

NOTICE OF MEETING



STRATEGIC PLANNING COMMITTEE MEETING

A Strategic Planning Committee Meeting of Byron Shire Council will be held as follows:

Venue	Council Chambers, Station Street, Mullumbimby
Date	Thursday, 29 March 2012
Time	9.00am

This meeting will be open to the public and the press.

Public Access relating to items on this Agenda can be made at 9.00am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink, appearing to read 'Graeme Faulkner', is positioned above the printed name.

Graeme Faulkner
General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person’s spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person’s spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- 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.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & 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 conflicts of interests must be dealt with in at least 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 if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

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BUSINESS OF MEETING

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3. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

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GENERAL MANAGER'S REPORT

Report No. 4.1. Station Street Mullumbimby – Affordable Housing Project

General Manager

5 **File No:** ADM304500 #1183671

Principal Activity: Community Services

Summary: Housing affordability is an issue of significant community concern in Byron Shire. In 2009, Council engaged Dr Judith Stubbs to develop options for affordable housing on Council's Station Street site in Mullumbimby.

Dr Stubbs' report was considered by Council's Strategic Planning Committee (SPC) on 26 November 2009. Council subsequently resolved on 17 December 2009 (Resn 09-1081) that the affordable housing project should be reviewed following a review of the Mullumbimby Inflow and Infiltration System which, at that time, was constraining development in Mullumbimby. The moratorium on development has subsequently been lifted (Resn 11-256). This report therefore provides Council the opportunity to further consider the potential for affordable housing on the Station Street site.

Following a review of the options, management considers that none of the models put forward in the Stubbs' report are financially viable for Council. All of the options put forward would create a significant unsustainable impost on Council's financial position. For these reasons, management recommends that the Station Street Affordable Housing Project does not proceed. Management recommends instead that, should Council wish to facilitate affordable housing development in the Shire, it focuses on assisting private developers to increase supply through planning and other mechanisms.

RECOMMENDATION:

- 10
1. **That the Strategic Planning Committee note the report on the Station Street Mullumbimby Affordable Housing Project.**

 - 15 2. **That the Strategic Planning Committee note that management examined a number of options for the potential funding of the Station Street Mullumbimby Affordable Housing Project, including the potential for sale of the following parcels of operational land to assist with the anticipated costs of the development:**
 - 20 a) **Lot 530 DP238451 'Roundhouse'**
 - b) **Lot 2 DP1004514 'Bayshore Drive'**
 - c) **Lot 1 435267 'Old Telstra Site'.**

 - 25 3. **That the Strategic Planning Committee note that the options proposed for the Station Street Affordable Housing Project are not financially viable for Council in either the short- or the longer-term**

 4. **That the Strategic Planning Committee resolve under delegated authority that the Station Street Affordable Housing Project not proceed.**

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- 5 **5. That the Strategic Planning Committee resolve under delegated authority to make a submission to the NSW State Government noting that affordable housing construction is beyond the financial capacity of Byron Shire Council, and that Housing NSW should urgently review the provision of affordable housing in the Shire.**

Attachments:

- 10
- Station Street Mullumbimby Affordable Housing Project: Report on Options for Site Development #918231 [187 pages] **Annexure 10(a)**
 - Net Present Value Analysis – Affordable Housing Options #1204415 [6 pages] **Annexure 10(b)**
- 15 *Annexure 10(a): Due to the size of this document it has been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website.*

Report

Housing affordability is an issue of significant community concern in Byron Shire. In 2009, Council engaged Dr Judith Stubbs to develop options for affordable housing at Council's Station Street site in Mullumbimby. The report is attached as Annexure 10(a). After an analysis of site constraints, and an economic feasibility study, Dr Stubbs developed three options: a mixed commercial-residential development; a seniors' development; and a residential development.

When these options were presented to Council in 2009, Council requested that further work continue on two options only: the seniors' development; and a new option – a mixed residential-seniors' development. Following costing of these two options, it was decided in consultation with Council staff to include a third option: a residential development with engineering detail on foundations. The final report on these options was presented at Council's Strategic Planning Committee (SPC) meeting of 26 November 2009.

Council subsequently resolved on 17 December 2009 (Resn 09-1081) that the affordable housing project be reviewed following the review of the Mullumbimby Inflow and Infiltration System. At that time, Council had placed a moratorium on development in the Brunswick Valley Catchment (including Mullumbimby) (Resn 08-748).

The Mullumbimby Inflow and Infiltration System was reviewed throughout 2009-2011 in the context of the development of the Brunswick Sewerage Augmentation Scheme (BASAS). When the BASAS was completed in 2011, and had capacity to receive additional load, the moratorium on development in Mullumbimby was lifted (Resn 11-256).

This report provides Council with an opportunity to consider the viability of the Station Street Affordable Housing Project.

Among other things, this report also notes that NSW Housing has constructed very few residences in Byron Shire in recent years, which has increased rental affordability pressures. Management therefore recommends that Council write to NSW State Government requesting that Housing NSW urgently review the provision of affordable housing in the Shire.

Options for site development

Three options for affordable housing at the Station Street Mullumbimby site were presented to SPC for consideration on 26 November 2009:

1. a 'Seniors SEPP' model proposed under State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004, consisting of 24 x 1.5 and 2 bedroom dwellings
2. a mixed seniors/residential development of 21 x 1.5 and 2 bedroom dwellings and
3. a residential development of 14 x 1.5 and 2 bedroom dwellings.

Due to a range of issues related to site constraints (principally related to floor level), the consequent difficulty of compliance with the access provisions of the Seniors SEPP given these constraints, and the inclusion of above-BASIX (Building Sustainability Index) environmental best practice measures in the project plans, Dr Stubbs considered that it was likely that all three options would result in significant capital shortfalls (of around \$1.5 to \$2.0 million est. in 2009).

Council staff have reviewed these figures to estimate the impacts on Council's bottom line. Staff estimate that the capital shortfalls from the three options put forward would now result in deficits of between \$1.4m (residential development) - \$5.2m (seniors development) by 2021/22. These impacts are discussed further under the 'Financial Implications' section below.

Losses of between \$1.5m to \$2.0m were anticipated as 'best case scenarios' at the time of the Stubbs' report, even with affordable rental returns (80% of market rent) and after factoring in possible Australian Government National Rental Affordability Scheme (NRAS) funding. Losses were anticipated to be higher once contingencies were factored in, and should very low income households be accommodated under 'social rental' structures as part of the model.

Dr Stubbs concluded that it was unlikely that sufficient cost savings could be found in any of the three selected options to make the project independently viable as an affordable housing development.

The report also noted that the capital requirements from Council would be higher still if NRAS funding could not be accessed. Council has recently been advised that there is unlikely to be further funding made available under the NRAS, with the last (4th) round having concluded in December 2010.

Funding options – Affordable housing project

Dr Stubbs noted in her report that there were a range of potential funding options available for the Station Street Affordable Housing Project. These included: direct funding such as provision of land by Council and funds from community housing providers; State and Australian Government funding; debt funding through borrowings; the use of income from rentals to service loans; the sale of a proportion of the units to offset initial costs; or a combination of some or all of these.

Additional considerations are: what Council's role would be in the development and ongoing operation of the housing project (direct provider vs. arms length); and what the market would be prepared to pay for both the site and subsequently the units through a competitive tender / sale process.

In order to give Council additional options, should it wish to proceed with this project, management considered the ability of Council to address the capital shortfalls identified in the Stubbs and staff analyses through the establishment of an affordable housing reserve. The concept was that this reserve could be funded through the sale of selected parcels of operational land. Accumulated funds could then be used either to reduce borrowings, or to directly fund the Station Street development itself.

This funding option was investigated via a review of the land register and three parcels of land were identified as possibly suitable for sale:

- a) Lot 530 DP238451 'Roundhouse'
- b) Lot 2 DP1004514 'Bayshore Drive'
- c) Lot 1 435267 'Old Telstra Site'.

Considerations – Potentially Saleable Operational Lands

Councillors should be aware of the following issues in relation to the three parcels of land identified as potentially saleable to fund the development of Affordable Housing in Station Street Mullumbimby:

a) Lot 530 DP238451 'Roundhouse'

Council has resolved to implement an 11 lot subdivision on the Roundhouse site. Subject to agreement with the Ocean Shores Country Club (OSCC) and associated costs, access and services will be provided to two adjacent lots owned by the Club.

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Work has progressed on the implementation of the subdivision with some delay experienced in resolving issues. An investigation of an alleged contaminated well on the site was conducted by the NSW Office of Environment and Heritage (OEH) and only recently concluded. OEH have written to Council and advised that at this stage no further action would be required of Council. The status of the proposed agreement with the OSCC in terms of legislation pertaining to Public-Private Partnerships (PPP) has been tested with the Department of Local Government (DLG). DLG have written to Council and advised that the proposed subdivision and arrangement is not a PPP.

5
10 Subject to completion of the agreement with the OSCC it is expected the subdivision would be completed by July 2013. Council has resolved to retain two lots from the subdivision for the community. Initial sale of some of the remaining lots will provide funds to cover the cost of the subdivision and it is expected there will ultimately be a surplus available.

15 **b) Lot 2 DP1004514 'Bayshore Drive'**

In December 2010, Council considered a report on the potential of developing a concept plan for Council-owned land at Bayshore Drive, Byron Bay (Lot 2 DP 1004514). Council resolved:

20 **10-1021**

That a workshop be convened early in the new year to allow Councillors to receive a briefing from staff with updated aerial shots or proposed future zonings including other reports eg Byron Bay, Suffolk Park, Ewingsdale Settlement Strategy 2002 and Local Environmental Study.

25

That Council consider the allocation of up to \$20,000 in the December 2010 quarterly review for the preparation of a concept plan for Bayshore Drive land at Lot 2 DP 1004514 with funding being provided by the Property Reserve.

30 Council subsequently allocated \$20,000 at the December quarterly review.

A report was prepared for Council to facilitate a workshop in accordance with the resolution of Council and this occurred at the Strategic Planning Committee meeting in March 2011. Council resolved:

35

11-381

1. *That Council note the report and receive a further report to the next Strategic Planning Committee Meeting on the concept design brief.*

40 2. *That the report consider options:*

- a) *to retain a walking and cycling corridor to provide a future link between Bayshore Drive and the Byron Regional Sports and Cultural Complex*
- b) *for affordable housing*

45 Due to the resignation of key staff and resource constraints, progression of this resolution has been delayed. It is expected a report concerning a proposed Options Report will be reported to the Strategic Planning Committee Meeting on 29 March 2012.

50 **c) Lot 1 435267 'Old Telstra Site'**

Lot 1 435267 Old Telstra Depot Site is the subject of a current Expression of Interest process to lease the site for a period of 2 years. The Expression of Interest process has recently been concluded and is the subject of a Confidential Report to Council on 29 March 2012.

55 Management considers, in summary, that given the scale of the financial shortfall, it is unlikely that the proceeds from the sale of any of the above (or combinations of the above) parcels of land

would be sufficient to address the capital shortfall for the Station Street Affordable Housing Project effectively.

5 However, if Council has a different view, it would be possible to proceed to valuations to test the market value of the properties in question. This would have impacts for the reports on the Old Telstra Site and Bayshore Drive, which are also being considered as part of the agenda of the Strategic Planning Committee agenda of 29 March 2012.

Project Management

10 As well as being financially challenging for Council, as noted in the 2009 reports to SPC and Council, a project of this size and complexity would require considerable resources in terms of project management, and would require the recruitment of new staff within Council to manage it.

15 In addition to new staffing and project management costs (estimated at up to approximately \$300,000 in 2009), there could be additional costs to Council (estimated at up to approximately \$450,000 in 2009) for fees, professional costs, legal costs, planning fees, and similar depending on the model selected for progression. Once the facility was constructed, there would also be significant ongoing costs for the operation and maintenance of the facility, depending on the
20 model selected.

To offset some of these anticipated costs, Council could consider partnering with a community organisation such as North Coast Community Housing to progress aspects of the affordable housing project. It is understood that the Mayor has recently had discussions with community
25 organisations on issues including affordable housing and other housing issues, including homelessness. There is no Affordable Housing Officer position currently within Council to progress these relationships or possible agreements.

30 Should Council resolve to proceed with an affordable housing project at Station Street Mullumbimby, it would need to call for Expressions of Interest (or Tenders depending on likely cost) for:

- a) Design and Construct and
- b) Affordable Housing Facilities Management

35 to be able to access state or federal government funding. The Expressions of Interest processes would need to be considered alongside other priorities in the 2012/13 budget process.

Delivery and management – Affordable housing project

40 There would be four phases to the Station Street Affordable Housing project in terms of delivery and management:

- 1. funding
- 2. design and construct
- 3. operation
- 4. maintenance.

45 Council could be involved in any of the above areas, to a greater or lesser extent.

The four main delivery options are:

- 50 1. Arms Length (completely outsourced) model – the whole project is assigned to a third party (or consortium) via a competitive tendering process and contractual arrangement. Council-staff would need to be involved in the design and implementation of the tender process. Contractors may be private, public or community sector bodies or a consortium

involving a mixture of these. In this model, funding, design, construction, operation and maintenance of the facility would all be outsourced.

2. Partnership with a Community or Social Housing Provider or Private Developer – Council would enter a joint venture via an Expression of Interest / Tender process for design and construct and management and maintenance, or for selected aspects of these. This model would involve greater ongoing involvement and risk to Council than Option 1
3. Direct Council provision – Council manages all aspects of design, development, operations and management, with commensurate expertise and staff required. Council does not currently have sufficient resource to directly provide services, and very few NSW Councils are engaged at this direct level. There would be greater cost and risk to Council from proceeding with this option than other options. It is not recommended by management.
4. Private Equity model – Council constructs the development, using appropriate contractors or builders, and the dwellings are sold off to smaller investors. This approach has the potential advantage of allowing Council to recoup capital, but the financial risks are significant and, in addition, Dr Stubbs considered it would be difficult to ensure the development remained affordable housing in perpetuity, or could be used by low or moderate income households long-term. Given the need for significant up-front investment, and given current resource constraints, this model is not recommended by management.

Should Council wish to proceed with any of these options, it would also be necessary to source ongoing funding for the creation of an Affordable Housing Officer position to coordinate the project.

A fifth model, not explored by Dr Stubbs in her report, involves Council resolving to not proceed with an affordable housing project at Station Street Mullumbimby, but rather to facilitate Development Applications for affordable housing projects elsewhere throughout the Shire as they are submitted.

Affordable housing in Byron Shire

For the purposes of development assessments the Environmental Planning and Assessment Act defines affordable housing as:

"affordable housing" means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

State Environmental Planning Policy (Affordable Rental Housing) 2009 also sets out this definition in that "a household is taken to be a very low income household, low income household or moderate income household if the household:

- (a) has a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or
- (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme."

Council is already promoting secondary dwellings, or 'Granny Flats', as private affordable housing projects and there has been significant interest in Secondary Dwellings with over 40 applications for secondary dwellings being lodged in 2011. This has been mainly due to Council Resolution 11-268 on 14 April 2011, which allows for the removal of Section 64 and Section 94

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contributions for Secondary Dwellings for developments which comply with minimum standards specified in the resolution.

5 Additionally Council has undertaken a public meeting to promote and explain the requirements of the State Environmental Planning Policy (Affordable Rental Housing) / construction standards. Council Resolution 11-268 and has also created simplified template Statements of Environmental Effects to assist people in the lodgement of Development Applications.

10 It is worth noting also that, while housing affordability is an issue of community concern, Byron Shire Council is largely on track in terms of the targets set for new residential development in the Far North Coast Regional Strategy (FNCRS). In 2006, the FNCRS set a target of 2,600 new residences for Byron Shire between 2006 and 2031; an average of 104 new residences per annum. Council approved 150 residences per year in 2006 and 2007 and since then has
15 approved around 100 per year in the context of a slowed economy. While housing prices are undeniably high in the Shire, housing stock will continue to grow on target with the impending release of additional residential land at Bayside Brunswick together with proposed West Byron rezoning and residential allotments at Mullumbimby and Bangalow.

20 In terms of seniors' accommodation, there is currently a new seniors' living development proceeding at Suffolk Park and a similar development has been approved at Ocean Shores but has not yet proceeded.

25 Council has been responsive to community concerns about affordable housing. For example, Council has previously established Steering Committees and Project Reference Groups to address these issues. In 2002, it released the Affordable Housing Strategy for Urban Areas to identify ways of achieving greater housing affordability in the Shire through planning and other mechanisms. An Affordable Rural Housing Options brochure has also been released.

30 There are no real inconsistencies between the draft Byron LEP 2012 and the recommendations of the 2002 Affordable Housing Strategy. However, as was reported to Council on 17 November 2011, many of the Strategy's planning recommendations are now addressed by the State Environmental Planning Policy for affordable housing and thus do not require separate implementation in the draft LEP.

35 NSW Housing has constructed very few residences in Byron Shire in recent years, however, and this has increased rental affordability pressures. Council may wish to write to the State Government in this regard.

40 **Financial Implications**

45 As noted earlier in this report, management considers that the significant capital shortfalls from the three options put forward for affordable housing at Station Street Mullumbimby (\$1.4m-\$5.2m by 2021/22) mean that the Station Street Affordable Housing project is beyond Council's financial means. For this reason, management recommends that the development does not proceed.

50 Dr Stubbs estimated in 2009 that the seniors' development would cost \$6.47 million to construct, providing 24 units inclusive of ancillary works, Council fees and other professional costs, at an average cost of \$270,000 per dwelling. The proposed seniors development would not be self-funding as rental income would be insufficient to repay required borrowings, and would
55 require an estimated capital injection of around \$2.3 million (est. 2009) by Council or its development partners (private or community), or from other government funding sources. Dr Stubbs also considered that sale of units to fund the shortfall would be unlikely to be an option, as approximately four dwellings would need to be sold for every one affordable housing dwelling due to the high cost of construction arising from the disadvantages of the site, and the likely sale price of such development in Mullumbimby. In these circumstances, only 20 percent of the development would then be available for affordable rental housing.

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Dr Stubbs estimated that the mixed seniors-residential development would have a projected construction cost of \$5.45 million for 21 units inclusive of ancillary works, Council fees and other professional costs, at an average cost of \$260,000 per dwelling. As for the seniors' development, the mixed seniors-residential development model would not be self-funding through borrowings and rental, requiring capital injection of around \$1.7 million (est. 2009) under the projected debt-equity scenario by Council or a development partner. Sale of units to fund the shortfall would again be unlikely to be an option, as around two dwellings would need to be sold for every one affordable housing dwelling (ie only around 30 percent of dwellings would be retained as affordable rental housing).

The residential development was estimated by Dr Stubbs to have a projected construction cost of \$3.84 million (or \$270,000 per dwelling est. 2009). Similar to the other models, the proposed development would not be self-funding through borrowings and rental and would require a capital injection of around \$1.2 million (est. 2009) under the projected debt-equity scenario. Sale of units to fund the shortfall was again unlikely to be an option, as around two dwellings would need to be sold for every one affordable rental unit (ie only around 35 percent would be retained as affordable rental housing).

As noted previously, the project would also have significant resource implications for Council in terms of both financial and human resources. Dr Stubbs estimated that \$450,000 would be required for costs associated with Council fees, professional costs, legal costs, planning fees and the like. Project management costs would also be likely to be significant (\$300,000 plus) and could not be absorbed within current staffing levels. Even for the 'arms length' model, a project of this complexity and scale would require significant investment of staff time and resources for the tender and contract management process.

Models requiring greater Council involvement (partnership / direct provision / private equity), would require greater financial and human resource investment. For example, Dr Stubbs estimated that a project manager for a Council-managed 'design and construct' process would cost around \$300,000. All of these costs would need to be considered and incorporated in Council's 2012/13 budget. There is no officer currently allocated to Affordable Housing issues.

