



Byron Shire Council



Agenda

Ordinary Meeting Thursday, 10 October 2013

held at Council Chambers, Station Street, Mullumbimby
commencing at 10.30am

Public Access relating to items on this Agenda can be made between 9.00am and 10.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

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.

BUSINESS OF ORDINARY MEETING

1. **APOLOGIES**

2. **REQUESTS FOR LEAVE OF ABSENCE**

3. **DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**

4. **TABLING OF PECUNIARY INTEREST RETURNS (s450A Local Government Act 1993)**

5. **ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**

5.1. Ordinary Meeting held on 19 September 2013

5.2. Reserve Trust Committee Meeting on 19 September 2013

6. **RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**

7. **MAYORAL MINUTE**

8. **NOTICES OF MOTION**

8.1. Sponsorship 3

8.2. Holiday Let Precincts 5

8.3. Grays Lane Creek Crossing Upgrades 7

9. **NOTICE OF RESCISSION MOTION**

9.1. Draft Byron LEP 2012 Submissions Finalisation 1..... 10

10. **PETITIONS**

11. **SUBMISSIONS AND GRANTS**

12. **DELEGATES' REPORTS**

13. **REPORTS BY DIVISION**

General Manager

13.1. Proposed Establishment of a Sports Stakeholder Forum 11

Community Infrastructure

13.2. Proposed road and bridge names..... 14

13.3. 2013/14 Road Maintenance Budgets for Bitumen Operations (Pothole Filling Works)..... 23

Corporate Management

13.4. Investments – August 2013..... 26

13.5. Sandhills Early Childcare Centre - Owner's consent to lodge development application 32

13.6. Mullumbimby and District Neighbourhood Centre - Annex Building Destroyed by Fire 36

13.7. Access Deed for Telstra telecommunications facilities Suffolk Park..... 42

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(2)

Environment and Planning

- 13.8. Byron Coast Comprehensive Koala Plan of Management..... 53
- 13.9. PLANNING - Former Telstra Site Station Street Mullumbimby..... 56
- 13.10. Byron Shire Coastline Hazards Assessment Update Report 60

Society and Culture

- 13.11. Report of the Public Art Assessment Panel meeting held on 13 September 2013 68

Water and Recycling

- 13.12. Mullumbimby Water Trunk Main Replacement – Approval to Tender..... 70

14. COMMITTEE REPORT

Community Infrastructure

- 14.1. Byron Bay New Year's Eve Traffic Management 73

Environment and Planning

- 14.2. Report of the Planning Review Committee Meeting held on Wednesday 18 September 2013..... 80

15. CONFIDENTIAL REPORTS

Water and Recycling

- 15.1. CONFIDENTIAL Tender 2013-0022 - Assessment of the Hire or Purchase of a Landfill Gas Utilisation Plant for Myocum Landfill 81
- 15.2. CONFIDENTIAL Tender Assessment - Register of Pre-qualified Suppliers 2013-0032 87
- 15.3. CONFIDENTIAL Tender Assessment - Bulk Chemical Supply for Treatment Plants 92

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

NOTICES OF MOTION

Notice of Motion No. 8.1. Sponsorship

#E2013/58747

5

I move that Council staff provide a report on the viability and the likely social and environmental impacts of selling sponsorship rights to local business and individuals for prominent council owned infrastructure and/or their maintenance.

10

Signed: Cr Alan Hunter**Councillor's Background Notes:**

15 The purpose of the report is to identify likely financial benefits for council to assist with the maintenance of gardens, parks, streets, roads, roundabouts, sports grounds, tennis courts and other community facilities in the Byron Shire.

20 The report needs to include research of case studies from other local government areas with current or past experience in such programs. Any international experience of the impacts of such programs should also be included.

Recommended priority relative to other Delivery Plan tasks:

This review/report be given high priority within the FSPP.

25

Definition of the project/task:

Identifying commercial opportunities to assist improve the Financial Sustainability of Council.

Source of Funds (if applicable):

30 Council is currently working through the FSPP, a part of which is identifying and developing commercial opportunities to assist in Council's financial performance. Funding has already been allocated for such research by staff.

Management Comments by Phil Holloway, Executive Manager Community Infrastructure:

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

40 Council at its Ordinary Meeting of 8 August 2013 considered a staff report titles 'Revised Draft Policy – Sponsorship'. The revised draft policy was reported as a potential source of additional revenue generation in accordance with Action 6 of Part 4 of Council's Financial Sustainability Project Plan (FSPP).

Council resolved (**Resolution 13-397**):

45

1. *That the draft Sponsorship Policy be amended as follows:*

a) *Rename to "Sponsorship Received by Council"*

b) *Remove "all" from line 4 of section 1. Purpose and from clause 5.1*

c) *Replace "all" in the bracketed note in clause 5.3 with "each role"*

d) *Change "any" to "a" in clauses 5.3, and three times in clause 6.3*

50

e) *Remove "other" from clause 7.3b*

f) *Change 7.3e to "who have an unacceptable sponsorship record with Byron Shire Council or with any other government authority"*

2. *That the amended Policy be placed on public exhibition for a minimum period of 28 days.*

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(4)

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

5 4. *That in the event that no submissions are received on the draft Policy it be adopted and incorporated into Council's Policy Register.*

10 As such an amended policy was advertised in accordance with the resolution and lodgement of submissions closed on 23 September 2013 at 4.00pm. No Submissions were received and on this basis the draft Policy has now been adopted.

It is understood that if the proposed motion is successful then the "selling of sponsorship rights" would need to be consistent with the definitions adopted as part of the new policy.

15 An example where "sponsorship" could be considered is in relation to "Adopt a Road" type initiatives, where a section of roadway could be identified as an area that has maintenance sponsored by a group or business.

20 Another example that staff are currently investigating is the sponsorship of bus shelters. The sponsorship of bus shelters has been utilised by other councils to offset maintenance costs of the shelters through the provision of advertising placed on them.

25 Where public infrastructure is maintained by others, Council would need to ensure that risks are managed appropriately, including a full risk assessment, appropriate insurances, training of volunteers / employees, adherence to relevant legislation (including Workplace Health and Safety) and an approved work plan. Council would need to satisfy itself that all risks have been mitigated.

Clarification of project/task:

30 That staff provide a report on the viability and the likely social and environmental impacts of selling sponsorship rights to local business and individuals for prominent council owned infrastructure and/or their maintenance

Executive Manager responsible for task implementation:

35 Executive Manager Community Infrastructure

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

40 Council's adopted Financial Sustainability Project Plan (May 2013)

Financial and Resource Implications:

45 Not Known

Legal and Policy Implications:

50 Policy No 11/002 – Sponsorship Received by Council (Sept 2013)
ICAC Guide – Sponsorship in the Public Sector (May 2006)
Local Government Act (1993)
Local Government (General) Regulations (2005)

Attachments:

55 • Policy No 11/002 – Sponsorship Received by Council #E2013/62706 [7 pages]..... **Annexure 13**

Notice of Motion No. 8.2. Holiday Let Precincts

#E2013/62340

I move that Council prepare a Holiday Letting Strategy with the following purposes in mind:

- (i) examining issues raised in workshops during 2013;
- (ii) examining Zoning / precinct options;
- (iii) facilitating the preparation of a future LEP amendment; and
- (iv) supporting the amendment and hence justifying it to the DOPI.

Signed: Cr Duncan Dey

Councillor's Background Notes:

Holiday Let is a cheap method of running an (unregulated) accommodation business in an area where it is sometimes not welcome. There can be impacts such as noise, parking, stray rubbish on neighbouring residents as well as the turnover of strangers as one's neighbours. There are also societal impacts through the scarcity of permanent accommodation and the badging of places like Byron Bay as party towns.

Council has held workshops on the matter. The NSW government has indicated it should be dealt with locally. Recent court cases have highlighted that Councils should actively deal with it.

Council is still to hold a further forum on the issue, as required under **Resolution 13-343** which states at its part 2:

(That Council) initiate a Holiday Let forum consisting of Councillors and staff, 2 representatives of Holiday Let Organisation (HLO); 2 representatives from the Real Estate Industry; 2 representatives of Australian Resident Accommodation Managers' Association (ARAMA) NR; 2 representatives from Victims of Holiday Letting (VOHL) and 4 representatives from the broader community, invited by the Mayor and Deputy Mayor to consider possible precinct and registration options, appropriate rates and charges, and other relevant management issues.

The forum could precede the development of the Strategy or, better still, become one of the steps in developing it. This Motion commits to investigating Precincts rather than continuing to discuss their possibility.

Staff have advised that options may be pursued, to offer zones or precincts where Holiday Letting can be undertaken. By implication, it would not be allowed in other residential areas. This would take some of the pressure off this issue and give property owners the choice (albeit by re-locating for some) to own where Holiday Letting is allowed or the opposite.

A Resolution is needed so that suitable resources can be allocated to the project.

Would such a project be eligible for grant funding?

Recommended priority relative to other Delivery Plan tasks:

A reasonable time frame would be for this work to start early in the next financial year, after the DLEP has left for Sydney.

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(6)

Definition of the project/task:

Prepare a Holiday Letting Strategy with a view to amending the LEP (currently Draft).

5 Source of Funds (if applicable):

To be budgeted for the first quarter of the 2014-15 fiscal year, or sooner if funding can be sourced sooner.

