



Byron Shire Council



Agenda

Extraordinary Meeting Thursday, 21 March 2013

held at Council Chambers, Station Street, Mullumbimby
commencing at 3.00pm

Public Access relating to items on this Agenda can be made at 3.00pm on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink, appearing to read 'Ken Gainger'.

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary interests - Must be disclosed in meetings.

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

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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BUSINESS OF EXTRAORDINARY MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. REPORTS BY DIVISION

Corporate Management

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Environment and Planning

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CORPORATE MANAGEMENT - EXECUTIVE MANAGER'S REPORT

Report No. 3.1. Byron Bay War Memorial Swimming Pool – Lease/Management Agreement

Executive Manager: Corporate Management
Report Author: Trish Kirkland, Manager Property Contracts and Information Systems
File No: #E2013/11398

Theme: Corporate Management, Property, Procurement & Contract Services

Summary: The current agreement between Crown Lands, Council and Fishheads@Byron Pty Ltd for the lease and management of the Byron Bay War Memorial Pool Complex (which includes the Café) expires on 30 June 2013. There is no provision for a further term, and the agreement requires Fishheads to vacate the premises at that time.

The tenure of the land on which the Complex is located, is complex and involves four land parcels being part Crown Reserve R82000 (part Lot 10 DP 1049827), part Road Reserve and part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049). Rationalising these land tenure arrangements has been the subject of many reports to Council.

Negotiations between Council and Crown Lands are continuing in accordance with resolution **(12-689)**, however, the rationalisation of the land tenure remains unresolved.

Due to the long and complex legislative process to establish any new lease/management agreement over several different land tenure arrangements, it is necessary for Council, in relation to part Road Reserve and part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049, to again determine the future arrangements for lease/management of the Complex from 1 July 2013.

A report, in relation to part Crown Reserve R82000, is included in the Reserve Trust Committee Meeting Agenda for 21 March 2013.

10 **RECOMMENDATION:**

That Council:

- 15 1. **Not call for tenders for the proposed lease/management agreement of the Byron Bay Byron Bay War Memorial Swimming Pool Complex (the Complex) for the following reasons:**
- 20 a) **that Crown Lands (as Lessor) has refused to provide its consent to the calling of tenders to establish a new lease/management agreement;**
- 25 b) **the specialised nature of pool management means that there are limited persons with sufficient experience and skill; and**
- c) **a tenure of two (2) years would be unlikely to result in commercially acceptable tenders.**

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2. Delegate the General Manager to negotiate a new lease/management agreement for the Complex with the current lessees/managers (Fishheads@Byron Pty Ltd) on a “without admission”, “without prejudice” and “without obligation” basis and subject always to all necessary approvals from external agencies and resolutions of the Reserve Trust and Council being obtained.
3. Endorse the proposed lease/management agreement for the Complex be on the same basis of the existing deed of agreement, refer Annexure 1(b) (#E2013/10817) with the following changes:
- a) a 24 month period commencing 1 July 2013 and terminating on 30 June 2015;
 - b) the Rent and Management Fee will be indexed where necessary;
 - c) inclusion of a clause that has the effect of terminating the lease/management agreement without fault or liability to any party should the swimming pool filtration system or associated infrastructure fail during the term of the agreement.
- subject to meeting all statutory requirements relating to any new lease including public notice and public consultation processes, obtaining approval of the Minister of Lands, as well as the Minister for Local Government if necessary.
4. That the lease/management agreement be subject to the following:
- a) the lessees releasing Council, as Reserve Trust Manager, from all (real or perceived) claims, damages, liability, actions or the like, arising from anything to do with the tender of the Complex, leases or generally their occupation of the Byron Bay War Memorial Swimming Pool Complex at any time, such release to be in writing to the satisfaction of the General Manager and Council’s solicitors; and
 - b) the lessees personally guaranteeing that they will vacate the premises by the end date of the proposed new lease, namely 30 June 2015, and indemnifying Council as the Reserve Trust Manager, from all claims, damages, actions, liability or the like in the event that they do not so vacate the premises.
5. Delegate the General Manager to do all such things as may be necessary at the appropriate times to seek all necessary approvals, from the Crown Lands Division and Division of Local Government, for any new Lease/management agreement and to meet all statutory requirements relating to any new lease, including public notice and public consultation processes.
6. That in the event negotiations with the current lessees/managers are unsuccessful and/or are not concluded within this time, the General Manager is authorised to serve notice on the current lessees/managers to vacate the premises on or before 30 June 2013.
7. That in the event an acceptable leasing arrangement cannot be reached and notice is served on the current lessees/managers to vacate the premises, the management of the Complex revert to Council from 1 July 2013.

Attachments:

- Letter from Crown Lands Division dated 6 March 2013 #E2013/14651 [1 page]Annexure 1(a)
- Draft lease and management contract #E2013/10817 [56 pages]..... Annexure 1(b)

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- **CONFIDENTIAL** Report to Ordinary Meeting 20 May 2003 #DM386703 [4 pages] **Annexure 1(c)**
- **CONFIDENTIAL** Resolution 03-493 Ordinary Meeting 20 May 2003 #DM391644 [2 pages] **Annexure 1(d)**
- Letter from Dept of Local Government 30 April 2007 #DM673765 [3 pages]..... **Annexure 1(e)**
- Letter from Dept of Lands 15 May 2007 #DM677659 [2 pages]..... **Annexure 1(f)**
- 5 • Letter from Dept of Lands 27 January 2011 #DM1051473 [1 page]..... **Annexure 1(g)**
- Letter to Crown Lands Division dated 21 February 2013 #E2013/9010 [2 pages] **Annexure 1(h)**
- Letter to Fishheads@Byron Pty Ltd dated 21 February 2013 #E2013/10810 [2 pages] **Annexure 1(i)**
- Email from Fishheads@Byron Pty Ltd dated 8 March 2013 #E2013/15039 [3 page] **Annexure 1(j)**
- Letter to Division of Local Government dated 21 February 2013 #E2013/10821 [2 pages]... **Annexure 1(k)**
- 10 • **CONFIDENTIAL** Market rental valuation 2011 #DM1079500 [91 pages] **Annexure 1(l)**
- **CONFIDENTIAL** Letter from Maxwell & Co received 29 January 2007
#DM651634 [3 pages]..... **Annexure 1(m)**
- Letter from Minister of Lands received 19 March 2007 #DM664618 [1 page]..... **Annexure 1(n)**
- **CONFIDENTIAL** Report to Ordinary Meeting 26 April 2007 part agenda
15 #DM669395 [11 pages]..... **Annexure 1(o)**
- **CONFIDENTIAL** Report to Ordinary Meeting 9 April 2009 #DM838533 [10 pages]..... **Annexure 1(p)**
- Late Report to Extraordinary Meeting 1 July 2010 #DM968227 [10 pages]..... **Annexure 1(q)**
- Legal brief dated 11 March 2013 #E2013/15473 [2 pages]..... **Annexure 1(r)**
- **CONFIDENTIAL** Report to Ordinary Meeting held 22 November 2005
20 #DM556268 [6 pages]..... **Annexure 1(s)**

Report

Background

5 Byron Bay War Memorial Swimming Pool Complex (pool and café) (“the Complex”) is located upon four parcels of land being part Crown Reserve R82000 (part Lot 10 DP 1049827), part Road Reserve and part Council owned Operational Land (part Lot 4 DP 827049 and part Lot 5 DP 827049).

10 Lease/management agreements for the Complex were last tendered in 2000, and Council resolved **(00-905)** to accept the tender from Fishheads. The initial lease/management agreement was for a period of five years from 8 January 2001 to 7 January 2006.

15 Delays regarding the initial commencement and occupation of the premises resulted in Council resolving to grant a new lease **(03-493)** effectively extending the tenure of the lease to a revised termination date of 30 June 2007, refer Report to Ordinary Meeting 20 May 2003 (Confidential Annexure 1(c)) and Resolution (03-493) (Confidential Annexure 1(d)).

20 At its Ordinary Meeting held 22 November 2005, Council considered two additional requests from Fishheads in relation to their lease/management agreement, namely a request by Fishheads for extension of tenure, and a requested change to the lease/management agreement to permit alcohol consumption in the café/kiosk area of the complex, refer Confidential Annexure 1(s).

25 Council resolved **(05-874)** to modify the lease terms and conditions to allow BYO alcohol consumption within the café area and prohibit alcohol consumption in the rest of the complex; and with regard to the request to extend their tenure past 30 June 2007, resolved **(05-874)**:

2. *That Council advise the current lessees as follows:*

30 a) *That Council does not agree to their request to extend the lease term;*

e) *That the tenancy for the period following expiry of the lease will be determined by a public competitive tendering process.*

35 On 29 January 2007, Council received a letter from Maxwell & Co, Fishheads’ solicitor, seeking agreement, within 28 days, to the further extension of the lease term, refer Annexure 1(m). Council replied that a competitive tender for the lease would be undertaken with reference to resolution **(05-874)**.

40 After receiving a request from the Minister of Lands to postpone the tender of the lease to enable him to investigate allegations and complaints made by Fishheads, refer Annexure 1(n), Council considered alternative options for the immediate future management of the pool complex at its Ordinary Meeting held 26 April 2007, refer Confidential Annexure 1(o). Council resolved:

45 **(07-177)**

50 *“1. That as a matter of urgency Council seek advice from the Minister of Lands, Local Government, ICAC and Ombudsman regarding the recommended course of action (as detailed below) for dealing with a request from the Minister for Lands dated 19 March 2007 to postpone the tender for the ongoing management operation of Byron Bay War Memorial Swimming Pool.*

2. That the General Manager and Mayor contact the relevant Ministers and their officers to progress this matter and report back to Councillors by email and, if necessary, call an Extraordinary meeting.

