

NOTICE OF MEETING



STRATEGIC PLANNING COMMITTEE MEETING

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

Venue	Council Chambers, Station Street, Mullumbimby
Date	Thursday, 24 May 2012
Time	9.00am

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

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

Graeme Faulkner
General Manager

#1230307
Distributed 17/05/12

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.

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BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

3.1 Strategic Planning Committee Meeting held on 29 March 2012

4. NOTICE OF MOTION

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NOTICE OF MOTION

Notice of Motion 4.1. Protecting Local Food Production and Encouraging Environmental Repair of Rural Land.

COR405527 #1227048

5

I move that Council receive a report discussing options and scoping guidelines to:

1. Develop a local production ratings subcategory for farmland.
- 10 2. Develop incentives for rural landholders to undertake environmental repair including potential to acknowledge the community benefit through the rating system.
3. Identify other measures Council may undertake to support local food production.

15

Signed: Cr Basil Cameron

Councillor's Background Notes:

20

1. Local Production Rating Subcategory

25

Many rural landowners in Byron Shire grow food and other products for sale and consumption through local markets and businesses. In many cases, this activity is relatively small scale and low impact. Incomes are not high, may be marginal or secondary and are sometimes used to offset the costs of environmental repair that protect and extend biodiversity. Clearly these efforts contribute much towards a more sustainable and resilient community. Such efforts need to be encouraged and supported.

30

Currently smaller producers on lower incomes are not able to obtain a farmland categorisation for rating purposes and are financially penalised by the higher cost residential rating category. This is because of the need to demonstrate that the farming activity is the 'dominant use' of the land and that it has a 'substantial commercial purpose' (Sec. 515, LGA). There is a lack of flexibility in the application of these terms. For example, small-scale production is often relatively intense and may occupy a small area of land in a larger holding. Even if such intense production may be viewed as having a substantial commercial purpose, it may not meet the dominant use test. Where the remainder of the land is being managed to protect and extend biodiversity, the imposition of the residential rating is inequitable, especially where significant costs may be associated with such management. In short, the application of the residential rating to such producers acts as a disincentive for sustainable local food production.

40

The Local Government Act acknowledges the need to apply the legislative tests in Section 515 in a variety of circumstances. Sec 529 provides that 'sub-categories' may be determined for farmland and that rates 'may be different for different sub-categories'.

45

LOCAL GOVERNMENT ACT

529 Rate may be the same or different within a category

50

- (1) Before making an ordinary rate, a council may determine a sub-category or sub-categories for one or more categories of rateable land in its area.
- (2) A sub-category may be determined:
 - (a) for the category "farmland"-according to the intensity of land use, the irrigability of the land or economic factors affecting the land, or

...

(3) The ad valorem amount (the amount in the dollar) of the ordinary rate may be the same for all land within a category or it may be different for different sub-categories.

...

5 A local production sub-category for the farmland rating provides an opportunity to assess small-scale producers on a more equitable basis with a greater emphasis on the economic factors as discussed above. Land managed to extend and protect HCV may be excluded for the purposes of determining categorisation.

10 **2. Recognising Community Benefit in Environmental Repair of Rural Land**

Commitment to environmental repair of rural land by landholders provides many benefits to the environment and community. The costs of undertaking environmental repair needs to be acknowledged. What incentives could Council develop to support landholders and encourage further environmental repair. As much of this activity may be undertaken independently of farmland production, options outside of the rating system need to be considered.

3. Supporting food production

20 What other measures might Council undertake to support local food production including for urban residents and non land owning residents?

Recommended priority relative to other Management Plan tasks:

25 High.

Definition of the project/task:

30 To provide a report outlining options for a revised rating system and other measures that support local food production and environmental repair of rural land. The report should discuss issues raised in the notes, but not be limited to the measures referred to in the notes. The reference to 'scoping guidelines' means to identify and discuss issues that will need to be addressed in possible guidelines, particularly for the proposed ratings subcategory.

35 Management Comments:

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

Clarification of project/task:

40 This Notice of Motion is requesting that Council receive a report outlining options for a proposed "Farmland rating" subcategory for rural landowners participating in local food production and that the report should also identify any other measures that could support local food production and environmental repair of rural land.

45 The development of the report on options related to the Rating Structure would be undertaken by the Executive Manager Corporate Management. The identification of other measures, other than through a revised rating structure, that could support local food production and environmental repair of rural land would be undertaken by the Executive Manager Environment and Planning.

50 Comments Executive Manager Corporate Management

The development of a proposed "Farmland 'rating subcategory for rural landowners participating in local food production, is one method identified in the Notice of Motion of developing incentives for rural landholders to undertake such an activity, and to acknowledge a community benefit through the rating system.

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Before making the ordinary rate, council may determine a sub-category or sub-categories for the "farmland" category.

A sub-category for 'farmland' may be determined according to the intensity of land use.

