

NOTICE OF MEETING



ORDINARY MEETING

An Ordinary Meeting of Byron Shire Council will be held as follows:

Venue	Council Chambers, Station Street, Mullumbimby
Date	Thursday, 12 April 2012
Time	10.30am

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

Public Access relating to items on this Agenda can be made between 9.00am and 10.30am 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.

Submissions and questions from the public - Anyone wishing to make a submission to Council on an item outside the Agenda or to ask a question of a general nature to Councillors or to the General Manager will be able to do so at the completion of the Public Access period (refer note above) time permitting and at the discretion of the Mayor.

Phil Warner
Acting General Manager

#1212346
Distributed 05/04/12

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.

BUSINESS OF ORDINARY MEETING

- 1. APOLOGIES
- 2. REQUESTS FOR LEAVE OF ABSENCE
- 3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
- 4. TABLING OF PECUNIARY INTEREST RETURNS (s450A Local Government Act 1993)
- 5. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 5.1. Ordinary Meeting held on 22 March 2012
 - 5.2. Byron Shire Reserve Trust Meeting held on 22 March 2012
 - 5.3. Extraordinary Meeting held on 3 April 2012
- 6. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS
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- 10. SUBMISSIONS AND GRANTS
- 11. DELEGATES’ REPORTS
- 12. ITEMS DEFERRED FROM PREVIOUS MEETINGS

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Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Executive Manager prior to the meeting. Any suggested amendments to the recommendations should be provided to the Administration section prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

NOTICES OF MOTION

Notice of Motion No. 8.1. Parking coupons for volunteer workers

COR405527 #1213381

5

I move:

1. That Council support the Fletcher Street Cottage and other government recognised and/or funded community service groups by providing parking coupons for use by volunteers whilst working in the Byron Shire.
2. That the government recognised and/or funded community service groups keep record by way of a log book for the use of the parking coupons should the owner of a particular vehicle be required to be identified.

15

Signed: Cr Jan Barham

Councillor's Background Notes:

20

I have received representations from Fletcher Street Cottages in relation to their volunteers being fined for overstaying the two hour time limit in place outside of the Cottage. I have previously raised the issue of provision of parking coupons for government recognised and/or funded community service groups in a Notice of Motion on 1 March 2007, where the following was resolved:

25

(Resolution: 07-42)

30

'... that Council provide resident parking coupon(s) to government recognised and/or funded community service groups that are able to provide all the following documentation:

35

a) A copy of the current valid certificate of registration for the vehicle owned or leased by the organisation registered as either business or charity use, and nominate a representative of the organisation to meet the requirements of part b) and

b) A copy of a New South Wales Drivers Licence from a Byron Shire resident working for the organisation, displaying their Byron Shire residential address.'

40

This resolution addressed vehicles owned or leased by the community group, where there was a Byron Shire resident working for the organisation. In the case of volunteers working at Fletcher Street Cottage, they use their own vehicles and therefore can not access a parking coupon to park in the paid parking areas of Byron Bay.

45

This motion seeks Council resolution to provide the Fletcher Street Cottage and other government recognised and/or funded community service groups parking coupons for use by their volunteers. A condition of issue of the parking coupons would be that the group keeps a record of use by way of a log book so that a vehicle owner can be identified if required.

50

Recommended priority relative to other Management Plan tasks:

Medium.

Definition of the project/task:

Provide government recognised and/or funded community service groups parking coupons for use by their volunteers.

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Source of Funds (if applicable):

N/A

Management Comments:

5 (Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:

The Notice of Motion would require the provision parking coupons for use by volunteers working for government recognised and/or funded community service groups.

10

Resident coupons only apply to allow unpaid parking in the Main Beach, Clarkes Beach, Nth Lawson and Sth Lawson car parks. Each of the car parks are subject to 4 hour parking limits. Resident coupons do not entitle parking beyond the posted time restriction.

15 The issue of coupons in this instance would provide economic but not geographic assistance.

Geographically the walking distance between Fletcher Street Cottages and the car parks is equivalent to or greater than the distance from the cottages to free 4 hour parking and free all day parking areas.

20

There is free 4P parking available in Middleton St and free all day parking is available on the east side of Middleton Street and in Lawson Street and Marvell Street.

25 There is off street parking for 3 vehicles available at Fletcher Street Cottages. Rangers advise that this parking is currently being utilised.

Staff are concerned that to deal with the parking problems that these volunteers experience, in the manner suggested, would set a precedent for other organisations and individuals thus making Council's management of already limited parking spaces considerably more difficult.

30

Rangers report that this arrangement has had some problems in the past ie surf life savers. Staff received complaints that the volunteers had forgotten to put coupons on the dash and were issued with Penalty Notices. Staff were then required to deal with applications for Penalty Notices to be withdrawn. Complaints also went to allegations that the system was rorted and that additional, not entitled, people parked utilising the coupon provided to the club.

35

The Rangers maintain that where the parking limit is posted, unless there is a lawful reason or excuse to exceed the time, no leeway should be allowed. If a driver believes that parking will be longer than the posted time she/he should not park in that zone.

40

Unless suffering a disability (which may afford a lawful reason or excuse) there appears no real reason for volunteers to park directly out the front of the premises where volunteer work is undertaken.

45 Executive Manager responsible for task implementation:

Executive Manager Corporate Management

Relationship to, priority of, and impact on other projects/tasks:

This task would have a minimal impact on other projects and tasks.

50

Financial and Resource Implications:

This task would be undertaken within existing allocated financial and staff resources.

Legal and Policy Implications:

55 As indicated above under the heading Clarification of project/task.

Notice of Motion No. 8.2. Funding for brochure publication

COR405527 #1211222

5 I move that Council provide \$3,000 towards a second print of the Brunswick Valley Landcare publication 'My Local Native Garden' from the Environmental Levy.

Signed: Cr Jan Barham

10 **Councillor's Background Notes:**

The publication 'My Local Native Garden' was first published by Brunswick Valley Landcare in September 2011. The guide promotes biodiversity for gardens within the Byron Shire and has proved very popular.

15 The original print-run was for 5,000 copies and I have been advised they are almost out of first run copies.

20 Council's Biodiversity Conservation Strategy includes a number of actions which relate to directly to the provision of education and information. I believe this publication meets a number of actions within the strategy and therefore move that Council provide \$3,000 towards a second print and that it is funded from the Environmental Levy.

(Link: [My Local Native Garden](#))

25 Recommended priority relative to other Management Plan tasks:
Medium.

30 Definition of the project/task:
Provide funding for one reprint to the value of \$3,000.

Source of Funds (if applicable):
Environmental Levy.

35 **Management Comments:**
(Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:
Provide \$3,000 from Environment Levy towards second print run of 'My Local Native Garden'.

40 Executive Manager responsible for task implementation:
Environment and Planning

45 Relationship to, priority of, and impact on other projects/tasks:
Provision of educational material on native vegetation is consistent with Biodiversity Conservation Strategy actions (no. 3,4, 23,33 and working in partnership with community groups such as Brunswick Valley Landcare is consistent with the BCS objectives, including:

- 50 g) *Encourage and promote the importance of native biodiversity protection and restoration across the Shire, strengthening existing initiatives and developing new ones in consultation with the community, industry and relevant government agencies;*
h) *Develop a greater understanding of biodiversity issues, values and solutions throughout Byron Shire, utilising existing information and networks and fostering greater links between Council, the community, industry and government agencies.*

55 Financial and Resource Implications:
There are savings in the grant funded Bush Futures program that can be used to fund this publication.

Legal and Policy Implications:
None perceived.

Notice of Motion No. 8.3. Support for increasing Animal Welfare Inspectors in the Far North Coast

COR405527 #1210849

I move:

- 5
1. That Council support the campaign by Australians for Animals Inc. to increase the number of animal welfare inspectors on the Far North Coast by calling on the NSW Government to:
 - 10 a) urgently address the need for more animal welfare inspectors
 - b) to consider giving Council Rangers powers under Prevention of Cruelty to Animals Act 1986
 - c) to fund Councils for the purpose of the above powers
 - d) to give power to recognised Animal welfare shelters to appoint inspectors
 - 15 2. That this support be put in writing to the NSW Department of Primary Industries and the Australians for Animals Inc.

20 **Signed: Cr Jan Barham**

Councillor's Background Notes:

25 I have received representations from Australians for Animals Inc. to support their campaign to increase the number of animal welfare inspectors on the Far North Coast. A copy of the letter is reproduced below.

30 They are calling on the NSW Government to increase the number of inspectors for the area covering Coffs Harbour to Tweed Heads. They are also asking the government to consider giving Council rangers powers under the Prevention of Cruelty to Animals Act (POCTA) and to fund Councils accordingly with the above powers.

35 I am seeking agreement to write to the NSW Department of Primary Industries and convey Councils support for Australians for Animals Inc. in their endeavours to provide increased services to cover the North Coast region.

Recommended priority relative to other Management Plan tasks:

Medium.

Definition of the project/task:

40 Write a letter of support.

Source of Funds (if applicable):

45 Not applicable. The request for support includes reference that where Council rangers are given powers under POCT, that Council is funded accordingly.

Dear Jan,

My organisation is seeking the support of Councils and community leaders on the mid and Far North Coast for an increase in the number of animal welfare inspectors in this region.

Currently, the RSPCA has one inspector for an area stretching from Coffs Harbour to the border. Given that the population in this region is now over 200,000 and increasing exponentially, there is little possibility that one man can cope with a responsibility of this size.

We're aware that the previous NSW government canvassed the possibility of Council Rangers having the same powers as NSW police under the provisions of the Prevention of Cruelty to Animals Act (POCTA). However, the government was unwilling to provide any financial support instead demanding financial input from Councils.

Australians for Animals believes that Council Rangers with at least some powers under POCTA could relieve a situation which can only be described as out of control. Acts of appalling cruelty are on the rise and there is a clear link between animal cruelty, child abuse and domestic violence as evidenced by a great deal of research.

Together with the Mayor of Lismore, representatives of the Anglican and Catholic churches, and a psychologist who has conducted considerable research on these issues, we will be holding a press conference in Lismore in a week or two. This conference will call on the NSW Government to:-

- * urgently address the need for more animal welfare inspectors*
- * to consider giving Council Rangers powers under POCTA*
- * to fund Councils for the purpose*
- * to give power to recognised Animal welfare shelters to appoint inspectors (A power which was withdrawn unfortunately, imposing a heavy responsibility on the RSPCA)*

The support of Byron Council in this matter would be greatly appreciated.

Yours sincerely,

*Sue Arnold
Co-ordinator
Australians for Animals Inc./*

Management Comments:

(Management Comments must not include formatted recommendations – resolution 11-979)

5

Clarification of project/task:

Provide a letter of support to 'Australians for Animals Inc'.

10

At present there is one RSPCA inspector who Byron Shire Council ("BSC") Rangers can contact if RSPCA assistance/advice is required. This inspector covers a vast area of Northern NSW on his own. At times this RSPCA inspector has contacted BSC Rangers to visit particular sites to assist him and determine if complaints received by the RSPCA are valid. This is due to him being considerable distances away doing other jobs.

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At times BSC has requested his assistance and have been told that he would not be able to get the job in the immediate future due to his heavy workload.

- 5 BSC Rangers receive a number of telephone requests that are forwarded to the RSPCA or the complainant is informed to contact the RSPCA directly as Rangers do not have the relative powers to assist.

The RSPCA call centre is in Sydney. This is the initial point of contact for customers.

- 10 The more inspectors employed will obviously assist in the management of RSPCA matters.

Executive Manager responsible for task implementation:
Executive Manager Corporate Management

- 15 Relationship to, priority of, and impact on other projects/tasks:
This task would have a minimal impact on other projects and tasks.

Financial and Resource Implications:

- 20 The funding of additional Inspectors would need to come from sources other than Council.

Legal and Policy Implications:

The Notice of Motion in Part 1b) is seeking the State Government to consider the giving of powers under Prevention of Cruelty to Animals Act 1986 to Council Rangers.

Notice of Motion No. 8.4. Installation of Air-Conditioning of the Mullumbimby Civic Hall
COR405527 #1205741

I move:

- 5
1. That Council notes the request by the Mullumbimby Civic Hall Board of Management for the installation of air-conditioning in the Mullumbimby Civic Hall.
 2. That Council install air-conditioning in the Mullumbimby Civic Hall.
 - 10 3. That funds are to be obtained from the Section 94 fund, Community Facilities in the Mullumbimby Catchment.
 - 15 4. That the Mullumbimby Civic Hall Board of Management develops a usage protocol to ensure the appropriate use and management of the air conditioning.

Signed: Cr Simon Richardson

20 **Councillor's Background Notes:**

The Mullumbimby Civic Hall (MCH) has truly blossomed into a cultural hub of Mullumbimby and its surrounds. After a great history, it was brought back to life in 2008, with great credit to be given to past and previous council staff and Hall Committees. It has increasingly developed into a site for rich cultural and social interaction and, if the Hall is maintained and developed appropriately, it will grow as a venue and along with the broader precinct, as a true town centre. However, as is often the case for old buildings, the original designers of the MCH failed to address the geographic realities in which it was situated. It failed to address the features of a subtropical climate. Thus, in 2012, it is regularly failing to address the needs of both hirers and general patrons. Increasingly, patrons are finding the conditions in a crowded setting oppressive and exhaustive. Some are beginning to attend events less. Hirers are being forced to open doors, this forces organisers to hire extra security staff and increase costs. They are increasingly moving events to other venues outside Mullumbimby that are appropriately cooled for patron's comfort and requirements. In Winter, the cold felt by patrons has made it difficult for hirers to be supported and they too, are increasingly seeking more appropriate venues. This is having a detrimental effect on the Hall's financial position and will only get worse.

It is a great shame that air conditioning has become crucial for the hall's future viability, though it has been understood as vital ever since it was resurrected as a venue 4 years ago. Now that the Hall is back to life, it is time to bring it to great health.

The negative environmental impacts of air-conditioning are well known and shared by the mover. Any new building constructed today that requires AC does so only because of a woefully poor design; however, as previously stated, this building is very old and thus, poorly designed to respond to the sub-tropics and new types of functions and events. As Councillors, we have to respond to a problem that is in front on us, we cannot wish it were something else, or wish it away. I get no satisfaction in proposing the allocation of funds for an air-conditioning; however, it is better to have an air-conditioned hall that is open than potentially, one without air-conditioning that is closed.

The Civic hall is a crucial piece of community infrastructure for Mullumbimby. As stated in the MULLUMBIMBY CIVIC HALL WORKING GROUP BUSINESS PLAN, (adopted 23 August, 2005. Res No. 05-620).

5 “Versatile venues that can host an array of artistic, cultural and community activities are an essential backbone for active communities and cultural development in today’s society. However, particularly for a small regional rural community (like Mullumbimby), which is already challenged from a socio-economic aspect, it is paramount to make available facilities that can support, encourage and host the arts, community initiatives, groups and networking.

10 Likewise, the Northern Rivers Regional Plan 2011- Vision to 2020, outlines the benefits of a healthy and financially sustainable town centre, stating, “We have identified the following opportunities to keep the Northern Rivers Region special:

- Reviving small town and village centres and developing local employment opportunities to keep the Northern Rivers a region of villages, each with its own distinctive sense of place and community, providing new models for employment.
- 15 - Designing and providing services that encourage social inclusion and interaction; and build social capital.
- Developing employment in the creative and knowledge-based industries to provide opportunities for groups (such as Aboriginal People, Torres Strait Islanders and young people) that are vulnerable in the regional labour market.”
- 20 - There is funding currently available. As at June 30 2011, Council holds \$77,053.93 for community facilities in the Mullumbimby Catchment. There has been a further \$33,031.99 in contributions received since the audit of the financial reports. There are currently no 2011/12 budgeted works to come out of this account, thus, there would be approximately \$77,053.93 + \$33,031.99 = \$110,085.92 (plus interest) to be allocated in the 2012/13 budget. Recently
- 25 obtained quotes ranged around \$40-\$50,000.

30 The added costs of providing and using air conditioning will be more than met by the resultant extra usage; as all the major hirers have stated they consistency and regrettably hire venues elsewhere due to the current, unacceptable conditions. Also, as it is very much in the interests of the Board of Management to minimise the costs associated with the use of the air conditioning, they will be swift in developing protocols to ensure it is used only where it is needed and when absolutely necessary and not as a matter of course. After seeking feedback from hirers and patrons, the response was overwhelmingly supportive of the upgrade.

35 This upgrade is needed, it is wanted, it can be funded, it now needs Councillors to make it happen and complete the Civic Hall resurrection started a few years ago.

Recommended priority relative to other Management Plan tasks:

- 40 Within Management Plan- key themes Community Infrastructure- objectives:
 Objective 1: Planning for the future.
 Objective 2: Provision of essential services.
 Objective 3: Renew and maintain existing infrastructure.

45 Definition of the project/task:

Funding and provision of air-conditioning for the Mullumbimby Civic Hall.

Source of Funds (if applicable):

50 Section 94 funds, Community Facilities in the Mullumbimby Catchment.

Management Comments:

(Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:

55 Prior to executing item 2 of the Notice of Motion to “install air-conditioning in the Mullumbimby Civic Hall”, it is recommended that a full assessment of the building is undertaken to establish air-

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conditioning requirements, optimum energy efficiency options (including ongoing operational running costs), external ventilation points and required work to seal these areas, and any structural or mechanical issues that may need to be planned and costed as part of preparing the scope of works and total budget requirements.

5

It is anticipated that once completed, the scope of works and budget requirements will be the subject of a further report for Council's consideration.

Director responsible for task implementation:

10 Executive Manager Corporate Management

Relationship to, priority of, and impact on other projects/tasks:

This task has not been identified in Council's capital works program or management plan.

15 Financial and Resource Implications:

This task will be resourced in the context of priority projects already included in Council's adopted capital works and management plans.

Section 94 Contributions:

20

At the Strategic Planning Committee meeting of 29 March 2012 the Draft section 94 plan was presented for consideration. In the works schedule for community facilities on page A79 an acoustic upgrade to the Civic Hall was proposed at a cost of \$100,000. \$50,000 from the currently held section 94 funds was to be allocated to these works in the reconciliation column. This work was identified by staff as the highest priority in this catchment for the pooling of contributions.

25

There are two options available to Council with regard to the expenditure of section 94 funds on the air conditioning.

30

1 Expend \$50,000 on air-conditioning now (dependant on the outcome of the full assessment of the building) and reduce the reconciliation amount on page A79 by \$50,000. This costs Council an additional \$40,000 over 10 years and increases the cost per SDU by about \$40. Exhibit the draft section 94 plan with these changes in it.

35

2 Change the description of works in the draft contribution plan to include air conditioning and increase the cost of works by \$50,000. This has the same financial implications as above in point 1. Exhibit the draft plan with this change to it. It would be possible to include the air-conditioning in the plan and then expend the \$50,000 that Council hold on air-conditioning, as Council does not have to make any further contribution for this first \$50,000. This could occur immediately following the adoption of the plan.

40

Legal and Policy Implications:

Nil

45

Attachments:

- Letters of support #1205743, #1205748, #1205747, #1205746 [5 pages]..... **Annexure 7**

Notice of Motion No. 8.5. Busking Information Board

COR405527 #1213809

I move:

- 5 1. That Council provides up to \$600 for the design and signage costs of a Busking Information board.
- 10 2. That the funds are sourced from the Economic Development budget (2343.1).

Signed: Cr Simon Richardson

Attachments:

- 15 • Poster “Busking in Byron Bay” #1215506 [1 page]..... **Annexure 16**

Councillor’s Background Notes:

20 The purpose of the information board is two fold.

One, it is a declaration of the intent of the Shire - how we view and value busking and street performance. The intended audience is most particularly visitors, who, it is hoped, may stop and spend 2 minutes reading it; walking away with a heightened positive feeling about our shire and performers. They may also then, financially support buskers with more purpose.

Two, it will provide some clear instruction as to key features of the Council’s busking policy, in particular, the allowable times, locations and amplified busking requirements.

30 The information board is intended to be 1000cm x 900cm and contains the following declaration and information:

35 *“Byron Bay is proud of its tradition of providing and supporting a lively street culture and greatly values the diversity of entertainment that buskers provide. Busking can add to the richness of a vibrant street environment and contribute to an innate sense of safety and security for those in town. Busking is a valid means for people to make a living. Encouraging diversity, vitality, amenity and ambience into the street environment, busking can provoke thought, interest and curiosity.*

40 *Byron Bay has long been a place where people create and share this creativity. Street performers offer an experience to all who walk by: rich and poor, young and old and locals and visitors. Our street culture reflects a sense of place and local identity. We celebrate our creative street culture because it reflects a part of who we are and offers visitors a chance to see, hear, enjoy and support who we are.*

45 *Information for Buskers:*

- 50 1. *Buskers must hold an authorised approval to busk, issued by the Byron Shire Council.*
- 2. *Approval may be obtained, during business hours, from the Byron Shire Council Chambers, Station Street Mullumbimby following payment of appropriate Council fees where applicable. Buskers must display a copy of this policy and their Approval to Busk in a prominent, highly visible position in the busking site at all times during their acts.*
- 3. *All amplified busking is to cease at 10.30pm, with non-amplified busking to cease at between 12.00 midnight and 8.00am.*

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4. *The use of percussion instruments for busking are only permitted in designated sites as shown in red.*
5. *The use of 'electronically amplified sound equipment' by groups of 3 or more for busking are permitted only in designated areas as shown in red.*

5 For further requirements regarding Busking, please contact Byron Shire Council during business hours (6626 7000).

For a full copy of the Busking Policy, go to: <http://www.byron.nsw.gov.au>

10 Recommended priority relative to other Management Plan tasks:
Recommended priority relative to other Management Plan tasks:

15 Busking Policy 5.37
Cultural Plan 2008-13
Community Economic Development Policy 10/003
Tourism Management Plan

20 Definition of the project/task:
The provision of funding for the design and signage costs of a Busking Information board.

Source of Funds (if applicable):

The funds required of \$600 are to be sourced from the Economic Development budget (2343.1).

25 **Management Comments:**

(Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:

30 Council to provide funding in the amount of \$600 for the design and signage costs of a Busking Information board and that the funding be sourced from the Economic Development budget (2343.1).

35 The Notice of Motion does not indicate whether the signage costs include the installation of Busking Information board and who would be responsible for the installation and any ongoing maintenance costs.

Executive Manager responsible for task implementation:

40 Executive Manager Corporate Management (Busking Policy)
Executive Manager Society and Culture (Economic Development budget and Cultural Plan 2008-13)

Relationship to, priority of, and impact on other projects/tasks:

45 The provision of the funding would be undertaken by the Executive Manager Society and Culture with the Executive Manager Corporate Management providing any assistance required in relation to the information contained on the Busking Information board relating to the Busking Policy. This task would have a minimal impact on other projects and tasks but would assist Councillor Richardson in his role as the Council's Busking Liaison and with the distribution of information on the Busking Policy to Buskers.

50 Financial and Resource Implications:

55 Up to \$600 is available in the Economic Development budget (2343.1) to fund the design and signage costs of the Busking Information board. Clarification is required on whether any costs associated with the installation of the Busking Information board would be incurred above the allocated amount, and if so, who would be responsible for those costs.

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Additional funding is available within existing budget allocations for the ongoing maintenance of the Busking Information board when installed.

Legal and Policy Implications:

- 5 Busking Policy 5.37
- Cultural Plan 2008-13
- Community Economic Development Policy 10/003
- Byron Shire Tourism Management Plan 2008-2018

Notice of Motion No. 8.6. Potholes, patching and resealing roads

COR405227 #1213768

5 I move that Council develop, as a priority road safety measure, new methods and procedures for filling potholes, patching and resealing local roads in partnership with residents as a matter of urgency.

10 **Signed: Cr Patrick Morrisey**

Councillor's Background Notes:

15 Council has a duty of care to provide safe roads for residents and visitors alike. Previous planning decisions have resulted in residents not only living in urban areas but also throughout the shire in semi isolated valleys and localities. Tourism promotion increases the number of motorists travelling on dangerous roads that they are not familiar with. Many of Council's roads in both urban and rural areas are in very poor standards. All residents and visitors alike are travelling on dangerous unsafe roads that deteriorate quickly as a result of high rainfall. Pot holes are particularly dangerous in narrow windy rural roads as motorists risk head on accidents as they swerve to miss large potholes.

20

Council's needs a minimum of \$7 Million dollars to bring roads up to even a basic standard, money it does not have.

25 Projected blowouts in annual maintenance costs from new projects such as the Byron Regional Sports Centre at Ewingsdale, combined with rate pegging and cost shifting from State Government makes finding money for even basic road repairs more difficult.

30 New methods of making urgent repairs to improve safety, if not road longevity, are required as a priority. Lismore Council has worked with residents in rural areas to fix pot holes in the past by providing hot mix, wacker packers, safety equipment and public liability insurance.

35 Byron Council has worked with local residents in many locations around the shire over the years to seal gravel roads with adjacent resident providing financial contributions.

40 Council's Roads and Assets Project Reference Group has been exploring initiatives such as an Adopt-a-Road program and updating public liability insurance for all volunteers working on Council land, primarily road reserves and parks and gardens. These initiatives are all parts of the bigger picture that needs to be brought together in practical easy to deliver ways.

The desperate circumstances residents find themselves in needing to navigate these roads requires new ideas, actions to be implemented so that residents can access hot mix, for example to 'adopt a pole hole' or 2 to help Council provide safer roads.

Recommended priority relative to other Management Plan tasks:

High – road safety.

Definition of the project/task:

50 Council develop, as a priority road safety measure, new methods and procedures for filling potholes, patching and resealing local roads in partnership with residents as a matter of urgency.

Source of Funds (if applicable):

Community Infrastructure.

Management Comments:

(Management Comments must not include formatted recommendations – resolution 11-979)

5 Council's community infrastructure funding is well below the identified requirement to maintain the assets to an adequate standard and to the expectations of the community. Staff are increasingly receiving complaints from residents about the number of potholes and other serious road defects. They regularly claim the safety problems associated with "dodging potholes".

10 Common complaints are about safety and "how is it that works such as that on Gulgan Road and Myocum Road are taking place when there are no potholes there?" This comment clearly indicates that people measure the problems with roads by the existence of potholes. The fact that there are accidents occurring on a stretch of road for reasons of alignment, sight lines, cross fall, driver behaviour etc are not a measure of a need for works by so many people. Nor is it relevant to most people that the works on these Black Spots are federally funded, rather than coming out of their rates payments.

15 Obviously there are many people frustrated by the condition of our roads.

20 However, the 'adopt a pot hole' proposal is not supported by management as it does not address the wider issue of preventative maintenance across the road network. There are a number of councils that have an 'Adopt a Road' program, but these are related to keeping the roadsides clean of litter and gaining environmental and amenity improvements.

25 Adopting a pothole in a similar vein is much more difficult. Council invests many thousands of dollars each year to ensure the safety of both its work force in the carrying out of their duties, as well as the safety of the community whilst these duties are being performed. Basic safety issues related to the repair works on our roads include traffic management, wearing PPE, safe work method statements in the handling of materials, conducting their duties in as safe and efficient manner as possible, etc.

30 These safety measures are not possible to achieve when untrained persons are given the materials to undertake these duties. Council's own 'Volunteer's OHS Manual and Guidelines 2006' also states "[volunteers] will not perform the routine or specialist tasks usually undertaken by paid employees."

35 If a policy was to be developed in relation to the use of volunteers, it would be critically important that there the significant WHS implications are addressed, eg:

- 40 - that same WHS provisions that relate to employees also relate to volunteers
- Council would have to have a Safe System of Work in place, eg having policies and procedures governing how Council would meet all of its WHS obligations BEFORE it adopts a policy enabling volunteers to work on Council roads
- 45 - Council would be responsible for and would have to support the Safe System of Work with an adequate budget to meet all costs of compliance with WHS obligations eg training, induction, site risk assessment (either by staff or by volunteers who have been sufficiently trained), safe work method statements (either by staff or by volunteers who have been sufficiently trained), traffic control, PPE, supervision (by Council staff to ensure Council requirements are being met) etc
- 50 - To resolve to proceed without having the Safe System of Work in place for the program, or without an adequate budget and resources, would breach WHS laws and would be ultra vires

In response to the Councillor's Background Notes citing a similar program in Lismore City Council, a senior engineering officer was contacted at Lismore to confirm and advise how such a program worked. Advice received was that "no such program was undertaken in Lismore." They have advised that they have a resident who paints around potholes but this is discouraged for safety reasons, they have also advised that "Our previous legal advice regarding volunteers working on roads recommended we not proceed with the proposal".

Council has resolved as part of **res 11-982** to:

- 10 *6.(iii) review the heavy fleet by disposing of a grader and the "Flocon" patching truck and rationalisation of the manner in which road patching occurs;...*

This review will include the assessment of the manner in which pothole patching is undertaken, intervention levels and the inclusion of options for delivering this service.

15

Clarification of project/task:

Develop, as a priority road safety measure, new methods and procedures for filling potholes, patching and resealing local roads in partnership with residents as a matter of urgency.

- 20 Executive Manager responsible for task implementation:

Community Infrastructure

Relationship to, priority of, and impact on other projects/tasks:

- 25 15.2 Review existing and develop new policies and procedures for Community Infrastructure.
18.1 Develop improved levels of service throughout all activities via the implementation of Asset Management Systems and change management processes.
18.6 Implement and complete the Maintenance Works and Programs relating to the Works Section.

30

Financial and Resource Implications:

Unknown.

Legal and Policy Implications:

- 35 Workplace Health and Safety Action
Roads Act 1993

GENERAL MANAGER'S REPORTS

Report No. 13.1. **Minutes of the Finance Advisory Committee Meeting held on 15 March 2012**

5 **General Manager**
File No: COR250000 #1212952

Principal Activity: Finance

Summary: Council's Finance Advisory Committee met on 15 March 2012. This report to Council presents the minutes of the meeting.

RECOMMENDATION:

- 10
1. That Council note the minutes of the Finance Advisory Committee meeting held on 15 March 2012.
- 15
2. That in relation to Report No. 4.1. – Draft Delivery Program and Operational Plan (Organisational Support COR653000 #1205259), Council adopt:

Committee Recommendation FAC 4.1.1

That the Finance Advisory Committee recommends to Council in principle support for the 2012-2015 Delivery Program (including Operational Plan) (#1165127) prior to reporting to Council for the final phase of public exhibition.
- 20
3. That in relation to Report No. 4.2. – Draft 2012/2013 Statement of Revenue Policy (Corporate Management FIN451010 #1202694), Council adopt:

Committee Recommendation FAC 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.
- 25
4. That in relation to Report No. 4.2. – Draft 2012/2013 Statement of Revenue Policy (Corporate Management FIN451010 #1202694), Council adopt:

Committee Recommendation FAC 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:

40

 - 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).
 - 45
 - 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.
- 35

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- 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.
- 5 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.)

10 **Attachments:**

- Minutes of the Finance Advisory Committee Meeting held 15 March 2012
#1207858 [3 pages].....**Annexure 22(a)**
- 15 • Agenda and Annexures of the Finance Advisory Committee Meeting held 15 March 2012
#1205448 [413 pages]..... **Annexure 22(b)**

Annexure 22(b) has been provided on the Councillors' Agenda CD only. An electronic copy can also be viewed on Council's website.

Report

This report provides the recommendations of the Finance Advisory Committee meeting held on 15 March 2012 for determination by Council.

5 The Committee recommendations, are as detailed in the Minutes of the Finance Advisory Committee held on 15 March 2012, attached to this report at Annexure 22(a) and in the covering recommendations for this report.

10 Committee Recommendations FAC 4.1.1 and FAC 4.2.1 are supported by management. Management's comments on Committee FAC 4.2.2 have been made in the separate report "*Draft 2012/2013 Budget Estimates and Draft 2012/2013 Fees and Charges*" to this Ordinary meeting.

15 These comments have been made to provide the information sought by Committee Recommendation FAC 4.2.2, should this recommendation be adopted by Council, and to inform that report.

Finance Advisory Committee Agenda is provided at Annexure 22(b).

20 **Financial Implications**

As per the Reports listed within the Finance Advisory Committee Meeting Agenda 15 March 2012 and in report "*Draft 2012/2013 Budget Estimates and Draft 2012/2013 Fees and Charges*" to this Ordinary meeting of Council.

25 **Statutory and Policy Compliance Implications**

As per the Reports listed within Finance Advisory Committee Meeting Agenda 15 March 2012.

Report No. 13.2. **Draft 2012/2013 Budget Estimates and Draft 2012/2013 Fees and Charges**

Executive Manager: Corporate Management
File No: FIN451010 #1214546

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 Revenue Policy, Draft 2012/2013 Budget Estimates and Draft 2012/2013 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:

Recommendation FAC 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 recommendation of the Finance Advisory Committee will be presented to Council at its Ordinary Meeting to be held on 12 April 2012 for adoption.

The Draft 2012/2013 Statement of Revenue Policy was presented to the

Strategic Planning Committee Meeting held on 29 March 2012 where the following recommendation was made to Council:

Recommendation SPC 4.3.1

That Council approve the draft 2012/2013 Statement of Revenue Policy, as amended, as a component of Byron Shire Council’s Operational Plan for the purposes of public exhibition.

SPC Recommendation 4.3.1 will be presented to Council at its Ordinary Meeting to be held on 26 April 2012 for adoption.

The documents comprising the 2012/2013 Draft Budget Estimates and 2012/2013 Draft Fees and Charges are now presented for Council to consider and approve, subject to any amendment, prior to the public exhibition of Draft 2012-2016 Delivery Program (including the 2012/2013 Draft Operational Plan). These documents will be incorporated into the Draft 2012/13 Revenue Policy which is a component of the Draft 2012/2013 Operational Plan.

RECOMMENDATION:

5 **That Council:**

- 1. Place the Draft 2012/2013 Budget Estimates, subject to any amendments in addition to and including the amendments detailed below in part 2, on public exhibition as part of the final (phase 3) exhibition of the Draft 2012-2016 Delivery Program (including the 2012/2013 Draft Operational Plan).
- 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 public 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.
 - (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.
- 3. Place the Draft 2012/2013 Fees and Charges, as amended, on public exhibition.
- 4. Incorporate the Draft 2012/2013 Budget Estimates and Draft 2012/13 Fees and Charges, as amended, into the Draft 2012/2013 Statement of Revenue Policy, being a component of the Draft 2012/2013 Operational Plan, prior to public exhibition of the Draft 2012/2016 Delivery Program (including the 2012/2013 Draft Operational Plan).

Attachments:

- Draft Budget for 2012/2013 #1209371 [173 pages].....Annexure 3(a)
- Draft Budget for 2012/2013 Adjustments Table #1205787 [2 pages]..... Annexure 3(b)
- Table of Fees and Charges increasing greater than CPI #1203663 [14 pages].....Annexure 3(c)
- Draft 2012/13 Fees and Charges #1205711 [80 pages]..... Annexure 3(d)
- Memo to Councillors 26 March 2012 #1212028 [7 pages]Annexure 3(e)

Report1. Background

5 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).

