

The debtors balance, as at 31 October 2022, was consistent with the balance as at 31 October 2021 (an increase of 0.5% from the prior year).

9.2 Investment Summary - October 2022



A. Investments by Institution

Funds Invested With	Fossil Fuel Free / Green	Rating S&P	30 September \$'000	31 October \$'000	Quota %	% of Total
AMP Bank	No	BBB	5,000	7,000	10%	6.9%
Auswide Bank	Yes	BBB	2,000	2,000	10%	2.0%
Bank of Communications	No	A-	1,000	-	20%	-
Bank of Queensland	No	BBB+	7,000	7,000	10%	6.9%
Bank of Us	Yes	BBB+	3,000	3,000	10%	2.9%
Bendigo & Adelaide Bank	Yes	BBB+	2,000	1,000	10%	1.0%
Commonwealth Bank	No	AA-	14,000	14,000	20%	15.7%
Commonwealth Bank (Green)	Yes	AA-	2,000	2,000		
Defence Bank Ltd	Yes	BBB	5,000	5,000	10%	4.9%
Heritage Bank	Yes	BBB+	5,000	5,000	10%	4.9%
IMB Ltd	Yes	BBB	1,000	-	10%	-
ING Bank	No	A	6,000	6,000	10%	5.9%
ME Bank	No	BBB+	7,000	7,000	10%	6.9%
MyState Bank Ltd	Yes	BBB+	5,000	3,000	10%	2.9%
National Australia Bank	No	AA-	12,000	9,000	20%	8.8%
Newcastle Perm Build Society	Yes	BBB	2,700	2,700	10%	2.6%
Police Bank	No	BBB	-	2,000	10%	2.0%
Suncorp Limited	Yes	A+	15,300	15,300	20%	15.0%
Westpac Bank Corp	No	AA-	11,000	11,000	20%	10.8%
Total			106,000	102,000		

Credit Rating Summary as per the Investment Policy	Maximum Allowed		Value 30 September \$'000	Value 31 October \$'000	%	%
	%	Value				
A- or Higher	100%	102,000	61,300	57,300	57.8%	56.2%
BBB	60%	61,200	44,700	44,700	42.2%	43.8%
Total			106,000	102,000	100%	100%

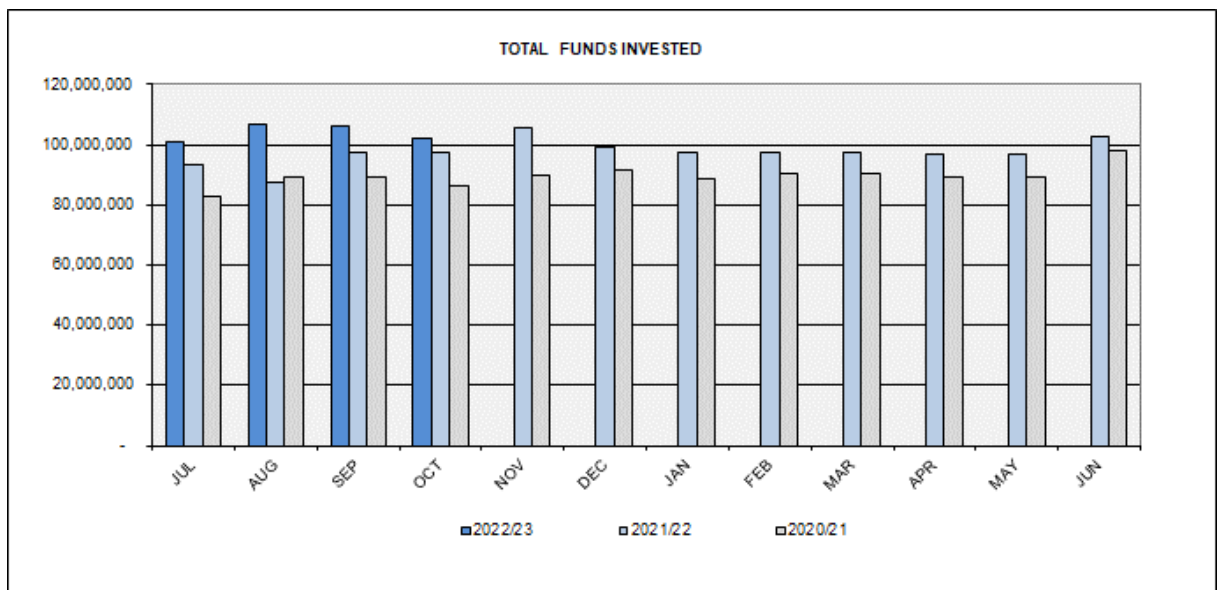
Liquidity Risk Parameters as per the Investment Policy	Maximum Allowed		Value 30 September \$'000	Value 31 October \$'000	%	%
	%	Value				
Placement term 1 year or less	100%	102,000	95,000	92,000	89.6%	90.2%
Placement term 1 to 3 years	40%	40,800	1,000	-	1.0%	-
Placement term over 3 years	20%	20,400	10,000	10,000	9.4%	9.8%
Total			106,000	102,000	100%	100%

B. Fossil Fuel Free and Green Investments

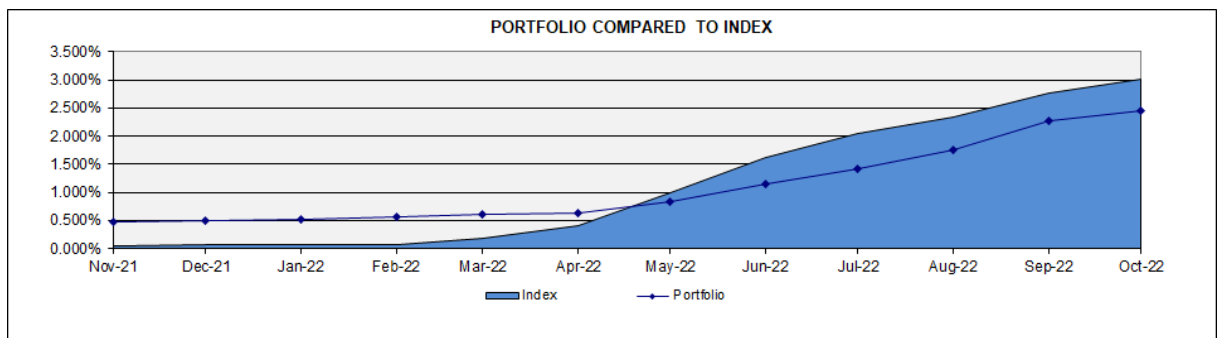
Environmental Classification	30 September		31 October	
	(\$'000)	(%)	(\$'000)	(%)
Fossil Fuel Aligned and Non-Green Investments	63,000	59	61,000	60
Fossil Fuel Free Investments	41,000	39	39,000	38
Green Investments*	2,000	2	2,000	2
Total	106,000	100	102,000	100

In October 2022, six investments matured totaling \$10m. Three new investments totaling \$6m were placed, including two investments totaling \$4m with non-fossil fuel aligned institutions.

C. Monthly Comparison of Total Funds Invested

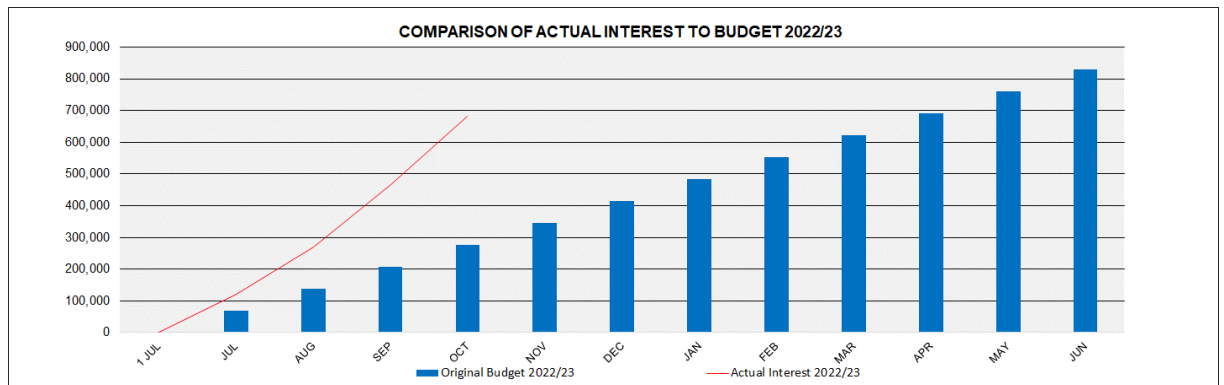


D. Comparison of Portfolio Investment Rate to 90 Day BBSW



9.2 Investment Summary - October 2022

E. Progressive Total of Interest Earned to Budget



A review of interest income has been completed as part of the September 2022 quarterly budget review and an increase of \$1.18m is proposed. The chart will be updated following the adoption of the quarterly budget review.

F. Investments held as of 31 October 2022

Purchase Date	Issuer	Type	Rate	Maturity Date	31 Oct 2022 \$'000
06/02/18	Newcastle Permanent Bld Society	FRN	3.6550%	06/02/23	700
30/07/18	Westpac Banking Corporation	FRN	4.0163%	31/07/23	1,000
31/07/18	Westpac Banking Corporation	FRN	4.0163%	02/08/23	1,000
06/09/18	Newcastle Permanent Bld Society	FRN	3.6550%	06/02/23	1,000
11/01/19	Commonwealth Bank of Australia	FRN	4.0352%	11/01/24	1,000
08/02/19	Westpac Banking Corporation	FRN	3.3050%	06/02/24	2,000
24/02/21	Suncorp-Metway Limited	FRN	2.8420%	24/02/26	1,300
04/03/21	Newcastle Permanent Bld Society	FRN	3.1711%	04/03/26	1,000
18/06/21	Bendigo & Adelaide Bank	FRN	3.4910%	18/06/26	1,000
03/11/21	MyState Bank Ltd	TD	0.7000%	02/11/22	1,000
09/11/21	Suncorp-Metway Limited	TD	0.5200%	08/11/22	2,000
11/11/21	AMP Bank	TD	1.0000%	08/11/22	3,000
17/11/21	Heritage Bank	TD	0.4700%	15/11/22	2,000
18/11/21	Heritage Bank	TD	0.5000%	15/11/22	3,000
30/11/21	Defence Bank Ltd	TD	0.6000%	29/11/22	1,000
09/12/21	Suncorp-Metway Limited	TD	0.5500%	06/12/22	2,000
14/12/21	Suncorp-Metway Limited	TD	0.5500%	13/12/22	1,000
15/12/21	Commonwealth Bank - Green	TD	0.5000%	08/12/22	2,000
18/01/2022	Auswide Bank	TD	0.5500%	17/01/23	2,000
20/01/22	MyState Bank Ltd	TD	0.7500%	10/01/23	1,000
25/01/22	AMP Bank	TD	1.1000%	24/01/23	2,000
02/02/22	Bank of Us	TD	0.8000%	31/01/23	3,000
08/02/22	National Australia Bank	TD	0.7700%	07/02/23	2,000
08/02/22	Bank of Queensland	TD	0.8000%	07/02/23	2,000
15/02/22	National Australia Bank	TD	0.8700%	14/02/23	2,000
22/02/22	Defence Bank Ltd	TD	0.9200%	21/02/23	1,000
01/03/22	Defence Bank Ltd	TD	0.9200%	28/02/23	2,000
01/03/22	Defence Bank Ltd	TD	0.9200%	28/02/23	1,000
06/04/22	Suncorp-Metway Limited	TD	1.7300%	05/04/23	1,000
21/04/22	ING Bank (Australia) Ltd	TD	1.9000%	20/04/23	3,000
22/04/22	ING Bank (Australia) Ltd	TD	2.3000%	20/04/23	1,000

9.2 Investment Summary - October 2022

Purchase Date	Issuer	Type	Rate	Maturity Date	31 Oct 2022 \$'000
18/05/22	ME Bank	TD	3.1000%	17/05/23	3,000
23/05/22	ME Bank	TD	3.2000%	18/05/23	2,000
30/05/22	ME Bank	TD	3.2000%	24/05/23	2,000
02/06/22	Westpac Banking Corporation	TD	3.1500%	31/05/23	1,000
02/06/22	Westpac Banking Corporation	TD	3.1500%	31/05/23	1,000
07/06/22	Suncorp-Metway Limited	TD	3.1700%	06/06/23	2,000
22/06/22	Suncorp-Metway Limited	TD	3.6300%	21/03/23	2,000
28/06/22	Suncorp-Metway Limited	TD	3.5900%	04/04/23	2,000
28/06/22	ING Bank (Australia) Ltd	TD	3.8800%	04/04/23	2,000
30/06/22	National Australia Bank	TD	2.7200%	23/11/22	2,000
08/08/22	Commonwealth Bank of Australia	TD	3.4700%	07/02/23	6,000
16/08/22	Westpac Banking Corporation	TD	3.9500%	14/08/23	2,000
16/08/22	Commonwealth Bank of Australia	TD	3.9800%	15/08/23	4,000
18/08/22	Westpac Banking Corporation	TD	3.9600%	15/08/23	1,000
29/08/22	Commonwealth Bank of Australia	TD	4.1700%	29/08/23	3,000
31/08/22	National Australia Bank	TD	3.4500%	01/03/23	3,000
01/09/22	Westpac Banking Corporation	TD	4.1700%	29/08/23	2,000
01/09/22	Bank of Queensland	TD	4.1500%	29/08/23	1,000
06/09/22	Bank of Queensland	TD	4.1500%	05/09/23	4,000
27/09/22	MyState Bank Ltd	TD	4.6000%	26/09/23	1,000
13/10/22	Police Bank Ltd	TD	4.4000%	10/10/23	2,000
19/10/22	AMP Bank	TD	4.6500%	17/10/23	2,000
25/10/22	Suncorp-Metway Limited	TD	4.6000%	24/10/23	2,000
	Totals				102,000
	TD = Term Deposit; FRN = Floating Rate Note				

RECOMMENDATION

That Council notes the report of banking and investments for October 2022.

Attachment(s)

Nil

9.3 Donations - Australian Representation and Community Groups

9.3 Donations - Australian Representation and Community Groups

Section	Communications
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Objective	To consider an application for funding under the Donations - Australian Representation Policy, and Donations - Financial Assistance for Community Groups
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Background

Council occasionally receives requests to financially support athletes who reside in the Ballina Shire if they are selected to represent Australia in their chosen field of sport.

Council recently received an application as part of the exhibition of the reviewed Donation - Australian Representation Policy in September 2022.

The application is seeking assistance for travel and accommodation expenses from a young Ballina Shire resident who has been invited to attend an international junior girl's football touring squad of England and France.

The objective of the policy is to provide assistance to shire residents who represent Australia.

Council also received two requests from community groups for financial assistance, outside of the typical donations timeline that was endorsed at the July 2022 Ordinary meeting for the 2022/23 financial year.

Typically, we would advise applicants to re-apply next financial year, however the policy does allow applications where there may be exceptional circumstances. These applications meet this requirement as the donation applications relate to safety matters.

Key Issues

- Compliance with Council policy
- Equity in donation assistance

Discussion

Australian Representation

Ms Molly Walsh, student at Ballina Coast High School and resident of Wardell, has been identified as a talented female football player in NSW.

Earlier in 2022, Molly was invited to participate in an international touring squad in January 2023 (refer to Attachment 1). Molly is seeking Council's financial assistance under the Donations – Australian Representation Policy to support the expenses incurred to participate in the tour.

The family were impacted significantly by flooding in February/March 2022.

9.3 Donations - Australian Representation and Community Groups

In terms of compliance with the policy, Molly's application complies with most aspects of the selection criteria including:

- confirmed resident of the Ballina Shire
- has not previously received a donation this year
- assistance is for the expenses incurred as part of their role representing Australia.

The only criteria that has **not** been explicitly met under this policy is *"The individual must be chosen in a team or event that is part of a nationally recognised federation."*

Historically a successful application under this policy has been through a selection process in order to be nominated. There has been no selection process or tryout for this particular squad, and it is not from a 'nationally recognised federation'. As described by Molly's parents, players were invited from North Coast State Carnival Teams event, and it is on a first-in, first-served basis.

The total cost for Molly to participate in this international touring squad is approximately \$6,000. Should Council endorse the application, the level of assistance provided, as detailed in the policy, is \$513 (overseas representation in 2023).

Donations for Community Groups

Rous Mill and District Memorial Hall

The Rous Mill and District Memorial Hall is seeking Council's consideration of a late application to the Financial Assistance – Community Donations Program to fund the replacement of four faulty emergency lights valued at \$952 (refer Attachment 2). The lights are required to meet fire safety requirements.

The Policy states: *"Only one application per community group or organisation will be considered per financial year"*.

This will be Rous Mill and District Memorial Hall's second application to the program, with their first application in 2022/23 being for assistance with payment of their annual insurance (\$2,046).

The Hall Committee has advised their funds are derived from hire charges which have reduced significantly since the COVID-19 pandemic. The hall is run by community volunteers, to provide a safe venue for community activities.

Ballina Region for Refugees

Ballina Region for Refugees have made contact with Council seeking a donation of three-month membership to the Ballina War Memorial Swimming Pool for a Syrian family who have recently settled in Ballina (refer Attachment 3).

The refugee group are seeking this donation as the family are terrified of the ocean, however love swimming.

An estimated cost for the three-month membership is \$320. This application meets the objectives and guidelines outlined in the policy.

Delivery Program Strategy / Operational Plan Activity

CC3.2 - Provide young people with a range of leisure activities

CC3.3 – Support improved health outcomes by providing equitable access to community facilities

Community Consultation Policy

This matter has not been subject to community consultation.