5 Insofar as intensity of land use is concerned, it is suggested that Council will need to look beyond the actual extent or area of land used and to focus on the actual intensity of the particular use, being the dominant use of the land.

10 Section 515 of the Local Government Act 1993 requires that the dominant use be for farming and lists a number of farming activities in its definition including:

15 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:

20 (a) have a significant and substantial commercial purpose or character, **and**
(b) be engaged in for the purpose of a profit on a continuous and repetitive basis (whether or not a profit is actually made).

(2) Land is not to be categorised as farmland if it is rural residential land.

25 The determination of significant and substantial commercial purpose is outlined in the Division of Local Government "Council Rating and Revenue Raising Manual" which suggests
"In order to determine whether the farming has a significant and substantial commercial purpose or character, it is legitimate for council to enquire whether the particular activity or activities carried out are "too slight" or "too minor" to be reasonably regarded as having the requisite degree of commercial purpose or character. Thus in case of farming activities producing very small returns, it may be difficult, if not impossible, to designate those activities as a business having significant and substantial commercial purpose or character."

35 If the farming activities on any rural land do not have a significant and substantial commercial purpose or character, and are not engaged in for the purpose of profit on a continuous and repetitive basis, that land may be defined as being *rural residential* land.

40 Under the Local Government Act 1993, *rural residential* land, cannot be categorised as farmland, and therefore, in turn cannot be sub-categorised in any designated sub-category of farmland. The dictionary to the Local Government Act 1993 defines rural residential land as

(a) is the site of a dwelling, and
(b) is not less than 2 hectares and not more than 40 hectares in area, and
45 (c) is either:
(i) not zoned or otherwise designated for use under an environmental planning instrument, or
(ii) zoned or otherwise designated for use under such an instrument for non-urban
50 purposes, and

(d) does not have a significant and substantial commercial purpose or character.

55 It may be possible for Council to make a sub-category for 'local production' based on the intensity of the farming activities being carried out on the land, however, the properties within that sub-

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category would initially have to qualify for farmland under Section 515 of the Local Government Act 1993.

5 The requirements for the making of any rate within a sub-category of 'farmland' are the same as the making of an ordinary rate, as defined in Section 532 of the Local Government Act 1993. Therefore, given the time constraints for the making of rates and charges for the 2012/2013 rating year, any such sub-category of farmland would need to be taken into consideration in a review of the rating structure for the 2013/2014 rating year. In addition, if Council were to establish a local production rating subcategory for farmland, it would need to clearly define what the criteria is to
10 apply to determine 'local production' aside from the tests to establish farmland rating.

15 Those property owners practicing the protection of the environment and environmental biodiversity do not qualify for 'farmland' under Section 515 of the Local Government Act 1993 as these activities do not have a significant and substantial commercial purpose and are not engaged in for the purpose of a profit on a continuous or repetitive basis.

20 It also needs to be recognised that the potential to create the ability of a ratepayer to attract a lower general rate through a sub categorisation may cause a redistribution of the rating yield and subsequent increase in general rates to other rating categories/sub categories given that Council would still levy the same rate income allowable overall.

Comments Executive Manager Environment and Planning

25 In addition to the comments to be provided in the report on a revision of the rating structure, the report will need to also identify any other measures that could provide incentives and/or support local food production and the environmental repair of rural land.

Executive Manager responsible for task implementation:

30 Executive Manager Corporate Management and Executive Manger Environment and Planning.

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

35 The preparation of the report will impact on other projects and/or tasks being undertaken by the Finance section, as it will require a review of the current structures against any proposed structures to estimate the financial implications.

Financial and Resource Implications:

40 The preparation of the report will be undertaken within existing budget allocations, although there will be a minimal impact on staff resources.

45 The financial implications associated with any revised rating structure or any other measures developed to support local food production or environmental repair of rural land will be detailed in the report to Council.

Legal and Policy Implications:

The legal and Policy Implications are as detailed in the above comments.

CORPORATE MANAGEMENT – EXECUTIVE MANAGER'S REPORT

Report No. 5.1. Nomination of Voting Delegates to Establish "One Association"

5 **Executive Manager:** Corporate Management
File No: COR405000 #1229051

Principal Activity: Corporate Management – Administration and Governance Services

Summary: The Executive Committees of both Associations (Local Government Association (LGA) and Local Government and Shires Association (SA)) each separately took important formal steps to progress the proposal to establish "One Association" to the next stage, which is to have the proposal submitted to a secret postal ballot of delegates of the members of each Association.

This report provides Council with an update regarding the progress towards One Association, outlines the next steps and what Council needs to do next. A number of Frequently Asked Questions have been provided at Annexure 3.

RECOMMENDATION:

10 **That the Strategic Planning Committee resolve under delegated authority to nominate three Councillors as Council’s voting delegates to take part in the forthcoming secret ballot to deal with the matter of One Association, and that their names and personal postal addresses be forwarded to the Association to form the Roll of Voters.**

15 **Attachments:**

- 20 • Frequently asked questions #1228171 [4 pages]**Annexure 3**

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Report

5 On 17 April 2012 the Shires Association ("SA") Executive and on 20 April 2012 the Local Government Association ("LGA") Executive passed the formal resolutions required to progress the One Association matter to go to a vote of the members' delegates.