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Recommended course of action for Byron Bay War Memorial Swimming Pool

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1. That Council, without being bound to enter into any new agreement, consider granting a proposed new lease for the Byron Bay War Memorial Swimming Pool (the Pool Complex) subject to:
 - 5 a) Agreement being reached on terms satisfactory to Council; and
 - b) Compliance with all statutory requirements.

2. That Council authorise the General Manager to negotiate, on a 'without admission', 'without prejudice' and 'without obligation' basis, with the current lessees of the Pool Complex regarding a proposed new lease of the premises to the current lessees subject to:
 - 10 a) the term of any proposed new lease commencing 1 July 2007 and terminating 30 June 2008;
 - b) the lessees personally guaranteeing that they will vacate the premises by the end date of the proposed new lease, namely 30 June 2008, and indemnifying Council from all claims, damages, actions, liability or the like in the event that they do not so vacate the premises;
 - 15 c) the lessees releasing Council from all (real or perceived) claims, damages, liability, actions or the like arising from anything to do with the tender of the Pool Complex, leases or generally their occupation of the Byron Bay Swimming Pool complex at any time, such release to be in writing to the satisfaction of the General Manager and Council's solicitors;
 - 20 d) the conditions of any proposed new lease being similar to the current lease with the General Manager authorised to require any alterations or additions deemed to be necessary;
 - e) negotiations on the terms and conditions of any proposed new lease and release being concluded by 16 May 2007 (to enable sufficient time for statutory requirements to be met and further reporting on the matter prior to 30 June 2007).

- 25 3. That Council authorise the General Manager to do all such things as may be necessary at the appropriate times to seek Ministerial approval of any proposed new lease and to meet all statutory requirements relating to any proposed new lease.

4. That Council request a report on the matter to go to a Reserve Trust Meeting to be convened at the earliest possible time after any successful negotiations have been concluded.

5. That Council receive a further report on the outcome of any Reserve Trust Meeting considering the matter, any negotiations and compliance with all statutory requirements, so that Council can make a final determination on the issue.

- 35 6. That in the event that any negotiations with the current lessees have been unsuccessful and/or have not been able to be concluded by 16 May 2007, that the General Manager be authorised to serve Notice on the current lessees, in accordance with any statutory requirements, requiring vacation of the premises by 30 June 2007.

- 40 7. That Council not call for tenders for any proposed new one year lease of the Pool Complex for the following reasons:
 - 45 a) That the proposed lease is for a period of 1 year only and therefore exempt from the requirement to call tenders pursuant to ss 46A(3) and 55(3) of the Local Government Act 1993; and
 - b) That, in any event, there are extenuating circumstances which prevent the calling of tenders at this time and that a satisfactory result would not be achieved by inviting tenders for the following reasons:
 - 50 i. Council is currently prevented from calling tenders as a result of a request from the Minister for Lands;
 - ii. The specialised nature of pool management means that there are limited persons with sufficient experience and skills in the local area;
 - iii. The proposed tenure of only 1 year is unlikely to result in commercially acceptable tenders.

- 55 8. In the event that an acceptable leasing arrangement cannot be reached, the pool complex revert to Council control until any necessary works are completed and acceptable agreements concluded on the issue of a new lease.

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3. *That the report of the closed part of the meeting is to remain confidential until such time as Council have awarded a tender for a minimum of 5 years of management of the Pool Complex commencing after July 2008, and all documentation evidencing a lease, tender contract and the like, have been signed by all parties and enjoy all necessary statutory approvals.”*

(07-178)

“Resolved that the draft minutes of Report No. 12.2 of this meeting be forwarded to the Directors General and the Ministers for the Department of Local Government and Lands.”

After seeking advice from the Minister of Lands, the Division of Local Government, ICAC and Ombudsman, Council; and receiving advice not to call tenders from Department of Local Government (refer Annexure 1(e)) and Department of Lands (refer Annexure 1(f)); Council again extended the tenure by granting a new lease/management contract with Fishheads to 30 June 2009 **(07-248, 07-414)** after considering a report at its Ordinary Meetings held 21 June 2007 and 23 August 2007, refer <http://www.byron.nsw.gov.au/meetings/2007-08-23-planning>; <http://www.byron.nsw.gov.au/meetings/2007-06-21-quarterly>.

At its Ordinary (Quarterly Review) Meeting held 31 July 2008, Council resolved **(08-442)** to undertake stage one (1), capital infrastructure renewal project at the Complex, refer <http://www.byron.nsw.gov.au/meetings/2008-07-31-quarterly>. At the same time, Council continued discussions with Crown Lands to resolve the land tenure issues at the Complex.

At its Ordinary Meeting held 9 April 2009, Council resolved to call separate tenders for each part of the Complex **(09-216)** - Swimming Pool separately to Café Building, refer Confidential Annexure 1(p).

At its Ordinary Meeting held 14 May 2009 Council resolved to rescind that resolution and adopted an alternate motion to pursue a new lease/management agreement with Fishheads **(09-336)**, refer Notice of Rescission Motion “9.2. Byron Bay War Memorial Swimming Pool Lease and Management” <http://www.byron.nsw.gov.au/meetings/2009-05-14-ordinary>.

At its Extraordinary Meeting held 25 June 2009 Council resolved to grant that new 2 year lease/management agreement to Fishheads **(09-525)**. This extended Fishheads tenure to 30 June 2011, refer <http://www.byron.nsw.gov.au/meetings/2009-06-25-quarterly>.

At its Ordinary Meeting held 12 November 2009, Council considered a report titled “Regional and Local Community Infrastructure Program (RCLIP) Round Two” that recommended the grant funding application to replace the filtration system and rebuild the plant room and associated infrastructure at the Complex, refer <http://www.byron.nsw.gov.au/meetings/2009-11-12-ordinary>. The resolution excluded the Complex filtration and associated infrastructure from the list of projects to be included in the grant funding application **(09-984)**.

At its Ordinary Meeting held 24 June 2010, Council considered a report titled “Byron Bay Memorial Swimming Pool – Stage 2 Works, refer <http://www.byron.nsw.gov.au/meetings/2010-06-24-ordinary>. This report advised the funding requirements for stage 2 infrastructure works from resolution **(08-442)**, and proposed stage 3 infrastructure renewal works required at the Complex. Council resolved funding for stage 2 works **(10-503)**, however, the stage 2 works and funding allocation has been on hold since resolution **(10-772)** ended the land tenure rationalisation negotiations based on a “land exchange” with Crown Lands.

At an Extraordinary Meeting held 1 July 2010, Council considered a report that recommended the final steps required to finalise a “land exchange” with Crown Lands to resolve the land tenure issues at the Complex **(10-555)** and resolved as recommended, refer Annexure 1(q).

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This resolution was rescinded by Council at its Ordinary Meeting held 7 October 2010, refer "9.1 Notice of Rescission Motion- Land Exchange with Land and Property Management Authority (LPMA)" (10-772) at <http://www.byron.nsw.gov.au/meetings/2010-10-07-ordinary>. This resolution had the effect of ending the negotiations between Council and Crown Lands to resolve the land tenure issues with the "land swap" proposal.

At its Ordinary Meeting held 10 March 2011, refer <http://www.byron.nsw.gov.au/meetings/2011-03-10-ordinary>. Council resolved to note the report (11-206), which provided an update on the land tenure issues at the Complex. The report included updated information in relation to correspondence from Crown Lands as a result of resolution (10-772). This report included advice from Crown Lands that it was not prepared to provide agreement to Council calling new tenders for the lease/management of the Complex, refer Annexure 1(g).

At its Ordinary Meeting held 9 June 2011, Council resolved to grant Fishheads a new lease for one (1) year, with a one (1) year option at the discretion of the Minister of Lands (11-470), refer <http://www.byron.nsw.gov.au/meetings/2011-06-09-ordinary>.

At its Ordinary Meeting held 22 March 2012, Council resolved to grant Fishheads the 12 month option to extend the lease/management agreement to expire 30 June 2013 (12-188), refer <http://www.byron.nsw.gov.au/meetings/2012-03-22-ordinary>.

At its Ordinary Meeting of 30 August 2012 Council considered a report titled "13.19. Byron Bay Memorial Pool – Crown Lands – Land Tenure Proposal", which provided advice from Crown Lands that they would consider any reasonable proposal to achieve rationalisation of the land tenure provided it ensured a strong retail business continued to operate on the Crown Reserve and there was no further unauthorised occupation of Crown Land by Council's infrastructure. The report included an "alternate proposal" to rationalise the land tenure at the Complex for Council's consideration, refer (<http://www.byron.nsw.gov.au/meetings/2012-08-30-ordinary>). Council resolved:

(12-689)

"1. That Council note this report.

2. That Council authorise the General Manager to prepare and submit to the Crown Lands Division, a proposal for the rationalisation of the land tenure on this site, based on the Alternate Proposal detailed in this report.

3. That Council request the Crown Lands Division to consider and provide comment on the proposal within 28 days of receiving the proposal.

4. That upon receipt of a response from the Crown Lands Division that a further Report be brought to Council."

(12-691)

"Resolved that Council commence action with the proposal as contained in Annexure 29(h)."

At its Ordinary Meeting held 25 October 2012, Council considered report "12.2 - 2012 Community Building Partnership Program Grant Applications" (<http://www.byron.nsw.gov.au/meetings/2012-10-25-ordinary>) that recommended the grant funding application to replace the filtration system and rebuild, in its current location, the associated plant room and other infrastructure at the Complex. Council heard representations, at public access, from Fishheads about relocating the filtrations system and associated infrastructure from its current location as part of their larger 'vision' for the future development of the Complex. At that time, Fishheads indicated the filtration system and associated infrastructure may or may not make it through another close/open season. After

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considering the report, Council resolved **(12-821)** to make a grant application and this excluded the infrastructural renewal project required at the Complex.