Financial / Risk Considerations

There is no specific budget allocation for the Donations - Australian Representation policy as the donation requests are typically ad hoc and the funds donated are relatively minor in comparison to Council's overall budget. Any allocation is typically funded from the Community Donations budget.

The last consideration of an application under this policy was in March 2020.

With respect to the Community Donation budget and recent requests for funding, the 2022/23 budget has been fully allocated.

There is money available in the Community Donations - Council Fees budget, where approximately \$3,500 is unallocated. This budget is for organisations applying to have Council fees reimbursed or waived.

Options

Council has an option to support the applications, or not support the applications.

The first application for Australian Representation does not meet all the criteria in the policy and Council needs to be mindful of providing donations outside adopted policy as it then creates a precedent for future requests. There is an exception in this case due to the flood impacts and given the overall circumstances of the family, the recommendation that follows supports this application under the Donations – Australian Representation Policy.

The other two requests from community groups for donations are based on safety support requirements and it is recommended that these requests be supported on these grounds.

RECOMMENDATIONS

1. That Council approves a donation in the amount of \$513 for Ms Molly Walsh towards costs for travel to the International Junior Girls Football Tour of UK/France in January 2023 as per Council's Donations – Australian Representation Policy, due to the exceptional circumstances of the flood impacts on this family.
2. That Council approves the Community Donation request for the Rous Mill and District Memorial Hall for \$952 to replace their faulty emergency lights.
3. That Council approves the Community Donation request for Ballina Region for Refugees for three-month family membership to the Ballina War Memorial Swimming Pool valued at \$320.

Attachment(s)

1. Invitation to Molly Walsh - International Junior Girls Football Touring Squad [⇒](#)
2. Community Donation Application - Rous Mill and District Memorial Hall [⇒](#)
3. Community Donation Application - Ballina Region for Refugees [⇒](#)

9.4 Financial Statements - 2021/22

Delivery Program

Financial Services

Objective

To present the audited financial statements.

Background

Council considered the annual financial statements for the financial year ended 30 June 2022 at the October 2022 Ordinary meeting. Council's auditor, Mr Adam Bradfield, Contract Auditor for the Audit Office of New South Wales also addressed Council at that meeting.

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

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

Key Issues

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

Discussion

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

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

Financial / Risk Considerations

The Financial Statements summarise the financial position of Council.

Delivery Program Strategy / Operational Plan Activity

EL2.1d - Pursue compliance with the Fit for the Future Program

Community Consultation Policy

Council provided public notice of the Financial Statements.

Options

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

RECOMMENDATION

That Council adopts the annual financial reports and auditor's reports for the financial year ended 30 June 2022, as publicly exhibited.

Attachment(s)

Nil

9.5 Annual Report - 2021/22

Section Communications

Objective To endorse Council's Annual Report for 2021/22.

Background

The Local Government Act (section 428) requires council to prepare an annual report within five months of the end of the financial year.

Council's Annual Report for 2021/22 has been prepared in line with the Office of Local Government's (OLG) integrated planning and reporting (IPR) guidelines.

The new IPR guidelines (2021) now requires Council endorsement of the Annual Report, whereas historically this report was only required to be published to Council's website and notification provided to the OLG.

The Annual Report must be endorsed by Council by 30 November 2022.

Key Issues

- Compliance with Local Government Act
- Compliance with Office of Local Government's IPR Guidelines

Discussion

The Annual Report (due to the size of the document, refer to this link [Annual Report 2021/22](#)) has been prepared in accordance with the Local Government Act and Office of Local Government's IPR Guidelines.

This report is an important document providing accountability between council and its community.

It reports on the achievements in implementing the Delivery Program and Operational Plan and the effectiveness of the principal activities undertaken in achieving the objectives of the Community Strategic Plan.

In summary, the Annual Report includes:

- organisation structure (page 7)
- shire community profile (page 11)
- 2021/22 achievements summary (page 13)
- progress on achievements in implementing the Community Strategic Plan (pages 15 to 17)
- progress on Delivery Program and Operational Plan (page 14 and appendix 1, page 52)
- Councillor and Mayor expenses (page 20)
- Councillor and Mayor professional development and induction (page 21)
- profile of staff (page 22)

- remuneration packages of senior staff (page 22)
- compliance with equal employment opportunity management plan (page 23)
- activities funded by special rate variations (pages 25 to 28)
- contracts awarded (pages 30 to 32)
- legal proceedings and results (pages 33 and 34)
- voluntary planning agreements (page 35)
- development contributions and levies (pages 36 to 38)
- council contributions and donations (pages 39 to 42)
- companion animal act information (pages 45 and 46)
- compliance with public interest disclosure (appendix 3, page 127)
- compliance with government information public access (appendix 4, page 130)
- compliance with disability inclusion act (page 49 and appendix 5, page 137)
- capital expenditure (appendix 6, page 164)
- audited financial statements (appendix 7, page 172)

The Annual Report must be endorsed by Council by 30 November 2022.

Delivery Program Strategy / Operational Plan Activity

EL 1.1c – Prepare Council's Annual Report

Community Consultation Policy

The community has not been consulted on the contents of the Annual Report although many of the items listed in the report reflect the outcomes from community consultation processes.

The report will be published on Council's website once endorsed.

Financial / Risk Considerations

Council is required to comply with Section 428 of the Local Government Act 1993. The Annual Report meets this compliance requirement.

Options

Council can choose to either endorse or amend the Annual Report.

The Annual Report complies with the requirements outlined in the Local Government Act and Office of Local Government's IPR Guidelines, and it is recommended that Council endorses the Annual Report as presented.

RECOMMENDATIONS

1. That Council endorses the Annual Report for 2021/22, as per the contents of this report.
2. That Council notify the Office of Local Government of the Annual Report by 30 November 2022 and publish it on Council's website.

Attachment(s)

Nil

9.6 **Financial Year 2022/23 - 30 September 2022 Review**

Section Financial Services

Objective To provide a quarterly review of the 2022/23 financial year based on the known results to 30 September 2022.

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 first quarterly review for the 2022/23 financial year.

Key Issues

- Variations to the budget and financial performance of Council

Discussion

The purpose of this report is to provide information on how the financial forecast is tracking compared to budget and to confirm any known budget variances, as at 30 September 2022.

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.

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

Section One – General Fund Long Term Financial Plan

This section provides an overview of the General Fund including a high-level summary of the ten-year Long Term Financial Plan.

Section Two - Operating Income and Expenditure Budgets 2021/22

Outlines the 2022/23 operating income and operating expenditure budgets for the Funds (General, Water and Wastewater).

Section Three - Capital Budgets 2022/23

Outlines the 2022/23 capital expenditure budgets.

Section Four - Cash and Investment Statement

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

Section Five - Key Performance Indicators

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

Section Six - Contractors/Consultants/Legal Expenses

Details expenses incurred.

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 One – General Fund Long Term Financial Plan

The following table provide an overview the General Fund Long Term Financial Plan (LTFP) with the inclusion of the changes listed in this report.

General Fund - LTFP Forecasts September 2022 Review (\$'000)

Year	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
Operating Income	82,905	83,147	84,823	87,523	90,124	92,877	95,360	97,997	100,758	103,744
Operating Exps	68,887	64,973	66,280	67,523	69,122	70,872	72,622	73,989	75,721	78,025
Result before Non-Cash items	14,018	18,174	18,543	20,000	21,002	22,005	22,738	24,008	25,037	25,719
Less Depreciation	21,122	21,272	21,659	22,053	22,454	22,863	23,278	23,702	24,131	24,571
Surplus/(Deficit)	(7,104)	(3,098)	(3,116)	(2,053)	(1,452)	(858)	(540)	306	906	1,148
Work Cap Result	250	131	(564)	(475)	(388)	(270)	(144)	0	275	326
WC Balance	4,193	4,324	3,760	3,286	2,898	2,629	2,485	2,485	2,760	3,087

This forecast shows the General Fund reaching an operating surplus in 2029/30. The forecast for 2022/23 has deteriorated primarily as the depreciation expense has increased by \$1.12m, based on 2021/22 results.

With many of Council's General Fund services representing recurrent programs, the major reason for the improvement in the forecast operating deficits for 2023/24 onwards, is that there is a large number of one-off grant program projects included in 2022/23, where the actual grant income has been recorded in previous years, as well as major operating expense items, that are funded from reserves or internal loans, which means the funding source is not included as operating revenue for 2022/23.

Examples of this include flood and bushfire related projects that should be completed during 2022/23 (i.e. Koala Projects \$158,000, Indigenous Protected Area Repair Works \$417,000, Flood Recovery Programs \$100,000), as well as one-off projects, such as the Tuckombil quarry rezoning (\$150,000), Southern Cross Industrial Estate rezoning (\$141,000) and LED Street Lighting Replacement (\$895,000), that do not have matching operating revenue funding.

There are always examples of one-off expenditure projects in the annual budget, not funded from matching operating revenues, however the figures for 2022/23 seem exceptionally high as compared to previous and future years.

Nevertheless, the primary objective continues to be to reach a break-even operating result, with the ever-increasing depreciation expense, being the major financial hurdle for the General Fund. One pleasing result in the revised LTFP forecast, is that the working capital result is positive for 2022/23 and 2023/24.

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

Section Two – Operating Income and Expenditure Budgets 2022/23

General Fund – Operating Income and Expenses

This section deals with the General Fund operations.

The **Forecast Operating Result as at September** is a loss of \$7.1m. This compares to a forecast loss of \$6.0m following the carry forwards as reported to the August 2022 Ordinary meeting.

The estimated movement in **Unrestricted Working Capital** does however show a marked improvement, with a forecast surplus **as September** now of \$250,100. This compares to a forecast deficit of \$566,400 following the carry forwards as reported to the August 2022 Ordinary meeting.

The next two tables detail operating income and operating expenses including recommended variations to budget, as per “Changes for Approval” column.

General Fund – Operating Income (\$'000)

Operating Income	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Planning and Environmental Health Division								
Strategic Planning	136	0	136	0	136	264	400	16
Development Services	2,677	0	2,677	0	2,677	0	2,677	759
Environment / Public Health	966	48	1,014	0	1,014	0	1,014	490
Community Gallery	106	0	106	0	106	0	106	28
Open Spaces	969	0	969	0	969	100	1,069	649
Sub Total	4,854	48	4,902	0	4,902	364	5,266	1,942
Civil Services Division								
Asset Management	315	7	322	0	322	11	333	41
Roads and Bridges	3,344	21	3,365	0	3,365	0	3,365	1,333
Emergency Services	247	(132)	115	0	115	210	325	0
Landfill and Resource Mgmt	11,054	0	11,054	0	11,054	1,260	12,314	3,037
Domestic Waste Mgmt	8,791	0	8,791	0	8,791	5	8,796	8,131
Sub Total	23,751	(104)	23,647	0	23,647	1,486	25,133	12,542
Corporate and Community Division								
Governance	20	0	20	0	20	0	20	0
Comms / Customer Service	16	0	16	0	16	362	378	292
Financial Services	34,809	(2,375)	32,434	0	32,434	896	33,330	27,526
Information Services	270	0	270	0	270	0	270	73
People and Culture	174	0	174	0	174	0	174	46
Property Management	2,834	0	2,834	0	2,834	190	3,024	1,174
Airport	7,966	0	7,966	68	8,034	0	8,034	2,182
Community Facilities	730	0	730	0	730	0	730	395
Facilities Management	45	0	45	0	45	0	45	13
Library Services	122	0	122	0	122	0	122	0
Swimming Pools	1,071	0	1,071	0	1,071	0	1,071	249
Tourism	54	0	54	0	54	0	54	30
Plant Operations	5,208	24	5,232	0	5,232	22	5,254	1,299
Sub Total	53,319	(2,351)	50,968	68	51,036	1,470	52,506	33,279
Total Operating Income	81,924	(2,407)	79,517	68	79,585	3,320	82,905	47,763

General Fund – Operating Expenses (\$'000)

Operating Expenses	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Planning and Environmental Health Division								
Strategic Planning	930	206	1,136	10	1,146	75	1,221	146
Development Services	3,452	167	3,619	0	3,619	(1)	3,618	864
Environment / Public Health	3,118	203	3,321	0	3,321	(4)	3,317	713
Community Gallery	417	0	417	0	417	(2)	415	94
Open Spaces	6,157	542	6,699	0	6,699	6	6,705	1,537
Sub Total	14,074	1,118	15,192	10	15,202	74	15,276	3,354
Civil Services Division								
Asset Management	1,371	17	1,388	0	1,388	(8)	1,380	358
Roads and Bridges	7,438	595	8,033	910	8,943	27	8,970	2,934
Ferry, Wharves and Jetties	677	0	677	0	677	209	886	179
Emergency Services	10,657	162	10,819	0	10,819	1,560	12,379	2,293
Landfill and Resource Mgmt	8,106	0	8,106	0	8,106	80	8,186	2,035
Domestic Waste Mgmt	1,371	17	1,388	0	1,388	(8)	1,380	358
Sub Total	28,249	774	29,023	910	29,933	1,868	31,801	7,799
Corporate and Community Division								
Governance	1,238	0	1,238	0	1,238	90	1,328	1,034
Comms / Customer Service	581	1	582	(10)	572	301	873	116
Financial Services	761	0	761	0	761	93	854	235
Information Services	3,074	80	3,154	0	3,154	108	3,262	1,505
People and Culture	262	41	303	0	303	(70)	233	78
Property Management	1,830	0	1,830	0	1,830	0	1,830	536
Airport	4,462	108	4,570	(30)	4,540	0	4,540	1,283
Community Facilities	1,080	0	1,080	0	1,080	(2)	1,078	369
Facilities Management	642	0	642	0	642	(3)	639	600
Library Services	1,681	0	1,681	0	1,681	0	1,681	452
Swimming Pools	1,767	0	1,767	0	1,767	0	1,767	432
Tourism	514	0	514	0	514	(2)	512	118
Plant Operations	3,188	24	3,212	0	3,212	0	3,212	1,042
Sub Total	21,080	254	21,334	(40)	21,294	515	21,809	7,800
Total Operating Expense	63,403	2,146	65,549	880	66,429	2,457	68,886	18,953
Op Result Before Dep	18,521	(4,553)	13,968	(812)	13,156	863	14,019	28,810
Depreciation and Non-Cash	20,002	0	20,002	0	20,002	1,120	21,122	5,281
Net Operating Result	(1,481)	(4,553)	(6,034)	(812)	(6,846)	(257)	(7,103)	23,530

The larger adjustments to the General Fund Operating Result include:

- Interest income has been reviewed in light of Reserve Bank interest rate changes. A recalculation of estimates results in a proposed total increase to General Fund interest income of \$1,176,000, with \$520,000 of that amount transferred to reserves.
- The Financial Assistance Grant income has been increased \$240,000 following confirmation of the allocation to Council for 2022/23.
- Sports Field income increased by \$100,000 for amounts received to date. This amount has been placed into the sports field reserves.
- Workers Compensation expense decreased by \$70,000, following confirmation of instalments required for 2022/23.
- The above favourable adjustments offset slightly by an increase of \$90,000 to the budgets for Public Risk Insurance.
- Following the finalisation of the 2021/22 year, the forecast for depreciation of General Fund assets has been increased by \$1,120,000, to a revised forecast of \$13,693,000.

9.6 Financial Year 2022/23 - 30 September 2022 Review

- The largest individual asset class for adjustment was buildings, for which indexation of 15% was applied as at 30 June 2022, resulting in an increase to future depreciation charges.

General Fund Working Capital Movements (\$'000)

Item	Original Budget	Approved Carry Forwards	Total after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Increase / (Decrease)	(574)	8	(566)	0	(566)	816	250	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. Importantly, Council is now forecasting an increase in working capital, which is an excellent result from a cash perspective. However, the key issue remains the forecast operating deficit, inclusive of numerous non-cash items such as depreciation.

Comments on the main budget variations are as follows.

General Fund - Operating Income

Planning and Environmental Health Division

Strategic Planning

Income budgets for this section includes interest earned on section 7.11 reserve balances, rezoning fees and grant funding.

Interest earned is allocated at the end of the financial year and is based on total actual income earned and the balances of the reserves.

The current interest budget for this section is \$104,000. This budget is to be increased by \$264,000 to a revised budget of \$368,000. This adjustment increases the transfer to section 7.11 reserves.

Further comment on interest on investments is provided in the Financial Services section later in this report.

Development Services

Total budgeted income remains unchanged.

It is noted that income is trending well for quarter one, with Development and Town Planning Fees trending well up. If this trend continues, a revision can be expected for the second quarter budget review.

Open Spaces

Income of \$85,000, has been raised for rental income received from Resilience NSW for the Wollongbar Sports Fields and \$15,000 received for other sports field charges, mainly for use of lighting.

These amounts have been transferred to the Sports Fields reserves.

Civil Services Division

Emergency Services

Grant funding of \$420,000 has been confirmed from Resilience NSW.

This funding, over a 24 month period, allows for spending up to \$300,000 for employee related expenses and \$120,000 of operating expenses.

The income has been allocated as 50% to 2022/23 and 50% to 2023/24 budgets.

Corresponding expenditure budgets have also been raised.

Landfill and Resource Management (LRM)

The income budget for Self Haul Gate Fees has been increased by \$971,000 to a revised budget of \$6,650,000. This increase is attributable to increased volume of construction and demolition waste from flood related construction works as well as increased revenue from commercial waste contractor customers.

The income budget for Council Works Gate Fees has been increased by \$250,000 to a revised budget of \$1,450,000. This increase is attributable to increased volume of waste generated from Council's extensive capital works program.