The SA Executive unanimously resolved in favour of the resolutions. The LGA Executive adopted the resolutions by a majority of 21 to 3.

10 The formal documentation has been lodged with Fair Work Australia. Shortly Fair Work Australia will engage the Australian Electoral Commission to undertake the secret postal ballot of members' delegates.

15 It is important to note that there are actually two separate secret postal ballots; one will be a ballot of LGA member's delegates and the other will be a ballot of SA member's delegates. Both ballots need to achieve a majority of "yes" votes to enable the formation of One Association.

20 It is anticipated that the ballots will occur before the September 2012 Local Government general elections but exact timing will depend of Fair Work Australia.

Frequently asked questions are shown at Annexure 3.

Financial Implications

25 Council's subscription to the Local Government Association of NSW for 2011/12 was \$27,500. As Council is not a member of the Shires Association, no subscription is currently paid to that organisation. At this time, no indication has been provided as to what the level of subscription fees will be if One Association is formed and Council becomes a subscribing member to the new organisation.

30

Statutory and Policy Compliance Implications

Byron Shire Council is an Ordinary member of the Local Government Association of NSW with a population of approximately 32,600 (ABS). This entitles Council to appoint 3 voting delegates.

ENVIRONMENT AND PLANNING – EXECUTIVE MANAGER'S REPORTS

Report No. 5.2. Draft Roadside Vegetation Management Plan – Public Exhibition

5 **Executive Manager:** Environment and Planning
File No: PLN656500 #1211270

Principal Activity: Land and Natural Environment

Summary: Road reserves in Byron Shire include vegetation of high conservation value including threatened species and endangered ecological communities.

In 2011 Council received funding from NSW Environmental Trust for a project titled *Protecting and managing significant roadside vegetation in Byron Shire*. This includes preparation of a Roadside Vegetation Management Plan (RVMP).

The development of a RVMP provides a framework for implementation of best practice vegetation management along the shires' roadsides. The project also involves the preparation and delivery of training to ensure effective uptake of the plan by relevant Council staff and contractors and preparation of a handbook to guide on-ground works.

The draft RVMP has been prepared and is now ready for public exhibition and consultation.

RECOMMENDATION:

10 **That the Strategic Planning Committee resolve under delegated authority to place the draft Roadside Vegetation Management Plan (Annexure 1, #1227254) on public exhibition for a period of 28 days.**

15 **Attachments:**

- Draft Roadside Vegetation Management Plan #1227254 [101 pages].....**Annexure 1**

Report

5 Road reserves in Byron Shire include vegetation of high conservation value including threatened species and endangered ecological communities. In some areas the remnant vegetation within road corridors is of increased significance as the only vegetation retained within a landscape, providing critical habitat and connectivity values. Roadside vegetation is highly visible to the public providing scenic values and also plays a significant role in the dispersal of weed species which significantly threaten the environmental and scenic values. The lack of a best practice framework for management of roadside vegetation presents a significant threat to biodiversity values in the Shire.

10 The Byron Biodiversity Conservation Strategy identifies the preparation of a Roadside Vegetation Management Plan (RVMP) as a high priority.

15 In 2011 Council received funding from NSW Environmental Trust for a project titled 'Protecting and managing significant roadside vegetation in Byron Shire'. This included preparation of a RVMP.

20 The development of a RVMP provides a framework for implementation of best practice vegetation management along the Shires' roadsides. The project also involves the preparation and delivery of training to ensure effective uptake of the plan by relevant Council staff and contractors, preparation of a field booklet to guide roadside management, and funding to implement high priority actions from the completed RVMP.

25 Council has an existing *Rural Road and Roadside Land Management Plan (RRRLMP)*. This plan focuses on soil erodibility and aims to minimise erosion and other environmental impacts during capital and maintenance works of roads. The RVMP ties in with the RRRLMP however focuses on protecting the significant conservation values of roadside vegetation including threatened species and endangered ecological communities.

30

Planning process

The following three components of this project is overseen by a steering committee:

- 35
1. Roadside survey and development of GIS database
 2. Development of the RVMP
 3. Implementation of plan

40 A steering committee was formed in May 2011 which includes Team Leader Natural Environment, Ecologist, Manager Infrastructure Planning, Works Manager and Superintendent Parks. The steering committee has met regularly to provide advice and guidance on the implementation of the project. The range of staff involved in the steering committee ensures a range of views are represented in the development of the plan.

45 The RVMP has been developed to be consistent with the *'NRCMA Region LGA Rural Roads and Roadsides Land Management Strategic Plan'*, the NSW Roadside Environment Committee's *'Roadside Vegetation Management Guidelines for Authorities'*. The project has been identified and discussed with the Northern Rivers Natural Resource Managers group and the Northern Rivers Catchment Management Authority.