10 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

15 An 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. Clause 201 of the Local Government (General) Regulation 2005 requires the Statement of
20 Revenue Policy to include the detailed estimates of Council's income and expenditure. For this purpose, the detailed statement of Councils income and expenditure has been deemed to be the Draft 2012/2013 Budget Estimates as outlined in Annexure 3(a).

25 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:

- 30 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.*
- 35 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.

40 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:

- 45 1. *That Council not apply for a special rate variation for 2012/2013.*
- 50 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, which incorporates the Draft 2012/2013 Budget Estimates and the Draft 2012/2013 Fees and Charges, and is a component of the Draft 2012/2013
55 Operational Plan.

The Finance Advisory Committee considered the Draft 2012/2013 Revenue Policy, Draft 2012/2013 Budget Estimates and Draft 2012/2013 Fees and Charges at its meeting held on 15 March 2012. As a result of that consideration, the Finance Advisory Committee made the following recommendations to Council:

5

Recommendation FAC 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.

10

Recommendation FAC 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.

15

- (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*
- (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 quantity 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.*

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25

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Council will need to consider FAC Recommendation 4.2.1 and FAC Recommendation 4.2.2 which have been reported separately to this Ordinary Meeting of 12 April 2012, as these recommendations may have budgetary implications that are not currently included in the 2012/2013 Draft Budget Estimates [refer Annexure 3(a)]. The comments required by Recommendation FAC 4.2.2, should this recommendation be adopted by Council, have been provided later in this report.

40

The Strategic Planning Committee considered report 4.3 'Draft 2012/2013 Statement of Revenue Policy at its Meeting held on 29 March 2012. Subsequent to that consideration the Strategic Planning Committee recommended:

45

Recommendation SPC 4.3.1

That Council approve the draft 2012/2013 Statement of Revenue Policy, as amended, as a component of Byron Shire Council's Operational Plan for the purposes of public exhibition.

50

In view of the above recommendation the Draft 2012/2013 Revenue Policy has not been included in this report.

In consideration of Report 4.9 Draft Byron Developer Contributions Plan 2012, the Strategic Planning Committee at its Meeting held on 29 March 2012 made the following recommendation:

55

Recommendation SPC 4.9.1

1. *That the Strategic Planning Committee recommend to Council as follows:*

- 5 a) *The Draft Byron Developer Contribution Plan 2012 (Annexure 2(b) #1207024) as amended below, be placed on public exhibition in accordance with the Environmental Planning and Assessment Act, 1979 and Regulation, for a period of 28 days.*
- 10 i) *That the draft s94A Contributions Plan and associated works plan be amended to include as the highest priority, footpath construction at Marine Parade Wategos Beach to link the existing Cape Byron Reserve Trust footpath at the western end of Marine Parade with the Cape Byron Walking Track at the Eastern end.*
- 15 ii) *That the Capital Works program for 2012/2013 be amended to include the Marine Parade footpath at Wategos with a project cost of \$60,000.*
- 20 iii) *That the Marine Parade footpath project be funded by s94A funds with any balance from the Footpath Dining Reserve.*
- 25 iv) *That the draft s94 Contributions Plan be amended so that acquisition and embellishment of sports fields for the Ocean Shores catchment is the first priority in both Ocean Shores and LGA Wide catchments for open space.*
- v) *That Facility No 40 be split into 2 projects at the Rifle Range Road intersection.*
- 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.*

30 It is suggested that Part 1(a)(i), 1(a)(iii), 1(a)(iv), 1(a)(v) of Recommendation SPC 4.9.1 could be addressed through future Quarterly Budget Reviews and are currently not incorporated into the Draft 2012/2013 Budget Estimates. In relation to Recommendation SPC 4.9.1, part 1(a)(ii) this amount has not been included in the Draft 2012/2013 Budget Estimates as Council does not have any Section 94A Funds on hand to complete the works and again this could be addressed in a future Quarterly Budget Review once the new Byron Developer Contributions Plan 2012 becomes active and Section 94A funds begin to be collected.

35

40 Should Council resolve to include the construction of the *Marine Parade footpath at Wategos* in the Draft 2012/2013 Budget, then Council will have to identify another funding source (ie the Footpath Dining Reserve) or to amend the forecast budget result to increase the deficit by an amount of up to \$60,000.

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

50 Council 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 supporting the Draft 2012/2013 Operational Plan have been prepared on this basis. The Operational Plan is to be integrated into the 4 year Delivery Plan for the period 2012/2013 to 2015/2016, and is the subject of another report to this Ordinary Meeting of Council. The recommendations included with that Report include

55 that *“the Long Term Financial Plan be updated to ensure that it accords with Council’s endorsed draft 2012/2013 Budget, prior to final (phase 3) exhibition.”*

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It is recommended that the Council consider the following reports in the order set out in the Agenda and detailed below, due to impact of the Recommendations contained in each Report to the subsequent Reports.

5

1. Minutes of Finance Advisory Committee Meeting held on 15 March 2012.
2. Draft 2012/2013 Budget Estimates and Draft 2012/2013 Fees and Charges
3. Draft Delivery Program and Operational Plan

10 2. Draft Budget 2012/2013

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 3(a).

15

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:

20

- 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.
- 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.

25

30

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

35

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)

40

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:

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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

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

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)

10 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.

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)

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

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.

25 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

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Estimates it was projected that the Reserve would be overdrawn by approximately \$402,000 in 2012/2013.

5 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:

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

10	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)

15 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:

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

20 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)

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To arrive at the Draft Budget Results outlined in Table 6 and Table 7, a complete reconciliation of adjustments is provided at Annexure 3(c).

5 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.

10 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:

- 15 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.
- 20 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.
- 25 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.
- 30 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.
- 35 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.
- 40 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.

45 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
50 budget projections suggest it no longer has capacity to do so.

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.

55

“12-105 Resolved:

That Council:

- 5 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;*
- 10 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).*
- 15 3. *Prepare a flood evacuation plan for Lot 4 DP 841856 in relation to using the land as a Primitive Camping Site.*
- 20 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.*
- 25 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 Council may also wish to consider prior to placing the Draft 2012/2013 Budget on public exhibition. 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 of 15 March 2012. 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:

- 45 • 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..
- 50 • 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.

3. Draft 2012/2013 Fees and Charges

The Draft 2012/2013 Fees and Charges has been reviewed by respective program managers and have been included at Annexure 3(d). Where possible, fees have been altered/increased to reflect the following specific changes:

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- 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%.
- 5 • 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.
- 10 • 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.
- 15 • 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.
- 20 • 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.
- 25 • 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.
- 30 • Inclusion of applicable fees and charges for the Byron Regional Sport and Cultural Complex including the Multipurpose Building.
- 35 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 3(c) 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 40 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.
- 45 Aside from the above items, in relation to the draft fees and charges 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.
- 50 Recommendation 4.2.2 from the Finance Advisory Committee Meeting held on 15 March 2012, requested information be provided to Council as follows:

Recommendation FAC 4.2.2

5 *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.*

- 10 (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*
 (d) *The full definition of the green waste be provided*
 (e) *That degassing arrangements be clarified.*
 15 (f) *That a better definition for contaminated soils be provided*
 (g) *That any quantity 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.*
 20 (i) *That water and sewer fixed charges not be increased greater than the percentage increase for variable charges.*

25 In regard to Recommendation FAC 4.2.2, Management provided Councillors with a Memo on 26 March 2012 responding to parts (a) to (h) of Recommendation FAC 4.2.2 and Cr Staples memo dated 12 March 2012. A copy of this Memo is included at Annexure 3(e).

30 In regard to part (i) of Recommendation FAC 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 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
 35 outlined in the draft Revenue Policy considered at the Strategic Planning Committee meeting of 29 March 2012.

40 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:

45 *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.*

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

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

- 5 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 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.

10 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 15 2012/2013 is estimated at \$3.64million and equates to 48% of water operating revenue in one expenditure item.

20 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 25 Managements view that the proposed increases and charges presented in the Draft 2012/2013 Statement of Revenue Policy at Annexure 9(b) of the Agenda to the Strategic Planning Committee meeting held on 29 March 2012 not be changed.

4. Community Consultation

30 Once the Draft 2012/2016 Delivery Program, incorporating the 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 during May 2012.

35 Financial Implications

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 40 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 and the associated fees and charges.

45 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 3(a) commencing at page 5 of 173.

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

55 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:

Known Impacts

- 5 • 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 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.
- 10 • Council can access government contracts for electricity that would be less than that applicable for residential consumers.
- 15 • 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**).
- 20 • 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.

Unknown Impacts

- 25 • 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.
 - 30 • 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.
- 35 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.

Statutory and Policy Compliance Implications

45 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

- 50 (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.***

- 5 (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.*
- 10 (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.*
- 15 (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.*
- (6) *The council must post a copy of its operational plan on the council's website within 28 days after the plan is adopted.*

20 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:

201 Annual statement of council's revenue policy

- 25 (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:
- 30 (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,
- 35 **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.
- (c) a statement with respect to each charge proposed to be levied,
- 40 (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,**
- 45 (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,**
- 50 (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.
- (2) The statement with respect to an ordinary or special rate proposed to be levied must include the following particulars:
- 55 (a) the ad valorem amount (the amount in the dollar) of the rate,

- 5
- (b) whether the rate is to have a base amount and, if so:
- (i) the amount in dollars of the base amount, and
- 10
- (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 category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce,
- 15
- (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,
- 20
- (e) the categories or sub-categories of land in respect of which the council proposes to levy the rate.
- (3) The statement with respect to each charge proposed to be levied must include the following particulars:
- 25
- (a) the amount or rate per unit of the charge,
- (b) the differing amounts for the charge, if relevant,
- 30
- (c) the minimum amount or amounts of the charge, if relevant,
- (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.
- (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.

Report No. 13.3. Draft Delivery Program 2012-2015 (including Operational Plan)

General Manager

File No: COR653000 #1214136

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 'Delivery Program 2012-2015 (including 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 Resourcing Strategy (including Rating Strategy, Budget, Fees and Charges) as the two documents will be exhibited together each year (akin to the previous Management Plan/Budget exhibition process).

5

RECOMMENDATION:

That Council resolve to:

10

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, with authorisation to amend the draft to ensure that it accords with Council's endorsed draft 2012/13 Budget as necessary, for final (phase 3) exhibition.**

20

Attachments:

- Draft Delivery Program 2011-2015 (including the Operational Plan) #1165137 [117 pages]..... **Annexure 1**

ReportDraft 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 2012-2015 (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 draft Delivery Program 2012-2015 (including Operational Plan) was reported to the Strategic Planning Committee meeting on 29 March 2012 at which time the Committee resolved under delegated authority that the matter be deferred to the Ordinary Meeting of 12 April 2012 (**Res 12-223**).

45 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.

50 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);
- 55 3. draft Delivery Program 2011-2015 (including Operational Plan);
4. draft Budget (including draft Fees and Charges).

It is proposed that the suite of documents will be placed on public exhibition during late April through May, with submissions to be reported back to Council prior to the 30 June 2012 deadline.

- 5 The draft Delivery Program 2012-2015 (including Operational Plan):
- a. Comprises the statutorily required 4 year Delivery Program ie the actions that Council proposes to progress over the next 4 years.
 - 10 b. Includes the statutorily required Councils annual Operational Plan ie the actions that Council proposes to progress in the next year.
 - 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
15 councils (and accepted by the DLG).
 - 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.
20
 - e. Identifies:
 - i. the 4 year Delivery Key Activity which is carried forward from the Community Strategic Plan;
 - 25 ii. the 2012/13 Actions intended to delivery the Key Activity;
 - 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;
 - 30 iv. whether actions are ongoing (usually operational in nature) or have a particular target date;
 - v. the Division responsible for the action;
 - vi. how performance against the action will be measured; and
 - 35 vii. the funding source for the action (or in some cases the fact that the proposed action is unfunded).
 - 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
 - 45 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).

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
50 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 integrally linked (as shown below) and changes to one, eg the budget, will most likely result in a need for changes
55 to be made to the other.

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



5

Financial Implications

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

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.

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.

COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER’S REPORTS

Report No. 13.4. Bangalow Weir

Executive Manager: Community Infrastructure

5 **File No:** ENG650000 #1213062

Principal Activity: Infrastructure Planning and Project Definition

Summary: The Bangalow weir has environmental, recreational and heritage significance.

The weir’s recent deterioration is significant and Council needs to consider taking action in regards to its removal, part removal or repair / reconstruction.

The community has expressed concerns about what Council’s decision may be and they have a desire to be involved in the decision making process.

RECOMMENDATION:

- 10 1. That Council note the report regarding the current status of the Bangalow Weir.
- 15 2. That Council allocate \$60,000 from the Risk Management Reserves to remove all or part of the weir wall (dependent on contractor’s quotations) sufficient to make it safe, whilst retaining elements of the wall for heritage monument(s).
- 20 3. That Council engage with the Bangalow community whom have an interest in the weir and pool, and with Rous Water and the Department of Primary Industries – Fisheries to discuss plans to restore the weir, pool and upstream reaches of the creek to a natural environment.
- 25 4. That Council staff continue to monitor the condition of the weir structures on a weekly basis until arrangements are complete for its removal.

Attachments:

- 30 • Bangalow Weir Condition Assessment by Geolink #1192562 [7 pages] **Annexure 11(a)**
- Ecological Assessment Bangalow Weir #1204594 [31 pages] **Annexure 11(b)**
- Letter from DPI Fisheries Bangalow Weir Failure #1192889 [13 pages] **Annexure 11(c)**
- Letter to DPI Fisheries re Bangalow Weir Failure #1181127 [1 page] **Annexure 11(d)**
- Resolutions from Bangalow Community Forum 7/2/12 #1204238 [2 pages] **Annexure 11(e)**

Report

At the Extraordinary Meeting of Council on 8 December 2011, Council considered a report (held over from the Ordinary Meeting of 1 December 2011), regarding the Bangalow (swimming pool) Weir Failure, and resolved as follows:

11-998 Resolved:

1. That \$20,000 be allocated from Council's Risk Management Reserves to fund an options study as soon as possible into the preferred actions for resolving the failure of the Bangalow Weir.
2. That Council note the Heritage Study conducted by Angela Jones in 1998 and consult with Rous Water regarding connecting to Country project which involves works below the weir.
3. That, as a matter of urgency, a meeting be held with Councillors, the public, Bangalow Historical Society, Bangalow Weir group, Bangalow Landcare and Bangalow Rivercare.
4. That Council note Question with Notice from the Ordinary Meeting held on 18 December 2008 regarding Bangalow Swimming Pool maintenance and with reference to the risk management report.

The report (Item 12.6) can be viewed in full on Council's website at:

www.byron.nsw.gov.au/meetings/2011

The purpose of this report is to bring Council up-to-date with actions since the above mentioned meeting and to seek direction as to actions for the weir/community pool.

Actions to-date

The actions taken to-date in regards Resolution **11-998** are:

Part 1. an options study, which was the staff recommendation from the report to Council on 8 December 2011, has not been undertaken to-date. This is due to other events emanating from point 3 of Resolution 11-998 superseding this part of the resolution, details of which follow in this report.

The following issues have been considered since the meeting with Councillors and community representatives, as required by part 3 of Res 11-998, which was held on site on 19 December 2011:

- a. an assessment of the structural integrity of the weir structure – ie only the wall, not the side walls or the concrete aprons along the base of the pool area
- b. an assessment of any impact on the platypus colony
- c. advice on process and legislative requirements from the Department of Primary Industry – Fisheries
- d. advice from Council's insurers in regards to the safety requirements of the current state of the weir and pool area
- e. advice from Council's environmental health officers in regards to the water quality and statutory requirements of public pools

If Council still chooses to undertake an options study, a brief would need to be developed and a Request for Quote referred to a number of consultants with the capacity to assess engineering, environmental, social and heritage issues

Part 2. the Heritage Study conducted by Angela Jones in 1998 is posted on the Councillors' Extranet. It is a student's project for university and has not been critically assessed in any way by Council staff. It is noted that it contains many pictures that are included in a DVD provided to staff by community representatives.

5

Part 3. a meeting with Councillors and community representatives occurred on 19 December 2011. It included a representative from Rous Water. Fisheries representatives were invited, but were unable to attend on this day.



Figure 1:

Councillors and community representatives discussing the state of the weir and what can be done about the heritage, environmental and maintenance matters resulting from the wall's deterioration.



Figure 2:

This photo shows the current water level approximately 200m upstream of the weir wall (measured along the centre of the water way).

The lowering of the water level from the long term weir height has exposed the creek embankments and a number of platypus holes.

10

A memo to all Councillors was distributed on 22 December 2011 (#1181766) advising them of the progress on a number of matters raised at the above mentioned meeting, including:

15

1. a summary of the condition assessment report that had been received
2. advice from Council's insurers in regards to the fence that had been erected around the weir
3. actions being taken in regards to assessing any impacts on the local platypus population
4. actions being taken to obtain advice from Fisheries

20

Part 4. the Question with Notice from 18 December 2008 is reproduced below:

"Councillor Question with Notice No. 15.1 Bangalow Swimming Pool Maintenance

COR405526 #813645

At Council's Ordinary Meeting held on 27 November 2008, Cr Staples asked the following question which was taken on notice:

5 Cr Staples referred to the existing Bangalow Swimming Pool and asked the Director Asset Management Services if there was any budget in the current Management Plan for maintenance and if there was any intention to do any works on the pool.

Response Director Asset Management Services:

10 Works were undertaken early 2008 to remove dangerous obstructions from the Bangalow Pool. A Risk Management Report has been prepared indicating actions to be undertaken and the pool was subsequently closed to the public due to issues with risk management.

15 The Pool needs to be cleaned out before it can be opened, but the water level needs to be below before cleaning can take place. The high rainfall so far this season has not allowed this to happen. In the interim, barrier fences and signage around the pool will be checked.

20 Currently there is no budget for any significant works. It is intended that any risk management works be paid for from the Risk Management Reserves.

A report will be put before Council early 2009 on the future of the pool. It is expected significant funds will be required to bring the pool up to a "safe" standard."

Information gathered to-date

25 From the above mentioned actions, a number of elements of information pertaining to the future of the weir have been collected. The information below is provided from those actions.

1. Bangalow Weir Condition Assessment

30 In response to, and at short notice, several attempts were made to engage a consultant to undertake an assessment of the weir. Geolink was engaged and they provided a report on 21 December 2011 (Annexure 11(a) #1192562).

35 The report notes that,

"It should be noted that this assessment is based only on visual observations and a very rudimentary survey of the site. No site testing, sampling or laboratory analysis has been carried out to confirm what was observed on site."

40 It is noted that the inspection of cracks in the wall shows that there is no steel reinforcing in the wall. A major crack that had appeared in the wall between August and December 2011 was pointed out to the Councillors and community representatives at the site meeting held on 19 December.

45 The assessment report provides a table listing a number of significant defects – 12 in all. Geolink advises that as there are a significant number of placed boulders on the downstream side of the weir wall, that there would have been some cracking of the structure prior to 2011. There is no record of when these boulders were placed.

50 Geolink conclude from their observations that:

1. *The failure of the weir structure can be attributed to the following:*

- 55
- a. *the weir is not anchored onto a solid rock foundation and high velocity flows have scoured the alluvial material from beneath the weir wall*
 - b. *the structure is not reinforced*

- c. *the unusual configuration of the structure produces longitudinal tensile forces along the wall, particularly on the western side of the weir. However, unreinforced concrete has only a very low tensile strength*
- d. *the quality of the concrete in the wall seems to be poor*

5

2. *Further movement and deterioration in the condition of the structure can be expected as a consequence of:*

10

- a. *further scour of the foundation material*
- b. *significant hydraulic forces being imposed on the weakened structure under flood conditions*
- c. *the poor concrete quality and lack of reinforcement*

15

3. *The multiplicity of significant defects within the structure, the inappropriate nature of its design, the inadequate foundation conditions and the poor quality of the concrete, coupled with the age of the structure are such that rehabilitation of the weir is not a viable proposition.*

20

4. *From a life cycle analysis perspective, demolition and construction of a new structure would be a significantly more cost effective and sustainable proposition. In the absence of a thorough geotechnical appraisal of the site, it is difficult to make any meaningful estimate of the cost of constructing a new weir on this site. However, it is likely that the cost of a new weir and associated works would be significantly more than \$1million.*

25

It should also be noted that the integrity of the western revetment wall and to a lesser extent the podium floor on the eastern side of the creek are at risk. This is because under flood conditions, the failed weir is likely to produce lower upstream water levels in the creek, thereby increasing flow velocities and exacerbating erosion of the foundations. Any consequent failure of the western revetment wall could introduce significant sediment loads into the creek.

30

Figure 3: Several of the structural defects cited in the assessment



Plate 5 - Crack in the weir wall at Ch 15.5



Plate 11 - Undercutting of the apron on the upstream side of the weir

35

The findings reported by Geolink are reasonable based on the visual inspections. They were asked to assess a replacement cost for the structure, based on a finding of the current structure no longer being viable. They estimate in excess of \$1 million in the absence of any design, environmental assessment, Fisheries requirements and any other legislative requirement.

They were not asked to consider a range of options.

2. Ecological Assessment

Geolink was engaged to undertake an Ecological Assessment of the weir and the creek, with particular emphasis on the upstream areas and the local platypus population. Council ecologists and representatives of Fisheries were consulted prior to this engagement.

5 This engagement was made in response to suggestions made at the meeting with Councillors and the community of 19 December 2011 that Council had adversely impacted on the local platypus community as a result of the long term lowering of the water levels upstream of the weir. The assessment can be found at Annexure 11(b) #1204594.

10 Geolink consulted two leading experts on platypus and representatives of Fisheries during the assessment, including the methodology to be used.

15 Figure 4: a platypus sighting during the assessment

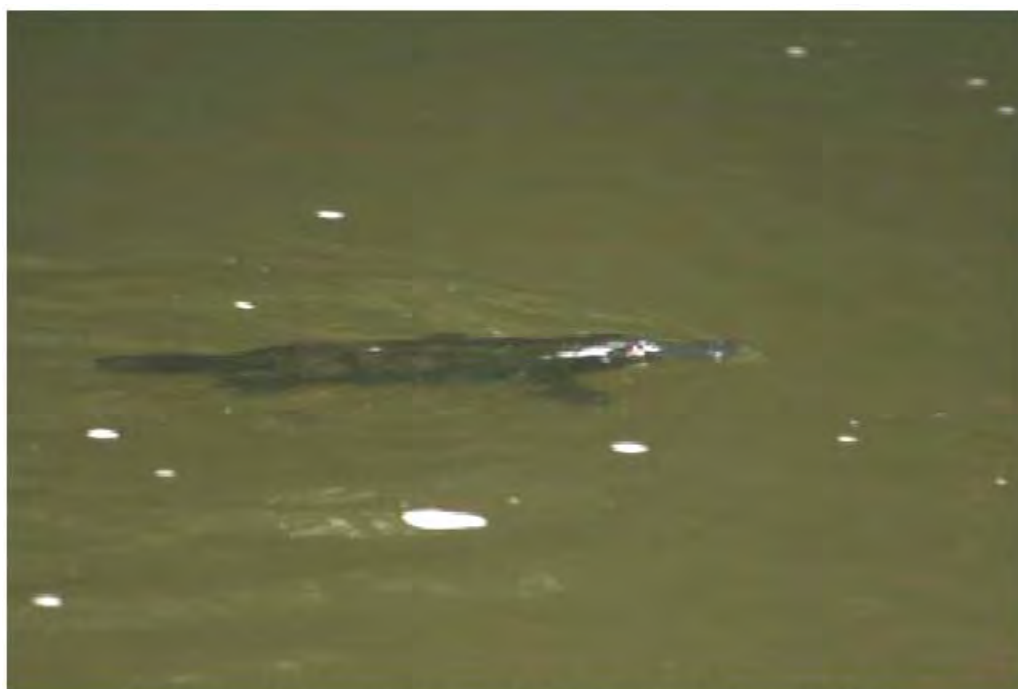


Plate 4.1 Platypus in Byron Creek downstream of Bangalow Weir

20 Geolink suggest a number of recommendations that could be implemented:

- 1. habitat could be improved by planting shrubs along the new water level, thereby providing cover for Platypuses and Giant Barred Frog and increased inputs of organic material
- 2. weed removal should be carried out progressively in small stages to maintain consolidation of the banks for burrows and to minimise impacts on Giant Barred Frog
- 25 3. restrict stock access to Byron Creek. Cattle appear to have access to sections along the eastern side of Byron Creek

If works are undertaken to reconstruct the weir, strict adherence to the following recommendations are required:

- 30 1. plan works during low flow periods
- 2. conduct works outside the breeding season (which extends from mid-September to mid-March)
- 3. minimal removal of riparian vegetation
- 35 4. installation of sediment control measures

- 5. avoid inundation during the period when eggs or dependent young may be within burrows; and
- 6. pre and post-construction monitoring

They concluded that:

“Bangalow Weir Pool and Byron Creek, both upstream and downstream provides suitable resting/nesting and foraging habitat for Platypus. The weir drawdown appears to have had minimal negative impact on Platypus and it is expected that the impact on the greater population in the area is also negligible.”

3. Advice from Department of Primary Industries (Fisheries)

Staff wrote to Fisheries (Annexure 11(d) #1181127) to ask them for any advice / comments they may have in regards to the Bangalow Weir. Their letter of response (Annexure 11(c) #1192889) is provided for information.

They cite the fact that it is up to Council to decide on the actions to be taken with the weir and cite the state planning and assessment requirements. Essentially, anything more than the undertaking of remedial repair work to the weir will require Fisheries permits to be obtained. In this regard, one requirement on Council would be to cater for improved fish passage.

With such a structure as the weir, the requirement would be to provide a fish ramp (or ladder). Depending on the scale of the structure to be passed by the fish, and the type of ramp used, estimates for such a structure could range from tens of thousands of dollars, to several hundred thousand dollars.

Examples of fish ways (fish ladders) can be found on the DPI web site at:

<http://www.dpi.nsw.gov.au/fisheries/habitat/rehabilitating/fishways>

A specific example is shown below:

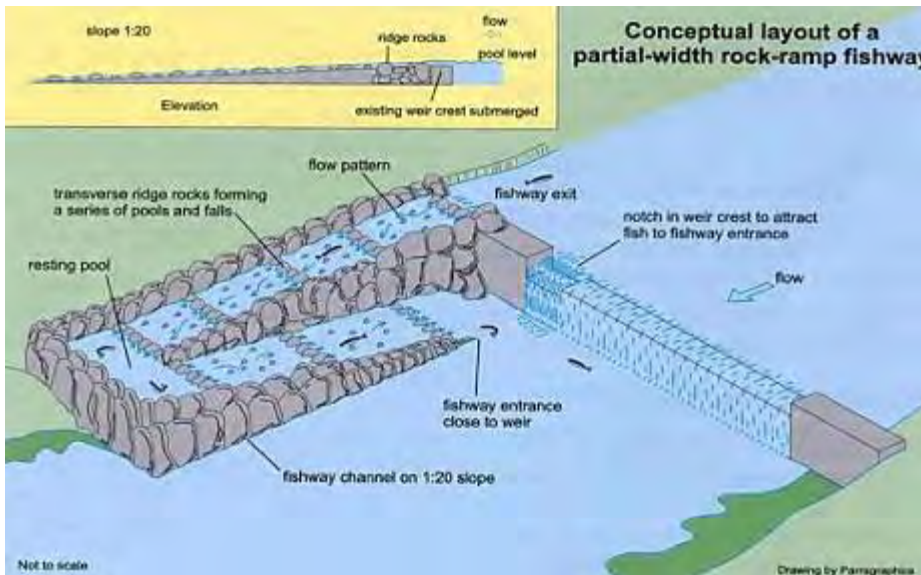


Figure 5:

Rock ramp fishway

Large rocks and timbers are used to create pools and small falls that mimic natural structures. Due to the length of channel needed for the ladder, such structures are most appropriate for relatively short barriers.

A fish ladder (ramp) must be designed by people with the expertise to do so and be approved by Fisheries.

Fish ladders are also a significant maintenance burden on the authority that installs them. They require ongoing maintenance due to shifting of rocks by water flows and by persons who may tend to see them as something they can play on. Conditions are imposed by Fisheries when approval is

given for their construction to ensure ongoing maintenance. This would mean such a new 'asset' would require ongoing funds that Council does not have.

4. Advice from Council's Insurers

5 In response to concerns raised about the fencing around the weir, Council's insurers were asked for advice as to whether or not the fence should or could be removed.

They advised on several aspects of the fencing and the weir with regards to Council's exposure to risk.

10 They noted that *"the water level in the creek upstream of the weir is substantially lower than was the case when the weir was functioning "normally", and the downstream water level appears to be much as it has been in normal operation."*

15 Figure 6: Fence around the eastern side of the weir and the lowered water levels can be seen



20 The risk implications of the current situation include:

- potential for harm from inadvertently falling into the former pool area has increased due to the greater fall height, as a result of the lower water level and the exposure of features that were previously submerged
- 25 • the extent and location of the fence means that accidental entry to the former pool area is highly unlikely, and any entry to the area could be considered a deliberate act if it was to occur
- 30 • the existing signage which provides warnings about the hazards associated with the pool is still appropriate. To emphasise that the pool is not operational, additional signage advising 'No Swimming' could be added to the sign and / or erected on the fence
- 35 • if staff were aware of the situation and took no action, there would be little defence if someone had been harmed as a result of the situation causing the concerns

Statewide Mutual concludes that the fence is essential to discourage access to the pool area as a result of the increased risks associated with the failing structures and the lowered water level. They go on to advise that *“Statewide Mutual does not encourage provision of unsupervised swimming facilities. If Council has any intention of reconstructing the weir as a swimming facility, Statewide would expect that this only occur after a thorough assessment of the risks of providing such a facility is conducted, including consideration of current Guidelines for public swimming facilities.”*

5. Advice from Council’s Team Leader Environmental Services

The Team Leader was asked for advice as to any issues with the weir from a health perspective and whether or not there would be any legislative issues should Council choose to rebuild the weir to return it to a public swimming pool. His advice is provided below:

“The proposed draft Public Health Regulation is currently going to State Parliament. In relation to any “public swimming pool” the following extract under the mandatory Schedule 1 is likely to be;

*“Schedule 1: Prescribed operating requirements for public swimming pools and spa pools
Clause 3 Disinfection*

- (1) A pool must be fitted with an automated or a continuous metered disinfectant dosing system.*
- (2) A pool must be disinfected with chlorine or bromine.”*

Monitoring of the water quality and condition of the section of Byron Creek commonly referred to as the “Bangalow Pool”, had found extremely unsatisfactory and unhealthy conditions (even when it was being maintained by Council in the late 1990’s) it cannot be recommended other to restore the creek to a natural waterway and install warning signs to advise against swimming in the water.

The additional ‘prescribed conditions’ offered by the soon to be introduced Public Health Regulation (Schedule 1. above) would see the use of the ‘Bangalow Pool’ to be an offence under the Public Health Act 2010;

*“Public Health Act 2010 No 127
Section 35 Operation of premises*

- (1) If an occupier of any premises at which a public swimming pool or spa pool is situated fails to ensure that the prescribed operating requirements are complied with, the occupier is guilty of an offence.
(a) in the case of an individual; 100 penalty units (\$11,000), or
(b) in the case of a corporation; 500 penalty units (\$55,000)”*

In addition there are serious public liability risks associated with this type of activity. The risks associated with drowning, injuries from slips, trips and falls, serious injuries associated with diving into shallow water, illness and associated medical costs from poor water quality, etc should be referred to Councils’ insurer for their risk assessment and commentary.

Finally, Council has no budget to maintain even the current primitive conditions which may have developed historically. There would be more value in improving the current infrastructure and facilities at Mullumbimby and Byron Bay swimming pools before progressing down the path of assessing the ‘Bangalow pool’.

Council does not have the funds to ensure compliance with the relevant regulations as outlined above.

6. Community Based Heritage Study

This 2008 study can be found in full on Council's website at:

www.byron.nsw.gov.au/publications/community-based-heritage-study

- 5 'Section 4 Proposed individual heritage items' from the study cites in Table 4.4 the Bangalow Swimming Pool/Park in Deacon Street (at item 4.57).

The Heritage Inventory provides some details of the significance of the "Pool & Park". The following extracts are from this inventory:

10

"Statement of Significance:

15 *The Bangalow Swimming pool is a distinctive feature in a parkland setting that illustrates a pattern of recreation from an earlier time when swimming areas were designated in inland water courses for recreation that became increasingly popular from the early Twentieth Century. This is one of several in the district but the only one for which the improvements remain intact and legible."*

20 ***"Historical Notes or Provenance:***

Bangalow developed substantially after the construction of the Lismore to Tweed Railway,....

25 *The nearby coastal zone has grown in popularity because of the swimming and fishing at the beaches and river entrances. However the inland settlements, including Mullumbimby and Bangalow, being well away from the coast needed to develop swimming pools in the local rivers to provide for the recreational needs of the inland populations. Each constructed improvements in the rivers in the first decades of the Twentieth Century for bathing.*

30 *The swimming pool at Bangalow was built originally in the 1920's had a large swimming carnival in 1928 to celebrate. It had a 10metre Diving Tower and other diving boards as well as a slippery dip, starting blocks, lane markers and was lit for night carnivals. Originally it had wooden sides which were replaced by concrete in the 1950s. There were dressing sheds and toilets and a sprung dance floor where social dances were held. The A&I Society had several social events at the "Bangalow Waterfront". Several diving champions came to give a display including an American Champion who refused to tackle the 10 metre tower so a local champion did. In 1932 The Courier Mail described it as the best Olympic pool outside*
 35 *any major city."*

40 There is no doubting the significance of the pool as a heritage item to the town, the region, and possibly the state.

45 Should council resolve to remove the weir and undertake environmental works to the creek, items of the weir and pool would be retrieved and preserved in the adjacent park. This could be by way of, for example, retaining the side walls and making them safe with fences along the top, and retaining a portion, or portions, of the weir wall with appropriate heritage interpretative signs in the park.

Comment

50 The above advice from a number of sources provides much of what an options study would assess and report on. Other ecological assessments may be beneficial.

Also, consideration could be given to further structural assessments to test the integrity of the concrete structures and look at what lies beneath the water directly under the wall.

55 It should be noted that every level of study or further studies conducted will come at a significant cost with funds best spent on positive actions.

Community Input

The community have been involved in this matter directly by:

1. attendance at the site meeting on 19 December 2011, as outlined above
- 5 2. holding a community forum in Bangalow on 7 February 2012
3. a meeting held on 17 February 2012 with Council staff to discuss the outcomes of their community meeting

10 The community representatives who attended the meeting held on 17 February 2012 handed staff a copy of "*Resolutions from the Bangalow Community Forum held 7 February 2012*", and a diagrammatic representation of survey results. These can be viewed at Annexure 11(e) #1204238.