This section also includes a budget for interest on reserve balances. The budget for interest income has been increased by \$39,000.

Corporate and Community Division

Communications/Customer Service

The NSW Government announced funding titled Reconnecting Regional NSW – Community Events Program in May 2022. This is in response to the cumulative impacts of the COVID-19 restrictions and natural disasters across regional NSW. The program is planned to:

- facilitate economic recovery in regional NSW by stimulating activity in the events, hospitality, and accommodation sectors, all of which have been heavily impacted by COVID-19 restrictions, providing opportunities for an immediate revenue boost.
- reconnect communities by facilitating the delivery of events that promote greater social cohesion, bringing people together to create improved social outcomes.

The allocation to Ballina Shire Council is \$362,050.

An expression of interest process was undertaken, and Council now has 18 events in the Ballina Shire to be funded under this program.

The Northern Rivers Community Gallery are to receive \$62,000 for the Ballina Contemporary Art Market.

The Lennox Head Tintenbar Music Weekend are to receive \$48,000.

Ballina on Richmond Rotary Club are to receive \$45,000 for their concert on the greens at Cherry Street Sports Club.

Financial Services

The budget for the Financial Assistance Grant Rates has been increased by \$240,000, based on confirmation of the 2022/23 grant allocation.

The income budget for interest on investments, within this section, has been increased by \$656,000, to a revised budget of \$856,000.

The original adopted budget for interest on investments was \$849,000 for Council as a whole.

Since the time of budget adoption, there have been several increases to the Reserve Bank cash rate, and consequently to the interest rates on offer for new term deposits. At the time of writing this report, rates approximating 4.6% are on offer, in comparison to a number of older investments currently held at 0.5%.

A recalculation of estimates completed results in a proposed total increase to interest income of \$1,799,000. Allocation to various reserves is then calculated using the estimated average reserve balances.

Of the total interest increase, an adjustment of \$656,000 is the proposed adjustment for this section. The remaining proposed adjustments are \$520,000 to General Fund Reserves, \$263,000 to Water Fund and \$360,000 to Wastewater Fund.

Property Management

Income budgets for this section includes interest earned on the Property Development reserve and Community Infrastructure balances. As noted earlier in this report, a review of interest budgets has been completed.

The interest budget for the Property Development and Community Infrastructure reserves have been increased by \$107,000 and \$83,000, respectively.

These amounts are transferred to the respective reserves.

Airport

Airport financial results for the first quarter of 2022/2023 look very promising.

Airline income has exceeded forecasts due to passenger numbers remaining above pre-COVID levels. Similarly, income derived from car rental franchises has exceeded forecasts.

Car parking income is below forecasts due to delays in commissioning the new boom gate revenue collection system which only became operational in October.

Expenses remain in line with forecasts.

The Airport Long Term Financial Report was reviewed in the Commercial Services meeting held Tuesday 15 November, so no changes are proposed in this review.

Community Facilities

No budget adjustments are proposed at this stage in relation to community facilities income, however it is noted that overall the incomes are trending well for quarter one.

The community facilities income is strong for quarter one due to (in part) the popularity of indoor sport.

The sporting associations that use the Ballina Indoor Sports Centre (BISC) have indicated an increase in memberships this season (futsal, basketball, netball, pickleball and volleyball), and this is reflected in an increase in revenue for the BISC.

Flood impacts are also contributing to strong revenue for community facilities, partly due to Red Cross Lifeblood exclusively booking the Richmond Room until December 2022, and the high demand for meeting rooms for flood impacted businesses continues at all facilities (Kentwell Community Centre, Lennox Head Cultural Centre, BISC, and Ballina Surf Club).

A further contributing factor is the easing of COVID-19 restrictions which has resulted in demand for function rooms for celebrations, conferences and performances, this is particularly apparent for the Ballina Surf Club and Lennox Head Cultural Centre.

Plant Operations

Income budgets for this section includes interest earned on reserve balances.

The interest budget for the Plant reserve has been increased by \$22,000, with this amount transferred to the reserve.

General Fund - Operating Expenses

Planning and Environmental Health Division

Strategic Planning

The budget for Section 7.11 Plan Reviews has been increased by \$50,000, to \$70,000. This increase is to fund the Ballina CBD parking study.

This increase is funded from the section 7.11 Admin Reserve.

A budget of \$25,000 is raised for the Emissions Reduction Plan. This budget is funded from the Strategic Planning reserves

Development Services

Other than a minor transfer of budget to Information Services for mobile device charges, no adjustments have been made to the Development Services expenditure budgets.

The expenditure budgets in this section include a budget of \$300,000 for legal costs, which is currently trending well down.

Open Spaces

Budget of \$20,000 has been raised for Compensatory Vegetation Works for the Airport Boulevard.

This budget is transferred from the carried forward capital budget in the Roads and Bridges section.

Budget of \$12,500 has been transferred from Administration expenses in this section to Information Services for mobile device charges.

Civil Services Division*Stormwater and Environmental Protection*

The budget for the contribution to Rous County Council for flood mitigation has been increased by \$27,000 to \$315,000, with the annual required contribution for 2022/23 now confirmed.

Roads and Bridges

The budget for the contribution to Rous County Council for flood mitigation has been increased by \$27,000, to a revised budget of \$315,000 following confirmation of the amount payable for 2022/23.

A continuation of expenditure associated with the February 2022 weather event approximates \$1,646,000 for the current financial year as at the end of September 2022.

The following table summarises the expenditure across sections.

Section	30 September 2022 (\$)
Open Spaces	3,618
Roads and Bridges	953,819
Stormwater	354,952
Ancillary	12,485
Emergency Services	4,981
Communications	56,840
Airport	37,862
Facilities Management	221,909
Total	1,646,466

The final expenditures and associated grant funding for the current year are unknown at this time.

Once the expenditures are finalised for the year, the required amount of grant income will be allocated to each section.

Emergency Services

As noted earlier in this report, funding of \$420,000 has been confirmed from Resilience NSW, with 50% allocated to the 2022/23 budgets.

Landfill and Resource Management (LRM)

The budget for the transport and disposal of residual waste has been increased by \$1,560,000 to a revised budget of \$7,800,000.

This increased expenditure is due to greater than anticipated volume of waste managed through the waste management centre, coupled with increased transport costs due to sustained increase in fuel prices.

Domestic Waste Management (DWM)

A new budget of \$80,000 is raised to cover the costs incurred for a household bin composition audit that has been completed.

Corporate and Community Division

Governance

The budget for Public Risk and Plant has been increased by \$90,000, to a revised budget of \$824,000.

The largest component of this budget is the Public Liability Professional Indemnity Insurance, which has increased from \$675,000 to \$759,000, an increase of 12.0%.

Communications and Customer Service

As noted in the income section of this report, funding has been confirmed under the Reconnecting Regional NSW – Community Events Program. Expenditure budget of \$362,000 is raised for this.

There is a transfer of budget of \$60,600 to Information Services for mobile device charges, noted further below.

Financial Services

A budget of \$85,000 is raised for Asset Revaluations for Council's Land, Buildings and Other Structure asset classes.

This is based on quotations recently obtained.

This budget is partially funded by bringing forward a budget of \$60,000 from the 2023/24 year, funded from reserves.

9.6 Financial Year 2022/23 - 30 September 2022 Review

Under the Australian Accounting Standards, Council is required to complete revaluation of asset classes at least every five years, and more regularly if there are indicators that the fair value of the asset class may have materially changed.

Due to the large indexation indicators for the 2021/22 financial year, it is necessary for a full revaluation of these asset classes to be completed in the 2022/23 year.

Information Services

A budget for \$150,000 has been transferred to this section, being the expenditure for mobile devices (ie mobile phones and ipads).

These costs were previously distributed across various Council sections.

The budget has been consolidated to allow better visibility and monitoring of these costs.

The transfers of budget from various Council sections to the Information Services section is based on estimated costs from 2021/22.

Offsetting the increase of \$150,000 is a reduction of \$40,000 to the overheads expenses for this section, representing the other side adjustment for the mobile phone budgets transferred from the water, wastewater and waste sections.

People and Culture

The budget for Workers Compensation has been reduced by \$70,000, to a revised budget of \$456,000.

The revised budget is based on confirmation of the instalments required for the 2022/23 year. This is an expenditure that can vary year on year, dependent on claims history.

Water Operations

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

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

Water - Statement of Operating Income and Expenses

Item	Original Budget	Approved Carry Forwards	Revised Total	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Operating Income	13,974	(15)	13,959	0	13,959	313	14,272	4,146
Operating Expenses (excl. dep)	12,597	111	12,708	0	12,708	0	12,708	3,850
Operating Result Before Dep	1,377	(126)	1,251	0	1,251	313	1,564	296
Depreciation and Non-cash	1,750	0	1,750	0	1,750	120	1,870	468
Net Operating Result	(373)	0	(499)	0	(499)	193	(306)	(172)

The **Forecast Operating Result** (inclusive of depreciation) as at **September** is a deficit of \$306,000, an improvement of \$193,000 from the forecast deficit of \$499,000 following the carry forwards as reported to the August meeting.

Forecast operating income has been increased by \$313,000 in total. Based on the review of interest income noted earlier in this report, forecast interest income for the Water fund has been increased by \$263,000.

The most significant source of operating revenue for the Water Fund is the water consumption charges, budgeted at approximately \$8.2 million and representing approximately 60% of total budgeted operating income. No changes are proposed to consumption income budgets.

The budget for Residential Water Access charges has been increased by \$50,000, to a revised budget of \$3.9m, based on charges raised to date.

Following the finalisation of the 2021/22 year, the forecast for depreciation of water fund assets has been increased by \$120,000, to a revised forecast of \$1,870,000.

Wastewater Operations

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

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

Wastewater - Statement of Operating Income and Expenses

Item	Original Budget	Approved Carry Forwards	Revised Total	Other Approved Changes	Revised Budget	Changes for Approval	Sept Budget	Actual to Sept
Operating Income	21,807	0	21,807	0	21,807	600	22,407	17,476
Operating Expenses (excl. dep)	13,555	221	13,776	0	13,776	0	13,776	3,530
Operating Result Before Dep	8,252	(221)	8,031	0	8,031	600	8,631	13,946
Depreciation and Non-cash	4,740	0	4,740	0	4,740	160	4,900	1,225
Net Operating Result	3,512	(221)	3,291	0	3,291	440	3,731	12,721

The **Forecast Operating Result** (inclusive of depreciation) **as at September** is a surplus of \$3,731,000 an improvement of \$440,000 from the surplus forecast of \$3,291,000 following the carry forwards as reported to the August Council meeting.

Forecast operating income has been increased by \$600,000 in total.

The most significant source of operating revenue for the Wastewater Fund is the access charges, budgeted at approximately \$19.3 million in total (both residential and non-residential) and representing approximately 88% of total budgeted operating income.

The budget for Residential Wastewater Access charges has been increased by \$240,000, to a revised budget of \$21.6m, based on charges raised for quarter one.

Based on the review of interest income noted earlier in this report, forecast interest income for the Wastewater fund has been increased by \$360,000.

9.6 Financial Year 2022/23 - 30 September 2022 Review

Following the finalisation of the 2021/22 year, the forecast for depreciation of wastewater fund assets has been increased by \$160,000, to a revised forecast of \$4,400,000.

Section Three – Capital Budgets 2022/23

This section of the report looks at capital expenditure.

General Fund - Capital Budget - Source and Application of Funds

Capital Funding / Expenditure	Original Budget	Approved Carry Forwards	Totals after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval this Report	Sept Budget	Actual to Sept
Funding								
General revenue	8,019	0	8,019	0	8,019	0	8,019	8,019
Reserves	15,574	1,652	17,226	(144)	17,082	(101)	16,981	16,981
Loans	19,185	0	19,185	2,067	21,252	0	21,252	0
Section 7.11 contributions	2,039	822	2,861	653	3,514	0	3,514	3,514
Grants and contributions	20,551	1,136	21,687	(771)	20,916	125	21,041	5,042
Total Funding	65,368	3,610	68,978	1,805	70,783	24	70,807	33,556
Expenditure								
Planning and Environmental Health Division								
Environmental Health	485	0	485	7	492	0	492	7
Community Gallery	0	0	0	7	7	0	7	7
Open Spaces	5,676	400	6,076	870	6,946	0	6,946	300
Civil Services Division								
Asset Management	0	20	20	0	20	0	20	0
Roads and Bridges	28,781	4,070	32,851	(1,294)	31,557	(101)	31,456	3,884
Emergency Services	1,580	0	1,580	200	1,780	0	1,780	77
Waste Management	670	0	670	(70)	600	0	600	1
Corporate and Community Division								
Property Development	4,150	(1,524)	2,626	1,434	4,060	0	4,060	88
Ballina Byron Gateway Airport	20,688	(346)	20,342	485	20,827	0	20,827	565
Community Facilities	213	307	520	0	520	125	645	37
Libraries	980	357	1,337	0	1,337	0	1,337	72
Facilities Management	0	0	0	89	89	0	89	57
Swimming Pools	0	41	41	0	41	0	41	31
Plant Operations	2,145	285	2,430	77	2,507	0	2,507	697
Total Expenditure	65,368	3,610	68,978	1,805	70,783	24	70,807	5,823

General Fund

Council reviewed the capital works program at the October 2022 Ordinary meeting. Further adjustments are as follows.

Roads and Bridges

Capital budget of \$101,000 has been transferred from the carried forward capital budget for Airport Boulevard to the Open Spaces operating budgets for Compensatory Vegetation Works. Of this, an amount of \$20,000 is raised for current year operational budgets and \$81,000 is placed into Open Spaces reserves for future works.

Community Facilities

A budget of \$125,000 is raised for capital improvements to the Ballina Indoor Sports Centre, with confirmation of grant funding under the Stronger Country Communities (SCCF) Round 4.

Water Fund

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

Capital Funding / Expenditure	Original Budget	Approved Carry Forwards	Totals after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval this Report	Sept Budget	Actual to Sept
Funding								
Reserves	2,891	335	3,226	0	3,226	0	3,226	3,226
Section 64 contributions	300	1,500	1,800	0	1,800	0	1,800	1,800
Total Funding	3,191	1,835	5,026	0	5,026	0	5,026	5,026
Capital Expenditure	3,191	1,835	5,026	0	5,026	0	5,026	355

Council reviewed the capital works program at the October 2022 Ordinary meeting. In this review, a budget of \$71,000 is transferred from the Water Loss Reduction budget for specific projects for Ballina Heights Reservoir (\$25,000), Whites Lane Reservoir (\$23,000) and Wardell Reservoir (\$23,000).

Wastewater Fund

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

Capital Funding / Expenditure	Original Budget	Approved Carry Forwards	Totals after Carry Forwards	Other Approved Changes	Revised Budget	Changes for Approval this Report	Sept Budget	Actual to Sept
Funding								
Reserves	5,382	1,300	6,682	545	7,227	20	7,247	7,247
Section 64 contributions	4,900	592	5,492	0	5,492	0	5,492	5,492
Total Funding	10,282	1,892	12,174	545	12,719	20	12,739	12,793
Capital Expenditure	10,282	1,892	12,174	545	12,719	20	12,739	1,082

Council reviewed the capital works program at the October 2022 Ordinary meeting. In this review, a new budget of \$20,000 is raised, funded from reserve, for Pop Denison Pump Station.

Section Four – Cash and Investment Statement

The next table shows the forecast for externally and internally restricted reserves.

Forecast Restricted Reserves as at 30 June 2023 (\$'000)

Reserve Title	After Carry Forward	Other Approved Changes	Revised Budget	Changes for Approval this report	Sept Budget
Externally Restricted					
Section 7.11	15,713	(653)	15,060	264	15,324
Domestic Waste Management	1,772	0	1,772	(75)	1,697
Section 64 Water	10,878	0	10,878	144	11,022
Water	7,375	0	7,375	169	7,544

9.6 Financial Year 2022/23 - 30 September 2022 Review

Reserve Title	After Carry Forward	Other Approved Changes	Revised Budget	Changes for Approval this report	Sept Budget
Section 64 Wastewater	7,970	0	7,970	158	8,128
Wastewater	11,276	(545)	10,731	422	11,153
Total Externally Restricted	54,984	(1,198)	53,786	1,082	54,868
Internally Restricted					
Council Elections	171	0	171	0	171
Financial Assistance Grant	3,874	0	3,874	0	3,874
Local Government Recovery Grant	1,965	0	1,965	0	1,965
Bushfire Recovery Grant	0	0	0	0	0
Legal/Audit/Revaluations	235	0	235	(60)	175
Employee Leave Entitlements	2,994	0	2,994	0	2,994
Risk Management Projects / Insurance	181	0	181	0	181
Community Infrastructure Reserve	3,700	(100)	3,600	83	3,683
Property Development Reserve	694	(40)	654	3,625	4,279
Wigmore Arcade	726	0	726	0	726
Crown Properties Rental	77	0	77	0	77
Flat Rock Tent Park	264	0	264	0	264
Quarries	533	0	533	0	533
Airport	(277)	286	9	0	9
Community Facilities	376	0	376	0	376
Library Special Projects	263	0	263	0	263
Plant Renewal/Replacement	1,172	(77)	1,095	22	1,117
Admin Building and Depot	114	0	114	0	114
Other Corporate & Community	396	0	396	0	396
Strategic Planning Studies and Proposals	371	0	371	(25)	346
Sec 7.11 Plan Reviews	449	0	449	(50)	399
Other PEH	180	0	180	0	180
Public Art	121	0	121	0	121
Public Order	2	0	2	0	2
Quarry Compliance	43	0	43	0	43
Healthy Waterways and other projects	911	(7)	904	0	904
Coastal Management Plans	0	0	0	0	0
Vegetation Works	651	0	651	81	732
Public Amenities	146	0	146	0	146
Open Spaces	1,130	0	1,130	0	1,130
Sports Fields	62	0	62	100	162
Cemeteries	235	0	235	0	235
Gallery	8	0	0	0	0
Stormwater Capital	383	0	383	0	383
Stormwater and Environ Mgmt Plans	97	0	97	0	97
Canal dredging	65	0	65	0	65
Bypass Funds	3,210	0	3,210	0	3,210
Roadworks	316	52	368	0	368
Other Civil	100	0	100	0	100
Ancillary Footpaths	245	0	245	0	245
Boat Ramps and Infrastructure	10	50	60	0	60
Rural Fire Service	0	0	0	0	0
Landfill and Resource Management	2,130	70	2,200	(300)	1,900
Total Internally Restricted	28,323	234	28,549	3,476	32,025
Total Restricted	83,307	(964)	82,335	4,558	86,893

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 investment summary for 30 September 2022, funds invested amounted to \$106,000,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 30 September 2022 to the amount of \$12,386,217.
4. Actual year to date cash and investments amounted to \$118,368,217 at 30 September 2022.