50 ***Roadside survey and development of GIS database***

55 A detailed survey of vegetation within all rural roads reserves was carried out in late 2011. The survey involved visual vehicle based observation combined with onsite survey where capture of additional detailed information was necessary. The survey gathered a wide range of data using handheld GPS units. This data included points and polygons attributes of vegetation type, vegetation conditions, threatened species, endangered ecological communities, significant weed

occurrences, weed abundance, evidence of community works and heritage values. The results from this survey were then incorporated into a GIS database which was used to inform the development of the RVMP as well as a valuable resource to monitor vegetation change over time.

5

Development of the Roadside Vegetation Management Plan (RVMP)

The RVMP has the following aims

- Protect significant conservation values, including threatened species and endangered ecological communities;
- Balance ecological conservation with road management;
- Outline the preferred management techniques for roadside vegetation within the project area;
- Improve Council's capacity to protect, restore and minimise future damage to significant roadside vegetation by promoting improved management practices.

15

A consultant was engaged to prepare the RVMP in December 2011. The RVMP has been informed by the results of the roadside survey, existing threatened species records, high conservation value vegetation mapping, wildlife corridor mapping and Council's chemical sensitive register.

20

All roads reserve vegetation was assigned a conservation value category (low, medium and high) based on ecological attributes. Guidelines for management actions within each zone were developed in order to protect the environmental values within each zone. In addition general management principals for roadside vegetation management have been included addressing protection of significant flora and fauna habitat, weed control, machine hygiene and vegetation treatment methods. Erosion and earthworks are not covered in detail instead the *Rural Road and Roadside Land Management Plan* (RRRLMP) has been referred to where relevant. The plan also identifies priority areas for revegetation to improve landscape connectivity and reduce long term maintenance costs where possible.

30

Consultation has been held with a range of council staff who are involved in roadside and vegetation management, many of who have provided comment on a working draft RVMP. In addition, consultation has been held with Far North Coast Weeds and Essential Energy during the development of the plan. During the planned public exhibition period a stakeholder workshop will be conducted which will allow all stakeholders and community members to discuss and provide comments on the draft RVMP. These comments will be considered and incorporated into the final RVMP.

35

Preparation of a roadside handbook

40

Following the completion of the RVMP a roadside handbook will be developed that will be distributed to staff and contractors involved in roadside management and will provide a ready-reference guide to the RVMP. The handbook will contain maps covering all road segments highlighting the conservation values, outlining the specific management requirement as well as general management principals. The handbook will also include information on identification of significant weeds species. The book will be designed to be long lasting with laminated pages. The handbook content and layout will require approval from the project steering committee before publishing.

45

Delivery of staff training

50

Staff and contractor training is a key component in order to ensure the successful implementation of the RVMP. Training will be delivered by the consultants preparing the plan as well as council staff involved in the Plans development. Training will cover detail of the Plan, use of the handbook, plant identification and will highlight the changes in roadside vegetation management

55

regimes. An on-going training program will also be developed to ensure new staff and contractors are familiar with the RVMP and skills are being refreshed and improved.

Financial Implications

- 5 Total project cost \$114,000 (includes \$99,000 grant from Environmental Trust and \$15,000 from biodiversity work program)

Task	Cost	Funding origin
Roadside survey and development of GIS database	\$60,000	NSW Environmental Trust
Plan preparation, production of handbook and staff training	\$15,000	Biodiversity works program
Implementation of high priority actions	\$30,000	NSW Environmental Trust
Materials, publicity, administration	\$9,000	NSW Environmental Trust
Total	\$114,00	

- 10 Ongoing implementation of the RVMP will be dependant on roadside management budget. Many of the changed practices recommended in the RVMP will not increase management cost; however some, such as installing a roadside marker system, will require upfront investment to ensure effective implementation. The NSW Environmental Trust funding allocates \$30,000 towards implementing high priority actions from the RVMP.

- 15 As per Resolution 11-432, funds from the former Biodiversity Extension Officer have been reallocate to an infrastructure maintenance conservation program budget, with expenditure on conservation initiatives, such as roadside vegetation management. This funding source provides an opportunity to implement actions outlined in the RVMP. Further detail on financial implication will be provided when the final RVMP is reported to Council.

20 **Statutory and Policy Compliance Implications**

There is a range of legislation that relates to management and protection of road reserves in relation to native and exotic vegetation as well as cultural heritage sites and objects. While some road maintenance activities are exempt activity under the *Roads Act 1993* and the *SEPP Infrastructure 2007*, others may require consideration and approval in relation to the following legislation:

- *Threatened Species Conservation Act 1995*
- *Environmental Protection and Biodiversity Conservation Act 1999*
- *Native Vegetation Act 2003*
- 30 • *National Parks and Wildlife Act 1974*
- *Noxious Weeds Act 1993*
- *Protection of the Environment Operations Act 1997*
- *Soil Conservation Act 1938*

- 35 In particular the Threatened Species Conservation Act 1995 and Environmental Protection and Biodiversity Conservation Act 1999 provide protection of threatened species and endangered ecological communities, many of these have been identified during the development of the RVMP. Development and implementation of RVMP is a high priority in the *Byron Biodiversity Conservation Strategy* and will assist Council in protecting and enhancing the biodiversity values of rural roadside and in meeting provisions of relevant legislation. It is also consistent with
- 40 Council policy No.11/007 – *Camphor Laurel Management in Byron Shire* and Council’s *Rural Roads and Roadside Management Plan*.