As noted previously, Council staff have reviewed and updated the cost assumptions in the Stubbs report to present values. Provided at Annexure 10(b) is a Net Present Value calculation for each of the three affordable housing options discussed in this report. This is in addition to the economic modelling done by Dr Stubbs. To arrive at the net present value results for each option, the following assumptions have been used:

1. Construction costs have been taken from the Stubbs report but indexed by 5% for three years given the Stubbs report was completed in 2009.
2. Loan borrowings are assumed over a 25-year period at a fixed rate of 7% interest per annum as likely loan borrowings Council may be able to secure for the project.
3. Co-ordination costs is a provision for a staff resource to manage the project during construction and then operations.
4. Operational costs have been provided at \$2,000 per unit indexed each year by 5%.
5. Rates and charges are provided for at \$2,000 per unit assuming the development is strata titled and fully serviced in each option. These are indexed by 5% each year.
6. Sale proceeds from Council land assume no profit from the Roundhouse subdivision is applied and assumes a sale price combined of the Telstra Depot Site and Bayshore Drive site. It is also assumed that sale proceeds are derived in the first year and used to reduce the amount of loan borrowings.

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7. Unit rental is based on affordable housing rental as disclosed in the Stubbs Report and indexed by 3% each year.
8. It is assumed that (in the worst case scenario) there is no grant funding available for construction or for ongoing operations once constructed.
- 5 9. A provision is provided at 3% of capital value for each option to generate funds for eventual replacement, or significant upgrade, and/or renovation each year.
10. Cash flows for the net present value analysis have been discounted by the current cash rate of 4.25% to reflect an opportunity cost of the funding required.
- 10 Each of the affordable housing options discussed in this report reveal the following net present value results as summarised in the table below (detailed at pages 1 to 3 of Annexure 10(b)):

Affordable Housing Option	Net Present Value over 10 years \$	Net Present Value over 25 years \$
Option 1 – Seniors Development 24 Units	-4,771,074	-8,255,959
Option 2 – Mixed Development 21 Units	-3,568,047	-6,863,186
Option 3 – Residential Development 14 Units	-1,580,659	-2,735,485

Impact on General Fund Accumulated Surplus

- 15 Page 4 of Annexure 10(b) provides an analysis of the impact of each of the affordable housing options on the General Fund Accumulated Surplus over the next ten years based on the projected forecast presented to the Finance Advisory Committee on 15 March 2012.
- 20 The current projection on the General Fund Accumulated Surplus suggests at deficit of \$826,300 in the 2021/2022 financial year prior to any impact of the three affordable housing options. Applying the net cost of each affordable housing option prior to discounting to a net present value reveals the following estimated General Fund Accumulated Surplus results by the year
- 25 2021/2022:
1. If Option 1 is pursued – Seniors Development of 24 Units – a deficit of \$5,240,214
 2. If Option 2 is pursued – Mixed Development of 21 Units – a deficit of \$3,785,004
 3. If Option 3 is pursued – Residential Development 14 Units – a deficit of \$1,370,862
- 30 The Net Present Value analysis has considered both the cost of construction and of the operation of the development for each option to identify indicative net cost implications for Council. What each option demonstrates is that no option is financially viable as the cash flow projections are negative overall for each option. In addition, the size of the funding requirements suggested by the analysis under any option of the affordable housing project will create a significant
- 35 unsustainable impost on Council's financial position given its current commitments. If it is Council's desire to pursue an affordable housing option it would need to reduce other programs/services to provide the estimated funding required as identified in the report.

Capital Expenditure Review

- 40 Should Council wish to proceed, Council would also need to notify the Division of Local Government of the proposed capital expenditure and follow the process for a capital expenditure review as detailed in the Capital Expenditure Guidelines (December 2010) issued by the Division of Local Government.

45

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Councils under the Guidelines are required to undertake a capital expenditure review for projects that are not exempt and cost in excess of 10% of Council's annual ordinary rates revenue or \$1 million (GST exclusive).

- 5 Exempt projects include project design and feasibility studies that do not commit Council to the project. Council would be required to complete a capital expenditure review prior to committing to the construction of an Affordable Housing Project. The process to be followed by Council is set out in the Guidelines.

10 **Statutory and Policy Compliance Implications**

Byron Shire Affordable Housing Strategy for Urban Areas (2002)

State Environmental Planning Policy (Affordable Rental Housing)

- 15 Local Government Act 1993 (particularly sections relating to Public-Private Partnerships; Capital Expenditure Guidelines)

Division of Local Government Capital Expenditure Guidelines (December 2010)

COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER’S REPORT

Report No. 4.2. Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009

5 Executive Manager: Community Infrastructure
File No: ENG540000 #1168283

Principal Activity: Open Space and Recreation

Summary: To update Council on the achievement to date and remaining planned actions for the “Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009” and other Byron Bay town centre matters.

RECOMMENDATION:

10 That the Strategic Planning Committee recommend to Council:

- 1. That Council note the works completed to date on the Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009 (Annexure 6b).
2. That a further “Landscape Plan for Byron Bay Town Centre” be prepared in 2012/13 for implementation commencing in 2013/14.
3. That funding of \$10,000 for the preparation of a “Landscape Plan for Byron Bay Town Centre” and adjoining public spaces, similar in format to the Port Douglas Landscape Plan, be undertaken as part of the 2012/13 delivery Program from the Byron Bay Town Centre Upgrade – Landscape/Precinct Plan (Acc 4841.001).
4. That Council receive a report by August 2012 on options for town centre signage after a detailed cross divisional review.
5. That an allocation of \$10,000 be referred to the Main Beach Crown Reserve Trust for consideration for a risk assessment analysis and report of Main Beach car park, Apex Park and the area around and east of the Surf Club approximately.
6. That Council note that the establishment of a Byron Bay Town Centre works team has not been included in the 2012/13 Delivery Plan.
7. That Council note that the removal of exotic vegetation species within the Byron Bay Town Centre will be undertaken in conjunction with maintenance, capital works and landscaping works as resources permit.

Attachments:

- 40 • Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009 #1209116 [53 pages] Annexure 6(a)
• Status of works for Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009 #1209122 [6 pages] Annexure 6(b)
45 • Expenditure on Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009 #1209125 [1 page] Annexure 6(c)
• Draft Review of Byron Bay town centre signage #1209128 [12 pages]..... Annexure 6(d)
• Extract Proposed 2012/13 Capital Works Budget #1209136 [1 page] Annexure 6(e)

Report

Background

5 Council, at its meeting on 14 May 2009, considered a report on Adoption of the Landscape Analysis and Renovation Plan Byron CBD and resolved:

Res 09-352

- 10 1. That Council note the submissions to the Landscape Analysis and Renovation Plan Byron Town Centre.
- 15 2. That Council adopt the Landscape Analysis and Renovation Plan Byron CBD (Annexure 17(b) #849337), as amended below:
- every reference to CBD be amended to Town Centre.
- 20 3. That Council approve funding of \$150,000 from Section 94 funds, as per Resolution No. 06-43, to implement The Landscape Analysis and Renovation Plan Byron CBD, with the following amendments to funding:
- 4.1.2 Railway Cottage (first dot point) Landscaping - \$3000 be deferred
 - 4.1.3 Railway Park (second dot point) Sculpture - \$10,000 be deferred until public art policy is done.
 - 4.1.3 Railway Park (third dot point) Historic interpretation - \$1500 be deferred
 - 4.1.9 Jonson Street east (first dot point) Tree guards - \$8,500 be deferred.
- 25 4. That a review of the suitability of log pinning of the beds containing the cudgerie trees at Jonson Street be investigated and reported back to Council (4.1.1 first dot point) and the last dot point, the planting of lomandra at the zig zag fence, transferred from the median

30 Council, at its meeting on 3 December 2009, considered a report on Amendment to Byron Town Centre Landscape Plan and resolved:

Res 09-1040

- 35 1. That Council endorse change in Landscape Analysis and Renovation Plan Byron Bay Town Centre (p 13) to surround existing Cudgerie trees in central island of Jonson Street using ACQ treated pine landscape sleepers (Annexure 2(b) #894241).
- 40 2. That Council endorse change (p 15) in Landscape Analysis and Renovation Plan Byron Bay Town Centre to plant Lomandra species on outside of zig zag fence in Jonson Street (Annexure 2(b)).
- 45 3. That Council prepare a maintenance plan for the town that identifies how often inspections and maintenance of the areas will be undertaken and that a landscape plan as per the Port Douglas plan be developed to establish the desired vegetation type and standard in each area of the town.
- 50 4. That Council establish a Byron Bay Town Centre works team to ensure that the works program and the general maintenance of the public spaces and infrastructure is in peak condition all year round.
5. That a plan be established to phase out exotic species in public areas as per the Biodiversity Conservation Strategy Action – 26 “That Council will commence replacing weed species from its parks and gardens with non-invasive and locally native species”.

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6. *That a review of town centre signage be undertaken with a view to provide new signage that minimises the number of signs and considers the bollard style signage as used by the Cape Byron Headland Trust.*

5 Council, at its meeting on 14 April 2011, considered a Notice of Motion on Byron Bay Town Centre Landscape and Renovation and Maintenance and resolved:

Res 11-284

That Council receive a report on:

- 10 a) *The progress of the Byron Bay Town Centre Landscape and Renovation Plan 2009 implementation (\$150,000 – Res 09-352)*
- 15 b) *The progress of the Tourism Management Plan, Strategy 7 and Action S7.1.2 Develop a BSC Tourism Works Plan to ensure the maintenance of facilities for tourism particularly during peak visitation periods*
- c) *The progress of the review of signage as per resolution 09-1040 part 6*
- 20 d) *The funding available to deliver maintenance and upgrade for Byron Bay in association with general work and tourism related expenditure including prior rate increases since 2004 and the current level of service provided (rate increases as identified in Notice of Motion)*

25 Council, at its meeting on 3 November 2011, considered a Notice of Motion on Byron Bay maintenance and risk assessment and resolved:

Res 11-867

1. *That Council receive a report with updates on:*

- 30 a) *Byron Bay Landscape and Renovation Plan works implementation since 2009*
- b) *identifying the balance of expenditure for the plan (\$150,000 - RES 09-352)*
- 35 c) *an overview of annual maintenance funding for maintenance of Byron Bay including previous specific rate increases, footpath dining, crown reserve commercial funds*
2. *That Council receive a report on a risk assessment analysis and disability access of Byron Bay town including the Main Beach Reserve area.*

40 Byron Bay Town Centre Landscape and Renovation Plan 2009

The Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009 was adopted by Council on 14 May 2009 (Res 09-352) and further amended on 3 December 2009 (Res 09-1040). A copy of the final, amended plan, is provided as Annexure 6(a).

45 Funding has been provided since 2008/09 on an annual basis to implement the Plan. Annexure 6(b) details the status of all actions in the Plan and Annexure 6(c) details total expenditure and source of funds per year since 2008/09.

50 Since 2008/09, total funding of \$353,800 has been provided and works of \$349,653 completed to date.

55 Works outstanding to complete all actions in the Byron Bay Town Centre Landscape Analysis and Renovation Plan 2009 have been estimated to cost \$31,200, without the costs for the street and uplighting, which needs further detailed investigation. There is approximately \$12,426 remaining in the budget for 2011/12 and if Council allocates the traditional budget of \$50,000 next year, then it is anticipated that all works will be completed in 2012/13.

To continue on from the work completed in the 2009 Plan, a further "Landscape Plan for the Byron Bay Town Centre" should be completed in 2012/13, with the aim to commence in 2013/14, subject to approval of the Plan and an appropriate budget by Council.

5

Exotic Vegetation Species within Byron Bay Town Centre

Res 09-1040

- 10 5. *That a plan be established to phase out exotic species in public areas as per the Biodiversity Conservation Strategy Action – 26 "That Council will commence replacing weed species from its parks and gardens with non-invasive and locally native species"*

15 The removal of exotic species in public areas of the Byron Bay town centre has been ongoing as part of normal parks maintenance works, any capital works and landscaping upgrades. The removal is occurring as priority for maintenance works and capital projects allow, together with the budgets available.

20 The removal and replacement of the exotic species could be expedited if additional resources and a separate budget were provided. This is best considered in conjunction with Council's deliberations on the Draft Delivery Programme for 2012/13. A nominal budget could be provided per year for these works in the landscaped areas and parks of the urban and town areas for the Shire. This would be in areas not subject to work by the Bush Regeneration Team and Bush Futures project.

25 If separate funding is provided then a programme per town / urban area would be completed in advance of works to identify those species to be removed and those to be planted. Status reports of the programme could be provided to Council over the life of the programme if required.

30 Byron Bay Town Centre Works Team

Res 09-1040

- 35 4. *That Council establish a Byron Bay Town Centre works team to ensure that the works program and the general maintenance of the public spaces and infrastructure is in peak condition all year round.*

40 Notwithstanding Res 09-1040 Council at this time was in the process of reducing its staff compliment through natural attrition and was attempting to absorb additional costs imposed on its operation.

In the preparation of the 2010/11 Management Plan, Community Infrastructure reduced its Capital Works program by \$853,000 to assist in Council meeting its Long Term Financial Plan objectives.

45 Work undertaken in the Byron Bay town centre and adjoining public open spaces in Byron Bay include:

- mechanical street sweeping - 7 days per week
- hand litter collection / sweeping – 7 days per week
- 50 • toilet cleaning - 7 days per week
- park mowing
- park maintenance
- removal of dumped rubbish
- drainage inspections and cleaning
- 55 • playground inspections

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There are winter and summer target schedules to reflect the higher seasonal uses of the parks, car parks, toilets and other facilities by both residents and visitors.

All of the above works are undertaken by a combination of Council staff and sub contractors.

5 Normally Council staff undertakes the mechanical street sweeping, toilet cleaning, park mowing, park maintenance, removal of dumped rubbish, playground inspections, drainage inspections and routine drain cleaning. Sub contractors are used normally to assist with hand litter collection / sweeping on Friday, Saturday and Sunday mornings, to supplement Council resources in high grass growth seasons, for special events such as New Year's Eve, Blues Fest, Schoolies and for
10 specialist maintenance activities such as cleaning confined spaces in the stormwater drainage system.

15 The expenditure for these works is costed to various budgets in the roads and parks financial areas. There are no separate budgets for Byron Bay town centre and the adjoining public spaces.

A dedicated works team would nominally consist of and use the following:

- supervisor
- two labourers
- 20 • dual cab utility
- landscape and other materials
- small truck as required from time to time for the task to be performed
- backhoe / mini excavator from time to time for the task to be performed
- other small plant

25 Dependant upon the area of the town centre and adjoining public spaces the dedicated work team would be responsible for, they could undertake part only of the work undertaken by other Council staff, such as park mowing, park maintenance, removal of dumped rubbish and litter and playground inspections. The existing staff would still be needed to undertake this work in the
30 other areas of Byron Bay and Byron Shire Council area.

35 To maintain the existing services in the other areas of Byron Bay and the other towns and villages of the Council area and provide a dedicated work team for the Byron Bay town centre and adjoining public spaces would require additional funding to reflect the additional services to be provided.

The total annual cost of a dedicated work team for the Byron Bay town centre and adjoining public spaces is approximately \$240,000 each year.

40 The funding options to provide this team are as follows:

- additional \$240,000 each year
- additional part funding and a reduction in parks budgets of other areas of Council
- no additional funding and a reduction in parks budgets of other areas of Council to free up \$240,000

45 There has not been any additional funding provided as part of the Draft Delivery Program for 2012/13 for operating budgets/.programs however there is Capital Works funding proposed in the Draft Delivery Program (Annexure 6e).

50 Byron Bay Town Centre Maintenance Plan and Landscape Plan as per the format of the Port Douglas Plan

Res 09-1040

55 3. *That Council prepare a maintenance plan for the town that identifies how often inspections and maintenance of the areas will be undertaken and that a landscape plan as per the Port*

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Douglas plan be developed to establish the desired vegetation type and standard in each area of the town.

5 The services that Council provides in the Byron Bay town centre and adjoining public spaces are described in the previous section. They are summarised in Table 1 as follows:

Table 1

Item	Frequency
Street Sweeping (Machine)	<ul style="list-style-type: none"> • daily in town centre • weekly beach front and other residential town centre streets and lanes
Street Cleaning (By hand)	<ul style="list-style-type: none"> • one staff member – 4 - 6 hours per day (9 days a fortnight M - F) • contractor every Fri, Sat, Sun and Mon mornings
Parks Maintenance, Mowing, Weed Control, Brush cutting, rubbish removal, park furniture maintenance, etc	<ul style="list-style-type: none"> • Parks crews work part of each day in some part of the Byron town centre on these activities • additional mowing, brushcutting, etc undertaken in high growth seasons of Spring, Summer and Autumn. Frequency increases to weekly mows in high use and profile areas such as Apex Park. In low season this frequency is once a fortnight for Apex Park
Toilet and BBQ Cleaning	<p><u>October to February</u></p> <ul style="list-style-type: none"> • Railway Park, Byron Pool and Clarkes Beach three times per day • Byron Surf Club two times per day <p><u>March to September</u></p> <ul style="list-style-type: none"> • All two times per day
Drain Cleaning	<ul style="list-style-type: none"> • drains are cleaned daily by street sweeper, with once yearly full clean by vacuum machine • all open drains are inspected six monthly, or after each rain event and cleaned at least once a year, or more if required
Rubbish Collection (General)	<ul style="list-style-type: none"> • daily
Rubbish Collection (Peak Times)	<ul style="list-style-type: none"> • additional collection up to six weeks a year during peak times – four weeks at Christmas, one week at Easter and one week during schoolies.
Other Works	<ul style="list-style-type: none"> • all other requests or noted defects are repaired as soon as possible and where budget allows

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A landscape plan for Byron Bay town centre in a similar format to the Port Douglas Plan has not been completed due to the size of the task, other priorities for parks staff, lack of budget and the lack of internal expertise of existing staff.

5 The actioning of this resolution and the preparation of a specific landscape plan in a shorter timeframe could be achieved through the engagement of external resources, but this will require a budget. This is recommended in this report to the value of \$10,000.

10 Tourism Management Plan, Strategy 7 and Action S7.1.2

Res 11-284

That Council receive a report on:

- 15 b) *The progress of the Tourism Management Plan, Strategy 7 and Action S7.1.2
Develop a BSC Tourism Works Plan to ensure the maintenance of facilities for
tourism particularly during peak visitation periods.*

20 From the information provided in the previous sections and in Table 1 above, it can be seen that the services Council provides in the Byron Bay town centre and adjoining public spaces does increase to match periods of higher use, increased visitors, school holidays, special events and the like.

25 If Council and the community want more, or a higher level of service, then generally this will require additional funding. This has been discussed in the section of a dedicated works team for Byron Bay town centre and adjoining public spaces.

Review of Byron Bay Town Centre Signage

30 **Res 09-1040**

- 6 *That a review of town centre signage be undertaken with a view to provide new signage that minimises the number of signs and considers the bollard style signage as used by the Cape Byron Headland Trust.*

35 An initial review on the types of different signs that exist and are required in the Byron Bay town centre and adjoining public spaces for place names, regulatory, warning, compliance, interpretive, directional, information and route markers has been completed and attached as Annexure 6(d) to this report.

40 A more detailed review needs to be completed to include all the different types of signs needed, their purpose, any applicable standards, compliance with regulations and planning instruments and styles of signs where BSC has discretion. This review needs to include technical staff from a number of divisions of Council and would take some time to complete. Three (3) months would appear to an appropriate time, dependent upon priorities of the staff involved. A target date of reporting back to Council has been recommended to set a deadline for this review.

Risk Assessment for Byron Bay Town Centre and Main Beach Reserve Area

50 This assessment has not been undertaken due to the size of the task, other priorities for professional and operational staff, lack of budget and the lack of internal expertise of existing staff.

The relevant part of the resolution is as follows:

Res 11-867

- 55 2. *That Council receive a report on a risk assessment analysis and disability access of Byron Bay town including the Main Beach Reserve area.*

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The resolution is for the Byron Bay town centre and Main Beach Reserve area. This area would need to be defined, but any area of the town could be expected to include crown lands, roads, car parks, off road paths and cycleways, parks and reserves, toilets and access to Council buildings.

5 If this resolution is to be actioned by staff only, then it will be some time before it is completed. Council's Risk Management Officer recently resigned and the position has not been filled yet. It is currently funded three days per week and principally deals with insurance claims. The Risk Management Officer may have had the capability to do the assessment, but no capacity due to the funded days per week of the position. Other staff that may be able to undertake this
10 assessment and report have existing workloads and priorities that preclude them completing this work in the short term. There is currently no budget available to employ external resources that could complete the assessment and report in the short term.