This amount includes cash at bank of \$12,386,217 and funds invested of \$106,000,000 which has been reconciled to the bank statements and investment reports.

Comment on Cash and Investment Position

The changes in this report increase the reserves by a net \$4.558 million resulting in the current forecast restricted reserves of \$86.893 million.

The majority of 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 are summarised as follows.

Section 7.11 Reserves

Budgeted interest income on these reserves has also been increased by \$264,000.

Domestic Waste Management

There is a decrease of \$75,000 based on the adjustments made to operating income as noted earlier in this report.

Water Reserves

Net reserves increased by \$313,000 based on the revised operating result.

Wastewater Reserves

Net reserves increased by \$580,000 based on the revised operating result offset partially by capital expenditure.

Legal/Audit Revaluations

There is a decrease to this reserve of \$60,000 with that amount partially funding the required revaluation, for financial reporting purposes, now to be completed in the 2022/23 year.

Community Infrastructure Reserve

This reserve is increased by \$83,000 for the increased transfer to reserves from interest income.

Property Development Reserve

This reserve is increased by \$107,000 for the increased transfer to reserves from interest income.

Further, the timing of anticipated land sales has been amended.

Sales of \$8,203,100 is recognised for 2022/23 for the Harvey Norman Complex at Southern Cross estate.

Sales of \$4,685,000 for the Wollongbar Urban Expansion Area stage 3 have been deferred for a further year.

The net movement in the sales increases the reserve balance at 30 June 2023 by \$3,518,000.

Strategic Planning

There is a decrease to this reserve of \$25,000 with that amount funding the budget for the Emissions Reduction Plan.

Section 7.11 Plan Reviews

There is a decrease to this reserve of \$50,000 with that amount funding the budget for the Ballina CBD parking study.

Vegetation Works

There is an increase of \$80,000 to these reserves, being the transfer of budget from the Airport Boulevard road, for future compensatory vegetation works.

Sports Fields

There is an increase of \$100,000, being amounts received for rental income received to date.

Landfill and Resource Management (LRM)

There is a decrease of \$300,000, being the adjustments to the operating result noted within this report.

Section Five - Key Performance Indicators

This section of the report takes selected financial benchmarks and compares the 30 June 2021 and 2022 ratios with the forecast at September to 30 June 2023.

The performance indicators have a short-term focus, which suits the quarterly review.

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

Key Performance Indicators - Description

1. **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).

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 (NSW Code of Accounting Practice)

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

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 (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.

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 (NSW Code of Accounting Practice)

Benchmark Indicators – General Fund

1. Operating Performance Ratio – General Fund

Benchmark: >0

2020/21	2021/22 Mar	2022/23 Sept
Actual	Actual	Estimate
-0.70%	-4.34%	-6.40%
Fail	Fail	Fail

Comment

This is a key ratio for “Fit for the Future” assessments and has historically been a difficult benchmark to achieve. The ratio is affected by many variables.

The General Fund failed this benchmark in 2020/21 and 2021/22. The current LTFP forecasts this ratio will deteriorate in 2022/23 and this benchmark will not be met until 2025/26.

A significant factor behind a deterioration in this ratio is the increase in depreciation expense as a result of assets indexation processed in 2021/22.

The strategy to improve this ratio is to reduce operating expenses and increase income.

2. Unrestricted Current Ratio – General Fund

Benchmark: >1.5

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
2.64	2.63	1.57
Pass	Pass	Pass

Comment

The General Fund is expected to continue to meet this benchmark.

This ratio is lower than previous years as a result of the extensive capital works program for 2022/23.

3. Debt Service Cover Ratio – General Fund

Benchmark: > 2

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
4.06	3.77	1.83
Pass	Pass	Fail

Comment

Increased budgeted borrowings for property development and airport capital works will result in this ratio deteriorating in 2022/23 and 2023/24 and Council not meeting this benchmark.

Proceeds from sales generated from Southern Cross and Wollongbar Urban Expansion Area developments will repay some of the loans and the ratio will improve steadily from 2025/26 onwards.

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

Benchmark Indicators – Water

1. Operating Performance Ratio - Water

Benchmark: > 0

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
0.5%	-3.41%	4.57%
Pass	Fail	Pass

Comments

The Water Fund failed to achieve this target in 2021/22. 2022/23 and future years are anticipated to achieve positive ratios.

2. Unrestricted current ratio - Water

Benchmark: >1.5

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
79.08	19.69	45.58
Pass	Pass	Pass

Comments

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

3. Debt Service Cover Ratio - Water

Benchmark: >2

2020/21	2021/22	2022/23
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. Operating Performance Ratio - Wastewater

Benchmark: >0

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
25.00%	18.76%	16.65%
Pass	Pass	Pass

Comments

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

2. Unrestricted current ratio - Wastewater

Benchmark: >1.5

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
2.83	2.60	3.51
Pass	Pass	Pass

Comments

The Wastewater Fund met this benchmark in 2020/21 and it is anticipated that the Fund will meet the benchmark in future years.

3. Debt Service Cover Ratio - Wastewater

Benchmark: > 2

2020/21	2021/22	2022/23 Sept
Actual	Actual	Estimate
2.15	1.88	2.49
Pass	Fail	Pass

Comments

The wastewater fund had been failing this ratio for a number of years due to high debt levels, but the ratio has generally been improving year on year, as the level of debt in the wastewater fund continues to fall.

The benchmark was met in 2020/21 as a result of higher than anticipated developer's contributions in that year.

The ratio in 2021/22 was more consistent with previous years, with the Wastewater Fund failing to meet the benchmark in that year.

It is anticipated that this ratio will meet the benchmark in 2022/23 and all future years.

Section Six – Contractors/Consultants/Legal Expenses

Contractors

Contracts entered into during the quarter are as follows.

Contractor Name	Purpose	Amount (GST Excl)	Award Date	Contract Duration	Incl in Budget
Surf Life Saving Services Pty Ltd	Surf Life Saving Services	Schedule of Rates	1/7/2022	48 months	Y
SoilCo Pty Ltd	Processing Organic Waste Material	Schedule of Rates	1/7/2022	24 months	Y
Solo Resource Recovery	FOGO Kerbside Collection Services	Schedule of Rates	1/7/2022	72 months	Y
Precision Civil Infrastructure Pty Ltd	Upgrade of the Alstonville WWTP Inlet Works	\$1,577,925	1/7/2022	6 months	Y
Executive Collections	Debt Recovery Services	Schedule of Rates	1/7/2022	36 months	Y
EC Sustainable Pty Ltd	Kerbside Bin System Audit	Schedule of Rates	21/7/2022	4 months	Y
HGT Australia Ltd	Traineeship / Apprenticeship Services	Schedule of Rates	11/8/2022	24 months	Y
Abergeldie Rehabilitation	Wastewater and Stormwater Infrastructure -Relining Recurrent Works	\$892,044	12/9/2022	36 months	Y
Sam the Paving Man Pty Ltd	Intstallation of Concrete and Natural Stone Unit Pavers – Lennox Village Vision	\$546,570	22/9/2022	3 months	Y

Consultants

The Office of Local Government defines a consultant as:

A consultant is a person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist or professional advice to assist decision making by management. Generally it is the advisory nature of the work that differentiates a consultant from other contractors.

Expenditure to 30 September 2022 on consultants is as follows:

Item	Expenditure YTD (excl GST) (\$)	Included in Budget
Consultancies	707,712	Yes

Legal Expenses

The next table summarises the expenditure incurred to the end of September 2022 on legal fees. Legal fees have been included where there is a dispute situation. This includes, for example, recovery of rates not paid but excludes processing of infringement notices (no dispute at this point) and amounts paid to legal firms that may be related to the creation of a lease or sale of land.

Item	Expenditure YTD (excl GST) (\$)	Included in Budget
Legal Fees	49,178	Yes

Section Seven - Certification

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2021.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 30 September 2022 indicates that Council's projected financial position at 30 June 2023 is satisfactory, 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

Delivery Program Strategy / Operational Plan Activity

The content of this report relates directly to the financial sustainability of Council. This is identified within Council's adopted Delivery Program, under Direction 4: Engaged Leadership.

EL2.1g - Pursue compliance with the Fit for the Future Program.

Community Consultation Policy

This report has been prepared to inform the community of budget variations. Staff have been consulted in the preparation of this report.

Financial / Risk Considerations

This report details financial results to date in comparison to budget.

Options

Council may approve the budget amendments proposed or make further changes.

The proposed changes reflect Council resolutions or adjustments based on the trending of actual income and expenses.

RECOMMENDATION

That Council notes the contents of this report for the September 2022 Quarterly Financial Review and approves the budget changes identified within the report.

Attachment(s)

Nil

9.7 Legal Matters - Update

9.7 Legal Matters - Update

Section Governance

Objective To provide an update on Council legal matters.

Background

This is a regular report that provides an update on legal matters to ensure that the community is informed on Council litigation.

Key Issues

- Type, outcomes and cost of litigation

Discussion

A brief summary of recent legal cases follows.

Council Legal Rep	Applicant	Description	Estimate (\$)	Actual (\$)
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	99,000

Comment

DA 2018/381 involves the decommissioning of an existing dwelling and construction of a new two-storey dwelling and swimming pool as well as upgrading of an existing internal access way at 404 Old Byron Bay Road, Newrybar. Council refused the application at the December 2019 Ordinary meeting and the applicant lodged an appeal. A third party joined the proceedings, with this party raising issues additional to those set out in Council's statement of facts and contentions. The hearing was finalised on 4 December 2020 and on 29 October 2021 the Court ruled that the refusal was upheld and the appeal was dismissed. A link to the judgement is as follows:

<https://www.caselaw.nsw.gov.au/decision/17b098435bc9edc17ae32aaa>

This matter involved some detailed and complex elements relating to the application of LEP provisions and biodiversity provisions. The application of the relatively new Biodiversity Conservation Act and its intersection with land use planning formed a central part of the hearing and judgement. Case law is now progressively providing clarity as to how the Court sees the new biodiversity laws and how they should be applied in a planning context. Following on from the Court hearing and judgement, Council has sought legal advice in relation to options for action for vegetation restoration on the land.

This is a fairly complex matter requiring consideration of potential costs, possible environmental benefits, opportunity for the landowner to lodge new development applications and the context of the issues relative to the Court action undertaken in relation to this property. Recently, the landowner has indicated an intent to lodge a fresh development application.

Staff continue to address the matter of the vegetation restoration in line with the legal advice received. A new development application DA 2022/469 has been lodged.

9.7 Legal Matters - Update

Council Legal Rep	Applicant	Description	Estimate (\$)	Actual (\$)
Allens Linklaters	Snashall v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Deemed refusal of development application 2021/605.	50,000	0
Comment DA 2021/605 involves a proposal for the demolition of an existing two storey duplex and construction of a new dwelling house on land at 38 Dress Circle Drive. The matter is listed for a section 34 conciliation conference and hearing on 1-2 December 2022.				
Lindsay Taylor Lawyers	Impact Property Consultancy Pty Ltd v Ballina Shire Council	Land and Environment Court - Class 1 and 2 Appeal Proceedings – Deemed refusal of development application 2021/420 and s68 applications relating to DA 2018/51 and 2020/284.	75,000	0
Comment DA 2021/420, DA 2020/284 and DA 2018/51 relate to approved and proposed subdivision of land at 20 North Creek Road Lennox Head (known as The Crest). The appeals relate to a deemed refusal of s68 applications associated with subdivision works certificates for DA 2020/284 and DA 2018/51 and a development application for additional lots and redesign of lots under DA 2021/420. The matter is listed for a section 34 conciliation conference on 1 December 2022.				
Lindsay Taylor Lawyers	Newrybar Pty Ltd v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Refusal of DA 2021/137	50,000	0
Comment DA 2021/137 involves alterations to an existing dwelling house to create an attached dual occupancy, vegetation removal and associated works on land at 10-12 Old Pacific Highway, Newrybar. The application was refused. The matter is listed for a section 34 conciliation conference and hearing on 21 and 22 February 2023.				
Parker and Kissane Solicitors	Ooh! Media Assets Pty Ltd v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Deemed refusal of development application 2022/33	50,000	0
Comment DA 2022/33 involves the erection of an advertising structure for the purposes of digital advertising on land at 44 Bangalow Road, Ballina (Ballina Central). The matter is listed for a section 34 conciliation conference on 28 February 2023.				

Delivery Program Strategy / Operational Plan Activity

Legal cases are linked to Delivery Program strategies such as:

- HE3.2 - Match infrastructure with development to mitigate any impacts on the environment
- HE3.3 - Minimise negative impacts on the natural environment

9.7 Legal Matters - Update

Community Consultation Policy

This report is provided in open Council to ensure the community is informed on legal matters.

If Council wishes to discuss any details it may be necessary to resolve into confidential session to ensure any legal advice is not discussed in open session.

Financial / Risk Considerations

The following table provides a summary of planning related legal costs for recent years, including the 2022/23 expenditure to early November 2022.

Table 1 – Legal Expenditure 2019/20 to 2022/23

Description	2019/20	2020/21	2021/22	2022/23
DA 2016/184, 2018/616 - CURA A – Intrapac (Planners North / Northern Rivers Land Solutions)	337,000	3,600	0	0
DA 2017/244 - Skennars Head – Aureus – Intrapac	28,000	150,500	32,000	0
DA 2017/600 – 19-21 Northcott Crescent (Gibbs)	7,000	98,400	0	0
DA 2017/707 - 5 Rayner Lane (Ardill Payne)	37,000	0	0	0
Ballina Sands – Newrybar Swamp Road	15,000	0	0	0
The Beach House	16,000	6,000	4,000	1,700
DA 2018/189 – 4 Page Court (Millar)	6,000	0	0	0
DA 2018/321 - Palm Lake	497,000	9,600	3,000	0
DA 2018/381 - 404 Old Byron Bay Road (White)	22,000	69,300	7,100	200
404 Old Byron Bay Road (Kenny NCAT)	0	7,500	0	0
DA 2019/30 – 43 Tuckombil Lane (Griffani)	17,000	32,100	3,600	0
DA 2019/170 – 937/987 Wardell Road (Veronesi)	0	11,200	0	0
DA 2020/49 – 38 Newrybar Swamp Road (Anderson)	0	33,600	13,700	0
DA 2020/192 – GemLife (Planners North)	0	277,800	307,300	0
DA 2020/568 – Midgen Flat Road	0	3,300	0	0
Compliance – 19 Old Pacific Highway, Newrybar	0	0	22,800	2,500
Compliance – Swimming Pools	0	17,000	37,100	5,500
Other Compliance, Insurance and Planning Agreements	60,000	16,100	40,400	21,800
Total Actual Expenditure	1,042,000	736,000	471,000	31,700
Legal Expenditure Budgets	1,036,000	725,000	465,000	315,000
Expenditure Budget Result – Surplus / (Shortfall)	(6,000)	(11,000)	(6,000)	283,300
Legal Actual Income from Costs Recovered / Fines	157,000	539,000	364,000	200
Legal Income Budget	140,000	550,000	160,000	120,000
Income Budget Result – Surplus / (Shortfall)	17,000	(11,000)	204,000	(119,800)
Net Income and Expenditure Budget Result	11,000	(22,000)	198,000	163,500

Expenditure for 2022/23 is relatively low compared to recent years, although the number of legal cases has increased since the last report to Council. This will likely result in a substantial increase in costs for the balance of 2022/23.

Legal expenditure can vary significantly from year to year as shown in the following table, which provides an eight-year summary of actual results.

The last two years have had a relatively low net cost to Council, primarily due to costs being recovered. On the other hand, actual expenses have been comparatively high for six years in a row, with legal expenses often trending with strong property markets.

9.7 Legal Matters - Update

Table 2 – Legal Expenditure – Period 2013/14 to 2020/21 (\$'000)

Year	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Expense	103	88	353	967	503	1,042	736	471
Income	5	20	90	108	61	157	539	364
Net Cost	98	68	263	859	442	885	197	107

Options

This report is provided for public information as there is public interest in legal matters involving Council.

RECOMMENDATION

That Council notes the contents of this Legal Matters – Update report.

Attachment(s)

Nil

9.8 Policy (Review) - Internal Reporting

9.8 Policy (Review) - Internal Reporting

Section Communications

Objective To review the Internal Reporting Policy.

Background

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

Under section 6d of the Public Interest Disclosures Act 1994 (PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures.

The Internal Reporting Policy, previously referred to as the Public Interest Disclosure Policy, was first adopted by Council in 2013 in line with section 6d of the PID Act.