The meeting "*demands*" the following:

- 15 1. that no changes be made to the weir, specifically no removal or demolition
2. that all feasible engineering options be considered for the repair of the weir and pool and the construction of the obligatory fishway under relevant legislation
3. that any Council commissioned study be made public
4. that Council staff and consultants be available to present their case regarding proposals for
- 20 the pool and weir at a future date
5. that Council enter into discussions with Mr Baggio in regards to his initial proposal

In regards to the above "*demands*", staff advise as follows:

- 25 1. staff have no intention of acting without first reporting to Council to seek direction. However, safety of the community is of paramount importance. As will be shown later in this report, further deterioration of the structure has occurred since the meetings that have been held with the community and the risk may become too high for Council not to be pro-active in demolition for the safety of the community and the environment.
- 30 2. any engineering option presented for consideration will be assessed. To-date, with the visual inspection of the structure taking place and with ongoing monitoring, two over-arching options have been considered, being reconstruction of the weir with all relevant legislation matters to be considered and removal of the weir with restoration of the area to a more natural
- 35 environment.
3. the Condition Assessment and Ecological Assessment are contained in the Annexures to this report
- 40 4. Council staff is available to meet with members of the public. Whether doing so in a public forum, rather than meeting with specific community representatives, is open to consideration.
- 45 However, to make consultants available will come at a cost to Council. They have been engaged to provide specific advice and they have done so. Should Council choose to engage them for community consultation purposes, it will require a suitable budget allocation.
5. Mr Baggio has not been engaged as a consultant to Council and no details of his proposals have been submitted for consideration.

50 Also provided to staff was a short DVD, showing in particular, heritage matters by way of interviews with some elderly members of the community who were reciting some of their experiences at the weir / pool.

55 A copy of the DVD can be made available to Councillors on request, but staff have been advised that the community have provided Councillors with a copy.

Current condition of the weir



Figure 7: This photo was taken on 28 February 2012.

It shows a large section of the wall dislodged from the weir towards the western end.

5 Regular monitoring of the weir has been taking place since April 2011, with particular concern since the recent declared natural disaster of late January 2012.

10 Whilst a large crack that was not there in April 2011 was noticed at the meeting held on site with the community on 19 December 2011, Figure 7 above shows the most recent and most significant deterioration as at end February 2012 – being the dislodgement of a large section of the concrete weir wall.

15 Another means of inspecting by Council staff has been to reach down into the water with a long pole and with the equipment they have been using repeatedly are now unable to touch the bottom of the weir, indicating without the use of visual confirmation that the base of the weir has significantly deteriorated.

20 Council must give consideration to the demolition of the weir wall for the safety of the community and protection of the environment downstream of the wall to prevent a catastrophic failure occurring. Any restoration of the area and a means by which the heritage values of the weir / pool could be considered subsequent of such actions and in consultation with the community. Funding for the long term works to be carried out is one concern, but the means of providing funds for immediate action to address this ongoing safety concern is another significant problem. Consideration could be given to using funds form Councils Risk Management Reserves.

25 If the ongoing monitoring of the deterioration of the weir wall indicates that catastrophic failure is imminent at any time and there could be danger to life and/or property and/or the environment, action to remove the wall will be taken.

30 Options

Council may choose to take action from the following options:

1. do nothing and simply monitor the structural integrity of the wall indefinitely
2. do nothing in the short-term, whilst further consultation takes place with the community and report back to Council as to a preferred course of action when a consensus is reached as to a way forward
3. repair the weir wall and surrounding elements of the concrete structure

- 4. demolish and rebuild the weir wall with appropriate fish passage structures – construction of a new structure could take place on the upstream side of the existing wall prior to demolition (if required) of the existing wall
- 5. demolish the weir wall and whilst retaining elements of the pool for heritage purposes, undertake environmental works to restore the area to a more natural environment.

10 In view of the high costs, legislative requirements for fish passage and for public swimming pools, doing nothing or repair / reconstruct to return the area to a condition suitable for the use as a public pool is not advisable.

In consideration of Council's risk and more importantly the safety of the community and the environment, option 5 is recommended.

15 **Financial Implications**

An amount of \$20,000 was allocated from Council's Risk Management Reserves to undertake an options study. To-date, \$10,100 of this allocation has been used. The bulk of this cost coming from the field studies into assessing the impact on the platypus.

20 A more detailed Heritage Study may be warranted, or it may be enough to rely upon the assignment by Angela Jones of 1998, the DVD provided by the community and Council's own Community Based Heritage Study, conducted in 2008.

25 Whilst the Condition Assessment cites a cost in excess of \$1 million for reconstruction of the weir wall, this is not based on a detailed design, nor does it take into consideration all other elements involved in this matter.

30 A fish passage ramp for any rebuilding or significant repair of the weir wall could vary significantly subject to design and type of structure designed. Also for consideration in terms of a fish ramp is the ongoing maintenance of such a structure. They are high maintenance and if such a facility were to be provided here, or anywhere in the shire where it becomes a Council asset, funds for ongoing maintenance will become a significant burden. Such things as:

- 1. rocks move under medium to high velocity flow
- 35 2. children are known to get into them, as they are very attractive play space and they move the rocks around
- 3. safety issues for the ramps become a management problem

40 The actual costs remain an unknown at this time for whatever option Council chooses.

Statutory and Policy Compliance Implications

As stated in the report above, statutory requirements are covered in matters of fish passage and public pools.

Report No. 13.5. EOI for land to be developed as sports fields in the North of Shire

Executive Manager: Community Infrastructure

File No: ENG650000 #1200656

Principal Activity: Infrastructure Planning and Project Definition

Summary: Expressions of interest were advertised for Council to purchase land to enable the development for sports fields in the north of the Shire.

This report highlights that process and advises that there are no funds available to progress with the development of sports fields in the north of the Shire at this time.

5

RECOMMENDATION:

- 10 1. That Council note the Expression of Interest received to offer to Council land for purchase for developing sports fields in the north of the Shire.
- 2. That Council not progress with the investigations and development of sports fields in the north of the Shire due to there being no funds to:
 - 15 a) enable relevant studies and assessments to be carried out to enable a rezoning application to be prepared;
 - b) carry out the capital development of sports fields;
 - 20 c) meet the ongoing operational costs of sports fields.

Attachments:

- 25 • **CONFIDENTIAL** Expression of Interest in Land for sale for development of sports fields #1184684 [1 page]**Annexure 10(a)**
- **CONFIDENTIAL** Billinudgel Sports Fields - comments re: soil at proposed site at Billinudgel and offer of compiling a report #1211137 [3 pages]..... **Annexure 10(b)**
- **CONFIDENTIAL** Submission Re Sports Fields for the Shire's North #1212205 [1 page].....**Annexure 10(c)**

Report

At the Ordinary Meeting of 15 December 2011, Council considered Report No. 16.3. 'Further Report into the Investigation of Developing Sports Fields at Billinudgel'.

5

It was resolved as follows:

11-1064 Resolved:

- 10
1. *That Council, as a matter of urgency, call for Expressions of Interest for the sale of land north of the Brunswick River for the development of sports fields to fulfil ICAC guidelines.*
 2. *That Council assess EOIs and report back no later than the 1 March 2012 Ordinary Meeting.*
 - 15 3. *That if no more suitable parcels of land are identified in the EOI process that Council offer a holding deposit on the portion of land south of the Pocket Rd on Lot 3 DP 1019171 whilst appropriate investigations take place and a rezoning application is made to the Dept of Planning and Infrastructure.*

20 Due process was followed, which has resulted in Council receiving one Expression of Interest (EOI), as contained in CONFIDENTIAL Annexure 10(a) (#1184684).

The land holder who has submitted the EOI has stated his value for the land. In accordance with part 3 of Resolution 11-1064, consideration needs to be given to the value of a holding deposit, as well as any conditions that the land holder may impose.

25

There is no definitive amount established for a holding deposit. The usual deposit paid for the purchase of land is 10%. A common holding deposit is 1%. However, this needs to be negotiated with the land holder should Council resolve to progress this matter.

30 The other elements of part 3 of Resolution 11-1064 require investigations of the site and a rezoning application to be made. The site investigations would need to take place prior to the rezoning application being made as such information will support the application.

Site investigations will include:

35

1. geotechnical assessment of the suitability of the land for use as sports fields
2. access and traffic
3. drainage and flooding
4. environmental assessments

40

If Council resolves to progress these investigations, CI staff and Planning staff can liaise to develop a project brief to engage the services of a suitably qualified consultant to undertake the assessments / studies and assist in the preparation of a rezoning application.

45 However, the cost of such a consultancy is an unknown. Further, as previously reported, "Council could expend up to \$1,120,734 on the acquisition of this land from the \$1,125,000 available provided that Council contributes \$341,066 in additional funds for a total available budget of \$1,461,800."

50 Though there are section 94 funds for acquisition, there are no funds available for undertaking the abovementioned studies and preparation of a rezoning application. Should Council resolve to progress these investigations, a funding source needs to also be identified by way of Council nominating a project or projects to be cancelled in favour of this matter.

Community Submissions

5 Although there was no call for community submissions other than for formal EOI's for the sale of land to council for sports field use, two submissions have been sent to Council. These are provided for Council's information at CONFIDENTIAL Annexure 10(b) (#1211137) and Annexure 10(c) (#1212205).

Annexure 10(b) details an opinion in regards to the soil conditions of the site at Billinudgel. These opinions are expressed in the absence of any soil or geotechnical testing of the area.

10 Should Council resolve to proceed with assessment of this parcel of land detailed in the submission, a consulting geotechnical/soil expert will be engaged to undertake any relevant assessment of the site suitability for the land to be used as sports fields.

15 Annexure 10(c) suggests that the large parcel of land could be used for other community facilities. Also, that the angst caused between the residents and the soccer club at the New Brighton fields in regards the use of lights is another reason to consider the feasibility of another site for sports fields for the north of the shire.

Financial Implications

20 Council does not have funds available to develop sports fields at Billinudgel at this time. As previously reported and as stated above, should Council wish to progress this, other projects need to be identified for cancellation and transfer of funds to this project.

25 Further to the capital development costs, ongoing maintenance and operations of the sports fields are also unfunded.

Statutory and Policy Compliance Implications

30 Nil

CORPORATE MANAGEMENT – EXECUTIVE MANAGER’S REPORTS

Report No. 13.6. Draft Mosquito Management Plan

Executive Manager: Corporate Management

5 **File No:** BLD604010 #1188227

Principal Activity: Environmental Services

Summary: Council at its Ordinary Meeting held on 22 September 2011 resolved the following:

11-750

“Resolved that the Strategic Planning Committee Meeting resolve under delegated authority that:

- 1. *the plan be placed on public exhibition for 42 days*
- 2. *a media release be issued informing of the exhibition of the plan*
- 3. *any submissions be reported back to council with recommendations*
- 4. *if there are no submissions are received that the plan be adopted.*

The Draft Mosquito Management Plan was placed on public exhibition for 42 days from 6 October to 16 November 2011 and a media release was issued during the month of October 2011.

Three submissions were received during the exhibition period.

RECOMMENDATION:

10 **That Council adopt the Draft Mosquito Management Plan (Annexure 5 #1136090) as exhibited, and a link to the plan be included on Council's website.**

15 **Attachments:**

- Draft Mosquito Management Plan as exhibited #1136090 [73 pages] **Annexure 5**

CONFIDENTIAL Submissions have been provided to Councillors only on CD.

Report

Council at its Ordinary Meeting held on 22 September 2011 resolved the following:

5 **11-750**

“Resolved that the Strategic Planning Committee Meeting resolve under delegated authority that:

- 1. *the plan be placed on public exhibition for 42 days*
- 2. *a media release be issued informing of the exhibition of the plan*
- 10 3. *any submissions be reported back to council with recommendations*
- 4. *if there are no submissions are received that the plan be adopted.*

The Draft Mosquito Management Plan was placed on public exhibition for 42 days from 6 October to 16 November 2011 and a media release was issued during the month of October 2011.

15

Council received three submissions during the exhibition period.

Below is a table providing a summary of submissions and the staff responses. However, Councillors also need to refer to the full copies of all submissions which have been provided on disc, strictly on a confidential basis, to Councillors. The full copies of the submissions contain personal information such as names and addresses of the persons lodging submissions which are relevant matters to be taken into consideration in determining this matter.

20

Doc Number	Submission comments	Staff response
#1164995	Supportive of DMMP. Encouraging of continuing community education and long term community involvement in monitoring. Urged Council consideration of developments where mosquitoes can impact on people. Commented about the issue of 'alternative' preparations.	No changes to the DMMP required. Council has no resources to increase community education on this topic. Opportunities to include our community in mosquito monitoring are limited by NSW Ministry of Health program budget. Only two trap sites are available. The advice in relation to preparations is scientifically valid and supported by the Therapeutic Goods Administration. Council cannot recommend non-TGA approved products.
#1166237	Discussed experience in wetland environments and wetland design, referencing Tweed Shire Council and other journal documents. Avoid prescriptive requirements for constructed waterbody design. Suggested monitoring of both larval and adult mosquitoes. Asked that NPWS assess the coastal reserves.	No changes to the DMMP required. The DMMP agrees with the strategies raised by author and recommended in Greenway, but stops short at making prescriptive requirements for constructed wetlands. The discussion related to the issues associated with constructed wetlands. The DMMP is not prescriptive but seeks to raise awareness during considerations for new development design options. Comments are perhaps more related to a DCP document.
#1174918	Concern that Council was not aware of the Cape Byron Marine Park and the penalties under the Marine Parks Regulation 1999.	No changes to the DMMP required. Council was aware of the Cape Byron Marine Park. No works or research (including the trapping of mosquitoes) was conducted contrary to the Regulation.

Financial Implications

5 The report raised a number of recommendations which will save the community future costs associated with failures to understand mosquito nuisances and public health hazards. The document, if accessed on Councils' website, will provide advice to visitors and residents of the Shire on the issues and options for managing potential mosquito issues.

10 The most cost effective option available to Byron Shire Council at this time is to promote the information contained within the draft mosquito management plan so that individuals can make their own assessments, and take appropriate preventative actions.

15 There is no legislative requirement for Council to consider an active mosquito control position. Active mosquito control would involve the employment of entomologist or pest control specialists, application of larvacides and / or pesticides, active inspection and monitoring programs, and the purchase of pesticides and appropriate application equipment with the intent of responding to a specific mosquito nuisance and mosquito-borne disease issue. Accordingly there is no request associated with the adoption of the Draft Mosquito Management Plan for a budget to support an active mosquito control program in Byron Shire.

20 If some future consideration of a legislative response for NSW local government was required, for example in response to say a serious public disease outbreak, this situation would be subject to review by Council and may include requests for significant budget and manpower resources at that time. The draft mosquito management plan provides a significant resource which would assist Council in such considerations, should the need ever arise.

25

Statutory and Policy Compliance Implications

30 Council will continue to be included in the monitoring of mosquito-borne diseases as part of the NSW Ministry of Health annual arbovirus program. This program not only assesses the severity and likelihood of mosquito-borne diseases, but provides a link to public media releases when elevated risks are identified. This program is subject to funding from the State Government continuing. The intent of this program is not to capture and kill every mosquito in Byron Shire, nor reduce the nuisance impacts from mosquitoes over all or part of the Shire.

35 No statutory requirement exists to require local government to take any action in respect of monitoring or control of mosquitoes. The exception may be if a 'declared emergency' situation was to occur under the State Emergency and Rescue Management Act 1989.

40 Department of Planning "*Settlement planning guidelines (August 2007)*" made specific reference in relation to the "*development of land which may pose an unacceptable risk to public health due to its location with respect to mosquito habitat*". In this document it stated that councils in undertaking local environmental plans/development assessment, that;

45 *An assessment should be carried out by qualified persons as to the risk of people having their quality of life affected by pest mosquitoes or sandflies or contracting a mosquito borne disease as a result of development being established near vegetation or landscapes which potentially support significant mosquito habitat. A management plan should be prepared to mitigate any risk.*

50 *A high risk should be considered a constraint to development.*

This legislative consideration does not relate to the draft mosquito management plan. The plan before Council however does assist in the assessment of this risk associated with the development of land.

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Report No. 13.7. Board of Management/Section 355 Committee Movements

Executive Manager: Corporate Management

File No: ADM252000 #1194073

Principal Activity: Governance and Administration Services – Section 355 Committees

Summary: Council has received:

- a resignation from Cr Basil Cameron from the Mullumbimby Civic Memorial Hall Board of Management.
- a request from Durrumbul Community Centre Section 355 Committee for a further committee member.

5

RECOMMENDATION:

1. That Council note the resignation from Cr Basil Cameron from the Mullumbimby Civic Memorial Hall Board of Management.
2. That Council appoint Rommel Albanese to the Durrumbul Community Centre Section 355 Committee for the remainder of this term of Council.

15

Attachments:

- **CONFIDENTIAL** Committee Nomination from Rommel Albanese #1200799 [2 pages] **Annexure 2**

Report**Mullumbimby Civic Memorial Hall Board of Management**

- 5 Council has received formal resignation from Cr Basil Cameron from the Mullumbimby Civic Memorial Hall Board of Management.

10 The Board of Management has acknowledged Cr Cameron's resignation and has contacted their other Councillor representative Cr Simon Richardson who advises he is happy to be the only representative from now until the end of the current term of the Committee wherein the Management options for the Hall will be reviewed.

As such it is not necessary to appoint a further Councillor at this time.

15 Durrumbul Community Centre Section 355 Committee

Council at its meeting on 3 November 2011 accepted a resignation from a member of the Committee. The Durrumbul Community Centre Section 355 Committee have now requested Council appoint a further community representative to the Section 355 Committee.

20 At the Section 355 Committee meeting held on 11 January 2012 it advised of an interested community member wishing to join the committee. The Section 355 Committee adopted a motion *"that we invite Rommel Albanese to join the Committee and arrange for him to apply through Council"*.

25 Council has now received a nomination from Rommel Albanese to become a member on the Section 355 Committee shown at Annexure 2.

30 For your information the present Committee members are as follows:

Cr Tom Tabart
Robin Buckley
Duncan Dey, **Secretary**
Janet Shand, **President**
Sarah-Jane McGrath
Jerry Cook
Wayne Smith, **Treasurer**

A copy of the Minutes of the Committee can be viewed on Council's Website at www.byron.nsw.gov.au/committees/durrumbul-community-centre-section-355-committee

35 Executive Manager Corporate Management comments:

It is usual practice for Council to advertise for community members. In this instance the Committee has requested the appointment of an interested member of the community to join the Committee.

- 40 It has been recommended to appoint Rommel Albanese to the Durrumbul Community Centre Section 355 Committee until the end of this term of Council, September 2012.

45 Update on advertising for further members to the South Golden Beach and Ocean Shores Community Centres. Note advertising for members and an invitation to members of the Youth Committee failed to attract any nominations for these committees. Both committees advised that

due to all Committees being disbanded in September in line with council election that they will try and recruit further members throughout the year for nomination at that time.

Financial Implications

5 There are no financial implications with the appointment of new members to the Committee as they are holding a volunteer position on that committee.

Statutory and Policy Compliance Implications

10 With regard to Committee Membership Council's Guide to Operation of Section 355 Committees states:

3.2 Committee Membership

15 The Community Committee membership will number not less than four (4) and not more than twelve (12) members as appointed by Council including office bearers unless otherwise decided by Council. Council reserves the right to appoint one of its members to each committee.

20 Whilst no particular qualifications are necessary, a commitment to the activities of the committee and a willingness to be actively involved in committee issues is essential.

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Report No. 13.8. Investments – February 2012

Executive Manager: Corporate Management

File No: FIN252000 #1200377

Principal Activity: Financial Services

Summary: This report includes a list of investments as at 29 February 2012.

5

RECOMMENDATION:

That Council receive and note the record of investments for the month of February 2012.

10

Attachments:

- Investment Valuations and Graphs February 2012 #1200379 [2 pages] **Annexure 21(a)**
- Denison February Report #1207065 [9 pages]..... **Annexure 21(b)**

15

Report

5 Council has continued to maintain a diversified portfolio of investments. The average 90 day bank bill rate for the month of February was 4.37%. Council's performance for the month of February is a weighted average of 4.62%. This performance is again slightly higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits. Council's investment portfolio should continue to out-perform the benchmark as the capital protected investments earning 0% interest begin to mature or are able to be switched favourably. There are still a number of Council's capital protected investments being partially and fully allocated to an underlying zero coupon bond. This is part of the "Capital Protection Mechanism" and coupons will not be paid if any allocation is made to this bond.

15 The current value of an investment compared to the principal value (face value or original purchase price) provides an indication of the performance of the investment without reference to the coupon (interest) rate. The current value represents the value received if an investment was sold or traded in the current market, in addition to the interest received.

20 For the month of February, the current value of investments has remained lower than the principal amount. The table below shows a slight decrease in the unrealised loss for Council from January to February 2012.

Movement in Principal and Current Market Valuations

Month	Principal	Current Value (at end of month)	Unrealised Gain/(Loss)
JANUARY	59,995,191.04	58,350,399.41	(1,644,791.63)
FEBRUARY	60,705,889.06	59,079,204.06	(1,626,685.00)

25 This unrealised loss is a consequence of the lingering effects of the Global Financial Crisis. Some of Council's investments are linked to the Credit and Equity Markets which have been adversely affected and are yet to recover. A breakdown of this can be seen in the table below. The figures are for February 2012.

Dissection of Council Investment Portfolio as at 29 February 2012

Principal (\$)	Investment Linked to:-	Current Value	Unrealised Gain/(Loss)
37,424,300.00	TERM DEPOSITS	37,424,300.00	0
1,981,589.06	BUSINESS ONLINE SAVER	1,981,589.06	0
3,500,000.00	MANAGED FUNDS	3,092,600.00	(407,400.00)
8,000,000.00	CREDIT	7,728,230.00	(271,770.00)
9,800,000.00	EQUITY	8,852,485.00	(947,515.00)
60,705,889.06		59,079,204.06	(1,626,685.00)

35 Council uses a diversified mix of investments to achieve short, medium and long-term results. Council's historical strategy is to use credit/equity markets for exposure to long term growth. It should be noted that Council's exposure to credit/equity products is capital protected when held to maturity, which ensures no matter what the market value of the product is at maturity, Council is insured against any capital loss. The investment strategy associated with long term growth is now prohibited under the current Ministerial Investment Order utilising credit/equity markets to seek investment products. However, the 'grandfathering' provisions of the Ministerial Investment Order provides Council can retain investments now prohibited until they mature. Council is also looking

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continually at 'switch' opportunities for these investments in conjunction with its independent investment advisors. Any 'switch' opportunities undertaken are reported to Council in the investment report relating to the month the 'switch' occurred. Notwithstanding the current valuations of credit/equity investments, these products will trend toward their full principal value as they approach maturity.

5

Investments held as at 29 February 2012

Date	Principal (\$)	Description	CP*	Rating	M'ty	Type	Rate	Current Value
26/3/07	1,000,000	CARGO II	N	AAA	03/12	CR	5.50%	916,600.00
24/7/07	1,000,000	AVERON II	CP	AAA	07/14	CR	0.00%*	861,800.00
17/1/08	1,000,000	ANZ SUB DEBT	N	AA-	01/13	CR	5.59%	996,140.00
30/1/08	1,000,000	SELECT ACCESS INVESTMENTS	CP	AA	11/12	CR	5.40%	940,750.00
22/4/08	2,000,000	ANZ TRANSFERABLE DEPOSIT	N	AA	04/13	CR	5.64%	2,018,440.00
14/11/08	2,000,000	ANZ TRANSFERABLE DEPOSIT	N	AA	12/12	CR	4.88%	1,994,500.00
26/9/05	1,500,000	EMU NOTES	CP	AAA-	10/15	MFD	0.00%*	1,278,000.00
29/6/06	2,000,000	ALL SEASONS NOTE	CP	AA+	08/14	MFD	0.00%*	1,814,600.00
22/6/06	1,000,000	HIGH INCOME NOTES	CP	A+	06/13	E	0.00%*	936,640.00
5/9/06	800,000	MGD GLOBAL PROPERTY	CP	A+	09/12	E	0.00%*	778,320.00
22/11/06	1,000,000	LIQUIDITY	CP	A+	10/12	E	0.00%*	970,600.00
30/3/07	1,000,000	INFRASTRUCTURE AND UTILITIES NOTE	CP	A+	03/14	E	0.00%*	883,820.00
28/9/07	1,000,000	TRI-SECTOR LINKED NOTE	CP	A+	09/14	E	0.00%*	852,010.00
5/11/07	1,000,000	ELN 2	CP	AA	11/12	E	3.00%	990,595.00
28/11/07	3,000,000	CLIENT MANAGED NOTE	CP	A+	11/14	E	0.00%*	2,519,100.00
20/12/07	1,000,000	DANDELION NOTE	CP	AA	12/12	E	0.00%*	921,400.00
21/2/11	1,000,000	HERITAGE BUILDING SOCIETY	P	NR	04/12	TD	5.35%	1,000,000.00
6/9/11	2,000,000	SUNCORP	P	A	03/12	TD	5.88%	2,000,000.00
23/1/12	2,000,000	CREDIT UNION AUSTRALIA	P	NR	04/12	TD	5.78%	2,000,000.00
29/9/08	2,000,000	WESTPAC BANK	N	AA	09/13	TD	8.00%	2,000,000.00
16/12/08	1,000,000	WESTPAC BANK	N	AA	12/13	TD	6.00%	1,000,000.00
28/9/09	785,000	INVESTEC BANK	P	BBB+	01/14	TD	8.02%	785,000.00
2/10/09	1,734,800	ELDERS RURAL BANK	P	BBB	07/12	TD	6.93%	1,734,800.00
13/12/11	1,000,000	CREDIT UNION AUSTRALIA	N	NR	03/12	TD	5.74%	1,000,000.00
17/6/10	786,000	SUNCORP	N	A	06/14	TD	7.30%	786,000.00
27/1/12	1,000,000	ME BANK	P	BBB	04/12	TD	5.85%	1,000,000.00
27/1/12	1,000,000	NEWCASTLE PERMANENT	P	NR	04/12	TD	5.85%	1,000,000.00
7/12/11	2,000,000	SOUTHERN CROSS CR UNION	P	NR	03/12	TD	5.80%	2,000,000.00
12/5/11	1,000,000	INVESTEC BANK	P	BBB+	05/14	TD	7.48%	1,000,000.00
28/11/11	2,000,000	ING BANK (AUSTRALIA)	P	A1	03/12	TD	5.79%	2,000,000.00
4/1/12	4,200,000	WESTPAC BANK	N	AA	04/12	TD	5.75%	4,200,000.00
27/7/11	1,000,000	RABO BANK	P	AAA	5/12	TD	6.30%	1,000,000.00

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8/8/11	1,000,000	RABO BANK	N	AAA	8/13	TD	6.50%	1,000,000.00
25/8/11	1,000,000	GREATER BUILDING SOCIETY	P	NR	5/12	TD	5.65%	1,000,000.00
28/11/11	1,000,000	WIDE BAY LTD	P	NR	04/12	TD	5.95%	1,000,000.00
27/2/12	2,000,000	ST GEORGE BANK	P	AA-	05/12	TD	5.90%	2,000,000.00
30/11/11	2,000,000	NATIONAL AUSTRALIA BANK	P	AA-	03/12	TD	5.99%	2,000,000.00
13/12/11	2,000,000	BANKWEST	P	AA-	03/12	TD	6.00%	2,000,000.00
4/1/12	918,500	INVESTEC	N	BBB+	04/12	TD	5.89%	918,500.00
5/1/12	1,000,000	ME BANK	N	BBB	04/12	TD	5.85%	1,000,000.00
10/2/12	1,000,000	AMP BANK	P	A	09/12	TD	6.00%	1,000,000.00
10/2/12	1,000,000	AMP BANK	N	A	09/12	TD	6.00%	1,000,000.00
N/A	1,981,589	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	4.75%	1,981,589.06
Total	60,705,889					AVG	4.62%	59,079,204.06

Note 1. CP = Capital protection on maturity
 N = No Capital Protection
 Y = Fully covered by Government Guarantee
 P = Partial Government Guarantee of \$250,000

Note 2.

Type	Description	
CR	Credit	Principal varies based on valuation, interest payable via a floating interest rate that varies except for those capital protected investments that have transferred to their capital protection mechanism
E	Equity	Principal varies based on valuation, interest payable via a floating interest rate that varies except for those capital protected investments that have transferred to their capital protection mechanism.
MFD	Managed Fund	Principal varies based on fund unit Price valuation, interest payable varies depending upon fund performance.
TD	Term Deposit	Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
CALL	Call Account	Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance at the cash rate +0.50%

Note 3. Floating rate notes and Term Deposits can be traded on a day-to-day basis, and therefore Council is not obliged to hold the investments to the maturity dates. Managed funds operate in a similar manner to a normal bank account with amounts deposited or withdrawn on a daily basis. There is no maturity date for this type of investment.

Note 4. The coupon on these investments is zero due to the Capital Protection mechanism working. This occurs when the investment falls below a certain level. This coupon may be paid again in the future as the market recovers.

Other Information – Financial Claims Scheme (FCS)

On 1 February 2012, the Financial Claims Scheme (FCS - or Government guarantee) coverage for any one investor in deposits will reduce to \$250,000 from \$1,000,000 per Approved Deposit

5 Institution (ADI). The Financial Claims Scheme was introduced as a result of the Global Financial Crisis (GFC), essentially to provide investors confidence when taking out deposit's with all ADIs and to ensure that their primary business of lending money was not significantly hindered due to lack of funding. NSW Local Government Councils have under the Ministers Order always been able to invest with ADIs without a dollar limit on any one institution.

10 Under Australian Prudential Regulatory Authority (APRA) regulation Building Societies and Credit Unions must meet the same capital requirements as a Bank. Whilst the majority are much smaller in terms of balance sheet size to the Banks they are still considered to be strong business' and investing in their term deposits still low risk. Most of Councils' term deposits have now been amended to show a partial guarantee of this \$250,000 per deposit taking institution.

Financial Implications

15 The reduction of the current value of Council's portfolio is a result of the downturn in global markets stemming from the global financial crisis. It should be noted that Council's exposure to the credit/equity markets is supported by capital protection which ensures that the initial value of the investment is not reduced when held to maturity. In downward cycles, the capital is protected by allocating the investment to an underlying bond. If the investment is 100% allocated to this bond,
20 no interest will be paid up to maturity. This will impact negatively on Council's interest earnings on investments.

25 Council's investment strategy is to invest for the long term while maintaining sufficient liquid investments to meet short term requirements. It is important that this strategy is maintained to ensure that principal attached to credit/equity investments is recovered over time as maturity occurs or 'switch' opportunities to alternative investments present themselves.

Statutory and Policy Compliance Implications

30 In accordance with clause 212 of the Local Government (General) Regulation 2005, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies Council has invested under section 625 of the Local Government Act 1993.

35 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. In this regard, the current Council Meeting cycle does not always allow this to occur, especially when the second meeting of a month is a Strategic Planning Meeting or when the meeting dates are brought forward. Under normal circumstances it is not possible to present the investment report to the first Ordinary Meeting in the month, as investment valuations required for the preparation of the report, are often received after the deadline for the submission of reports for
40 the meeting.

45 Council's investments are carried out in accordance with section 625(2) of the Local Government Act 1993 and Council's Investment Policy. The Local Government Act 1993 allows Council to invest money as per the Ministers Order – Forms of Investment, last published in the Government Gazette on 11 February 2011.

Council's Investment Policy includes the objective of maximising earnings from authorised investments and ensuring the security of Council Funds.

Report No. 13.9. Use of Mullumbimby Civic Memorial Hall to house the Returning Officer for the Local Government (LG) Election

Executive Manager: Corporate Management
File No: ADM450000 #1212447

Principal Activity: Corporate Management – Governance and Administration

Summary: The NSW Electoral Commission (EC) is seeking a suitable venue in Byron Shire to house the Returning Officer (RO) for a period of approximately 3 months (25 June 2012 to 24 September 2012).

5

RECOMMENDATION:

- 10 1. That Council note the Mullumbimby Civic Memorial Hall will be hired to the NSW Electoral Commission (EC) to house the Returning Officer for the Local Government Election from the 25 June to 24 September 2012.
- 15 2. a) That a fee of \$1,750 plus GST per week be set to hire the facility to the NSW EC during this period.
- 20 b) That in accordance with the Local Government Act 1993 Section 610(f) the proposed addition to the fees and charges for the weekly hire of the Mullumbimby Civic Memorial Hall to the NSW EC be advertised for a period of 28 days to allow for public submissions.
- 25 c) That if any submissions are received on the proposed hire fee it be reported back to Council prior to adoption. In the event that no submissions are received on the hire fee it be adopted and included in Council's Fees and Charges.
3. That Council in conjunction with the Board of Management inform the community by way of a media release of the use of the Mullumbimby Civic Memorial Hall by the NSW EC for the upcoming LG Election.

Report

5 In a report to Council on 9 February 2012 management advised Council of information provided by the NSW Electoral Commission (EC) on the LG Election to be held on 8 September 2012. As stated in that report the EC requested Council's acceptance of Byron Shire Council sharing a returning officer with Ballina Shire Council by 13 January 2012 and management responded to this matter advising as follows:

10 *"With regard to your advice regarding "Regions where councils will share a returning officer", Council has no objection to sharing a Returning Officer (RO) with Ballina Shire Council.*

15 *Council does request however that the Commission give consideration of the preferred location of the Regional RO to be located in Byron Shire. At the 2008 Local Government Election the RO was situated in Ballina and Council received several objections from scrutineers having to travel to Ballina to scrutinise the election process."*

20 The EC has been liaising with management for a suitable venue to house the RO in this Shire from the 25 June 2012 to 24 September 2012. An initial option was to offer the new Byron Shire Sports and Cultural Centre, but as there have been delays with the appointment of a Co-ordinator for the facility and the requirement of the resurfacing of the floors at the centre, this option was withdrawn.

25 The Mullumbimby Civic Memorial Hall was put forward as a facility to house the RO. Council has liaised with the Board of Management and Venue Co-ordinator who have agreed with the hiring of the hall for the abovementioned period to the NSW EC. The Venue Co-ordinator advises there is only one booking confirmed in this period at this stage between the 9 and 13 July (school holidays) and the Venue Co-ordinator will ensure an alternate suitable venue is found for this hirer.

30 The EC have confirmed that they would like to accept the offer of the Mullumbimby Civic Memorial Hall for the sole and exclusive use of the Returning Officer for the LG Election from 25 June to 24 September 2012 on the basis of the recommended hire fee of \$1,750 plus GST per week.

The Board of Management welcomes the income this booking will generate to make improvements to the facility for the future community's use of the hall.

35 The Board of Management has requested:

- that Council set the hire fee of the facility of \$1,750 (plus GST) per week totalling \$22,750 (13 weeks @ \$1,750 per week).
- a media release be issued advising the community of the use of the facility for this period by the NSW Electoral Commission and the overall benefit it will provide the community.

45 A one off specific Licence Agreement for the facility will be drawn up between the Mullumbimby Civic Hall on behalf of Council and the NSW Electoral Commission with assistance from management if required.

Financial Implications

50 The EC advised the facility hire costs for the 2008 LG Election was \$20,000. The fee requested by the Board of Management and agreed to by the EC would be suitable hire costs for this facility.

Statutory and Policy Compliance Implications

As stated in the Board of Management Guidelines Limitation of Powers states:

2.2 Limitation of Powers

The Board of Management may not make decisions concerning the following:

- 5 (a) Fixing of charges or fees (the Board of Management may submit recommendations for adoption by Council in relation to the fixing of charges and fees for use of the venue under its control), including any policy for exemption from fees and charges.