10 **Management Comments:**

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

Clarification of project/task:

15 Prepare a Holiday Let Strategy examining precinct and zoning options

Executive Manager responsible for task implementation:

20 Executive Manager, Environment and Planning

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

25 The Community Strategic Plan 2022 under Community Outcome EC2 incorporates measures to build and develop the tourism sector and to support and promote a collaborative shire wide approach to managing tourism. The plan also nominates the implementation of the Tourism Management Plan which includes the following line item.

Strategy #	Strategy	Action #	Actions
S3.3	Resolve the holiday-letting issue and other unapproved development activities	S3.3.1	Ensure the new LEP has provisions to resolve this issue

30 To date little work has been done on the Holiday Let matter, but Council has resolved to deal with one specific unapproved tourist development at Old Bangalow Road, Byron Bay.

Financial and Resource Implications:

35 Funding will need to be identified to complete the strategy, however it may be able to be achieved in-house utilising existing staff resources.

Legal and Policy Implications:

40 The Strategy would be aimed at informing an LEP amendment and lead to planning provisions controlling the location of holiday let dwelling houses in the Shire. The strategy could also examine timeframes for any sites to gain relevant approvals, and time frames for the removal of sites outside any adopted precincts or zones.

Notice of Motion No. 8.3. Grays Lane Creek Crossing Upgrades

#E2013/62457

I move that:

- 5
1. Council liaise with affected residents of Grays Lane Tyagarah, in order to develop an agreed upon scope of works required to upgrade the Grays lane creek crossing and flood prone sections of the road.
 - 10 2. A report be brought to Council outlining the results of the consultation and an outline of potential cost implications for Council and possible timeframe for completion of works if competed as part of Council's adopted Unsealed Roads Upgrading Hierarchy.
 - 15 3. This report also outline the current expenditure of grading and on going road maintenance works and costs arising from increasing the frequency of maintenance works.
 4. This consultation consider:
 - a) The possibility of incremental, staged works and on-going maintenance,
 - 20 b) Previous trials of maintenance and previous upgrading proposals and engineering designs
 - c) The best value for money option for the works
 - d) The possibility of sharing costs to ensure completion of works
 - 25 5. If residents wish to expedite the works and support a shared cost arrangement, this may include Council:
 - a) Engaging contractors, or scheduling the works by Council, to undertake the works
 - b) Supervising and managing the works whether the works are carried by council staff or by contractors
 - 30 c) Providing funds to be used from the Local Roads Maintenance budget
 - d) Undertaking the creek crossing design
 - e) Developing a contract for minor works and the seeking of three quotes from local contractors, as well as estimating the works to be carried out by Council
 - 35 6. Council liaise with NPWS, and affected residents, in seeking ways to provide for the upgrade of this section of Grays Lane, Tyagarah, including the consideration of ways to potentially increase Nature Reserve entrance fee revenues that may in turn be used, in part, to assist with road maintenance.
 - 40 7. Council review *Policy #4.17: Contribution to the cost of sealing of unsealed roads adjacent to properties at request of owners*, with a view of broadening the scope to of the policy include other road infrastructure.

Signed: Cr Simon Richardson**45 Councillor's Background Notes:**

Grays Lane is a popular road for visitors to the beach, tea tree lakes and Nature Reserve. It also services a significant resident community. The creek crossing section of this lane is often flooded when rainfall occurs, ensuring often unsafe creek crossing occurs both in vehicles and by foot. This

50 NOM focuses upon this section of the road, not its' entirety, nor the section controlled by NPWS. Some cost estimates for upgrading this piece of Council controlled infrastructure are beyond Council's current budgetary capacities.

Grays lane is similar to other Council controlled roads that are heavily impacted by large volumes of traffic generated by visitors that may be substantially greater than local traffic, for example, Broken Head Rd, Lighthouse Rd and Hinterland roads and causeways leading to Minyon Falls.

5 This NOM seeks to clarify:

1. What works are required for a 'Rolls Royce' upgrade, one that will ensure vehicular access even after significant rainfall, to a more 'Holden' version, that allows safe crossing during smaller rainfall periods.
- 10 2. The preferred designs to achieve these options and proposed costs, utilising residents' knowledge of the creek crossings flood and engineering history.
3. A clear understanding between residents and Council as to a likely timeframe for works to occur, and if Council's budgetary constraints indicate a significant time period before the works could be completed, the option for residents to assist with cost sharing in order to
15 ensure the works are done more quickly.

Though many funding avenues may arise that could be accessed and engineering aspects may change to bring costs down, there are most likely three options that will emerge from this:

- 20 1. Council will decide to complete the most effective works, when funds allow, which may be many years. This will be especially likely as population increases and global warming rainfall increases will necessitate a greater standard.
2. Council will complete scaled down works, when funds allow, which may be quicker, if a lower standard can be deemed acceptable
- 25 3. Residents could consider helping with costs and make the most effective works occur more quickly.

This Notice of Motion seeks to clarify options 1 and 2 and to see if there is any degree of affected residents' support for option 3.

30

Recommended priority relative to other Delivery Plan tasks:

CM 1.1.5

Review major spends and opportunities for expenditure savings.

35

Examine opportunities for Council to join up with shared procurement opportunities.

CM 2.2.1

Engage the community in decision making by using varied communication channels that are relevant to residents and stakeholder groups

40

CM 3.1.1

Review current partnership arrangements and identify opportunities for new local/regional partnerships and collaborations

45

CI 2.3.2

Undertake a review of the adopted Strategic Asset Management Plan for inclusion in the CSP

CI 3.1.1

Review and implement 10 Year Asset Management Plan.

50

CI 3.1.2

Undertake the shire wide drainage levy program as per the '10 Year Capital Works Program'.
Undertake the rural and urban roads programs as per the '10 Year Capital Works Program'.

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(9)

Definition of the project/task:

Liaison between Council and affected residents to consider design, engineering and cost implications of upgrading the creek crossing on Grays lane, Tyagarah.

5

Source of Funds (if applicable):

Management Comments by Phillip Holloway, Executive Manager, Community Infrastructure:
(Management Comments must not include formatted recommendations – resolution 11-979)

10

To allow detailed and accurate information to be provided in relation to consideration of a design, engineering assessment and cost estimates for the works proposed in this Notice of Motion, a report to Council is proposed.

15 Staff will liaise with residents and provide feedback as part of the report, along with estimates and proposed designs.

This project is not part of the current delivery program and as such, will not be reported back to Council until 2014.

20

Clarification of project/task:

To liaise with affected residents to consider design, engineering and cost implications of upgrading the creek crossing on Grays Lane, Tyagarah.

25

Executive Manager responsible for task implementation:

Community Infrastructure

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

Not part of current delivery program.

Financial and Resource Implications:

35

The compiling of a report to Council has minimal financial and resource implications.
The costs associated with the potential design and delivery of an upgraded creek crossing will be advised within the proposed report.

40 Legal and Policy Implications:

Nil

NOTICE OF RESCISSION MOTION**Notice of Rescission Motion No. 9.1. Draft Byron LEP 2012 Submissions Finalisation 1**

#E2013/61642

5

We move that Council rescind Resolution **13-454** from its Ordinary meeting held on 29 August 2013 which reads as follows:

10

13-454 Resolved that in relation to the draft Byron LEP 2012 Council adopts the following recommendation:

- *Amend draft Minimum Lot Size Map for land zoned RU5 in Main Arm Village on the southern side of Main Arm Road to reflect a minimum lot size of 4000m².*

15

If successful we intend to move:

That in relation to the draft Byron LEP 2012 Council adopts the following recommendation:

20

- Amend draft Minimum Lot Size Map for land zoned RU5 in Main Arm Village on the southern side of Main Arm Road to reflect a minimum lot size of 2000 m².

Signed: Cr Diane Woods
Cr Alan Hunter
Cr Chris Cubis

25

Comments Executive Manager Environment and Planning:

30

Staff recommended that the minimum lot size map for this area of Main Arm be amended to 2000m² in report 12.22 to the 29 August 2013 Ordinary meeting. The following comments from Annexure 2(c) to the report provided the following reasoning for the 2000 m² minimum:

35

Development consent DA10.2008.159.1 incorporated 8 village lots with a minimum lot size of 2000 m² on the southern side of Main Arm Road. The draft LEP has correctly zoned the land RU5, but mistakenly has left the minimum lot size at 40 ha. It is recommended that the minimum lot size be reduced to 2000 m², consistent with the other land zoned RU5 in Main Arm. It is also recommended that the lot size change also apply to the other small parcels zoned RU5 on the southern side of Main Arm Road.

40

It is noted that works for the subdivision as approved under DA10.2008.159.1 are near complete and the development will create 8 village lots varying in area from 2010 m² to 3200 m². The proposed mapping change would also cover 4 other village lots that vary in area from 747 m² to 3308 m². The 2000 m² minimum is also consistent with the minimum lot size applied to village zoned land at Federal and Billinudgel under the draft Byron LEP 2012.

GENERAL MANAGER'S REPORT

Report No. 13.1. Proposed Establishment of a Sports Stakeholder Forum

General Manager

5 **Report Author:** Ken Gainger, General Manager

File No: #E2013/62162

Theme: Society and Culture – Sport and Recreation

Summary: At a meeting of the Council held on 29 August 2013 the Council resolved as follows:

“That Council establish a Shire wide sports association and user group to consider the needs and opportunities for the enhancement of sporting participation across the shire and that this group meets at least twice per year.”