15 There is an advantage of having a suitably qualified and experienced, independent person that is not familiar with the area to undertake the assessment and report as they will look at the risks and formulate responses through a 'fresh pair of eyes'.

20 The total project could be broken into stages that could be completed over time as the funding constraints of Council allow. Different areas could be funded from different sources, eg, Crown lands such as Main Beach and the off road car parks from the Crown Reserve, Council owned car parks from the paid parking reserve and the balance such as roads and parks from revenue funding.

25 One of the highest used and most iconic areas is the Main Beach car park and Apex Park. Discussions with Council's insurer about a risk assessment analysis for this area indicate that a minimalist study could cost approximately \$5,000, with the cost increasing dependant upon the scope of work required. As the resolution refers to disability access, a study for this area could be expected to cost more than \$5,000. The brief of the study will need to be developed and the area defined. It could cover the area of Main Beach car park, Apex Park and the area around
30 and east of the Surf Club, half way to Clarkes Beach.

It is recommended that the first stage of the risk assessment apply to the above area and a budget of \$10,000 be provided from the Crown Reserve to employ an external consultant.

35 **Financial Implications**

There are no negative impacts proposed in this report, as the requests for any additional funding are recommended to be done in consideration with deliberations of the Draft Delivery Program for
40 2012/13.

Statutory and Policy Compliance Implications

Not Applicable

CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORTS

Report No. 4.3. Draft 2012/2013 Statement of Revenue Policy

5 **Executive Manager:** Corporate Management
File No: FIN451010 #1208949

Principal Activity: Financial Services

Summary: Council at its Ordinary Meeting held 10 February 2011 resolved via Resolution **11-64** to implement the Integrated Planning and Reporting Framework as a Group 3 Council and to advise the Division of Local Government accordingly. This Resolution being as follows:

“11-64 Resolved:

1. *That Council amend its previous nomination for Group 2 and instead nominate as a Group 3 Council to commence under the Integrated Planning and Reporting Framework from 1 July 2012.*
2. *That Council advise the Division of Local Government of this decision.”*

Following on from Resolution **11-64**, Management has been working on the development of the documents required by the Integrated Planning and Reporting Framework, and which were reported to the Strategic Planning Committee Meeting held on 24 November 2011. These documents included the Resourcing Strategy

The Strategic Planning Committee at this meeting received a briefing on the Resourcing Strategy. The Resourcing Strategy was considered by Council at its Ordinary Meeting held 15 December 2011 where Council resolved:

“11-1080 Resolved:

1. *That Council not apply for a special rate variation for 2012/2013.*
2. *That Council endorse Resourcing Strategy (consisting of the long term financial, asset management and workforce plans) for the final phase of public exhibition.”*

Management has also been developing the 2012/2013 Draft Statement of Revenue which includes the Draft 2012/2013 Budget Estimates, Rates and Charges, Borrowings and Fees and Charges.

These documents were considered by the Finance Advisory Committee at its Meeting held on 15 March 2012, with the Committee making the following recommendation to Council:

FAC Recommendation 4.2.1:

That the Finance Advisory Committee recommends to Council the Draft 2012/2013 Statement of Revenue Policy comprising 2012/2013 Budget Estimates, Rates and Charges, Borrowings and Fees and Charges.

The documents are now presented for the Strategic Planning Committee to consider and approve under delegated authority for public exhibition.

RECOMMENDATION:

- 5 That the Strategic Planning Committee resolve under delegated authority to:
1. approve the draft 2012/2013 Statement of Revenue Policy comprising the 2012/2013 Budget Estimates, Rates and Charges, Borrowings and Fees and Charges subject to any amendments in addition to and including the amendments detailed below in part 10 2 of this recommendation, prior to the final (phase 3) exhibition;
 2. make the following amendments to the Draft 2012/2013 Budget for the General Fund, which have no impact on the estimated budget result, prior to the final (phase 3) 15 exhibition:
 - (a) Removal from the capital works program of \$100,000 relating to the staged construction of concrete pavement in floodway past the School on Main Arm Road funded by Section 94 funds.
 - 20 (b) Transfer of an additional \$20,000 to building maintenance related to outbuildings at the Byron Regional Sport and Cultural Complex with this funding provided by reducing the budget for building maintenance for the multipurpose centre.

25 **Attachments:**

- Draft Budget for 2012/2013 #1209371 [173 pages].....Annexure 9(a)
- Draft Revenue Policy (including Rates and Charges) #1122400 [28 pages]..... Annexure 9(b)
- 30 • Draft Budget for 2012/2013 Adjustments Table #1205787 [2 pages].....Annexure 9(c)
- Table of Fees and Charges increasing greater than CPI #1203663 [14 pages]..... Annexure 9(d)
- Draft 2012/13 Fees and Charges #1205711 [80 pages].....Annexure 9(e)

Report

Over the last three financial years, Local Government Councils in NSW have been transitioning to the new Integrated Planning and Reporting requirements that have been legislated by the NSW State Government into the Local Government Act 1993 (Sections 402 to 406).

The requirements of the Integrated Planning and Reporting mandate that Council must develop:

- A ten year Community Strategic Plan
- A four year Delivery Plan
- A one year Operational Plan
- Resourcing strategies to support the above Plans including a ten year Long Term Financial Plan, ten year Workforce Plan and ten year Asset Management Plan

A Operational Plan in accordance with Section 405 (2) of the Local Government Act must include the Council's Statement of Revenue Policy for the financial period covered by the Operational Plan.

Council at its Ordinary Meeting held 10 February 2011 resolved via Resolution **11-64** to implement the Integrated Planning and Reporting Framework as a Group 3 Council and to advise the Division of Local Government accordingly. This Resolution being as follows:

"11-64 Resolved:

1. *That Council amend its previous nomination for Group 2 and instead nominate as a Group 3 Council to commence under the Integrated Planning and Reporting Framework from 1 July 2012.*
2. *That Council advise the Division of Local Government of this decision."*

Following on from Resolution **11-64**, Management has been working on the development of the documents required by the Integrated Planning and Reporting Framework, and which were reported to the Strategic Planning Committee Meeting held on 24 November 2011. These documents included the Resourcing Strategy

The Strategic Planning Committee at this meeting received a briefing on the Resourcing Strategy. The Resourcing Strategy was considered by Council at its Ordinary Meeting held 15 December 2011 where Council resolved:

"11-1080 Resolved:

1. *That Council not apply for a special rate variation for 2012/2013.*
2. *That Council endorse Resourcing Strategy (consisting of the long term financial, asset management and workforce plans) for the final phase of public exhibition."*

Since the 15 December 2011 Ordinary Council Meeting, Management has undertaken a process to develop the Draft 2012/2013 Revenue Policy including the Draft Budget Estimates, Rates and Charges, Borrowings and Fees and Charges which inform the Draft 2012/2013 Operational Plan.

The Operational Plan is integrated into the 4 year Delivery Plan for the period 2012/2013 to 2015/2016, and is the subject of another report to this meeting of the Finance Advisory Committee Meeting.

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The information that needs to be included in the Annual Statement of Revenue Policy is defined in Clause 201 of the Local Government (General) Regulation 2005.

5 The Draft 2012/2013 Budget Estimates (outlined at Annexure 9(a)), Draft 2012/2013 Revenue Policy including Rates and Charges (outlined at Annexure 9(b)) and the Draft Fees and Charges outlined at Annexure 9(e)), comprise the 2012/2013 Draft Revenue Policy and have been prepared at this stage on existing formats familiar to Council and the Strategic Planning Committee. The documents are now at a point that they been reviewed by the Finance Advisory Committee at the Meeting held 15 March 2012, with the Committee making the following
10 recommendations to Council:

FAC Recommendation 4.2.1:

15 *That the Finance Advisory Committee recommends to Council the Draft 2012/2013 Statement of Revenue Policy comprising 2012/2013 Budget Estimates, Rates and Charges, Borrowings and Fees and Charges.*

FAC Recommendation 4.2.2:

20 *That in addition to the memo provided by Cr Staples dated 12 March 2012 that the report to Council include information on budgetary impacts and equity principles of the following proposals regarding domestic recycling and waste management.*

- 25 (a) *Percent increases for collection of the three bins sizes be kept equal subject to rounding.*
- (b) *That the tip charges at Myocum be increased by no more than twice the percentage increase for kerb side collection (with the exception of increases in green waste charges which are to be retained as per the current draft).*
- (c) *That the adjustments resulting from (a), (b) and (i) be reviewed to ensure that the draft total budget result remains unchanged*
- 30 (d) *The full definition of the green waste be provided*
- (e) *That degassing arrangements be clarified.*
- (f) *That a better definition for contaminated soils be provided*
- (g) *That any quality of waste motor oil (to a maximum of 100 litres) be accepted provided it is in containers no bigger than 20 litres.*
- 35 (h) *That clarification be given about how the green waste charges are applied with an example to be included.*
- (i) *That water and sewer fixed charges not be increased greater than the percentage increase for variable charges.*

40 As a general comment on all the documents presented they are still in draft form and will require further adjustment/changes whether via the Strategic Planning Committee processes or through the integration process required to finalise the Draft 2012/2013 Statement of Revenue Policy document prior to exhibition. It is expected the documents will be formally adopted by Council at its Ordinary Meeting held on 7 June 2012 following the Public Exhibition period of 28 days
45 required by Section 405(3) of the Local Government Act 1993.

The Strategic Planning Committee would also be aware of Council Resolution **11-1080** in which Council resolved not to proceed with a special rate variation application to the Independent Pricing and Regulatory Tribunal (IPART) for the 2012/13 Financial Year The documents
50 supporting the Draft 2012/2013 Operational Plan have been prepared on this basis.

1. Draft Budget 2012/2013

55 The Draft Budget 2012/2013 is based on the 2011/2012 budget with various changes to reflect the increased price of service delivery across all programs based on input received from each Council Division. The draft budget has been included at Annexure 9(a).

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There were a number of factors which affected the base budget and which included in the first draft of the 2012/2013 budget. This draft formed the basis of the Long Term Financial Plan that was presented to Council in December 2011. Subsequent to this, each Council Division was asked to review their respective budgets to identify any further known variations to the base budget (ie increases in contributions, statutory charges, operational costs, etc). Any variations identified were updated to the Draft 2012/2013 Budget in February 2012. These variations included the impacts of the following Council resolution items:

- 5
- 10
 - Council resolution 12-3 providing funding for three years regarding the constitutional recognition of local government
 - Council resolution 12-38 allocating funding for the remainder of 2011/2012 plus projected budget net costs on a full financial year for 2012/2013 relating to the operation of the Byron Regional Sport and Cultural Complex.
- 15
 - Council resolution 12-53 concerning the 31 December 2011 Quarter Budget Review and its impact upon the General Fund Accumulated Surplus (Working Funds) that will be brought forward to the 2012./2013 financial year.

At that point in time the proposed Draft 2012/2013 Budget Result on a Consolidated (All Funds) basis is detailed below at Table 1

Table 1 – Forecast Budget Result 2012/2013 Consolidated (All Funds)

Operating Revenue	62,015,800
Less: Operating Expenditure	54,035,900
Less: Depreciation	15,935,100
Operating Result before Capital Amounts	(7,955,200)
Add: Non Cash Expenses – Depreciation	15,935,100
Add: Capital Grants and Contributions	3,902,500
Add: Loan Funds Used	400,000
Subtract: Capital Works	(14,325,800)
Subtract: Loan Principal Repayments	(2,675,800)
Cash Surplus/(Deficit)	(4,720,200)
Reserves – Increase/(Decrease)	(4,331,400)
Budget Result – Surplus/(Deficit)	(388,800)

Table 1 indicates a forecasted budget deficit of \$388,800 which relates to the General Fund only. The forecast General Fund Accumulated Surplus (Working Funds) position based on the draft budget is shown in Table 2:

Table 2 - Forecast General Fund Accumulated Surplus (Working Funds) after first Draft 2012/2013 Budget

Forecast accumulated surplus to 30 June 2012 after the December 2011 Budget Review + Council resolution 12-3 and 12-53	\$502,900
Add: Estimated 2012/2013 budget result	(\$388,800)
Forecast accumulated surplus to 30 June 2013	\$114,100

Table 3 below also projects the General Fund Accumulated Surplus (Working Funds) for the next ten years as follows:

35

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Table 3 – General Fund Accumulated Surplus (Working Funds) 2012/2013-2021/2022

Financial Year	Opening Accumulated Surplus Result – Surplus/(Deficit) \$	Budget Result – Surplus/(Deficit) \$	Closing Accumulated Surplus Result – Surplus/(Deficit) \$
2012/2013	502,900	(388,800)	114,100
2013/2014	114,100	(133,400)	(19,300)
2014/2015	(19,300)	(286,100)	(305,400)
2015/2016	(305,400)	(185,600)	(491,000)
2016/2017	(491,000)	(232,100)	(723,100)
2017/2018	(723,100)	(118,700)	(841,800)
2018/2019	(841,800)	(184,800)	(1,026,600)
2019/2020	(1,026,600)	(189,300)	(1,215,900)
2020/2021	(1,215,900)	(522,300)	(1,738,200)
2021/2022	(1,738,200)	(373,700)	(2,111,900)

5 Following the updating of the draft 2012/13 Budget in February 2012 a further review was undertaken of divisional budgets with a number of measures being identified to address the estimated deficit for the General Fund for the 2012/13 Financial Year. Based on this review, Management prepared a revised Draft 2012/2013 Budget position summarised at Table 4 below that was considered by the Finance Advisory Committee at its Meeting held on 15 March 2012.

10 **Table 4 – Forecast Budget Result 2012/2013 Consolidated (All Funds)**

Operating Revenue	61,827,000
Less: Operating Expenditure	53,834,800
Less: Depreciation	15,935,100
Operating Result before Capital Amounts	(7,942,900)
Add: Non Cash Expenses – Depreciation	15,935,100
Add: Capital Grants and Contributions	3,902,500
Add: Loan Funds Used	0
Subtract: Capital Works	(9,651,800)
Subtract: Loan Principal Repayments	(2,676,800)
Cash Surplus/(Deficit)	(433,900)
Reserves – Increase/(Decrease)	(425,900)
Budget Result – Surplus/(Deficit)	(8,000)

Table 4 indicates a forecasted budget deficit of \$8,000 and this relates to the General Fund.

15 Subsequent to the Finance Advisory Committee Meeting held on 15 March 2012, there has been a review of the capital works program for 2012/2013 relating to the Sewerage Fund.

20 The review was undertaken due to concerns raised over the impact of the funding requirements place on the Sewerage Internal Reserve in the draft document. In the draft 2012/2013 Budget Estimates it was projected that the Reserve would be overdrawn by approximately \$402,000 in 2012/2013.

25 This is not sustainable and the review has transferred works to the value of \$1,330,000 to future financial years or altered the funding source from the Sewerage Internal Reserve to available Section 64 Developer Contributions for Sewerage currently held. In view of this, the revised Draft 2012/2013 Budget Result on a Consolidated (All Funds) basis is outlined in Table 5 as follows:

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Table 5 – Forecast Budget Result 2012/2013 Consolidated (All Funds)

Operating Revenue	61,827,000
Less: Operating Expenditure	53,834,800
Less: Depreciation	15,935,100
Operating Result before Capital Amounts	(7,942,900)
Add: Non Cash Expenses – Depreciation	15,935,100
Add: Capital Grants and Contributions	3,902,500
Add: Loan Funds Used	0
Subtract: Capital Works	(8,321,800)
Subtract: Loan Principal Repayments	(2,676,800)
Cash Surplus/(Deficit)	895,100
Reserves – Increase/(Decrease)	904,100
Budget Result – Surplus/(Deficit)	(8,000)

5 The Draft 2012/2013 Budget Result still estimates a deficit of \$8,000. The estimated budget result has not changed as the adjustments that have influenced the budget outcomes in Table 5 are related to the Sewerage Fund only. Table 6 identifies the forecast General Fund Accumulated Surplus (Working Funds) position based on the draft budget:

10 **Table 6 - Forecast General Fund Accumulated Surplus (Working Funds) after Draft 2012/2013 Budget**

Forecast accumulated surplus to 30 June 2012 after the December 2011 Budget Review + Council resolution 12-3 and 12-53	\$502,900
Add: Estimated 2012/2013 budget result	\$(8,000)
Forecast accumulated surplus to 30 June 2013	\$494,900

15 Table 7 below also projects the General Fund Accumulated Surplus (Working Funds) for the next ten years estimated as follows:

Table 7 – General Fund Accumulated Surplus (Working Funds) 2012/2013-2021/2022

Financial Year	Opening Accumulated Surplus Result – Surplus/(Deficit) \$	Budget Result – Surplus/(Deficit) \$	Closing Accumulated Surplus Result – Surplus/(Deficit) \$
2012/2013	502,900	(8,000)	494,900
2013/2014	494,900	(90,100)	404,800
2014/2015	404,800	(241,400)	163,400
2015/2016	163,400	(92,000)	71,400
2016/2017	71,400	(125,800)	(54,400)
2017/2018	(54,400)	(7,200)	(61,600)
2018/2019	(61,600)	(67,000)	(128,600)
2019/2020	(128,600)	(66,000)	(194,600)
2020/2021	(194,600)	(382,800)	(587,400)
2021/2022	(587,400)	(237,900)	(825,300)

20 To arrive at the Draft Budget Results outlined in Table 6 and Table 7, a complete reconciliation of adjustments is provided at Annexure 9(c).

It is clear the long term budget projections for Council are not sustainable and the General Fund Accumulated Surplus (Working Funds) are anticipated to reach a deficit position in 2016/2017 and Council's long term financial target is to maintain a \$1,000,000 surplus.

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For the 2012/2013 financial year, a major contributor to the reduction in anticipated General Fund Budget Deficit to \$8,000 is via a reduction in the legal services budget of \$332,200. Such a proposed reduction is not without risk and warrants particular attention and comment as follows:

- 5
- a) Council either need to conservatively budget each year for legal costs based on likely costs if large, numerous or complicated cases arise or, if a legal reserve can be established and maintained, budget on the basis of trends in costs over previous years.
- 10
- b) Council's legal costs are currently trending down, however, the variation from year to year can be significant as a result of either individual significant cases or the number of cases. For example, Council's Annual Report net legal costs have been 2008/09 \$406,567, 2009/10 \$1,105,501 and 2010/11 \$718,612, with estimates, at this stage, for 2011/12 indicating costs will likely to be less than last year's levels.
- 15
- c) Because Council cannot predict when a significant individual case or an increase in the number of cases might arise, if Council set its legal budget based on trends (as is currently proposed for the 2012/13 budget) it must maintain capacity to address individual significant cases which may otherwise be beyond budget and the only way to do this is by establishing and maintaining a legal reserve.
- 20
- d) The 2012/13 draft legal budget includes a recommended reduction against the current legal budget level of \$332,200. This recommendation is made on the basis that Council needs to commit to re-establishment of a legal reserve of at least \$500,000 through quarantining of any legal budget surpluses during this and next financial year.
- 25
- e) If in future the legal reserve is relied upon to meet any legal budget deficits, it will be imperative that it be replenished otherwise required legal budget increases will adversely impact the general fund working balance and the long term financial plan.
- 30
- f) Management will need to make a recommendation in the next quarterly budget report that Council resolve to transfer any legal budget surpluses for 2011/2012 and/or 2012/13 to the legal reserve until a reserve balance of \$500,000 has been achieved, to support the current draft budget. If Council are not of a mind to replenish the legal reserve, it may need to consider no proceeding with the currently recommended reduction in the 2012/13 legal budget.
- 35

40

The budget projections also demonstrate the difficulty Council has absorbing additional costs without corresponding revenue. The major contributor to the deterioration in the long term budget projections is the estimated operational net cost of the Byron Regional Sport and Cultural Complex, a new asset/service, that are in excess of the original estimated operational costs previously planned by Council. It can only be emphasised that Council must consider carefully the long term implications on its finances any consideration to add a new asset/service as current budget projections suggest it no longer has capacity to do so.

45

Further to the predicted 2012/2013 budget position indicated above in this report, Council at its Ordinary Meeting held on 1 March 2012 passed the following resolution regarding a Refuge for the homeless – Mullumbimby.