The most recent review of the policy was completed in 2018 to bring it into alignment with the NSW Ombudsman model internal reporting policy and NSW Ombudsman guidelines.

A new PID Act received assent in April 2022 and will commence in October 2023. This new Act will replace the existing PID Act. This review has identified only minor changes to the current policy however a comprehensive review will be undertaken during 2023 to align with the new Act.

Key Issues

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

Discussion

The current Internal Reporting Policy has been reviewed against the current legislation and corporate requirements.

This review identified only minor wording changes to align current corporate terminology and to reflect a recent internal change to the roles and responsibilities for receiving and reporting on disclosures.

The changes have been marked in yellow and proposed deletions have been marked in red and struck through. A copy of the amended policy is included as Attachment 1.

Although the existing Policy complies with current legislation, it is important to note that NSW is in a period of transition. A new Public Interest Disclosures Act 2022 (PID Act) received assent on 13 April 2022 and will commence in October 2023.

The aim of the new PID Act is to encourage and facilitate the disclosure of wrongdoing in the public sector. The key changes will include:

- New simplified framework for reporting
- Clarity for agencies on their obligations
- Focus on 'speak up' culture for reporting
- Provision of more comprehensive protection for individuals involved in investigating PIDs
- Incorporate additional reporting obligations

The NSW Ombudsman is developing new guidance and training material that will support the public sector with implementing the new legislation. Public authorities must continue to comply with the current PID Act 1994 until the new PID Act 2022 commences.

Delivery Program Strategy / Operational Plan Activity

The Internal Reporting Policy is an important component of ensuring accountability and transparency in Council's decision making, fraud and corruption prevention, and reporting processes.

Community Consultation Policy

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

Financial / Risk Considerations

The proposed changes to the policy do not create any additional risk or financial considerations.

Options

Council may accept or amend the proposed changes to the policy. The changes included are minor in nature and it is recommended that the policy be adopted as presented. It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

RECOMMENDATIONS

1. That Council adopts the amended Internal Reporting 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) - Internal Reporting [↗](#)

9.9 Policy (Review) - Local Procurement

9.9 Policy (Review) - Local Procurement

Section Financial Services

Objective To review the Local Procurement Policy.

Background

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

This policy was first adopted in 2013 in recognition of the importance of the need to provide best value services to the community whilst also understanding the importance of supporting, where appropriate and available, local businesses.

The policy outlines the key considerations when procuring goods and services and establishes a social and community evaluation criteria of 15%. This weighting is incorporated into Council's current quotation and tender assessment processes.

Key Issues

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

Discussion

The purpose of this policy is to support the local economy through recognizing the impact of the procurement decisions on the local economy.

The review identified that the policy is effective and that only minor wording changes are required to bring it into alignment with current legislation and terminology.

The changes have been marked in yellow and proposed deletions have been marked in red and struck through.

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

A copy of the amended policy is included as Attachment 1 to this report.

Delivery Program Strategy / Operational Plan Activity

The Local Procurement Policy supports PE2.3 Council contributes and understands the local economy.

Community Consultation Policy

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.

Financial / Risk Considerations

The proposed changes to the policy do not create any additional risk or financial considerations.

Options

Council may accept or amend the proposed changes to the policy. The changes included are minor in nature and it is recommended that the policy be adopted as presented.

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

RECOMMENDATIONS

1. That Council adopts the amended Local Procurement 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) - Local Procurement Policy [⇒](#)

10.1 Pat Morton Look Out Precinct - Upgrade

10. Civil Services Division Reports

10.1 Pat Morton Look Out Precinct - Upgrade

Section Engineering Works

Objective To confirm a preferred design option for the Pat Morton Look Out Precinct upgrade.

Background

At September and October 2021 Ordinary meetings, Council considered reports following the public exhibition of design options for the Pat Morton Precinct Upgrade.

The resolution from the October 2021 meeting is provided below.

1. *That Council adopts Option 1, as presented in the 23 September 2021 Ordinary meeting report, as per Attachment 1 to this report, as the preferred concept to support the detailed design and delivery of the upgrade of the Pat Morton Car Park Precinct.*
2. *That Council endorses the concept of Rock Salt Pitted Coloured Concrete as the preferred surface for the path to be provided in the preferred option in point 1 above, with Council to be further consulted in regard to the specific details of this option, including final colour, as the project progresses.*
3. *That Council further consult on the naming of Pat Morton with the local Indigenous community.*
4. *That Council identify funding for the shared path works in the 2021/22 budget.*

At the June 2022 Ordinary meeting Council resolved the following.

That Council defers a decision on the Pat Morton Concept Plan Shared Path connection for further reporting.

The Delivery Program and Operational Plan includes funding in the current financial year of \$115,000 under the Car Park Improvement Program. This allocation is for the purpose of renewing and improving the road pavement and stormwater drainage at this site.

The total cost of the works in the adopted concept plan is estimated to be \$700,000. This means there is a current funding gap of \$585,000.

For integration and project efficiency reasons, the preference is to complete the Car Park Improvement Program works and the Concept Plan works at the same time.

Adopting a concept design is an important step in supporting potential grant applications. The objective of this report is to provide an opportunity for Council to confirm a preferred design option.

Key Issues

- Providing infrastructure to support the amenity and sustainability of this community space
- Balancing infrastructure with the environment

Discussion

Attachment 1 to this report is a copy of the report presented to the 22 July 2021 Ordinary meeting. The report presents the four concept design options that were developed for Council's consideration.

In response to the report, Council endorsed the public exhibition of the draft concept designs. As per the recommendation to the report, Council did not indicate a preferred option for purposes of the public exhibition.

The four options can be summarised as follows.

Option 1

This option provides a new path north of the car parking area. The edge of the car park area would be pulled back to the south to give more grassed area and to make provision for the path. The pathway is 2.5m wide and separated from the car parking pavement by a narrow grass verge.

Option 2

This option provides for a 2.5m path with pathway along the northern edge of the car parking area. The pathway would be defined and separated from vehicles by wheel stops and pavement colour/patterning treatment. (Both Option 1 and Option 2).

Option 3

Provides for a 2.5m wide pathway that passes through the car parking area leaving the northern edge of the car park as a grass surface.

Option 4

This option provides for a reconfiguration and reconstruction of the car parking area. It includes a 2.5m wide pathway that passes through the car park area leaving the northern edge of the car park as a grass surface. It is anticipated that community feedback, once obtained, would be used to further develop a preferred concept design option to enable Council to progress with a more detailed design.

Attachment 2 to this report is a copy of the draft concept design drawings for the options.

10.1 Pat Morton Look Out Precinct - Upgrade

Attachment 3 is a copy of the report presented to the 23 September 2021 Ordinary meeting. The report assesses the community feedback from the exhibition period.

In response to this report Council resolved as follows:

That Council look at different options for the construction materials for the pathway for Options 1 and 2 from the concept designs attached to this report for the upgrade of the Pat Morton Car Park Precinct.

Attachment 4 is a copy of a further report presented to the 28 October 2021 Ordinary meeting. The report followed a Councillor briefing held in response to the September 2021 resolution.

As per the background section of the report, Council's final position was to adopt Option 1.

Point 4 of the October 2021 resolution was that "Council identify funding for the shared path works in the 2021/22 budget".

In response to this resolution further reporting confirmed that the estimated cost for the total concept plan was around \$700,000, with the shared path works estimated at \$240,000.

With Council only having a recurrent budget of approximately \$500,000 for footpath / shared path projects, no funding source for the works has been confirmed to date.

The main options remain reallocating funding from existing projects in the recurrent footpaths / shared path program, or a potential transfer from the Community Infrastructure Reserve.

An adopted concept plan would help with grant applications, particularly with this being a very high profile tourism location.

Delivery Program Strategy / Operational Plan Activity

This project is consistent with Strategy PE1.1 - Promote our area as an attractive place to visit and Strategy PE3.3 - Deliver infrastructure that supports residential living.

Community Consultation Policy

The draft car park and shared path concept design planning document was used to seek community input through a public exhibition process. The consultation from the Lennox Village Vision and the Cultural Ways Project is also helpful to guide Council's decision making for this project.

Consultation with the Registered Aboriginal Parties for the Coastal Walk has also been undertaken to allow an amendment to the existing Aboriginal Heritage Impact Permit (AHIP).

Financial / Risk Considerations

The Delivery Program and Operational Plan includes funding in the current financial year of \$115,000 under the Car Park Improvement Program. This allocation is for the purpose of renewing and improving the road pavement and stormwater drainage at this site. The total cost of the works in the adopted concept plan is estimated to be \$700,000. This means there is a current funding gap of \$585,000.

Options

The following options are available.

Option 1 - Endorse previous position – Adoption Concept Design Option 1

This option reconfirms Council's previous position. This is the recommended option.

Option 2 - Re-exhibit the Four Concept Design Options

As this is a new term of Council, Councillors may prefer to reexhibit the previous exhibition material to see if there are further comments or feedback from the community.

Option 3 - Develop Alternative Designs

Under this option new concept design options would be developed. Council would need to provide direction to staff in respect of the scope of the design and design intention, and the preferred community consultation program to ensure the project achieved Council's objectives.

RECOMMENDATIONS

1. That Council confirms that Option 1, as presented in the 23 September 2021 Ordinary meeting report, as per Attachment 1 to this report, as the preferred concept to support the detail design and delivery of the upgrade of the Pat Morton Car Park Precinct.
2. That Council endorses the concept of Rock Salt Pitted Coloured Concrete as the preferred surface for the path to be provided in the preferred option in point 1 above, with Council to be further consulted in regard to the specific details of this option, including final colour, as the project progresses.

Attachment(s)

1. Report presented to Ordinary meeting 22 July 2021 [⇒](#)
2. Attachments to report presented to Ordinary meeting 22 July 2021 [⇒](#)
3. Report presented to Ordinary meeting 23 September 2021 [⇒](#)
4. Report presented to Ordinary meeting 28 October 2021 [⇒](#)

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

Section	Engineering Works
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Objective	To report on changes proposed by the NSW Government for flood planning and response, and to provide a progress update for Council's stormwater investigation program following the 2022 flood events.
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Background

The February and March 2022 flood events were historically significant for Ballina Shire and the Northern Rivers region. The response and recovery to these events involves a large number of program delivery and other actions by Council, the NSW and Federal Governments and community groups.

The objective of this report is to update Council in respect to the following elements of the response and recovery program:

- To review the findings of the 2022 NSW Flood Inquiry (the Independent Inquiry)
- To review the findings of the NSW Legislative Council Select Committee on the Response to Major Flooding across NSW in 2022 (the Upper House Inquiry)
- To report the implementation of stormwater and drainage works
- To advise on grant applications providing opportunities to improve the resilience of local infrastructure.

Key Issues

- Improving the preparedness and response capability to protect the community from the impacts of major floods
- Management of stormwater and drainage infrastructure
- Potential grant funding opportunities

Discussion

The Independent Inquiry

In March 2022, the NSW Government commissioned an independent expert inquiry into the preparation for, causes of, response to and recovery from the 2022 catastrophic flood event across the state of NSW.

The Inquiry was led by prominent public officials Mary O'Kane and Michael Fuller. The terms of reference required the Inquiry to examine the causes of catastrophic flood events in NSW, the preparation and planning by Government and others for these events, the response management, and the transition from response to recovery.

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

There was significant public information and media coverage of the Inquiry and the NSW Government has a dedicated web page with information.

Therefore this report does not provide further background information regarding the Inquiry.

The web based information is available at <https://www.nsw.gov.au/nsw-government/projects-and-initiatives/floodinquiry>.

On this site are copies of the summary report, the full report and the Government's response.

The Inquiry made 28 recommendations.

Attachment 1 to this report is an extract from the summary report, which provides information about each recommendation.

Attachment 2 is a copy of the NSW Government's response.

As per that response, the Government has accepted six recommendations in full and indicated its in principle support for the remaining 22 recommendations, with further work required on development and implementation.

Attachment 3 is a copy of Council's submission to the Inquiry.

Further to the submission, staff were provided an opportunity to share information with the Inquiry team regarding observations made in respect of the operational response to the floods.

The following provides some overview comments regarding some of the key recommendations.

Recommendation 3 State Emergency Operations Controller

Recommendation 3 is to establish a permanent position of State Emergency Operations Controller (SEOCN) and that this officer is Deputy Commissioner of the NSW Police Force.

The reason for this recommendation is that the Inquiry found the NSW SES failed to use many of the resources that were available to it through direct assistance or by other agencies.

Catastrophic events, by their nature, will involve many government and non government agencies.

A combat agency such as the SES is not in the best position to coordinate or manage the breadth of support and resources of the whole of Government. Furthermore, accountability is reduced due to lack of a single lead role and the new position can assume ownership of the state capability framework.

During the flood event and the recent bush fires, the Northern Rivers Emergency Operations Centre was stood up, under the command of the Local Emergency Controller (LEOCN) to support the operational arrangements of the SES and NSW Rural Fire Service (RFS).

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

One operational arrangement is certainly preferred. The permanent position allows for a more programmed and proactive approach to improving readiness.

Recommendation 5 Resilience NSW and Recovery

This recommendation is for Resilience NSW to be reshaped to Recovery NSW with the new agency to be more streamlined and agile to drive recovery in the first 100 days post a disaster.

Council's submission to the Inquiry makes comments about the role of Resilience NSW and it is also noted the agency had only recently been created and there had not been time to establish clarity around roles, responsibilities, resources, or develop the working relationships with key officers.

From the community's perspective, there was confusion between when the response concluded and recovery commenced.

Also, community expectations and Resilience NSW's capability were not aligned, resulting in criticism of the agency.

Providing an agency with a single focus for the initial transfer period from response to recovery is supported.

However, the recommendation redistributes the other functions of Resilience NSW to a number of existing agencies. This is concerning, depending on how it is implemented, as the creation of Resilience NSW was the first opportunity for an agency to be dedicated to building capacity and systems for communities to prepare for and manage the impacts of disasters.

Decentralising these processes will see agencies working independently resulting in limited outcomes, duplication and confusion.

The recommendation highlights the role of the Department of Communities and Justice (DCJ) in coordinating evacuation centre management. The confusion between the roles of Resilience NSW and DCJ need to be removed and it is agreed DCJ are best placed as the agency to deal with this responsibility.

Our experience with DCJ in the floods was that there were insufficient resources in existence or with access to the region to undertake this role.

Council staff, with assistance from volunteers, made a significant contribution to bridge this gap. Therefore it is important the Government considers the resources required for DCJ to deliver this function in the future.

Recommendation 6 Community First Responders Program

This recommendation suggests, to better coordinate community efforts to save life and property during a disaster, Government create a 'Community First Responders Program', funding appropriate community equipment and training, particularly in high-risk catchments along the east coast of NSW.

This training would be delivered by combat and/or other appropriate government agencies.

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

This program could support and empower community led initiatives such as disaster response, evacuation centres and the provision of services such as psychological first aid.

Many residents willingly volunteer to assist the community when dealing with natural disasters. However, many of these volunteers are not able or interested in being regular members of a combat agency.

The suggested program is an excellent idea to bridge this gap enabling more resources to be available while also taking reasonable care to ensure volunteers are safe and supported while undertaking their contribution.

Recommendation 9 and 28 Impact to Essential Services

All members of Council and the community will appreciate the issues that existed from the failure of essential services, particularly telecommunications.

This recommendation deals with this issue, while the need is self-evident, it is very important actions to implement are undertaken as soon as possible.

Recommendation 15 NSW Reconstruction Authority

The Northern Rivers Reconstruction Corporation (NRCC) was established and commenced operations on 1 July 2022. The NRRC is modelled on the successful reconstruction authority arrangements established in Queensland.

Similar to the discussion above regarding response, with so many agencies responsible for the delivery of services for reconstruction, a single place of authority and coordination is essential.

Recommendation 18 Risk Based Approach to Flood Planning Levels

Council has adopted this approach in its flood planning framework.

A current major project, funded by a grant from the Federal Government, will assist Council to further develop the maturity of our floodplain risk management and planning.

A challenge for Council in completing this work previously has been identified gaps in policy (such as adopted climate change predications) or resourcing from the NSW Government which has limited the rate or amount of our progress.

The recommendation is considered important from a strategic land use perspective to build community resilience for future events.

Recommendations 22, 23, 24 and 25 Housing and Re-Housing

These are detailed recommendations in respect of managing the risks of existing development in the floodplain.

It was pleasing to see the Federal and NSW Government's recently announce the Northern Rivers Resilient Homes Fund and this announcement is aligned with recommendation 22, which seeks to empower vulnerable people and communities to relocate.

It is also pleasing to see importance the Inquiry has noted in respect of the need for new policy and investment for housing, especially social housing.

Recommendation 25 deals with the issues identified in respect of permanent residents of caravan parks and mobile housing estates.

This is an issue the Council has pursued through the NSW Planning Minister and NSW Minister for Local Government.

The Upper House Inquiry

An Upper House Select Committee was established on 23 March 2022 to inquire into and report on response to major flooding across New South Wales in 2022. The select committee's inquiry is different to the NSW Government's independent flood inquiry.

Council's Mayor and Director Civil Services provided evidence to this inquiry.

Attachment 4 provides information on the 21 findings by the Upper House Inquiry.

Attachment 5 provides a copy of the NSW Government's response.

The Government supports 17 of the recommendations and supports, in principle, 20 recommendations, with further work required on implementation.

The findings and the response cover similar ground to the Inquiry and accordingly are not further discussed here.

Council's Stormwater and Drainage Program

Heavy rainfall events generate excess runoff, which often manifests as flooding.