This report seeks to frame a proposal for the structure and operation of a Byron Shire Sports Stakeholder Forum for the consideration of the Council. Through active engagement with sporting clubs at a local and sub-regional level the Council will gain a clearer understanding of the growth and development needs of the various sporting codes and will have a much enhanced basis for making informed judgements and decisions about the future development and renewal of vital recreational infrastructure.

10 **RECOMMENDATION:**

1. That Council supports the establishment of a Byron Shire Sports Stakeholder Forum.
- 15 2. That representatives from sporting organisations across the Shire be invited to attend an inaugural forum to be held at the BRSCC and chaired by the Mayor to discuss and consider the proposed objectives of the Byron Shire Sports Stakeholder Forum, its proposed structure and a meeting schedule as well as to identify key issues to be discussed at future forums.
- 20 3. That a further report be prepared for the consideration of the Council on the outcomes from the inaugural forum.
4. That interested councillors be invited to attend the inaugural forum.

Report

5 A number of recent controversies regarding the development and management of sports
 10 fields/facilities within the Byron LGA have highlighted the need for thoughtful planning and close
 15 collaboration involving those community organisations hiring or seeking to utilise the facilities and
 the communities that abut them. Problems in establishing optimal usage of the Byron Regional
 Sport and Cultural Centre (BRSCC), a large capital investment, and years of indecision regarding
 the establishment of new sporting fields in the north of the Shire are but two significant examples
 where effective engagement and relationship building between Council and community sporting
 groups could have elicited more effective and timely decisions/outcomes. Council has
 acknowledged the need to actively develop and promote effective community engagement
 strategies utilising the International Association of Public Participation (IAP2) principles, yet to date
 little has been done to proactively and regularly engage with the key sporting groups and
 associations that hire the majority of Council's active indoor/outdoor recreational spaces, i.e.
 designated sporting fields and facilities.

This deficiency was recently recognised by the Council at its meeting held on 29th August 2013
 when Council resolved:

20 *“That Council establish a Shire wide sports association and user group to consider the needs and
 opportunities for the enhancement of sporting participation across the shire and that this group
 meets at least twice per year.”*

25 Since this resolution was adopted staff have developed some potential objectives for a proposed
 Byron Shire Sports Stakeholder Forum (the term forum is preferred to “Association” because it is
 envisaged that rather than forming another organisation with all of the inherent rules and
 requirements that apply, that regular forums where Council can regularly engage with the sector
 would be more effective). The potential objectives developed are:

30 Objectives:

1. To bring together all of the major sporting groups currently utilising Council's sports fields
 and facilities on a regular basis
2. To provide a means of improving and facilitating closer cooperation and collaboration
 35 between sporting codes who are active within the Byron LGA
3. To improve the level of understanding between the clubs and associations as to the
 competing demands for limited indoor/outdoor recreation spaces within the Byron LGA
4. To collect data and information regarding the growth of each of the sporting codes and their
 likely future development needs
- 40 5. To utilise information regarding the future growth and development needs of the clubs to help
 inform future Council decision making and forward infrastructure planning
6. To provide a forum for actively engaging with the principal users of Council sports fields on
 ground/facility development proposals and any issues arising from the use of Council
 facilities
- 45 7. To build a spirit of cooperation and mutual respect between clubs/codes and between
 clubs/codes and the Council
8. Through closer cooperation facilitate and promote shared ground/facilities development
 proposals for government funding utilising seed funding/funding from sporting
 associations/codes and/or the Council

50 As a basis for discussing the Sports Stakeholder Forum (SSF) with local and sub-regional sporting
 groups/associations the following outline of a potential SSF has been prepared:

Composition and Conduct of the Forum:

- 55
1. The Forum would be chaired by a councillor appointed by the Council

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013 (13)

2. The Forum would include up to three councillors including the Chair
3. The Forums would be attended by the General Manager (or his delegate), the Director - Infrastructure Services, and the relevant Manager.
4. The Forum would meet every 3 months at the BRSCC
- 5 5. Notes summarising issues raised and decisions taken at each Forum would be tabled at Council meetings
6. Participation in the Forums would be open to all major sporting groups that currently use or have a need to use Council sports fields/facilities, primarily (although not exclusively) by virtue of them having a significant membership residing within the Byron LGA
- 10 7. The number of participants would be a maximum of two per club or based upon such other formula which ensures equity and fairness of representation
8. The Forum would operate on the basis of consensus and information exchange rather than on the basis of any binding vote
- 15 9. The feedback from the Forum will facilitate more informed decision making by the Council in relation to the allocation of sporting facilities and the future development of sporting facilities within the Byron LGA.

Inaugural Meeting:

20 It is proposed that in order to further explore the establishment of a SSF that representatives from sporting organisations across the Shire be invited to attend an inaugural forum to be held at the BRSCC and Chaired by the Mayor to discuss and consider the proposed objectives of the Byron Shire Sports Stakeholder Forum, its proposed structure and a meeting schedule as well as to
25 identify key issues to be discussed at future forums. The outcomes from the inaugural forum would be reported back to the Council for consideration and endorsement. Some of the issues that could be expected to be raised at the inaugural forum are:

- Ground allocations
- Forward planning and ground tenure
- 30 • Ground/facility improvements
- Unauthorised use of grounds
- Condition of grounds including maintenance, council response times, liability issues etc
- Hire charges
- Strategic approach to cooperative facilities development and funding
- 35 • Establishing smaller working parties to consider and report on particular issues/initiatives

Conclusion:

40 The establishment of a Sports Stakeholder Forum involving all of the major users of Council's outdoor sports fields and associated facilities is critical if Council is to effectively plan for the future development and maintenance of these valuable community assets. The added benefits of forming a SSF include the building of trust between the various competing sporting codes and constructive dialogue with the Council, as well as the opportunity to facilitate more cost effective facilities development outcomes through shared planning and funding of such facilities. The proposal is
45 strongly commended to the Council.

Financial Implications

50 There are no detrimental financial implications for the Council. The cost of SSF meetings can be absorbed within Council's current budget provisions while the potential for improved cost efficiencies in grounds/facilities management and development is significant.

Statutory and Policy Compliance Implications

55 Local Government Act 1993 – provisions relating to the management and use of Community Land
Crown Lands Act 1989 – provisions relating to the licensing and leasing of Crown Land.

COMMUNITY INFRASTRUCTURE – EXECUTIVE MANAGER’S REPORTS

Report No. 13.2. Proposed Road and Bridge Names

5 **Executive Manager:** Community Infrastructure
Report Author: Simon Bennett, Traffic and Transport Planner
File No: #E2013/62798

Theme: Community Infrastructure, Local Roads and Drainage

Summary: Council has received a number of requests to name roads, lanes and a bridge.

This report outlines those requests, plus takes the opportunity to outline other similar public infrastructure that would benefit from an official name.

While many of the proposals relate to Council owned or managed infrastructure, the state required process for the proposal, consultation and gazettal of names must be adhered to and is briefly outlined within this report, as is Council’s own ‘Road Name Register’ and relevant policy *Tourist, Street Name, Community Facility and Service Signs*, as adopted 30 August 2007.

10

RECOMMENDATION:

15

1. That, as detailed in this Council report (#E2013/62798), consultation be undertaken in accordance with state requirements including where relevant, the writing to affected property owners in regard to the proposed names detailed and as listed at:

20

- a) Table 1: requests received for naming of roads, lanes and a bridge
- b) Table 2: proposal to name unnamed roads/lanes (as detailed in Annexure 8(a) (#E2013/61533).

25

2. That after completion of Part 1 and in regard to each specific naming proposal, staff do one of the following:

- a) if no submission is received, gain gazettal of the names proposed, after which a report is provided back to Council for confirmation; or
- b) if submissions are received, provide a report back to Council on the submissions for further consideration.

30

Attachments:

- Proposed Names For Unnamed Roads And Lanes #E2013/61533 [4 pages]Annexure 8(a)
- RMS Letter Naming Pacific Highway Foot Bridge at Billinudgel #DM1126026 [3 pages] Annexure 8(b)

Report

This report details the following:

- 5 • Table 1: requests/proposals received for naming roads, lanes and a bridge
- Table 2: proposal to name unnamed roads/lanes (as detailed in Annexure 8(a))

Accordingly this report is broken into these two sections.

10 Background

As Table 1 indicates, Council has received requests and suggestions for naming streets and bridges. In reviewing these matters the issues detailed in Table 2 have also been identified.

- 15 Both tables include a proposed name for each site identified, noting Council have a relevant policy, *Tourist, Street Name, Community Facility and Service Signs*, as adopted 30 August 2007 via Resolution 07-467, and an approved list of suitable names (#DM354461) known as the Street Name Register.

- 20 NB: both Council's Policy and street name register are available on the following web links:

[http://www.byron.nsw.gov.au/files/publications/Tourist Street Name Community Facility and Service Signs Policy.pdf](http://www.byron.nsw.gov.au/files/publications/Tourist_Street_Name_Community_Facility_and_Service_Signs_Policy.pdf)

- 25 [http://www.byron.nsw.gov.au/files/publications/Street Name Register.pdf](http://www.byron.nsw.gov.au/files/publications/Street_Name_Register.pdf)

As for dedicating names, Council is able to name roads in accordance with the authority provided in Part 10, Division 4, Section 162 of the Roads Act 1993.