Current

- 5 The natural disaster damage from January 2013 long weekend storm, included damage to the filtration system's plant room building. As the building was already structurally degraded, the strong wind had further weakened the eastern wall allowing the roof to further push the north/east corner out to a dangerous degree. The plant room became structurally unsound and unsafe. Remediation works to the roof and north/east walls has been carried out to facilitate the reopening of the Complex to the public on 13 March 2013. It is unknown at this time if the cost of the remediation works will be covered by the natural disaster declaration funding.

The filtration system and associated plant room infrastructure remain at significant risk of failure.

- 15 In accordance with resolution **(12-689)**, Council wrote to Crown Lands Division on 10 September 2012 regarding the alternate land proposal, seeking a response within 28 days. At the time of writing this report, no formal response has been received. However, a meeting between Crown Lands and the General Manager is scheduled for 20 March 2013, to facilitate the progression of Council's preferred alternate proposal to rationalise the land tenure at the Complex.

- 20 The current agreement between Crown Lands, Council and Fishheads@Byron Pty Ltd (Fishheads) for the lease and management of the Complex expires on 30 June 2013. There is no provision for a further term, and the agreement requires Fishheads to vacate the premises at that time.

- 25 Fishheads have held lease/management agreements over the Complex continuously since 2001, with several new lease/management agreements being granted past the original tendered contract term of 5 years.

- 30 Crown Lands have not been prepared to agree to Council calling tenders to establish a new lease/management agreement until such time as the land tenure issues have been resolved.

Division of Local Government has provided similar advice that Council should review the land status prior to taking any further actions to tender for the lease of the Complex.

- 35 Council again needs to determine a course of action for ongoing management of the Complex from 1 July 2013.

The unresolved land issues severely constrain the options available to Council. Options available are set out below:

- 40 a) Temporary closure of the Complex

Temporary closure of the Complex would involve a number of considerations such as asset maintenance, security, safety, costs, and financial implications.

- 45 Closure of the Complex will mean no income generation for leasing or user charges commencing 1 July 2013.

- 50 Expenditure would be reduced, however, determining ongoing expenditure requirements will depend on the method of closure. The two closure methods are set out below:

- i) Complete shut down

- 55 Complete shut down means the pool shells would be emptied and safety fencing erected around each of the pool shells. All unsafe chemicals and equipment would need to be uninstalled from the Complex and extra security patrols would be required to protect the

assets and ensure safety. The one off costs of this are difficult to estimate, but the shut down could be organised quite quickly. Annual costs of security fencing and patrols are estimated between \$25,000 to \$35,000 per annum but final actual costs would be determined through a competitive procurement process.

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ii) Closed to the public

Under this method at the 30 June 2013, the Complex would be closed to the public and placed in "winter hibernation". If Council do not wish to completely shut down the Complex, the site will require the attendance of a pool technician with the requisite skills to maintain the pool and caretake the Complex from a maintenance and safety perspective. Council staff do not have the resources, experience or skill set to undertake the necessary tasks required to maintain "hibernation" of the pool and its associated infrastructure.

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The day-to-day tasks and costs associated with this process would need to be established, documented and a procurement process undertaken to attract interested parties with the required knowledge, skills and experience. Annual costs are estimated at \$60,000 but final actual costs would be determined through a competitive procurement process. This procurement process could take up to two months to complete with no guaranteed outcome. The costs associated with reopening the Complex to the public from "hibernation" are unknown but would be less than reopening it from complete shut down.

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b) A new lease/management agreement with Fishheads @ Byron Pty Ltd)

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A new lease/management agreement with Fishheads for two (2) years will keep the facility open to the public whilst the issues with land tenure continue to be resolved.

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In correspondence to Crown Lands Division, Council has sought the Minister's consent, as required by the Crown Lands Act, to negotiate another lease/management agreement to the incumbents and if so, under what terms and conditions. The correspondence to Crown Lands points out that as Council has not received a formal response the Council's "alternate proposal" to rationalise the land tenure at the Complex it is necessary to consider management options for the Complex from 1 July 2103, refer Annexure 1(h).

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The response from Crown Lands, refer Annexure 1(a) confirms they have no objection to the negotiation of a new agreement with Fishheads for a period of up to two (2) years on the basis that Council achieve a full separation of those financial transactions between Councils pool activities and the Trusts operation of the café. Refer to the Financial Implications section of this report in relation to the financial separation of the Crown Reserve lease income from Council's general fund.

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In correspondence to Division of Local Government, an update has been provided regarding rationalisation of land tenure at the Complex, and the Divisions comments in relation to not calling tenders and negotiating with the incumbents for a new lease/management agreement has been sought, refer Annexure 1(k).

At the time of preparing this report, no response from the Division of Local Government has been received.

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In order to meet the necessary deadline of 30 June 2013, should Council proceed with the recommendation, it was also necessary to obtain the current lessees/managers in principle agreement to an additional tenure by 8 March 2013. Consequently, correspondence was sent to Fishheads on a "without admission", "without prejudice" and "without obligation" basis seeking an indication of their intentions regarding a further lease/management term, refer Annexure 1(i).

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Council received a response, refer Annexure 1(j), from Fishheads expressing their interest in another 2-year lease/management agreement on the same terms and conditions, including the current annual rental value and management fee. The current rental value and management fee are:

5

Management Fee: \$184,634.34 ex GST, \$203,097.77 inc GST
Rent: \$206,389.00 ex GST, \$227,027.90 inc GST

10

When considering a new lease/management agreement with Fishheads in 2011, Council received, under cover of a memorandum, a copy of an updated market rental valuation, refer Confidential Annexure 1(l).

15

The management fee is comparable with that paid under the management contract for the Petria Thomas Swimming Pool, Mullumbimby, which is \$206,868.51 excl GST as last indexed in September 2012.

20

This report recommends the inclusion of a clause in the agreement that has the effect of terminating the agreement should the swimming pool filtration system or its associated infrastructure fail during the term of the agreement. This means that in the event of a failure, the agreement ends, with no fault or liability to any party, and the Complex would be closed to the public, as set out in a) ii above, until Council could determine a course of action about funding for infrastructure replacement or other alternatives.

25

At the time of preparing this report, legal advice had been sought on the form of such a clause and it is anticipated that the advice will be available for consideration by Council at the Ordinary Meeting, refer Annexure 1(r).

30

Inclusion of such a clause will be the subject of further negotiations with Crown Lands and Fishheads as required.

35

A copy of the draft lease/management agreement is contained at Annexure 1(b). The terms and conditions of the proposed lease/management agreement are exactly the same as the previous agreement, with the following exceptions:

40

- a 24 month period commencing 1 July 2013 and terminating on 30 June 2015,
- the Rent and Management Fee will be indexed where necessary,
- inclusion of a clause that effectively terminates the lease/management agreement without fault or liability to any party should the swimming pool filtration system or associated infrastructure fail during the term of the agreement.

45

Establishing a lease/management agreement over the Complex falls under three different Acts and requires different processes to be run successfully prior to the granting and execution of a new agreement.

50

These processes are complex and require certain steps to be undertaken within certain timeframes to meet the legislative requirements by 30 June 2013. As below:

55

- | | | |
|--|----|------------|
| • Legal advice received for new clause regarding filtration failure | by | 28/03/2013 |
| • Resolution as recommendations in this Report | | 28/03/2013 |
| • Resolutions as recommendations in the Reserve Trust Committee Report | | 28/03/2013 |
| • Acceptance of the endorsed lease terms and conditions by Fishheads | | 02/04/2013 |
| • Public Exhibition authorise advertising (Roads Act) | | 02/04/2013 |
| • Public Exhibition commence Advertising (Roads Act) | | 09/04/2013 |
| • Public Exhibition ends (Roads Act) | | 07/05/2013 |

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- Public Exhibition (Crown Lands Act) if required by 20/05/2013
- Letter from Crown Lands (providing consent) 24/05/2013
- Letter from DLG (if required) 24/05/2013
- Resolutions (Council) for granting lease, submissions, affix seal 13/06/2013
- 5 • Resolutions (Reserve Trust) for granting lease subject to Ministerial consent 13/06/2013
- Executed documentation required by 30/06/2013

10 In the event that negotiations with the current lessees are unsuccessful and/or not concluded within time, or Crown Lands do not provide final consent to the new lease/management agreement with the current lessees/managers, this report recommends a Notice be issued to the current lessees/managers to vacate the premises on or before 30 June 2013.

15 Should this occur, this report recommends that management of the Complex revert to Council from 1 July 2013. In this event, staff will likely have insufficient time and resources to secure the required skills, experience and knowledge to maintain the pool in "hibernation". It is, therefore, recommended in this report to undertake the necessary steps to achieve a complete shut down of the Complex in these circumstances.

20 This report provides the recommendations required to commence the processes required for option b) outlined in this report, including the need to determine, as Council did in 2007, 2009, and 2011 not to call tenders for a new lease/management agreement at the Complex.

Financial Implications

25 Current lease rental and management fees are set out below:

Management Fee:	\$184,634.34 ex GST,	\$203,097.77 inc GST
Rent:	\$206,389.00 ex GST,	\$227,027.90 inc GST

30 Plus CPI (all groups Sydney June 2013)

The proposed agreement will retain the same rental and management fee values, which will result in no impact to the draft 2013/2014 budget for these items.