There are four main types of flooding that affect properties in Ballina Shire. These are:

1. Local Drainage

Smaller scale problems that are generally associated with urban drainage reticulation. Surface runoff is generally considered 'nuisance' and damage is generally minor.

Flooding in these instances is generally caused by severe local storms of durations from minutes to a few hours and often coincides with overland flooding, however is generally less severe and is not typically classed as flooding.

Moderate to severe flooding of this type was observed during the March 2022 rain event.

2. Overland Flooding

Inundation occurring when rainfall runoff exceeds the capacity of trunk drainage systems resulting in local stormwater runoff that is deep enough to result in above floor flooding and considerable damage to property.

Flood causing storm events are typically severe local thunderstorms affecting smaller creeks and urban catchments resulting in flood events rising in minutes to hours.

Minor-moderate flooding of this type was observed during the February 2022 rain event and moderate to severe flooding of this type was observed during the March 2022 rain event.

3. Mainstream Flooding from Rivers and Watercourses

Mainstream flooding (often referred to as 'regional flooding') is when inundation of normally dry land occurs from overtopping the banks of a stream, river, estuary, lake or dam.

Flood causing storm events for coastal rivers are generally 'east coast lows' or southward moving tropical systems lasting days to weeks.

Severe flooding of this type was observed during the February 2022 rain event.

4. Coastal Influences/ Tidal surge

In the lower estuarine areas of rivers and streams or low-lying urban areas on coastlines, flooding is far more complex as it depends not only on rainfall, but also on tides and coinciding storm induced increases in the ocean level. Ballina has only observed minor tidal surge events in recent history.

All floods are different and affect properties differently depending on soil type, topography and proximity to the coast and waterways.

Quite often built areas of the Shire will be affected by more than one type of flooding. The following table broadly describes the various types of flooding that affect each of the main urban areas and villages in Ballina Shire.

Table One Flood Sources and Locations in Ballina Shire

Urban Areas Affected by Flooding	Flood Plain Risk Management			Infrastructure Planning
	Coastal Influences/ Tidal surge	Regional flooding from Rivers and water courses	Overland Flooding	Local Drainage
Ballina Island/ West Ballina/ North Ballina				
East Ballina				
Lennox Head				
Alstonville/ Wollongbar				
Wardell				

The storm events, which occurred at the end of February and March 2022, were record breaking events in terms of magnitude and damages compared to previous storm and flood experiences.

In particular, the storm event which occurred at the end of March 2022 resulted in significant rainfall occurring in urban catchments, which far exceeded the design capacity of the stormwater drainage systems.

During this event, overland flow was necessary to discharge runoff in excess of the piped system capacity, which in many instances was exacerbated by coinciding regional flooding in waterways and high tides.

Whilst the magnitude of local overland flood damage was less than that from the flood damage caused by the February Richmond River dominated flooding, it was still substantial.

Quite a number of properties experienced inundation of yard areas as well as over floor flooding through homes from overland flow.

The following information discusses the investigations and inspections that have been undertaken relating to overland flooding and local stormwater drainage in urban areas that occurred during the March 2022 flood.

This is distinct from regional flooding from the Richmond River that occurred during the February 2022 flood.

Following the March 2022 rainfall event, Council received a very high volume of requests from the community to investigate the incidence of nuisance and damaging flooding arising from local stormwater runoff and overland flooding.

Due to limited resources, all incidents and requests couldn't necessarily be assessed immediately.

Council has one full time position for the functions of stormwater management and floodplain management.

This position has been vacant since January 2022, despite on-going efforts to recruit.

An engineer has been engaged on a part time basis and other technical staff and managers provide support where possible.

All the requests received have been recorded on an issues register, to be investigated by technical specialists, as resources are available.

The immediate action was to inspect and meet with residents onsite to record any information that would be of use in subsequent assessments.

The overwhelming demand and limited available resources have necessitated the workflow of investigations to be undertaken on a priority basis, giving priority to the issues that present the most damage to property.

To demonstrate fairness, the following priority categories have been developed.

Priority 1

Properties that have experienced above floor flooding to habitable areas of dwelling with moderate to severe damage that warrants insurance claims

Priority 2

Properties that have experienced flooding to garages and sheds (but no habitable areas) that causes minor damage to property

Priority 3

Properties that have experienced flooding of pools and yards which is generally considered 'nuisance' flooding.

A three-phase structured approach has been implemented for projects involving the investigation of registered incidents from stormwater runoff and overland flooding. The three phases are;

Phase 1

Initial assessment of the issues and complaints to determine the primary cause of flooding (for example blocked drains, insufficient capacity, lack of overland flow path).

The objective of Phase 1 is to identify the appropriate response pathway from either;

1. Maintenance – If the likely cause is a blocked or obstructed drain, the matter is delegated to Council's operations team to schedule clearing, or jetting, subject to any environmental permits that may be required.
2. Capacity – If the likely cause is an exceedance of the capacity of the drainage system and there appears to be a deficiency in the capacity, then a detailed drainage assessment is scoped for further investigation.

Phase 2

Detailed drainage assessment. This is an in-depth study which analyses the existing drainage system. It is either site specific (looking at a single location) or catchment wide (analysing an entire network or trunk drain) depending on the scale of the issues being investigated.

The scope varies slightly from project to project however generally involves:

- Surveying and recording flood heights – this is used for model calibration and validation when available
- Catchment analysis and modelling of the drainage system for a range of rainfall events to assess the capacity of the existing drainage system
- Identify sections of drainage system with deficient capacity using the results of modelling
- Investigate options for upgrading deficient sections of drainage and assessing the cost versus benefit of upgrades and providing recommendations on priorities.

Phase 3

Detailed design of options for alterations and upgrades identified in the drainage assessments. This would typically involve capital works and will be subject to funding allocations.

Attachment 6 is a copy of the register showing each location, the priority assessment and the current status of investigations.

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

Presenting the structure and status of the program in this way is assisting to respond to inquiries.

Staff continue to look for opportunities to increase the resources available for this program.

The results of the Phase 1 assessments undertaken to date has identified several locations where overland flooding occurred as clusters of properties impacted by a common drainage system.

For these cases, a catchment wide assessment has been undertaken.

This work has allowed us to commence the following Phase 2 detailed drainage assessments.

Alstonville Flood Study

This is a capacity assessment of the drainage networks and overland flow paths covering the areas in Alstonville around Mellis Circuit, Alston Avenue, Opal Crescent, Kawana Street, Alabaster Place, and Panorama Estate.

Engeny Water Management has been engaged to undertake this catchment wide study which is currently in the modelling stage.

Preliminary model results are expected mid December 2022.

Wardell Stormwater Drainage Masterplan

This is a two stage project.

- a. Capacity assessment of the drainage networks and overland flow paths covering the area of Wardell on the north-west side of the Richmond River.
- b. Developing a masterplan for future upgrades of the drainage network with recommendations on priority upgrades.

The masterplan will also identify upgrades required for future town centre upgrades and potential future private development according to current zonings

Engeny Water Management has been engaged to undertake this catchment wide study which is currently in the data collection stage.

Preliminary modelling results are expected early 2023.

West Ballina Overland Flood Study Addenda

This is a post event assessment report as an addendum to the Ballina Island and West Ballina Overland flood study that was completed in 2021 and adopted by Council in May 2022.

The addenda study is focused on the causes of overland flooding in March 2022 around Riverside Drive, Quays Drive, adjoining areas to the Leach Crescent development, Horizon Drive and Wetlands Drive.

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

The scope includes investigating options for mitigating overland flooding in identified locations. This study is currently in the preliminary modelling stage.

Tamarind Drive Trunk Drainage Strategy

A detailed capacity assessment of the existing open drain running along the southern side of Tamarind Drive from The Canal to Centennial Park. The scope also includes modelling of the proposed undergrounding of the open drain for the four laning of Tamarind Drive concept design.

Options will be assessed to alleviate flooding to Ballina Gardens Caravan Park and properties on the north side of Tamarind Drive that experienced flooding during the March 2022 event. This project is currently at the scoping stage.

Rutherford Street and Williams Reserve Flood Study

Trunk drainage capacity assessment of the trunk drainage system and overland flow paths covering the areas from Rutherford Street to Williams Reserve. The scope of this project also includes developing options to optimize the efficiency of the existing drainage system and reduce incidence of blockages to inlets and clear obstructions to overland flow through properties.

This project is currently at the scoping stage.

Greenfield Road and Tallowood Place Drainage Options

Design options for upgrading the piped system and reducing overland flooding through properties in Greenfield Road and Tallowood Place, Lennox Head. This project is currently at the options development stage.

Council's stormwater program typically involves a combination of mains renewal (due to the risk or actual cases of collapse) and maintenance.

The four-year renewal program is forecast in the Delivery Program and Operational Plan. It is possible the outcomes of the above studies and future investigations will identify infrastructure upgrades or replacements. This is in addition to the existing works identified in other completed studies such as the Ballina and West Ballina Overland Flood Study.

This means it is likely Council will need to reconsider its project priorities for the available stormwater funds. This will be challenging due to existing budget constraints.

The following is reproduced from the report to the June 2022 Ordinary meeting dealing with the Delivery Program and Operational Plan.

The stormwater and drainage network is one of the most underfunded infrastructure areas in Council's recurrent asset renewal program, with an annual budget of approximately \$850,000 and a depreciation expense of around \$1.5m, representing a significant shortfall in asset renewal.

Recurrent Stormwater Program

The following information discusses the activities that have been undertaken either in response to the flood events or as part of our normal program and operations.

Pipe Network Maintenance

The clearing of blocked pits and pipes is an ongoing maintenance activity. Given the length of the network, it is not feasible to operate a regular inspection process. Also, pipes and pits become blocked at intermittent times, for different reasons.

Staff inspect known hotspots and rely on inspections during rain fall events and from community feedback to identify maintenance needs. The budget for this type of work is \$162,000 and this financial year we have expended \$50,000.

Open Drain Maintenance

Council progressively clears open drains of sedimentation and vegetation build up. Typically these tasks involve significant plant and equipment resources and accordingly works are undertaken when we can accommodate them in the budget.

We have recently completed the clearing of the following drains (with approximate costs);

Tamarind Drive	\$20,000
Hutley Drive	\$25,000
Skennars Head	\$15,000
Ballina Wastewater Treatment Plant	\$12,500

Obtaining environmental approvals, including Fisheries permits, for these works can be a significant task. Ongoing works at certain designated locations has been possible under one particular permit. Over the past eighteen months we have been working on a permit for an expanded operating area and it is pleasing that this permit has now been assessed and an approval is expected to be issued shortly. This will enable our operations team to complete outstanding works that have not been possible previously.

There are however many drains where environmental approvals and funding remain an issue. These include, for example locations in South Ballina, west Ballina, North Ballina, Wardell and the catchment areas adjoining Ross Lane.

Often Council is responsible for only a small segment of these drains, with asset ownership being in private ownership or with Rous County Council.

For some time discussions have been ongoing with NSW Government representatives in respect of confirming the planning pathway for these works, simplifying this process and providing more certainty to Council, and consideration of funding support by the Government.

The flood event has provided an opportunity to advance those discussions and hopefully we can report a positive outcome in the near future.

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

Mains Renewal

As mentioned, for many years Council has allocated funds to stormwater mains renewal. This has been necessary as the condition of parts of the network has resulted in collapse, or the immediate risk of collapse.

Relining technology has provided Council an alternate option to excavation and trenching. This is particularly helpful to avoid the destruction of road pavements and private property.

Council recently awarded a tender for the current round of relining renewal works. The full four year program is reproduced as follows.

Stormwater	1,722,000	1,859,000	876,000	894,000
Urban Lanes	75,000	75,000	75,000	75,000
Kerr Street (Tamar Street to Richmond River		60,000		
Urban Stormwater Management Plan	25,000	25,000	25,000	25,000
Asset Data Collection	50,000	50,000	50,000	50,000
Tide Gates to Urban Streets	180,000	75,000	55,000	55,000
Urban Stormwater Reticulation Renewal		211,000	371,000	399,000
Moon Street (Tamar Street to Holden Lane)		90,000		
Henry Philp Avenue, Ballina	50,000	40,000		
Martin Street (River Street to Richmond River		70,000	90,000	
Williams Reserve, Lennox Head		15,000		
Ballina Fair, Ballina	307,000			
Grant Street, Ballina			100,000	
Temple Street, Ballina	115,000			
Owen Street, Ballina	80,000			
Oakland Avenue, Ballina		120,000	110,000	
River Street, Ballina	50,000			
Norton Street, Ballina				80,000
Cherry Street, Ballina	40,000	28,000		
Daydream Avenue, Ballina				90,000
Wardell				120,000
Lems Lane and Cliff Murray Lane, Lennox	50,000			
Tanamera Drive Revegetation, Alstonville	200,000			
Local Government Recovery Program Works	500,000	1,000,000		

The recommendation to this report is for Council to note the information in respect of our stormwater drainage program in response to the flood events.

Betterment Grants

The Federal and NSW Governments have recently announced two funding packages which are targeting betterment. Betterment is the term used to describe improvements to infrastructure that build resilience into the infrastructure itself to better withstand the impacts of a natural disaster. Betterment is also connected to providing new infrastructure that improves services to the community or builds resilience for the community.

10.2 NSW Government Flood Inquiry and Update - Flooding and Drainage

Under the National Disaster Relief and Recovery Arrangements, which is the program to support communities and councils dealing with natural disasters, funding is available for repairs and restoration of assets, however there is very limited opportunities for the funding to support betterment. Therefore it is pleasing that these new packages have been announced and it is hoped packages of this type will continue to be available in the future.

The two packages are the Infrastructure Betterment Fund (IBF) and the Regional Roads and Transport Recovery Package (RRTRP). A summary of each of these programs is provided below.

Infrastructure Betterment Fund

Funds	\$200 million
Eligible Assets	Transport, telecommunications, Tourism, Water and Sewer, Other public infrastructure assets.
Eligible Applicants	Councils, Local Aboriginal Councils and certain NSW agencies
Relevant Disasters	Four of the recent bushfire and flood events
Eligible Impact Area	91 local government areas across NSW
Applications Close	15 December 2022

Regional Roads and Transport Recovery Package

Funds	\$312.5 million
Eligible Assets	Transport infrastructure assets.
Eligible Applicants	Councils and Transport for NSW
Relevant Disasters	February/March 2022 Flooding
Eligible Impact Area	26 local government areas across NSW
Applications Close	1 December 2022

While the programs are separate, to reduce duplication of application development and assessment, unsuccessful applications to RRTRP can be nominated for the IBF, although it is noted the IBF is expected to be significantly more competitive as it deals with more asset classes and many more councils are eligible.

Before the assessment criteria was announced for the RRTRP, eligible councils were invited to nominate three priority projects. Based on our understanding of the likely criteria, nominations were made for the following three projects;

- Ross Lane Flood Immunity Improvements
- Fishery Creek Bridge Duplication
- Wardell Road Flood Immunity Improvements

The package limits a council to three applications.

The eligible amounts for a grant range from \$50,000 to \$10 million per project.

The Ross Lane project has been selected as a priority because the proposed project offers significant benefits in respect of improving the resilience of the road network for both major and smaller rainfall events and as a regional road it is an important link for access.

The Duplication of Fishery Creek Bridge was selected because it will improve the capacity of River Street to function as an evacuation route, it is major project requiring significant funding and pre-construction activities are well advanced.

The isolation of Wardell during the February and March flood had a significant impact on the community. Investigations have identified a road raising project that will enable the Wardell to Alstonville connection to remain open during a future event of the same scale as the recent event.

The program requires the nominated roads to have been impacted during the recent floods.

The announcement of successful projects is expected to commence in January 2023. Funding deed execution and commencement of works for approved projects is early 2023 and projects are required to be completed by 31 May 2025.

It is not proposed to make an application under the IBF. Significant resources are required to prepare applications and the assessment criteria and level of competition is not suited to potential Council projects at this point in time.

Delivery Program Strategy / Operational Plan Activity

This report and the work being undertaken responds to the Community Strategic Plan Outcome HE1 – We protect, respect and enhance our natural environment.

HE1.1 is a Delivery Program Strategy that says our planning considers past and predicted changes to the environment and the benefits from this planning is reduced risk from natural disasters or changes in climate.

The information in this report also follows the Community Strategic Plan Outcome EL1 – Decision making is inclusive, transparent and underpinned by sustainability.

EL1.3 is a Delivery Program Strategy that says we will actively advocate community issues to other levels of government to realise increased levels of State and Federal Government support.

Community Consultation Policy

Staff have made significant efforts to respond to the large volume of contact with Council from residents impacted by, or concerned with, stormwater management issues. This communication work will be ongoing into the future.

Financial / Risk Considerations

This report provides information regarding a grant program that provides opportunities for Council to apply for funding assistance towards upgrading our road network.

It is likely the stormwater investigation process will identify infrastructure improvements. This will mean Council will need to give consideration to how these projects can potentially be included in the Long Term Financial Plan.

Options

The recommendation is to note the key points in the report. It is an option for Council to resolve to undertake further actions in response to the information.

In response to the 2022 floods, Council staff continue to work directly and closely with the Northern Rivers Regional Recovery Committee, the Northern Rivers Reconstruction Corporation, Resilience NSW, JALI Aboriginal Land Council, Transport for NSW, NSW Public Works and a range of other government and non-government agencies.

This work allows Council to have some input or influence in respect of the discussions regarding how the NSW Government will implement the recommendations of the two inquiries mentioned in the above report.

The stormwater investigation work will continue to progress as quickly as resources allow following the reported program structure.