- 30 The procedure of naming roads, is dictated by Sections 7 to 10 within Part 2, Division 7 of the Roads Regulation 2008, which is available in detail at:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+156+2008+cd+0+N>

- 35 In summary however, the regulation requires compliance with the following process:

- Step 1: as recommended, proposed names be advertised and consulted upon*
- Step 2: report back any submissions, with those that receive none proceed to Step 3
- Step 3: publish in Government Gazette and local newspaper, plus inform authorities*
- 40 Step 4: name is adopted if no objections are received from the listed authorities*

- 45 *NB: consultation in Step 1 includes to 'serve notice' on the 'authorities' referred to in Step 3 and 4 and include Australia Post, the Registrar-General, the Surveyor-General, the Chief Executive of the Ambulance Service of NSW, New South Wales Fire Brigades, the NSW Rural Fire Service, the NSW Police Force, the State Emergency Service, the New South Wales Volunteer Rescue Association Incorporated and, in the case of a classified road, the RMS.

Additional consideration is the Australian-New Zealand Standard 4819:2011, in particular Section 4 'Road Definition and Naming' and is noted within this report where relevant.

- 50 Also within this report are maps of each proposal which will assist with the consultation process required, noting that (where applicable) consultation will include directly notifying adjacent landowners.

- 55 The process of formalising the name may take between three to six months depending upon the submissions received and the concurrence or not of the above named authorities.

Requests for Naming of Roads, Lanes and a Bridge

Council has received requests to name the infrastructure detailed in Table 1.

- 5 It is therefore recommended consultation be undertaken in regard to Table 1, noting each proposal is detailed further below (Figures 1-1, 1-2, etc).

Table 1: requests for naming of roads, lanes and a bridge

Fig	Request to Name / Rename	Suggestion (source)
1-1	foot bridge, Pacific Highway, Billinudgel	Lloyd Poynting (relative)
1-2	lane off Gulgan Road, Mullumbimby	McKenzies Lane (resident)
1-3	cul-de-sac St Finbarr's Primary School	Arakwal Court (parent)
1-4	Tyagarah Airfield access road	Stacey's Way (local business)
1-5	a road or park after Mullumbimby boxer	Murphys Lane (relative)
1-6	unnamed lane off Foxs Lane, Gulgan	Foxs Lane South (resident)
1-7	STP Access Road, Ocean Shores	Smokey Valley Way (resident)
1-8	Short Street, New Brighton	Mangrove Street (street name register)
1-9	unnamed road, New Brighton	North Head Road (resident)
1-10	Fletcher Lane, Byron Bay	Byron Lane (resident)
1-11	road reserve entry to Orara Court, Lilli Pilli	Coolalie Place (resident)

10

Figure 1-1: proposal to name foot bridge, Pacific Highway, Billinudgel after local Lloyd Poynting

The footbridge provides a link between Billinudgel and Ocean Shores over the Pacific Highway.

It is recorded as a Council asset to maintain and labelled 'Balemo Drive Footbridge'.

The RMS record the facility as simply 'Bridge No. 10081' and have advised Council by letter of a request received by them to name the bridge 'Lloyd Poynting'. The RMS letter is attached (Annexure 8(b)).



In summary, the letter advises of RMS criteria for naming a facility and requests Council undertake consultation on the proposed name.

The letter also outlines the long standing association of Mr Lloyd Poynting with the village of Billinudgel, including from 1934 when joining and then taking responsibility for the family business of operating the general store which continued, as did his long service with the local RSL, following

his active WWII service. In addition Mr Lloyd Poynting also served as local post master (1947-1980) which ceased on his retirement, during which he served as an active volunteer for the local RFS and dune care protection. Mr Lloyd Poynting passed away aged 82 in 2004 as a resident of South Golden Beach.

Figure 1-2: lane off Gulgan Road, Mullumbimby

A resident request has been made to name the unsealed lane (depicted by the yellow line) as 'McKenzie's Lane', which the requestor claims is the name of a long established local family.

As the map shows the three adjacent properties do have a street address allocated, with two of them having access to / from the lane, ie the southern premises upon #1 Mullumbimby Road and #153 Gulgan Road. The third property is addressed as #42 Bilin Road, which is off McAuleys Lane (ie west of the map and not shown). Thus no name is required for addressing or postal purpose.

However the request outlines problems with being located, including by emergency services. It is believed the name proposed will be supported by the two adjacent premises.

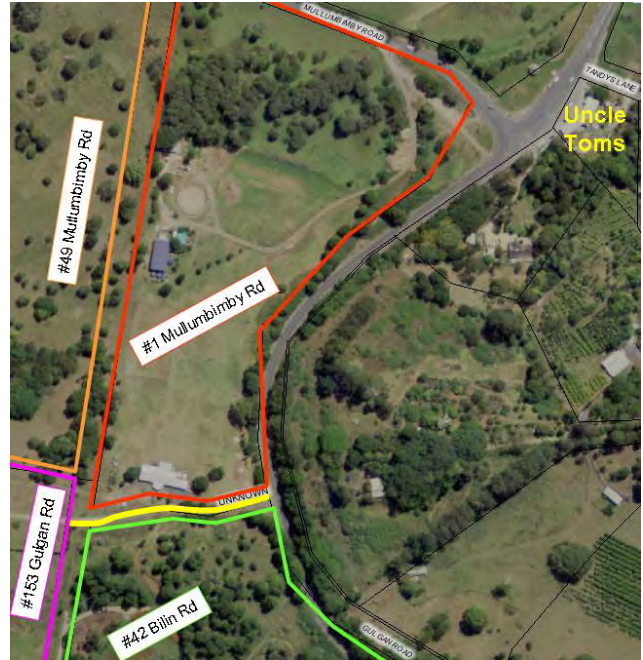


Figure 1-3: cul-de-sac at St Finbarr's Primary School

A local resident has advised he has gained support of the two school "parent bodies" and from "representatives of the local indigenous community" to name the cul-de-sac between St Finbarr's Primary School and Byron Bay High School as 'Arakwal Court' (Location A).

East of the site is Arakwal National Park; the property on the north side is #165 Bangalow Road, while the property to the south is #1 Broken Head Road.

Consultation with the Arakwal Corporation will take place.

All these properties have a street address and location allocated and known and thus according to AS4819:2011 no name for the cul-de-sac is required. It is also noted this is not Council maintained.

NB: map indicates yellow land parcels which are addressed as Bangalow Road; while two pink parcels are addressed as Broken Head Road. These are provided for indicative purposes only and do not form part of the proposal.

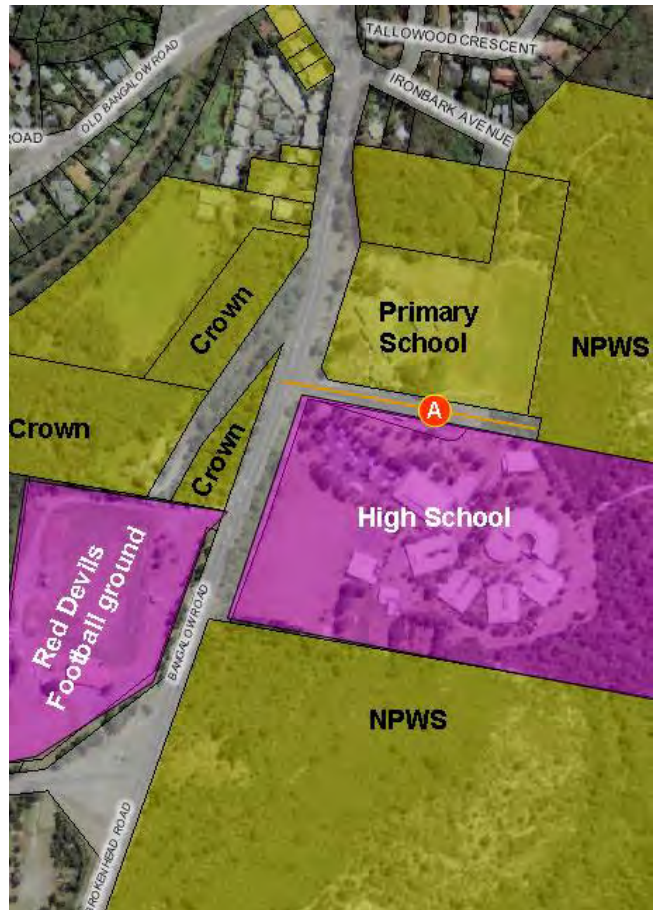
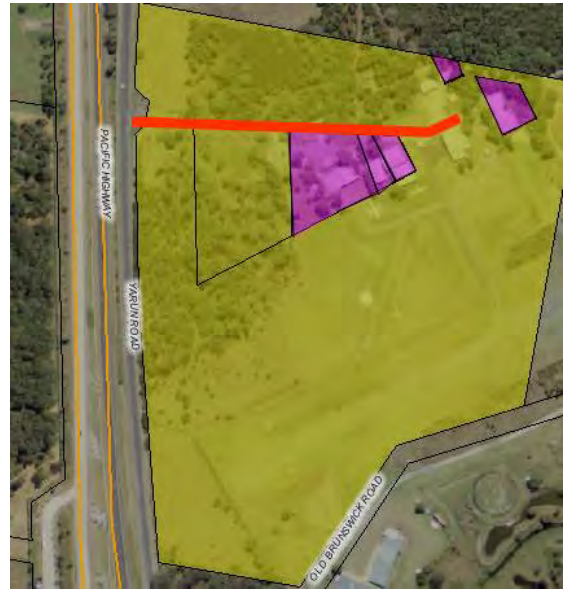


Figure 1-4: Tyagarah Airfield Access Road

Council land is shown in yellow, while private properties are shown in pink. These private properties and the Tyagarah airfield are accessed via the unnamed road (red line) maintained by Council. The road is on Council land but not in a dedicated road reserve, with access to this unnamed road available from Yarun Road, which runs parallel to the Pacific Highway.