50 ***"12-105 Resolved:***

That Council:

- 55
1. *Receive a report by Ordinary Meeting 22 March 2012 documenting progress and constraints on actioning outstanding Council resolutions regarding investigating a primitive camping ground at Lot 4 DP 841856 Mullumbimby.*

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2. *Allocate an additional \$5,000 (making a total of \$10,000) to conduct a site specific study of Lot 4 DP 841856 in relation to flood levels, flow velocities, depths and water surface levels and for Council to run spot surveys from the corner of Mill St and Station St along the access road and along the more elevated portion to determine ground levels (RL's) to assist in planning for future access and egress. (\$5,000 was allocated in Res 10/808 and has not been spent to date).*
3. *Prepare a flood evacuation plan for Lot 4 DP 841856 in relation to using the land as a Primitive Camping Site.*
4. *Identify possible grant funding and/or consideration of an allocation in the 2012/13 budget process to transfer Lot 4 DP 841856 from the Sewer Fund to the General Fund for the purpose of primitive camping subject to the flood study in point 2. Valuation was completed as per Res 09/137.*
5. *Consult with the Northern Rivers Social Development Council in relation to regional funding opportunities."*
- The financial impacts of resolution **12-105**, particularly part 4 have not currently been added to the Draft 2012/2013 budget as the item is identified on the basis of possible grant funding or for consideration. The current budget projections identify that the General Fund does not have the financial capacity to absorb part 4 of resolution **12-105** at this time unless there is a corresponding adjustment from another program area of Council to compensate. This is something the Strategic Planning Committee may also wish to consider. If part 4 of resolution 12-105 is included without any corresponding offset then the General Fund projected budget deficit for 2012/2013 will need to increase by the value assigned to the land transfer from the Sewerage Fund to the General Fund.
- In additional to the amendments to the draft 2012/13 Estimates detailed in Table 5, there are two other budgetary changes for the General Fund that have been identified following the Finance Advisory Committee Meeting . These changes have no impact on the budget result for 2012/2013 but will be included subject to Council approval. These items are as follows:
- Removal from the capital works program \$100,000 relating to the staged construction of concrete pavement in floodway past the School on Main Arm Road. This project was funded by Section 94 funds and the project will not be completed in 2012/2013 due to there not being sufficient Section 94 funds available from the catchment to complete the work.
 - Transfer of an additional \$20,000 to building maintenance related to outbuildings at the Byron Regional Sport and Cultural Complex with this funding provided by reducing the budget for building maintenance for the multipurpose centre by the same amount.

2. Draft 2012/2013 Revenue Policy including Fees and Charges

The Draft 2012/2013 Revenue Policy including fees and charges has been reviewed by respective program managers and have been included at Annexure 9(b). Where possible, fees have been altered/increased to reflect the following specific changes:

- Increases in the Consumer Price Index or Local Government Cost Index established by the Independent Pricing and Regulatory Tribunal (IPART) – 3.1% to 3.4%.
- Ordinary rates have been increased by 3.6% in accordance with the IPART determination for 2012/2013 which forms the basis of the budget result presented.

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- Water fixed charges and consumption charges are increased by 7.66% and 3.96% respectively due to the revenue needs to carry out maintenance, capital works and repay debt balanced with a decline in water consumption.
- 5 • Sewer fixed charges and consumption charges are increased by 8.10% and 8.55% respectively due to the revenue needs to carry out maintenance, capital works and repay debt balanced with a decline in water consumption.
- 10 • Domestic Waste and Non Domestic Waste charges have increased between 9.00% and 12.00% to generate revenue required to address landfill expansion, remediation and to fund the anticipated \$300,000 increase in the Waste Levy payable to the NSW State Government.
- 15 • Further restructure of the fees associated with Council's two Holiday Parks to ensure more consistency between the Parks, including refinement of seasonal charging whilst also acknowledging the differences between the two Holiday Parks in terms of their facilities and markets. Fees at First Sun Holiday Park have generally increased 6% to continue to generate revenue for park operations and improvements. The season arrangements established in 2011/2012 have been retained. For Suffolk Park Holiday Park, the seasons introduced in 2011/2012 has been revised to eliminate the high season and replace with an extension of the peak season. To compensate peak charges for onsite accommodation have been reduced by \$10.00 per night in a bid to still increase revenue overall but to improve occupancy. It also needs to be noted for Suffolk Park Holiday Park and permanent residents, there is no fees disclosure in the fees and charges as the fee is considered private given it is covered by a lease increment and it is not proposed to increase the fees payable for 2012/2013.
- 20
- 25 • Inclusion of applicable fees and charges for the Byron Regional Sport and Cultural Complex including the Multipurpose Building.
- 30

In addition to the above and to incorporate Resolution **12-109** adopted by Council following consideration of Notice of Motion 8.3 – Fees and Charges Increases at its Ordinary Meeting held 1 March 2012, a table has been produced at Annexure 9(d) that lists all proposed fees and charges that have increased greater than the Consumer Price Index (CPI) with the identified fee and explanation for the reason why the recommended increase is greater than the Consumer Price Index (CPI). For the purposes of using the Consumer Price Index as a benchmark, the rate of 3.1% has been applied, which is the All Groups CPI increase at 31 December 2011, being the latest CPI publication issued by the Australian Bureau of Statistics at the time of preparing this report.

Aside from the above items, in relation to the draft fees relating to the use of community halls and facilities, some of the fees shown still need to be amended to reflect the recommendations from the various Section 355 Committees/Boards of Management. The fees associated with Richmond Tweed Regional Library are yet to be received from Lismore City Council for inclusion.

Recommendation 4.2.2 from the Finance Advisory Committee Meeting held on 15 March 2012, requested information be provided to Council as follows:

FAC Recommendation 4.2.2:

That in addition to the memo provided by Cr Staples dated 12 March 2012 that the report to Council include information on budgetary impacts and equity principles of the following proposals regarding domestic recycling and waste management.

- (a) *Percent increases for collection of the three bins sizes be kept equal subject to rounding.*

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- (b) *That the tip charges at Myocum be increased by no more than twice the percentage increase for kerb side collection (with the exception of increases in green waste charges which are to be retained as per the current draft).*
- 5 (c) *That the adjustments resulting from (a), (b) and (i) be reviewed to ensure that the draft total budget result remains unchanged*
- (d) *The full definition of the green waste be provided*
- (e) *That degassing arrangements be clarified.*
- (f) *That a better definition for contaminated soils be provided*
- 10 (g) *That any quality of waste motor oil (to a maximum of 100 litres) be accepted provided it is in containers no bigger than 20 litres.*
- (h) *That clarification be given about how the green waste charges are applied with an example to be included.*
- (i) *That water and sewer fixed charges not be increased greater than the percentage increase for variable charges.*
- 15

In regard to recommendation 4.2.2, Management will provide a Memo to Councillors prior to the Strategic Planning Committee Meeting to be held on 29 March 2012, providing responses to Cr Staples memo dated 12 March 2012 and part (a) to (h) of recommendation 4.2.2.

20 In regard to part (i) of recommendation 4.2.2, Management would like to provide to Council an alternate view for Council to consider. As Council would be aware, it manages significant water and sewerage infrastructure. As at 30 June 2011, the gross replacement cost of Sewerage Fund Assets is \$266.117million and Water Fund Assets is \$80.144million. Collectively Council has \$346.26million in water and sewerage assets which is representative of the cost to replace those

25 assets. In terms of available internal reserves it is estimated at 30 June 2013 Council will have available internal reserve balances for water and sewer of \$1,282,900 and \$1,186,883 respectively. These estimated reserve balances are derived from applying the proposed charges outlined in Annexure 9(b) with proposed increase identified earlier in this report.

30 The NSW Office of Water as part of the Department of Primary Industries, have issued guidelines known as the 'Best Practice Management of Water Supply and Sewerage Guidelines'. These guidelines on page 8 and 9 provides the following commentary:

35 *With a higher proportion of water supply revenue obtained from usage charges, LWUs' revenue will be more greatly affected by annual weather variations. LWUs may therefore establish a revenue fluctuation reserve of up to 10% of turnover. LWUs can draw on this reserve to assist them to cope with wet years or drought water restrictions where water sales are lower than predicted. Dry years will result in a corresponding increase in demand and revenue.*

40 On the above basis turnover is associated with revenue. The estimated revenue for water on an operating basis for 2012/2013 is \$7,447,300 and for Sewerage it is \$12,766,100. On this basis Council needs a reserve of \$745,000 for Water and a reserve of \$1.276.600 for Sewerage to provide a buffer against potential revenue loss due to the consumption factor given Council

45 utilises water consumption for the calculation of water and sewerage revenue, for both residential and non-residential customers.

Currently in relation to both water and sewerage, Council utilises the internal reserves as a buffer against revenue loss from variances in water consumption and to provide a source of funding for capital works. On this basis the existing reserves could be considered not sufficient nor provide

50 the ability for Council to fund any emergency works that could occur if there was an unexpected/unforseen failure of water or sewerage infrastructure.

The intent of the proposed water and sewerage charges are to restore to some degree adequacy to reserve funds for water and sewerage and have been structured to reduce the dependence on

55 consumption revenue by placing a greater emphasis on fixed charges to guarantee more of the

estimated revenue required to operate both Water and Sewerage Funds that have significant fixed costs.

5 In relation to Sewerage, Council has borrowed substantially for recent capital works to the extent projected loan repayments are in excess of \$5million for the next ten years and the rebuilding of reserves may provide the ability to reduce the amount of or necessity to borrow further loans in future years for capital works. In relation to Water, Council irrespective of its water consumption from Rous Water is charged a fixed cost for water supply each financial year. This cost for 10 2012/2013 is estimated at \$3.64million and equates to 48% of water operating revenue in one expenditure item.

15 Management is of the view placing a greater reliance on consumption charges for water and sewerage than those proposed for 2012/2013, would place a greater risk on the required revenue to finance water and sewerage operations, due to the variability of water consumption, when it can be demonstrated Council has significant fixed costs in water and sewerage. On this basis, It is Managements view that the proposed increases and charges presented in the Draft 2011/2012 Revenue Policy at Annexure 9(b) not be changed.

20 3. Community Consultation

Once the Draft 2012/2013 Operational Plan has been approved by Council, it will be placed on public exhibition for a period of no less than 28 days seeking submissions from the Community. This will be in addition to the other suite of documents Council has prepared under the Integrated Planning and Reporting Framework. It would be expected the public exhibition period will be 25 during April/May 2012.

Financial Implications

30 Council in the preparation of its Operational Plan is required to include a number of statements in relation to its revenue policy for 2012/2013. This includes a statement containing the draft estimate of Council's Income and Expenditure or Budget for this period. The other statements identified in Clause 201 of the Local Government (General) Regulation 2005 are in the main dependant upon the rate pegging limits approved by the Minister for Local Government, any application for a special rate variation and Council's decisions in relation to expenditure, income 35 and the associated fees and charges.

40 A summary of the parameters used in preparing the Draft 2012/2013 Budget including the estimated borrowings and forecast working capital movements for General, Water and Sewer Funds are detailed in the introduction of the Draft 2012/2013 Budget at Annexure 9(a) commencing at page 5 of 173.

The financial forecast of the General Fund has been discussed in detail earlier in this report is a major concern for Council.

45 Discussion at the Finance Advisory Committee Meeting held on 15 March 2012 also included the costs of Electricity and the level of increases included in the projections for these costs in future years. From the outset it is difficult for Council to assess cost increases for future years as there are a number of known/unknown impacts being as follows:

50 Known Impacts

- Council at its Ordinary Meeting held on 16 October 2010 (resolution 10-1047) accepted a contract for the supply of electricity for its contestable sites and street lighting (Council has 55 eleven of these) for a period of three years that commenced on 1 January 2011 and concludes on 31 December 2013. Prices are stipulated for each year of the contract but can be increased by any imposition of 'a new tax' in accordance with Clause 2.4.

- Council can access government contracts for electricity that would be less than that applicable for residential consumers.
- Electricity is in part a consumption based cost and Council has taken steps over time to reduce its electricity consumption. The most recent one is the change of street lighting to be more energy efficient by accepting a proposal from Country Energy (resolution 11-193).
- The Independent Pricing and Regulatory Tribunal (IPART) determined in setting the rate peg for the 2012/2013 financial year that local government would be given an advance of 0.4% for the impact of the proposed 'carbon tax'. In the case of Byron Shire Council this equate to an impact of \$67,000 based on Council's 2011/2012 rate yield. On this basis IPART at this time suggest the imposition of the carbon tax is minimal in terms of electricity to Council given the carbon tax would also apply to other goods/services Council will procure aside from electricity.

15 Unknown Impacts

- The NSW State Government has announced the three electricity distribution companies will merge on 1 July 2012 to be one company. It is the view of the NSW Government this should save costs in reduced management and duplicated administration costs. The NSW Government is suggesting there will be savings passed onto consumers but how any of these savings (if any) are passed onto Council is unknown.
- It is not clear at this stage whether any of the supplementary legislation the Federal Government has enacted, to create opportunities for industry to access funding to reduce carbon emissions, whether Council can access any of this assistance, so to enable it to implement measures to further reduce electricity consumption and therefore its electricity cost.

30 Generally an allowance for electricity costs based on assumed Consumer Price Indexation has been allowed in future years, however these will obviously be reviewed in the Council's Long Term Financial Plan (LTFP), once the impact of future electricity costs post the implementation of the carbon tax is known and what contractual conditions Council is able to secure for its electricity requirements post December 2013.

35 **Statutory and Policy Compliance Implications**

As Council will be completing the transitional provisions surrounding the Integrated Planning and Reporting Framework as a Group 3 Council by 1 July 2012, in respect of the Draft 2012/2013 Operational Plan, Council must comply with the provisions of Section 405 of the Local Government Act 1993 as described below concerning the adoption of an Operational Plan.

405 Operational plan

- (1) *A council must have a plan (its **operational plan**) that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year.*
- (2) *An operational plan must include a statement of the council's revenue policy for the year covered by the operational plan. The statement of revenue policy must include the statements and particulars required by the regulations.*
- (3) *A council must prepare a draft operational plan and give public notice of the draft indicating that submissions may be made to the council at any time during the period (not less than 28 days) that the draft is to be on public exhibition. The council must publicly exhibit the draft operational plan in accordance with the notice.*

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5 (4) *During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map that shows those parts of its area to which each category and sub-category of the ordinary rate and each special rate included in the draft operational plan applies.*

(5) *In deciding on the final operational plan to be adopted, a council must consider any submissions that have been made concerning the draft plan.*

10 (6) *The council must post a copy of its operational plan on the council's website within 28 days after the plan is adopted.*

The specific statements required by Council to be disclosed as part of its Revenue Policy are determined by Clause 201 of the Local Government (General) Regulation 2005 as follows:

15 **201 Annual statement of council's revenue policy**

(1) The statement of a council's revenue policy for a year that is required to be included in an operational plan under [section 405](#) of [the Act](#) must include the following statements:

20 (a) a statement containing a detailed estimate of the council's income and expenditure,

(b) a statement with respect to each ordinary rate and each special rate proposed to be levied,

25 **Note:** The annual statement of revenue policy may include a note that the estimated yield from ordinary rates is subject to the specification of a percentage variation by the Minister if that variation has not been published in the Gazette when public notice of the annual statement of revenue policy is given.

30 (c) a statement with respect to each charge proposed to be levied,

(d) a statement of the types of fees proposed to be charged by the council and, if the fee concerned is a fee to which Division 3 of Part 10 of Chapter 15 of [the Act](#) applies, the amount of each such fee,

35 (e) a statement of the council's proposed pricing methodology for determining the prices of goods and the approved fees under Division 2 of Part 10 of Chapter 15 of [the Act](#) for services provided by it, being an avoidable costs pricing methodology determined by the council in accordance with guidelines issued by the Director-General,

40 (f) a statement of the amounts of any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed and the means by which they are proposed to be secured.

45 (2) The statement with respect to an ordinary or special rate proposed to be levied must include the following particulars:

(a) the ad valorem amount (the amount in the dollar) of the rate,

50 (b) whether the rate is to have a base amount and, if so:

(i) the amount in dollars of the base amount, and

55 (ii) the percentage, in conformity with [section 500](#) of [the Act](#), of the total amount payable by the levying of the rate, or, in the case of the rate, the rate for the

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category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce,

- 5
- (c) the estimated yield of the rate,
- (d) in the case of a special rate-the purpose for which the rate is to be levied,
- (e) the categories or sub-categories of land in respect of which the council proposes to levy the rate.
- 10
- (3) The statement with respect to each charge proposed to be levied must include the following particulars:
- 15
- (a) the amount or rate per unit of the charge,
- (b) the differing amounts for the charge, if relevant,
- (c) the minimum amount or amounts of the charge, if relevant,
- 20
- (d) the estimated yield of the charge,
- (e) in relation to an annual charge for the provision by the council of coastal protection services (if any)-a map or list (or both) of the parcels of rateable land that are to be subject to the charge.
- 25
- (4) The statement of fees and the statement of the pricing methodology need not include information that could confer a commercial advantage on a competitor of the council.

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Report No. 4.4. Review of Policies - Section 356 Donations - Rates and Charges

Executive Manager: Corporate Management

File No: COR050505 #1165403

Principal Activity: Corporate Management - Governance

Summary: Council annually provides financial assistance to community centres, halls and charitable organisations with a Section 356 Donation of 100% of the General Rates and Fixed Water and Sewer charges under the following Policies:

- Section 356 Donations to Public Halls and Community Centres – Rates and Charges; and
- Section 356 Donations to charitable and Community Organisations

A new draft Policy, Section 356 Donations – Rates and Charges which incorporates all facilities into one Policy and historical facilities, where Council pays the rates that are not included in any existing Policies.

5

RECOMMENDATION:

That the Strategic Planning Committee resolve under delegated authority:

10

1. That the new draft Policy – Section 356 Donations – Rates and Charges as shown at Annexure 3(c) (#1165088) be placed on public exhibition for a minimum period of 28 days.

15

a) That in the event that any submissions are received on the draft Policy it be reported back to Council prior to adoption.

20

b) That in the event that no submissions are received on the draft Policy it be adopted at the end of the exhibition period and incorporated into Council's Policy Register.

2. That after adoption of the new draft Policy, Section 356 donations – Rates and Charges the following Polices be deleted from Council's Policy Register being:

25

• Policy 3.40 - Section 356 Donations to Public Halls and Community Centres – Rates and Charges as shown at Annexure 3(a) (#660963); and

30

• Policy 3.39- Section 356 Donations to charitable and Community Organisations as shown at Annexure 3(b) (#630679)

3. That Council amend the naming of the following budgets to indicate they are Section 356 donations:

35

2356.2 s356 General Rates (Property Management)

6141.9 s356 Water Supplies Management (Community Building – Water Charges)

7141.9 s356 Sewerage Services Management (Community Building – Sewerage Charges)

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Attachments:

- Policy – Section 356 Donations to Public Hall and Community Centres Rates and Charges #660963 [3 pages]..... **Annexure 3(a)**
- 5 • Policy – Section 356 Donations to Charitable and Community Organisations #630679 [3 pages]..... **Annexure 3(b)**
- Amended Policy – Section 356 Donations Rates and Charges #1165088 [7 pages]..... **Annexure 3(c)**

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Report

In November 2000, Council adopted the following Policies:

- 5 • Section 356 Donations to Public Halls and Community Centres – Rates and Charges; and
- Section 356 Donations to charitable and Community Organisations

10 These Policies have been reviewed and incorporated into one policy being “Section 356 Donations – Rates and Charges” (see Attachment 3(c)). The Policy also incorporates facilities that historically Council has been paying the rates and charges and are eligible for inclusion as follows:

Assess. No	Name of Centre/Hall	Owner	Ratepayer/Managed By
928309	Brunswick Heads Scout Hall South Beach Road Brunswick Heads	Crown Land	Byron Shire Council
1079219	Brunswick Valley Historical Society Stuart Street, Mullumbimby	Crown Land	Brunswick Valley Historical Society
356006	Brunswick Heads RSL Hall 24 Fawcett Street, Brunswick Heads	Trustees DF Ryan, PJ Hain, PJ Quirke	Brunswick Heads RSL Sub-Branch
999409	Mullumbimby CWA 15 Tincogan Street, Mullumbimby	Byron Shire Council	Byron Shire Council
220103	Mullumbimby Scout and Guides Hall Burringbar Street, Mullumbimby	Byron Shire Council	Byron Shire Council

15 The facilities recognised in the Policy have been placed in alphabetical order and now show the Assessment No. of the property, the Owner and the Ratepayer/Managed By (user). The Ratepayer/ Managed By organisation are usually responsible for any excess water usage and garbage charges.