35 Council has been requested by the Crown from 1 July 2013 to separate the rental payable for the kiosk lease from the General Fund. In 2012/2013 financial year and in previous financial years, Council had used the rental revenue within the General Fund as a means to offset the running costs of the Byron Bay Memorial Swimming Pool. In preparing the draft 2013/2014 budget estimates, the separation of the rental income requested by the Crown has been done on the following basis:

- The estimated rental revenue for the kiosk will continue to be transferred to the Crown Reserve for the Main Beach Reserve.
- 45 • The estimated revenue for the Byron Bay Memorial Pool will no longer be transferred to the Crown Reserve for the Main Beach Reserve.
- The estimated operating expenditure of the Byron Bay Memorial Swimming Pool will no longer be transferred from the Crown Reserve for the Main Beach Reserve.
- The estimated operating expenditure for maintaining public toilets on the Main Beach Reserve funded by the General Fund will now be funded from the Crown Reserve for the Main Beach Reserve.
- 50

The indicative draft 2013/2014 budget results for Council are based on the above separation and as such the requested separation of the kiosk rental from the General Fund by the Crown has been accounted for from 1 July 2013.

55

Statutory and Policy Compliance Implications

ICAC Guidelines

5 An open competitive selection process such as a tender or expression of interest process enables Council to demonstrate accountability and transparency and makes it difficult for private interests to influence, or be seen as influencing the outcome of a contract.

The “*ICAC Guidelines for managing risks in direct negotiations*”, May 2006”, states

10 “*It is not acceptable to automatically reappoint an incumbent whose fixed term contract is about to expire.*”

15 “*...however, there are scenarios where it may be impossible to test the market or to use a competitive process. In other cases, a competitive process may be possible but for various reasons may be so impractical or expensive that direct negotiations are the most acceptable way to fulfil a contract. In these cases, direct negotiations can be justified.*

20 “*Agencies should also ensure that they fully examine claims that direct negotiations are the most suitable course of action and that they explore any alternative courses of action. ... agencies should also rely on common sense and the general principles outlined in “First principles” ...to guide their decisions.*”

25 “*Doing business with government is a key driver of economic activity and many private firms and not-for-profit organisations rely on access to government contracts in order to stay in business. Direct negotiations can unfairly exclude capable firms and employ staff, pay taxes and contribute to the economy.*”

30 “*Obtaining best value for public money is a fundamental principle of public sector work. When it is known that there are other proponents who could feasibly compete for a contract, agreeing to direct negotiations with a single proponent increases the risk that the agency may not obtain best value for money. When a proponent does not have to compete for contracts there is a higher risk that the proponent may unjustifiably increase profit margins, exaggerate expenses or otherwise boost returns on the contract.*

35 “*Accountability and transparency are related concepts. Accountability involves agencies being able to demonstrate and justify to an appropriate authority how public resources are used. This involves allocating and taking responsibility for past and expected future performance. This necessarily involves keeping good records that leave an audit trail.*

40 “*Transparency means an agency must be prepared to open a project and its processes to scrutiny and possible criticism. This also involves providing reasons for all decisions that are taken and providing appropriate information to relevant stakeholders.*

45 “*Demonstrating accountability and transparency gives proponents and taxpayers additional confidence in the decisions being made, and also reduces the opportunities for corrupt conduct and fraud.*

50 “*The selective and closed nature of direct negotiations can create suspicions of favouritism and bias, consequently making it difficult for public agencies to justify the decisions they make. Exclusive negotiations that are underpinned by commercial-in-confidence provisions are more vulnerable still to perceptions of a lack of accountability and transparency.*

55 “*Direct negotiations (or the possibility of direct negotiations) can create an environment where private interests could influence or be seen to influence the outcome of the contract. In contrast, an open, competitive selection process, with a predetermined business plan and selection criteria and an accompanying audit trail, make it difficult for private interests to influence, or be seen to influence, the outcome of a contract”*

Roads Act 1993

Division 2 Short-term leases of unused public roads

153 Short-term leases of unused public roads

- 5 (1) A roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.
- 10 (2) However, a lease may not be granted under this Division with respect to land that has been acquired by RMS under Division 3 of Part 12 (being land that forms part of a classified road) except by RMS.
- (3) A lease granted under this Division may be terminated by the roads authority at any time and for any reason.

154 Public notice to be given of proposed lease

- 15 (1) Before granting a lease under this Division, the roads authority must cause notice of the proposed lease:
- (a) to be published in a local newspaper, and
- (b) to be served on the owner of each parcel of land adjoining the length of public road concerned.
- 20 (2) The notice:
- (a) must identify the public road concerned, and
- (b) must state that any person is entitled to make submissions to the roads authority with respect to the proposed lease, and
- 25 (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

155 Public submissions

Any person may make submissions to the roads authority with respect to the proposed lease.

156 Decision on proposed lease

- 30 (1) After considering any submissions that have been duly made with respect to the proposed lease, the roads authority may grant the lease, either with or without alteration, or may refuse to grant the lease.
- (2) If the roads authority grants a lease, the roads authority must cause notice of that fact to be published in a local newspaper.
- 35

157 Special provisions with respect to short-term leases

- (1) The term of a lease, together with any option to renew, must not exceed:
- (a) except as provided by paragraph (b), 5 years, or
- 40 (b) in the case of a lease of land that has been acquired by the roads authority under Division 3 of Part 12, 10 years.
- (2) A person must not erect any structure on land the subject of a lease under this Division otherwise than in accordance with the consent of the roads authority. Maximum penalty: 10 penalty units.
- 45

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- (3) Such a consent may not be given unless the roads authority is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can easily be demolished or removed.

5 Local Government Act 1993

8 The council's charter

- (1) A council has the following charter:

- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible
- to engage in long-term strategic planning on behalf of the local community

55 What are the requirements for tendering?

- (1) A council must invite tenders before entering into any of the following contracts:

- (g) a contract for the disposal of property of the council,
- (h) a contract requiring the payment of instalments by or to the council over a period of 2 or more years,
- (i) any other contract, or any contract of a class, prescribed by the regulations.

- (3) This section does not apply to the following contracts:

- (e) a contract for the leasing or licensing of land by the council, other than the leasing or licensing of community land for a term exceeding 5 years to a body that is not a non-profit organisation (see section 46A)

377 General power of the council to delegate

- (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),
- (t) this power of delegation,
- (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.

- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council.

ENVIRONMENT AND PLANNING - EXECUTIVE MANAGER'S REPORT

Report No. 3.2. Interim Rock Protection Works - Border, Don and Manfred Streets, Belongil

Executive Manager: Environment and Planning

Report Author: Ray Darney, Phillip Holloway, Shannon McKelvey - Executive Managers

File No: #E2013/17240

Theme: Environment, Land and Natural Environment
Community Infrastructure
Corporate Management

Summary: Part A – Options for potential interim rock protection works, Border, Don and Manfred Streets
Part B – Peer review of Manfred Street Works geofabric design
WorleyParsons (2012)

10 **RECOMMENDATION:**

1. That Council, authorise the General Manager to pursue options for rock/hard materials for the purpose of providing interim protection at Manfred, Border and Don Streets, Belongil; noting that this is an interim position until a long term coastal management policy has been adopted.
2. That within the Belongil Beach area the prioritisation of sites for reconsideration of interim protection works be Manfred, Border then Don Street sites (noting that this is an internal prioritisation only for these sites and depending on prevailing circumstances there may be higher priority areas or projects in the Shire).
3. That the Old Jetty Site not be considered further by Council as it is owned and managed by Catchments and Lands, Department of Primary Industries (formerly Crown Lands), but that Council confirm that it does not object to the concept of interim erosion control works consisting of rock/hard materials on the Old Jetty Site provided any specific design will not adversely impact the environment or the public interest etc.
4. That Council delegate authority to the General Manager to advance the consideration of alternative interim protection works, including without limitation:
 - a) securing sufficient funding eg landowners or State or Federal Government funding;
 - b) applying for and obtaining all necessary approvals and permits including without limitation from State Government, Crown Lands, the Marine Park Authority and all affected landowners etc;
 - c) proceeding to construction if all preconditions are able to be satisfied; etc and Council note that the matter will be reported back if any preconditions are unable to be satisfied.

40 **Attachments:**

- Comparison of Coastal Engineering Aspects of Sandbag Seawalls with Rock Seawalls - Water Research Laboratory #E2013/9266 [4 pages]..... **Annexure 2(a)**
- Letter from Patrick George dated 7 March 2013 #E2013/16917 [2 pages] **Annexure 2(b)**
- 45 • Draft Peer Review of 'Manfred Street Works – Detailed Inspection' (WorleyParsons, 2012) - Water Research Laboratory #E2013/16901 [26 pages] **Annexure 2(c)**
- Summary table regarding approvals processes for coastal protection works undertaken by a public authority #E2013/17202 [14 pages]..... **Annexure 2(d)**

Part A – Temporary rock beach access works, Border, Don and Manfred Streets**Background resolutions**

5

13-89 Resolved that Council note:*That complimentary to the matters identified in Resolution 13-21 Council confirm:*

- 10 1. *The report only needs to relate to the Border, Don and Manfred Streets, beach access sites at Belongil, not the coastline, and is to include information on potential funding sources, preconditions that might arise and any other issues that may need to be considered, eg any positive issues as well as potential barriers.*
- 15 2. *Council's request for a report should not influence landowner's decisions to lodge their own development applications for any type of interim or permanent protection works they want and landowners should not delay their own actions on the matter.*
- 20 3. *The consideration of these issues is additional to the work required for preparation of the Coastal Zone Management for the Byron Bay Embayment (CZMP (BBE)) and the outcome of that process cannot be predetermined or influenced by any interim decisions of Council.*

13-21 Resolved that Council note (relevant parts only):