Report No. 5.3. PLANNING - Submissions report following second public exhibition for proposed major events clause – Amendment 151

Executive Manager: Environment and Planning
File No: PLN560065 #1224687

Principal Activity: Land and Natural Environment

Summary: The purpose of this report is to provide Council with details of the second public exhibition for the Planning Proposal to include a clause on Major Events in the *Byron LEP 1988*. This report also provides a brief analysis of the issues raised in the submissions received and provides options for consideration by Council.

Council received many submissions both for and against the planning proposal and staff previously made recommendations not to proceed. Should Council wish to proceed with the clause it is recommended that it be altered by removing the provision restricting the number of major music events to two per year.

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 the Strategic Planning Committee resolve under delegated authority to:

- 20 1. **Proceed with the proposed amendment to the Byron LEP 1988 to include a clause on Major Events with the following amendment:**
 - a) **Delete subclause 5(a); and**
- 25 2. **Review the *Events on Public and Private Land Policy* to determine where adjustments can be made to the criteria for major events to encourage smaller events to operate within the Shire.**

Attachments:

- 30 • Planning Proposal (as amended) for a clause on Major Events #1172797 [31 pages].....**Annexure 2(a)**
- Submission from Bluesfest summarising the petition and emails #1224236 [2 pages]..... **Annexure 2(b)**
- Summary of Splendour website issues from 1 Dec 2011 report #1226094 [2 pages].....**Annexure 2(c)**
- Submission from Byron United #1220998 [1 page]..... **Annexure 2(d)**
- 35 • Advice from DoPI Sep 2011 in relation to draft Byron LEP 2011 #1135631 [1 page]**Annexure 2(e)**

Note: Confidential copies of all submissions are provided to Councillors on CD. See #1229181

Report

5 Council at its meeting on 21 October 2010 resolved (**10-809**) to proceed with an amendment to the Byron LEP 1988 for inclusion of a clause on Major Events. A Planning Proposal was prepared and a Gateway determination granted in June 2011, followed by public exhibition in July 2011.

10 Council considered the submissions report at its meeting on 1 December 2011 and resolved (**11-977**) to further amend the Planning Proposal in line with the Major Events Policy. The resolution was as follows:

11-977 Resolved (relevant amended parts only shown below)

15 1. That Council amend the Major Events clause to read as follows:

65 Major Events

(1) In this clause major event means an outdoor music event **of any duration** that exceeds 6,000 patrons, participants and staff per day.

20 (2).....

(3).....

25 (4) Major Events shall only be permitted in the zone 1(a)(General Rural Zone), 6(a)(Open Space), 6(b) (Private Open Space) or 1(d) (Investigation Zone);

(5).....

30 (6).....

2. That Council remove reference to "Bluesfest" and "Splendour in the Grass" from the Planning Proposal.

35 3. That Council re-exhibit the draft amended clause with the amended definition of major event (Clause 65(1)) in relation to the Major Events Planning Proposal prior to submission to the Department of Planning and Infrastructure.

40 The Planning Proposal was amended accordingly, Annexure 2(a), and sent back to the Department of Planning and Infrastructure (DoPI) on 7 December 2011 for approval to re-exhibit. A second Gateway determination was granted to Council on 29 February 2012 with the same conditions as the initial Gateway. The conditions are set out below:

45 1. 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 must be made publicly available for **28 days**; and
(b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals.

50 2. Consultation is required with the following public authorities under section 56(2)(e) of the EP&A Act:
• Area Health Services
• Catchment Management Authority
• Department of Industry and Investment (Agriculture)
• Department of Primary Industries (Fisheries and Forestry)
55 • New South Wales Police Service

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- NSW Rural Fire Service
- Office of Environment and Heritage
- Roads and Traffic Authority
- State Emergency Service

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3. Council is required to consult with Byron United and provide a copy of the planning proposal and relevant supporting material to this organisation for its review.

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4. 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.

5. The LEP is to be completed by **30 June 2012**.

15 **Public Exhibition**

The amended Planning Proposal was placed on public exhibition for an extended period of thirty-six (36) days from Thursday 22 March to 26 April 2012 to take into consideration the Easter and Anzac Day holidays. Advertisements were placed in the Byron Shire News on two separate occasions and the proposal was placed at various CAP points around the Shire.