The Board of Management responsibilities are as follows:

10 **Mullumbimby Civic Hall Board of Management**

- To provide short and long-term strategic marketing direction for the Hall.
- To maximise income and promote optimum usage of the Hall
- To ensure compliance with council policies and all relevant legislation.

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- To provide recommendations to Council for function improvements and/or upgrades to the Hall,
- To source and secure grant funding opportunities for Council's consideration.
- To plan and undertake fund raising activities as required.
- To develop procedures for equity of access to the Hall for the local community.

20

- To strive for a "break-even" or profitable annual financial position (after all operational, short and long-term maintenance, building insurance and paid venue coordinator costs).
- In consultation with the Venue Coordinator:
 - care for and maintain the venue,
 - ensure the safety of the patrons, contractors, and volunteers of the Hall,

25

 - ensure compliance with Council's adopted fees and charges, Occupational Health and Safety, Place of Public Entertainment, and other legislation relevant to the operations of the Venue.

30 Advertising the amendment to the fees and charges are in accordance with Section 610F of Local Government Act 1993 which states:

- (1) *A council must not determine the amount of a fee until it has given public notice of the fee in accordance with this section and has considered any submissions duly made to it during the period of public notice.*

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- (2) *Public notice of the amount of a proposed fee must be given (in accordance with section 405) in the draft operational plan for the year in which the fee is to be made.*
- (3) *However, if, after the date on which the operational plan commences:*
 - (a) *a new service is provided, or the nature or extent of an existing service is changed, or*
 - (b) *the regulations in accordance with which the fee is determined are amended,*

40

the council must give public notice (in accordance with section 705) for at least 28 days of the fee proposed for the new or changed service or the fee determined in accordance with the amended regulations.
- (4) *This section does not apply to a fee determined by a council for an application made in a filming proposal, if that fee is consistent with a scale or structure of fees set out in an applicable filming protocol.*

45

ENVIRONMENT AND PLANNING – EXECUTIVE MANAGER’S REPORTS

Report No. 13.10. PLANNING – DA 10.2011.524.1 Four lot subdivision at Coopers Shoot Road Coopers Shoot

Executive Manager: Environment and Planning

5 **File No:** Parcel No 15940 #1173886

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:

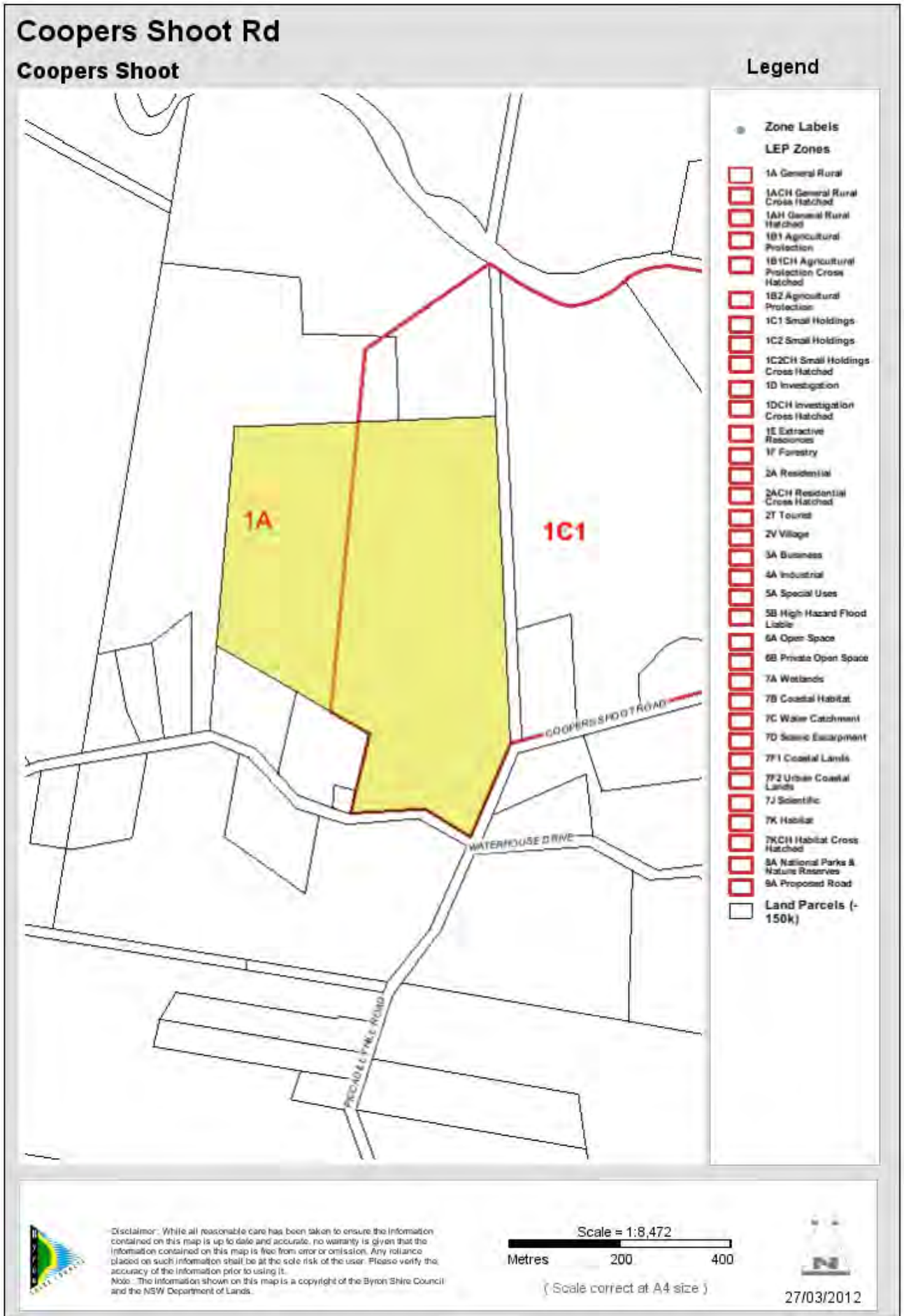
20 That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2011.524.1, for a subdivision to create four allotments, be granted consent subject to the conditions listed in Annexure 14(b) #1209685.

Attachments:

25 *Locality Map*

- Plan of subdivision #1210312 [1 page] **Annexure 14(a)**
- Consent conditions #1209685 [9 pages]..... **Annexure 14(b)**

30 *Confidential submission #1185054 has been produced for Councillors Agenda CD only.*



BYRON SHIRE COUNCIL

ORDINARY MEETING

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DA No:	10.2011.524.1
Proposal:	Subdivision to create four (4) lots
Property description:	Lot 7 DP 255770 Coopers Shoot Road Coopers Shoot
Parcel No/s:	15940
Applicant:	Mr P J Defina
Owner:	Mr J Armstrong
Zoning:	Zone No. 1(a) - General Rural Zone / PART 1(c1) - Small Holdings Zone
Date received:	25 November 2011
Integrated Development:	Yes
Public notification or exhibition:	Level 2 advertising under DCP 2010 Chapter 17 – Public Notification and Exhibition of Development Applications Exhibition period: 15.12.11 to 11.1.12 Submissions: One (1).
Other approvals (S68/138):	Nil.
Planning Review Committee:	N/A
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none"> • SEPP No.1 Objection to Clause 11(1) of Byron LEP 1988 regarding minimum lot size in the 1(a) General Rural Zone; • Submission regarding view affectation, and • Bush Fire Prone Land.
Summary:	<p>The application seeks development to subdivide Lot 7 DP 255770 into four (4) allotments including (3) small holding lots to be located adjacent to the Coopers Shoot Road frontage and the creation of a single residual allotment which is to contain the balance of the land within the existing allotment.</p> <p>The subject site is identified as containing bushfire prone land. The NSW Rural Fire Service has issued a Fire Safety Authority pursuant to Section 100B of the Rural Fires Act 1997 subject to a condition which has been included in the recommendation of this report.</p> <p>The proposal is considered to be acceptable and the potential rural/agricultural use of the neighbouring land should not be compromised.</p> <p>The application includes a SEPP No.1 objection to Clause 11(1) regarding the 40 hectare minimum lot size for land within Zone 1(a) General Rural. It is considered that no planning benefit is to be gained from preventing the subdivision of containing Land within the 1(c1) Small Holding Zone and land within the 1(a) General Rural Zone in this instance. Concurrence has been granted by the Department of Planning and Infrastructure. Compliance with the development standard is considered unreasonable, unnecessary and not practical in the circumstances of this case and the SEPP No.1 objection to Clause 11(1) of the Byron LEP is supported.</p>

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	<p>The application was required to be publicly notified in accordance with the Level 2 provisions of Council's DCP 2012 and one (1) written submission was received. The issues raised in the submission include view loss, loss of privacy and rural amenity and have been addressed in the body of this report.</p> <p>Overall the application is considered to have sufficient planning merit and is recommended for approval subject to conditions.</p>
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1. INTRODUCTION

1.1 History/Background

The applicant met with Council's Development Advisory Panel on 1st February 2011. Council in a letter dated 7 February 2011 provided preliminary information and assistance to the applicant with respect of Council's statutory and policy requirements. The matters raised in this letter have been reviewed.

1.2 Description of the site

The subject site is described as Lot 7 DP 255770 Coopers Shoot Road, Coopers Shoot. The site is an irregular shaped allotment with a total area of 28.93 hectares and is located on the northern side of Coopers Shoot Road at the intersection with Piccadilly Hill Road.

The level of the site falls generally in a north-easterly direction. The Coopers Shoot Road frontage of the site follows the hill crest which at approximately RL129 with the site level falling to RL107 in close proximity of the proposed new allotments fronting Coopers Shoot Road.

The higher levels of the site have been used for agricultural purposes (cattle grazing) and is predominantly pasture land substantially cleared of tree and significant vegetation. The lower slopes within the 1(c1) zone contain some remanent forested areas.

1.3 Description of the proposed development

The application seeks development consent for the torrens title subdivision of the subject allotment. The proposal is to subdivide the site into four (4) allotments comprising (3) small holding lots that are located adjacent to the Coopers Shoot Road frontage and the creation of a single residual allotment to contain the balance of the land within the existing allotment (See **Figure 1**). Following is a table of the proposed areas of each allotment:

Proposed Lot	Approximate Area
Lot 1	7600m ²
Lot 2	6100m ²
Lot 3	7800m ²
Lot 4	27.78 hectares



Figure 1 – Proposed subdivision

2.0 Integrated Development – Section 100B of Rural Fires Act 1997

In accordance with Clause 91(1) of the Environmental Planning and Assessment Act 1979, the application was referred to the Rural Fire Service (RFS) to obtain a Bush Fire Safety Authority pursuant Section 100B of the Rural Fires Act 1997.

The RFS in a letter dated 5 January 2012 advised that it issues a Bush Fire Safety Authority subject to the following conditions.

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by Kennedy Surveying, titled “Plan Showing Contours and Detail”, sheet 1 of 1, Revision 1 and dated 11/10/11, except for the following criteria, as required by Clause 4.1.3.2 of Planning for Bush Fire Protection 2006, “Property Access”;
 - The “common bitupave entry” is to be 4.0m wide, and
 - Curves in the property access road are to have a minimum internal radius of 6m, and
 - The minimum distance between the inner and outer curves in the property access road is to be 6m.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Electricity and gas are to comply with section 4.1.3 of ‘Planning for Bush Fire Protection 2006’.

Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

3. Property access roads shall comply with section 4.1.3 (2) of ‘Planning for Bush Fire Protection 2006’.

General Advice - consent authority to note

This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the ‘Building Code of Australia’ must be subject to separate application under section 79BA of the EP & A Act and address the requirements of ‘Planning for Bush Fire Protection 2006’.

The conditions recommended by the RFS have been included in the recommendation of this report.

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Requirement	Proposed	Complies
State Environmental Planning Policy No.1 Development Standard	Specifies that a written objection can be made where strict compliance with a development standard	The proposed subdivision does not comply with minimum lot size requirements under Clause	Yes* (See further assessment in the LEP Issues

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Requirement	Requirement	Proposed	Complies
	cannot be achieved.	11(1) of Byron LEP 1988. A SEPP 1 Objection has been submitted by the applicant and is assessed in the LEP Issues section of this report.	section of this report)
SEPP44 - Koala Habitat Protection	Council must determine if the land is a <i>potential koala habitat</i> (feed tree species constitute at least 15% of the trees in the upper or lower strata of the tree component).	Koala feed tree species constitute less than 15% of the trees on the land.	Yes
State Environmental Planning Policy No 55 - Remediation of Land	The Council must: (a) consider whether the land is contaminated; and (b) if the land is contaminated, if the land is suitable in its contaminated state or after remediation; and (c) be satisfied before the land is used.	Council's Local Approvals and Certification Officer has advised the subject site is suitable for the proposed small holding subdivision following a review of Council's records and information submitted by the applicant.	Yes
State Environmental Planning Policy (Rural Lands) 2008	The following matters are to be taken into account: (a) the existing uses and approved uses of land in the vicinity of the development, (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development, (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b), (d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone, (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).	The proposed subdivision is considered to be consistent with SEPP (Rural Lands) 2008.	Yes

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Requirement	Requirement	Proposed	Complies
North Coast Regional Environmental Plan (Deemed SEPP)	To ensure that development: <ul style="list-style-type: none"> protects the natural environment; encourages an efficient and attractive built environment and guides development into a productive yet environmentally sound future. 	The proposed subdivision is consistent with the provisions of this plan.	Yes
Disability Discrimination Act	Access for persons with disabilities and integration into surrounding streetscapes without creating barriers (council res 10-1118)	The proposed access for each of the allotments is not restricted and is considered to be consistent with DDA requirements	Yes

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

Zone: Part Zone No. 1(a) - General Rural Zone / Part 1(c1) - Small Holdings Zone

Definition: Subdivision

5

LEP Requirement	Summary of Requirement	Proposed	Complies
Meets the objectives of the Zone No.1(c1) – (Small Holdings Zone)	<ul style="list-style-type: none"> allow rural development but only if it does not impact on services and agricultural production; and make provision for small rural holdings while maintaining rural character. 	The proposed development is considered to be consistent with the objectives of the 1(c1) Small Holdings Zone and should maintain the rural character of the area.	Yes
Meets zone objectives for 1(a) General Rural Land	<ul style="list-style-type: none"> encourage and permit a range of uses that maintains the rural character and environment; minimise/ avoid conflicting land use; minimise traffic generating uses along main roads: and development to conserve, protect and enhance the value of the fauna and flora. 	The proposed development is considered to be consistent with the objectives of the 1(a) General Rural Zone.	Yes
Permissible use	A person shall not subdivide land to which this plan applies except with the consent of Council.	Subdivision is permissible with the consent of Council.	Yes
Clause 11 Subdivision in rural areas	(1) Council shall not consent to the subdivision of land within the 1(c1) zone unless the area of the allotment to be created is not less than	Each of the proposed allotments has an area exceeding 0.4 hectare. The applicant has submitted a plan indicating the building	Yes

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LEP Requirement	Summary of Requirement	Proposed	Complies
	<p>0.4ha and in the opinion of Council each allotment is of satisfactory shape and has a satisfactory frontage.</p> <p>(2) The Council may only consent to the subdivision of any land within Zone No 1 (c1) shown unhatched on the map - where the number of allotments to be created by the subdivision for the purpose of a dwelling-house is not greater than the area of land divided by 2.5.</p>	<p>envelope and dwelling house envelope for each of the proposed Lots which excludes areas of Bush Fire Asset Protection Zones.</p> <p>The applicant has not submitted a survey plan for the entire allotment specifying the area within the 1(c1) Zone. It has been calculated that the subject site has an area of approximately 19.8 hectares within the 1(c1) Zone and when divided by 2.5 the maximum number of seven (7) allotments ie. 7 lots capable of containing a dwelling house. The proposed four (4) allotments</p>	
<p>Clause 11 - Subdivision in rural areas for agriculture, etc.</p>	<p>The council shall not consent to the subdivision of land within 1(a) zone, unless the area of each of the allotments to be created is not less than 40 hectares.</p>	<p>*Refer to Section 3.1 of this report for consideration of a SEPP1 Objection to Clause 11 submitted by the applicant.</p>	<p>No* (See Section 3.1 of this report)</p>
<p>Clause 11A restriction on the number of allotments within Zones 1(c1) and 1(c2)</p>	<p>The Council must not consent to a subdivision for the purpose of rural residential development:</p> <p>(a) if the subdivision will result in the creation of a number of allotments of land to which this clause applies during a 5-year period to be used for that purpose which will exceed the maximum number of allotments specified by the council for that period, or</p> <p>(b) if there is no maximum number so specified for the current 5-year period.</p>	<p>Council's Executive Manager of Environment and Planning in a memo dated 26 July 2011 established a quota for the following five year period to allow for the creation of 100 new 1(c1) or 1(c2) allotments. The proposed four new allotments do not exceed the quota for the current five year period.</p>	<p>Yes</p>
<p>Clause 31 – Development on ridgetops</p>	<p>Development on or near ridgetops is not to be approved unless no alternative location exists.</p>	<p>The subject site is located near a minor ridgeline. The proposed subdivision is in accordance with the objectives of the 1(c1) Small Holdings Zone. The subject allotments are of a size which will allow for the positioning of dwellings in a</p>	<p>Yes</p>

LEP Requirement	Summary of Requirement	Proposed	Complies
		manner which is unlikely to have an unacceptable visual impact.	
Clause 45 – Provision of Services	Prior adequate arrangements must be made for the provision of sewerage, drainage and water services to the land.	An on-site sewage management assessment was completed for the three proposed lots by EAL consulting in a report dated October 2011. Suitable effluent disposal areas within minimal constraints for effluent disposal have been identified on all proposed allotments. Sufficient area is available for the management of stormwater.	Yes

* Non-complying issues discussed below

Byron Local Environmental Plan 1988- Issues

5 State Environmental Planning Policy No. 1 Objection - Non-compliance with Clause 11(1) of Byron LEP 1988

10 Pursuant to Clause 11(1) of Byron LEP 1988, the minimum area of a lot created within the 1(c1) Small Holdings Zone is 0.4 of a hectare, whilst the minimum lot size for the 1(a) General Rural Zone is 40 hectares. As the proposed subdivision proposes to create three (3) rural small holding Lots varying in size from 6100m² to 7800m² allotment within the 1(c1) Small Holding Zone these allotment are compliant with Clause 11(1). However the residue lot (proposed Lot 4) comprising 1(c1) and 1(a) zoned land has an area of 20.25 hectares and is therefore less than the required 40 hectare minimum for the 1(a) zone.

15 The applicant has submitted a SEPP No.1 Objection to the minimum allotment size. The applicant seeks a variation to the development standard applying to the minimum allotment size for subdivision within the 1(a) General Rural zoned land.

20 A written objection was submitted with the development application asserting that compliance with the minimum 40 hectare lot size development standard is unreasonable and unnecessary as the existing allotment is already below 40 hectares (Lot 7 DP 255770 has a total area of 29.93 hectares).

Clause 3 of SEPP No.1 specifies the following aims and objectives:

25 *“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

30 Section 5 of the Environmental Planning and Assessment Act 1979 provides that the objects of the Act relevant to State Environmental Planning Policy No. 1 are:

“(a) to encourage:

35 (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water,

cities, 35 towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

5 (ii) *the promotion and co-ordination of the orderly and economic use and development of land,”*

Clause 7 of SEPP No.1 specifies that consent may be granted:

10 *Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.*

15 Strict compliance with the 40 hectare standard is not considered necessary in the circumstances of this application. The submitted SEPP No.1 Objection is considered to be well founded and compliance with the standard in this instance is unreasonable and unnecessary in view of the following:

- 20 • the area of the existing allotment (Lot 7 DP 255770) is 29.93 hectares. The allotment is already less than the 40 hectare minimum, and
- the objection has planning merit by facilitating the subdivision of land within the 1(c1) Zone to create three additional allotments which are significantly exceed the minimum Lot size within the of 1(c1) Small Holding Zone.

25 In correspondence dated 15 December 2011 the Department of Planning and Infrastructure (Doc No.1178568) issued concurrence for the proposal stating, in part:

30 *“Following consideration of the application, concurrence has been granted to vary the subdivision development standard for the 1(a) General Rural Zone contained in Clause 11(1) of Council’s planning instrument to permit the creation of the residue lot (proposed Lot 4) of about 28 hectares which is partly zoned 1(a).*

35 *Concurrence was granted in this instance as the subdivision will allow for the creation of three rural residential lots in accordance with the zoning of the land with all the 1(a) land remaining in a single lot.”*

40 Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of this case and the SEPP No.1 objection is therefore supported.

Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

45 No relevant draft Environmental Planning Instruments have been identified for this application.

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2010

Development Control Requirements	DCP Requirement	Proposed	Compliance
B2.3 – Site Design	The subdivision must take into account all natural and human – made aspects of the site to be developed.	The design of the subdivision reflects the topography, physical constraints of the subject	Yes

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Development Control Requirements	DCP Requirement	Proposed	Compliance
		site whilst allowing for the retention of existing trees and vegetation.	
B2.4 – Climate Control	The subdivision must take into consideration wind direction and vegetation types and location.	The configuration and location of the proposed allotments seeks to utilise land which is relatively level, and contain building areas which able to minimise environmental impacts and vegetation removal.	Yes
B2.5 – Aspect	The subdivision must take into consideration solar access.	The area of the proposed rural small holding allotments varies from 6100m ² to 7600m ² with the topography of the Lots providing land with southern, eastern and northern aspects. The size of the allotments allows for dwelling site to gain satisfactory solar access.	Yes
B2.6 – Rural Land	Lots should have dwelling sites protected from noise, dust, odours, spraying in relation to adjoining agricultural uses.	The subject land is located within the 1(c1) rural small holding zone in which rural residential development is anticipated. A substantive buffer distance and plantings minimise any impacts from current intensive agricultural industries in this locality.	Yes
B4.5 – Stormwater Drainage	Facilitate effective drainage provision and management.	Each of the proposed large rural lots can manage on site stormwater discharge. The lots can also discharge stormwater flows to the road table drains in Coopers Shoot Road.	Yes
B2.7 – Tree Preservation	The subdivision layout must encourage retention of existing trees.	Existing stands of trees on the site will be retained within the residue allotment. Some trees are located on the proposed small holding Lots along the property boundaries. The proposed subdivision configuration is considered to encourage the retention of existing vegetation.	Yes

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Development Control Requirements	DCP Requirement	Proposed	Compliance
B2.8 – Landscaping	The subdivision should take into consideration landscaping and Council should impose landscaping requirements were necessary.	The proposed subdivision	Yes
B3.2, 3.3 & 3.4 – Roads	The subdivision must take into consideration road design.	The proposed internal access road is able to satisfy road design requirements.	Yes
B3.5 – Public Open Space	Subdivisions should form part of a pedestrian/cycleway network which connects the subdivision with other facilities including public open space areas (It is Council's responsibility to establish to location of pedestrian/cycleway/public open areas using S.94 Contributions)	There is no pedestrian or bicycle network which connects to the proposed subdivision.	Yes
B3.6 – Lot Size	Subdivision lot sizes are to comply with Clause 11(1), (2) and 11(A) of Byron LEP 1988.	The proposed three (3) allotments located entirely within the 1(c1) zone exceed the 0.4 of a hectare minimum lot size. The proposed residue lot has an area of 27.78 hectares and is partially located within the 1(a) zone which has a minimum Lot size of 40 hectares.	No* (See assessment in Byron Local Environmental Plan 1988 - Issues' section of this report)
B3.7 – Lot Frontage	The subdivision must take into consideration the orientation of each lot and it's ability to provide a suitable house site with good aspect, useable private open space and adequate vehicle access.	The proposed subdivision involves the creation of three (3) allotments within the 1(c1) zone which have an area significantly exceeding the minimum lot size of 0.4 hectare. The size and orientation of the proposed small holding allotments is considered acceptable.	Yes

DCP 2010 Chapter 10 - Coopers Shoot

Development Control	Summary of Requirement	Proposed	Compliance
4.1 – Subdivision design principles	Applications are to have regard to overall site design factors of climate, landform, aspect and views.	The proposed allotments exceed the minimum area requirements for allotments within the 1(c1) zone.	Yes

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4.2 – Lot size and shape	Minimum lot size is 0.4 hectare. Generally lots should have a depth to width ratio not exceeding 4.1 without a justified exception. A maximum of 2 lots with reciprocal rights-of-way will be permitted from one access handle and minimum road frontage of battle axe blocks is 7m.	The proposed new allotments within the 1(c1) zone have a depth to width ratio of approximately 1.5:1 or 2:1. The increased size of the allotments is considered to justify the exception in this instance. The proposed subdivision involves a right-of-way for 4 Lots. The proposed access arrangements are considered to be appropriate in this instance reducing the number of crossovers to Coopers Shoot Road.	Yes
4.3 – Residue land	Where part of site is outside the 1(c1) zone and within the 1(a) zone, that part of the residue unable to meet the minimum 40 hectare lot size is to be incorporated within a lot created within the 1(c1) zone.	The proposed residue allotment (proposed Lot 4) is partially located within 1(a) zone and has been incorporated within a lot created partly within the 1(c1) zone.	Yes
4.4 – Zone boundary variations	The boundary between 1(c1) zone and zones 1(a) and 1(d) will be adjusted to better reflect the topography.	Not a matter for consideration in a development application. This matter could be considered by way of a planning proposal.	N/A
4.5 – Landscaping guidelines	Development to incorporate the use of landscape plantings to enhance visual appearance and living amenity of residents.	The provision of screen plantings to enhance the visual amenity of residents is most appropriately dealt with at time of assessing subsequent development of the proposed allotments.	Yes
4.6 – House siting	Each lot to make provision for suitable house site having regard to slopes in excess of 20%, visual impact, access etc.	The subject allotments are considered to each have suitable areas for dwellings.	Yes
4.7 – Access to water	Subdivision design to provide for as many lots as practicable to have non-potable water source for non-domestic use.	A dam is not located in close proximity to the proposed 1(c1) allotments in this instance.	Yes
4.8 – Climate control and aspect	Refer to Chapter 1 provisions for house location and site design.	The subject allotments contain areas suitable for residential dwellings.	Yes
4.9 – Effluent disposal	Each of the proposed house site to have an adequate area with the	Subject site have suitable area for effluent disposal system.	Yes

necessary absorption
 qualities for an effluent
 disposal system.

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

5 Subject to the conditions included in the recommendation the proposed subdivision is considered to be unlikely to result in any unacceptable impacts on the natural and built environments. The positioning of a dwelling house on each of the subject allotments and the subsequent impact on the views from any neighbouring property is a matter for consideration at the time a dwelling house is proposed.

10 The proposed subdivision is unlikely to result in any unacceptable social and economic impacts in the locality.

3.5 The suitability of the site for the development

15 Bush fire prone land
 The subject allotments are identified by Council's hazard mapping to partially contain bush fire prone land and bushfire prone land buffer areas. As detailed in Section 2.1 of this report the NSW Rural Fire Service has issued a Bush Fire Safety Authority subject to conditions which have been included in the recommendation of this report.

20 External access
 Access to each of the proposed is to be provided from Coopers Shoot Road. Coopers Shoot Road is to be upgraded to a nominal 6m wide bitumen seal pavement with table drains for the full (southern) frontage of the parent lot, west of Piccadilly Hill Road.

25 Internal access
 The proposed internal access arrangements for each allotment are adequate for the proposed subdivision. The proposal involves the creation of a right-of-carriageway for the internal driveway to service the four (4) lots and is to remain within private property (proposed Lot 4).

30 Car parking
 There are no parking controls for subdivisions as parking demand is assessed with building approvals. There is adequate space for parking on each of the proposed lots.

35 On-site sewage management system (OSMS)
 An on-site sewage management assessment was completed for the three proposed lots by EAL consulting in a report dated October 2011. Suitable effluent disposal areas within minimal constraints for effluent disposal have been identified on all proposed allotments.

40 Relocation of power lines
 The applicant has proposed to relocate the existing powerlines passing through proposed Lot 3 with the relocated to along the southern and eastern boundaries of proposed Lot 3.

3.6 Submissions made in accordance with this Act or the regulations

45 The application was notified in accordance with the Level 2 Provisions of Council's DCP 2010. One (1) submission was received in response to the public notification process. Following is a summary of the relevant planning matters raised in the submission.

50 *"Below is a table providing a summary of submissions and staff responses. However, Councillors also need to refer to the full copies of all submissions which have been provided on disc, strictly on a confidential basis, to Councillors. The full copies of the submissions contain personal information*

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such as names and addresses of the persons lodging submissions which are relevant matters to be taken into consideration in determining this matter.”

Issue	Comment
<p>The proposed subdivision will result in a significant loss of iconic views (Byron Lighthouse) from the adjoining property at No.398 Coopers Shoot Road.</p>	<p>An inspection of the subject site at the boundary with the property at No.398 Coopers Shoot Road identified that the dwelling at No.398 gains very distant views of Cape Byron Lighthouse across the subject site.</p> <p>The proposed subdivision does not involve any construction work which is likely to have any impact on the views front the property at No.398 Coopers Shoot Road. Concerns regarding the possible future location of a dwelling house on proposed Lot 1 and subsequent loss of views are not able to be accurately considered as part of the proposed subdivision. Proposed Lot 1 has an area of approximately 7600m² which will allow significant flexibility in the location of any future dwelling house which may prevent the loss of any views from the dwelling at No.398.</p> <p>In the appeal decision Tenacity Consulting v Warringah Council, 2004, the principles of view sharing was considered and the commissioner established a four step assessment. Following an assessment of the proposal using the principles of the 2004 appeal decision it is considered proposed subdivision itself does not involve any building works which are likely to affect views.</p> <p>Should a future development application be received for the development of a dwelling house or structure on proposed Lot 1 a view sharing assessment would be completed at that time.</p> <p>It is also noted that a specific building envelope is not being approved as part of this application and any planting of vegetation on the subject land does not require development consent.</p>
<p>The proposed subdivision will result in a dwelling being located close the existing dwelling at No.398 that it will detract from the privacy of this property.</p>	<p>It is considered the proposed subdivision itself will not result in any reduction of privacy for the adjoining property at No.398 Coopers Shoot Road. Should a future development application be received for the development of a dwelling house on the proposed Lots a view sharing assessment would be completed as part of that assessment.</p>
<p>Visual and aural (noise) amenity on the adjoining property at No.398 Coopers Shoot Road.</p>	<p>It is considered the proposed subdivision itself will not result in any unacceptable visual or acoustic impacts for the adjoining property at No.398 Coopers Shoot Road.</p>
<p>The proposal is contrary to the objectives of the 1(c1) Small Holdings Zone particularly the Objective (c) which is to maintain the rural character in areas where small holdings are permissible.</p>	<p>It is considered the proposed subdivision will not detract from the rural character of the area and is consistent with the objectives of the 1(c1) Small Holdings Zone.</p>
<p>The submitted SEPP No.1 Objection to the minimum allotment size specified in Clause 11 of Byron LEP 1988 should not be supported.</p>	<p>The reasons for supporting the submitted SEPP No.1 Objection in are detailed in Byron Local Environmental Plan 1988 - Issues section of this report.</p>

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3.7 Public interest

The proposal is not considered to be contrary to the public interest.

5 4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

10 As there is no increase in the load on these services and therefore no contributions will be required for water and sewer services.

4.2 Section 94 Contributions

15 As there is no increase in the load on these services and therefore no contributions will be required.

Plan	=	Council's 2001-2006 Developer Contributions Plan
Catchment	=	Rural South
Credit	=	The existing land has a credit of 1 SDU.
Demand	=	The proposal generates a demand of 4 SDU.
Contribution	=	3 SDU (4-1).

Contributions will be required in accordance with the following table (current as at 15 March 2012):

RESIDENTIAL DEVELOPMENT

SCHEDULE OF CONTRIBUTIONS PURSUANT TO SECTION 94 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

(Office Use Only)				
Community and Cultural Facilities	(CF-RS)	3.00 SDU @ \$886.40	=	\$2,659.19
" - Shire Wide	(CF-SW)	3.00 SDU @ \$603.98	=	\$1,811.95
Open Space	(OS-RS)	3.00 SDU @ \$731.83	=	\$2,195.50
" - Shire Wide	(OS-SW)	3.00 SDU @ \$3,042.84	=	\$9,128.51
Roads	(R-RS)	30.00 trips @ \$823.89	=	\$24,716.63
Cycleways	(CW-RS)	3.00 SDU @ \$776.41	=	\$2,329.24
Civic & Urban Improvements	(IM-RS)	3.00 SDU @ \$786.40	=	\$2,359.20
Rural Fire Service	(BF-RS)	3.00 SDU @ \$960.97	=	\$2,882.90
Surf Lifesaving	-	3.00 SDU @ \$0.00	=	\$0.00
Administration	(OF-SW)	3.00 SDU @ \$820.23	=	\$2,460.69
		Total	=	\$50,543.81

20

5. CONCLUSION

25 The subject site is identified as containing bushfire prone land. The NSW Rural Fire Service has issued a Fire Safety Authority pursuant to Section 100B of the Rural Fires Act 1997 subject to a condition which has been included in the recommendation of this report.

The proposal will not compromise the potential rural/agricultural use of the neighbouring land.

30 The application includes a SEPP No.1 objection to Clause 11(1) regarding the 40 hectare minimum lot size for land within Zone 1(a) General Rural. It is considered that no planning benefit is to be gained from preventing the subdivision of containing Land within the 1(c1) Small Holding Zone and

land within the 1(a) General Rural Zone in this instance. Concurrence has been granted by the Department of Planning and Infrastructure. Compliance with the development standard is considered unreasonable, unnecessary and not practical in the circumstances of this case and the SEPP No.1 objection to Clause 11(1) of the Byron LEP is supported.

5

The application was required to be publicly notified in accordance with the Level 2 provisions of Council's DCP 2012 and one (1) written submission was received. The issues raised in the submission include view loss, loss of privacy and rural amenity and have been addressed in the body of this report.

10

Overall the application is considered to have sufficient planning merit and is recommended for approval subject to conditions.

6. RECOMMENDATION

15

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979 development application 10.2011.524.1, for a subdivision to create four allotments, be granted consent subject to the conditions listed in Annexure 14(b) #1209685.

20

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Nil.

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Report No. 13.11. PLANNING – S96 10.2007.406.3 – Affordable Housing/Planning Agreement at 2-10 Bangalow Road and 12 Browning Street Byron Bay
Executive Manager: Environment and Planning
File No: Parcel No 63190 #1063612

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 That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979 development application 10.2007.406.3 be refused for the reasons provided in Annexure 17(b) #1211882.