One of the private property owners has advised of support from the others for his proposal to name the road “Stacey’s Way” in memory of his daughter who passed away aged 30 due to cancer.

As such it is believed no objections would be forthcoming during consultation and no problems foreseen for Council by naming and signing the cul-de-sac as requested, noting all properties highlighted are currently addressed as the Pacific Highway.

5

Figure 1-5: a Road or Park After Mullumbimby Boxer

Notable Australian boxer ‘Tommy Burns’ was born as Geoffrey Mostyn Murphy in Mullumbimby 1922. Mr Murphy died in Sydney in February 2011, with details of his life and achievements available on The Courier Mail newspaper website at the below web address.

Mr. Murphy’s son requests Council “consider naming a new park or road or something” with preference his family name of Murphy be used instead of his boxing (professional) name of Burns.

Therefore it is proposed that Lane 2, which is parallel to and between Gordon Street and Dalley Street and connects from Tincogan Street to Tyagarah Street, be named ‘Murphys Lane’, noting that attributing a family name is consistent with parallel lanes east of the subject site, eg Studal Lane and McGougans Lane.



<http://www.couriermail.com.au/sport/local-sport/tommy-burns-played-to-packed-stadiums/story-e6frepno-1226007123234>

10

Figure 1-6: Lane Connected to Foxs Lane, Tyagarah

A resident has lodged a DA with Council and both he and planning staff seek clarification on a property address.

The property is amongst those depicted, all of which have no house number and instead are addressed as simply Pacific Highway, Tyagarah.

As pictured, the nearest named local road is Foxs Lane and the resident's suggestion is logical ie the unnamed lane (as shown by the pink line) be named Fox's Lane south.

However this is not supported by AS4819:2011, nor is it required, given only two of the four properties addressed as Foxs Lane are allocated with house numbers (ie numbers 17 and 68).

It is therefore proposed the name Foxs Lane be applied for the whole length. This should not require change to the two existing numbers / allocations and, subject to consultation, also result in four new house numbers allocated to properties as indicated (#).



Depicts new house number/address

Figure 1-7: Unnamed STP Access Rd, Ocean Shores

5

A resident requests the unnamed public road currently signed as 'STP Access Road' (as shown by the pink line and accessible from Brunswick Valley Way) be endorsed as 'Smokey Valley Way'.

As shown however, there are two road segments, with the pink line being recorded as 'Unnamed STP Access Road', while the green line is simply recorded 'Unnamed Road'.

However as only two properties are accessible from these roads, it is believed the one-name can apply without a problem.

An alternative option however might be applying 'Smokey Valley Way' to the road segment shown by the pink line, while the green line remain / endorsed as signed ('STP Access Road') or be given a new name, such 'Dalagar Way', deemed apt on the basis of meaning 'soft mud' and within Council's Street Name Register.

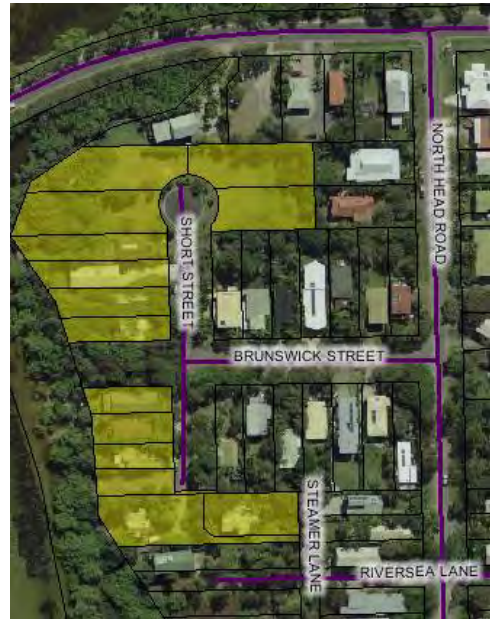


It is noted also that while the resident property is accessible via the STP access road (site A) the resident's address is, and therefore presumed also accessible from, Banana Lane (site B) and thus the sole property adjacent to the road (and only other owner to be consulted with) is Council, noting the STP facility (site C) is currently identified by Lot and DP only as addressed to the Pacific

Highway. Therefore should Council as owner / operator of land / STP not object to the proposal, it is recommended the proposed name 'Smokey Valley Way' be put out for broader community consultation and apply to both segments of the road shown.

Figure 1-8: Request to Rename Short Street, New Brighton

Within the same postcode, 2483, are two streets both named Short Street. One is in Brunswick Heads (21 land parcels, between Byron Street and Tweed Street) and one in New Brighton (cul-de-sac, 15 land parcels, west end of Brunswick Street).



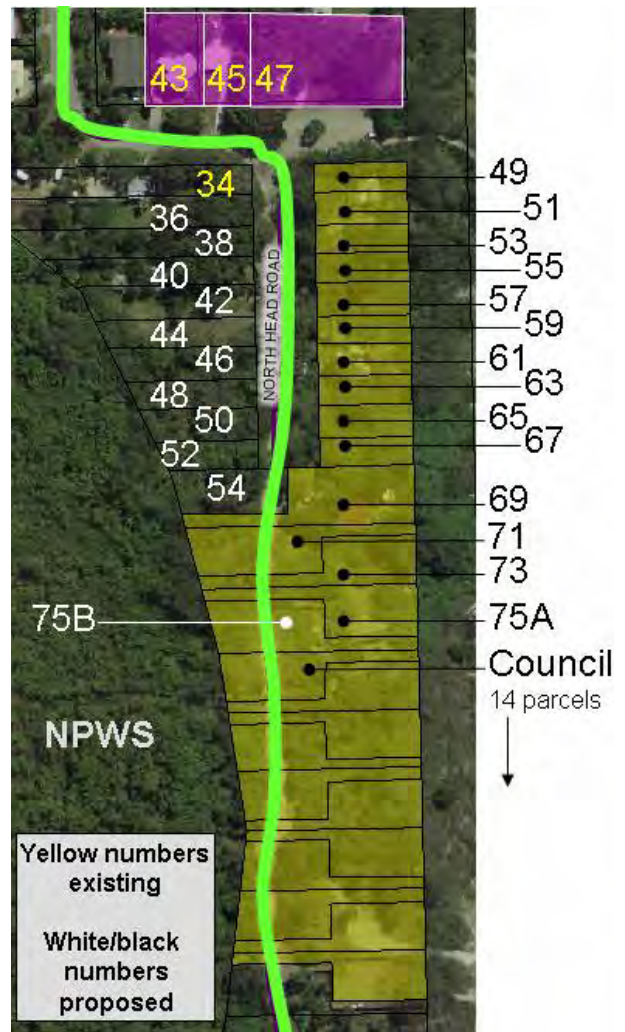
Repeated confusion with the delivery of mail led a resident to complain to Australia Post, who in turn suggested it is a Council matter to re-name the road.

It is noted that changing the New Brighton address affects less property owners (11 compared to 21) and that the relevant AS does not support the same street name used within the same town or postcode.

It is recommended therefore a new name be applied to Short Street, New Brighton and Mangrove Street is offered for consultation purposes.

Figure 1-9: Unnamed Road, New Brighton

Local residents (three pink land parcels, three owners) have a property number allocated against the road name 'Unnamed Road', meanwhile those south of them are without house number and allocated a different street name.



On the east side (26 yellow land parcels, 5 owners) each property has an address to the disconnected road north of them ('The Esplanade', and not shown on the map) while those opposite on the west side (11 land parcels, 7 owners) are addressed as 'Unnamed Road'.

More logical would be the continuation of the name and numbering system on North Head Road, which is the request of one resident of those highlighted.

The potential numbering system is shown, noting actual numbering and confirmation is a matter for Council (Local Government Act) and confirmation with Australia Post and other authorities *after* a road name is agreed.

Therefore at this time the numbers allocated here are for indicative purposes only and in efforts to verify if the existing number system could be continued, which appears possible noting that the road dissects several land parcels, most of them being Council owned (14 of the 26 yellow land parcels).

Figure 1-10: Proposal to Rename Fletcher Lane as Byron Lane, Byron Bay

The sole resident with a Fletcher Lane address (red land parcel) suggests the lane name is misleading and not consistent with the naming convention across the town centre, ie the lane is perpendicular (and not parallel as elsewhere) to the street it is named after.

The resident therefore suggests Fletcher Lane be renamed as Byron Lane, which runs parallel and north of the lane.

As the lane only has one addressed property (the proponent of this proposal) and is a short, single, one-block length between Fletcher Street and Middleton Street, the change is believed to be logical and uncomplicated to include amongst the various proposals requiring consultation within this report.



Note: objections to change a long standing name are considered more likely from locals and residents, and not the authorities listed in this report.