20 The Policy also now includes the process of the Section 356 Donation and the Source of Funding.

Financial Implications

25 Council makes provision in its budget each year for funding the Section 356 Donations to these Community Facilities, Halls and Charitable organisations as follows:

Property Management	2356.2	General Rates
Water Supplies Management	6141.9	Community Building – Water Charges
30 Sewerage Services Management	7141.9	Community Building – Sewerage Charges

It has been recommended that the naming of these budgets be amended to reflect that they are Section 356 Donations and are included annually in the Annual report.

35 As indicated in the 2010/11 Annual Report, Rates and Charges totalling approximately \$83,500 was donated as a Section 356 Donation, to the community facilities in the amended Policy, for the financial year ending 30 June 2011.

Statutory and Policy Compliance Implications

40 Local Government Act, 1993, Section 356:

356 Can a council financially assist others?

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- (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.*
- 5 (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:*
- 10 (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.*
- 15 (4) *Public notice is also not required if the financial assistance is part of a program of graffiti removal work.*

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Report No. 4.5. Section 356 Donation Process

Executive Manager: Corporate Management

File No: ADM481000 #1202360

Principal Activity: Governance and Administration

Summary: To inform Council of the proposed process for the distribution of Section 356 donations for the 2012/13 financial year and to seek endorsement for the Section 356 donation process detailed within the report.

5

RECOMMENDATION:

10 **That the Strategic Planning Committee resolve under delegated authority to endorse the process for distribution of Section 356 Donations for 2012/13, as detailed within this report.**

Report

Council has in its draft 2012/13 Budget have the following moneys set aside for Section 356 Donations under the following Policies:

- 5 • **Budget 2341.43 \$48,000 General Donations**
 Policy 3.13 Donations to Community Organisations, Other Groups and Persons
 This Policy assists:
 - 10 • *community organisations in the provision of services and facilities for the benefit of the residents*
 - *appropriate private groups or persons to achieve their objectives.*

- 15 • **Budget 2341.16 \$7,000 Contribution Community Events – Approval Expenses**
 Policy 4.15 Assistance for Festivals and Community Functions
 This Policy provides:
 - 20 • *appropriate levels of assistance to community organisations through the use of Council's works resources.*
 - *an equitable basis for the recovery of Council's costs for road closures associated with community events.*

- 25 • **Budget 2341.9 \$2,000 Contribution Community Facilities – Development Fees**
 Policy 5.2 Waiving of Fees for Building and Development Applications
 - 30 • *The policy provides assistance to appropriate community groups in development and construction of buildings*

1. In accordance with Policy 3.13 Council will advertise for applications for Section 356 donations prior to the adoption of the Budget. Advertisements will be placed in its block advertising in April/May and media releases issued for interested groups to apply for Section 356 Donations.

Applications for donations must be submitted on a Council approved application form requesting the following information:-

- 35 • Name of community Organisation of Individual
- Contact Details
- Donation Amount Requested
- Purpose of Donation
- Have you made application for financial assistance from other bodies for this project
- 40 • If only a part of the donation requested is supported by Council will you / your organisation be able to proceed with the proposed project? (New)
- Category (New) Note : a separate application is required to be completed for each category
- The impact the project will have on the community or groups/persons?
- Number of proposed beneficiaries from the project or services?
- 45 • Any other information to support the application
- Details of donations given to your Organisation by Council and/or other bodies over the last three years

A report to Council on all requests for Section 356 donations will be presented after formal adoption of the Budget. In arriving at the recommended amounts to be distributed, Management assess the information provided and endeavour to be equitable and allocate amounts on the basis of the amount requested, the information provided and the benefit to the community. Management also consider prior decisions of Council. The Council is the final determining body of any donation to be provided.

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2. Moneys for community events to assist with road closure,/traffic management under Policy 4.15 will be advertised as per the above process. Moneys not expended under this budget may be set aside for distribution for any further community event that may occur throughout the year.

5 Moneys will be allocated depending on the estimate of Council's costs for the road closure, moneys donated to charity, size of community involvement and the distribution of events across the Shire. Management will also consider prior decisions of Council. The Council is the final determining body of any donation to be provided.

- 10 3. With regards to Policy 5.2 Waiving of Fees for Building and Development Applications, moneys (\$2,000) are set aside from the allocated Section 356 donation moneys for distribution to applicants throughout the financial year. All applications must be requested in writing and are presented for Council's determination. *Note: This Policy is required to be redrafted to reflect the current applications now required by Council..*

15 The above processes provides clear guidelines for the management of financial donations made by Council, establishes maximum levels of annual expenditure on donations and allows Council to properly record all donations and eliminate hidden subsidies.

20 Council has also had a request from Community Infrastructure to include a line item in the budget for road closure applications of \$2,000 for the annual Shire's Anzac Day parades.

Financial Implications

25 The Council's draft 2012/13 Budget includes a budget allocation for Section 356 donations of \$78,800.

30 In accordance with past Resolutions of Council and the request for \$2,000 (Anzac Day parades – road closures as a separate line item) the following standard contributions have been included in the draft 2012/13 Budget as items funded from this budget allocation.

1.	Policy 3.13 donations to Community Organisations, Other Groups and Persons	\$48,000
35	2. Policy 5.2 Waiving of Fees for Building and Development Applications	2,000
	3. Policy 4.15 Assistance to Festivals and Community Events	7,000
	4. Contribution – ANZAC Day Road Closures (New)	2,000
	5. Contribution – NAIDOC Week	1,000
	6. Contribution – North Coast Academy of Sport	3,800
40	7. Contribution – Brunswick Heads Marine Rescue	5,000
	8. Contribution – Brunswick Valley and District Volunteer Rescue Organisation	5,000
	9. Contribution – Northern Region SLSA Helicopter Rescue	5,000
	Total	\$78,800

45 The draft 2012/13 Budget also includes the following items under the Budget area of Section 356 Donations and Activities:

50	Mayor – Discretionary Allowance	2,000
	Contribution – Staff Christmas Party	3,100
	Contribution – Ocean Shores Pre-School Lease	45,200
	Contribution – Mullumbimby Neighbourhood Centre	15,600
	Contribution – Old Country Energy Building (Contra)	15,600

On the basis that Council endorses the process proposed for the distribution of Community S356 donations, then the allocation of the \$48,000 would be determined by Council following the adoption of the 2012/13 Budget.

- 5 The Strategic Planning Committee may:
- resolved under delegated authority to note the process of distribution of Section 356 donations;
 - recommend to Council that a different amount available in the draft Budget be provided as Section 356 Donations;
- 10 • recommend to Council an alternate process be followed.

Statutory and Policy Compliance Implications

- 15 Council Policy 3.13 Donations to Community Organisations, Other Groups and Persons
Council Policy 4.15 Assistance for Festivals and Community Functions
Council Policy 5.2 Waiving of Fees for Building and Development Applications

20 These policies have not been reproduced they can be accessed on Council's website at www.byron.nsw.gov.au/policies.

Section 356 of the Local Government Act states:

356 Can a council financially assist others?

- 25 (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.*
- (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.*
- 30 (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.*
- 35 (4) *Public notice is also not required if the financial assistance is part of a program of graffiti removal work*

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Report No. 4.6. Local Government Election - Constitutional Referendum and/or Poll

Executive Manager: Corporate Management

File No: ADM450000 #1199714

Principal Activity: Corporate Management – Governance and Administration

Summary: Council at its Ordinary meeting held on 9 February 2012 resolved (12-54) *“that it will be holding a Constitutional Referendum and or a Council Poll at the next election.”*

The NSW Electoral Commission have advised that they require Council to confirm exactly what Council will be holding by 30 April 2012.

5

RECOMMENDATION:

10 That the Strategic Planning Committee resolve under delegated authority that Council confirm with the NSW Electoral Commission that it will be holding:

a) a Constitutional Referendum and a Poll (and number of questions for both)

OR

15

b) a Constitutional Referendum only (and number of questions)

OR

20

c) a Poll only (and number of questions)

at the Local Government Elections to be held on 8 September 2012.

Report

Council at its Ordinary meeting held on 9 February 2012 resolved (12-54) "that it will be holding a Constitutional Referendum and / or a Council Poll at the next election."

5 Management have advised the NSW Electoral Commission of Council's intention to hold a Constitution Referendum and/or a Council Poll and they have requested, to assist with their planning and logistics, for Council to confirm exactly what Council will be holding by 30 April 2012 ie either:

10

- holding a Constitutional Referendum and a Poll (and number of questions for both).
- holding a Constitutional Referendum only (and number of questions).
- holding a Poll only (and number of questions).

15

Note the NSW Electoral Commission do not require the actual questions at this time. The questions for the Constitution Referendum and / or Poll will be required by end of June 2012

Financial Implications

20

A budget of \$150,000 has been allocated in the draft 2012/13 Budget. To date the NSW Electoral Commission have not advised Council what their costs will be to administer the election.

Additional costs will be incurred to hold a Constitution Referendum and / or a Poll.

25

Statutory and Policy Compliance Implications

The Department of Premier and Cabinet, Division of Local Government issued Circular 11-30 on 6 October 2011 on amendments to the Act with regard to Constitutional Referendums. See Attachment 14(b) from the Ordinary meeting agenda of 9 February 2012.

30

Extracts from the Local Government Act 1993 regarding Council's Polls and Constitutional Referendums are as follows;

35

Part 3 Expressions of community opinion

Division 1 Council polls

14 Council polls

A council may take a poll of electors for its information and guidance on any matter.

40

Division 2 Constitutional referendums

15 What is a constitutional referendum?

45

A constitutional referendum is a poll initiated by a council in order to give effect to a matter referred to in section 16.

16 What matters must be dealt with at a constitutional referendum?

50

A council may not do any of the following unless approval to do so has been given at a constitutional referendum:

- (a) divide its area into wards or abolish all wards in its area,*
- (b) change the basis on which the mayor attains office (that is, by election by the councillors or by election by the electors),*
- (c) increase or decrease the number of councillors in accordance with the limits under section 224,*
- (d) change the method of ordinary election of councillors for an area divided into wards.*
- (e) (Repealed)*

55

17 What is the effect of a constitutional referendum?

- (1) The decision made at a constitutional referendum binds the council until changed by a subsequent constitutional referendum.
- (2) However, such a decision does not apply to a by-election held after the constitutional referendum and before the next ordinary election.

Division 3 General provisions concerning a council poll or constitutional referendum

18 What provisions apply to the conduct of a council poll or constitutional referendum?

Part 1 and Part 6 (except Divisions 3, 4 and 5) of Chapter 10 (How are people elected to civic office?) apply to a council poll, and Part 1 and Part 6 (except Divisions 3 and 5) of that Chapter apply to a constitutional referendum, with such modifications as may be necessary, in the same way as they apply to an election.

Note. Part 1 of Chapter 10 identifies the people who are entitled to vote in council elections, and Part 6 governs the conduct of those elections.

Division 3 of Part 6 of that Chapter deals with nominations for election, Division 4 with failure to vote and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and those declared void.

19 Day for taking council poll or constitutional referendum

A council poll or constitutional referendum may be taken on any Saturday, including the Saturday of an ordinary election.

20 When is a question at a council poll or constitutional referendum carried?

- (1) The question at a council poll or constitutional referendum is carried if it is supported by a majority of the votes cast.
- (2) The reference to votes in subsection (1) does not include a reference to any vote that, pursuant to the regulations, is found to be informal.

Expressions of community opinion

Types of expression			
<i>Council Poll</i>		<i>Constitutional Referendum</i>	
Question to be determined			
<i>Any question</i>		<ul style="list-style-type: none"> • <i>Creation or abolition of all wards</i> • <i>Change in the way in which the mayor is chosen</i> • <i>Change in number of councillors</i> • <i>Change in the way councillors are elected for an area divided into wards</i> 	
Result of Poll			
<i>If Yes</i>	<i>If No</i>	<i>If Yes</i>	<i>If No</i>
<i>Council chooses whether or not to proceed</i>		<i>Change must proceed</i>	<i>Change cannot proceed until passed by a later constitutional referendum</i>

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ENVIRONMENT AND PLANNING – EXECUTIVE MANAGER'S REPORTS

Report No. 4.7. PLANNING - Draft Shire-wide Development Control Plan

5 **Executive Manager:** Environment and Planning
File No: PLN458040 #1200036

Principal Activity: Land Planning and Natural Environment

Summary: To present the following sections of the draft Shire-wide Development Control Plan to Council, for Councillor discussion and recommendation, in order to finalise them ready for public exhibition in line with the draft Local Environmental Plan:

- E2 - Bangalow
- E3 - Mullumbimby
- E4 - Brunswick Heads
- B10 - Signage

NOTE TO COUNCILLORS:

10 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a
15 Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

- 20
1. That the Strategic Planning Committee suspend standing orders to move into committee to discuss the relevant chapters on the Draft Shire-wide Development Control Plan (DCP) with staff for Councillor input, and that attendance during the briefing be limited to Councillors, the General Manager and the relevant staff.

25

 2. That after completion of informal discussions, the Committee move out of committee and back into the Strategic Planning Committee Meeting to resolve under delegated authority to adopt the content of the presented sections of the draft Shire-wide Development Control Plan (Annexures 5(a) to 5(d) #1179342, 1183658, 1181406, 1205619) together with any recommended amendments, for staff to revise to ensure
30 consistency with relevant legislation and draft planning instruments in readiness for future public exhibition.

35 *Attachments:*

- Draft DCP Chapter E2 – Bangalow #1179342 [43 pages] Annexure 5(a)
- Draft DCP Chapter E3 – Mullumbimby # 1183658 [20 pages] Annexure 5(b)
- Draft DCP Chapter E4 – Brunswick Heads #1181406 [10 pages] Annexure 5(c)

40

- Draft DCP Chapter B10 – Signage #1205619 [23 pages] Annexure 5(d)

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Report

At Council's Ordinary (Planning) meeting of 13 November 2008, it was resolved (relevant item only):

- 5 **08-705**
 1. *That Council endorse the format, scope and content of the proposed Shire-wide Development Control Plan (DCP 2009) as outlined in this report.*

10 The outline in the report has been reproduced as an attachment to this report. As stated in the previous report to Council this outline 'does not constitute the proposed structure of the draft Shire-wide DCP, but rather identifies sections that are intended to be included'.

15 Council has progressively considered various parts/sections that constitute the Shire-wide DCP at several Council meetings since 2010, refer to Table 1 below for specific details.

 The following sections are now presented to Council for comment in order to finalise them ready for public exhibition in line with the draft Local Environmental Plan. These sections are draft only and will be formatted before public exhibition to ensure consistency and legibility:

- 20 1. E2 - Bangalow (Annexure 5(a))
 2. E3 - Mullumbimby (Annexure 5(b))
 3. E4 - Brunswick Heads (Annexure 5(c))
 4. B10 - Signage (Annexure 5(d))

25 **Table 1: Summary of sections now being presented for Council comment – refer to bolded sections**

Part/Section	Comment
PART A Preliminary	Presented at the 25 March 2010 SPC Meeting.
PART B Controls Applying Generally to Development Applications	Part B provides the development controls that apply to most, if not all DAs in Byron Shire. It contains the following Sections:
Section B1 Natural Environment	In progress.
Section B2 Climate Change	In progress.
Section B3 Water Management	In progress.
Section B4 Traffic Planning, Vehicle Access, Circulation and Parking	In progress.
Section B5 Providing for Cycling	Presented at the 25 March 2010 SPC Meeting.
Section B6 Buffers	Presented at the 25 March 2010 SPC Meeting.
Section B7 Mosquito and Biting Midge Control	Presented at 25 November 2010 SPC Meeting (Res. 10-969)
Section B8 Waste Minimisation and Management	Presented at 10 February 2011 Meeting (Res. 11-59)

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Part/Section	Comment
Section B9 Landscaping	In progress
Section B10 Signage	<p>The draft B10 Signage Section provides guidelines and controls for all signage and outdoor advertising.</p> <p>The existing DCP Chapter has been reviewed to ensure that the draft section is consistent with the Draft LEP and with SEPP 64 – Advertising and Signage. For instance:</p> <ul style="list-style-type: none"> • signage definitions used in the Draft LEP (parent and child definitions) have been incorporated with the signage definitions from the existing DCP, • permissibility of signage as indicated in the zone land-use tables of the draft LEP have been incorporated (at Table B10), • signage that is exempt development in Schedule 2 of the draft LEP have been incorporated, • signage definitions used in SEPP 64 have been incorporated e.g. wall advertisement and special promotional advertisement, • key provisions from SEPP 64 are included such as Clause 10 of the SEPP which prohibits advertisements in various zones, and SEPP 64 Assessment Criteria which is included at Appendix 1. <p>A new Element <i>B10.3.6 Prohibited Signage</i> has been added in keeping with Council resolution 11-904.</p> <p>The Chapter has also been revised in order to address issues raised by staff. For instance, the Sign Category Table in L3 of the existing DCP currently lacks clarity. It has been replaced with Table B10 <i>Signage Categories</i> which lists signage types and their definitions, whether or not they are exempt development and other zone relevant criteria. New Element B10.3.5 <i>Corporate Colours</i> has been included to address the use of corporate colours on buildings.</p>
Section B11 Planning for Crime Prevention	Presented at the 25 March 2010 SPC Meeting (Res. 10-181 & 10-182)
Section B12 Affordable Housing	In progress.
Section B13 Social Impact Assessment	Presented at the 25 March 2010 SPC Meeting (Res. 10-181 & 10-182)
Section B14 Access and Mobility	Presented at the 25 March 2010 SPC Meeting (Res. 10-181 & 10-182)
Section B15 Excavation and Fill	Presented at 25 November 2010 SPC Meeting (Res. 10-969)
Section B16 Desired Future Character	In progress.
PART C	Part C provides the development controls that apply to

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Part/Section	Comment
Further Controls Applying to Land with Specific Constraints and Characteristics Environmental	development on land with certain environmental constraints or characteristics. It contains the following Sections:
Section C1 Indigenous Heritage	In progress.
Section C2 Non-Indigenous Heritage	Presented at the 28 June 2010 SPC Meeting (Res. 10-511)
Section C3 Areas Affected by Flood	In progress.
Section C4 Coastal Erosion and Hazard Areas	In progress.
Section C5 Scenic Escarpments, Ridgelines and Visually sensitive Areas	Presented at the 25 March 2010 SPC Meeting (Res. 10-181 & 10-182)
Section C6 Development in Drinking Water Catchment	Awaiting Rous Water draft DCP.
PART D Further Controls Applying to Specific Landuses	Part D provides the development controls that apply to certain specific types of development. It contains the following Sections:
Section D1 Housing & Residential Development in Urban & Special Purpose Zones	Presented at the 28 June 2010 SPC Meeting (Res. 10-511)
Section D2 Housing & Residential Development in Rural & Environmental Protection Lands	In Progress
Section D3 Tourist and Visitor Accommodation	Presented at the 23 September 2010 SPC Meeting (Res. 10-754)
Section D4 Commercial & Retail Development	Presented at the 23 September 2010 SPC Meeting (Res. 10-754)
Section D8 Public Art	Presented at the 23 September 2010 SPC Meeting (Res. 10-754)
Section D9 Miscellaneous	In progress.
PART E Further Controls Applying to Specific Localities	Part E provides the development controls that apply to the specific localities referred to in the following Sections:
Section E1 Suffolk Park	Presented at the 10 February 2011 Meeting (Res. 11-59)