20

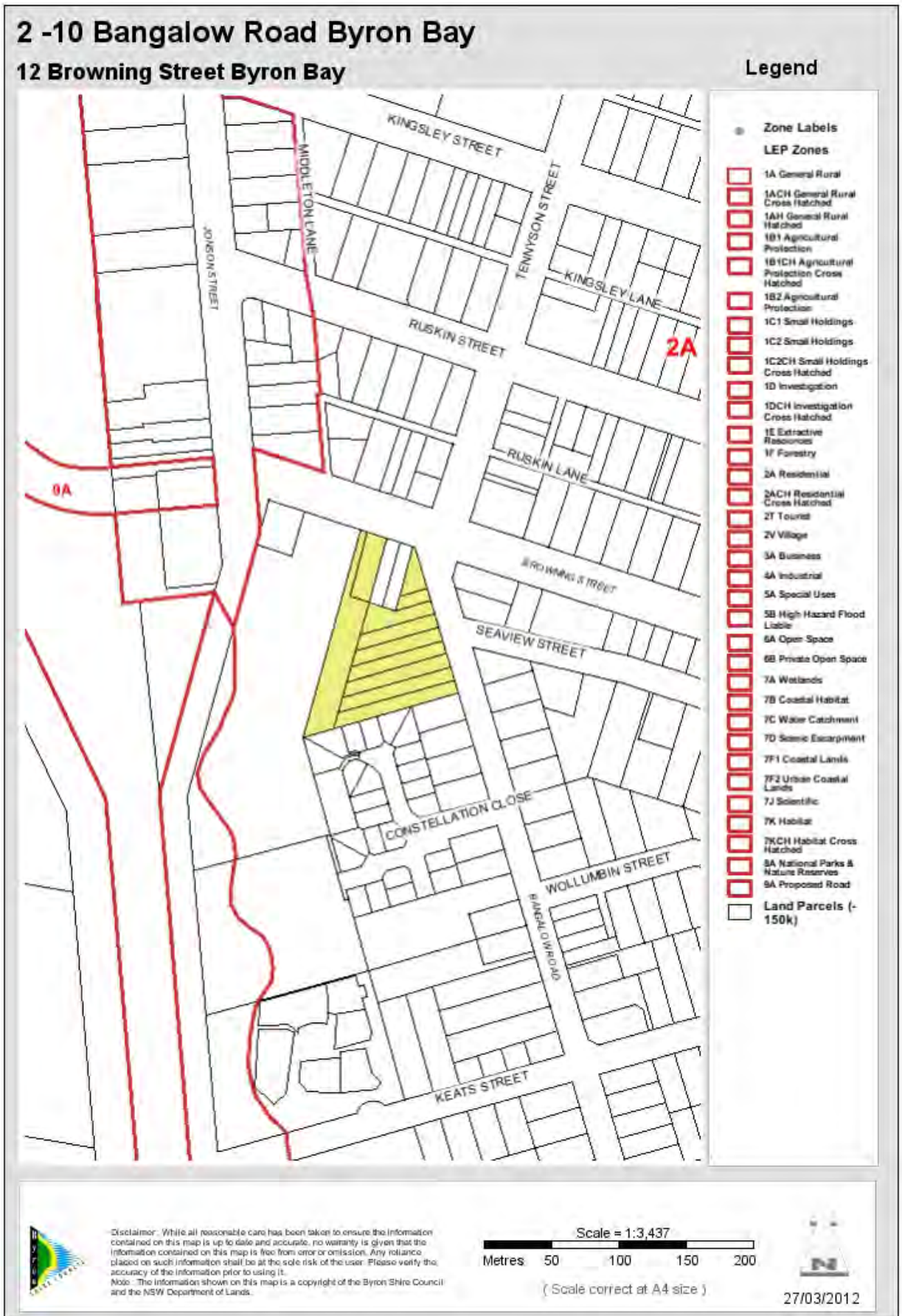
Attachments:
Locality Map

25

- Development consent 10.2007.406.5 #1170988 [93 pages] **Annexure 17(a)**
- Reasons for Refusal #1211882 [1 page]..... **Annexure 17(b)**
- Proposed modified Torrens Title subdivision plan no 0441-03-00/11 issue D #1211973 [1 page] **Annexure 17(c)**
- Proposed Strata subdivision plan no 0441-03-00/12 issue F #1211979 [1 page] **Annexure 17(d)**

30

Confidential Submission #1075395 has been produced for Councillors Agenda CD only.



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S.96 No:	10.2007.406.3
Proposed modification:	Change proposed 6 lot Torrens Title subdivision to a 2 lot Torrens Title subdivision, remove connecting road between boarding houses and medium density houses, change requirement for boarding house manager's residence to be constructed prior to issue of Occupation Certificate for second boarding house, changes to services provision and minor changes to house designs
Original Development:	Affordable housing comprising change of use of 5 existing dwellings for use as boarding houses and erection of 4 new houses for use as boarding houses; medium density development comprising 12 new dwellings; Torrens title and strata title subdivision; staging of the development. The development is the subject of a Planning Agreement
Type of S.96 sought:	S96(2) Other modification
Property description:	LOT: 21 DP: 829621, LOT: 5 DP: 4544, LOT: 6 DP: 4544, LOT: 7 DP: 4544, LOT: 12 DP: 4544, LOT: 8 DP: 4544, LOT: 10 DP: 4544, LOT: 9 DP: 4544, LOT: 22 DP: 829621, LOT: 13 DP: 4544, LOT: 11 DP: 4544 2 Bangalow Road Byron Bay, 10 Bangalow Road Byron Bay, 4 Bangalow Road Byron Bay, 8 Bangalow Road Byron Bay, 6 Bangalow Road Byron Bay, 12 Browning Street Byron Bay
Parcel No/s:	186530, 109560, 109570, 109580, 63190, 63680, 63300, 63460, 186540, 145140, 145170
Applicant:	Kate Singleton Pty Ltd
Owner:	Mrs R G & Mr N Hunt & Mrs A M & Mr E W Pearce
Zoning:	Zone No. 2(a) - Residential Zone
S96 date received:	18 February 2011
Original DA determination date:	09/04/2009
Integrated Development	Yes
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 3 advertising under DCP 17 – Public Notification and Exhibition of Development Applications - Exhibition period: 10/03/11 to 30/03/11 - Submissions: 1
Planning Review Committee:	16 March 2011
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none"> • Range of modifications sought • Complexity of the consent • Complexity of the application
Summary of modification:	The parent consent approved development composed of a medium density element comprising 12 new dwellings and an affordable housing element comprising the change of use of 5 existing dwellings for use as boarding houses and erection of 4 new houses for use as boarding houses. The consent also included Torrens subdivision and consequent strata subdivision

	<p>of the existing 11 lots and for the development to be undertaken in a series of eleven stages.</p> <p>The consent is the subject of a deferred commencement condition for a Planning Agreement to be entered into by the Council and landowners. The landowners have not yet provided Council with a signed copy of the Planning Agreement and consequently the Agreement has not been entered into.</p> <p>The consent lapses on 29 April 2014.</p> <p>The development has a high level of complexity and the consent comprises some 90 pages and calls up some 90 drawings. A wide range of modifications are proposed. These include new subdivision arrangements, new arrangement of ET credits, deferment of the timing for the construction of a manager's residence and community centre in association with the boarding-houses, revised stormwater arrangements and modified building designs.</p> <p>Some of the elements of the application could, taken in isolation from the package of proposed modifications, be supported. For example, the proposed initial subdivision into 2 Torrens Title lots to separate the medium density from the boarding house components of the development to replace the currently approved initial subdivision of 5 Torrens Title lots could be supported as could proposed alterations to the designs of some dwellings.</p> <p>Other elements are not supported. For example, a number of conditions (relating to 8 stages) require that before a strata certificate is issued for the approved strata subdivision for any stage, all approved buildings in that stage (varying from 2 to 5 buildings) must have received an Occupation Certificate. It is proposed that these conditions be modified such that the strata certificate can be issued after an Occupation Certificate for only one building in the stage has been obtained. This is not supported as the strata subdivision must be tied/warranted to the approved built and the proposed modified arrangement would not, under the relevant legislation, allow for the strata subdivision to be so warranted.</p> <p>There are also elements to the application in regard to which requested further information has not been received.</p> <p>The complexity of the approved development and the range and consequence of the proposed modifications makes it impractical to consider granting approval to some elements while refusing approval to other elements. It is also reasonable to regard the proposed modifications as comprising an inter-related package of elements in which event the cherry picking of elements for refusal or approval is not appropriate. To so cherry pick would not produce a good planning outcome</p> <p>In the event that the application is refused, it is open to the applicant to consider this assessment report and propose a less complex application.</p>
--	--

1. INTRODUCTION**1.1 Details of approved development and any subsequent modifications**

5 **DA 10.2007.406.1** approved as a deferred commencement consent: *Affordable housing comprising change of use of 5 existing dwellings for use as boarding houses and erection of 4 new houses for use as boarding houses; medium density development comprising 12 new dwellings; Torrens title and strata title subdivision; staging of the development.* The affordable housing component of the consent was the subject of a Planning Agreement pursuant to Section 93F of the EPA Act.

This approval was the subject of Council resolution 09-147 that stated as follows:

- 15 1. *That Council grant consent to Development Application 10.2007.406.1 for boarding house and medium density development subject to the attached conditions of consent in Doc #828934.*
- 20 2. *That Council agree to the Planning Agreement (#783382) as attached to this report. Council authorise the affixing of the Council seal to all documents necessary to give effect to this resolution.*

The Planning Agreement has since been amended in accordance with Council resolution 10-461 to include the name of a landowner that had been erroneously omitted from the agreement. The current agreement is identified as document #980283 in Council's DOCS data base. The Planning Agreement is between Council and all owners of land the subject of the consent and specifically relates to the boarding house component of the development.

30 **S96 application 10.2007.406.2** modified the deferred commencement condition to require that: *Evidence of compliance with the above condition/s sufficient to satisfy the Council as to those matters, must be provided within 24 months of 29 April 2009.*

35 **S96 application 10.2007.406.4** modified the deferred commencement condition to require that: *Evidence of compliance with the above condition/s sufficient to satisfy the Council as to those matters, must be provided within 30 months of 29 April 2009 [i.e. by 29 October 2011]*

40 **S96 application 10.2007.406.5** modified the deferred commencement condition to require that: *Evidence of compliance with the above condition/s sufficient to satisfy the Council as to those matters, must be provided within 42 months of 29 April 2009 [i.e. by 29 October 2012]*

NB: Section 96 application 10.2007.406.4 and 5 have been determined before the current application in order that the consent did not lapse due to the failure to satisfy the deferred commencement condition

45 Consent conditions

Deferred Consent: *The Planning Agreement the subject of Byron Shire Council Resolution 08-690 has been entered into by the landowners of the subject site and by Byron Shire Council*

50 Stages:

55 **Stage 1** – Subdivision of the existing 11 lots into 6 Torrens lots. Lot 1 to comprise the western part of the site on which is to be located the medium density component of the development. Lots 2-6 to contain the boarding house element of the development being the part to which the Planning Agreement applies.

Stage I includes a requirement for the construction of an acoustic fence on the boundaries of the 2 adjacent northern lots that are abutted by the development site on 3 sides.

5 **Stage A1** – Strata subdivision of Torrens lots 2-6 into 3 development lots (AL1, AL2, AL3) and a common property lot

Stage A2 – Relates to boarding-house development in strata lots AL1 and AL3 and further strata subdivision

10 **Stage A3** - Relates to boarding-house development in strata lots AL2 and AL3 and further strata subdivision

15 Both stages A2 and A3 include the requirement that the managers residence and community centre building is to be constructed and occupied prior to the issue of an Occupation Certificate for the second boarding-house to be brought into operation on the site.

Stage B1 – strata subdivision of Torrens title Lot 6 into 6 development lots (RL2, RL4-RL8) and a common property lot

20 **Stages B2 to B8** relate to the construction of houses in the medium density element of the consent – strata lots RL2, RL4-RL8, and associated strata subdivisions of the lots.

25 The structure of the consent is such that, apart from broad consent parameters, each stage is separately listed with conditions relevant to each stage.

Conditions for Stages A2, A3, B2 and B4-B8 require Occupation Certificates be issued for all dwellings/boarding-houses in each stage prior to the issue of a strata subdivision certificate in regard to that stage.

30 **1.2 Section 96 modifications sought**

SUBDIVISION

Stages 1

35 It is proposed to modify Stage 1 so that the site is resubdivided into 2 Torrens Title lots rather than 6 such lots. The medium density and boarding-house components of the development will be separately contained within Torrens Title Lots 1 and 2 respectively. The proposed modified stage 1 subdivision will slightly vary the areas of the two component parts of the development with the area
40 of the medium density component changing from 5210 m² to 5167 m² and with a slight adjustment to the boundary between the two components of the development.

Stage A1

45 The modified Stage A1 will relate to the strata subdivision of proposed Torrens Title Lot 2 into 3 development lots (AL1-AL3) and a community lot for the boarding house element of the development

Approval to the above modified stages would involve the replacement of the following endorsed drawings:

- 50
- 0441-03-00/08 Site Plan Areas dated 25/07/08 replaced by 0441-03-00/08 Site Plan Areas dated 8-10
 - 0441-03-00/11 Torrens Lots dated 25/07/08 replaced by 0441-03-00/11 Torrens Lots dated 8-10
 - 0441-03-00/12A Develop Lots A dated 25/07/08 & 0441-03-00/12B Develop Lots R dated
55 25/07/08 replaced by 0441-03-00/12A Develop Lots A dated 8-10.

Stage B1

Stage B1– strata subdivision of Torrens Title Lot 1 - is essentially unchanged and will relate to the strata subdivision of proposed Torrens Title Lot 1 into development lots (RL1, RL3-RL7)

5

Stages A2 & A3

The staging of the boarding-house/Planning Agreement development incorporating the construction of boarding houses and associated subdivision will remain as per the existing consent.

10

Stages B2, B4-B8

The staging of the medium density development incorporating the construction of dwelling-houses and associated strata subdivision will remain as per the existing consent.

15

REQUIREMENTS PRIOR TO ISSUE OF STRATA SUBDIVISION CERTIFICATE

Existing conditions for Stages A2, A3, B2 and B4-B8 require Occupation Certificates be issued for all dwellings or boarding-houses in each stage prior to the issue of a strata subdivision certificate in regard to that stage.

20

It is proposed that such conditions be modified to allow for the release of the strata subdivision certificate following the issue of an Occupation Certificate for one of the buildings in the particular stage.

25

INTERNAL VEHICLE ACCESS

It is proposed to delete a vehicle access between the medium density and boarding house parts of the site. This would require modification to conditions 11 and 33 of Stage A2 to delete reference to “main access driveway between Bangalow Road and Browning Street.”

30

MODIFICATION OF SERVICES EASEMENT

It is proposed to remove reliance between the medium density component and the boarding house components in regard to services.

35

This would require the removal of any easements over the proposed Torrens Title Lot 2 that service the proposed Torrens Title Lot 1 as created by the proposed modified Stage 1 of the development. For example, it would be necessary to modify existing condition 18 to Stage 1 that calls for a S88B instrument in relation to (a): *inter-allotment drainage easements* and; (d): *suitable rights of carriageway* and modification to Stage 1 condition 1 to delete reference to easements.

40

BUILDING DESIGN

Design modifications are proposed for boarding-houses 2, 7, 8 & 9 and to dwelling-houses 11, 12, 17, 18, 19, 21 & 22. Amended drawings have been submitted.

45

BASIX CERTIFICATES

A new BASIX Certificate, dated 21/10/2010 has been submitted. It is proposed that this Certificate replace those called up in regard to Boarding-house #9 and dwelling-houses #17-19 and #21-22 to reflect the proposed design changes.

50

ACOUSTIC FENCE

Condition 5 of Stage 1 of the parent consent states, as a condition to be complied with prior to the issue for a Construction Certificate for Stage 1:

- 5 *Soundproof barrier on the common boundaries of the development site with Lots 3 & 4 DP 4544*
The application for a Construction Certificate is to include plans and specifications for a 1.8m high soundproof barrier of a suitable lapped and capped paling fence style of appearance along the full length of the common boundary between the development site and Lots 3 & 4 DP 4544.

- 10 Condition 20 of Stage 1 requires that the fence be completed prior to the issue of a Subdivision Certificate for Stage 1.

- 15 It is proposed that these conditions be modified to require that such a fence be required to be erected prior to the issue of a Construction Certificate for houses 6, 10 or 11 [House 6 is a boarding house close to the eastern boundary of the adjacent lots; Houses 10 and 11 are dwelling-houses close to the western boundary of the adjacent lots.] Approval to this modification would relocate the acoustic fence condition into Stage A2 (includes boarding houses #6 and #7) and Stage B2 (includes dwelling-houses #10 and #11)

COMMUNITY CENTRE/MANAGER'S RESIDENCE

- 20 Condition 3 for Stage A2 provides that: *The elements of Stage A2 of the development may be carried out in any order however the manager's residence must be constructed and an Occupation Certificate issued for same prior to the issue of an Occupation Certificate for the second boarding-*
 25 *house on any part of the site to be brought into operation.*

A like condition is imposed for Stage A3.

- 30 The parent consent calls up plans relating to the manager's residence and community centre design and these comprise a two storey building with the community centre on the ground level and the manager's residence in the upper level. It is implicit that the community centre be constructed at the same time as the manager's residence.

- 35 It is proposed that the existing condition be replaced to state that accommodation for an on-site manager is to be provided prior to the issue of an Occupation Certificate for the second boarding house on the site, that such accommodation may be "temporary" and that the manager's residence is to be constructed prior to the issue of an Occupation Certificate for the sixth boarding house on the site.

- 40 The applicant proposes the following terms for the proposed modified condition(s) for Stages A2 and A3:

- 45 *Accommodation specifically allocated for the exclusive use of an on-site manager is to be provided prior to the issue of an Occupation Certificate for the second boarding house on any part of the site (Torrens Title Lot 2) to be brought into operation. A plan indicating the proposed location of the "temporary" manager's accommodation is to be submitted to Council prior to the release of the Occupation Certificate for the second boarding-house on any part of the site (Torrens title Lot 2). The manager's residence is to be constructed and occupied prior to the issue of an Occupation Certificate for the sixth boarding-house to be brought into operation on any part of the land.*

PARKING

- 55 It is proposed that the boarding house component be serviced by the provision of 40 parking spaces.

STORMWATER MANAGEMENT

5 No engineering drawings are called up in the existing consent. Conditions require that “Engineering Construction Plans” be submitted and ‘On-site Stormwater Detention” approval be obtained prior to the issue of a CC for Stage 1.

10 New drawings – titled “Overall Project” and ‘Subdivision Works” - have been submitted with the current modification application and are proposed for inclusion in Condition 1 – Development to be in accordance with approved plans.

The application originally proposed to construct the “Serpentine Channel” being a formed drainage line incorporating a pond area, which was to provide on-site stormwater detention for the overall development during the first stage of the development. The amended application – see new drawings - proposes to construct an open drain only in the first stage.

15 **ALLOCATION OF EXISTING WATER/SEWER CREDITS**

20 The site has a credit of 11 ET. It is proposed that these be distributed upon the Stage 1 Torrens Title subdivision of the lot such that 5 accrue to Lot 1 and 6 to Lot 2 (boarding-houses).

Under the existing consent no water/sewer payments are required for Stages 1 and A1. For Stage B1 payments for water and sewer of 3.5ET and for bulk water of 2.5ET are required and are apportioned for each proposed house in Stages B2.

25 **DELETE REQUIREMENT TO DEMOLISH SHED**

Condition 10 of Stage A1 requires that the garage and shed of house #2 must be demolished prior to the issue of a subdivision certificate. It is proposed that this condition be deleted.

30 **AMENDED DRAWINGS**

The application is accompanied by a large number of drawings. Approval to the proposed modified subdivision will require considerable modification to the details of drawings called up in the Parameters of Consent.

35 **AMENDED CONDITIONS**

The application incorporates a large number of proposed modified conditions.

40 **1.3 Owners’ Consent and Planning Agreement**

45 It has been explained by the representative landowner that a reason for elements to this application is to modify the consent so as to enable the landowners to arrange their affairs such that the ownerships of the boarding house and medium density elements of the development are separated.

The Planning Agreement contracts all landowners of the lands the subject of the consent. Its terms however relate specifically to the boarding house element of the application.

50 Current ownership of the 11 lots is divided between RG & N Hunt and AM & EW Pearce (3 titles), Troyvale P/L (5 titles) and RC Morrison & N Hunt (2 titles).

55 The current S96 application is signed by RG Hunt, N Hunt, R Morrison, E Pearce, A Pearce, N Hunt for Troyvale P/L and includes the Common Seal of Troyvale P/L.

The Planning Agreement as amended provides as signatories: *BYRON SHIRE COUNCIL AND NORMAN HUNT, ROSALIND GAIL HUNT, ERROL WILLIAM PEARCE, ANTHEA MARY PEARCE, ROBERT CHARLES GOOCH MORRISON & TROYVALE P/L.*

5 The landowner’s representative has advised that it is intended that the ownership of the land to become the site for the boarding house element be separated from the ownership of the land the subject of the medium density component with the Planning Agreement signatories limited to the owner(s) of the boarding house land.

10 The following sequence could potentially achieve these objectives:

1. Registration of proposed modified Torrens Title subdivision
2. Change of ownership reflected on the Land Titles
- 15 3. Lodgement of a S96 application to modify the current consent to delete Stages B1, B2, B2-B8
4. Simultaneous lodgement of new development application to incorporate Stages B1, B2 B4-B8.
5. Simultaneous application to amend the Planning Agreement to be signed only by the owner/s of the boarding house development.

20 It cannot be assumed that Council would support either the above S96 modification, the above new development consent or the above modification to the Planning Agreement. Further, it cannot be assumed that bush fire safety requirements imposed in an amended consent and/or a new consent would be the same or similar to those currently imposed with the result that
 25 the approved layout/house design may not be able to be sustained.

1.4 Is the modification substantially the same as the development granted

30 Yes

2. SUMMARY OF REFERRALS

Rural Fire Service (RFS)

35 The parent application was the subject of a bush fire safety authority issued by the Rural Fire Service under Section 100B of the Rural Fires Act.

The current modification application was referred to the RFS. The RFS has responded to issue a new bush fire safety authority subject to the following conditions:

Water and Utilities

40 The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- 45 1. Water, electricity and gas are to comply with the following requirements of section 4.1.3 of ‘Planning for Bush Fire Protection 2006’.

Access

50 The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

- 55 2. The internal access road, The Avenue, within proposed Lot I shall comply with section 4.1.3(2) of ‘Planning for Bush Fire Protection 2006’

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- 5 3. Proposed Houses 13, 14, 15, 16 and 17 shall comply with section 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
- 10 4. A 1.8 metre high minimum, radiant heat shield (e.g. fence) made of non-combustible materials shall be constructed along the southern boundary of House 14 & 15, and the western boundary of House 15. The bottom of the fence is to be in direct contact with the finished ground level or plinth.

Landscaping

- 15 5. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.
- 20 6. To aid in firefighting activities, unobstructed pedestrian access to the rear of House 15 shall be provided and maintained at all times.

General Advice — consent authority to note

This assessment is based on the information provided that the development of proposed Lot 1 is for medium density conventional housing, and the development of Lot 2 is for affordable housing.

COMMENT

The above conditions are capable of being imposed on the proposed modified development and would not compromise the capacity of the proposed modified development to be undertaken on the site.

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

SUBDIVISION STAGES 1 & A1

The proposed modifications to Stages 1 & A1 are, taken in isolation, essentially administrative and do not affect the character of the development. However, this element must be seen in the context of the overall modification application, the complexity of the parent consent and the circumstance that a number of elements of this application are not supported. In this context it is not appropriate to cherry pick different elements of the application for different determinations.

REQUIREMENTS PRIOR TO ISSUE OF STRATA SUBDIVISION CERTIFICATE

Existing circumstance

The approved Stage A1 relates to the strata subdivision of approved Torrens title lots 2-6 into 3 development lots, titled AL1, AL2 and AL3 and a common property lot.

The approved stages A2 and A3 relate to alterations and additions to existing houses and their change of use to boarding houses and to the construction of new houses for use as boarding houses in, respectively, lots AL1 and AL2. These stages also relate to the construction of a managers residence and a community centre in lot AL3 with such construction required as either a part of stage A2 or A3.

Condition 42 of the conditions that apply to stage A2 and A3 requires that:

5 *Prior to issue of the subdivision certificate for the strata plan of subdivision, a final Occupation Certificate must be issued for every dwelling in this stage and the managers residence/community building in stage A4. Where a final Occupation Certificate is over 12 months old a building certificate less than 12 months old must also be issued for the relevant building.*

10 [NB. No stage A4 is elsewhere identified in the parent consent. The reference to such a stage was utilised in the assessment of the parent application to distinguish the manager's residence/community centre in strata lots AL3 and AL4 from built elements in stage A2 and A3. However, the matter of the timing and circumstance of the construction of the manager's residence and community centre is fully addressed in the terms of stages A2 and A3 and thus the remaining reference to stage A4 is superfluous.]

15 Approved stage B1 relates to the strata subdivision of the approved Torrens Title Lot 1 into 6 development lots, being RL1 and RL3-RL7 and a common property lot.

Approved stages B2 and B4-B8 relate to the construction of new houses in strata lots RL1 and RL3-RL7.

20 Conditions that apply to each of stages B2 and B4-B8 require as follows:

25 *Prior to issue of the subdivision certificate for the strata plan of subdivision, a final Occupation Certificate must be issued for every dwelling in this stage. Where a final Occupation Certificate is over 12 months old a building certificate less than 12 months old must also be issued for the relevant building.*

Proposed Modification

30 It is proposed that the conditions that require the issue of Occupation Certificates prior to the release of a strata certificate for each stage be modified to allow for the release of the strata subdivision certificate following the release of the first Occupation Certificate for a building within the particular stage.

Assessment

35 The proposed modification is not supported.

40 The applicant seeks to obtain a strata certificate after one building only in each stage is the subject of an Occupation Certificate.

45 For example, in regard to Stage A2, it is proposed that a certificate for the five created strata lots be issued in the event that one of the three existing buildings in the stage was the subject of an Occupation Certificate (for use as a boarding-house) or if one of the two proposed new buildings in the stage was the subject of an Occupation Certificate (for use as a boarding-house).

The various strata subdivisions in the parent consent were approved on the basis that the approved built development and use is undertaken. Thus, any strata subdivision must be tied to the subject development consent.

50 Under the provisions of the *Strata Schemes (Freehold Development) Act 1973 No 68*, this is undertaken by the "warranting" of the development in a strata development contract. Such warranting can obligate built development within the strata lots to be defined by the terms of the subject development consent.

55 However, a strata contract must relate to a strata subdivision that incorporates development lots. The creation of a development lot must be consistent with section 28A of the *Strata Schemes*

(Freehold Development) Act 1973 which defines a development lot as: *development lot means a lot in a strata plan that is identified by a strata development contract as a lot that is to be the subject of a strata plan of subdivision under the development scheme.* That is, a development lot must be capable itself of strata subdivision.

5

The problem is that the proposed strata lots in, say, stage A2, will not be capable of strata subdivision as they will be required to contain either a dwelling-house or boarding-house and any further strata subdivision of these lots is not within the scope of the consent.

10 In regard to, say, Stage B5, the proposed modification is for strata subdivision after one of the two houses within that stage is issued with an Occupation Certificate. However, the proposed remaining vacant lot would not be capable of itself being strata subdivided under the terms of the required warrant. It would not therefore comprise a development lot and could not therefore be the subject of a development contract for warranted development.

15

In regard to Stage B2, the proposed development within that stage comprises an attached dual occupancy making the proposed modification inapplicable.

20 It is concluded that the proposed modification is not feasible within the terms of the applicable legislation and no other means for creating a strata lot that is tied, or warranted, to the subject development consent, is available.

INTERNAL VEHICLE ACCESS

25 It is proposed to delete a vehicle access between the medium density and boarding house. This is indicated on the submitted drawings and would require modification to conditions 11 and 33 of Stage A2 to delete reference to "main access driveway between Bangalow Road and Browning Street."

30 This is a matter of potential significance only in regard to fire safety. The RFS has issued a S100B authority for this modification application that requires that the internal access road for the medium density component of the development, called The Avenue, comply with s4.1.3 of PBP 2006. The RFS issued a S100B authority for the parent consent following extensive negotiation between the applicant and the RFS in regard to the design of The Avenue, however the prior S100B authority does not stipulate an internal access road standard. Support for this modification would require that
35 the applicant provide documentation that the design of The Avenue is suitable.

This element evidently relates to the interest of the landowners to separate the ownership and consequent management of the two components of the consent. This separation as discussed in section 1.3 of this report is problematical and is not anyway sought in this application.

40

MODIFICATION OF SERVICES EASEMENT

45 It is proposed that services to proposed Torrens Lot 1 be provided from Browning Street without reliance on any easements across proposed Torrens Lot 2.

This element evidently relates to the interest of the landowners to separate the ownership and consequent management of the two components of the consent. This separation as discussed in section 1.3 of this report is problematical and is not anyway sought in this application.

50 This separation of the components of the development could be supported in the event that it was not associated with the range of modifications currently proposed and not all of which are supported.

BUILDING DESIGN

5 The proposed modifications to the design of a number of buildings are generally minor and will not generate new impacts beyond those of the development as currently approved.

This element of the application could be supported in the event that it was not associated with the range of modifications currently proposed and not all of which are supported.

BASIX CERTIFICATES

10 The proposed replacement of BASIX Certificates affecting certain dwelling designs that are proposed for modification could be supported in the event that it was not associated with the range of modifications currently proposed and not all of which are supported.

ACOUSTIC FENCE

15 Lot 3 DP 4544 has a common (western) boundary of 50m with that part of the development site to contain Houses #10 and #11 and a common 10m southern boundary with that part of the development that contains a roadway adjacent to an open space area.

20 Lot 4 DP 4544 has a common 10m southern boundary with that part of the development that contains the "Village Square" element to the boarding houses development and a common (eastern) boundary of 50m with that part of the development site to contain Houses #5 and #6 (boarding houses.).

25 The proposed modification would require a fence along the "full length of the common boundary between the development site and Lot 4 DP 4544" to be constructed prior to issue of an Occupation Certificate for house #6 and a fence along the "full length of the common boundary between the development site and Lot 5 DP 4544" to be constructed prior to issue of an Occupation Certificate for house #10 and/or House #11. [It is noted that the application misidentifies Lot 3 as Lot 5 and the title referenced in the application as Lot 5 is referenced as Lot 3 in this assessment.].

30 The reason for the existing condition was to mitigate the noise impacts of the subject development, both during construction and after, on the adjacent houses. The construction phase may be undertaken intermittently and extend over time. The intensity of the boarding house development in particular will have noise impacts that are likely to be greater than those of other residential developments. In these circumstances the existing condition should be maintained.

COMMUNITY CENTRE/MANAGER'S RESIDENCE

35 The existing consent requires the construction and occupation of the community centre/manager's residence before the issue of an Occupation Certificate for the second boarding-house whether the second boarding house forms a component of stage AA2 or stage A3. This building comprises two stories with the residence on the upper level.

40 It is proposed to modify the condition for an on-site manager to be accommodated in a boarding house with the construction of the manager's residence not required until the occupation of the sixth boarding house.

45 This modification is not supported for the following reasons:

- 50 (a) The existing consent incorporates plans for a single building containing a ground floor community centre and a 1st storey manager's residence. The consent refers only to the manager's residence but it is implicit that the construction of the community centre and the manager's residence would be undertaken simultaneously. That is, any deferment to the

construction of the manager's residence can presumed to likewise defer the construction of the community centre.

(b) It is proposed that the manager's residence and community centre would not be required until the boarding-house development has the capacity for approximately 70 persons.

(c) The Statement of Environment Effects states that: *it is preferable for the manager to be provided with temporary accommodation comprising a room in the facility, during the early phases of the development* [SEE p.8] without stating why this is "preferable."

(d) It is essential that the boarding house development be properly managed. Such management will incorporate a range of responsibilities, including the obligations under the planning agreement. A person or persons undertaking these responsibilities will need suitable accommodation for their comfort and management. Presumably the proposed "temporary" manager's accommodation will comprise a room in a boarding-house with shared facilities. There is a limit as to how much responsibility can reasonably be expected to be undertaken under such an arrangement. The use of a boarding house room or rooms will also reduce the number of rooms available for rental.

(e) The community centre is an important element to the application and will provide for a level of amenity which contributed to the circumstances in which Council supported the subject Planning Agreement.

PARKING

It is proposed that the boarding house component be serviced by the provision of 40 parking spaces.

It is agreed that 40 car spaces should be provided for the affordable housing component of the development, which comprises 9 boarding houses @ 4 per dwelling (36), 1 car space for the manager and 1 visitor space per 4 dwellings (3). It is noted, however that the proposed parking layout will require amendments to comply with conditions of consent, such as deletion of a car space (refer Condition 11(f) of stage A2), adjustments to width of spaces adjacent to obstructions and aisle widths (AS 2890), and to comply with the building code in regard to car space dimensions for people with access disabilities. Details should be provided to demonstrate that 40 car spaces can be provided.

This element of the application is likely capable of support subject to the provision of the above specified detail.

STORMWATER MANAGEMENT

The application originally proposed to construct the "Serpentine Channel" to run north to south across the medium density development and which was to provide on-site stormwater detention for the overall development during the first stage of the development. The amended application proposes to form an open drain only in the first stage, which is adequate for the subdivision but may not provide sufficient storage for future on-site stormwater detention needs of the development on proposed lot 2. In this regard, details must be provided to demonstrate how the on-site stormwater detention will be provided for future stages of development on proposed lot 2 having regard to the drainage easement proposed for stage 1. Details must also be provided as to when (i.e. what stage) the on-site stormwater detention (ie "Serpentine Chanel") will be constructed.

The proposed modification in regard to stormwater management is not supported.

ALLOCATION OF EXISTING WATER/SEWER CREDITS

The modification application seeks to divide the existing ET credit of 11 that applies to the existing 11 lots between the two Torrens Title lots proposed as the initial stage (Stage 1) of the development.

A division of 5 ET is proposed for Lot 1 and 6 ET for Lot 2 (the boarding-houses).

5 Council can support a division of the ET credits at the time of the proposed modified initial subdivision. However, such a division must allow for a minimum 7 credits for Lot 2 and a minimum of 2 credits for Lot 1. That is any allocation must comprise a 9/2, 8/3 or 7/4 split between Lot 2 and Lot 1

The applicant has been advised and proposes a 7/4 split.

10 This matter has specific relevance to the proposed Stage 1 subdivision into two Torrens Title lots.

15 It would be appropriate, in the event of an approval to this element of the application, and in the context that the applicant has expressed that the reason for this element of the application is the wish to clearly separate the boarding-hose and the medium density components of the development, to modify the following provision of the Planning Agreement:

6(b) subject to the existing 11 ET credits which are acknowledged by Council, assess section 64 contribution for the Development based on:

20 *the Boarding Houses at the rate of 0.125ET per person or 1.5 ET for 12 persons ordinarily resident in each Boarding House;*

25 Approval to this element is however not supported in the context of its interdependence with other elements of the application and the circumstance that a number of elements cannot be supported. It is also noted that any amendment to the Planning Agreement requires a resolution of Council for public exhibition followed by a further Council resolution.