Figure 1-11: Proposal to Name Road Reserve Entry to Orara Court, Lilli Pilli

5

A resident requests the road reserve (green line) connected to Orara Court, Lilli Pilli be named and signed Coolalie Place after the original homestead and acreage.

As shown, the change of name would affect four properties (yellow land parcels) all addressed as #1 Orara Court and accessed via a road upon land classified as Community / Neighbourhood Titles (red parcel).

As such a change of road name would result in new addressing of each property as Coolalie Place (presumably #1 to #4) and the sign be erected at Orara Court, which would benefit locating properties. Council however would not become responsible for the road or its maintenance that is upon the community title.



Proposal to Name Unnamed Roads / Lanes (as detailed in Annexure 8(a))

10 In investigating the above it became apparent of the numerous unnamed roads and lanes that exist within the Shire.

15 However due to the size of the table and numbers of maps required, plus to assist with consultation, all details of these are within Annexure 8(a), noting the staff recommendations for names are provided for consultation; a process that will provide opportunity for changes and report back to Council prior to gazettal if necessary.

As it will be noted the Annexure cites AS4819, clause 4.4.7 as reasons against a name proposed. This clause recommends the same name not be used in the same town, for example Fingal Street and the proposed Fingal Lane to its south.

5

However Council has established such a naming convention, as used in Brunswick Heads and Byron Bay, and therefore recommended.

10

No such convention is used in Mullumbimby, yet most lanes are named after early pioneer family names. Therefore the available pioneer names within Council's street name register is recommended to be used for consultation purposes.

Financial Implications

15

Advertising is required and is expected to be a considerable cost given the amount of detail. Additional costs, assuming all locations are to be signed, will be sign production and installation.

20

It is therefore considered a budget of up to \$10,000 will be adequate for completion of all advertising and signage requirements.

25

Council allocates an annual traffic facilities budget, plus has a local roads budget used for signage and maintenance where required. It is considered both are appropriate for this purpose, noting the costs will be incurred over time as each item is progressed, which as the report notes is likely to take between three to six months at best and very much dependent upon consultation.

Statutory and Policy Compliance Implications

As noted within report.

Report No. 13.3. **2013/14 Road Maintenance Budgets for Bitumen Operations (Pothole Filling Works)**

Executive Manager: Community Infrastructure

Report Author: Tony Nash, Manager Works

File No: #E2013/60352

5

Theme: Community Infrastructure, Local Roads and Drainage

Summary: To adjust road maintenance budgets to account for the year to date actual expenditure versus budget for bitumen operations (pothole filling works).

There is a nil net financial impact on the road maintenance budgets by these adjustments.

RECOMMENDATION:

10

That the financial adjustments to the road maintenance budgets, as detailed in Table 1 of the report, be approved to fund the actual expenditure for bitumen operations.

Report

Byron Shire has received its annual rainfall before the end of August 2013, which has resulted in a large number of road failures and potholes.

5 In reacting to this amount of rainfall in such a shortened time period and making the roads safe for traffic, the actual expenditure of filling potholes has been high on a year to date comparison against the budget.

10 In the 2013/14 financial year up to three crews have been used at times (about a six week concentrated period) to fill the potholes and make the roads safe for residents and road users. Management, Councillors and operational staff were inundated with complaints by residents and road users due to the number and size of potholes in the Shire's road network. The actual cost of pothole filling works so far in 2013/14 is about 40 to 45% of the total annual budget for the year. If
15 additional Council funds cannot be directed to this maintenance activity, then other road maintenance budgets will need to be adjusted to free up funds for the increased pothole filling works. This is the recommended action.

20 In the 2012/13 financial year, the same situation occurred, wherein our area received more than the annual rainfall in 2012, with most of the rain falling between January and September 2012. There were no additional Council funds available in 2012/13, so the increased budget for pothole filling works was found by adjustments to other road maintenance activities.

25 Council has a requirement to do its best to try to make roads as trafficable as possible at all times. This requires Council to be responsive and react to road defects, such as potholes, as they develop across our road network as much as possible. In a wet year this means additional budgets for pothole filling works are required.

30 The factors affecting the large number of potholes that develop on our roads include:

- the amount of rainfall received in our area
- the recent weather patterns
- distinctive wet and dry seasons
- annual budgets for pothole filling works
- 35 • budgets not increasing in line with real costs
- current poor condition of our road network
- limited other reactive road maintenance works such as crack sealing, heavy patching, shape and surface correction works
- 40 • reduced road resealing program
- limited AC resheeting program
- limited rehabilitation / reconstruction of roads in poor condition / failed states

45 A separate and more detailed technical report about bitumen operations, including pothole works, is being prepared for the General Manager. It is recommended that a similar report be presented to the Community Infrastructure Advisory Committee for their consideration and discussion.

Financial Implications

50 The increased budget for bitumen operation (pothole filling works) has been provided by making corresponding decreases in other road maintenance activities, as shown in the following table.

There is a nil net financial impact on the road maintenance budgets by these adjustments.

Table 1

Description	Original Budget \$	Proposed Revised Budget \$	Effect \$
Drainage Maintenance	369,300	320,000	-49,300
Bitumen Operations	621,400	960,000	+338,600
Vegetation Control	108,600	70,000	-38,600
Roadside Tree Maintenance	180,100	140,000	-40,100
Grading	431,300	324,000	-107,300
Roadside Mowing	221,900	201,900	-20,000
Footpaths	39,700	30,500	-9,200
Sign Maintenance	171,500	150,000	-21,500
Other Expenses	232,600	180,000	-52,600
Total	2,376,400	2,376,400	0

Comments by Manager Finance

5 The proposed budget amendments included in this report do not impact the overall 2013/2014 budget result. However, as Council does not have the capacity to provide additional funding to pothole filling works without reducing another Council service, the impact of the budget adjustments proposed will be a reduction of other road maintenance activities.

10 Whilst this proposal addresses the short term budget position at the expense of other road maintenance activities, it could be suggested that the ongoing deterioration of the road network, if not addressed, will require Council to devote additional financial resources to road maintenance in future years. It is becoming clear that current allocated budgets are not sufficient and also
 15 highlights the important role of the Infrastructure Renewal Reserve once sufficiently established and Council continuing to pursue the Financial Sustainability Project Plan (FSPP) outcomes.

20 Council in future years will need to consider either continuing to provide only minimal road maintenance budgets, which may be inadequate to meet demand, or provide additional funding for road maintenance, which would require reductions to another Council program(s) or service(s) within the General Fund.

Statutory and Policy Compliance Implications

25 In accordance with Regulation 211 of the Local Government (General) Regulation 2005, Council will need to approve the budget adjustments outlined in this report prior to any additional expenditure being incurred on pothole filling works that may exceed the current budget allocations existing prior to the consideration of this report.

CORPORATE MANAGEMENT – EXECUTIVE MANAGER’S REPORTS

Report No. 13.4. Investments – August 2013

5 **Executive Manager:** Corporate Management
Report Author: James Brickley, Manager Finance
File No: #E2013/56362

Theme: Corporate Management, Financial Services

Summary: This report includes a list of investments and identifies Council's overall cash position as at 31 August 2013 for Council's information.

10 **RECOMMENDATION:**

That the report listing Council's investments and overall cash position as at 31 August 2013 be noted.

15 **Attachments:**

- Investment Valuations and Graphs August 2013 #E2013/56358 [2 pages] **Annexure 2(a)**
- Denison Investment Report – August 2013 #E2013/59523 [10 pages] **Annexure 2(b)**

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013 (27)

Report

In relation to the investment portfolio as at 31 August 2013, Council has continued to maintain a diversified portfolio of investments. The average 90 day bank bill rate for the month of August was 2.59%. Council's performance for the month of August is a weighted average of 3.71%. This performance is again higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits. Council's investment portfolio should continue to out-perform the benchmark as the capital protected investments earning 0% interest begin to mature or are able to be switched favourably. There are still a number of Council's capital protected investments being partially and fully allocated to an underlying zero coupon bond. This is part of the "Capital Protection Mechanism" and coupons will not be paid if any allocation is made to this bond.