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Part/Section	Comment
<p>Section E2 Bangalow</p>	<p>Chapter E2 is a combination of the relevant parts of the current DCP's Chapter 12 – Bangalow (created in 1991) and Chapter 22 – Bangalow Urban Release Areas (created in 2011). The majority of the changes are to sections from Chapter 12 due to the fact that all of the old 'potential release areas' have been developed and therefore large sections of this DCP were no longer relevant. The sections relating to Heritage Conservation have been retained and amended where necessary to apply to the expanded Heritage precinct as delineated on Map 1.</p> <p>Chapter 22 has been transferred across to the new DCP in its entirety with some minor alterations to the provisions for Neighbourhood parks to ensure more appropriate equipment will be provided. Discussions have also been had with council staff to ensure the s94 plan was updated to reflect the amended provisions.</p> <p>There have also been some minor alterations to the Maps throughout the Chapter to update references in line with the draft LEP.</p>
<p>Section E3 Mullumbimby</p>	<p>Section E3 – Provides for updated Controls and Mapping for Mullumbimby. The main areas of change relate to the controls for Precinct 5 in West Mullumbimby to reflect the adopted masterplan for this area. Further consideration and explanation has been provided in relation to the shelterbelt which sits in a road reserve along the southern boundary of this Precinct. In particular detail is provided as to what the shelterbelt aims to achieve and how it should be planted out.</p> <p>Detail is also provided on how development in Precincts 2 and 3, which rely on rear lane access, should proceed. These two precincts are the traditional residential areas of Mullumbimby surrounding the town centre. The land is level making pedestrian and cycling to town attractive with residential properties characterised by an unsealed lane and in many cases a house straddling two properties. With the lifting of the sewer moratorium during 2011 it is anticipated Council will continue to receive applications for boundary adjustments/ re-subdivision to create vacant rear lots and dual occupancy. Specific requirements have been drafted for rear lane setbacks, sealing of rear lanes, safe vehicle access and pedestrian access back to the main street frontage.</p>
<p>Section E4 Brunswick Heads</p>	<p>The Brunswick Heads Chapter has been drafted using the Brunswick Heads Settlement Strategy 2004, The Tweed Street Masterplan and the Community Streetscape Forum. The Chapter focuses on preserving the natural features of Brunswick, acknowledging the varied architectural styles throughout the town and the prominence of Tweed Street and the core business area.</p> <p>Development within Brunswick Heads needs to be consistent with the Tweed Street Masterplan, must be sympathetic to the character of the specific locality and respect the coastal village character. A section has been</p>

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Part/Section	Comment
	<p>included for development adjoining the Brunswick River to ensure sufficient setbacks of 10m are retained for new buildings and that Stormwater is not discharged into the River. A section on Pedestrian/ Cycleway access has also been included to ensure the Bike Plan is actioned where possible</p> <p>Bayside Brunswick is still with the Department of Planning and Infrastructure for determination of the Development Application under Part 3A and therefore cannot be finalised until such time. It is understood that this will happen within the next few months and can be included within this Chapter at that time prior to exhibition.</p>
Section E5 Byron Bay	In progress.
Section E6 Ocean Shores	Presented at the 10 February 2011 Meeting (Res.11-59) Council resolved not to proceed with this chapter.
Section E7 Federal Village	Presented at 25 November 2010 SPC Meeting (Res. 10-969)
Section E8 Main Arm	Presented at 25 November 2010 SPC Meeting (Res. 10-969)
Section E9 Eureka	Presented at the 10 February 2011 Meeting (Res.11-59) Council resolved not to proceed with this chapter.
Section E10 Blackbutt Lane, Broken Head	Presented at the 10 February 2011 Meeting (Res.11-59) Council resolved not to proceed with this chapter.
PART F Appendices	
Appendix A Dictionary.	In progress.
Appendix B The Development Application Process.	In progress.
Appendix C Development Application Requirements.	In progress.
Appendix D Sample Waste Management Plan.	In progress.

Financial Implications

5 The Shire-wide DCP will inform conditions imposed on development applications and thus financial considerations for developments.

Statutory and Policy Compliance Implications

10 The *Environmental Planning and Assessment Act 1979* and *Regulations 2000* prescribe the making of DCPs. Once the Shire-wide DCP is adopted by Council it will be triggered in the assessment of development applications and will inform the conditions imposed on them.

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ATTACHMENT 1

Outline of Shire Wide DCP as referred to in *Resolution 08-705*:

Proposed Section/Element	Status	Comments
<i>Introduction and Definitions</i>	DCP 2002 with amendments as required	Draft Shire-wide LEP contains standard definitions for the LEP. It will be necessary to have additional terms in the DCP.
<i>Mosquito and Sandfly Control</i>	New Section	Council resolved (05-293); <i>That Council prepare a Mosquito/Sandfly Management DCP by adapting the Ballina DCP as a basis for input into the Shire-wide LEP.</i>
<i>Planning for Crime Prevention</i>	DCP 2002	
<i>Public Notification & Exhibition of Development</i>	Currently DCP 17	As per EP&A Act and Regulations
<i>Social Impact Assessment</i>	Draft Approved by Council 2006 for re-exhibition	
<i>The Natural Environment</i>	Biodiversity Strategy 2004, Bush Regeneration/weed removal guidelines drafted	Including biodiversity, environmental management, corridors, bush regeneration, weed removal, buffers and vegetation and tree preservation controls
<i>Climate Change</i>	New Section	Address Council Resolution (no. 07-757)
<i>Heritage</i>	Draft DCP available from adopted Community-Based Heritage Study	Requires additional information for conservation areas and liaison with heritage advisor and staff.
<i>Affordable Housing</i>	SEPP 70 (and in particular schedule 2 principles)	Separate consultancy – Judith Stubbs and Associates
<i>Flooding</i>	DCP 2002 with amendments as required	Consider Council's resolution on climate change, floodplain management plans & studies & preliminary draft Byron Bay Area DCP provisions.
<i>Vehicle Circulation & Parking</i>	DCP 2002 with amendments as required	Consider preliminary draft Byron Bay Area DCP provisions.
<i>Access and Mobility</i>	New Section	Based on Council's Disability Action Plan & provisions developed by other Councils
<i>Landscaping</i>	DCP 2002 Part H	Some changes required
<i>Water Sensitive Urban Design (includes Drainage)</i>	New Section	Concept incorporates urban stormwater design for roads and structures, re-use opportunities, alternative water sources. Subject to existing Council Resolution 05-212 (dated 26 April 2005) - point 3 requires that Council

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Proposed Section/Element	Status	Comments
		develop a "... <i>DCP for Water Sensitive Urban Design (WSUD) for the Shire as soon as possible and include, amongst other things, the re-use of greywater within residential allotments and compulsory rainwater tanks</i> ".
<i>Sustainability of the Built Environment</i>	BASIX where applicable	New section required for commercial and industrial development
<i>Signs</i>	SEPP 64	Provide controls for signage not addressed by Draft LEP and SEPP 64
<i>Residential Development</i>	DCP 2002	Address design controls for serviced apartments and medium density, balconies and new draft LEP categories and development types
<i>Industrial Development</i>	DCP 2002	Amend to include energy efficiency provisions.
<i>Commercial Development</i>	DCP 2002	
<i>Tourist Development</i>	New Section	Council Tourism Management Plan currently under development. BRSS, draft LEP and Shire-Wide LES will also provide background to address holiday cabins and restaurants and retail development in rural areas.
<i>Guest House (holiday home) accommodation (includes Holiday Letting if included in draft Shire-wide LEP)</i>	Potential New Section	Detailed Holiday Letting provisions required if Council decides to regulate this form of development – await Council decision on draft LEP.
<i>Coastal Erosion & Hazards</i>	DCP 2002 + amendments	Draft Coastline Management Plan in progress. Consider also draft LEP provisions.
<i>Rural Provisions</i>	BRSS DPI Guidelines	Guidelines for land use conflict management in rural areas (including buffers for different uses)
<i>Subdivision</i>	DCP 2002 + some new provisions	New provisions are required to include landscaping plans/street plantings for the streetscape and Energy Efficient street lighting.
<i>Sex Services Premises</i>	New section	Byron LEP 1988 clause 51 can be used/modified.
<i>Villages</i>	DCP 7 DCP 8 Draft Main Arm DCP	These include Federal, Main Arm & Eureka. Main Arm draft DCP requires further work to finalise.

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Proposed Section/Element	Status	Comments
<i>Suffolk Park</i>	Existing Settlement Strategy DCP 9	Consider alternatives to current DCP format and/or update. Refer to previous section in this report on 'Location-specific DCPs'.
<i>Bangalow</i>	Existing Settlement Strategy DCP 12	Consider alternatives to current DCP format and/or update. Refer to previous section in this report on 'Location-specific DCPs'.
<i>Brunswick Heads</i>	Existing Settlement Strategy DCP 6	Consider alternatives to current DCP format. Park until decision by Council regarding proposed zoning for vacant land at Bayside Brunswick.
<i>Ocean Shores</i>	DCP 14(a)	Consider alternatives to current DCP format and/or update. Refer to previous section in this report on 'Location-specific DCPs'.
<i>Mullumbimby</i>	Existing Settlement Strategy DCP 11	Consider alternatives to current DCP format and/or update. Refer to previous section in this report on 'Location-specific DCPs'.
<i>South Jonson Street</i>	New Section	Draft Byron Bay Area LEP and preliminary draft Byron Bay Area DCP
<i>Byron Central Hospital</i>	New Section	Consider buffer controls
<i>Becton</i>	Currently DCP 18	May require amendment to current DCP to reflect current approvals.
<i>Bayshore Village</i>	Currently DCP 20	Convert current DCP to comply with draft LEP zones, definitions etc.
<i>Railway Precinct, Byron Bay</i>	New section	Pending urban design study. This may be a separate, future addition – refer to previous comments in this report. Preparation of DCP subject to existing Council Resolution 05-775.
<i>Sandhills Estate</i>	New section	New provisions may be required – park pending direction from Council (refer to previous comments in this report)
<i>Cypress pine communities</i>	New Section	Address preliminary Endangered Ecological Community determination and vegetation mapping as no specific controls included in draft Shire-wide LEP.
<i>Aboriginal heritage</i>	New Section	Liaison is required with DECC and local aboriginal groups. Prepare from scratch with liaison with stakeholders.

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Proposed Section/Element	Status	Comments
<i>Cultural Plan Implementation</i>	New Section	Requires further investigation. This may be a separate/ future component of the DCP – refer to previous comments in this report.
<i>Visually significant areas</i>	New Section	Address current 7(d) Zones, Lighthouse Road, Wategos & higher lands in Baywood Chase. Provisions and overlay required
<i>Buffers</i>	Currently addressed in C2.3. New provisions required.	Address Settlement Planning Guidelines, recent DPI & SCU publication and best practice guidelines.
<i>On Site Sewage management</i>	New Section	Council staff to finalise draft DCP provisions and consultant to convert to Standard LEP zones and definitions.
<i>Development in Drinking Water Catchment</i>	New Section	Address Draft LEP, other regions' DCP provisions, OSSMS provisions, Lavery's Gap Drinking Water Catchment Plan & Rous Water advice
<i>Waste Management</i>	New Section	Use 'Waste Not' template DCP prepared by NEWF, convert to appropriate structure & liaise with Waste Manager re specifications and service levels.
<i>Providing for cycling</i>	New Section	Address action in Council's Bike Plan and relevant parts of Cultural Plan where appropriate. Provide for end of trip facilities.
<i>Miscellaneous BLEP 1988 matters not addressed by Draft Shire-wide LEP (if required)</i>	Potential New Sections	New provisions may be required

Report No. 4.8. Koala Plan of Management Project Reference Group

Executive Manager: Environment and Planning

File No: PLN804401 #1193450

Principal Activity: Land Planning and Natural Resources

Summary: Council resolved at its 24 February 2011 meeting to support the Byron Shire Koala Plan of Management (KPoM). Council resolved at its meeting on 14 April 2011 to establish a Koala Plan of Management (KPoM) Project Reference Group (PRG) to provide advice and guidance on the preparation of the Byron Koala Plan of Management to ensure that it meets the aim of SEPP 44.

The first stage of the plan preparation, the *Byron Coast Koala Habitat Study*, is now complete.

The PRG have had three meetings over this time and according to the groups constitution disbanded on 2 February 2012, however, the members have recommended that the group's timeframe is extended in order to guide the development of the second stage; the Koala Plan of Management.

5

RECOMMENDATION:

- 10 1. That the Strategic Planning Committee suspend standing orders and move into committee to undertake a facilitated discussion to be conducted by *Biolink Ecological Consultants*, an independent facilitator on the Koala habitat study, and that attendance during the informal discussions be limited to Councillors, the General Manager and relevant staff.
- 15 2. That, after completion of informal discussions, the Committee move out of committee and back into the Strategic Planning Committee meeting.
- 3. That the Strategic Planning Committee resolve under delegated authority:
 - 20 a) That the recommendations of the KPoM PRG from the 1 February 2012 meeting be adopted as follows:
 - 25 **Recommendation 6.1 – Koala Plan of Management Project Reference Group (KPoM PRG)**
That the KPoM PRG continues to guide the preparation of the Koala Plan of Management.
 - 30 **Recommendation 6.2 – KPoM PRG Constitution**
That the KPoM PRG constitution be amended so that a quorum constitutes half of the PRG members holding voting rights.
 - 35 b) That the *Byron Coast Koala Habitat Study* be noted and that it will be used to inform the preparation of the Comprehensive Koala Plan of Management.
 - c) That the draft submission to the NSW Scientific Committee to list the koala population north of the Brunswick river as an Endangered Population under the *Threatened Species Conservation Act 1995* be noted.

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- 5 d) **That if the request for funding from OEH to prepare the Comprehensive Koala Plan of Management is unsuccessful, in whole or in part, then Council reallocate funds required from account #2605.4 Byron Rural Settlement Strategy.**

Attachments:

- 10 • Byron Coast Koala Habitat Study #1205421 [74 pages]..... **Annexure 4(a)**
• Byron Coast Koala Habitat Study Figures 1 #1205424 [4 pages].....**Annexure 4(b)**
• Byron Coast Koala Habitat Study Figures 2 #1205428 [5 pages]..... **Annexure 4(c)**
• Draft submission to the NSW Scientific Committee #1204914 [17 pages] **Annexure 4(d)**

Report

Council resolved at its 24 February 2011 meeting to support the preparation of a Byron Shire Koala Plan of Management (KPoM):

5

11-137 Resolved:

10

1. That Council support the preparation of a Byron Shire Koala Plan of Management (KPoM) and write to DECCW to seek support for either financial or in kind assistance to prepare the plan as was done in Coffs Harbour.

15

2. That Council receive a report/scoping study including costing estimates for delivery of the KPoM and clarify current information held by Council regarding location of populations and habitat. (Barham/Richardson)

Council resolved at its meeting on 14 April 2011 to establish a Koala Plan of Management (KPoM) Project Reference Group (PRG) to provide advice and guidance on the preparation of the Byron Koala Plan of Management to ensure that it meets the aim of SEPP 44:

20

11-299 Resolved:

25

1. That Council support the acceptance of the funding agreement offered by Department of Environment, Climate Change and Water to prepare a Byron Shire Koala Habitat Study and associated activities as part of the development of a Comprehensive Koala Plan of Management.

30

2. That Council establish a Koala Plan of Management (KPoM) Project Reference Group (PRG) to assist in the preparation and additional activities that will contribute towards the preparation of a KPoM in accordance with the statutory requirements of the SEPP 44.

35

3. That the KPoM PRG membership include:
(a) 1 Councillor
(b) 3 invited members representing Department of Planning, Department of Environment, Climate Change and Water and Friends of the Koala
(c) 2 community representatives (chosen from existing panel of interested community members – Ecology panel).

40

4. That the community representatives be selected by Council.
5. That Council adopt the draft Constitution for the PRG as provided in Annexure 42(d) (#1076685) and request the PRG to review the Constitution at its first meeting and provide feedback to the Biodiversity and Sustainability Advisory Committee or Council as to any proposed changes.

45

11-300 Resolved:

That Council acknowledge the one Councillor representative on the PRG will be one of the members of the Biodiversity and Sustainability Committee, being either Cr Barham, Cr Staples or Cr Richardson.

50

11-473 Resolved:

55

1. That Council appoints two community representatives as recommended in Annexure 2(a) (#1084776) from the Project Reference Group – Ecology register (#882945) to participate in the Koala Plan of Management Project Reference Group.

2. That Council appoints Cr Morrisey (and Cr Barham as the alternate) from the Biodiversity and Sustainability Advisory Committee to participate in the Koala Plan of Management Project Reference Group.

5 **Outcomes of the PRG**

The constitution objective of the Koala Plan of Management Project Reference Group is:

- 10
- To provide advice and guidance on the preparation of the Byron Koala plan of management to ensure it meets the aim of the SEPP44.

The reference group was made up of the following members:

- 15
- Cr Patrick Morrisey
 - John Turbill (Office of Environment and Heritage)
 - Steve Jensen (Department of Planning and Infrastructure)
 - Lorraine Vass (Friends of the Koala)
 - Jan Olley (Community representative)
 - Jacqui Paine (Community representative)
- 20
- Team Leader Natural Resources (staff)

The PRG had three (3) meetings since it was established on 4 August 2011. The reports of the 4 August 2011, 12 October 2011 and the 1 February meeting 2012 have been posted on Council's website.

25

The 4 August 2011 meeting considered the draft PRG constitution, an overview of SEPP 44 Comprehensive Koala Plans of Management, adoption of the proposed study area, and review of the project brief for the habitat study. The two State Government representatives identified they are unable to participate as voting members. As such it is proposed that the constitution be amended so that a quorum constitutes half of the PRG members holding voting rights.

30

The 12 October 2011 meeting included a presentation from Biolink Ecological Consultants, who were successful in their application to complete the Koala Habitat Study, on the scope, methodology and expected outcomes of the koala habitat study. Other issues discussed at the meeting included; an overview of Council's feral animal trapping initiative including efforts to collaborate with Lismore City Council, the issues restricting access to the Myocum Koala food tree plantation site, the Senate Committee Inquiry report regarding the status, health and sustainability of Australia's koala population, the proposed Part 3A development at Bayside Way and the University of Queensland radio tracking of koalas at the Bluesfest site at Tyagarah. The PRG also considered it valuable to undertake a site inspection to some survey sites at the next PRG meeting.

35

40

The 1 February 2012 meeting reviewed the draft Byron Coast Koala Habitat Study, the future of the PRG and sourcing funding to prepare a Comprehensive Koala Plan of Management for the study area. Under the constitution the PRG disbanded on 2 February. The PRG voted in favour of continuing the PRG to guide the preparation of the Koala Plan of Management, and to amend the constitution to reduce the requirement for a quorum to 2 people, which is half of the PRG members holding voting rights.

45

50 Recommendations arising from the KPoM PRG Meeting of 1 February 2012:

Recommendation 6.1 – Koala Plan of Management Project Reference Group (KPoM PRG)

That the KPoM PRG continues to guide the preparation of the Koala Plan of Management.

Moved: Cr Patrick Morrissey Seconded: Lorraine Vass

Recommendation 6.2 – KPoM PRG Constitution

That the KPoM PRG constitution be amended so that a quorum constitutes half of the PRG members holding voting rights.

Moved: Lorraine Vass Seconded: Jan Olley

Byron Koala Coast Habitat Study

The *Byron Coast Koala Habitat Study* is now complete (Annexure 4(a) which is the first stage in preparing a Koala Plan of Management (KPoM).

The specific aims of the study were to:

1. examine the current and past koala distribution within the entire LGA
2. determine the preferred koala food trees for the study area;
3. map potential and core koala habitat;
4. examine key threats to koala including mortality black spots;
5. identify important linkage areas;
6. provide an assessment of population size and local population viability, and make recommendations to inform preparation of a comprehensive Koala Plan of Management for the study area

The study area for the project was identified by a technical committee comprising representatives of Council, Office of Environment and Heritage (OEH) and the Department of Planning and Infrastructure. The boundaries of the study area encompass the area with the highest level of expected future urban growth and therefore the area with the greatest potential impact on koala populations. The study area includes an area of approximately 13,790 hectares comprising lands along the entire coastal strip extending from Billinudgel Nature reserve in the north, to Broken Head Nature Reserve in the south and as far west as Mullumbimby

The distribution and size of koala populations in the study area was determined through a combination of historical records analysis and field work using the regularised, grid-based Spot Assessment Technique. Sixty-three (63) field sites were assessed, eighteen (18) of which recorded evidence of koala use. Four disjunct sub-populations were identified between Brunswick Heads and Byron Bay with two major koala population centres identified around Myocum–Tyagarah and West Byron. Field data provided a broad population estimate of 240 koalas.