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During the exhibition period approx 10,000 submissions were received, most of which were in opposition to the clause and auto-generated through various websites. These submissions were largely in the form of either template-style emails or petitions and totalled approx 9,800. There were **134** individual submissions received, **42 (31%)** in favour of the clause and **92 (69%)** in opposition.

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There was a second submission received from Heydons Lawyers on behalf of *Bluesfest* (refer to submission #1224078 on the disc provided to Councillors). This submission again questions Council's authority on drafting a clause which is deemed to be outside the powers of the EP & A Act 1979 and anti competitive in nature. Councillors are referred to the confidential disc provided for copies of the submissions received.

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The Bluesfest petition (containing over 2000 signatures) together with over 6600 individual emails were submitted to Council as hard copies. These will be available for viewing in the Councillors' room prior to the meeting, as they have not been included on the Councillors confidential CD. A copy of the Bluesfest cover letter summarising the petition details of the email submissions received has been included as Annexure 2(b).

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40 **Discussion**

This report does not go into detail about the specific issues raised from the high volume of auto-generated submissions as these has already been covered in the 1st December 2012 Council report, and the responses to these remain largely identical. Instead, the table from the 1st December Council report has been included as Annexure 2(c) for a summary of the main issues generated through various websites. The main inclusions to the submissions on this occasion question why Council tightened the restrictions on 'major events' to capture all music events of 'any duration' given the high percentage of opposition to the clause previously.

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As mentioned above, Bluesfest have provided Council with hard copies of a petition along with approximately 6600 emails generated through their website. The petition and emails largely oppose the major events policy on the basis that it discriminates against music events and needs to be more liberal.

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An assessment of the 134 individual submissions to the proposed clause found that many of the same themes and issues detailed in the 1st December 2011 Council report were recurring. In response to the amended Planning Proposal defining major events as being carried out over "any duration", those in favour of the clause generally agree that this is a welcome restriction whereas those opposed see it as even more detrimental to the future of outdoor music within the Shire.

Byron United response:

Council was again required under the Gateway determination to consult with Byron United, Annexure 2(d). The main issues raised by Byron United are:

- Events are critical to ongoing economic development and injection of money to the region
- Strong opposition to the amendment
- Likely employment opportunities from North Byron Parklands
- Lack of supporting studies to suggest limitations to 2 events is necessary

North Byron Parklands (NBP)

In addition to the above submissions, a matter that has a significant impact on the proposed major events clause is the recent approval for North Byron Parklands (NBP). On the final day of the public exhibition period (26 April 2012) the Planning Assessment Commission (PAC) approved NBP's application in Yelgun, granting a series of annual trial events over a 5 year period up to the end of 2017 (see table below). Below is an extract from the PAC's approval:

'Three events per year will be permitted during the trial generally in accordance with the Table below. A maximum of 10 event days will be permitted each year during the trial, with a day allowed either side of the event for campers to arrive and depart. No event must exceed 4 event days.'

Number of trial	Large trial event	Medium trial event	Small trial event
First trial	Up to 25,000 patrons	Up to 15,000 patrons	Up to 10,000 patrons
Second trial	Up to 27,500 patrons	Up to 17,500 patrons	Up to 12,000 patrons
Third trial	Up to 30,000 patrons	Up to 20,000 patrons	Up to 13, 000 patrons
Fourth trial	Up to 32,500 patrons	Up to 22,500 patrons	Up to 14,000 patrons
Fifth trial	Up to 35,000 patrons	Up to 25,000 patrons	Up to 15,000 patrons

As evidenced in the table above, the approval for NBP could enable three (3) 'major events' as defined by the proposed clause to be carried out annually for the next 5 years. It should be noted that some of these events could be other than music events, ie Scout Jamboree or Writer's Festival and would therefore not be subject to the proposed clause. In a worst case scenario there could be three major outdoor music events at the NBP site not including the existing approval for Bluesfest which was granted for 10 years in 2010. Subsequently, there could possibly be four (4) 'major events' as defined in the proposed LEP amendment per annum that can be held within the Shire, significantly exceeding Council's draft Major Events clause limit of two (2).

In terms of major outdoor music events along the east coast, there may be signs of market saturation given that in recent years various promoters have called off similar events due to a lack of interest and market forces (eg. Homebake 2010). It is not unreasonable to expect this market saturation for major events in Byron Shire to be met by the four events which have been approved (possibly three at Yelgun and one at Tyagarah). To exceed this number of events in the future event promoters would need to focus on a wider demographic than the youth market often associated with events such as Splendour in the Grass.

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5 It is also noted that event promoters in Byron Shire will need to compete with similar events in Northern NSW and South East Queensland including; Woodford Folk Festival, Soundwave in Brisbane, the Big Day Out and Future Music Festivals on the Gold Coast, Reggaeifest in Ballina and the Bellingen Folk Festival.