- 25 4. *That staff prepare a report providing Council information regarding:*
- a) *Council initiated Development Applications for interim coastal protection works (utilising rocks) within the Belongil 7(f1) & 7(f2) coastal zones under the provisions of Section 39(3) of the Coastal Protection Act.*
- 30 b) *Factors to be considered within a Review of Environmental Effects, and any specific issues which are likely to be a barrier to the use of rock revetment protection.*
- 35 c) *Application to the Coastal Panel under s129 of the Infrastructure SEPP for rock revetment protection works as an interim coastal protection measure subject to completion of our Coastal Zone Management Plan.*
- 40 5. *That Council urgently secures all suitable rocks available at the Ewingsdale highway site for future use in protection works (estuary, coastal, waterways, road works and the like) conditional on existing budget allocations or alternately report back to Council on potential fund sources.*

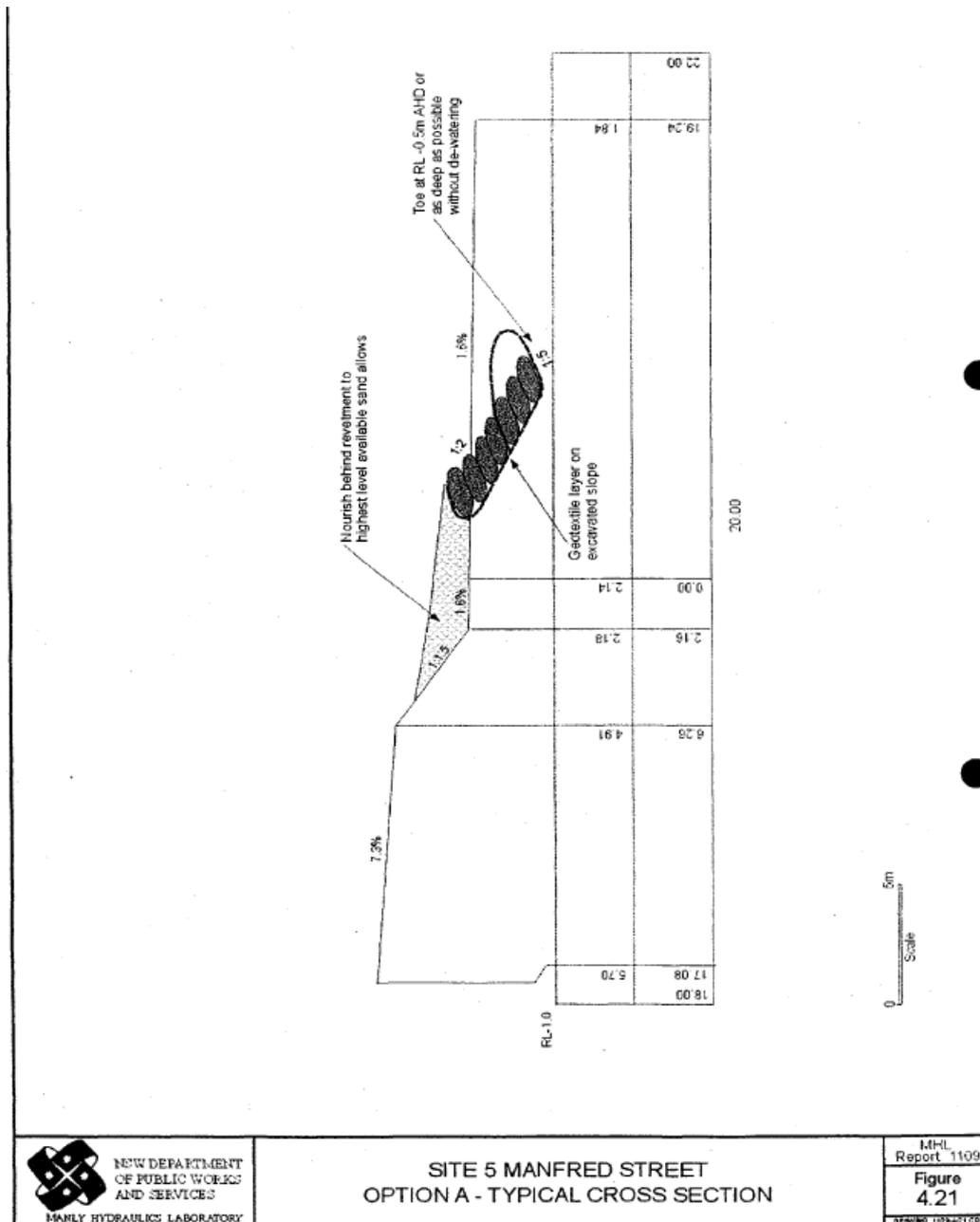
Setting the context

45 In mid 1999 there was a significant storm event during which a number of properties at Belongil, amongst other areas, suffered damage.

50 In June 1999 the Byron Shire Coastline Management Committee recommended to Council to give consideration to implementing temporary protection measures at five (5) specified locations including Manfred, Don and Border Streets. In the following year, Council considered advice from Manly Hydraulics Laboratory (MHL) that presented a number of options for each site, including sand nourishment, geobag and rock options. At some of these locations, interim toe rock revetments were initially recommended by MHL. The MHL initial recommendations were supported by the Coastline Management Committee but the Department of Land and Water Conservation advised that rock works could not be considered interim works and that *"a geobag revetment, ideally located along the existing dune escarpment warrants further consideration."* Subsequently

55 Council lodged a development application (DA 10.2001.403.1) for geobag works including at Don,

Border and Manfred Streets to the typical profile as shown (Figure 1), noting that the works were to be constructed using 0.75 m³ bags.



5 **Figure 1:** Figure 4.21 - Extracted from Development Application Report and Statement of Environmental Effects – Interim Stabilisation Measures Belongil and Main Beach, Byron Bay (GHD,2001)

10 The objective of the geobag measures was summarised in the Development Application 10.2001.403.1 (GHD, 2001) as follows:

15 *The objective of the interim measures is to reduce the risk of coastal erosion during the period required for Byron Shire Council (BSC) to develop and implement its long-term coastline management plan... BSC has been advised by the Department of Land and Water Conservation (DLWC) that interim measures should be readily removable and should not lead to the possibility of adverse long term consequences...DLWC advise that interim measures should be restricted to sand nourishment and sand filled geotextile structures. Such measures would be expected to reduce erosion that may be cause [sic] by small seas*

combined with high tides but would not be expected to provide effective protection against large storm events.

The Development Application 10.2001.403.1 was approved by Council on 9 November 2001.

5

The geobag works were subsequently installed. The Statement of Environmental Effects for the development application noted that in extreme hazard events sand is likely to be returned to the ocean and that *"maintenance of the revetment and sand nourishment will be required"*. This has subsequently been relied upon by the landowners to demand that Council always carry repair works to the exclusion of other works required in the Shire whereas Council has always advised the landowners that this places no higher obligation on Council to repair the geobag works than Council has to repair all other infrastructure, eg roads or causeways, in the Shire.

10

The geobag structures were only ever intended as interim short-term measures, but they have now been in place for over 10 years. Their age means they are suffering advanced effects generating higher maintenance requirements. In addition, with the geofabric 'breaking down' with age, pollution risks are now arising. Further, during the last 10 years there have been advancements in geofabric technology, such as an increase in the size of bags and different materials being used, which means that Council's previous approved design may no longer be as good as what a new updated approval might achieve. Also, recently Tweed Shire Council has obtained approval to proceed with interim measures involving rock revetments which indicates that there may have been a shift in thinking on what may or may be interim at a State level. For all of these reasons, it is appropriate that Council review the interim geobag structures and determine whether they want to continue with the existing design and structures or consider a different design for interim structures either of geobags or rock/hard materials etc.

15

20

25

Council Development Control Plan

Council Part J provisions were incorporated in DCP No 1 adopted on the 26 July, 1988.

30

Part J 2.7 of that DCP provided as follows:-

Beach Protection

"any work carried out by individual property owners to protect land from erosion will require the consent of Council"

35

Council will consider consent for such works only where, in the opinion of Council, such works will have no adverse effect on any adjoining properties or on any coastal processes"

40

On the 1 May, 2002 Council adopted a revised DCP, and provided the following in relation to Beach Protection Part J 2.5- Element Beach Protection

Element objective

To ensure that works proposed by property owners to protect land from coastal processes will not have adverse effects on other land or on coastal processes

45

Performance Criteria

Any work proposed by individual property owners to protect land from erosion must be designed to ensure that the work will not cause adverse impacts on other lands or on coastal processes.

50

Prescriptive measures

Any work carried out by individual property owners to protect land from erosion will require the consent of Council.

55

Council will consider consent for such works only where such works will have no adverse effect on any adjoining properties or on any coastal processes.

Rock, concrete and like hard materials must not be used for the construction of beach protection works

- 5 Council has consistently resisted applications for rock protective works in the years following its adoption of its DCP and in particular from 2002.

Interim rock protective works will be seen as a departure from this long-term provision.

10 **Approvals process for interim rock revetment works**

Part 4 of Res 13-21 asked this report to including information on potential for a "Council activated development application" for interim rock works. .

- 15 This is not considered the most effective way of trying to obtain an approval for replacement of the existing geobag works with more resilient interim measures.

The Infrastructure SEPP has the aim of improving regulatory certainty and efficiency for the provision of infrastructure, and is applicable for Councils and other public authorities.

- 20 The *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP), Clause 129, provides that Council may carry out the following without consent:

- 25 *"waterway or foreshore management activities includes a reference to development for any of the following purposes if the development is in connection with waterway or foreshore management activities:*

(a) construction works,

(b) routine maintenance works,

(c) emergency works, including works required as a result of flooding, storms or coastal erosion,

- 30 *(d) environmental management works."*

Clause 128 defines "*waterway or foreshore management activities*" as being:

...

- 35 *(c) coastal management and beach nourishment, including erosion control, dune or foreshore stabilisation works, headland management, weed management, revegetation activities and foreshore access ways, and*

(d) coastal protection works, and

..."