Analysis of data from 2543 trees was used to identify preferred koala food trees within the study area. Forest Red Gum, Swamp Mahogany, Tallowwood and Grey Gum were identified as most preferred food trees. Vegetation and soil landscape mapping identified approximately 1290 hectares of potential koala habitat within the study area.

The main threats to koalas identified during the study included habitat loss and fragmentation, roads, fire, domestic dog attack and disease. The study suggests that the low occupancy rates and isolation of sub-populations may impact on the long term viability of the population in the absence of improved landscape connectivity and increase habitat cover. The enhancement of linkages to allow gene flow between coastal and hinterland populations is fundamental to improve the probability of persistence.

Endangered Population

Based on the results of both the Tweed Shire and Byron Shire Koala habitat studies, Tweed Council and Biolink Ecological Consultants are preparing a submission to the NSW Scientific Committee to list the koala population between the Queensland-New South Wales border and the Brunswick River as an Endangered Population under the *Threatened Species Conservation Act 1995 (Annexure 4(d))*.

Financial Implications

5 Council was offered and accepted funding from the OEH towards development of a comprehensive Koala Plan of Management for the eastern part of the Shire. This funding totalled \$40,000, consisting of an initial payment of \$30,000 in the 2010-2011 financial year and a subsequent payment of \$10,000 in the 2011-2012 financial year.

10 To date \$30,000 has been spent completing stage one, the koala habitat study, leaving \$10,000 to be put towards stage two, the development of the plan.

It is estimated it will cost \$35,000 to produce the Koala Plan of Management which will include facilitating a series of workshops during the process which allows input from stakeholders and the community into the plans development.

15 Based on this estimate an additional \$25,000 will be needed to complete the plan. These funds have been requested from the OEH however verbal advice has indicated it is unlikely Council will receive all, if any, of the additional funding required. If funding, in whole or part is not provided by OEH then Council could use the \$20,900 allocated to the Byron Rural Settlement Strategy (account #2605.4), as these funds are not required for the settlement strategy.

20

Statutory and Policy Compliance Implications

25 Pursuant to the *State Environment Planning Policy No 44 – Koala Habitat Protection*, a plan of management may be prepared for the whole or part of a local government area listed in Schedule 1 of the SEPP.

Development of a Koala Habitat Study and a KPoM is consistent with priority actions of the *Byron Biodiversity Conservation Strategy 2004*.

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Report No. 4.9. Draft Byron Developer Contributions Plan 2012

Executive Manager: Environment and Planning

File No: PLN350500 #1187182

Principal Activity: Section 94 Planning

Summary: The purpose of this report is to:

1. Present the "Draft Byron Developer Contribution Plan 2012" to the Strategic Planning Committee for consideration;
2. Identify issues with the first draft plan prepared by consultants;
3. Consider the legal advice prepared with respect to the first draft plan;
4. Discuss the solutions adopted by staff;
5. Discuss the long term financial implications for Council.

5

NOTE TO COUNCILLORS:

10 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

15

RECOMMENDATION:

- 20 1. That the Strategic Planning Committee suspend standing orders to move into committee to receive a PowerPoint or briefing and participate in a facilitated discussion conducted by Council staff on the Draft Byron Developer Contribution Plan 2012.
- 25 2. That after completion of informal discussions, the Committee move out of committee and back into the Strategic Planning Committee Meeting.
- 30 3. That the Strategic Planning Committee recommend to Council as follows:
 - 30 a) That subject to any amendments to the Draft Byron Developer Contribution Plan 2012 (Annexure 2(b) #1207024) be placed on public exhibition in accordance with the Environmental Planning and Assessment Act, 1979 and Regulation, for a period of 28 days.
 - 35 b) That after the public exhibition period the Draft Byron Developer Contribution Plan 2012 is reported back to Council for consideration following any submissions received.

40

Attachments:

- **CONFIDENTIAL** letter #1075088 [7 pages]..... **Annexure 2(a)**
- Draft Byron Shire Developer Contributions Plan 2012 #1207024 [184 pages]..... **Annexure 2(b)**

NOTE: Copy of PowerPoint presentation will be provided to Councillors prior to the meeting.

Background

At its extra-ordinary meeting on 29 August 2006, (**res 06-582**) Council resolved to develop a Contributions Plan (CP). Council subsequently sought fee proposals from suitability qualified firms to undertake the preparation of a new developer contributions plan for Byron Shire.

A Consultancy firm was appointed to undertake the project, and the draft Byron Shire Direct Contributions Plan was developed in accordance with Part 5B of the *Environmental Planning and Assessment Amendment 2008 (EP&A)*. The Plan was originally developed under Part 5B of the Environmental Planning & Assessment Amendment Act 2008 at the time of the resolution Council was advised that the Part 5B of the EP&A Amendment 2008 would be gazetted by April 2009.

Basically, Part 5B changed contributions plans from what was known as “Section 94 Plans” to the new term “Direct Contributions Plans” and it was believed that the intent of Part 5B, was by regulations to restrict the types of development that Council could levy for The draft Byron Shire Direct Contributions Plan 2008 was publicly exhibited for 60 days from Monday 6 October 2008 to Friday 5 December 2008.

The Environmental Planning and Assessment Amendment Act 2008 was assented on 18 June 2008 however it has only been gazetted in parts. The provisions for developer contributions are under Part 5B of the EP&A Amendment 2008 were not gazetted. Verbal advice from the Department of Planning is that Part 5B will not be gazetted in the foreseeable future.

As the draft CP would not comply with the current legislation it was partially amended to broadly comply with the current provisions of the Act. At the time of re-drafting there were no revised Practice Notes or formal Guidelines issued by the Department of Planning with reference to Part 5B. The redrafted CP prepared by the Consultants was done under staff direction to minimise the cost of apportioned contributions to Council and to reduce the net amount of works from the 2005 plan to a manageable level given Council’s financial constraints. Cost minimisation to Council from the rate base for matching contributions was made a priority for the Consultants and this resulted in a less optimal plan in terms of current section 94 planning practice.

Council Strategic Planning Committee considered an updated draft CP on 17 March 2011. The report accompanying the draft CP stated:

“Council engineers have some concerns in relation to apportionment as set out in the plan, and 20 Council Executive Manager intends to request Adam Seton, of Marsdens to peer review the plan in this regard.”

Report

Council received this legal advice on 31 March 2011. A copy of the advice and is provided as a confidential attachment (*Confidential Annexure 2(a)*).

If Council wishes to discuss the confidential legal advice, it is recommended that Council resolve to move into confidential session. If that is the case, the motion could be along the lines:

1. That pursuant to Section 10A(2)(g) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss **CONFIDENTIAL Annexure 2(a)#1075088**.
2. That the reasons for closing the meeting to the public to further consider this item be that it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

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3. *That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as it could compromise the position of Council in current or future litigation and present a risk to public funds.*

5 On 13 June 2011 a Section 94 Officer was appointed. The Section 94 Officer reviewed the draft CP, and the notes made by Council's engineer, as well as the received legal advice.

This review identified issues with the following:

- 10 (a) Population models and catchments did not accord to ABS CD boundaries;
(b) Incorrect apportionment between existing population and new population;
(c) Double dipping;
(d) Works Schedules that are non compliant with Department of Planning Section 94 Practice Notes;
- 15 (e) Mapping of facilities not in accordance with the Environmental Planning and Assessment Regulation 2000;

20 Because of these issues staff decided to utilise the text and format of draft CP prepared by the Consultants but to prepare new population growth models, apportionment rates, works schedules and maps. Each of these issues and a brief description of the method used to correct the issue or to bring it into conformity with the Practice Notes, Act or Regulation is discussed below.

Population models and changes made.

25 The population model did not use exponential growth rates resulting in mathematical errors in the average growth rates shire wide and for each catchment. This in itself is not significant as it does not greatly affect the outcome of the model (ie the population figures are within +/- 10% variation using the exponential growth equation) but because the rest of plan is predicated on these models it call the draft CP into question. The catchment boundaries did not accord to the

30 Australian Bureau of Statistics (ABS) Collection District Boundaries (CD). A CD is the smallest unit area of population data available.

35 The updated population model divided the shire up into catchments based upon the aggregation of CDs. The boundaries of the draft CP catchments conform to the CD boundaries. This will enable future iterations of the plan to be updated by direct input of ABS census data as it is released.

40 In the absence of a Local Growth Management Strategy approved by the Department of Planning, a methodology to predict growth within each catchment had to be developed.

45 Each catchment was then designated as either a growth area or a non-growth area. A growth area would have available zoned land for significant urban development or proposals for new development with Council or the State Government. Non-growth areas would have little or no available land for further urban development. The growth in each catchment had to be estimated based upon existing proposed developments or on available zoned land.

50 The potential population was predicted by lot layouts for proposals such as Bayside Brunswick Heads, and West Byron or used lot yields for existing zoned land. These known amounts of growth were allocated to their respective catchments. The remaining non-growth catchments then had the remaining growth allocated to them. This enabled staff to allocate differing growth rates to each catchment rather than use a shire wide average that would produce misleading outcomes.

55 The population model does not deviate significantly from the Department Of Planning's predictions.

Apportionment between existing population and new population.

The draft CP allocated 100% of the cost of a facility to new population. In some cases no consideration was given to the level of service provision required for the existing population and the demand generated by new population. Incorrect apportionment is caused by two planning errors.

1 Double dipping where the same population is charged twice for the same facility. This occurs when the residential population is charged for the traffic that they generate from their dwelling and charged again for the traffic generated by the commercial or industrial developments that they work at or visit. This could result in Council attempting to recover more than 100% of the cost of a facility.

2 Charging 100% of the cost of a new facility when there is already a demand for that facility generated by the existing population. In this case the cost of a facility attributable to new development should only be the percentage change in population.

The Department of Planning Section 94 Practice Note states:

“Full cost recovering (ie 100% apportionment to new development) can only be used where the public facility is provided to meet the level of demand anticipated by new development only and there is no facility or spare capacity available in the area. If the proposed public facility satisfies not only the demand of new development, but also some regional demand, demand by people from outside the area, or makes up for some existing deficiency, only the portion of demand created by new development can be charged.”

There are some circumstances where 100% cost recovery is appropriate. However in the vast majority of cases where Council has identified works, some dating back to 1993, and has not provided those works then the apportionment will be the percentage change in population for that catchment. The determining factor for what timeframe to use to calculate the population change is based on the timeframe for the provision of the facility or the timeframe at which the facility will reach capacity.

In the amended draft CP the works schedules have been amended to provide an apportionment rate based on population growth that relates to the capacity of each facility.

Works Schedules

The works schedules prepared by the Consultants listed a broad category of works and provided a total cost for all the works in that category. Such an approach would provide Council with extensive flexibility on how the funds were expended. However this approach does not conform to the Practice Notes prepared by the Department of Planning.

Clause 26 of the Environmental Planning and Assessment Regulation relates to the preparation of contributions plans:

26 In what form must a contributions plan be prepared?

(cf clause 25 of EP&A Regulation 1994)

- (1) *A contributions plan must be prepared having regard to any relevant practice notes adopted for the time being by the Director-General, copies of which are available for inspection and purchase from the offices of the Department.*

On the basis of this clause Council must have regard for the practice notes. The Practice Notes state the following with regard to works schedules:

What form should a works schedule take?

There is no prescription in the EP&A Act or EP&A Regulation on the form of the works schedule to provide sufficient latitude for councils to present the information that is relevant to their area. However, good practice suggests that the following should be included in the works schedule:

- the **category** of public facility that is included in the development contributions plan. That is, whether it is for community facilities, open space, roads or other similar type of public facility
- the **name** or **location** of the particular facility that has been provided, or is being proposed for provision of upgrading. “Generic” names should not be used (eg community facility upgrading) – they should be specific (eg “Smith Street community facility”)
- the **cost** of the works – this should again be specific to the facility that is being provided (eg “Smith Street community facility - \$50,000”). In the case of a section 94 (s94) development contributions plan, the schedule should indicate whether the costs are inclusive or exclusive of apportionment
- the **timing** proposed or the **threshold(s)** being used as the measure for provision (eg “2006/07 or “when population of 3,000 achieved”).

The updated works schedules contain some items from the old contributions plan, with cost updates and new items based on existing adopted documents (such as the *Byron Shire Bike Strategy and Action Plan 2008*) and on input from all relevant sections of Council. That is not to say that the works schedules in the draft plan are definitive further input from Councillors will be required to determine is any additional facilities are to be included in the works schedules.

Councillors will also have an important roll in determining the priority order and timing of works. The works schedules for each category of contribution are including the name, location and a brief description of each facility. Where the facility has been identified in a separate study, adopted strategy or plan that document is referenced in the schedule.

Mapping of the facilities

Clause 27 (1)(h) of the Environmental Planning and Assessment Regulation 2000 requires the contributions plan to contain “a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds).” In the new draft CP where the location of a facility is known that facility has been mapped either by utilisation of maps from existing strategies, such as the Bikeways plan or individual maps have been created. Where the specific location of a facility is not known then the facility is noted to be provided within a mapped area of a catchment.

**Other proposed changes to the draft contributions plan
Section 94A Levy**

It is proposed to separate tourist, commercial and industrial development from residential development for the purposes of levying contributions. Specifically a Section 94 plan with nexus and apportionment will apply to residential development and a Section 94A plan with a contribution rate fixed as a percentage of the cost of works will apply to tourist, commercial and industrial development. This method has been applied at Port Stephens Council and at other Council’s. The reason for this is to avoid double dipping that is charging the residential population and then charging the same population via charges levied on their places of employment.

Imposing a Section 94A levy on tourist, commercial and industrial development is an attempt to level a capture the impact that population external to Byron Shire has on Council facilities. A

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Section 94A levy does not require any justification of nexus nor does it need to demonstrate that there is an increase in population. In this regard it is a good mechanism to capture a level of demand generated external to the shire.

5 The principal would be that the demand for new facilities, and therefore the cost, is levied on the residents by way of a Section 94 levy. The demand generated by tourists and workers who travel to the local government area to make use of industries and commercial uses is captured by the use of a Section 94A levy of the tourist accommodation, industries and commercial development.

10 There is no need to apportion the cost of a work between existing and new population when a Section 94A levy is used. A Section 94A levy is suited to providing for the provision of public art, and other civic improvements. If Council were to use a standard Section 94 plan to fund public art then Council would only be able to charge developers a percentage of the cost of the public art based on the apportionment rate. For example in the Byron Suffolk Park catchment this
15 would be 25.78% of the total cost. Council would be responsible for the remaining cost. If a Section 94A fixed percentage levy is used then 100% of the cost of public art can be funded from the developer.

Input from Councillors will be vital in the final form of the works schedule for the Section 94A levy.
20 Additional works may be added to the Section 94A works schedules and the cost and priorities changed.

Car Parking

25 The use of Section 94 to levy contributions in lieu of provision of carparking on a development site has been a commonly accepted part of many Section 94 plans. Carparking contributions are not levied on every commercial development but rather on those that cannot provide the required car spaces.

30 Section 94A(2) states "*A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under Section 94.*" This creates an issue if Council wishes to proceed with a Section 94A levy on commercial development. Where a commercial development did not provide sufficient carparking on site the act would prevent Council from imposing contributions for both the 94A and carparking.

35 A solution to this issue is to remove carparking from the Section 94 Contributions Plan. The payment of these contributions was optional for the developer i.e. the developer had the option of providing the spaces on their own site or paying Council to provide them. Essentially the carparking contribution is voluntary. A suitable mechanism to facilitate development would be by
40 the use of a voluntary planning agreement. Where a commercial development cannot or chooses not to provide the amount of carspaces as required by Chapter 1 Part G of Byron Shire Development Control Plan 2010 then that developer may request Council to provide them and offer to pay for the car spaces. The offer would be in the form of a voluntary planning agreement.

45 A policy on the preparation of voluntary planning agreements for provision of carparking would be required. This policy would contain the cost of the carspaces, indexation provisions and a standard template for a voluntary planning agreement for provision of carparking.

Financial Implications

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Affordability

The following tables set out a brief summary of the breakdown in the sources of funding required for each of the works schedules.

55

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Admin Summary	
Total Cost of Works	\$ 1,850,000.00
Total Cost to Council	\$ -
Total Cost to developer	\$ 1,565,000.00
Total Reconciliation	\$ 285,000.00

Community Facilities Summary	
Total Cost of Works	\$ 26,842,315.82
Total Cost to Council	\$ 13,330,134.94
Total Cost to developer	\$ 12,042,500.08
Total Reconciliation	\$ 1,469,680.80

Bikeways and Footpaths Summary	
Total Cost of Works	\$ 10,753,994.21
Total Cost to Council	\$ 6,695,097.14
Total Cost to developer	\$ 3,562,545.64
Total Reconciliation	\$ 496,351.43

Open Space and Recreation Summary	
Total Cost of Works	\$ 21,823,000.00
Total Cost to Council	\$ 4,418,981.96
Total Cost to developer	\$ 13,188,028.31
Total Reconciliation	\$ 4,215,989.73

Urban & Rural Roads Summary	
Total Cost of Works	\$ 36,141,249.05
Total Cost to Council	\$ 19,068,691.70
Total Cost to developer	\$ 9,709,035.18
Total Reconciliation	\$ 7,363,522.17

5

Because of the apportionment factor there will be a significant cost impost on Council. Based on the works schedules developed to date the estimated cost of works attributable to Council for across all of the works schedules is \$43,512,905.74 spread over 25 years. The following discussion is in very broad terms on the affordability of the various sections of the plan.

10

Administration

There is no cost to Council in this section of the plan.

15

Community Facilities

The Community Facilities component of the plan shows Council's share of the apportionment at \$13,330,134.94. As the Library has already been funded from other sources this frees up a source of income over the 25 year collection of funds and it also reduces Council share of the apportionment bill by the amount already paid by Council (refer to works schedule page 77 of the "Draft Byron Developer Contribution Plan 2012).

20

The income from developers contributing to the Library can be re-allocated to fund Council's share of the apportionment within the Community facilities works schedule. This reduces the shortfall in the Community Facilities component of the plan by \$9,677,221.80 down to \$3,652,913.14. Grant funding may be used to cover some of this shortfall. Further it is expected that Council's share of the apportionment for the landfill expansion (\$7,784,395.78) may be sourced from the general waste charge. This creates a surplus (with regards to future budgeting for Council's share of the apportionment) in the in the community services section of the plan of \$4,131,482.64. This surplus may be utilised to fund Council share of the apportionment in other components of the plan.

25

30

Bikeways

35

The above table shows that Council has to find \$6,695,097.14 over 10 years. Some of Council's share of the apportionment may be sourced from grants, such as the RTA grants for Bikeways and Roads to Recovery funds in Council's recurrent budget. These two funding sources should cover 100% of Council's share of the apportionment for Bikeways. This reduces the funding shortfall by a potential \$6 million over the first 10 years of the plan down to zero. If this occurs there is no funding shortfall in the Bikeways component of the plan.

40

Urban and Rural Roads

5 The roads component of the plan has a funding shortfall of \$19,068,691.70. Roads to Recovery funding has already been programmed for the next 5 years. After that period Council may allocate some or all of the roads to recovery funding to its share of the apportionment. This potentially reduces the funding deficit by \$1.8 million down to \$17,268,691.70 over 10 years (most roadworks have a 10 year timeframe for collection). Grant funding may take up some of this amount but it is considered that this level of funding shortfall is not sustainable and Council cannot afford to do all of the works in this section of the plan.

10

Open Space and Recreation

15 In the Open Space and recreation works schedule Council's share of the apportionment is \$4,418,981.96. Some of this is payable in 10 years, and other parts may be sourced over 25 years. Grant funding may be attained for some of this but the majority of this shortfall is unfunded unless Council allocates the surplus from its share of the apportionment from Community Facilities to open pace. This would leave a funding shortfall of \$300,000 over 25 years. This is potentially manageable.