Advice from Department of Planning & Infrastructure (DoPI)

10 Council previously sought direction from the DoPI on the draft clause and this advice was included in the 1 December Council report. The relevant extracts from that report are included below:

15 *Council sent a letter to the DoPI on 29 May 2011 seeking advice on how the draft clause could be incorporated into the draft Byron LEP 2012. Council's experience to date has been that local clauses that do not match the standard instrument model clauses have not been accepted by the DOPI. The letter also sought clarification on how the draft clause would be in keeping with model clause 2.8 Temporary use of land.*

A brief response was received from the DOPI and can be viewed as Annexure 1(e).

20 *As noted in the response, the DOPI touches on the fact that major events under the proposed clause could be approved as a permanent land use for an extended period of time which appears contrary to controls for major events as a temporary land use under the draft LEP. The response does not elaborate any further as to whether the proposed LEP clause can be accommodated in the draft LEP.*

25 *The second part of the response relates to the timing of the amendment and in particular as to whether it will be completed under the current Byron LEP 1988 or go out with the public exhibition of the draft LEP. Unfortunately this information is of no real benefit to Council as it does not address the issues raised in the letter to the DOPI and only adds to the uncertainty of how this proposed clause would translate into the draft LEP.*

30 To date the DoPI have not provided any further clarification about the translation of this proposed clause into the draft LEP or any assurance that it will be permitted in the new Standard Template LEP. As such, if Council were to proceed with the clause then it may only be effective for a limited period of time under the remaining life of the Byron LEP 1988.

Legal Considerations

40 As mentioned above, a second submission received from Heydons Lawyers on behalf of Bluesfest (refer to submission #1224078 on the disc provided to Councillors) questions whether the proposed amendment is outside the powers of the EP & A Act 1979 and anti-competitive in nature. In the absence of more comprehensive legal advice, it remains unclear whether the proposed amendment contravenes the objectives and powers under the EP&A Act and/or Competition and Consumer Act. Therefore Council may be exposing itself to litigation from numerous parties if the amendment proceeds without further legal advice.

Other Considerations

50 Notwithstanding the above issues, if Council decides to proceed with the proposed clause then it should also consider the impacts this may have on events which will be precluded (by this clause) from operating within the Shire. For example, as the clause relates to outdoor music events over 6,000 people then one day events which may attract 10,000 people where music is not the only attraction may be prohibited from taking place. This could apply to a cultural event such as the proposed 'Boomerang Festival' if it were to seek approval for an outdoor cultural and music event with numbers exceeding 6,000 persons. Over time this may lead to less diversity of outdoor cultural and/or music events in Byron Shire.

Obviously, from the perspective of workloads, with the draft Shire-Wide LEP to go on exhibition as soon as a s65 certificate is obtained, it would be preferable not to proceed further at all with this amendment. However, there are certain advantages within the draft clause that will assist to control major events, not the least being the restriction to certain zones. Other provisions within the clause are beneficial such as the prevention of major events from occurring within the Dec/Jan holiday period and preventing two major events from conflicting with each other by occurring at the same time.

Should Council agree with this scenario it could proceed to recommend that Subclause 5 (a) be deleted from the draft major events clause, as shown below (highlighted yellow):

65 Major Events

(1) *In this clause **major event** means an outdoor music event of any duration that exceeds 6,000 patrons, participants and staff per day.*

(2) *The objectives of this clause are to ensure major events:*

(a) *are conceived, promoted and well managed as sustainable events that have synergy, vibrancy and diversity;*

(b) *have effective and efficient resources allocated to the event;*

(c) *reflect existing and emerging communities whilst respecting and acknowledging the local Aboriginal heritage and traditions;*

(d) *conform with Council's long term strategic land use planning objectives;*

(e) *will not result in land use conflicts, are neighbourhood friendly and have any potential adverse impacts identified and managed;*

(f) *involve the community;*

(g) *are in keeping with Council's adopted ethical and equitable standards;*

(h) *are limited in scale; and*

(i) *respect the biodiversity of the region.*

(3) *Consent must not be granted to a major event except in accordance with this clause.*

(4) *Major Events shall only be permitted in the zone 1(a)(General Rural Zone), 6(a) (Open Space), 6(b) (Private Open Space) or 1(d) (Investigation Zone);*

(5) *Despite any other provision in this plan, development consent must not be granted for development for the purposes of a major event, if:*

(a) granting of development consent will result in more than two major events to be held in the Shire per calendar year;

(b) granting of development consent will result in the major event occurring at the same time as another major event to be held in the Shire;

(c) the major event will occur during the December/ January school holiday period for NSW and Queensland; or

(d) *the major event will have an adverse impact on biodiversity including native flora and fauna.*

(6) *When determining a development application for development pursuant to this clause, the consent authority must be satisfied that:*

5 (a) *the major event will not create significant changes to traffic flows, especially for emergency services;*

(b) *the major event is to be located so that it will benefit from existing road and other servicing infrastructure;*

10 (c) *the major event will provide opportunities for event patrons to utilise car pooling, public transport and bicycle hire to travel to the event;*

(d) *the major event will include efficient and effective waste minimisation and recycling strategies;*

(e) *the major event will have no significant adverse effect on the present or potential land use, including agricultural use, of the land or lands in the vicinity;*

15 (f) *the major event will not detract from the successful existing trade patterns within Byron Shire;*

(g) *the major event is in keeping with Council's adopted ethical and equitable standards; and,*

(h) *there will be no adverse impact on biodiversity including native flora and fauna.*

20 Removing subclause 5(a) will eliminate the most restrictive provisions of only 2 major events per year whilst retaining the other subclauses which will assist staff in regulating applications for major outdoor music events at the development assessment stage.