- 40 If Council want to proceed to assessment of proposed interim rock work the most efficient way would be via an assessment under the Infrastructure SEPP and Part 5 of the Environmental Planning and Assessment Act (rather than a Part 4 Development Application process). Part 5 assessment still requires Council to undertake a Review of Environmental Factors (REF) based on design plans and requires referral to the Coastal Panel and State agencies etc. However,
45 differences in the processes include that there are no public exhibition process under the Part 5 Infrastructure SEPP process and the criteria for assessment under Part 5 are different. Part 5 assessment can be applied to works proposed to be installed on any land, ie its application is not limited to works proposed only on Council land.

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Council has also looked at all other potential approval processes but has determined that assessment under either Part 4 or Part 5 will be required.

5 The provision of the Infrastructure SEPP governing private works is Clause 129A, which provides that *“Development for the purposes of a sea wall or beach nourishment may be carried out by any person with consent on the open coast ...”*

10 A table outlining the approval processes under s129 and s129A of the Infrastructure SEPP is at Annexure 2(d).

Table 1 summarises the main steps and estimated timeframes and costs for the approvals process. Please note that many of the steps can occur at the same time (eg notifying surrounding landowners at the same time as referring matters to Ministers and Crown Lands etc).

15 **Table 1** Summary of approval process for temporary rock revetment works

What	Who	Time	Cost
Design - set design objectives - develop design and costing	Consultant at direction of Council	6 weeks	\$10,000
Funding: - establish funding arrangements for both capital and future maintenance costs ** Sources of funding of ongoing maintenance may need to be finalised prior to preparation of the REF eg levying proposals finalised as these may be matters which will need to be considered in the REF and on which the Minister and/or Coastal Panel may want to be briefed on.	- Council to consult landowners and State/Federal Government to secure required funding	Est 8 weeks (but dependent on landowners')	Not established
Prepare Review of Environmental Factors	Consultant at direction of Council	6 weeks	\$10,000
Landowner Consent	Landowners	Unknown (dependant on the longest response time)	Staff time
Agreement from Crown Lands and licence agreement	Council in consultation with Crown Lands	Est 4 weeks	Unknown. Council will ask for any rent requirement to be waived but that will be at discretion of Crown.
Referral of Application to Minister for	Council	Unknown.	Staff time

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What	Who	Time	Cost
Environment/ concurrence - Coastal Protection Act			
Notification of surrounding landowners	Council	2 weeks	Staff time
Referral to the Coastal Panel	Council	21 days	Staff time
Referral to the Cape Byron Marine Park Authority	Council	21 days	Staff time
Referral to Minister for NPWS for concurrence if work is proposed below mean high water mark	Council	Unknown	Staff time
Determination whether an EIS is required • If an EIS is required new requirements are triggered which are not detailed in this report.	Council	1 week	Staff time
Determination of Part 5 Assessment including: - consideration of advice and responses from Ministers, agencies and/or public; - EP&A Act considerations; - Coastal Protection Act considerations; - Local Government Act considerations including the CZMP Guidelines	Council	21 days from receipt of final information/response	Staff time

Review of Environmental Factors

With reference to Part 14 of the *Environmental Planning and Assessment Regulation 2000*, the issues to be considered in the Review of Environmental factors are as follows:

5

- (a) any environmental impact on a community,
- (b) any transformation of a locality,

- (c) any environmental impact on the ecosystems of the locality,
- (d) any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
- 5 (e) any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
- (f) any impact on the habitat of protected fauna (within the meaning of the National Parks and Wildlife Act 1974),
- 10 (g) any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,
- (h) any long-term effects on the environment,
- (i) any degradation of the quality of the environment,
- (j) any risk to the safety of the environment,
- 15 (k) any reduction in the range of beneficial uses of the environment,
- (l) any pollution of the environment,
- (m) any environmental problems associated with the disposal of waste,
- (n) any increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply,
- 20 (o) any cumulative environmental effect with other existing or likely future activities,
- (p) any impact on coastal processes and coastal hazards, including those under projected climate change conditions.

Several of these matters are dealt with in a general sense in the remainder of the report. Guidance with respect to (p) above may be provided by the draft guidelines *Draft guidelines for assessing the impacts of seawalls* (DECCW, 2011).

Coastal Panel Process

With respect to assessment of proposed interim rock works at the Belongil locations, under the State Environmental Planning Policy (Infrastructure) 2007, Council would be required to:

- (i) notify the Coastal Panel before carrying out the development, and
- (ii) take into consideration any response received from the Coastal Panel within 21 days of the notification.

The OEH website provides further information on this process:

Notifications to the Coastal Panel under clause 129(2A) of the Infrastructure SEPP must be made in writing and provide sufficient information on the proposed coastal protection works, their potential impacts and the proposed mitigation actions to enable the panel to assess the proposed works. For example, a copy of a review of environmental factors or an environmental impact statement prepared under Part 5 of the Environmental Planning and Assessment Act should be provided to the panel.

The Coastal Panel will assess the proposed works, taking into consideration the objects of the Coastal Protection Act 1979 and provide recommendations to the public authority for consideration. OEH staff will review the implementation of these recommendations.

It would not be prudent to pre-empt the response provided by the Coastal Panel to any proposal for interim rock revetment works, particularly in the absence of a design. It should be acknowledged, however, that Tweed Shire Council recently stepped through this process with respect to interim rock protection works located at Kingscliff, just south of the Bowls Club. The Coastal Panel advice to the Tweed Shire Council however, must be considered within the context of the environment (eg without an adjacent Marine Park), other contextual issues (eg particular beach profile and adjoining development) and the particular design that was submitted etc.

The interim rock revetment at Kingscliff (south of the Bowls Club) was designed as a removable structure to provide emergency protection to the Holiday Park while a more permanent foreshore protection strategy was implemented (Tweed Shire Council, 2012). The design did not specify a particular level of protection but was based on the Gold Coast City Council's standard foreshore seawall design; this design was subsequently modified to better accord with the Coastal Panel's notion of a temporary structure as opposed to a permanent structure. A summary of the Coastal Panel's final advice given to Tweed Shire Council, where relevant, is provided below for information:

- 10 - The Panel did not in principle support the use of rock on beaches for the purposes of temporary foreshore protection, due to the potential impacts on public safety and beach amenity and environmental values.
- The Panel was concerned that the proposed works did not represent a properly engineered and designed seawall and that the integrity of the wall would be
- 15 - compromised during severe weather conditions, resulting in failure of the wall and/or rocks becoming displaced.
- In other cases along the NSW coast, Panel members were aware that rocks previously placed for temporary protection have not been removed and have continued to
- 20 - degrade beach amenity. The Panel recommended that the revised Coastal Zone Management Plan clearly identify how the works would transition from temporary to permanent including how materials would be removed or reused.
- The Panel recommended that Tweed Shire Council (TSC) closely monitors the performance and impact of the works and outlines a contingency plan for any remedial
- 25 - action that might be necessary if the works fail or any increased erosion is observed.
- That TSC continues to work with relevant agencies in relation to developing the longer-term more permanent foreshore management strategy.
- The Panel reiterated earlier advice concerning Council's consideration of the range of options for the future short and long term management of the beach at Kingscliff.

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Coastal Protection Act 1979

In accordance with section 38 of the *Coastal Protection Act 1979*, Council is required to refer proposes for 'new works' to the Minister for the Environment to afford them the opportunity to review the proposal and to form a view with respect to the matters at (b1), (c) and (d) as reproduced below:

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38 General supervision of coastal zone

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(1) A public authority shall not, without the concurrence of the Minister:

- (a) carry out any development in the coastal zone, or*
- (b) grant any right or consent to a person:*
 - (i) to use or occupy any part of the coastal zone, or*
 - (ii) to carry out any development in the coastal zone,*

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if, in the opinion of the Minister, as advised from time to time by the Minister to the public authority, the development or the use or occupation may, in any way:

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- (b1) be inconsistent with the principles of ecologically sustainable development, or*
- (c) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or*
- (d) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.*

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Under this section, Council will not be able to carry out any proposed work unless it has obtained agreement from the Minister that none of the matters set out under s38(1)(b1), (c) or (d) applies or the Minister has given concurrence to the proposed work.

5 Other issues to be considered, positive issues as well as any potential barriers

The consultants Water Research Laboratory (WRL) have provided a 'Comparison of Coastal Engineering Aspects of Sandbag Seawalls with Rock Seawalls' (WRL, 2013). This advice is at Annexure 2(a).

10 The report 'Byron Bay Erosion Protection Structures Risk Assessment' provides an assessment on the impacts that have been observed in the Byron Bay Embayment as a result of coastal protection works (both rock and geofabric works). This risk assessment report is available in the agenda papers for Ordinary Meeting 14 March 2013 (Report No 12.11), available at <http://www.byron.nsw.gov.au/meetings/2013-03-14-ordinary>

15 Drawing on the WRL (2013) advice as well as the risk assessment report (WorleyParsons, 2013), a very simplified analysis of the risks posed by rock armour material is provided below in Table 2. The current geofabric structures have also been analysed to provide a comparison.