DELETE REQUIREMENT TO DEMOLISH SHED

30 **The reason for condition 10 of Stage A1 relates to preventing any property boundary line running through the shed, to prevent the shed inhibiting the installation of services and to prevent the shed from inhibiting other works associated with the development.**

35 **The application states that the shed is contained wholly within proposed strata lot AL2 and only needs to be demolished at the time that additions/alterations to existing house 2 are undertaken.**

40 Support for this element of the application would be reliant on the provision of plans showing the location of the shed required to be demolished in stage A1 with regard to proposed boundaries to demonstrate that the shed will not compromise strata boundaries. Details must also be provided to demonstrate that the shed will not compromise access and parking requirements for each stage and as to in which stage the shed will be demolished.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

45

Requirement	Requirement	Proposed	Complies
Disability Discrimination Act	Access for persons with disabilities and integration into surrounding streetscapes without creating barriers (council res 10-1118)	No change to approved access arrangements and access for persons with disabilities will be available and integrated with the surroundings. Buildings to comply with access provision under the building code of Australia	Yes

3.6 Submissions made in accordance with this Act or the regulations

5 *“Below is a table providing a summary of submissions and staff responses. However, Councillors also need to refer to the full copies of all submissions which have been provided on disc, strictly on a confidential basis, to Councillors. The full copies of the submissions contain personal information such as names and addresses of the persons lodging submissions which are relevant matters to be taken into consideration in determining this matter.”*

Issue	Comment
The submission is from the owner of adjacent land. The submission seeks a sound attenuation fence between the development site and the adjacent land and for visual barriers, e.g. shutters on the upper levels of house 11.	The noise attenuation fence required by the parent consent is to remain. There is no element to the current application that would entitle the design of house #11 to be revisited.

10

3.7 Public interest

15 It is not in the public interest to approve a modification application when that application proposes a large number of modifications to a large and complex development consent that is the subject of a Planning Agreement in the circumstances that a number of the proposed modifications would have significant consequences and are not supported.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

20 Water and Sewer services can be provided to the modified development. The details of the staging of the payment of water and sewer levies would need to be revisited to suit the adjusted ET allocation.

25

4.2 Section 94 Contributions

30 The applicant has not advised of any proposed allocation of existing SDU credits in the context of the proposed modified development. In any event, the details of the staging of the payment of S94 Contributions would need to be revisited to suit the proposed modified development.

5. CONCLUSION

35 This is a difficult and complex Section 96 application. It seeks a broad range of modifications to development consent already complex. A number of the proposed modifications would have significant consequences and are not supported.

40 Other proposed modifications can not be satisfactorily determined owing to lack of adequate information for Council to be satisfied as to their merits.

A number of proposed modifications could, taken separately, be supported.

45 It is not appropriate or useful however to cherry pick proposed modifications for approval or refusal in the context of a large and complex consent in circumstances in which it can be reasonably assumed that the proposed modifications comprise a systematic and interrelated set of variations.

Further information in regard to a number of elements of the application was requested of the applicant by e-mail dated 15 July 2011 following a meeting with the applicant and a representative of the landowners. No response has been received.

- 5 It is open to the landowners to consider a revised section 96 application informed by the reasoning contained in this assessment

6. RECOMMENDATION

- 10 **That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979 development application 10.2007.406.3 be refused for the reasons provided in Annexure 17(b) #1211882.**

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

- 15 Has a Disclosure Statement been received in relation to this application No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division. No

Provide Disclosure Statement register details here: Nil.

Report No. 13.12. PLANNING – DA 10.2011.411.1 special purpose subdivision 45 Monet Drive Montecollum

Executive Manager: Environment and Planning

File No: Parcel No 53560 x 241583 #1149713

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 That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979 development application 10.2011.411.1, for special purpose subdivision to create a lot for an established rural tourist facility, be granted consent subject to the conditions listed in Annexure 20(b) #1212340.

Attachments:

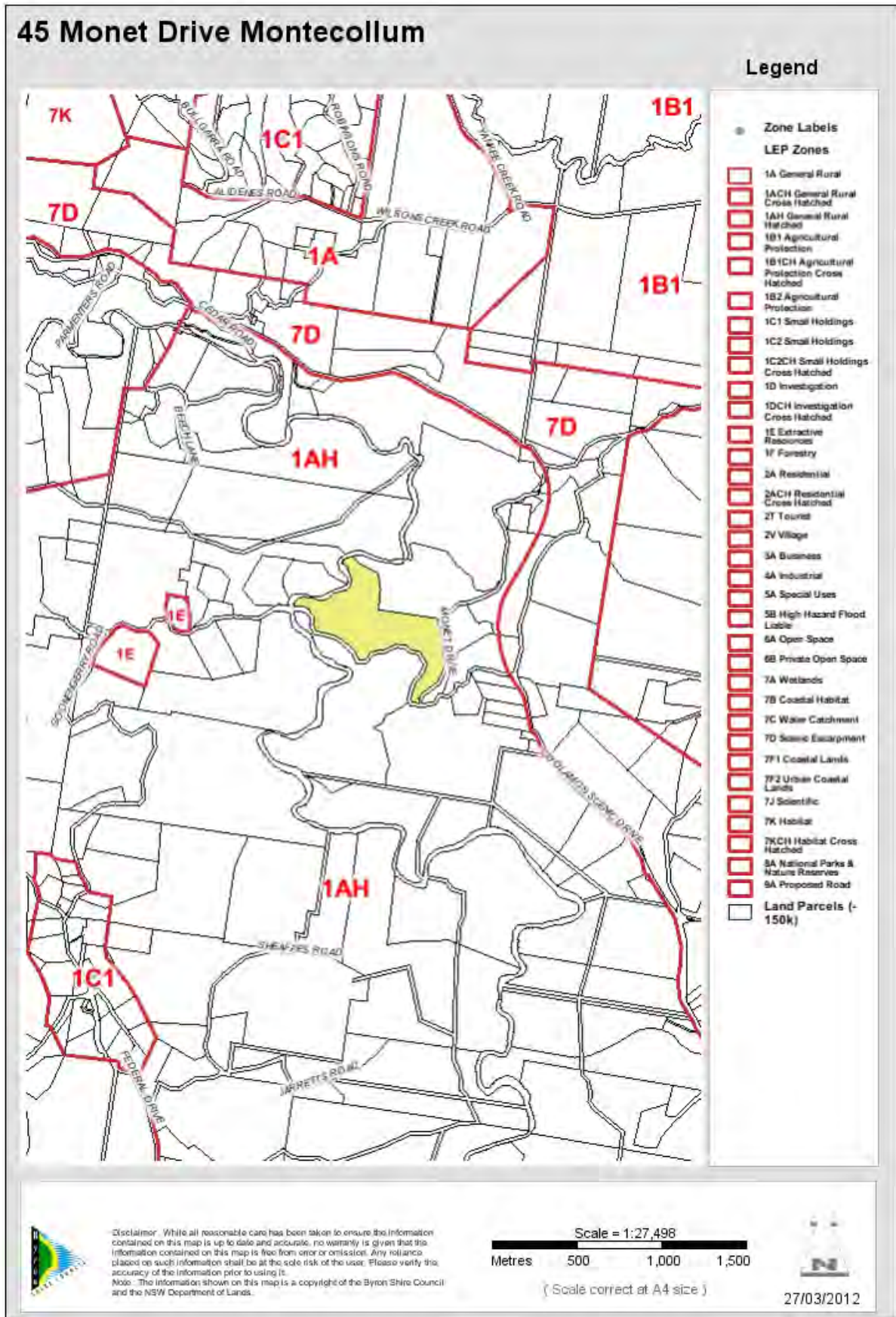
Locality Map

25

- Proposed subdivision plan #1214530 [1 page]Annexure 20(a)
- Conditions of consent #1212340 [3 pages]..... Annexure 20(b)

30

Confidential submissions #1212926 - Due to the size of this document it has been provided on the Councillors' Agenda CD only.



BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(110)

DA No:	10.2011.411.1
Proposal:	Special purpose subdivision to create a lot for an established rural tourist facility
Property description:	Lot 81 DP 605948 45 Monet Drive Montecollum
Parcel No/s:	53560
Applicant:	Mr R W Doolan
Owner:	Mr A J King
Zoning:	Zone No. 1(a) - General Rural Zone
Date received:	4 October 2011
Integrated Development:	Yes
Public notification or exhibition:	Level 2 advertising under DCP 17 – Public Notification and Exhibition of Development Applications Exhibition period: 20/10/11 to 2/11/11 Submissions: One hundred and nine (109) submissions for the proposal.
Other approvals (S68/138):	Not applicable
Planning Review Committee:	N/A
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none"> • Minimum allotment size.
Summary:	<p>A one into two allotment subdivision to create two allotments of 8.3ha and 16.7ha in total in the 1(a) General Rural Zone.</p> <p>The application proposes a SEPP 1 variation to clause 11 of BLEP 1988 which restricts the minimum allotment size to 40ha. The SEPP 1 objection was referred to the Department of Planning who support the proposal.</p> <p>The proposal does not result in the intensification of any use of either of the proposed allotments and creates no impacts on neighbouring properties, as such the proposal is recommended for approval.</p>

1. INTRODUCTION

1.1 History/Background

5 The subject site has an extensive history which is detailed below:

- BA – 6.1995.2173.1 – Addition/alteration to shop – Roof over tea rooms approved 2 May 1995
- DA – 5.1995.285.1 – Change of use – Tourist Facility approved 3 November 1995
- 10 DA – 10.1998.472.1 – Camping ground (4 sites), 6 cabins approved 17 May 1999
- DA – 10.2004.247.1 – Farm shed approved 28 June 2004
- DA – 10.2006.517.1 – Rural dwelling approved 1 November 2006
- DA – 10.2011.3.1 – Construction of a “Stupa” monument approved 14 February 2011

1.2 Description of the site

15 The site is formally known as Lot 81 DP 605948 No.45 Monet Drive and is more commonly known as the ‘Crystal Castle’. The subject site is approximately 25ha in size and is heavily vegetated. The entire site is zoned 1(a) pursuant to the provisions of Byron Local Environmental Plan 1988.

20 Currently existing onsite is the ‘Crystal Castle’ business and associated uses including a managers residence and a rural dwelling.

1.3 Description of the proposed development

25 A one into two allotment subdivision to create two allotments of 8.3ha and 16.7ha in total, with the Rural Tourist Facility (Crystal Castle and ancillary development) contained within the 8.3ha allotments and the existing rural dwelling to be contained within the 16.7ha allotment.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

	Summary of Issues
Development Engineer	Satisfactory subject to conditions.
Environmental Health Officer	Satisfactory subject to conditions.
Department of Planning	SEPP No.1 Concurrence from the Director-General for the proposed non-compliance with minimum allotment size Clause 11 of Byron LEP 1988. See Section 2.2 of this report for DoPI Comments.
Rural Fire Service	Compliance with ‘ <i>Planning for Bush Fire Protection 2006</i> ’. See Section 2.1 of this report.

2.1 Rural Fire Service comments. Section 100B – Bushfire Protection

35 The subject site is located within a mapped bush fire prone land. As the proposal involves the subdivision of this land, the application was referred to the NSW Rural Fire Service to obtain a Bush Fire Safety Authority under the Rural Fires Act 1997. In correspondence dated 28 October 2011, the Rural Fire Service issued a Bush Fire Safety Authority with the following conditions and comments:

40 This response is to be deemed a bush fire safety authority as required under section 100B of the ‘Rural Fires Act 1997’ and is issued subject to the following numbered conditions:

1. All previous advice issued under DA 10.2006.517.1 shall be complied with except where amended below.

Asset Protection Zones

5 The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- 10 2. At the issue of subdivision certificate and in perpetuity, a minimum 20 metre asset protection zone shall be provided and maintained around the existing retail ! restaurant building, and managed as an inner protection area (IPA) as outlined within Appendices 2 & 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

15 The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- 20 3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006' and include:

25 The water source shall be made available or located within the inner protection area (IPA) and away from the structure;

Above ground tanks are manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.

30 In recognition that no reticulated water supply exists, a 10,000 litre water supply shall be provided for fire fighting purposes on proposed Lot 2.

Evacuation and Emergency Management

35 The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- 40 4. A Bush Fire Emergency Evacuation Plan is to be prepared in accordance with the NSW Rural Fire Service document 'Guide for Developing a Bush Fire Emergency Evacuation Plan'.

In this regard the dwelling on Lot 1 shall be used as a refuge building.

45 A suitable pathway shall be maintained between the retail / restaurant building and the dwelling.

Design and Construction

50 The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- 55 5. The existing buildings on proposed Lots 1 & 2 are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

6. All new fencing shall be non-combustible.

2.2 Comments from the Department of Planning and Infrastructure (DoPI)

Director-General Concurrence

In correspondence from the DOPI dated 2 November 2011 the following comments were received:

5 *“Following consideration of the application, concurrence has been granted to vary the clause 40 hectare development standard contained in clause 11 of the Byron LEP 1988 to permit the special purpose subdivision on the above land.*

Concurrence was granted in this instance for the following reasons:

- (i) *The proposal is consistent with the approved development on the land;*
- 10 (ii) *No land use conflicts are likely to occur with the proposed subdivision and the dwelling already co-exists with the surrounding tourist development.”*

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

15 Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Summary of Requirement & Assessment		Complies
State Environment Planning Policy No.1 - Development Standards	Specifies that a written objection can be made where strict compliance with a development standard cannot be achieved.	The proposed subdivision does not comply with minimum lot size requirements under Clause 11 of Byron LEP 1988. A SEPP 1 Objection has been submitted by the applicant and is assessed in the SEPP Issues section of this report.	Yes* (See further assessment in the SEPP Issues section of this report)
State Environmental Planning Policy No. 55 - Remediation of Land	The Council must: (d) consider whether the land is contaminated; and (e) if the land is contaminated, if the land is suitable in its contaminated state or after remediation; and (f) be satisfied before the land is used. Where a change of use is proposed the Council must consider a report provided by the applicant specifying the findings of a preliminary investigation (and detailed investigation if necessary) of the land in accordance with the contaminated land planning guidelines	The subject site is considered to be suitable for the intended use.	Yes

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(114)

Requirement	Summary of Requirement & Assessment		Complies
State Environmental Planning Policy No.44 - Koala Habitat Protection	<p>Council must determine if the land is a <i>potential koala habitat</i> (feed tree species constitute at least 15% of the trees in the upper or lower strata of the tree component) OR Where land has been identified as is a <i>potential koala habitat</i> Council must determine if the land is a <i>core koala habitat</i>. OR Where land has been identified as <i>core koala habitat</i>, development must not be inconsistent with the koala plan of management.</p>	Feed tree species constitute less than 15% of the trees on the land.	Yes
North Coast Regional Environmental Plan 1988 (Deemed SEPP)	<p>Development Applications must be consistent with the provisions of the North Coast Regional Environmental Plan. In determining an application for consent to carry out development on such land, the council must take into account: (a) the NSW Coastal Policy 1997, (b) the Coastline Management Manual, and (c) the North Coast: Design Guidelines.</p>	The proposed development is considered to be consistent with the provisions of the North Coast Regional Environmental Plan.	Yes
NSW Coastal Policy 1997	Development within the Coastal Zone must be consistent with the Aims, Objectives and Strategic Actions of the Coastal Policy.	The proposed development is considered to be consistent with the provisions of the NSW Coastal Policy	Yes
Disability Access (DDA)	Access for persons with disabilities and integration into surrounding streetscapes without creating barriers. (Council Res.10-1118)	The proposed subdivision does not involve a change of building use or require works to be undertaken, as such the existing access arrangements remain.	Yes

* Non-complying issues discussed below

State/Regional Planning Policies and instruments - Issues

- 5 **State Environmental Planning Policy No. 1 Objection - Non-compliance with Clause 11 of Byron LEP 1988**

Pursuant to Clause 11 of Byron LEP 1988, the minimum area of a lot created within the 1(ah) General Rural Zone is 40 hectares, 11. However the proposed allotments are 8.3ha and 16.7ha and are therefore less than the required 40 hectare minimum.

- 5 The applicant has submitted a SEPP No.1 Objection to the minimum allotment size. The applicant seeks a variation to the development standard applying to the minimum allotment size for subdivision within the 1(ah) General Rural zoned land.

10 A written objection was submitted with the development application asserting that compliance with the minimum 40 hectare lot size development standard is unreasonable and unnecessary in the circumstances of the case.

Clause 3 of SEPP No.1 specifies the following aims and objectives:

15 *“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

20 Section 5 of the Environmental Planning and Assessment Act 1979 provides that the objects of the Act relevant to State Environmental Planning Policy No. 1 are:

“(a) to encourage:

25 (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, 35 towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

30 (ii) *the promotion and co-ordination of the orderly and economic use and development of land,”*

Clause 7 of SEPP No.1 specifies that consent may be granted:

35 *Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.*

40 Strict compliance with the 40 hectare standard is not considered necessary in the circumstances of this application. The submitted SEPP No.1 Objection is considered to be well founded and compliance with the standard in this instance is unreasonable and unnecessary in view of the following:

- 45 (a) the area of the existing allotment (Lot 81 DP 605948) is 25 hectares. The allotment is already less than the 40 hectare minimum;
- (b) a dwelling already exists on proposed Lot 1 and the subdivision will not result in an intensification of use of this residue lot, and

50 In correspondence dated 2 November 2011 the Department of Planning and Infrastructure (Doc No.1161942) issued concurrence for the proposal stating, in part:

“Concurrence was granted in this instance for the following reasons:

- i. *The proposal is consistent with the approved development on the land;*
- ii. *No land use conflicts are likely to occur with the proposed subdivision and the dwelling already co-exists with the surrounding tourist development."*

5 Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of this case and the SEPP No.1 objection is therefore supported.

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

10 **Zone:** Zone No. 1(ah) - General Rural Zone
Definition: Subdivision

LEP Requirement	Summary of Requirement	Proposed	Complies
Meets zone objectives	(a) to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron; (b) to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character; (c) to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses; (d) to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture; (e) to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development; (f) to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas; (g) to ensure sound	The application proposes subdivision of the existing allotment into two (2) allotments and does not alter the existing land uses.	Yes

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LEP Requirement	Summary of Requirement	Proposed	Complies
	<p>management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry;</p> <p>(h) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality;</p> <p>and</p> <p>(i) to permit the development of limited light industries which do not pose any adverse environmental impact, (eg. software manufacture and film processing); and</p> <p>(j) to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora. ins Amd.14 8/1/93</p>		
<p>Clause 11 – Subdivision in rural areas for agriculture etc.</p>	<p>Minimum area of allotment 40 hectares within 1(a) – General Rural Zone</p>	<p>The proposed allotments have areas of 8.3ha and 16.7ha hectares and fail to comply with this development standard.</p>	<p>No (SEPP No.1 objection submitted. See State Planning Policies and instruments - Issues section of this report).</p>
<p>Clause 38 – development within Zone No. 1(a) shown cross hatched on the map.</p>	<p>The council shall not consent to the carrying out of development for any purpose on land to which this clause applies unless the council has made an assessment of the susceptibility of the land and the proposed development to flooding, landslip, bushfire</p>	<p>The application has been assessed against the provisions of this clause and it is concluded that the proposal fully complies.</p>	<p>Yes</p>

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LEP Requirement	Summary of Requirement	Proposed	Complies
	hazard, soil erosion and the like.		
Clause 45 – Provision of Services	Council must be satisfied that prior adequate arrangements have been made for provision of water, sewer and drainage services.	The land can be fully serviced.	Yes

** Non-complying issues discussed below*

Byron Local Environmental Plan 1988- Issues

5 No issues.

Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

10 No Draft Environmental Planning Instruments are considered relevant to this proposal.

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2010

15

Chapter 1 Part B - Subdivision

Development Control Requirements	DCP Requirement	Proposed	Compliance
B2.3 - Site Design	The subdivision must take into account all natural and human – made aspects of the site to be developed.	The proposed subdivision does not result in the possibility to generate any additional land uses and has taken into account all natural and human – made aspects of the site to be developed.	Yes
B2.4 - Climate Control	The subdivision must take into consideration wind direction and vegetation types and location.	The subdivision design has taken into account the natural features of the locality.	Yes
B2.5 - Aspect	The subdivision must take into consideration solar access.	Solar access has been considered in the layout of the proposed allotments.	Yes
B4.5 – Stormwater Drainage	Facilitate effective drainage provision and management.	Stormwater drainage has been conditionally supported by Council.	Yes
B2.7 – Tree Preservation	The subdivision layout must encourage retention of existing trees.	The proposal does not result in the removal of any significant vegetation.	Yes
B2.8 - Landscaping	The subdivision should take into consideration landscaping and Council should impose landscaping	The proposal has taken into consideration landscaping and no conditions are required in	Yes

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Development Control Requirements	DCP Requirement	Proposed	Compliance
	requirements where necessary.	this instance.	
B3.2, 3.3 & 3.4 – Roads	The subdivision must take into consideration road design.	No new roads proposed or required.	Yes
B3.5 – Public Open Space	Subdivisions should form part of a pedestrian/cycleway network which connects the subdivision with other facilities including public open space areas (It is Council's responsibility to establish to location of pedestrian/cycleway/public open areas using S.94 Contributions)	Not required in this instance.	N/A
B3.6 – Lot Size	Subdivision lot sizes are to comply with Part B5.1 of DCP 2002.	Proposal complies.	Yes
B3.7 – Lot Frontage	The subdivision must take into consideration the orientation of each lot and it's ability to provide a suitable house site with good aspect, useable private open space and adequate vehicle access.	The proposal meets the requirements of Part B5 of DCP 2010.	Yes
B4.1 – Lot Size and shape	New lots must have dwelling(D) sites protected from noise, dust, odours, spraying, etc, considering wind direction and topography in relation to nearby agricultural uses	Sites already exist	Yes
	Ridgelines, vegetation and distance can provide effective buffers	N/A	N/A
	Avoid interference with own and neighbouring access for fire protection, flood or stock movement	No change	Yes
	Maintain all-weather access to stockyards and sheds	No change	Yes
	Ensure that flood refuges and shelterbelts are retained	No change	Yes

Development Control Plan 2010 - Issues

No issues

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

5 The subdivision is unlikely to result in significant impacts on the natural and built environments. The proposed subdivision is unlikely to result in negative social and economic impacts in the locale.

3.5 The suitability of the site for the development

10 No change to the existing services or the intensification of use is proposed in this instance, as such the subject site is considered suitable for the development.

3.6 Submissions made in accordance with this Act or the regulations

15 There were **109** submissions (all in support) made on the development application
 The 109 submission for the proposed development have been considered during the assessment of this application, it is recommended that Council approve the application which will address the issues raised in the submissions.

20 *“Below is a table providing a summary of submissions and staff responses. However, Councillors also need to refer to the full copies of all submissions which have been provided on disc, strictly on a confidential basis, to Councillors. The full copies of the submissions contain personal information such as names and addresses of the persons lodging submissions which are relevant matters to*
 25 *be taken into consideration in determining this matter.”*

Issues raised	Comment
We support the proposal for the special use subdivision as the proposal does not create any additional expansions. The Crystal Castle is a significant local employer and its proposal should be supported so it can continue to employ locals in an industry that complements the values of the local community.	The application has been assessed against the heads of consideration pursuant to section 79(c) of the environmental Planning and Assessment Act 1979 and is being recommended for approval.
As a local land owner I support the proposal for the special use subdivision as the proposal does not create any additional expansions.	The application has been assessed against the heads of consideration pursuant to section 79(c) of the environmental Planning and Assessment Act 1979 and is being recommended for approval.

3.7 Public interest

30 The proposal is considered to be within the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

35 As there is no increase in the load on these services and therefore no contributions will be required for water and sewer services.

4.2 Section 94 Contributions

5 As there is no increase in the load on these services and therefore no contributions will be required.

5. CONCLUSION

10 Apart from a requested variation to clause 11 the proposed development is consistent with the provisions of Byron Local Environmental Plan 1988 and DCP 2010 and not is considered likely to result in significant impacts on the existing environment. The application is considered to warrant approval subject to conditions.

6. RECOMMENDATION

15 **That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979 development application 10.2011.411.1, for special purpose subdivision to create a lot for an established rural tourist facility, be granted consent subject to the conditions listed in Annexure 20(b) #1212340.**

20

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

25 Provide Disclosure Statement register details here: Nil

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Report No. 13.13. PLANNING - Submissions Report on the Dwelling Entitlement Planning Proposal for Lot 2 DP 537488 2 Tickles Road, Upper Coopers Creek (draft Byron LEP Amendment No 152)

Executive Manager: Environment and Planning
File No: PLN560080 #1201694

Principal Activity: Land and Natural Environment

Summary: The purpose of this report is to provide Council with details of the public exhibition of the proposed gateway amendment to the *Byron LEP 1988* to grant a dwelling entitlement to Lot 2 DP 537488 2 Tickles Road, Upper Coopers Creek. It is proposed to amend Byron LEP 1988 to provide a dwelling entitlement for the subject land by nominating the property in Schedule 8. The Planning Proposal was placed on public exhibition for 14 days between the 23 February until 8 March 2012. Three submissions were received which generally supported the amendment. Issues raised relating to works on the land are discussed in the body of the report.

In summary there is no valid planning reason or physical impediments which prevent the planning proposal from proceeding. It is recommended that Council forward the planning proposal to the Department of Planning and Infrastructure for final drafting and gazettal of the LEP amendment.

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 That Council forward the planning proposal contained in Annexure 18(a) (#1197022) to the Department of Planning and Infrastructure for final drafting of the LEP amendment to include Lot 2 DP 537488 2 Tickles Road, Upper Coopers Creek in Schedule 8 of the Byron LEP 1988, and gazettal pursuant to Section 59 of the Environmental Planning and Assessment Act 1979.

25 **Attachments:**

- Planning Proposal for dwelling entitlement Lot 2 DP 537488, 2 Tickles Road Upper Coopers Creek #1197022 [120 pages] **Annexure 18(a)**
- Response to Submissions from Malcolm Scott #1210229 [3 pages]..... **Annexure 18(b)**
- 30 • Site Plan #1029995 [1 page]..... **Annexure 18(c)**

CONFIDENTIAL copies of all submissions, #1204928-29, #1201783 provided to Councillors on CD

Report

The landowner submitted a request to Council to amend the Byron LEP 1988 to enable development consent to be obtained for a dwelling house on the subject property. The land in question does not have a dwelling entitlement pursuant to the provisions of Byron LEP 1988.

The matter was reported to Council at its meeting of 10 February 2011 whereby it was resolved (11-18) that a planning proposal should be prepared for an amendment to the Byron LEP 1988. The Council resolved:

11-18 Resolved:

1. That Council support an amendment to Schedule 7 of Byron LEP 1988 in order to provide a dwelling entitlement to Lot 2 DP 537488 – 2 Tickles Road, Upper Coopers Creek.
2. That Council advise the land owner of the need to prepare a Planning Proposal in accordance with Section 55 of the EPA Act 1979 for submission to the Minister under Section 56 of the EPA Act 1979 through the LEP 'Gateway' process and that the Planning proposal be submitted to Council within 12 months of the date of the resolution.
3. That the Planning Proposal be submitted to the Department of Planning for a 'Gateway' determination without the need to report back to Council, and that the Minister be advised that further studies are likely to be required to address Bushfire, Contamination (SEPP 55 Remediation of Contaminated Lands) and Onsite Effluent Disposal to enable Byron LEP 1988 to be amended.

A planning proposal for the dwelling entitlement was provided to Council and sent to the Department of Planning and Infrastructure on 27 September 2011 for a Gateway determination. A Gateway determination was received on 7 November 2011. The conditions attached to the Gateway Determination included:

1. Council is to consult with the Commissioner of the NSW Rural fire Service and to take any comments into account in the planning proposal prior to public exhibition, in order to satisfy the requirements of S117 Direction 4.4 Planning for Bushfire Protection.
2. Council is to undertake a Site Contamination assessment in accordance with State Environmental Planning Policy (SEPP) 55 – Remediation of Land. The Planning Proposal is to be updated to include the site contamination assessment report for the purpose of public exhibition.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning 2009)* and must be made publicly available for **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of *A Guide to Preparing LEPs (Department of Planning 2009)*.
4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - NSW Rural Fire Services
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not have any bearing on the need to conduct a public hearing under the provisions of any other legislation.

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6. The timeframe for completing the LEP is to be **6 months** from the week following the date of the Gateway determination.

5 Following receipt of the Gateway Determination, the applicant carried out further studies providing Council with a Bushfire Assessment Report, a Contamination Assessment Report addressing SEPP 55 and an Effluent Disposal Report. In this regard the land is not contaminated from past land uses which would prevent it being used for residential purposes, whilst appropriate measures can be utilised for the disposal of effluent on-site.

10 The matter was also referred to the NSW Rural Fire Service (RFS) for comment pursuant to the requirements of the Gateway Determination. The RFS have advised that the bushfire report only identifies one location for a dwelling, being the site of the existing shed being used as a residence, and Council needs to ensure that any future dwelling is sited on the land such that radiant heat exposure from a bushfire does not exceed 29kW/m². Accordingly the Planning Proposal has been
 15 amended to take into consideration the issues of the Rural Fire Service. It is intended to amend Byron LEP 1988 by inserting an additional item into Schedule 8 of Byron LEP 1988 as follows:

Lot 2, DP 537488, 2 Tickle Road, Upper Coopers Creek:

- 20 (a) for the purposes of a dwelling house and
 (b) the dwelling house to be sited to achieve a radiant heat exposure from bushfire no greater than 29kW/m².

25 This will enable development consent to be obtained for a dwelling house on the subject land, provided the dwelling house is sited to achieve a radiant heat exposure from bushfire no greater than 29kW/m².

30 The Planning Proposal for the LEP amendment was placed on public exhibition for the required 14 days from 23 February until 8 March 2012. Three submissions were received which were generally in support of the planning proposal however 5 issues were raised which require comment as follows:

Issue	Comment
Proximity of Shed/ future dwelling to other properties	The existing shed has been approved by Byron Shire Council under DA 90/141 and BA 90/2202. The existing shed is being utilised for residential purposes. In terms of site suitability, the site is not ridge top, is positioned some 90 plus metres from the banks of Upper Coopers Creek, the land is not contaminated from past land uses based on the SEPP 55 Report and is within a generally cleared area. Having regards to the size of the property and the character and the siting of surrounding rural residential development in the locality, the site is generally suitable for use of the shed as a dwelling house. This would need to be further considered under S79C of the EPA Act 1979 if a Development Application is lodged to formalise the use of the shed as a dwelling house under S.79C of the Act.
Removal of trees	The issue of tree removal was raised and that the owner had removed native vegetation. The landowner has advised that several non native trees were removed including camphor laurel and slash pine, whilst Country Energy cleared vegetation under the powerlines including the removal of blue fig trees. The landowner strongly refutes any claim that she was responsible for the removal of any native vegetation on the property.
Accuracy of the Vegetation Assessment	A Vegetation Assessment was carried out by Landmark Ecological Services, which found the property contained lowland rainforest fringing Upper Coopers Creek and a rainforest regeneration area. The submitter argues that the vegetation assessment has exaggerated the quality of the natural assets of the property whilst being somewhat depleted by previous clearing activities. Landmark Ecological Services have provided further advice that in their opinion the remnant rainforest is of high conservation

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	<p>value and stand by their previous assessment. Notwithstanding this, the most likely house site on the property is where the existing shed is sited, which is setback some distance from these vegetated areas near the creek, whilst Landmark further recommends ongoing weed removal to improve the quality of this remnant.</p>
<p>Illegal Building - Studio constructed within a flood zone</p>	<p>A small two storey building with an internal floor area of approximately 40 m² is located between the creek and the existing approved shed. There is no record of approval for this structure and there is outstanding compliance action. The landowners Planning Consultant has advised that consent could be sought to use the building as a studio and on assessment the building would comply with the studio provisions under Part C14 of DCP 2002. In terms of flooding the owner is of the opinion that the land the studio sits upon is above the flood height being some 26 metres from the creek line and 6 metres above the natural waterline.</p> <p>Should the LEP be amended as proposed the owner would be in a position to also formalise the use of this structure as a "Studio". Issues of flooding will need to be more thoroughly considered and options available to Council would include approval as located, approval with a requirement for relocation, to refusal and an Order for demolition.</p> <p>These matters though, are beyond the proposed LEP Amendment, however the land owner's consultant has indicated that following amendment of the BLEP 1988 relevant approvals will be obtained for the occupation use of the farm shed, studio and bathroom / toilet building.</p>
<p>Illegal building near the shed/ residence</p>	<p>A small bathroom building has been erected adjacent to the existing shed/ residence without development approval. Should the LEP be amended as proposed, the owner will be in a position to formalise any approvals for the ongoing use of this structure as a bathroom as discussed above.</p>

Conclusion

5 It is concluded that the land has capacity and adequate area to suitably site a dwelling on the property having regard to issues such as bushfire, onsite effluent disposal, soil contamination and high conservation value vegetation. In terms of agricultural potential the land is limited in size (1.217 ha) and is not a viable agricultural holding and its use for rural residential purposes will not impact upon the agricultural capabilities of Byron Shire. As discussed, should the LEP be amended, the landowner will then be in a position to seek development consent to formalise the use of the existing shed on the property as a dwelling house and resolve any other outstanding compliance matters.

15 It is recommended that Council endorse the final planning proposal (as submitted) to enable it to be forwarded to the Department of Planning and Infrastructure to amend Schedule 8 of Byron LEP 1988 as nominated, and to enable legal drafting by Parliamentary Counsel prior to gazettal by the Minister under Section 59 of the EPA Act 1979.

Financial Implications

20 The proposed amendment to Byron LEP 1988 has no direct financial implications.

Statutory and Policy Compliance Implications

25 The proposed amendment to Byron LEP 1988 is not inconsistent with any State, regional or local policy or plan.

ORGANISATIONAL SUPPORT – EXECUTIVE MANAGER’S REPORTS

Report No. 13.14. BSC ats Radburn LEC 30182/2012

Executive Manager: Organisational Support

5 **File No:** COR653000 x 120820 #1206271

Principal Activity: Legal Services

Summary: To advise Councillors of the receipt of this Class 3 application being an appeal against change in rates categorisation of a particular property.

RECOMMENDATION:

10 **That Council defend the proceedings and the General Manager be authorised to manage the litigation in accordance with the General Manager’s general delegation.**

15 **Attachments:**

- Class 3 Appeal #1202454 in part [4 pages] **Annexure 15**

Report

The property the subject of this appeal is located at Coopers Shoot and it is 21ha in size. It appears that an approved Bed and Breakfast business is apparently operated from the property.

5

In 2011 Council undertook a general review of categorisation and sought updated information from some landowners with regard to categorisation of their properties. In December 2011 the owners of the subject property lodged an application to have their land categorised as Farmland. The application indicates that owners rely on livestock breeding as the basis for the farming business and indicates that they stocked at the time 26 head of cattle and 2 horses.

10

Based on the information provided to Council by Department of Primary Industries, the estimated carrying capacity of the property is 17 head of cattle and the estimated total gross margin that could be earned from those cattle per annum would be approximately \$9,300.

15

On the basis of the information provided in the application about current use it was determined *“that the dominant use ... is for residential purposes and the farming activities conducted ... [did] not represent a significant and substantial commercial purpose or character”*.