Applications will be made under the RRTRP for funding to support the following projects;

- Ross Lane Flood Immunity Improvements
- Fishery Creek Bridge Duplication
- Wardell Road Flood Immunity Improvements

Council has established a Health and Wellbeing Committee as a sub-committee of the Local Emergency Management Committee.

The Health and Wellbeing Committee is providing the opportunity for agencies, non-government organisations and service providers to connect and develop responses and plans in respect to social well-being and mental health recovery.

With Resilience NSW work is also being undertaken to develop a strategic recovery action plan for the Ballina Shire.

RECOMMENDATIONS

That Council notes the contents of this report regarding the 2022 Flood events including:

- Recommendations from the NSW Flood Inquiry and the Government's response to these recommendations.
- Findings from the NSW Legislative Council Select Committee on the Response to Major Flooding across NSW in 2022, and the Governments response to these findings.
- Structure and progress of Council's stormwater and drainage investigation program.
- Funding opportunities under the Infrastructure Betterment Fund.

Attachment(s)

1. Summary Report [⇒](#)
2. NSW Government's Response [⇒](#)
3. Council's Submission to the Inquiry [⇒](#)
4. Findings of the Upper House Select Committee [⇒](#)
5. NSW Government Response - 17 Findings [⇒](#)
6. Stormwater Issues Register [⇒](#)

10.3 Policy (New) – Donations - Community Resource Recovery Initiatives

10.3 Policy (New) – Donations - Community Resource Recovery Initiatives

Section	Resource Recovery
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Objective	To establish a donations policy framework for the community to implement projects and initiatives that align with Council's strategic resource recovery objectives.
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Background

Council is often approached by community stakeholders requesting financial assistance to deliver projects and initiatives that are aligned to our waste minimisation and resource recovery education and program.

There are currently limited policy avenues that enable Council to consider providing assistance in a flexible or timely manner. As such, worthwhile projects may not proceed, or if they do, Council's opportunities to be engaged may be reduced. This means valuable ideas or activities to promote waste minimisation and resource recovery activities are not achieved.

Having a flexible policy that enables targeted financial support for relevant stakeholders delivering waste minimisation and resource recovery projects and initiatives provides an excellent opportunity for Council to leverage the resource, connection and goodwill these groups have in the community.

The proposed policy will enable Council to expand the reach of its strategic educational messaging, with the overarching result of reducing the amount of waste our community sends to landfill.

The proposed new Donations – Community Resource Recovery Initiatives Policy provides a framework for the management and distribution of financial donations provided to community members/groups for the purpose of conducting waste minimisation and resource recovery projects and initiatives within Ballina Shire.

The purpose of this report is to outline the benefits and seek direction for the public exhibition of the draft proposed policy.

Key Issues

- Community education and awareness
- Diverting waste from landfill
- Facilitating and leveraging community interaction and volunteerism
- Transparent and equitable allocation of funds

Discussion

Policy drivers

Community awareness and expectations around waste minimisation and resource recovery has increased significantly in the past few years.

This is reflected in Council's community satisfaction survey results which consistently show that providing recycling options rates as a highly important service offered by Council. Unfortunately, in 2019 the satisfaction level for this service suffered one of the largest levels of decline compared to previous surveys.

A key function of Council's Resource Recovery section is to educate the community on sustainable environmental practices associated with waste minimisation, reuse and recycling.

This is currently achieved by the delivery of a range of education and awareness programs aimed at influencing continual improvement in resource recovery behaviour patterns with residents, visitors, businesses, schools and the broader community.

These programs are largely delivered by Council with periodic support from the North East Waste (NEW) regional waste group and the NSW State Government.

These programs continue to deliver successful results. However, it is acknowledged that there are ongoing challenges and constraints with the ability to effectively engage and connect with all sectors of the Ballina community.

Factors such as the population size, variability in demographics, cultures and geographic spread make it very difficult to design, resource and deliver effective resource recovery education and awareness programs to all sectors of the community.

As such, it is recognised that there is an opportunity to leverage the community reach and engagement available through the range of individuals, community groups and education providers that operate in the Ballina Shire.

The targeted financial support provided through the proposed policy will foster partnerships between Council and these groups, facilitating the delivery of strategically aligned waste minimisation and resource recovery messaging to the various sectors of the community that council is not able to reach via its current education programs.

Policy structure and administration

The structure and administration of the proposed policy is consistent with Council's other donations policies and complies with Section 356 of the Local Government Act 1993 (LGA), which states as follows:

- 1) *A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.*

10.3 Policy (New) – Donations - Community Resource Recovery Initiatives

- 2) *A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.*
- 3) *However, public notice is not required if—*
 - a) *the financial assistance is part of a specific program, and*
 - b) *the program's details have been included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and*
 - c) *the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year, and*
 - d) *the program applies uniformly to all persons within the council's area or to a significant group of persons within the area.*

A review of similar themed policies and/or initiatives provided by other NSW councils was undertaken during the development of the proposed policy. This review highlighted several key design features that provided flexibility within those policies/initiatives, ultimately enhancing the achievement of policy objectives.

One such feature adopted within the proposed policy is having an on-going open application process to provide applicants the flexibility to submit applications when they choose.

Council's Resource Recovery team will then assess applications against the policy guidelines and make recommendations to Council for the distribution of funding to successful applicant(s).

Subject to the number of applications received, this may mean regularly reporting to Council.

This process is designed to minimise the time between an application being submitted and funding being granted to a successful applicant to commence their project or initiative.

This advantage offsets the administration involved in preparing reports to Council, which is expected to become reasonably routine under the terms of the policy.

Another flexibility within the policy framework is no cap on the amount of funding that can be applied for. Coupled with this is the ability for Council to conduct periodic reviews of the amount of overall budget allocated for funding the implementation of this policy.

This is designed to encourage applications for projects and initiatives of all sizes and value.

It is recognised that so long as there is sufficient funding available within the Landfill Reserve Management (LRM) budget, any application that has been assessed as providing a value for money solution for promoting waste minimisation and resource recovery education and messaging in the community, should have the opportunity to be funded.

This will help to enhance and expand the delivery of Council's strategic resource recovery program to sectors of the community that Council would otherwise not reach given its resource constraints.

It is noted that this policy is created separately to the existing Donations – Financial Assistance for Community Groups Policy. The reason for this is that the existing policy is funded from general revenue, is often over subscribed for the funds available and the assessment considerations are very different.

The assessment for the Resource Recovery projects is designed to consider the value returned to the environment and the avoided costs from landfill for each project.

Delivery Program Strategy / Operational Plan Activity

The proposed Donations - Community Resource Recovery Projects and Initiatives policy directly aligns with the current Delivery Program (2021-25) actions as follow:

CC2.2 Encourage community interaction, volunteering and wellbeing

HE2.2 Use our scarce resources wisely

HE2.3 Reduce resource use through innovation

Community Consultation Policy

It is recommended that the document be placed on public exhibition for a 28-day period. Any submissions received will be reported back to council.

Financial / Risk Considerations

An initial amount of \$50,000 per annum is proposed for allocation within the LRM budget for funding the implementation of this policy. However, this amount may need to be reviewed by Council throughout the financial year in response to the number and value of applications received and any impacts on the LRM budget.

A budget adjustment will be made at the next quarterly review if Council adopts the proposed policy.

An assessment of each application under the guidelines listed within the policy will be undertaken to ensure any funding assistance provided is consistent and equitable, manages Council's risks and represents value for money for the community.

10.3 Policy (New) – Donations - Community Resource Recovery Initiatives

Options

Option 1

Council endorses the Donations - Community Resource Recovery Initiatives Policy as contained in Attachment 1 for public exhibition. Any submissions will then be reported back to Council.

This is the recommended approach as it enables community consideration of the proposed policy provisions.

Option 2

Council makes amendments to the draft policy as considered appropriate and then proceed to public exhibition. If this approach is preferred, public exhibition would occur as set out under Option 1 once the policy is amended in line with any direction from Council.

Option 3

Council decides not to implement a Donations - Community Resource Recovery Initiatives Policy. Under this option, any further work on the preparation and implementation of the policy would cease.

RECOMMENDATIONS

1. That Council adopts the Donations - Community Resource Recovery Initiatives 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 (New) - Donations – Community Resource Recovery Initiatives [⇒](#)

11.1 Notice of Motion - Provision of Sports Courts

11. Notices of Motion

11.1 Notice of Motion - Provision of Sports Courts

Councillor Cr Ramsey

I move

1. That Council receive a report on options to deliver a series half-court basketball / handball / multi-purpose sport courts throughout the shire to provide low maintenance, free, facilities to encourage higher active outdoor participation by children, youth and adults.
2. The report is to examine the merits of the following sites, as a guide:

Fitzroy Park, Wardell
Williams Reserve, Lennox Head
Caloola Road, Lennox Head (EPIQ Estate)
Spoonbill Reserve, Skennars Head
Ballina Heights Sports Fields
Lumley Park, Alstonville
Chickiba Reserve, Ballina
Kingsford Smith Reserve, Ballina (currently identified in the adopted master plan)

Staff Comments

The sites identified are consistent with adopted plans (i.e. Kingsford Smith Master Plan) or have sufficient size and / or in a locality to potentially be suitable for the provision of this type of facility, subject to Council endorsement. The proposed report can canvass the process for community consultation, approval, potential priority order and funding options.

COUNCILLOR RECOMMENDATIONS

1. That Council receive a receive a report on options to deliver a series half-court basketball / handball / multi-purpose sport courts throughout the shire to provide low maintenance, free, facilities to encourage higher active outdoor participation by children, youth and adults.
2. The report is to examine the merits of the following sites, as a guide:

Fitzroy Park, Wardell
Williams Reserve, Lennox Head
Caloola Road, Lennox Head (EPIQ Estate)
Spoonbill Reserve, Skennars Head
Ballina Heights Sports Fields
Lumley Park, Alstonville
Chickiba Reserve, Ballina
Kingsford Smith Reserve, Ballina

Attachment(s) - Nil

11.2 Notice of Motion - Policing Numbers in the Shire

11.2 Notice of Motion - Policing Numbers in the Shire

Councillor

Cr Eoin Johnston

I move

That Council writes to the NSW Police Minister and the Local Area Commander requesting a review of Policing numbers in the Ballina Shire.

Councillor Comments

With the growth of the population generally and the increased demands for twenty four hour policing, it is submitted that more Police numbers should be appointed to the Richmond Police District. This would assist in providing an enhanced service to the Alstonville, Wollongbar and Wardell precincts.

The placing of permanent police in Alstonville five years ago was welcomed by the community and had a marked impact on young offenders and the gathering of intelligence in general.

However, due to staff shortages at other stations across the region, local Police are often rostered on elsewhere. The residents of Wardell have consistently lobbied for the refurbishment of their Police station and the need for a permanent Police presence.

It is understood that policing numbers are primarily based on statistics but it is submitted that the community would prefer a more proactive approach to crime prevention.

COUNCILLOR RECOMMENDATION

That Council writes to the NSW Police Minister and the Local Area Commander requesting a review of Policing numbers in the Ballina Shire.

Attachment(s)

Nil

11.3 Notice of Motion - 4WD Access - South Ballina

Councillor

Cr Bruem

I move

That Council conduct a review of the beach access regime in place at South Ballina, in cooperation with relevant NSW government agencies, to consider the feasibility of extending camera-monitoring in conjunction with the system at Seven Mile Beach.

Councillor Comments

Two years have passed since Council resolved to limit access to the beach at South Ballina to commercial fishers, emergency services and indigenous community members.

The change would appear to have been successful in its aim of limiting excessive 4WD traffic, anti-social behaviour and environmental damage. Residents are mostly satisfied with the change, however there are concerns the regulations have unfairly impacted on recreational fishers, especially those who are senior or have mobility issues.

Access to the beach is via a locked gate at Patch's Beach, however residents say it is often left unlocked and open to all. Similarly, there are no restrictions or monitoring of traffic accessing the beach from Richmond Valley Shire.

A camera and permit system would provide for better management and protection.

Synching the system with Council's permit system at Seven Mile Beach could potentially allow for limited access by local recreational fishers who feel they've paid a heavy price for the behaviour of others, mostly residents from outside the Ballina Shire.

Minister Kevin Anderson has written to Council saying Crown Lands is amenable to Ballina Shire operating a permit system. Further consultation with state agencies should ascertain whether state funds may be obtained if required for establishment costs.

Staff Comments

The consistent position of Council on South Ballina Beach access has been that the management of the beach and 4WD access, including any decisions on special access, is a matter for the State Government (specifically Crown Lands and NPWS), as Council is not the land manager for this area of the coastline.

Following consideration of representations regarding closure of the beach (including from Council), the State's decision has been to close the beach to general public access and limit access to a distinct set of users only.

11.3 Notice of Motion - 4WD Access - South Ballina

There are significant land management and resourcing implications associated with the beach (including presence of threatened fauna species and Aboriginal cultural heritage values).

Management of beach access arrangements also becomes more difficult and resource consuming where a broader array of user groups are granted access (e.g. why one additional group over another, how is the access regulated and by whom).

When access arrangements were revisited by Council in a notice of motion considered in April 2021, Council did not support further review of the user groups permitted to access the beach and so selecting or advocating for different groups for access was not a preferred course.

Given that the beach is land managed by the State and the management decisions to date have been made by the State, investigations/reviews etc is the jurisdiction/responsibility of the State as opposed to Council itself getting involved this work.

In any reconsideration of the previous decisions of Council, there is a need to be very cautious about the shifting of responsibilities and cost, and redirection of resources away from our already substantial land management tasks, in any advocacy that Council resolves to pursue in relation to the beach at South Ballina.

If Council is inclined to support the notice of motion, it is recommended that any approach is framed in such a way that Council is inviting the State Government to revisit matters, as opposed to committing Council resources to initiatives that are not currently within the endorsed Delivery Program and Operational Plan or within the land management jurisdiction of Council.

COUNCILLOR RECOMMENDATION

That Council conduct a review of the beach access regime in place at South Ballina, in cooperation with relevant NSW government agencies, to consider the feasibility of extending camera-monitoring in conjunction with the system at Seven Mile Beach.

Attachment(s)

Nil

11.4 Notice of Motion - Wollongbar Sports Fields - Rental Allocation

Councillor

Cr Chate

I move

That from 1 January 2023, Council set aside 50% of the rent money raised from the leasing of the land for the Wollongbar Temporary Village for the purpose of designing and constructing a shared bike path from the bottom of Elvery Lane and along Pearces Creek Road to join up with the existing path at the Seventh Day Adventist nursing home.

Councillor Comments

As we all know, funding for significant projects is an ever-present issue for our council. The Wollongbar community have welcomed the Wollongbar Temporary Village into their community and now 159 flood affected people are living there in 89 individual units.

In my communication with Wollongbar residents, I continue to have people mention to me that they feel unsafe when trying to walk or cycle along Pearces Creek Road into Alstonville. This road is very unsafe with a speed limit of 80kph and no effective shoulder to provide protection from traffic.

The road also runs through a steep cutting on the crest of a hill which funnels all pedestrians and cyclists through this very tight bottleneck situation with basically no protection from traffic. There is no visibility over the hill crest and nowhere to go to get out of the way of traffic.

The walk or cycle to Alstonville from Wollongbar along Pearces Creek Road is significantly quicker than walking or riding right through Wollongbar town and joining up with the shared path that leads down through Bullwinkel Park and up to Alstonville.

It takes about 1/3 of the time. "Time is money" and people are often drawn to take the quicker option and now, with an additional 159 residents living at the top of Elvery Lane in the Temporary Village, there is an increased likelihood that people will be walking or cycling to town along this more dangerous yet quicker route.

Item 11.5 from the April 2022 Ordinary meeting was passed unanimously. It reads: "That Council investigate and cost the creation of a cycleway / footpath along Pearces Creek Road from Alstonville to the Wollongbar sporting fields, with a potential funding source identified." The purpose of this motion is to facilitate this process.

By setting aside 50% of the rent from the Wollongbar Temporary Village for this project, the community of Wollongbar is being acknowledged for assimilating the village. It is sharing the rental recompense with the rest of Ballina Shire while at the same time actively progressing the funding for the proposed shared path. This project will provide significantly easier access to Alstonville for the entire Wollongbar community.

Staff Comments

Currently the rental income from the Wollongbar Sports Fields rental is transferred to an internal reserve to allow Council to confirm how the funds will be expended, at some point in time.

COUNCILLOR RECOMMENDATION

That from 1 January 2023, Council set aside 50% of the rent money raised from the leasing of the land for the Wollongbar Temporary Village for the purpose of designing and constructing a shared bike path from the bottom of Elvery Lane and along Pearces Creek Road to join up with the existing path at the Seventh Day Adventist nursing home.

Attachment(s)

Nil

11.5 Notice of Motion - Waste Minimisation

Councillor

Cr Dicker

I move

That Council aims to increase its commitment to sustainable procurement practices, including by:

1. Investigating potential updates to its procurement policies to incorporate further objectives supporting a decrease in the purchase of non-recyclable materials by: encouraging assessment of product need, utilising products/materials containing content recycled domestically, optimising reuse and increasing the uptake of products and materials that contain recycled content where they are comparable in cost, quality and performance, and do not have known worse environmental outcomes.
2. Taking advantage of resources designed to support sustainable procurement, including the LGNSW Sustainable Procurement Guide and the Local Government Procurement Sustainable Choice program.
3. Writing to relevant State and Federal Ministers calling on Government to:
 - Commit to more ambitious action on waste reduction and recycling through expanded product stewardship and regulations for mandatory recycled content; and
 - Redirect money collected through the NSW Government Waste Levy to support support councils and communities to implement local waste reduction or circular economy initiatives.
4. Writing to Local Government NSW requesting the Association to raise the profile of recycled content in local government procurement practices and invest in the development of support interventions that enable councils to overcome constraints to procuring products containing recycled materials.