20 **Table 2** A comparison of the advice to Council on identified risks posed by interim rock revetment structure constructed at Border, Don and Manfred Streets, and the current geofabric structures

Armour material	Structural integrity/risk of failure	Coastal Processes	Ecological processes	Beach access and amenity
Rock	Structural integrity is in large part dependent upon the level of protection afforded by the structure as determined by the design objective and parameters. The level of protection has not been defined for the rock structure, beyond the notion that the structure is to be 'temporary', this implies that the structure(s) will suffer damage over a period of years. Damage to structure(s) may result in movement of armour stones and deformation of structure(s). Severe damage may result in partial or whole collapse of structure(s) and	Voids may absorb a substantial proportion of wave energy (approx. 80%). This may help to reduce the lowering of beach profile in front of structure under certain conditions. Minimal incremental difference overall to alongshore erosion (Carley, 2013) when used as infill between longer rock seawalls.	Minimal incremental difference overall to alongshore erosion (Carley, 2013) when used as infill between longer rock seawalls. Therefore may not have significant incremental impacts on Belongil estuary, shorebird habitat etc. May provide inter-tidal, rock habitat (dependent on factors such as alignment, beach profile), may also provide habitat for rats, mice and snakes. Loose or fractured rock unlikely to cause environmental harm.	Hard material, uneven and irregular – can not be sat/laid upon comfortably, difficult to use as an access point from the water by swimmers and surfers. When beach is eroded, structure may stop alongshore beach access. Rock appearance may have a 'natural' feel. Fractured rock may wash up on to neighbouring beach. Additional beach access stairs or ramps (usually timber or concrete) need to be constructed if

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Armour material	Structural integrity/risk of failure	Coastal Processes	Ecological processes	Beach access and amenity
	<p>the strewing of rocks along the beach.</p> <p>Risk of overtopping dependent on height of structure which may also be dependent on height of adjoining structures. If height of adjoining structures is not sufficient, the crest height of interim structure may be restricted regardless of material used, unless risk to adjoining properties is to be increased.</p>			<p>access is to be preserved.</p>
<p>Geofabric</p>	<p>Structural integrity is in large part dependent upon the GHD design objective '<i>to provide protection against small seas and high tides</i>'. In turn this objective has driven the design parameters for the current structures.</p> <p>The hydraulic stability and wave overtopping potential of the current structures at Border, Don and Manfred Street have been rated by Worley Parsons as 'poor', whilst the geotechnical stability of the structures have been rated from 'poor' to 'fair'</p>	<p>Structure unlikely to absorb a significant proportion of wave energy, leading to higher wave reflection and wave runup. This may lead to lowering of beach profile in front of structure under certain conditions.</p> <p>Minimal incremental difference overall to alongshore erosion (Carley, 2013) when used as infill between longer rock seawalls.</p>	<p>Minimal incremental difference overall to alongshore erosion (Carley, 2013) when used as infill between longer rock seawalls. Therefore may not have significant incremental impacts on Belongil estuary, shorebird habitat etc.</p> <p>Loose geofabric may enter marine environment and cause harm.</p>	<p>Soft material, generally even and regular – can be sat upon, laid upon, may be used as an access point for swimmers and surfers from the water.</p> <p>Structure is suitable as de facto beach stairs (though doesn't strictly comply with Australian Standards for step height).</p> <p>When beach is eroded, structure still allows alongshore beach access (which may end at neighbouring rock structures).</p> <p>Geofabric</p>

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Armour material	Structural integrity/risk of failure	Coastal Processes	Ecological processes	Beach access and amenity
	<p>(Worley Parsons, 2013).</p> <p>Minor movement of armour units at Don and Border Street has been observed and container displacement and rotational slip failure has been observed at Manfred Street. Being interlocking structures, initial damage/container displacement (0-2%) may result in progressive loss of interlocking units (Worley Parsons, 2009) and complete failure of the structure/collapse on to the beach. The fabric can be subject to vandalism which can jeopardise the integrity of the structure.</p>			<p>structures may have an unnatural/synthetic feel. This can be somewhat reduced by the use of sand coloured, sand trapping fabrics (at additional expense).</p>

The logistical pros and cons of using rock as an armour material, as opposed to the current geofabric structures, are summarised in Table 3 below.

- 5 **Table 3** Logistical pros and cons of a temporary rock revetment structure constructed at Border, Don and Manfred Streets as opposed to the current geofabric structures

Armour material	Availability of material, equipment, plant etc	Site conditions and ability to construct	Maintenance Requirements	Ability to remove structure if required*	Ability to upgrade/modify the structure if required*
Rock	This is dependent on sampling Ewingsdale source and determining if it satisfies an engineering specification	To construct a wall with a toe of 0 to -1 m AHD (this has not yet been specified), and to access the site with appropriate	Maintenance requirements would be lower if rock satisfies engineering specification with this goal and rock is not too undersized	Theoretically possible with appropriate heavy machinery (e.g. excavator) and appropriate	Subject to detailed design, the structure can be covered with additional (larger) armour of rock or concrete, but

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Armour material	Availability of material, equipment, plant etc	Site conditions and ability to construct	Maintenance Requirements	Ability to remove structure if required*	Ability to upgrade/modify the structure if required*
	<p>for the rock revetment structure (which has not yet been established).</p> <p>Specialist staff, machinery and plant may be required to undertake the works.</p>	<p>machinery, the beach needs to be in a moderately accreted condition. Subject to access, some work may be possible by tipping from above.</p> <p>Current site conditions i.e. severely depleted beach profile would make construction from the seaward side difficult.</p>	<p>Movement of armour units, deformation of structure may require topping up of armour stones on a periodic basis to maintain crest height and structural integrity.</p> <p>Subject to access, this may be possible by tipping from above.</p>	<p>beach access and beach profile.</p> <p>Machinery requirements likely to result in high removal costs which may exceed construction costs.</p> <p>As per Coastal Panel and WRL advice, removal of rock armour units has not tended to occur in the past.</p>	<p>this will protrude further onto the public beach.</p>
Geofabric	<p>Materials and sewing equipment readily available, stored at Council.</p> <p>Staff can undertake this work in conjunction with Contractors with special machinery and plant</p>	<p>To construct/repair structure with a toe of -0.5 m AHD (noting that GHD, 2001 design was -0.5 m AHD or as deep as possible without de watering), and to access the site with appropriate machinery, the beach needs to be in a moderately accreted condition. Otherwise only short work windows around low tide are possible.</p>	<p>Damaged/degraded geofabric units may need ongoing monitoring and repairs e.g. patching of puncture holes.</p> <p>Dislodged units difficult to replace due to interlocking nature of structure.</p> <p>Major repairs generally require access from the beach.</p>	<p>Theoretically possible with minimal machinery, i.e. open and empty bags on to beach, remove geofabric and dispose – likely to be low removal costs.</p> <p>Appropriate beach access and beach profile required.</p>	<p>Subject to detailed design, the structure can be covered with additional (larger) armour of geofabric, rock or concrete, but this will protrude further onto the public beach</p>

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Armour material	Availability of material, equipment, plant etc	Site conditions and ability to construct	Maintenance Requirements	Ability to remove structure if required*	Ability to upgrade/modify the structure if required*
		Current site conditions i.e. severely depleted beach profile make construction from the seaward side difficult.			

* May be dependent on outcome of the CZMP process

Both Table 2 and 3 reveal that there are positive and negative attributes to rock revetment structures, as opposed to geofabric structures; for example rock revetment may have a more negative effect on beach access and amenity, whilst geobag structures may bring about greater lowering of the beach profile. If financial considerations are a primary concern however, rock revetment structures could be more advantageous with respect to the costs, logistics and safety of constructing and maintaining interim works (subject to a suitable source of rock being able to be secured at low cost) so that they remain effective and in a safe condition.

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Prioritisation of Sites within Belongil

If Council want to pursue possible alternative interim measures at Belongil, it would be necessary for a priority order to be attached to those sites, so that the public and staff are clear the order in which resources, when they become available, would be applied.

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This is necessary because Council has been receiving competing demands from Belongil landowners for prioritisation of different sites and clearly Council cannot do everything at every site at the same time.

20 Taking into account the advice received from Worley Parsons and Water Research Laboratory, the recommended order of priority would be:

1. Manfred Street;
2. Border Street
- 25 3. Don Street.

NB this is the recommended 'inter-Belongil' prioritisation and does not mean that these three sites or potential projects would be Council's overall priority matter/s at any time.

30 New Brighton

The Byron Shire Coastline Hazard Definition Study (WBM, 2000) mapped the immediate coastal erosion hazard lines for the developed parts of the Shire. This mapping depicted a potential storm bite (the loss of sand occurring from a severe storms or series of storms in succession) at New Brighton that threatened The Esplanade and North Head Road/ and was located just seaward of a number of privately owned houses. In this regard New Brighton may be seen as an emerging 'coastal erosion hotspot' which is defined by the Office of Environment and Heritage (<http://www.environment.nsw.gov.au/coasts/coasthotspots.htm>, 2011) as:

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... areas where five or more houses and/or a public road are located in a current (or immediate) coastal hazard area.

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Whilst a significant amount of time and resources has been expended on considering the future of the interim measures at Belongil, it is important to be aware that other parts of the developed Byron Shire coastline are also subject to coastal erosion and have suffered damage in the recent severe weather events.

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Although Council recently allocated funds towards the implementation of a beach scraping program at New Brighton, the recent (2013) coastal erosion of some 17 metres (landward) of the dune at certain locations illustrates the importance of Council considering a longer term strategy for this location. New Brighton is included in the recently commissioned coastal hazard study but is not being considered as part of the Coastal Zone Management Plan for the Byron Bay Embayment currently being prepared.

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Design Objectives

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The current interim geobag structures are designed in accordance with the design objective detailed above (GHD, 2001) ie to “*reduce erosion that may be caused by small seas combined with high tides but ... not ... to provide effective protection against large storm events.*”

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That design objective was set at a time when it was intended that Council would adopt a long term coastal management strategy within a few years but that intention was frustrated by many factors, including most recently by significant and multiple changes to the legislative regime. That legislation is still under review with further reform mooted, so there is still a high level of uncertainty surrounding coastal zone management.

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In those circumstances, it may be prudent to review this design objective with a view to providing a greater level of resilience against coastal processes and/or reducing repair and maintenance costs and associated logistical issues and safety risks in case development of a long term management strategy is delayed again for any reason, in particular reasons beyond Council's control.