The tests for rating categorisation are prescriptive and for ‘farmland’ categorisation all of the tests have to be satisfied, that is the:

20

- (a) “dominant use” must be for farming activities, being an agricultural “business or industry” or a combination of agricultural businesses or industries; and
- (b) farming activity must have a “significant and substantial commercial purpose or character”; and
- (c) farming activity must be done “continuously or repetitively” for profit (whether or not a profit is actually produced); and
- (d) land must not be “rural residential land” (which is not a reference to the zoning of the land but a link to the tests for ‘residential’ categorisation set out in s516).

25

30

The landowners were advised of the outcome of their application by letter on 3 February 2012 and were advised of the ability to apply to Council for a review of the decision. The landowners did not apply for an internal review.

35

The Appeal

This is an appeal in the Class 3 jurisdiction of the Land and Environment Court by which the landowner is asking the Court to declare that their property be categorised as “farmland” for rating purposes under the Local Government Act.

40

Council has instructed Marsdens to file an Appearance and the first callover listed for 16 March 2012.

The following directions were made on 16/3/12:

45

1. That the appeal listed for a s34 Conference –the date is yet to be set.
2. Council to provide the documents called for in the Applicant’s solicitors letter dated 14/3/12 by 30/5/12 - complete;
- 2A. Any Notice to Produce issued by the Council be filed and served by 4pm 20/3/12 and is to be made returnable 13/4/12 – Notice to Produce has been served. Documents are yet to be produced.

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55

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3. Council to file and serve its Statement of Facts and Contentions in accordance with Schedule C of Practice Notes – Classes 1, 2 & 3 Miscellaneous Appeals by 30/3/12 – underway at time of preparation of this report;
- 5 4. Applicant to file and serve its Statement of Facts and Contentions in reply in accordance with Schedule C of Practice Notes by 20/4/12;
- 4A. Council is to file any Statement of Facts and Contentions in Reply by 27/4/12;
- 10 5. Proceedings listed for a second directions hearing on 18/5/12.
6. If proceedings are resolved after the preliminary conference, parties are to notify the Court at least 48 hours before the date of the second Directions Hearing. If the proceedings have been resolved, the second Directions Hearing may be vacated.
- 15 7. Either party to have liberty to restore (ie to bring the matter back for an earlier callover) on 48 hours notice.

20 Council has sought production from the Applicant of relevant records that would, if available, support the Applicant's claims eg records of memberships of industry associations, stock movement records, financial and business records, tax returns and statements, LPHA annual returns, insurance policies etc.

25 The documents will be critical to establishing whether or not the applicant's contention that the statutory tests are satisfied or not. If documentary evidence of satisfaction of the statutory tests is produced, Council has the capacity to review its decision on categorisation. If the applicant is unable to produce documentary evidence of satisfaction of the statutory tests, the matter will most likely proceed to a hearing.

30 **Financial Implications**

35 The costs of defending this appeal have been estimated at \$15,000 - \$20,000 if the matter proceeds to a full defended hearing. Costs are estimated in the order of \$2,000 - \$5,000 if documentary evidence is produced which satisfies the statutory tests such that Council can review its decision. At this stage it is intended that Council staff will provide evidence so there are unlikely to be expert witness costs.

40 These are Class 3 proceedings, that is an appeal against a decision of the Council. There could be risks of an adverse costs order arising against Council if Council does defend the proceedings.

It is possible that if the landowner is unsuccessful the landowner may be ordered to pay Council's costs on a 'party/party' basis and conversely, if they are successful, that Council could be ordered to pay the landowner's costs, if they retain representation.

45 **Statutory and Policy Compliance Implications**

Council must act in accordance with Chapter 15 the Local Government Act and associated Regulations which governs levying of rates.

50 Categorisation of land for rating purposes as either farmland or residential is covered by sections 515 and 516, which relevantly provided as follows:

"515 Categorisation as farmland

- 55 (1) *Land is to be categorised as "farmland" if it is a parcel of rateable land valued as one assessment and its dominant use is for farming (that is, the business or industry of*

grazing, animal feedlots, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind, forestry or aquaculture within the meaning of the [Fisheries Management Act 1994](#), or any combination of those businesses or industries) which:

5

(a) has a significant and substantial commercial purpose or character, and

(b) is engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made).

10

(2) Land is not to be categorised as farmland if it is rural residential land.

(3) The regulations may prescribe circumstances in which land is or is not to be categorised as farmland.”

15

“516 Categorisation as residential

(1) Land is to be categorised as "residential" if it is a parcel of rateable land valued as one assessment and:

20

(a) its dominant use is for residential accommodation (otherwise than as a hotel, motel, guest-house, backpacker hostel or nursing home or any other form of residential accommodation (not being a boarding house or a lodging house) prescribed by the regulations), or

(b) in the case of vacant land, it is zoned or otherwise designated for use under an environmental planning instrument (with or without development consent) for residential purposes, or

25

(c) it is rural residential land.

(1A) For the purposes of this section, a "boarding house" or a "lodging house" means ...

30

(2) The regulations may prescribe circumstances in which land is or is not to be categorised as residential.”

35

Each review of categorisation has to be considered on its own facts and circumstances so it is unlikely that legal precedent could arise from this matter. However, there is a possibility of the judgment in the matter having persuasive value and/or policy implications for Council in terms of its processes for categorisation reviews or the types of matters and documents it takes into account when conducting reviews, for example.

Report No. 13.15. PLANNING - BSC ats Rydge LEC 40299/2012
Executive Manager: Organisational Support
File No: COR653000 240572D x 80.2012.5.1 x 10.2011.191.1 #1214655

Principal Activity: Legal Services

Summary: To advise Councillors of the receipt of this Class 4 application being an appeal against the approval issued by Council of DA 10.2011.191.1 for the use of 6/137 Beach Road, Broken Head for a limited number of functions.

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:

1. That Council delegate management of the litigation to the General Manager in accordance with general delegations.
- 20 2. That without limiting the general delegations, Council expressly authorise the General Manager to file a submitting appearance if legal advice recommends that course of action.

25

Attachments:

- Class 4 Appeal #1214658 [5 pages] **Annexure 12(a)**
- **CONFIDENTIAL** Legal advice from Marsdens Law Group #1199502 [7 pages] **Annexure 12(b)**

Report

5 On 2 April 2012 Council were served with a Class 4 Summons lodged by Mr R Rydge, as first applicant, and Mr and Mrs T & HM O'Reilly, as second applicant, against Byron Shire Council, as the first respondent, and Mr T Freedman as the second respondent. The appeal seeks:

1. A Declaration that the consent to DA 10.2011.191.1 issued by Council on 1 March 2012 for the use of the premises for functions is "*void and of no effect*".
- 10 2. An Order that Mr Freedman be "*restrained from carrying out or authorising or permitting the carrying out of development on the Land in purported reliance on the Development Consent*".
- 15 3. (Presumably an Order), that Mr Freedman be restrained from using the premises "*for the purposes of conducting wedding receptions or other functions otherwise than in accordance with an operative development consent for that purpose*".
- 20 4. An order that Council and Mr Freedman pay the Applicants' costs.
- 25 5. Any other orders that the Court deems necessary.

25 The property the subject of this application is located at Lot 6 SP 81554, 6/137 Beach Road, Broken Head. The premises are part of a tourist facility "Pavillions" approved by the Department of Planning pursuant to Part 3A of the Environmental Planning and Assessment Act.

30 Development Application 10.2011.191.1 originally sought approval of use of the tourist accommodation premises for up to 35 functions per year but after public exhibition the application was amended and then further amended, to ultimately seek approval for use for up to 14 functions per year with each function to be limited to a maximum of 70 guests.

35 The use of the premises for functions was the subject of complaints to Council which resulted in compliance action, in the form of Orders, being issued against the property owner. The owner lodged an appeal with the Land and Environment Court against the Orders issued by Council. On 9 June 2011 Council resolved (**Res 11-471**) to "*adjourn its action on the Order served on Mr Freedman until after the associated DA 10.2011.191.1 is determined*". Subsequently, Council withdrew the Orders, pending determination of the DA, and the appeal against the Orders was discontinued.

40 DA 10.2011.191.1 was originally determined under delegated authority and was refused on 3 November 2011. The Applicant lodged a s82A Review Application on 8 December 2011. The s82A Review Application was reported to Council at the first available meeting on 9 February 2012 with a recommendation to reconfirm the refusal of the DA, in response to which Council resolved to receive a further report on the DA to 1 March 2012 meeting with draft conditions of consent and addressing the issue of 'Owners' Consent' with respect to the Strata Plan (**Res 12-21**).

45 The further report was available for Council's 1 March 2012 meeting which recommended that the original refusal be reconfirmed and attached to which was confidential legal advice (which is reproduced at Annexure 12(b)). Council resolved to approve DA 10.2011.191.1 subject to conditions (**Res 12-104**).

50 A third-party Class 4 appeal has now been commenced seeking, amongst other things, a declaration that the approval issued by Council on 1 March 2012 is void.

55 Council's options in this matter could include defending the proceedings (that is defending the validity of Council's decision to issue an approval) or filing a submitting appearance (which means

that Council would agree to be bound by the findings of the Court without having made submissions or put evidence or arguments forward).

5 The Applicants' arguments are not known at this stage. The first call-over is scheduled for 20 April 2012. The usual Directions will require the Applicants to file their Points of Claim either prior to the first directions hearing or as the first action required by directions set at the first directions hearing.

10 The only indication provided to date by the Applicant's solicitor is that they had concerns about the "technical aspects of the application including but not limited to the requirement for consent to the Development Application by the [Strata] Owners Corporation and permissible uses within the relevant zone, together with ...the merits of the Development Application." As can be seen from this quote, the articulated concerns were very broad and could potentially encompass every aspect of the assessment and determination.

15 It will not be until the Applicants' Points of Claim are filed that Council will know exactly what arguments will arise in the appeal and it will not be until then, that Council will be able to obtain legal advice on whether it could or should defend the appeal or file a submitting appearance.

20 If the points of claim go only to the issues of permissibility of the proposed use in the relevant 2(t) Tourist Zone and/or whether consent of the Strata Owners Corporation was required, subject to legal advice it might be reasonably open to Council to file a submitting appearance and leave those two issues for determination by the Council. However, if points of claim are raised about Council's compliance with technical assessment and determination processes, Council may be in a unique position to respond.

25 Therefore, Council will need to wait until the Points of Claim are filed, and possibly any Points of Defence are filed by the Second Respondent, before obtaining advice on whether it would be appropriate for Council to file a submitting appearance in the particular circumstances of the case and what the cost/risk implications will be of submitting or defending etc.

30 The staff recommendation on page 1 of this report would allow the appeal to be managed under delegation until the Points of Claim/Defence are filed and for Council to then act in accordance with legal advice that will be obtained on the available options.

35 In the meantime, to preserve Council's rights to defend the proceedings if that is what Council resolves to do, or what the legal advice ultimately recommends Council should do, staff have instructed Marsdens solicitors to file an appearance and attend the first directions hearing.

40 **Financial Implications**

45 If Council resolve to file a submitting appearance, Council's legal costs would be limited to an estimated \$3,000 - \$5,000 and staff resources would be limited to preparing the brief to solicitors including reviewing historical files, obtaining and considering legal advice, receiving and considering any judgment and reporting to Council, both now and after judgment.

50 It is not possible to estimate what the legal and expert witness costs of defending the proceedings might be at this stage because the nature of the applicants' arguments and evidence (which would impact the amount of work required in the proceedings and the length of any hearing) is unknown at this stage. If the proceedings are defended, the staff resource implications would include dedication of staff time from Environment and Planning and Organisational Support Divisions, as well as possibly the Corporate Management Division, to conduct research, prepare evidence, instruct solicitors, attend hearings and report on the matter would be required.

55 These are Class 4 proceedings where the usual rule in relation to legal costs is that 'costs follow the cause' ie the successful party is usually entitled to a favourable costs order unless there is some disentitling conduct. Therefore if Council defend the proceedings and are successful, the

possibility of obtaining a favourable costs order would be reasonable but if Council defend the proceedings and are unsuccessful Council could be ordered to pay another party's costs. Costs order issues are further complicated by the fact that there are two applicants and two defendants and the actions of each could affect or give rise to individual or part costs orders etc. Filing of a submitting appearance can minimise potential exposure to adverse costs orders. Legal cost and risks/possibilities associated with potential costs orders will be matters taken into consideration in the legal advice that will be obtained after the Applicants' Points of Claim have been filed.

5

Statutory and Policy Compliance Implications

10

The challenge to the development consent issued by Council has been commenced by third parties pursuant to s123(a) of the Environmental Planning and Assessment Act which provides that any person may bring proceedings for an order to "*remedy or restrain a breach of [the] Act, whether or not any right of that person has been or may be infringed by or as a consequence of the breach*".

15

Report No. 13.16. PLANNING - Legal Status Report as at 23 March 2012

Executive Manager: Organisational Support

File No: COR653000 #1205041

Principal Activity: Legal Services

Summary: This report contains a status report on appeals being managed by the Legal Services Unit and outstanding costs relating to such proceedings. Where so resolved, the General Manager will seek to negotiate settlement of these matters in accordance with his general delegations.

The following summaries include details of 'Legal costs YTD' and 'Expert Witness Cost YTD'. These amounts are costs billed this financial year to date. They do not necessarily reflect the amounts *incurred* in this financial year to date only the amounts billed to date. Inclusion of this column in the regular legal services report will keep Councillors informed of the amount billed in matters as they progress.

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:

That this report be noted.

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Report

5 This is the regular Legal Services Status Report to Council on Land and Environment Court appeal matters (and if applicable appeals to the Supreme Court from Land and Environment Court decisions) relating to development applications, s96 modification applications and applications for approvals under the Local Government Act.

10 Please note that in addition to the 1 Land and Environment Court case referred to below being Ralph Lauren and Ors v Byron Shire Council, there are also 2 other sets of Land and Environment Court proceedings (LEC 40068/2011 and 40167/2011) and 2 sets of Supreme Court proceedings (SC 426979/2010 and SC 363913/2010), involving various Belongil residents. These are insurance matters in which Council has subrogated its rights to its insurer. These matters, as with all insurance damages claims, are beyond the scope of this status report and are therefore not included.

15

Matter:	BSC ats Abramovich LEC 10034/2012	
Solicitor:	HWL Ebsworth	Barrister: Nil
Legal Costs YTD: \$8,982.60	Expert Witness Costs YTD: Nil	
Date Last Report: New matter	Other Expenses YTD: Nil	
Type of Appeal: Class 1		
Address: Lot 268 DP 867786, 40 Corkwood Crescent, Suffolk Park		
Brief History of Substantive Matter: DA 10.2007.798.1 originally sought approval for a 3-residential lot community title subdivision. The DA was refused by Council Res 09-288 . On appeal, the application was amended by the applicant and then further amended by the Court, with the result being an approval issuing for a 2-residential lot community title subdivision.		
DA 10.2010.274.1 was again lodged for a 3-residential lot community title. It was refused under delegated authority, with the reasons for refusal in part being the same as reasons identified in the Land and Environment Court judgment relating to the earlier DA 10.2007.798.		
History of Council Resolutions Relating to the Appeal: This new matter was reported to Council on 1/3/12 at which time Council resolved: 12-87 <i>"Resolved that this report be noted and the General Manager be authorised to manage the litigation in accordance with the General Manager's general delegations."</i>		
Brief Description: This is Class 1 Appeal against Council's refusal of the 3 residential lot subdivision.		
Status: The Application was served on Council on 27/1/12. The first callover was listed for 20/2/12. At this callover the following directions were made: <ol style="list-style-type: none"> 1. Applicant to file and serve Statement of Facts and Contentions in Reply by 12/3/12; 2. Applicant & Respondent's experts are to file and serve any individual expert reports by 26/3/12; 3. Experts, grouped in areas of expertise, are to confer in accordance with the expert witness code and to file and serve their joint report by 23/4/12; 4. Respondent to file and serve its bundle of documents by 26/4/12; 5. Respondent to file and serve a Notice of Objectors who wish to give evidence by 3/5/12; 6. Respondent to file and serve a Notice of Objectors who wish to give evidence by 3/5/12; 7. Applicant to file and serve its draft Conditions in response by 3/5/12. Matter is listed for hearing on 10-11/5/12, commencing onsite and then proceeding to Tweed Heads Courthouse.		

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Matter:	BSC ats Bowen LEC 41265/2011	
Solicitor:	Marsdens	Barrister: Nil
Legal Costs YTD: \$1,143.58	Expert Witness Costs YTD: Nil	
Date Last Report: 9/2/12	Other Expenses YTD: Nil	
Type of Appeal: Class 4		
Address: Lot 2 DP 579392 No. 15 Browning Street, Byron Bay		
Brief History of Substantive Matter: DA 10.2011.42.1 sought approval for “change of use of shop” to a use that is prohibited under the current zoning, and relied on existing use rights to support the application. DA 10.2011.42.1 was refused under delegated authority. A s82A Review application which was rejected under delegation. DA 10.2011.455 was subsequently lodged for “change of use of shop” the mirror reverse of 10.2011.42.1, which was approved under delegated authority.		
History of Council Resolutions Relating to the Appeal: This matter was reported to Council on 23/02/2012 at which time Council resolved to note the report Res 12-68 .		
Brief Description: In the appeal, the owner was seeking certain declarations that the premises had alleged ‘existing use rights’ as a “shop and commercial premises” and that those rights would extent to the use of the premises as a primarily a “beauty salon” which was a prohibited use. Approval was able to be issued for use of the premises as “hairdresser with ancillary beauty salon”.		
Status: The Application was served on Council on 10/1/12. The first callover was listed for 3/2/12. The Applicant discontinued the appeal on 1/2/12 and the matter is now complete. Due to fact the appeal was discontinued shortly after it was commenced, and only a small amount of costs were incurred, it is not intended to provide a separate final report on the outcome unless Council indicates that it requires a final report.		

Matter:	BSC ats Connelly LEC 10112/2012	
Solicitor:	Marsdens	Barrister: Nil
Legal Costs YTD: \$2,412.78	Expert Witness Costs YTD: Nil	
Date Last Report: New matter	Other Expenses YTD: Nil	
Type of Appeal: Class 1		
Address: Lot 930 DP 858909, 335 Federal Drive, Federal		
Brief History of Substantive Matter: DA 10.2011.368.1 was refused by Council on 15 December 2011 – Res 11-1098 . A section 82A Review Application was lodged by the Applicant on 22 March 2012 which will need to be reported to Council for determination. It is unknown at present when the assessment report on the s82A Review Application will be able to be completed.		
History of Council Resolutions Relating to the Appeal: The Appeal was reported to Council on 22 March 2012 at which time Council resolved to defend the appeal and authorise the General Manger to manage the litigation in accordance with the General Manager’s general delegations - Res 12-143 .		
Brief Description: DA 10.2011.368.1 proposed to create a two lot subdivision of land zoned 1(b2) Agricultural Protection under SEPP (Rural Lands) 2008. The existing lot is 9.19 hectares and contains a dwelling-house and grazing land. The DA sought approval to create 1 “agricultural lot” consisting of vacant land without a dwelling entitlement and 1 lot with the existing house located on it.		

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None of the existing lot nor either of the proposed lot would meet the minimum lot size of 40ha for subdivisions of agricultural zoned land required by Council's Local Environment Plan (LEP). The application sought to rely on the SEPP (Rural Lands) 2008 to create the subdivision irrespective of the LEP minimum lot size provisions. Council refused the application for a number of reasons, which included reasons going to both merit and legal issues.

Status: The Application was served on Council on 20/2/12. The first directions hearing was held on 19/3/12. The proceedings were adjourned to 2/4/12. On the next occasion Council will seek to have the matter listed for hearing.

Matter:	BSC ats Freedman LEC 11135/2011	
Solicitor:	Marsdens	Barrister: Nil
Legal Costs YTD: Nil	Expert Witness Costs YTD: Nil	
Date Last Report: 9/2/12	Other Expenses YTD: Nil	
Type of Appeal: Class 1		
Address: Lot 6 SP 81554, 6/137 Beach Road, Broken Head		
Brief History of Substantive Matter: DA 10.2011.191.1 was determined under delegation with the application being refused. The applicants lodged a s82A application for review of the decision to refuse DA 10.2011.191.1, which was reported to Council on 1/3/2012 at which time Council resolved to grant approval subject to conditions – Res 12-108 .		
History of Council Resolutions Relating to the Appeal: The Class 1 appeal against refusal of DA 10.2011.191.1 was reported to Council on 15 December 2011 when Council resolved (Res 11-1047) to delegate management of the appeal to the General Manager including, without limitation, delegation to enter into consent orders approving the development subject to appropriate conditions, if legal advice recommended that course of action.		
Brief Description: Development Application 10.2011.191.1 originally sought approval of use of the tourist accommodation premises for up to 35 functions per year but after public exhibition the application was amended to seek approval for use for up to 18 functions per year with each function to be limited to a maximum of 70 guests. The appeal was against Council's refusal of DA 10.2011.191.1.		
Status: The Application was served on Council on 10/12/11. At first directions hearing on 9/1/12 Council requested adjournment of the matter pending Council's consideration of the s82A Review application at its meeting on 9/2/12. The request was granted with the matter being adjourned to 20/2/12, with directions being made for steps to be completed should the appeal continue. On 9/2/12 the matter was adjourned again to 5/3/12 pending Council consideration of the s82A Review application. On 5/3/12 the matter was adjourned 19/3/12 to allow the applicant time to consider the conditions imposed by Res 11-1047. The Applicant filed a Notice of Discontinuance with the Court on 23/3/12 on the basis that each party is responsible for paying their own costs. The matter is now complete. Due to fact the appeal was discontinued and only a small amount of costs were incurred, it is not intended to provide a separate final report on the outcome unless Council indicates that it requires a final report.		

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Matter:	BSC ats Radburn LEC 30182/2012	
Solicitor:	Marsdens	Barrister: Nil
Legal Costs YTD: Nil	Expert Witness Costs YTD: Nil	
Date Last Report: New matter	Other Expenses YTD: Nil	
Type of Appeal: Class 1		
Address: Lot 5 DP 610382, 119 Picadilly Hill Road, Coopers Shoot.		
Brief History of Substantive Matter: A review of the rating categorisation of the property resulted in re-categorisation from 'farmland' to 'residential'. The property owners did not apply for internal review of the re-categorisation which was a process available to them.		
History of Council Resolutions Relating to the Appeal: This is new matter – refer to separate report.		
Brief Description: The appeal is against Council's categorisation as farmland from 1/1/12 onwards.		
<p>Status: The Application was served on Council on 29/2/12. The first directions hearing was held on 16/3/12 at which time the following directions were made:</p> <ol style="list-style-type: none"> 1. That the appeal listed for a s34 Conference –the date is yet to be set. 2. Council to provide the documents called for in the Applicant's solicitors letter dated 14/3/12 by 30/5/12 - complete; 2A. Any Notice to Produce issued by the Council be filed and served by 4pm 20/3/12 and is to be made returnable 13/4/12 – Notice to Produce has been served. Documents are yet to be produced. 3. Council to file and serve its Statement of Facts and Contentions in accordance with Schedule C of Practice Notes – Classes 1, 2 & 3 Miscellaneous Appeals by 30/3/12 – underway at time of preparation of this report; 4. Applicant to file and serve it's Statement of Facts and Contentions in reply in accordance with Schedule C of Practice Notes by 20/4/12; 4A. Council is to file any Statement of Facts and Contentions in Reply s by 27/4/12; 5. Proceedings listed for a second directions hearing on 18/5/12. 6. If proceedings are resolved after the preliminary conference, parties are to notify the Court at least 48 hours before the date of the second Directions Hearing. If the proceedings have been resolved, the second Directions Hearing may be vacated. 7. Either party have liberty to restore on 48 hours notice. 		

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Matter:	Ralph Lauren 57 Pty Ltd & Ors v Byron Shire Council LEC 40184/2010	
Solicitor:	HWL Ebsworth	Barrister: \$5,700.00
Legal Costs YTD:	\$80,635.38	Expert Witness Costs YTD: Nil
Date Last Report:	9/2/12	Other Expenses YTD: Nil
Type of Appeal: Class 4		
Address: Lots 1 & 2 SP 65430 Don Street, Lot 2 Sec 2 DP 1623 The Esplanade and Lot 1 Sec 1 DP 1623 Border Street and Border St and Don St road reserves, Belongil.		
Brief History of Substantive Matter: Application for Mandatory Orders against the Council seeking orders that Council do works to and repair & maintain geobag revetments at Border and Don Streets, Belongil.		
History of Council Resolutions Relating to the Appeal:		
<p>The matter was first reported to the Strategic Planning Committee Meeting of 28/03/2010 but was not reached. At the Extraordinary meeting on 1/4/2010 Council resolved to defend the Appeal, to authorise the General manager to manage the litigation under delegation, to endorse a proposal contained in confidential document (#949444) and to allocate a budget of \$50,000 from accumulated surplus (Resolution 10-914).</p> <p>At the Ordinary meeting of 8/4/2010 Council resolved to note the report that had originally been put to the 28/03/2010 Strategic Planning Committee meeting (Resolution 10-247).</p> <p>The matter was further reported to Council 11/11/2010 meeting.</p>		
Brief Description:		
<p>In response to their anticipation of a severe weather event considered by the landowners as likely to result from Cyclone Ului, certain landowners commenced a Class 4 Application against Council seeking mandatory orders that Council do certain work by 19 March 2010 and further mandatory orders that Council repair and maintain the geobag revetment walls at Border and Don Streets. Council had agreed to allow the landowners to do certain sand nourishment works that they considered were necessary.</p> <p>After the perceived emergency in March 2010 passed, the landowners discontinued their claim for interlocutory relief (ie works by 19 March 2010) but maintained their claim seeking Orders that Council did not comply with the development consent when it constructed the existing geobag walls at Border and Don Streets and that Council be ordered to do all work necessary to achieve compliance with the development consent (which based on the landowners' then evidence was equivalent to a request for orders that Council demolish and then rebuild the existing geobag walls at Don and Border Streets and then maintain them). The landowners are also seeking an order that Council pay the landowners' costs of the litigation.</p>		
Status:		
<p>The Application was served on Council on 18/3/10. On that day Council issued a Roads Act approval to allow the landowners to carry out urgent and nourishment works and Council offered to enter into consent orders allowing the landowner to do sand nourishment works on conditions similar to those it had imposed on the Roads Act approval. After some negotiation and some changes, the landowners agreed.</p> <p>On 1/4/2010 the landowners' solicitors advised that the landowners would be pressing their application against the Council. At the callover on 1/4/2010 discussion occurred about the landowners' need to amend their Points of Claim (given that the 19/03/2010 being the date they were seeking orders for Council to do works by had passed). At the callover the matter was adjourned to 23/4/2010 with no other directions being given.</p> <p>In accordance with Res 10-914 Council made a without prejudice offer to the landowners to settle the litigation. That offer was rejected by the landowners. A callover occurred 23/4/2010 with directions being made. A call over occurred on the 25/06/2010 where the matter was listed for further callover on 27/8/10. As Council's attempts at settlement pre the mediation were</p>		

unsuccessful and no counter-offers had been put by the landowners for Council's consideration, Council had to proceed to prepare its response to the Summons, as amended, as well as evidence.

A Notice to Produce was received by Council on 30/6/10 listing various categories of documents required to be produced. Staff retrieved literally 1000's of documents which were forwarded to Council's Solicitors for production.

Mediation was held at Council on 26/7/10 at the end of which the mediation was adjourned, which would have allowed the parties a further opportunity to call another mediation session if both agreed but that did not occur and the mediation was subsequently terminated.

A directions hearing occurred on 24/9/10 at which the following orders of the Court were made:

1. That by 1/10/10, Council serve upon applicants copies of the further documents the Applicant had requested production of;
2. Applicants serve on the Respondent their proposed categories of documents for discovery by the respondent by 24/9/10;
3. Respondent to advise Applicants in writing of any objections to the categories of discovery sought by the Applicants by 12 noon 30/9/10, reserving to the Respondent its right to object to an order for discovery generally.
4. Matter be listed for further directions on 1/10/10.
5. Respondent to advise the Applicants in writing of whether or not it objects to the proposal set out in paragraphs 6-10 of Mallesons' letter of 16/8/10 (being a proposal to excavate in front of the geobag walls for the purposes of establishing the AHD level of the foundation rows of geobags) and if applicable, the conditions upon which it would consent to that proposal, by 29/9/10.

Council did not object to Mallesons' proposal to excavate for evidence gathering purposes. Despite Council agreeing, the proposed excavation did not occur. Actions in relation to the Applicant providing categories of documents, Council objecting to some of the categories and the Court's determination in relation to those were the subject of a separate reports to Council Ordinary Meeting 11/11/2010.

Council was ordered by the Court to provide formal discovery of the Court adjudicated categories of documents by 2 December 2010, despite Council's repeated advice, via its solicitors, to Mallesons and to the Court, that many thousands of documents would be required to be discovered and that the timeframe was insufficient. Council engaged a third party information technology service provider to support electronic discovery of the documents. Council searched for, identified, categorised and reproduced well over 6,000 documents (from over 1.03 million documents). Those documents had to be checked by Council's solicitors, for relevance and privilege, and uploaded and formatted by the IT service provider. It was not possible for the review and uploading to occur by the 2 December 2010 and Council's solicitors sought an extension to the timeframe. Extension to the discovery timetable was agreed to by the Applicants. The costs to Council of the discovery have been and will continue to be significant. The matter was listed for a further directions hearing on 11/02/2011, at which time the matter was adjourned at the request of the Applicants. At the further directions hearing held on 18/3/11 the Court made directions in relation to the filing of evidence and scheduling of a hearing.

The Applicants served a further 2 Notices to Produce on Council, each of which contained multiple categories of documents, which Council have complied with forwarding the necessary documentation to Council's solicitors for review for relevance and privilege prior to production.

The substantive issues in these proceedings were the subject of an agreement that Council would undertake certain works at the Don and Border Street sites in the 2011/2012 financial year. The works were due for completion by 31 October 2011 but were subject to Council being able to obtain all necessary approvals from other government agencies. Despite Council's best efforts, Council could not get all required approvals, eg from Marine Parks or Lands, and therefore it was

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not be possible to carry out the works prior to the due date. Negotiations occurred with the Applicants whereby it was agreed to extend the date for the proposed works to 16 December 2011 subject to weather. The works were completed by Council on 21 December 2011, with some minor delays due to high tides at the time.

The applicants were advised of the compliance with the Consent Orders immediately and asked to confirm that they would be discontinuing the proceedings as previously indicated. To date there has been no response. If a response is not received Council will consider asking the Court to relist the matter to press for the discontinuance.

Matter:	BSC ats SJ Connelly (Ventlink) LEC 10786/2010	
Solicitor:	Marsdens	
Legal Costs YTD: \$9,902.33	Expert Witness Costs YTD: \$23,820.00	
Date Last Reported: 9/2/12		
Type of Appeal: Class 1 Appeal.		
Address: Cnr Lawson and Fletcher Streets, Byron Bay (former Council Chambers building)		
Brief History of Substantive Matter: Approval was granted to DA 10.2005.733.1 for expansion of a boarding house development on the site of the former Byron Bay Council Chambers. A s96 application 10.2005.733.2 sought variation to the condition imposing developer contributions. The approval issued to the s96 application approved some but not all of the variations to the developer contributions sought by the applicant.		
History of Council Resolutions Relating to the Appeal: The matter was first reported to Council on 11/11/2010 at which time Council resolved that <i>“the General Manager be authorised to manage the litigation in accordance with the General Manager’s general delegations”</i> and <i>“that without limiting the general delegations, the General Manager be expressly given delegation to reach agreement on the method of calculation and/or amount of s94 Developer Contributions imposed by way of conditions in accordance with legal advice, if any”</i> (Res 10-898).		
Brief Description: The appeal is against conditions imposed on the consent granted to development application 10.2009.610.1 relating to developer contributions.		
Status: The appeal was served on Council on 08/10/2010. At the time, the appeal was against ‘deemed refusal’ of the s96 application. However, the s96 application was subsequently determined and the appeal changed to an appeal against conditions. The first callover was held on 01/11/2010 at which time the matter was adjourned to enable the Applicant to consider the conditions of the s96 approval issued by Council and file any Amended Statement of Facts and Contentions. At the further directions hearing on 15/11/2010 the matter was identified as one to be listed for a s34 Conference and subsequent discussions occurred as to suitable dates, with the s34 Conference eventually listed for 07/12/2010.		
An agreement was unable to be reached at the s34 conference but rather than discontinue the conciliation, the parties agreed to adjourn the conciliation to enable the Applicant time to provide additional information in the form of an expert report on traffic generation and to amend the modification application to change the number of beds in the hostel to 308 (ie a reduction from the approved number of beds). The Applicant put forward some further amendments to the proposal which would increase availability of onsite parking which is currently under assessment by staff.		
Due to the complexity of the arguments raised in relation to developer contributions for this particular site, and existing staff workloads, Council had to retain an external expert witness to give evidence on the s94 issues.		
The matter was listed for further mention on 21/3/11 at which time it was listed for hearing on 15, 16 & 17/6/11 commencing onsite at 10.30am. By eCourt on 23/3/11 the hearing dates were vacated and replaced with 22, 23 & 24/6/11 commencing onsite at 10.30am. Council were served		

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with a Notice to Produce on 8/4/11 which was complied with.

The hearing took place on 22 – 24 June 2011 before Commissioner Dixon in Sydney, after the Court changed the venue, but it was not finalised. The hearing continued on 1 - 2/9/11 in Sydney.

At the hearing, following conclusion of Applicant's oral submissions, proceedings were adjourned on basis that written submissions would be provided, which subsequently occurred. Judgment has been reserved and it is not known when the judgment will be handed down.

At the time of preparation of this report, judgment has still not been received. (Since the hearing in this matter, there have been some Court of Appeal cases pending and, recently one Court of Appeal decision, relating to s94 developer contributions which may have precedent implications for this matter and which might be a reason for the delay in the delivery of the judgment in this matter.)

Matter:	BSC ats Stebbing LEC 11144/2011	
Solicitor:	Marsdens	Barrister: Nil
Legal Costs YTD: \$11,575.00		Expert Witness Costs YTD: Nil
Date Last Report: 9/2/12		Other Expenses YTD: Nil
Type of Appeal: Class 1		
Address: Lot 11 DP 1016333 14-16 Teven Street, Brunswick Heads		
Brief History of Substantive Matter: The property the subject of the Appeal is located at Nos 14-16 Teven Street, Brunswick Heads.		
The site contains an existing commercial development comprising gymnasium, squash courts and indoor swimming pool approved via BA 106/72 on 11 September 1972. A number of alterations have been approved over the 38 years since the original approval was granted.		
History of Council Resolutions Relating to the Appeal: Development Application 10.2010.606.1 for "Alterations/Additions to Existing Gymnasium and change of use to Affordable Rental Housing (comprising 29 x 1 bedrooms, 4 x 2 bedrooms and 2 bedroom manager's residence) was reported to Council on 30 June 2011 with a recommendation that it be approved subject to conditions. Council resolved to refuse the development application with reasons (Res 11-534).		
The Appeal was reported to Council on 15/12/11 with a recommendation that delegations be granted to enter into consent orders on the basis of the conditions as reported to Council on 30/06/11. Council resolved to defend its refusal of the development application (Res 11-1091).		
Brief Description: Class 1 appeal against the refusal of DA 10.2010.606.1.		
Status: The Application was served on Council on 6 December 2011. Council filed its Statement of Facts and Contentions prepared in accordance with legal advice and on the basis of the relevant Council resolutions. Prior to the first Directions Hearing Council's solicitors advised the Applicant that they would require leave of the Court if they wanted to rely on amended plans but the Applicant disagreed.		
At the first Directions Hearing on 9/1/12, the applicant was directed to file and serve a Notice of Motion for leave of the Court to rely on amended plans by 17/01/12 and the matter was adjourned to 20/01/12. The Applicant filed their Motion and Council indicated that it would not object to the proposed amended plans subject to the additional legal, assessment and advertising costs associated with amending the plans being paid. The Applicant objected to having to pay any costs arising from the amendment.		
At the Motion Hearing on 20/1/12, the Applicant was granted leave to rely on amended plans and Order to pay Council's legal costs of \$500.00 and costs of re-notification to submitters of \$285.00		

and the Court directed Council to file any amended Statement of Facts and Contentions by 3 February 2012.