Government Agency Referrals

25 A response was received from the RFS which reiterated the points made in their previous submission regarding the inclusion of an additional clause to ensure major events comply with the Bushfire legislation if they are on bush fire prone land. No comments were received from any of the other public authorities consulted as part of the conditions in the Gateway determination.

Conclusion

30 In light of the various issues raised through legal opinion, public submissions and comments from the Department of Planning and Infrastructure, combined with the uncertainty of the proposed clause being transferred into the draft SI LEP and the recent approval for NBP to hold 3 events per annum over the next five years, Council could resolve not to proceed with the draft Major Events clause.

40 Given that development applications are assessed on their individual merits it is at the DA stage where an appropriate assessment of any adverse impacts relating to environmental, social or cumulative impacts can be undertaken. For example, limited consents can be issued which allow for monitoring and evaluation of events on a yearly basis and which also give Council more

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flexibility with imposing conditions and the ability to refuse consent if an event is deemed to significantly impact on the locality.

5 On the other hand, there are benefits in altering the major events clause to delete the number of events permitted annually but retaining the other provisions to assist staff when assessing applications. Due to workloads and timeframes this is not the preferred option but is one available to Council if so desired.

10 For either of the above options, Council is encouraged to review the *Events on Public and Private Land Policy* for the purpose of examining where adjustments can be made to enable smaller events to meet the criteria where impacts on the community are less.

15 If Council decides to proceed with the proposed clause as currently drafted then it is strongly recommended that comprehensive legal advice be sought to ensure that the proposed clause is within the powers of the EP&A Act and does not contravene the Competition and Consumer Act. Pending this legal advice, Council would need to further justify any limit on the number of events within the LEP based on adequate research and other supporting information concerning impacts. This is likely to require additional budget, staff and external consultant resources, which in turn will further delay the progression of the draft LEP.

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Options:

There are three options available to Council:

25 Option 1: Not Proceed

Option 2: Amend the proposal to delete subclause 5(a) and resubmit to the DoPI for determination.

30 Option 3: Proceed as currently drafted

Option 1:

35 1. That the Strategic Planning Committee resolve under delegated authority not to proceed with the proposed amendment to the Byron LEP 1988 to include a clause on Major Events for the following reasons:

a) The proposed amendment may not be within the objectives and powers under the *Environmental Planning and Assessment Act 1979* and could expose Council to litigation;

40 b) It is uncertain whether the proposed clause will be permitted in the new draft Byron LEP 2012 and therefore may only have a limited life span under the *Byron LEP 1988*;

45 c) The combination of the established Bluesfest event and the recently approved trial events for 'North Byron Parklands' already exceed the draft Major Events clause by enabling 4 'major events' to occur annually; and

2. That a review of the *Events on Public and Private Land Policy* be carried out to determine where adjustments can be made to the criteria for major events to encourage smaller events to operate within the Shire.

50 Option 2:

1. That the Strategic Planning Committee resolve under delegated authority to proceed with the proposed amendment to the Byron LEP 1988 to include a clause on Major Events with the following amendment:

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a) Delete subclause 5(a); and

2. That a review of the *Events on Public and Private Land Policy* be carried out to determine where adjustments can be made to the criteria for major events to encourage smaller events to operate within the Shire.

Option 3:

1. That the Strategic Planning Committee resolve under delegated authority to proceed with the proposed amendment to the Byron LEP 1988 to include a clause on Major Events.

2. That Council forward the planning proposal contained in Annexure 2(a) (#1172797) to the Department of Planning and Infrastructure for drafting of the LEP amendment and finalisation.

Financial Implications

There are no financial implications if Council resolves not to proceed with the clause.

Should Council decide to proceed with the amendment then there will be additional costs involved in seeking specialist legal advice and reviewing the proposed clause by staff and possibly external consultants. Council would need to allocate additional budget for this work. There also may be significant financial implications if future legal action is undertaken against Council for proceeding with the clause.

Statutory and Policy Compliance Implications

There are no statutory or policy implications if Council resolves not to proceed with the clause.

However, should Council decide to proceed then it is recommended that further legal advice be obtained in relation to implications of the proposed clause. Council has only obtained preliminary legal advice at this time, which is limited and acknowledges the fact that more detailed advice should be sought if Council requires greater clarity on the legal implications of implementing such an amendment.