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This question is largely separate to the issue of rock/hard materials versus geobag because in the context of providing ‘interim’ protection; either material is likely to prove adequate with appropriate design and construction.

In considering the design objective, Council may wish to investigate a number of issues:

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- How long are the works expected to be in place? The current position is that the works are in place until the CZMP is developed and implemented. Currently, the CZMP is due for submission in June 2014 but the legislative regime of coastal management in NSW is still in a state of flux with stage 2 reforms to the *Coastal Protection Act 1979* yet to be announced. In the past the best estimate timeframe ended up being considerably exceeded, so this time the design criteria may want to factor in a ‘worst case’ scenario timeframe instead. *If the estimated timeframe ends up being substantially exceeded, the maintenance requirements for the interim works may increase.*
- What level of interim protection is required, or put another way, what level of coastal erosion is acceptable at Don, Border and Manfred Streets within the estimated timeframe? *If the level of desired interim protection is underspecified, failure may occur before Council has finalised its long term position...*
- What level of maintenance and repair work is acceptable within the estimated timeframe?
- What on and off-site impacts (e.g. to coastal, ecological processes, beach access and amenity) are acceptable within the estimated timeframe?

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Ewingsdale source of rock

Arrangements are currently being made to carry out a preliminary technical appraisal of the competency of the rock at Ewingsdale from the current Pacific Highway Upgrade Project (Tintenbar to Ewingsdale). It should not be assumed however, that the rock is necessarily fit for the purpose.

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5 Apart from the competency of the rock, other factors also need to be taken into consideration regarding the suitability of the Ewingsdale source, for example procurement/acquisition process, handling, transport and storage costs. It may be that after these factors are taken into consideration, a quarry source is the more cost-effective option for consideration.

The Old Jetty Site

10 Since January 2013 Council has been corresponding with Mr Patrick George in relation to the Crown Land at Belongil known as the "Old Jetty Site".

15 Mr George has been requesting Council carry out works to repair the erosion on the Old Jetty Site. Council confirmed that the Old Jetty Site is Crown Land under direct control and management by Catchments and Lands, Department of Primary Industries (formerly Crown Lands) and that if landowners wanted to carry out work on that site they need to contact that Office.

20 On 7 March, 2013 Council received a submission from Mr Patrick George, Annexure 2(b), indicating he was going to approach Crown Lands with his proposal for protective rock works on the Old Jetty Site.

25 Mr George requested Council's support for his design proposal, in response to which Mr George was advised Council could not give 'blanket support' without being able to assess the impacts of the proposal.

30 The original Development consent 10.2001.403.1 in relation to the Old Jetty Site only recommended opportunistic beach scraping for the front of the site however records on the DA file indicated that at the time Crown Lands advised "*Erosion of the dune escarpment could continue for some distance with little increase in risk. Accordingly, no works are required other than to monitor future erosion progress.*"

35 It is unclear whether any beach scraping works ever occurred under DA 10.2001.403. Later Crown Lands lodged their own development application "Rehabilitation and refurbishment" of the Old Jetty Site (10.2002.199). Council granted approval to that consent but again there were no 'protection' proposals as part of that consent and it is unclear to what extent, if any, dune restoration works were approved under that consent and/or subsequently occurred.

40 The Old Jetty Site is well used by the public, and it has been an important vehicular beach access point in the past. Maintaining access to the beach from this site will be very important should rock works be installed here by private landowners or Crown Lands.

45 The Old Jetty Site is not under Council's control but is under the control of Crown Lands. Council is not in a position to financially contribute towards works on Crown Land (not just on the coast but anywhere in the Shire) and if infrastructure is to be considered on this site, Crown Lands will need to be responsible for costs of construction and maintenance.

50 The same approval processes would equally apply to the Old Jetty Site, ie s129 and s129A of the Infrastructure SEPP. The Old Jetty Site is some 150 metres in length and a separate Review of Environmental Factors will be needed for this site, particularly in relation to potential end wall effects further to the west.

55 If Crown Lands decided to proceed to upgrade the Old Jetty site, eg alternative protective measures, secure access to the beach and other needed improvements to the site, Crown Lands is able to proceed under the similar provisions as Council, by using the Infrastructure SEPP.

If Council resolves to pursue possible alternative interim measures at its sites, a copy of that resolution will be provided to Catchments and Lands, Department of Primary Industries (formerly Crown Lands) which would indicate Council's position that the potential for rock/hard materials at

Belongil is worthy of detailed assessment. Council would of course also respond to any requests for comments on any detailed design for the site provided there was sufficient information for Council to be able to assess the proposal, eg to assess whether there would be adverse impacts on beach access or public use of the site etc. However, without information sufficient to allow Council to assess compliance with obligations (for example in relation to maintaining beach access etc) that is, without the level of detailed design that would form the basis of a Review of Environmental Factors, Council could not give unconditional 'in principle support' as has been requested. An alternative recommendation has been put forward instead.

10 **Financial Implications**

Council will explore every opportunity for funding both the capital and the maintenance costs of proposed works including:

- 15 - private landholder contributions
- agencies/state funding contributions.

Council has already initiated discussions with some State agencies and will continue to pursue these. Council will need to commence negotiations with landowners immediate and will also investigate the 'surcharging' provisions further. This will occur under delegation.

If the costs of works cannot be funded from current budgets or other funding sources cannot be secured, then a further report will be provided to Council for consideration.

25 **Statutory and Policy Compliance Implications**

Council's long-held position on coastal erosion protection works has been that they should be interim pending adoption of Council's long term coastal management strategies and Council has for a long time preferred 'soft options' such as geobag and beach scraping as interim measures. It is always open to Council at any time to review its policy position on interim measures. Council decisions on interim measures cannot fetter Council's powers to ultimately determine its long term coastal management strategies and decisions on interim measures should not be interpreted as any indication of what long term strategies may eventuate.

35 It has always been possible for landowners to seek approval for any type of protection works they want or consider appropriate. Council has and will continue to encourage landowners to lodge applications for their own works and landowners should not delay their own applications pending the outcome of Council's investigations into possible alternative interim measures.

40 Management of the Byron Shire coastline is governed by a myriad of overlapping statutory regimes including the Local Government Act, Coastal Protection Act, Environmental Protection Act, National Parks and Wildlife Act, Fisheries Act, Threatened Species Conservation Act (NSW), Environment Protection and Biodiversity Conservation Act (Cth), Environmental Protection and Assessment Act and all associated regulations. Council must ensure that its decisions and actions
45 comply with all statutory requirements.

Conclusion

The following factors may be gleaned from this report:

- 50 - maintenance of the current geofabric structures has become increasingly difficult
- the coastal zone management legislative framework in New South Wales is still in a state of flux and therefore there is uncertainty about the timeframe for preparing and gazetting the Coastal Zone Management Plan and determining a long term coastal
55 management solution for the Byron Bay Embayment

- there are a range of pros and cons associated with rock revetment versus geofabric structures but on balance, rock revetment structures are likely to be more advantageous with respect to the costs of maintaining interim works, particularly within an uncertain timeframe
- 5 - it is unclear as to the appropriateness of the Ewingsdale source of rock, as such the costs associated with potential interim rock revetment works is, at this stage, unclear
- there is uncertainty as to the extent that Belongil landowners may be willing to fund construction and/or maintenance costs
- 10 - whether approval to alternative interim rock structures is possible cannot be known without going through the required processes.

For all of these reasons, amongst others, it is recommended that Council proceed with consideration of alternative interim measures including rock/hard materials at Manfred, Border and Don Streets, Belongil and that delegation to do so be given to the General Manager; noting that this would be an interim position until Council adopts its long term coastal management strategies.

If Council want to consider alternative interim measures, it is recommended that Council delegate authority to the General Manager to proceed with all necessary negotiations, agreements, approval processes and the like. There are many and complex processes which would all need to be managed at the same time including, without limitation:

- identifying and implementing funding sources;
- determining appropriate design criteria; -
- pursuing approvals processes;
- 25 - meeting all statutory requirements; etc.

Due to the complexity it would be impossible to manage pursuit of potential alternative interim measures efficiently without delegation to do so. If any precondition or requirement cannot be satisfied, the matter would be reported back to Council at that stage.

Finally, it is recommended that Council attribute a priority order to its consideration of potential alternative interim measures at Belongil:

1. Manfred Street
- 35 2. Border Street
3. Don Street.

Part B – Peer review of WorleyParsons (2012) geofabric design – Manfred Street, Belongil

Background resolutions

12-1011 Resolved (relevant parts only):

- 45 2. *That Council note the advice provided at Annexure 7(b) (#E2012/25172) with respect to repairing and maintaining the Manfred street interim works but that outstanding issues remain with respect to progressing and/or implementing the prescribed works as described in this report.*
- 50 3. *That Council engage an appropriately qualified expert to review the report and design at Annexure 7(b) (#E2012/25172)*

The peer review report is at Annexure 2(c).

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The main points of the peer review by James Carley of the Sydney Water Laboratory, University of NSW are as follows:

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 - current design criteria has been exceeded in numerous events
 - the current crest design levels of +3 m AHD and +4 m AHD are almost certain to be overtopped during moderate storms at high tide
 - the substantial footprint of the 2012 WorleyParsons design is not supported by the geotechnical peer review by Pells consulting
 - the 2012 WorleyParsons design is still constrained by the low crest level and would not
- 10
 - solve the issue of damage from wave overtopping
 - the rock revetment design proposed by ICM would increase the protection of the property behind but may not comply with the original consent and Council policies
 - rock sea wall options are less interim in nature than sandbag walls
- 15 In light of the peer review and the increased maintenance and safety issues relating to the current geobag structures, it is considered appropriate for Council to give careful consideration to a policy change with regard to interim protective works.