The table below identifies the investments held by Council as at 31 August 2013:

Schedule of Investments held as at 31 August 2013

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
24/07/07	1,000,000	AVERON II	CP	AAA	01/07/14	CR	0.00%*	963,100.00
26/09/05	1,500,000	EMU NOTES	CP	AAA-	25/10/15	MFD	0.00%*	1,407,000.00
29/06/06	2,000,000	ALL SEASONS NOTE	CP	AA+	29/08/14	MFD	0.00%*	2,031,400.00
30/03/07	1,000,000	INFRASTRUCTURE AND UTILITIES NOTE	CP	A	04/04/14	E	0.00%*	982,300.00
28/09/07	1,000,000	TRI-SECTOR LINKED NOTE	CP	A	29/09/14	E	0.00%*	969,900.00
28/11/07	3,000,000	CLIENT MANAGED NOTE	CP	A	28/11/14	E	0.00%*	2,797,500.00
20/06/12	500,000	HERITAGE BANK LTD BONDS	N	BBB+	20/06/17	B	7.25%	521,000.00
24/06/13	2,000,000	HERITAGE BANK LIMITED	N	BBB+	24/09/13	TD	4.15%	2,000,000.00
11/06/13	2,000,000	SUNCORP	P	A+	09/09/13	TD	4.15%	2,000,000.00
15/04/13	1,000,000	MACQUARIE BANK	P	A	14/10/13	TD	4.35%	1,000,000.00
29/09/08	2,000,000	WESTPAC BANK	P	AA	29/09/13	TD	8.00%	2,000,000.00
16/12/08	1,000,000	WESTPAC BANK	N	AA	16/12/13	TD	6.00%	1,000,000.00
28/09/09	785,000	INVESTEC BANK	P	BBB+	20/01/14	TD	8.02%	785,000.00
18/06/10	786,000	SUNCORP	N	A	06/06/14	TD	7.30%	786,000.00
24/06/13	1,000,000	ME BANK	P	BBB	24/09/13	TD	4.30%	1,000,000.00
09/08/13	2,000,000	NEWCASTLE PERMENANT	N	NR	07/11/13	TD	3.80%	2,000,000.00
01/08/13	2,000,000	SOUTHERN CROSS CR UNION	P	NR	28/01/14	TD	4.10%	2,000,000.00
12/05/11	1,000,000	INVESTEC BANK	N	BBB+	12/05/14	TD	7.48%	1,000,000.00
20/06/13	2,000,000	ING BANK (AUSTRALIA)	P	A1	18/09/13	TD	4.25%	2,000,000.00
09/08/13	2,000,000	RABO BANK	N	AA	12/02/14	TD	4.05%	2,000,000.00
24/07/13	1,000,000	GREATER BUILDING SOCIETY	P	NR	25/11/13	TD	4.10%	1,000,000.00
09/08/13	1,000,000	ST GEORGE BANK	N	AA-	07/11/13	TD	3.75%	1,000,000.00
27/08/13	1,000,000	NATIONAL AUSTRALIA BANK	P	AA-	25/11/13	TD	3.75%	1,000,000.00
03/06/13	1,000,000	ME BANK	N	BBB	02/09/13	TD	4.28%	1,000,000.00

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013 (28)

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
08/07/13	2,200,000	POLICE CREDIT UNION	P	NR	08/10/13	TD	4.09%	2,200,000.00
08/07/13	2,000,000	INVESTEC	N	BBB+	08/01/14	TD	4.08%	2,000,000.00
22/08/13	2,000,000	ME BANK	N	BBB	20/12/13	TD	3.90%	2,000,000.00
06/05/13	2,000,000	BANK OF QUEENSLAND	N	A2	05/09/13	TD	4.35%	2,000,000.00
03/06/13	1,000,000	ELDERS RURAL BANK	N	BBB	01/10/13	TD	4.25%	1,000,000.00
06/09/12	2,000,000	RABOBANK	N	AA	06/09/13	TD	5.02%	2,000,000.00
12/10/12	1,000,000	INVESTEC	N	BBB+	14/10/13	TD	4.71%	1,000,000.00
28/08/13	2,000,000	POLICE CREDIT UNION	N	NR	28/10/13	TD	3.80%	2,000,000.00
09/07/13	1,000,000	SUNCORP	N	A	09/10/13	TD	4.05%	1,000,000.00
11/06/13	1,000,000	HERITAGE BANK LIMITED	N	BBB+	09/09/13	TD	4.15%	1,000,000.00
19/06/13	2,000,000	BENDIGO & ADELAIDE BANK	N	NR	17/09/13	TD	4.05%	2,000,000.00
09/07/13	2,000,000	ING BANK (AUSTRALIA)	N	A1	09/10/13	TD	4.10%	2,000,000.00
N/A	4,294,183	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	2.75%	4,294,182.87
Total	58,065,183					AVG	3.71%	57,737,382.87

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

Note 2.

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(29)

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

5 For the month of August 2013, as indicated in the table below, there is a dissection of the investment portfolio by investment type. It also illustrates the current value of investments has remained lower than the original principal amount demonstrating a cumulative unrealised loss but compared to the previous month, the cumulative unrealised loss has reduced by \$77,650. This cumulative unrealised loss is a consequence of the lingering effects of the Global Financial Crisis as some of Council's 'grandfathered' investments are linked to the Credit and Equity Markets which have been adversely affected and are yet to recover.

Dissection of Council Investment Portfolio as at 31 August 2013

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
43,771,000.00	Term Deposits	43,771,000.00	0.00
4,294,182.87	Business On-Line Saver (At Call)	4,294,182.87	0.00
3,500,000.00	Managed Funds	3,438,400.00	(61,600.00)
1,000,000.00	Credit	963,100.00	(36,900.00)
5,000,000.00	Equity	4,749,700.00	(250,300.00)
500,000.00	Bonds	521,000.00	21,000
58,065,182.87		57,737,382.87	(327,800.00)

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

20 The table below provides a reconciliation of investment purchases and maturities for the period 31 July 2013 to 31 August 2013 on a current market value basis.

Movement in Investment Portfolio – 31 July 2013 to 31 August 2013

Item	Current Market Value (at end of month)
Opening Balance at 31 July 2013	55,650,253.70
Add: New Investments Purchased	12,000,000.00
Add: Interest from Call Account	9,479.17
Less: Investments Matured	10,000,000.00
Less: Call Account Redemption	0
Add: Fair Value Movement for period	77,650.00
Closing Balance at 31 August 2013	57,737,382.87

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(30)

Investments Maturities and Returns – 31 July 2013 to 31 August 2013

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity
2,000,000.00	Southern Cross Credit Union	TD	01/08/13	29	4.20%	6,673.97
1,000,000.00	Rabo Bank	TD	09/08/13	732	6.50%	*64,821.92*
1,000,000.00	National Australia Bank	TD	27/08/13	90	4.02%	9,912.33
2,000,000.00	ME Bank	TD	22/08/13	122	4.35%	29,079.45
2,000,000.00	Southern Cross Credit Union	TD	06/08/13	92	4.20%	21,172.60
2,000,000.00	Police Credit Union	TD	28/08/13	30	3.95%	6,493.15
10,000,000.00						138,153.42

- 5 * - The interest for the Rabo Bank Term Deposit (TD) is paid annually but the investment term was for two years. The total received on maturity is for the last year and not the full term of the investment. This investment returned \$130,356.16 over the two year term.

10 The overall 'cash position' of Council is not only measured by what funds Council has invested but also by what funds Council has retained in its consolidated fund or bank account as well for operational purposes. In this regard, for the month of August 2013 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 31 August 2013

15

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	43,771,000.00	43,771,000.00	0.00
Business On-Line Saver (At Call)	4,294,182.87	4,294,182.87	0.00
Managed Funds	3,500,000.00	3,438,400.00	(61,600.00)
Credit	1,000,000.00	963,100.00	(36,900.00)
Equity	5,000,000.00	4,749,700.00	(250,300.00)
Bonds	500,000.00	521,000.00	21,000
Total Investment Portfolio	58,065,182.87	57,737,382.87	(327,800.00)
Cash at Bank			
Consolidated Fund	4,079,026.06	4,079,026.06	0.00
Total Cash at Bank	4,079,026.06	4,079,026.06	0.00
Total Cash Position	62,144,208.93	61,816,408.93	(327,800.00)

Financial Implications

Council uses a diversified mix of investments to achieve short, medium and long-term results. Council's historical strategy is to use credit/equity markets for exposure to long term growth. It should be noted that Council's exposure to credit/equity products is capital protected when held to maturity, which ensures no matter what the market value of the product is at maturity, Council is insured against any capital loss. The investment strategy associated with long term growth is now prohibited under the current Ministerial Investment Order utilising credit/equity markets to seek investment products. However, the 'grandfathering' provisions of the Ministerial Investment Order provides Council can retain investments now prohibited until they mature. Council is also looking continually at 'switch' opportunities for these investments in conjunction with its independent investment advisors. Any 'switch' opportunities undertaken are reported to Council in the investment report relating to the month the 'switch' occurred. Notwithstanding the current valuations of credit/equity investments, these products will trend toward their full principal value as they approach maturity.

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

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

30 Statutory and Policy Compliance Implications

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

The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. In this regard, the current Council Meeting cycle does not always allow this to occur, especially when investment valuations required for the preparation of the report, are often received after the deadline for the submission of reports for the meeting. Endeavours will be made to ensure the required report will be provided to Council and this will for some months require reporting for one or more months.

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

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

Report No. 13.5. Sandhills Early Childcare Centre – Owner's consent to lodge development application

Executive Manager: Corporate Management
Report Author: Leslie Beardmore, Leasing and Licensing Coordinator
Greg Ironfield, Acting Manager Sustainable Communities

5 **File No:** #E2013/55758

Theme: Property, Procurements and Contract Services
Community Services - Children’s Services – Sandhills

Summary: Sandhills Early Childhood Centre is requesting owner’s consent to lodge a development application for removal of 31 trees to upgrade the outdoor play space on Crown Reserve Pt 457 DP 1087879 over which Council currently has a licence with NSW Trade and Investment Crown Lands Division for use and occupation of the building. This licence does not expire, but can be terminated at the discretion of the Minister.

Under the current licence agreement owner’s consent is required from the Minister of NSW Trade and Investment to lodge the development application.

This report recommends that Council apply to the Crown Lands Division of NSW Trade and Investment for owner’s consent to lodge the development application.

RECOMMENDATION:

10

1. That Council apply to the Crown Lands Division of NSW Trade and Investment for owner’s consent to lodge the development application as shown at Annexure 5 (#E2013/55828).