20 **Reconciliation of the old plan**

Council needs to reconcile the 2005 Section 94 plan. This will involve allocating funds already collected to new or rolled over projects in the works schedules for each category and within each catchment. Staff have allocated the unbudgeted currently held section 94 funds for each category and catchment to works in the new plan. The general principles adopted for this process were:

25

- (a) Funds collected in a catchment were allocated to projects within that catchment;
- (b) Funds within a works program were be allocated within that program area;
- 30 (c) Funds were allocated to the highest priority project in a program area.

In the preparation of the works schedules staff have made judgements on the priorities within the works schedules. This was done to provide Councillors with suggestions as to where to allocate the funds and starting point for further discussion. It is fully expected that Councillors will wish to change the priority order of the works and re-allocate the already collected funds based on a changed priority order.

35

There are two significant areas for which funds from the old plans have not been bought forward. These are \$1.5 million from open space in Suffolk Park and the pre-plan funds. The Suffolk Park open space money is likely to be spent arising from the community consultation held there in February. The pre-plan funds are the subject of a separate Council resolution calling for a report on their expenditure.

40

Statutory and Policy Compliance Implications

45

The population model, catchments, apportionment rates and draft works schedules have been developed to ensure that the draft CP conforms to the requirements of the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000 and the Department of Planning Section 94 Practice Notes.

ORGANISATIONAL SUPPORT – EXECUTIVE MANAGER'S REPORT

Report No. 4.10. Draft Delivery Program and Operational Plan

5 **Executive Manager:** Organisational Support
File No: COR653000 #1208179

Principal Activity: Organisational Support

Summary: Council have endorsed the draft Community Strategic Plan and Resourcing Strategy (consisting of the Long Term Financial Plan, Asset Management Plan and Workforce Plan) for the purposes of public exhibition.

The remaining CSP document is the draft 'Delivery Program and Operational Plan' a draft of which is attached. It too must be exhibited for 28 days prior to Council considering submissions and adopting a Delivery Program and Operational Plan.

It is appropriate that Council consider the draft Operational Plan at the same time it is considering the draft Budget, as the two documents will be exhibited together each year (akin to the previous Management Plan/Budget exhibition process).

RECOMMENDATION:

- 10 **That the Strategic Planning Committee resolve under delegated authority to:**
1. **authorise the draft Long Term Financial Plan to be updated to ensure that it accords with Council's endorsed draft 2012/13 Budget, prior to final (phase 3) exhibition;**
 - 15 2. **endorse the draft Delivery Program 2012-2015 (including Operational Plan) for final (phase 3) exhibition.**

20 **Attachments:**

- Draft Delivery Program 2011-2015 (including the Operational Plan) #1165137 [117 pages]...**Annexure 8**

Report

Draft 89 Community Strategic Plan and Resourcing Strategy

- 5 By **Res 11-746** Council has adopted the draft Community Strategic Plan for the purposes of public exhibition. By **Res 11-1080** Council adopted the associated draft Resourcing Strategy (Long Term Financial Plan, Asset Management Plan and Workforce Plan) for the purposes of public exhibition.
- 10 There has been no need for changes to be made to the draft Community Strategic Plan, Asset Management Plan or Workforce Plan at this stage and these documents are ready for final phase exhibition and no further resolutions of Council are required in relation to these documents.

15 However, the Long Term Financial Plan will need to be updated to align with recent resolutions as have been incorporated in to the 2011/12 Budget and, indeed any other changes that might be made to the 2011/12 budget. This has been addressed in recommendation (a) to this report.

Draft Delivery Program (including Operational Plan)

- 20 The final component in the suite of Community Strategic Plan documents which Council needs to endorse for final (phase 3) public exhibition is the draft Delivery Program 2012-2015 (including Operational Plan). It too has been prepared as per the requirements of the Division of Local Government.
- 25 The draft Delivery Program 2012-2015 (including Operational Plan) was distributed to Councillors for consideration along with the balance of the suite of CSP documents for the briefing session and report to the Strategic Planning Committee meeting of 24 November 2011. Since that time some minor changes have been made to update parts of the plan to accord with subsequent resolutions of Council but the vast majority of the draft Delivery Program has remained the same.
- 30 The draft Delivery Program 2012-2015 (including Operational Plan) was reported to the Finance Advisory Committee meeting on 15 March 2012 the resulting recommendation from which was:

FAC Recommendation 4.1.1:

35 *That the Finance Advisory Committee recommend to Council in principle, support for 2012-2015 Delivery Program (including Operational Plan) prior to reporting to Council for the final phase of public exhibition.*

40 The Delivery Program (including the Operational Plan) is part of the suite of Community Strategic Plan documents required under the integrated reporting regime. The relationship between the documents is depicted below.

45 As per the adopted Community Strategic Plan Communication Strategy, statutory requirements and prior resolutions of Council, once the 2012/13 Budget and Operational Plan are finalised, the following will all be placed on public exhibition:

1. draft Community Strategic Plan;
2. draft Resourcing Strategy (consisting of Long Term Financial Plan, Asset Management Plan and Workforce Plan);
- 50 3. draft Delivery Program 2011-2015 (including Operational Plan);
4. draft Budget (including draft Fees and Charges).

55 It is proposed that the suite of documents will be placed on public exhibition during April to enable submissions to be considered and reported back to Council prior to the 30 June 2012 deadline.

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The draft Delivery Program 2012-2015 (including Operational Plan):

- 5 a. Comprises the statutorily required 4 year Delivery Program ie the actions that Council proposes to progress over the next 4 years.
- b. Includes the statutorily required Councils annual Operational Plan ie the actions that Council proposes to progress in the next year.
- 10 c. Is a combined document as this is permitted, it reduces the number of documents and it is also a format which has already been commonly used by many of the category 1 and 2 councils (and accepted by the DLG).
- 15 d. Has been prepared bringing forward items from the current Management Plan, adopted Plans and Strategies and resolutions where they are consistent with the draft budget and available funding.
- e. Identifies:
 - 20 i. the 4 year Delivery Key Activity which is carried forward from the Community Strategic Plan;
 - ii. the 2012/13 Actions intended to delivery the Key Activity;
 - 25 iii. the status of the Action – existing actions are either activities which are ongoing and operational in nature or actions which have been previously identified but not yet delivered and new actions include actions arising from Council resolutions or plans and strategies etc adopted since the last Management Plan;
 - iv. whether actions are ongoing (usually operational in nature) or have a particular target date;
 - v. the Division responsible for the action;
 - 30 vi. how performance against the action will be measured; and
 - vii. the funding source for the action (or in some cases the fact that the proposed action is unfunded).
- 35 f. Includes actions which, while requirements from adopted plans, strategies or resolutions, they are unfunded for the 2012/13 financial year. These actions should remain in the Operational Plan (unless Council resolve to not proceed with them at all) in case funding sources are able to be identified for the action. If no funding source is able to be identified they will be carried forward until, either a funding source is identified, Council changes its strategic approach (and adopts a new CSP/4 year Delivery Plan) and/or Council resolves not to proceed with the particular action.
- 40 g. Has been prepared based on the draft budget (and should changes be made to the draft budget in turn could affect the funding sources for Actions).
- 45 The Key Activities in the Delivery Program flow from the Community Strategic Plan and, in turn, the 2012/13 Operational Plan 'Actions' must flow from the Key Activities. Further, it is a requirement that the Key Activities and Actions must be able to be traced sideways through the Resourcing Strategy (ie Long Term Financial Plan, Asset Management Plan and Workforce Strategy) and the annual Budget. That is, all of the suite of documents are required to be and are
50 integrally linked (as shown below) and changes to one, eg the budget, will most likely result in a need for changes to be made to the other.

Figure – Extract from Community Strategic Plan showing relationship between CSP suite of documents.



5

Financial Implications

10 The draft Delivery Plan (including Operational Plan) has been developed in house within existing resources. There will be minor costs associated with exhibition of the suite of CSP documents similar to the usual costs associated with exhibition of the annual budget, fees and charges and management plan.

Statutory and Policy Compliance Implications

15 The draft Delivery Program (including Operational Plan) and all of the suite of Community Strategic Plan documents, have been prepared in accordance with the requirements of the Division of Local Government – Department of Premier and Cabinet’s requirements for the Community Strategic Plan.

20 The Community Strategic Plan, the Delivery Program (including the Operational Plan) and the Resourcing Strategy must be exhibited for 28 days and submissions considered, before Council can consider adopting the plans.

SOCIETY AND CULTURE – EXECUTIVE MANAGER'S REPORTS

Report No. 4.11. Fees for Service – Aboriginal representation

5 **Executive Manager:** Society and Culture
File No: ADM300300 #1176698

Principal Activity: Community Services

Summary: This report provides advice on the establishment of fees for service for Aboriginal representation on Council committees and Project Reference Groups; and for ceremonies, cultural and artistic performances. The report presents State Government awards for these services for consideration.

RECOMMENDATION:

- 10 That the Strategic Planning Committee resolve under delegated authority:
- 15 1. That a fee for service be established for identified Aboriginal representative positions on all of Council's Project Reference Groups and Advisory Committees from 1 July 2012 based on the New South Wales Department of Premier and Cabinet Award of \$104 half-day and \$207 full-day sitting fees.
 - 20 2. That an *Aboriginal Representation - Fee for Service* line item for those Committees and Project Reference Groups with specified Aboriginal representation (Aboriginal Heads of Agreement PRG, Tourism Advisory Committee, relevant Tourism PRGs, and Public Art Policy Implementation PRG) be included in the Budget Preparations for 2012/2013.
 - 25 3. That fees as per the Department of Aboriginal Affairs Fee Schedule for Aboriginal Cultural Practices and Performances continue to be paid to local Aboriginal people for supporting Council through ceremonies and cultural performances, including Welcome to Country, Smoking Ceremonies, dance and didgeridoo performance.

Report

At the Ordinary Meeting on 3 November 2011, Council resolved (**11-886**):

- 5 *That staff report on the process for establishing fees for service eg. Heads of Agreement or Memorandum of Understanding, and check the Premier and Cabinet's Aboriginal Involvement Award.*

10 Aboriginal knowledge is complex and specialised, and is owned by Aboriginal people. As in Western culture, specialised knowledge is not something that is usually given away for free. Increasingly, government agencies are of the view that Aboriginal people who choose to provide services for councils in any capacity, including performing a traditional dance, giving a speech or traditional welcome, providing artwork or participating in a Committee or project, are entitled to be paid for their time and expertise.

15

Committees and Project Reference Groups

20 Many government agencies have introduced the payment of sitting fees for Aboriginal representatives on committees and working groups.

25

The New South Wales Department of Premier and Cabinet award for Aboriginal sitting fees for Advisory Councils sets the current rates, effective from 1 November 2004 as:

	Chair	Member
25 Full day	\$342	\$207
Half day	\$171	\$104

30 It is noted that the rates are set at a daily and half-daily rate. It is important to also consider the preparation, travel time and costs involved in preparing for Project Reference Group and Advisory Committees.

35

At the time of this report, Aboriginal representatives participate in the following Council Committees and Project Reference Groups:

35 Tourism Advisory Committee	1 member
Tourism Brand/Identity Project Reference Group	1 member
Visitor Trails Project Reference Group	1 member
Public Art Policy Implementation Project Reference Group	1 member
Aboriginal Heads of Agreement Project Reference Group	3 members

40 It is proposed that Council develop a new Memorandum of Understanding in 2012 with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal), and/or similar agreements with other recognised Native Title claimants. Committee membership may therefore increase as a result.

Cultural Practices and Performances

45

Aboriginal protocols such as 'Welcome to Country' are increasingly being used and observed by all levels of Government at community events and ceremonies. Aboriginal people are the original owners of this land and it is important that this special position is recognised and incorporated into official protocol to enable the wider community to share in Aboriginal culture and facilitate better relationships between Aboriginal people and the general community.

50

Below is the Cultural Practices and Performances Fee Schedule issued by the Department of Aboriginal Affairs:

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Cultural Practice	Minimum Fee
Welcome to Country	\$100.00
Smoking Ceremony	\$530.00
Didgeridoo performance	\$360.00
Dancer	\$430.00 – \$450.00

It is important to note that the schedule is only a guide and stated minimum fees are current as per the relevant certified agreement.

5

In 2011, representatives of the Arakwal People attended many Council events to perform 'Welcome to Country' and other cultural practices. These include Australia Day, International Women's Day, Seniors' Week, Youth Week, NAIDOC Week Flag-raising ceremony and NAIDOC Family Fun Day, New Year's Eve, and the opening of the Byron Regional Sports Cultural Complex.

10

Consultation on Planning Matters

This paper does not propose any change to consultation with Aboriginal community members on planning matters, such as the development of the LEP, DCP and/or Coastal Zone Management Plan.

15

Nor is there currently any provision for fees to be paid by applicants in relation to Aboriginal heritage, other than a referral fee of \$320 paid by applicants to the National Parks and Wildlife Service in relation to the issuing of an Aboriginal heritage impact permit. Such permit may be issued in relation to a specified Aboriginal object, place, land, activity or person.

20

Other than as above, Council cannot charge an applicant a fee for service for referring an application to the Arakwal People for consideration. Council would need to set aside a budget for referral if a fee was to be paid. Currently approximately 10 DA's per year would be referred, however this number may increase once Council enters negotiations over a new MOU with the Arakwal People later this year, and once relationships with other legitimate Native Title claimants are clarified and/or strengthened.

25

Financial Implications

30

As noted above, there are currently five Council Committees and PRGs with specified Aboriginal representation. Based on the proposed meeting frequency of these committees in 2012/13, the cost of introducing sitting fees is estimated at \$3,200. This amount has been provisionally included in the draft 2012/13 Budget for Council's consideration.

35

It is not anticipated that introducing fees for cultural practices and performances in 2012/13 would have any additional impact on individual program budgets. Council currently routinely pays a fee for these services.

40

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Statutory and Policy Compliance Implications

5 Currently only the community representatives on the Internal Audit Committee are paid a sitting fee, in recognition of the 'professional services' they are contributing to Council. No other committee members are currently paid a fee.

This paper also has relevance to:

- 10 NSW Department of Premier and Cabinet award for Aboriginal sitting fees for Advisory Councils (2004)
- NSW Department of Aboriginal Affairs Aboriginal Cultural Protocols and Practices Policy (2005)
- 1998 Heads of Agreement between Byron Shire Council and the Arakwal People
- Engaging with Local Aboriginal Communities (A Resource Kit for Local Government in NSW) 2007
- 15 Local Government Act 1993
- Native Title Act 1993
- Land Rights Act 1983

WATER AND RECYCLING – EXECUTIVE MANAGER'S REPORTS

Report No. 4.12. Options Report Lot 2 Bayshore Drive, Byron Bay

5 **Executive Manager:** Water and Recycling
File No: ENG073030 #1206204

Principal Activity: Community Services

Summary: Council considered reports on the future use of Lot 2, DP1004514 Bayshore Drive, Byron Bay in 2010 and 2011.

A report was prepared for Council, in accordance with a prior resolution, to facilitate a workshop at the Strategic Planning Committee meeting in March 2011. Council resolved:

11-381

1. *That Council note the report and receive a further report to the next Strategic Planning Committee Meeting on the concept design brief.*
2. *That the report consider options:*
 - a) *to retain a walking and cycling corridor to provide a future link between Bayshore Drive and the Byron Regional Sports and Cultural Complex*
 - b) *for affordable housing*

In view of this last resolution of Council it is clear Council is seeking advice regarding options for the potential future use of Lot 2. As such it is recommended that Council engage a consultant to prepare an Options Report such that Council could determine a preferred option that would form the basis for a more detailed concept design.

The purpose of this report to Council is to present the draft Options Report brief in accordance with the resolution of Council.

RECOMMENDATION:

10 **That the Strategic Planning Committee resolve under delegated authority to endorse the draft Options Report brief with an allocated budget of \$20,000 from the property reserve and that on completion of the associated consultancy the report be presented to Council.**

15 **Attachments:**

- Request for Detailed Quotation – Options Report #1206481 [15 pages]**Annexure 7**

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Report

Lot 2 DP1004514 Bayshore Drive, Byron Bay is 2.91 HA and is zoned 4A. Lot 2 is owned by the General Fund and rates are paid by the General Fund.

5

In April 2010 Council considered a report on the potential relocation of Water and Sewerage infrastructure currently located at the Bayshore Drive depot to the Byron Bay STP site. Council drew in the issue of nearby land owned by Council and resolved in part:

10 10-246

3. *That Council note Resolutions 05-289 and 02-651 to develop a concept plan for Bayshore Drive land at Lot 2 DP 1004514 and receive a report that includes consideration of Lot 1 DP1004514.*

15

No budget was assigned for the development of the concept plan.

In December 2010, Council considered a detailed report on the potential of developing a concept plan for Lot 2. Council resolved:

20

10-1021

1. *That a workshop be convened early in the new year to allow Councillors to receive a briefing from staff with updated aerial maps or proposed future zonings including other reports eg Byron Bay, Suffolk Park, Ewingsdale Settlement Strategy 2002 and Local Environmental Study.*
2. *That Council consider the allocation of up to \$20,000 in the December 2010 quarterly review for the preparation of a concept plan for Bayshore Drive land at Lot 2 DP 1004514 with funding being provided by the Property Reserve. (Staples/Barham)*

25

30

Council subsequently allocated \$20,000 at the December quarterly review.

A report was prepared for Council to facilitate a workshop in accordance with the resolution of Council and this occurred at the Strategic Planning Committee meeting in March 2011. Council resolved:

35

11-381

1. *That Council note the report and receive a further report to the next Strategic Planning Committee Meeting on the concept design brief.*
2. *That the report consider options:*
 - a) *to retain a walking and cycling corridor to provide a future link between Bayshore Drive and the Byron Regional Sports and Cultural Complex*
 - b) *for affordable housing*

40

45

In view of this last resolution of Council it is clear Council is seeking advice regarding options for the potential future use of Lot 2. As such it is recommended that Council engage a consultant to prepare an Options Report such that Council could determine a preferred option that would form the basis for a more detailed concept design.

50

The purpose of this report to Council is to present the draft Options Report brief (see annexure 7) in accordance with the resolution of Council.

55

Financial Implications

Council has previously allocated a budget of \$20,000 from the Property Reserve.

- 5 Council could also consider if any of the land subject of this report is sold off at future point in time that \$20,000 from any sale proceeds be reimbursed to the Property Reserve at that time.

Statutory and Policy Compliance Implications

- 10 Council Policy – 09/007 Affordable Housing on Council Owned Land states at 3.1, *When considering the best use of lands owned by Council, as a first option, consideration is given to affordable housing.*

377 General power of the council to delegate

- 15 (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:
- 20 (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)

BYRON SHIRE COUNCIL

CORPORATE MANAGEMENT – CONFIDENTIAL REPORT

Report No. 5.1. CONFIDENTIAL - Expression of Interest Lease Former Telstra Depot

Director: Corporate Management

5 **File No:** BEN400000/#1193870

Principal Activity: Property and Contracts

Summary: At the Ordinary Meeting 3 March 2011, Council resolved [11-176] to prepare and call for expressions of interest for the Lease of the Former Telstra Depot site for a period of two years only.

The Expressions of Interest have been assessed in accordance with the provisions of Council's Purchasing & Tender Guide and the Local Government Act 1993.

RECOMMENDATION:

- 10
1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, that the Strategic Planning Committee resolve into Confidential Session to discuss the following report, namely Expression of Interest Former Telstra Depot.
 - 15 2. That the reasons for closing the meeting to the public to consider this item be that:
 - (a) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
 - 20 (b) 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.
 - 25 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the confidential information could compromise the commercial position of the proponents, could adversely affect Council's ability to contract with preferred proponents or could affect Council's ability to attract competitive offers in the event that fresh expressions of
 - 30 interest are invited.

Attachments:

- 35
- **CONFIDENTIAL** Expressions of Interest received #1194771 [60 pages] **Annexure 1(a)**
 - **CONFIDENTIAL** Memo Executive Manager Environment & Planning #1182375 [1 page]. **Annexure 1(b)**
 - **CONFIDENTIAL** Assessment Panel Recommendation Report #1198615 [6 pages] **Annexure 1(c)**
 - **CONFIDENTIAL** Draft Lease Agreement #1152033 [11 pages] **Annexure 1(d)**