The plans for the proposed development, as amended:

- now reflect Stage 1 as reported to Council on 30/06/11 (ie Stage 2 is not being pressed as part of this appeal);
- make changes to one ground floor unit to delete the bedroom area and kitchen facilities and replace those with a store room (ie the bathroom is being retained but attached to a storeroom space not a unit)
- Increase carparking with the addition of 8 carspaces on the western side of the carparking area (with the area not previously designated for any particular use)

In accordance with the directions of the Court, the Council will now need to provide details of the amendments via letters to all people who lodged formal submissions to the development application. In addition, Council staff will need to review the amended plans and determine whether any of the Contentions, which were based on Council's reasons for refusal, have been addressed by the changes and/or require amendment due to the changes to the plans.

External consultants have been approached by our solicitors for the purposes of providing evidence.

At telephone directions hearing on 6/2/12, matter listed for further telephone directions on 13/2/12. At this directions hearing the following directions were made:

1. Applicants to file and serve individual expert's planning report on or before 8/3/12;
2. Experts in planning, traffic and car parking, stormwater engineering, building/structural engineering – grouped in areas of expertise – are to confer and file and serve by 22/3/12;
3. Proceedings fixed for hearing on 19-20/4/12, to commence 9.30am;
4. Council to file and serve draft conditions of consent by 5/4/12;
5. Applicant for consent to file and serve draft conditions in response by 12/4/12;
6. Parties to notify promptly the Court if there is any material slippage in the timetable;
7. Parties have liberty to restore on 3 working days' notice;
8. At hearing, the evidence of experts is to be given by way of concurrent evidence unless the hearing judge or commissioner directs otherwise;

Council to file and serve its Notice of Objectors by 12/4/12.

Matters in respect to which there are costs outstanding

- 5 The following status table relates to outstanding cost matters arising from appeals, which were finalised prior to 01/01/2011 and/or which were subsequently reported on in the Legal Services status reports. The General Manager pursuant to the following delegated authority will negotiate settlement of the cost matters:

10 *“to take such actions and do such acts or things (not inconsistent with the Act or any Act, ordinance, regulation, or by-law conferring powers or imposing duties on the Council or with any resolution or minute which has been passed or adopted by the Council) as he deems necessary to generally manage, control and administer the affairs of the Council including exercise of the powers and discretions of the Council and performance of its duties.”*

- 15 The column 'Solicitor costs billed this financial year to date' figures reflect only those costs billed in cost recovery work not those costs billed or incurred in running the substantive proceedings.

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(144)

1. Costs awarded to Council

Matter	Brief Description of Matter	Current Status	Last reported	Solicitor	Costs billed this financial year to date
BSC v Fletch Pty Ltd Tristran Pde, Mullumbimby LEC 50035 of 2005	Class 4 prosecution in the LEC for clearing of vegetation without requisite consent	Referred to debt recovery agents for action (as per Res 10-89). Registered with Local Courts on 10/6/10. Writ of execution has been passed to Sheriff. Garnishee orders issued by Kogarah Court.	9/2/12	Nil	Nil
Byron Shire Council v Singh, G "Byron Bay Manor" St Helena Lot 28 DP 1069577 LEC 41428 of 2005	Class 4 proceedings seeking declaratory orders that development comply with development consent	After issue of a bankruptcy notice, an instalment payment arrangement was implemented, requiring the total debt (including additional debt costs and interest) to be paid by 23/12/11. At the date of the last report all payments had been received in accordance with the agreed timetable. However, the final payment (approximately 9% of the debt) was not made by the due date and the matter is to be referred to Council's debt recovery agent again.	9/2/12	Nil	Nil
Byron Shire Council v Vos, Peter Scheaffes Rd Goonengerry LEC 50128 of 1998	Class 5 – Prosecution for breach of TPO. Costs awarded to Council.	Matter to be the subject of a future report.	9/2/12	Nil	Nil
Byron Shire Council v Wain & Wengarin P/L LEC 50116 - 50119 of 1998	Class 5 Proceedings – Council prosecuted defendants for pollution of Belongil Creek. Council awarded costs.	Matter to be the subject of a future report.	9/2/12	Nil	Nil

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(145)

Matter	Brief Description of Matter	Current Status	Last reported	Solicitor	Costs billed this financial year to date
Chris Lonergan & Associates v BSC (Coffee) Byron Street, Bangalow LEC 10450 of 2002	Class 1 Appeal – Refusal of DA 10.2000.484.1 for proposed 4 residential flats. Council awarded costs.	Referred to Council's debt recovery agent for further action (as per Res 10-89). Was registered with Local Courts on 10/6/10. Writ of execution had been passed to Sheriff. Notice of Non Levy from Sheriff. Company has ceased trade and no further action can be taken on this debt. Will need to be the subject of a report	9/2/12	Nil	Nil
Dansar Pty Ltd and Mr John Vaughan v BSC Lot 1 DP 1002730 Cavvanbah Street Byron Bay SC 30051 of 2002	Supreme Court proceedings Proceeding discontinued costs owed to Council pursuant to Supreme Court rules.	Costs assessment completed with Council's claimable costs being determined in the sum of \$40,247.26. The amount has not been paid. A brief will need to be prepared for Council's debt recovery agents.	9/2/12	HWL Ebsworth	Nil
Vaughan John v Byron Shire Council Lot 1 DP 1002730 Cavvanbah Street Byron Bay LEC 10683 of 2001	56A Appeal – Appeal against the decision of Commissioner Hoffman upholding Council's refusal of 10.2001.64.1. Appeal dismissed costs awarded to Council.	Costs assessment completed with Council's claimable costs being determined in the sum of \$40,247.26. The amount has not been paid. A brief will need to be prepared for Council's debt recovery agents.	9/2/12	Nil	Nil
BSC ats White Browns Crescent McLeods Shoot LEC 10519/2010	Class 1 appeal against conditions imposed on DA 10.2009.610.1	A fixed costs order in the amount of \$4,936.33 was made in Council's favour. Council resolved on 10/2/11 (Res 11-39) to suspend debt recovery action until 11/04/11 but debt remains outstanding.	9/2/12	Nil	Nil

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(146)

Matter	Brief Description of Matter	Current Status	Last reported	Solicitor	Costs billed this financial year to date
		Matter has been referred to Council's debt recovery agents for recovery.			

2. Costs awarded against Council

Matter	Brief Description of Matter	Current Status	Last reported	Solicitor	Costs billed this financial year to date
Byron Shire Council v John Vaughan and Anne Vaughan Manfred Street Byron Bay LEC 30164/97, 40596/99 & 40428/01	Court of Appeal & LEC proceedings concerning Council assertion of encroachment under the Encroachment Buildings Act. Costs awarded against Council.	Claim of 14,175.03 for disbursements remains unverified by the costs claimant. Council is not required to pay unless proof of incursion of the expenditure is produced and no further action is required of Council at this time.	9/2/12	Nil	Nil
BSC ats Ralph Lauren 57 Pty Ltd LEC 40184/2010 Don and Border Streets Belongil	LEC Class 4 Appeal commenced by landowners against Council seeking orders that Council undertake repair and maintenance works at Council's costs.	Costs Order issued against Council on 15/10/10 as a result of Council objecting to Applicant's request for formal Discovery of documents and information. No claim has been lodged to date. No further action will be required until a claim is lodged, then Council can either attempt to reach an agreement on a fixed amount or require the Costs Applicant to have their costs claim formally assessed.	9/2/12	Nil	Nil

WATER AND RECYCLING - EXECUTIVE MANAGER'S REPORTS

Report No. 13.17. Arakwal Application for Exemption from Section 64 Charges

Executive Manager: Water and Recycling

5 **File No:** ENG70000 #1206140

Principal Activity: Water and Sewerage Services

Summary: The Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) have written to Council seeking a merit based exemption from the section 64 development contribution charges associated with DA 10.2011.150.1 Lot 435 DP 729107, Bangalow Road, Byron Bay. The purpose of this report is to present to Council this request for determination.

RECOMMENDATION:

10 **That Council not grant the Arakwal Corporation an exemption from the water and sewer section 64 development contribution charges associated with DA 10.2011.150.1 Lot 435 DP 729107, Bangalow Road, Byron Bay and also note that any exemption for applicable bulk water section 64 charges is a matter for the determination of Rous Water.**

15

Attachments:

- Letter from the Arakwal Corporation #1204846 [3 pages] **Annexure 8**

Report

5 The Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) have written to Council seeking a merit based exemption from the section 64 development contribution charges associated with DA 10.2011.150.1 Lot 435 DP 729107, Bangalow Road, Byron Bay. The purpose of this report is to present to Council this request for determination.

10 The letter from the Arakwal Corporation sets out the reasons for their application and is presented as Annexure 8.

15 It is important to note that the request also pertains to the Bulk Water S64 charge which Council collects on behalf of Rous Water. The determination of the exemption request for applicable Bulk Water S64 charges must be referred to Rous Water. In the letter of acknowledgement of their correspondence, the Arakwal Corporation have been advised of the situation with Rous Water.

20 This land was referred to in the 1998 Heads of Agreement between the Arakwal and Byron Shire Council. The agreement refers to Council agreeing to expedite the assessment of any rezoning application for this land for residential purposes in accordance with statutory requirements. The land was subject to a rezoning through LEP Amendment No.91 which was gazetted on 18 May 2001. About 5100 square metres of the land was zoned 2(a) (Residential zone) and the balance is zoned 7(b) (Coastal habitat) under Byron LEP 1988. Council has also supported the revocation of part of the adjacent crown reserve to be used for access to the above land. This was gazetted on 24 October 2001 in the NSW Government Gazette No. 161. The land is currently partly zoned 7(b) Coastal Habitat Zone and 2(a) Residential which is appropriate for intended purpose. The land is proposed to be zoned R2 (Low Density Residential) and E2 (Environmental Conservation), under the Proposed Draft LEP which will continue to allow housing development on the R2 zoned portion of the site in the future. The Heads of Agreement does not refer to any exemption pertaining to applicable headworks charges for any development on the land.

30 The historical circumstances of the case brought forward by the Arakwal Corporation are unique and a factor for Council to consider. However, there are many not for profit organisations who aspire to community based outcomes that would also believe that their developments should be exempt from applicable S64 charges. Council will need to consider if granting the Arakwal Corporation request establishes both a precedent and therefore an expectation amongst other organisations.

35 Council has an adopted Section 64 plans for developer charges for water supply and sewerage headworks. These plans make no provisions for waiving of charges based on a type of development or the nature of the applicant; as such the management recommendation is that the request of the Arakwal Corporation not be granted.

Financial Implications

45 Developer charges are up-front charges levied to recover part of the infrastructure costs incurred in servicing new developments or additions/changes to existing developments. Developer charges serve two related functions:

- They provide a source of funding for infrastructure required for new urban development; and
- They provide signals regarding the cost of urban development and thus encourage less costly forms and areas of development.

50 The developer charges process is interrelated with Council's ongoing financial planning and determination of annual water supply and sewerage service charges. Failure to charge or collect applicable S64 charges will ultimately threaten the financial viability and sustainability of the Water and Sewer funds.

In a circumstance where Council resolves not to recover applicable developer charges, these funds will ultimately need to be recovered via service charges from the broad customer base.

Statutory and Policy Compliance Implications

5

Section 64 of the Local Government Act 1993 enables a local water utility to levy developer charges for water supply and sewerage management works. This power derives from a cross-reference in that Act to section 306 of the Water Management Act 2000.

10

A Development Servicing Plan (DSP) is a document which details the developer charges to be levied on development areas utilising a local water utility's infrastructure.

15

The calculation of applicable S64 charges for any development is governed by Council's adopted Policy No. 07/100 – Water and Sewer Equivalent Tenements Policy for Determining Developer Servicing Charges. The policy provides an equitable methodology to assess the Developer Servicing Charges for new development to contribute towards the cost of expanding or upgrading Council's water and sewer infrastructure. The policy is based upon the fundamental principle that Council's investment in assets servicing a development is fully recovered from that development in accordance with Council's adopted Development Servicing Plans for Water Supply and Sewerage Services.

20

The preparation and implementation of Development Servicing Plans is a requirement of the State Government's best practice guidelines for water supply and sewerage.

25

The Developer Charges calculation is based on the net present value (NPV) approach adopted by the Independent Pricing and Regulatory Tribunal (IPART). The fundamental principle of the NPV approach is that the investment in assets for serving a development is fully recovered from the development. The investment is recovered through up-front charges (i.e. developer charges) and the present value (PV) of that part of annual bills received from the development in excess of operation, maintenance and administration (OMA) costs.

30

$$\text{Developer Charge} = \text{Capital Charge (cost of providing the assets) minus Reduction Amount (cost recovered through annual bills).}$$

The capital charge is initially calculated for each service area. Service areas are:

35

- An area served by a separate STP or water supply distribution system;
- Separate small towns or villages; or
- A new development area of over 500 lots.

The calculated developer charges are the maximum charges that Council can apply.

40

If Council elects to levy less than the calculated amount of developer charges then the resulting cross subsidy from the existing customers in the typical annual residential bills must be calculated and disclosed in the relevant DSP, in Council's Annual Report and in communication material with stakeholders. In addition, special schedules No 3. and 5 of Council's annual financial statements will need to disclose the total cross subsidy provided in developer charges each year.

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(150)

Report No. 13.18. Waste and Sustainability Improvement Program

Executive Manager: Water and Recycling
File No: ENG450000 #1208473

Principal Activity: Waste and Recycling

Summary: In late 2011, the regulation pertaining to the WASIP funding model was changed. As a result the Waste and Sustainability Improvement Payments are now calculated from a single common pool of funding for the SMA, ERA and RRA councils. This includes the 2011-12 payment. The payment for Byron Shire Council has risen to \$181,141. This has resulted in \$99,000 of unallocated funds being available for a new program.

The purpose of this report to Council is to seek Council's adoption of a new program to implement landfill lids to cover the active waste face as an alternative to daily soil cover at the Myocum landfill using the available WASIP funds.

5

RECOMMENDATION:

10 **That Council endorse a program to implement landfill lids at the Myocum landfill using the available \$99,000 of 2011/12 WASIP funds.**

Report

In September Council considered a report on the NSW Waste and Sustainability Improvement program (WASIP) and resolved:

5 **11-714 Resolved** that Council authorise the General Manager to commit Council to meeting the 2011/12 Waste and Sustainability Improvement Payment standards.

and

10 **11-715 Resolved** that Council make application to the Office of Environment and Heritage to undertake the following projects using funds from the 2011/12 Waste and Sustainability Improvements Payments:

- 15 a) Household Waste and Recycling Composition audit (Budget \$35,000)
b) Greenhouse Emission Project – Extension (Stage 2) of the Pilot Landfill Gas System at Myocum Landfill (\$47,000).

20 Council had been advised that under the 2011/12 Waste and Sustainability Improvement Payment Program, approximately \$82,000 was available to Council for Waste and Sustainability projects. These funds are derived from the NSW Government Waste Levy via two pools, one for the combined Sydney Metropolitan Area (SMA) and the Extended Metropolitan Area (EMA) and the second for the Regional Regulated Area (RRA). Byron Shire is part of the RRA. The first pool of funds was significantly larger than the second and this lead to a lower WASIP value per capita for
25 Councils like Byron Shire in the RRA.

In late 2011, the regulation pertaining to the WASIP funding model was changed. As a result the Waste and Sustainability Improvement Payments are now calculated from a single common pool of funding for the SMA, ERA and RRA councils. This includes the 2011-12 payment. The payment for
30 Byron Shire Council has risen to \$181,141. This has resulted in \$99,000 of unallocated funds being available for a new program.

The purpose of this report to Council is to seek Council's adoption of a new program to implement landfill lids to cover the active waste face as an alternative to daily soil cover at the Myocum landfill
35 using the available WASIP funds.

Council is required under its operating licence to apply daily soil cover over the active landfill face on a daily basis primarily for the purposes of odour control. This practice leads to a significant volume of the available landfill being used. In addition to a more rapid exhaustion of the available
40 landfill volume, the daily cover material also attracts the NSW Waste Levy charge.

Technology has been developed such that large movable covers can now be deployed to provide the necessary daily cover and odour control. Tweed Shire Council has utilized WASIP funds to implement this technology with success. There are other benefits in deploying the lids including
45 eliminating any need to purchase cover material, reduction in the greenhouse gases produced by carting cover material to the landfill, more effective litter, dust and odour control, while also reducing insect/rodent/bird activity at, and adjacent to the site.

It is proposed that Council seek approval from OEH to implement a program over the 2011/ 12 and
50 2012/ 13 financial years to deploy landfill lids. This program will be an important element in Council extending the life of the existing Myocum landfill while the proposed Quarry landfill project is developed.

Financial Implications

5 The cost of the program is estimated to cost \$200,000 based on the experience of Tweed Shire Council. Therefore Council can utilize \$99,000 the 2011/ 12 WASIP funds and potentially \$101,000 from the 2012/ 13.

10 The NSW Waste Levy commenced at \$10 per tonne and has risen to \$43 per tonne in 2012/ 13 at which point it is estimated that the annual levy paid to the NSW government will exceed \$1 million. Staff have been advised at a recent regional forum associated with the current inquiry into the waste levy that the charge will progressively increase to \$120 per tonne.

15 The NSW Waste Levy is a huge drain on available resources that can be used to deploy better waste management technologies. The proposal to utilize available WASIP funds for landfill lids in part addresses this problem.

Statutory and Policy Compliance Implications

20 Waste and Sustainability Performance Improvement Payments are provided in accordance with the [Protection of the Environment Operations Amendment \(Miscellaneous\) Regulation 2011](#).

Each year the OEH publishes guidelines and standards that will set out what is required in order to qualify for the payments. Council is required to commit to achieving the standards each year, and submit an action plan containing proposed programs for approval prior to expenditure against the programs.

Report No. 13.19. Telstra Licence - Paterson Street Reservoir

Executive Manager: Water and Recycling
File No: BEN400000 #1204721

Principal Activity: Water Services

Summary: Telstra Corporation Limited is proposing to install telecommunications equipment at Paterson Street Reservoir in order to improve the level of service to their customers in this general area.

The proposed facilities are classified as low impact under the provisions of The Telecommunications Act 1997 and the Telecommunications (Low-Impact Facilities) Determination 1997.

The Telstra Corporation Limited proposal has been assessed operationally as feasible and a draft licence has been prepared.

This report seeks Council's authorisation to enter into a licence with Telstra Corporation Limited.

5

RECOMMENDATION:

- 10 1. That Council grant a new licence over the property at Part Lot 172 DP 755695 known as the Paterson Street Reservoir to Telstra Corporation Limited based on the draft licence agreement at Annexure 9(a) (#1205261), on the following basic conditions:
 - 15 a) Licence term of five (5) years
 - b) 3 x 5 year further terms
 - 15 c) A licence fee of \$12,500.00 per annum excluding GST
 - d) Increases of 4% per annum
 - e) All licence preparation and registration costs are met by the Licensee
- 20 2. That Council authorises the General Manager to affix the Council Seal to the Licence of Part Lot 172 DP 755695 in accordance with Regulation 400 of the Local Government (General) Regulations 2005.

25

Attachments:

- Draft Licence Agreement #1205261 [30 pages].....Annexure 9(a)
- Letter from Aurecon Australia re proposed installation works by Telstra #1163064 [11 pages]..... Annexure 9(b)
- Letter from Aurecon Australia re EME Report #1190260 [4 pages].....Annexure 9(c)

Report

Land Information

5 Part Lot 172 DP 755695
Purpose – Paterson Street Reservoir
Owner – Byron Shire Council
Classification – Operational

10 Telstra Corporation Limited is proposing to install telecommunications equipment at Paterson Street Reservoir in order to improve the level of service to their customers in this general area.

The proposed facilities are classified as low impact and presented in Annexure 9(b).
Telecommunications facilities such as small antennas and radio communications dishes erected
15 on existing towers, buildings and reservoirs are subject to the provisions of the Industry Code – Deployment of Mobile Phone Network Infrastructure enforced by the Australian Communications Industry Forum (ACIF).

The ACIF sets out consultation requirements where a development application is not required.
20 Telstra Corporation Limited has complied with the basic requirements of liaison with Council and public advertisement of the proposal.

Telstra Corporation Limited has advised that the proposed installation will comply with the
Australian Communications and Media Authority regulatory arrangements with respect to
25 electromagnetic radiation exposure levels. The EME exposure levels from this site have been calculated in accordance with the ARPANSA prediction methodology and report format. Refer Annexure 9(c).

The Telstra Corporation Limited proposal has been assessed operationally as feasible and a draft
30 licence has been prepared. A copy of the draft licence is Annexure 9(a).

Financial Implications

35 If the proposal is implemented it will generate income for Council. Telstra Corporation Limited have proposed the following licence agreement:

Rent:	\$12,500.00 ex GST per annum
Rent Increases:	4% per annum
Licence Term:	5 years
40 Further Term:	5 + 5 + 5 years

The market rent is based on the Independent Pricing & Regulatory Tribunal (IPART) standard fee
45 schedule adopted by the Lands Department for calculation of rent for communication sites on Crown Land.

Statutory and Policy Compliance Implications

In accordance with the Real Property Act 1900, lease/licence terms in excess of three years
50 require the lease/licence to be registered on the certificate of title.

Under the *Local Government (General) Regulations 2005*, Part 13, Division 1, paragraph 400(4),
the seal of a Council must not be affixed to a document unless the document relates to the
business of the council and the council has resolved (by resolution specifically referring to the
document) that the seal be so affixed.

Report No. 13.20. Options Report Lot 2 Bayshore Drive, Byron Bay

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.

5

RECOMMENDATION:

10 **That Council endorses 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.**

Attachments:

- 15
- Request for Detailed Quotation – Options Report #1206481 [15 pages] **Annexure 6**

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 6) in accordance with the resolution of Council.

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:
- (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).

GENERAL MANAGER - COMMITTEE REPORT

Report No. 14.1. Report of the Internal Audit Advisory Committee Meeting held on 27 March 2012

General Manager

5 File No: COR252000 #1213928

Principal Activity: Corporate Management

Summary: This report provides the minutes and recommendations of the Internal Audit Advisory Committee Meeting held on 27 March 2012.

RECOMMENDATION:

10

1. That Council note the minutes of the Internal Audit Advisory Committee Meeting held on 27 March 2012.

15

2. That in relation to Report No. 4.1. – Meeting Dates for Internal Audit Committee for 2012 (Corporate Management COR252000 #1196093), Council adopt:

Committee Recommendation IA: 4.1.1

20

That the Internal Audit Committee adopt the following dates for the Internal Audit Committee meetings for 2012:

Tuesday - 27 March 2012

Thursday - 31 May 2012

Thursday - 18 October 2012

25

Thursday - 13 December 2012

3. That in relation to Report No. 4.2. – Interim Audit Management Letter 2011 (Corporate Management FIN201000 #1197453), Council note:

30

Committee Recommendation IA: 4.2.1

That the comments provided by Management in response to matters raised in the Interim Audit Management Letter 2011 be noted by Council.

35

4. That in relation to Report No. 4.3. – Year End Audit Management Letter 2011 (Corporate Management FIN201000 #1197703), Council note:

Committee Recommendation IA: 4.3.1

40

That the comments provided by Management in response to matters raised in the Year End Audit Management Letter 2011 be noted by Council.

5. That in relation to Confidential Report No. 5.1. – Internal Audit Strategy and Internal Audit Plan (Corporate Management COR252000 #1195976), Council adopt:

45

Committee Recommendation IA: 5.1.2

a) That Council adopt the “Three Year Internal Audit Strategy and 18 Month Internal Audit Plan – February 2012” (#1195971) prepared by BDO (NSW-VIC) Pty Ltd.

b) That the report and Annexure 2 of the closed part of the meeting remain confidential.

5 6. That in relation to Confidential Report No. 5.2. – 2011/2012 Audit Strategy and Service Plan (Corporate Management FIN200000 #1197094), Council adopt:

Committee Recommendation IA: 5.2.1

10 a) That Council adopt the 2011/2012 Audit Strategy and Service Plan as outlined in Annexure 4 (#1196931) to be conducted by Thomas Noble and Russell.

b) That the report and Annexure 4 of the closed part of the meeting remain confidential.

15 7. That in relation to Report No. 6.1. – Minutes of the BRSCC Project Control group (PCG) Meetings (Community Infrastructure COR710100 #1208794), Council note:

Committee Recommendation IA: 6.1.1

20 That the Internal Audit Committee recommend that Council note the Minutes of the Byron Regional Sport and Cultural Complex Project Control Group Meetings from 6 May 2011 and 2 March 2012 (Annexure 5 #1208964).

25 ***Attachments:***

- Minutes of the Internal Audit Advisory Committee meeting held 27 March 2012 #1212115 [4 pages]..... **Annexure 23(a)**
- 30 • Agenda and Annexures of the Internal Audit Advisory Committee 27 March 2012 #1198042 [158 pages]..... **Annexure 23(b)**

Annexure 23(b) has been provided on the Councillors' Agenda CD only. An electronic copy can also be viewed on Council's website.

35

Report

This report provides the recommendations of the Internal Audit Advisory Committee meeting held on 27 March 2012 for determination by Council.

5 The Committee recommendations are supported by management, and are as detailed in the Minutes of the Internal Audit Committee meeting held on 27 March 2012, attached to this report at Annexure 23(a) and included as the recommendations for this report.

10 A copy of Internal Audit Advisory Committee Agenda for this meeting is provided at Annexure 23(b).

Financial Implications

15 As per the Reports listed within the Internal Audit Advisory Committee Meeting Agenda of 27 March 2011.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Internal Audit Advisory Committee Meeting Agenda of 27 March 2011.

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

(161)

ENVIRONMENT AND PLANNING - COMMITTEE REPORT

Report No. 14.2. Report of the Planning Review Committee Meeting held on 21 March 2012

#1209855/PLN307000

PRESENT: **Councillors:** Crs Morrissey, Staples, Tabart, Richardson

5 **Staff:** Wayne Bertram – Manager Development Assessment and Certification

The meeting commenced at 9.38am and concluded at 10.30am.

DA No.	Applicant	Property Address	Proposal	Reason/s	Outcome
10.2012.53.1	Mr M Leibovitch & Mrs P Leibo	Koonyum Range Rd Mullumbimby Creek	Use of existing suspended deck	The number of public submissions	Council
10.2012.16.1	Mr T A Hunter	Roses Rd Federal	Tourist Facility - Guesthouse (5 bedrooms)	The number of public submissions. The validity of the matters raised in the public submissions. The perceived public significance of the application.	Council to be provided to same council meeting (applications 10.2012.16.1 10.2012.15.1 10.2010.558.3)
10.2012.15.1	Mr TA Hunter	Roses Rd Federal	Restaurant	The number of public submissions. The validity of the matters raised in the public submissions. The perceived public significance of the application.	Council to be provided to same council meeting (applications 10.2012.16.1 10.2012.15.1 10.2010.558.3)
10.2012.52.1	RE & MJ Darney	15 Mia Court Ocean Shores	Addition dwelling being bedroom & en-suite		General Manager to determine

10 *Council determined the following original development applications. The Section 96 application to modify these development consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.*

BYRON SHIRE COUNCIL

ORDINARY MEETING

12 APRIL 2012

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DA No.	Applicant	Property Address	Proposal	Reason/s	Outcome
10.2007.52.2	G Lawler	McGettigans Ln Ewingsdale	S96 to reduce hours of operation and carparking		Delegated Authority
10.2008.742.2	Great Northern Hotel	35-43 Jonson St Byron Bay	S96 to alter conditions of consent in respect to carparking Contributions (Alterations and additions to the existing hotel including the replacement of the existing awning with a new awning/ balcony)		Delegated Authority
10.2008.742.3	Great Northern Hotel	35-43 Jonson St Byron Bay	S96 Modify the size of 2 windows & doors (Alterations and additions to the existing hotel including the replacement of the existing awning with a new awning/ balcony)		Delegated Authority
10.2010.320.2	Planning Resolutions	56 -58 Ruskin St Byron Bay	s96 - Change the development from strata title to torrens title subdivision (Urban subdivision to create six strata lots, construction of three new dwellings, carry out alterations and additions to an existing dwelling, two swimming pools and tree removal)	The extent of variation to council policies proposed. The lack of policy to direct determination	Council

BYRON SHIRE COUNCILORDINARY MEETING12 APRIL 2012

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DA No.	Applicant	Property Address	Proposal	Reason/s	Outcome
10.2010.558.3	Mr TA Hunter	Roses Rd Federal	S96 to amend the design of approved residence and shop	The number of public submissions. The validity of the matters raised in the public submissions. The perceived public significance of the application.	Council to be provided to same council meeting (applications 10.2012.16.1 10.2012.15.1 10.2010.558.3)

COMMITTEE RECOMMENDATION:**That the report be noted.**

WATER AND RECYCLING - COMMITTEE REPORT

Report No. 14.3. Report of the Water, Waste and Sewer Advisory Committee Meeting held on 8 March 2012

5 **Executive Manager:** Water and Recycling
File No: COR250000 #1208823

Principal Activity: Water and Recycling

Summary: Council's Water, Waste and Sewer Advisory Committee met on 8 March 2012.

This report to Council presents the minutes of the meeting and includes comments from management regarding the recommendations.

RECOMMENDATION:

10 **That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 8 March 2012.**

15 **Attachments:**

- Agenda WW&S Advisory Committee 8 March 2012 #1194333 [19 pages].....**Annexure 13(a)**
- Minutes WW&S Advisory Committee 8 March 2012 #1205442 [2 pages]..... **Annexure 13(b)**

20 *Annexure 13(a) has been provided on the Councillors' Agenda CD only. An electronic copy can also be viewed on Council's website.*

Report

Committee Recommendation WW&S 4.1.1

5 Proposed Meeting Dates for the Water, Waste and Sewer Advisory Committee for 2012

That the Water Waste and Sewer Advisory Committee meet on the following dates, prior to the Local Government election to occur on 8 September, at which time the committee will be disbanded:

10

- 10 May 2012
- 23 August 2012

Management Comment WW&S 4.1.1

15

Management endorses the proposed meeting dates.

Committee Recommendation WW&S 4.2.1

20 STP Flow and Reuse Data

1. That the Water, Waste and Sewer Advisory Committee note the report.
2. That an additional column be added next to BVSTP (Sewer Flows page 5) to indicate the sewer overflow at SPS4003.
3. That staff consider reviewing the KPIs for reuse (Recycled Water page 5 - be revised to reflect a percentage of treated effluent rather than quantity).

25
30 Management Comment WW&S 4.2.1

The additional column pertaining to the overflow status of SPS 4003 at Mullumbimby can be provided. It should be noted there has been no overflow from this pumping station since completion of the Brunswick Valley sewerage augmentation.

35

Staff can review the KPI used for recycled water use. A percentage approach could be used but it will be necessary to correlate this to rainfall and seasonal factors to make it meaningful. The current approach is simple and broadly reflects the reality that on the north coast treated effluent is used when it is dry and not used when it is wet.

40

Committee Recommendation WW&S 4.3.1

Myocum Landfill - Noise Assessment

45 That the information in this report be received and noted by the Water, Waste and Sewer Advisory Committee.

Management Comment WW&S 4.3.1

50 The Committee received a report detailing noise management issues and mitigation at the Myocum Landfill.

Committee Recommendation WW&S 4.4.1

55 Myocum Landfill – Landfill Gas and Odour Management

That the information in this report be received and noted by the Water, Waste and Sewer Advisory Committee.

Management Comment WW&S 4.4.1

5

The Committee received a report detailing odour mitigation and landfill gas recovery at the Myocum Landfill.

Committee Recommendation WW&S 4.5.2

10

Waste Management Strategy

The Draft Waste Management strategy (#1193349) was distributed to committee members at the meeting.

15

2. That staff receive comments out of session from members of the committee by 15 April in relation to the draft report.

Management Comment WW&S 4.5.2

20

Comments from the committee members will be considered prior to reporting the draft final of the Waste Management Strategy to the Committee at the 10 May meeting.

Committee Recommendation WW&S 4.6.2

25

Waste Management Fees and Charges

The latest draft of the Waste Management Fees and Charges was distributed to committee members at the meeting (#1175156).

30

2. That committee members are invited to send any comments on the draft by 15 April to Cr Staples or Cr Tabart for raising with management.

Management Comment WW&S 4.6.2

35

Any questions raised will be addressed in the process for reporting the 2012/ 13 Fees and Charges.

Financial Implications

40

Financial implications have been addressed as relevant in the reports to the Committee

Statutory and Policy Compliance Implications

45

Statutory and policy implications have been addressed as relevant in the reports to the Committee

COMMUNITY INFRASTRUCTURE - CONFIDENTIAL REPORT

Report No. 16.1. CONFIDENTIAL Tender Assessment – Foamed Bitumen Stabilisation 2012-0001

5 **Executive Manager:** Community Infrastructure
File No: ENG082000 #1212933

Principal Activity: Roads, Drainage and General Construction

Summary: At the Ordinary meeting on 1 December 2011, Council resolved [11-954] to prepare and advertise tenders for Foamed Bitumen Stabilisation using the open tendering method.

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005.

RECOMMENDATION:

- 10 1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely Tender Assessment, Foamed Bitumen Stabilisation 2012-0001.
- 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 tenderers, could adversely affect Council’s ability to contract with preferred tenderers or could affect Council’s ability to attract competitive tenders in the event that fresh tenders are
- 30 invited.

Attachments:

- 35 • **CONFIDENTIAL** Foamed Bitumen Tender Assessment Panel Recommendation Report #1210943 [6 pages]..... **Annexure 24**

CORPORATE MANAGEMENT - CONFIDENTIAL REPORT

Report No. 16.2. CONFIDENTIAL Expression of Interest Lease Former Telstra Depot

Executive Manager: 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 Council 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 4(a)
- CONFIDENTIAL Memorandum, EM Environment and Planning #1182375 [1 page] Annexure 4(b)
- CONFIDENTIAL Assessment Panel Recommendation Report #1198615 [6 pages]Annexure 4(c)
- CONFIDENTIAL Draft Lease Agreement #1152033 [11 pages] Annexure 4(d)