Councillor Comments

This month saw the suspension of the REDCycle soft plastic recycling scheme, which operated in over 200 major supermarkets nationwide. The collapse of the scheme was attributed to a rapid increase in uptake of the service among shoppers and fluctuating demand from recyclers, revealing significant flaws in the sustainability of Australia's nascent recycling market.

At the root of this problem is the exponential increase in plastic consumption worldwide. The World Economic Forum advises that global production of 15 Mt in 1964 grew to 311 Mt in 2014, is expected to double again by 2034 and almost quadruple by 2050 (National Waste Report, 2020, pg. 96). The vast majority of plastics in Australia (85%) are not recycled and end up in landfill.

While the REDcycle scheme claims to have diverted a total of over 3600 tonnes of soft plastics since it was launched, this pales in comparison to the 336,000 tonnes of soft plastics used and that end up in landfill every year.

11.5 Notice of Motion - Waste Minimisation

In addition to reducing our overall consumption of single use plastics, developing sustainable end markets for recycled materials is one of the critical challenges that Australia must overcome if it is to fix its current waste and recycling issues. In the absence of regulations that stipulate mandatory recycled content, the onus is on consumers (including individuals and institutions) to use their collective purchasing power to drive change.

Councils can play a critical role in driving demand for recycled materials, which are increasingly being used in construction materials and other manufactured building products. The Australian Local Government Association recommends that Councils adopt more supportive, mandated procurement targets for products containing recycled material, with a focus on mixed plastic waste content. In recent years, a number of resources have been developed to support local Councils to adopt more sustainable procurement practices.

Sources:

- REDCycle website, www.redcycle.net.au • Boomerang Alliance website, www.boomerangalliance.org.au
- Australian Packaging Covenant Organisation (APCO). Supporting Government Procurement of Recycled Materials. Version 1, November 2020. Available at: <https://apco.org.au/news/20Y4a00000000IEAY>
- Australian Government Department of Climate Change, Energy the Environment and Water. National Waste Report 2020. Available at: <https://www.dcceew.gov.au/environment/protection/waste/national-waste-reports/2020>

COUNCILLOR RECOMMENDATIONS

That Council aims to increase its commitment to sustainable procurement practices, including by:

1. Investigating potential updates to its procurement policies to incorporate further objectives supporting a decrease in the purchase of non-recyclable materials by: encouraging assessment of product need, utilising products/materials containing content recycled domestically optimising reuse and increasing the uptake of products and materials that contain recycled content where they are comparable in cost, quality and performance, and do not have known worse environmental outcomes.
2. Taking advantage of resources designed to support sustainable procurement, including the LGNSW Sustainable Procurement Guide and the Local Government Procurement Sustainable Choice program.
3. Writing to relevant State and Federal Ministers calling on Government to:
 - Commit to more ambitious action on waste reduction and recycling through expanded product stewardship and regulations for mandatory recycled content; and
 - Redirect money collected through the NSW Government Waste Levy to support support councils and communities to implement local waste reduction or circular economy initiatives.

4. Writing to Local Government NSW requesting the Association to raise the profile of recycled content in local government procurement practices and invest in the development of support interventions that enable councils to overcome constraints to procuring products containing recycled materials.

Attachment(s)

Nil

12. Advisory Committee Minutes

12.1 Commercial Services Committee Minutes - 15 November 2022

Attendance

Crs Sharon Cadwallader (Mayor - in the chair), Kiri Dicker, Simon Chate, Jeff Johnson (via Zoom), Eoin Johnston (via Zoom), Stephen McCarthy, Nigel Buchanan (via Zoom), Eva Ramsey (arrived at 5.02pm) and Rodney Bruem.

Paul Hickey (General Manager), Matthew Wood (Director, Planning and Environmental Health Division), Kelly Brown (Director, Corporate and Community Division), Paul Tsikleas (Manager, Commercial Services) and Sandra Bailey (Secretary) were in attendance.

There were no people in the gallery at this time.

1. Acknowledgement of Country

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

2. Apologies

An apology was received from Cr Phillip Meehan.

RECOMMENDATION

(Cr Simon Chate/Cr Kiri Dicker)

That such apology be accepted and leave of absence granted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eva Ramsey and Cr Phillip Meehan

3. Declarations of Interest

Nil

4. Deputations

Nil

5. Committee Reports

5.1 Ballina Byron Gateway Airport - Long Term Financial Plan - Review

RECOMMENDATION

(Cr Rodney Bruem/Cr Stephen McCarthy)

1. That Council notes the contents of this report in respect to the potential for savings for the runway strengthening project by closing the Ballina Byron Gateway Airport for a period of approximately three weeks, albeit that due to the need to offset those savings with revenue foregone, compensation to airport operators due to the loss of business and the negative reputational and tourism industry impacts for the Northern Rivers region for that period, the preference is not to proceed further with analysing this option.
2. That Council notes the contents of this report in respect to the leasing of the Coffs Harbour Airport by Coffs Harbour City Council.
3. That Council approves the inclusion of the revised long term financial plan for the Ballina – Byron Gateway Airport, as per Attachments 1 and 2 to this report, in Council's adopted Long Term Financial Plan, with the revised plan also providing for a \$11.5m loan in 2022/23 to finance the runway strengthening works.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eva Ramsey and Cr Phillip Meehan

5.2 Property Development Activities - Funding Review

RECOMMENDATION

(Cr Stephen McCarthy/Cr Rodney Bruem)

That Council notes the contents of this report in respect to the forecast movements for the Property Development Reserve and the Community Infrastructure Reserve, as well as the current and forecast loan debt for Council's commercial property development activities.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eva Ramsey and Cr Phillip Meehan

5.3 Russellton Industrial Estate - Final Stage of Development

RECOMMENDATION

(Cr Rodney Bruem/Cr Stephen McCarthy)

1. That based on the contents of this report, Council resolves to proceed with development of Lot 21 in DP 1252162 to create 27 serviced industrial lots and one public reserve lot as per development consent 2008/803 (as amended).
2. The General Manager is authorised to call tenders to undertake the civil construction works with the outcome of the tender process to be reported back to Council.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eva Ramsey and Cr Phillip Meehan

5.4 Commercial Redevelopment Options - 71 Tamar Street Ballina

RECOMMENDATION

(Cr Stephen McCarthy/Cr Simon Chate)

That based on the contents of this report, Council authorises the General Manager to finalise negotiations for an insurance payout for the damage incurred on the building located on 71 Tamar Street and proceed with preparing and lodging a development application for a three-level commercial building on the site.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eva Ramsey and Cr Phillip Meehan

5.5 Wollongbar Urban Expansion Area - Residential Housing Proposal

A **Motion** was moved by Cr Kiri Dicker and seconded by Cr Simon Chate

1. That Council sell at public auction Lots 1-18 (Site 1) of the Wollongbar Urban Expansion Area.
2. That Council further explore the feasibility of developing and retaining for leasing all or part of Site 2 (Lots 19 to 30) of the WUEA for the purposes of providing affordable housing for essential workers in accordance with State Environmental Planning Policy (Affordable Rental Housing) 2021.
3. That Council write to or arrange a meeting with the Minister for Families and Communities and Minister for Disability Services, Hon Natasha McLaren-Jones to discuss social housing projects for Ballina Shire.

Cr Eva Ramsey arrived at the meeting at 05:02 pm.

An **Amendment** was moved by Cr Jeff Johnson

That Council defer this matter to a Councillor briefing.

The **Amendment LAPSED.**

The **Motion** was **CARRIED.**

FOR VOTE - Cr Sharon Cadwallader, Cr Kiri Dicker, Cr Simon Chate, Cr Stephen McCarthy, Cr Eva Ramsey and Cr Rodney Bruem

AGAINST VOTE - Cr Jeff Johnson, Cr Eoin Johnston and Cr Nigel Buchanan

ABSENT. DID NOT VOTE - Cr Phillip Meehan

RECOMMENDATION

(Cr Kiri Dicker/Cr Simon Chate)

1. That Council sell at public auction Lots 1-18 (Site 1) of the Wollongbar Urban Expansion Area.
2. That Council further explore the feasibility of developing and retaining for leasing all or part of Site 2 (Lots 19 to 30) of the WUEA for the purposes of providing affordable housing for essential workers in accordance with State Environmental Planning Policy (Affordable Rental Housing) 2021.
3. That Council write to or arrange a meeting with the Minister for Families and Communities and Minister for Disability Services, Hon Natasha McLaren-Jones to discuss social housing projects for Ballina Shire.

FOR VOTE - Cr Sharon Cadwallader, Cr Kiri Dicker, Cr Simon Chate, Cr Stephen McCarthy, Cr Eva Ramsey and Cr Rodney Bruem

AGAINST VOTE - Cr Jeff Johnson, Cr Eoin Johnston and Cr Nigel Buchanan

ABSENT. DID NOT VOTE - Cr Phillip Meehan

6. Confidential Session

RECOMMENDATION

(Cr Eva Ramsey/Cr Stephen McCarthy)

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.

6.1 Russellton Industrial Estate - Land Sale

Reason for Confidentiality

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

- d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest due to the ongoing commercial negotiations and the release of any information could prejudice those negotiations, as well as disclosing private and commercial information relating to the proponents.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Phillip Meehan

(The Council moved into Confidential Session at 5.16pm).

Open Council

RECOMMENDATION

(Cr Kiri Dicker/Cr Simon Chate)

That Council move into Open Council and out of Committee of the Whole.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Phillip Meehan

(The Council moved into Open Council at 5.47pm).

The General Manager reported to the Open Meeting the recommendations made while in Confidential Session:

6.1 Russellton Industrial Estate - Land Sale

RECOMMENDATION

(Cr Rodney Bruem/Cr Stephen McCarthy)

That based on the contents of this report Council authorises the General Manager to finalise negotiations for the sale of proposed Lots 17, 18 and 28 in the proposed subdivision of Lot 21 DP 1252162 at the Russellton Industrial Estate, Wollongbar at the price negotiated, execute all relevant contract for sale documents and attach the Council seal to same.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Phillip Meehan

RECOMMENDATION

(Cr Rodney Bruem/Cr Nigel Buchanan)

That Lot 15 in the proposed subdivision of Lot 21 DP 1252162 at the Russellton Industrial Estate, Wollongbar, be sold by public auction.

FOR VOTE - Cr Sharon Cadwallader, Cr Kiri Dicker, Cr Jeff Johnson, Cr Simon Chate, Cr Stephen McCarthy, Cr Nigel Buchanan, Cr Eva Ramsey and Cr Rodney Bruem
AGAINST VOTE - Cr Eoin Johnston
ABSENT. DID NOT VOTE - Cr Phillip Meehan

Adoption of Recommendations from Confidential Session

RECOMMENDATION

(Cr Rodney Bruem/Cr Stephen McCarthy)

That the recommendations made whilst in Confidential Session, be adopted.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Phillip Meehan

MEETING CLOSURE

5.48pm

RECOMMENDATION

That Council confirms the minutes of the Commercial Services Committee meeting held 15 November 2022 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

13.1 Mayoral Meetings

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

13.1 Mayoral Meetings

Councillor

Sharon Cadwallader

Activities I have attended, or propose to attend, as at the time of writing this report, since the October 2022 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
27 October	Dept of Regional NSW, Resilient Homes Program Briefing
27 October	NSW Premier Flood Response Update
27 October	Northern Rivers Community Gallery Exhibitions Launch
29 October	Official Opening of the 2022 Alstonville Show
29 October	Aussies 4 Aussies fundraising function
31 October	Ballina Library Social Circle - guest speaker
2 November	Rous County Council, Cr tour of St Helena 600 pipeline and Dunoon Dam walk
2 November	Cr Briefing - Rating Structure
2 November	Cr Briefing - Pat Morton Masterplan
5 November	Blessing of the Boat - Rainbow Region Dragon Boat Club Inc
5 November	SCU Graduation Ceremony, faculties of Health, Education and Gribi College of Indigenous Aust. Peoples
5 November	SCU Graduation Ceremony, faculties of Business, Law & Arts, Science & Engineering, The Hotel School, SCU College
6 November	Lennox Head Lions 20th Anniversary Celebrations
7 November	Cr On-site inspection of Northern Rivers Wildlife Hospital, Wollongbar
8 November	Public citizenship ceremony
8 November	Northern Rivers Community Foundation Grant Giving event
9 November	Green Innovation Awards 2022 - Finals Event
9 November	Rob Sands traffic and road upgrades meeting
9 November	Hazel Matthews WIRES virtual fencing meeting
10 November	Graham Eggins meeting - homelessness
10 November	C Ward Committee meeting
11 November	Remembrance Day Commemoration Service and Wreath Laying Ceremony
12 November	Love Bites Gala Dinner, Rotary Club of Ballina on Richmond
14 November	Australian Coastal Councils Association (ACCA) meeting
15 November	Extraordinary JO Meeting
15 November	Phil Rudd, NRJO Meeting
15 November	Commercial Services Committee meeting
15 November	North Coast Briefing
16 November	Rous County Council workshop
17 November	NSW JO Chairs Forum
18 November	Country Mayors meeting
18 November	BACCI Christmas Arts & Craft Exhibition launch
19 November	Peter Thorpe funeral service
19 November	NSW SES Northern Rivers Command Awards Ceremony

13.1 Mayoral Meetings

21 November	B Ward Committee meeting
21 November	Graham Eggins follow up meeting - homelessness
22 November	Ballina Shire Economic Activation Group
22 November	North Coast Briefing
23 November	Northern Regional Planning Panel Council briefing
22 November	Qantas meeting with Joshua Hogan, Regional Sales & Development Manager – NSW / VIC
23 November	NRRC Advisory Board meeting
24 November	Ordinary Council meeting

RECOMMENDATION

That Council notes the contents of the report on Mayoral meetings.

Attachment(s)

Nil

13.2 Cr Eoin Johnston - LGNSW Annual Conference 2022

Councillor

Eoin Johnston

I submit this condensed report on my attendance at the Local Government NSW Annual Conference held at the Crown Plaza Hunter Valley on 23-25 October. I was accompanied by Councillors Eva Ramsey, Rod Bruem and Simon Chate. Mayor Sharon Cadwallader also attended, filling the dual roles of representing our Shire and Rous County Council.

There were over 700 attendees and a number of apologies were received from flood affected shires. Had the meeting been held this week I suspect there would have been a marked increase in the numbers unable to attend, such is the present state of rural NSW.

On the Sunday afternoon a number of workshops were held covering: Universal Urban Design; Creating Smart Places; Protecting Against Biosecurity Risks and Building a Resilient Local Government Sector. I attended the Biosecurity session and it was a well prepared and detailed presentation.

The official opening followed with various speakers including the pairing of Professor Mary O'Kane and Mick Fuller, both of whom are well known to Northern Rivers Communities, having conducted the NSW Flood Inquiry. The former leader of the NSW opposition and present Chairman of Lifeline, John Brogden, spoke with passion about his long-term struggle with mental illness and the need to be aware of challenging issues amongst all of us that are often not readily apparent.

The A R Bluett Award for the most progressive council in the state was accepted by Cr Michael Reagan, Mayor of Northern Beaches Council. This award has been described as "the pinnacle of local government achievement."

The President of LGNSW, Darriea Turley AM officially opened the meeting. Ms Turley was a long-term councillor at Broken Hill and has a strong affiliation with rural electorates. She will be visiting us at Ballina for a series of meetings in the new year.

Monday was taken up by the consideration of 150 notices of motions interspersed with presentations from major sponsors of the event. The majority were passed without debate and only about fifteen percent were put to the vote. It is a valuable exercise in democracy but the reality is that very few motions will survive the culling process and be approved by Parliament.

The benefit, in my view, is that attendees can observe and absorb the diversity of the needs and wants of councillors from the inner cities to the wide range of communities across rural NSW. On some issues there is a disconnect on opinions between city and country but the common threads that became obvious included: concerns with weather born natural disasters, the costs of rehabilitation after the event, the need to financially support our volunteers, the provision of affordable sources of power into the future, the crisis in the supply of skills and affordable housing and the many motions directed to the Department of Planning and Environment.

In the evening, dinner was served at Pokolbin's Hope Estate and the organisers did a remarkable job preparing the venue and mustering an army of hospitality workers needed to serve the 720 guests. A blast from past, the Cockroaches, ignited the stage and the dance floor filled with young and old, displaying various degrees of dexterity. Mayor Sharon and husband Bruce celebrated an important wedding anniversary on that day and it was duly announced by the lead singer, Paul Field, to the cheers of the crowd.

The final day was taken up with panel presentations from Wendy Tuckerman MP, Minister for Local Government; Greg Warren MP, Shadow Minister for Local Government; Sam Farraway MLC, Minister for Regional Transport and Roads; John Graham MLC, Deputy Leader of the Opposition in the Legislative Council and Robert Borsak MLC, the Shooters, Fishers and Farmers Party.

The Conference concluded with a polished delivery from the dynamic demographer, Simon Kuestenmasher and an address from Linda Scott, President of the Australian Local Government Association.

The Lord Mayor of Parramatta, Cr Donna Davis, closed proceedings with the announcement that next year's conference will be hosted in her shire at the Rosehill Racecourse.

We can only hope that Mother Nature, or whoever you believe in, can get this weather sorted over the next twelve months.

RECOMMENDATION

That Council notes the contents of the report from Cr Eoin Johnston on attendance at the LGNSW Annual Conference held in the Hunter Valley in October 2022.

Attachment(s)

Nil

14. Confidential Session

14. Confidential Session

Nil Items