15

2. That Council pay the \$65.70 application fee to Crown Lands Division (from the Sandhills Early Childcare Centre budget) to make application for the granting of owner’s consent to lodge the development application.

20

Attachments:

- Development Application and Referral #E2013/55828 [22 pages] **Annexure 5**

25

Annexure 5: Due to the size of this document it has been provided to Councillors on their Agenda CD only. It is also available for viewing on Council’s website and as a hard copy at community access points throughout the Shire.

Report

Land Information

- 5 Part Crown Reserve R755695 being part Pt 457 DP 1087879 at Gilmore Crescent, Byron Bay
Gazetted 29/06/07
Gazetted purpose – future public requirements
Owner – NSW Trade and Investment (Crown Lands)
Trust Manager – none
- 10 Licensed – Byron Shire Council for the purpose: use and occupation of existing buildings

15 Sandhills Early Childhood Centre is requesting owner's consent to lodge a development application for removal of 31 trees on Crown Reserve Pt 457 DP 1087879 over which Council currently has a licence with NSW Trade and Investment Crown Lands Division for use and occupation of the Sandhills Early Childhood Centre. The development application is lodged for the upgrade of the outdoor play space.

20 Under the 34a licence agreement (LI202604) issued by Crown Lands Division on 12 November 2008, Byron Shire Council cannot make improvements or carry out alterations without the Minister's consent:

45. Construction Of Improvements Permitted With Consent

- 25 (a) *For the purposes of this clause "Improvement" means any building structure facility work or pontoon.*
- (b) *The Holder will not construct effect erect or undertake any Improvements on the Premises other than with the prior consent in writing of the Minister.*

58. Carrying out of Alterations

- 30 (a) *The Holder will not make or undertake any alterations to the Premises unless full and proper plans and specifications shall have been previously submitted to and approved by the Minister in writing and all work in connection thereto shall be carried out by and at the expense of the Holder and to the satisfaction of the Minister using contractors or workmen*
- 35 *previously approved by the Minister whose approval shall not be unreasonably withheld and subject thereto the Holder will observe and comply with:*
- 40 (i) *all requirements of the Minister, the Local Council and any other statutory authority having jurisdiction over the Premises; and*
- (ii) *the plans and specifications approved by the Minister, the Council and any other statutory authority.*
- 45 (b) *The Minister may appoint such consultants as it may reasonably deem proper to inspect any work undertaken by the Holder pursuant to this clause and the Holder will comply with the reasonable directions of such consultants and shall pay the whole of their fees charges and expenses in relation thereto.*

50 As Council is not the owner of the land, consent to lodge the Development Application must be given by Crown Lands Division of NSW Trade and Investment.

Financial Implications

There is a fee of \$65.70 payable to Crown Lands Division to make application for the granting of owner's consent to lodge a development application.

Payment of development application fees and payment of the tree removal is to be made by Byron Shire Council. There are funds available to cover this cost in the Sandhills Early Childhood Facility budget account Job no 4240.21.

- 5 The costs of tree removal and compensatory habitat program relating to this development application are yet to be established. Current allowance for play area upgrade of \$64,200 is included in 2013/14 capital budget and has been carry forward from the 2012/13 financial year as per the 'Carryovers for inclusion in 2013/2014 Budget' report considered by Council at its Ordinary Meeting held 29 August 2013, Res. [13-408].

10

Statutory and Policy Compliance Implications

Crown Lands Act 1989

34A Special provisions relating to Minister's powers over Crown reserves

- 15 (1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.
- 20 (2) The following provisions apply in relation to the granting of a relevant interest:
- (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
- 25 (i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,
- (ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,
- (b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,
- 30 (c) the Minister is not to grant the relevant interest unless the Minister:
- (i) is satisfied that it is in the public interest to grant the instrument, and
- (ii) has had due regard to the principles of Crown land management.
- (3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.
- 35 (4) The proceeds from a relevant interest are to be applied as directed by the Minister.
- (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:
- 40 (a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the Public Reserves Management Fund Act 1987,
- (b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,
- 45 (c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of a livestock health and pest authority—a direction that the proceeds (or part of the proceeds) be paid to that livestock health and pest authority,
- (d) in the case of a Crown reserve referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.
- 50 (6) The provisions of:
- (a) Divisions 3 and 3A apply in relation to a lease granted under this section, and
- (b) Division 4 apply in relation to a licence granted under this section, and
- (c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and

(d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

5 (6A) Nothing in this section affects the operation of section 35.

(7) In this section:

Crown reserve means land that is, or is part of, a reserve within the meaning of Part 5, and includes:

- 10 (a) land within a travelling stock reserve, or
 (b) land within any other reserves for public purposes under the control of trustees or other authorities.

(8) For the avoidance of any doubt, the power of the Minister to grant a relevant interest in respect of a Crown reserve under this section includes the power to enter into an agreement for such a relevant interest.

15 (9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

Environmental Planning and Assessment Regulation 2000

20

49 Persons who can make development applications

(cf clause 46 of EP and A Regulation 1994)

(1) A development application may be made:

- 25 (a) by the owner of the land to which the development application relates, or
 (b) by any other person, with the consent in writing of the owner of that land.

(2) Subclause (1) (b) does not require the consent in writing of the owner of the land for a development application made by a public authority or for a development application for public notification development if the applicant instead gives notice of the application:

- 30 (a) by written notice to the owner of the land before the application is made, or
 (b) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.

(3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.

35 (3A) Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.

(4) Subclause (3) does not require the consent of the Crown if the development application is for State significant development made by a public authority or public notification development.

(5) In this clause:

40 **public authority** includes an irrigation corporation within the meaning of the Water Management Act 2000 that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

public notification development means:

- 45 (i) State significant development set out in clause 5 (Mining) or 6 (Petroleum (oil and gas)) of Schedule 1 to State Environmental Planning Policy (State and Regional Development) 2011 but it does not include development to the extent that it is carried out on land that is a state conservation area reserved under the National Parks and Wildlife Act 1974, or
 50 (ii) State significant development on land with multiple owners designated by the Director-General for the purposes of this clause by notice in writing to the applicant for the State significant development.

Report No. 13.6. Mullumbimby and District Neighbourhood Centre - Annex Building Destroyed by Fire

Executive Manager: Corporate Management
Report Author: Trish Kirkland, Manager Property Contracts and Information Systems
Colin Sims, Projects Coordinator Property
Leslie Beardmore, Leasing and Licencing Coordinator
Len Reilly, Maintenance Coordinator

5

File No: #E2013/60299

Theme: Property, Procurement and Contracts

Summary: This report provides an update and background information on the recent fire at the Mullumbimby Neighbourhood Centre Annex, located on Crown Land (Lot 8 Section 8 DP 758725), and which is the subject of Crown Lease 453912.

Following assessment of the annex building, Council's insurers approved its demolition and removal.

This report recommends that the annex building be reconstructed and temporary tenure arrangements be provided to Mullumbimby District Neighbourhood Centre, to allow the Centre, to continue to provide accommodation for the Southern Cross Distance Education program, which used the annex building prior to the fire.

10

RECOMMENDATION:

1. That Council authorise the General Manager to take all necessary steps and actions to reconstruct the annex building destroyed by fire at Lot 8 DP 758725.
2. That Council authorise the General Manager to take all necessary steps and actions to provide temporary tenure for Mullumbimby and District Neighbourhood Centre, in the front room of the Mullumbimby Civic Hall, to enable them to continue to provide accommodation of Southern Cross Distance Education program, until the annex building has been reconstructed, subject to support from Crown Lands being received for this purpose.
3. That Council notify Crown Lands and Mullumbimby and District Neighbourhood Centre of its decision to reconstruct the annex building.

15

20

25

Attachments:

- Email from E Levack: Level of Insurance Coverage Confirmed #E2013/59553 [1 page].....Annexure 6(a)
- Asbestos Inspection and Structural Condition Report #E2013/57273 [26 pages]..... Annexure 6(b)
- Email from Crown Lands Division dated 18/09/13 #E2013/60861 [1 page]Annexure 6(c)
- Area leased by Mullumbimby District Neighbourhood Centre #E2013/61395 [1 page]..... Annexure 6(d)
- Mullumbimby District Neighbourhood Centre Annual Report #E2013/61674 [32 pages].....Annexure 6(e)
- Email from Mullumbimby District Neighbourhood Centre #E2013/61691 [1 page]..... Annexure 6(f)

30

35

Annexures 6(b) and 6(e): Due to the size of these documents they have been provided to Councillors on their Agenda CD only. They are also available for viewing on Council's website and as hard copies at community access points throughout the Shire.

ReportLand information

- 5 Description: Part Lot 8 Section 8 DP 758725 at 55 Dalley St (corner Tincogan St),
Mullumbimby
- Purpose: Site for council chambers
- Gazetted: 16/10/25
- Owner: Crown Lands
- 10 Reserve Trust: Nil
- Trust Manager: Nil
- Tenure: Crown Lease 453912 for business purposes dated 07/09/12 to Byron Shire
Council - Approved Crown sub-lease to Mullumbimby & District Neighbourhood
Centre Inc (MDNC) for community welfare services.

15

Background

- At its Ordinary Meeting held 9 August 2012, Council considered a report titled "13.14 Proposed
new Crown lease and sub-lease - Mullumbimby and District Neighbourhood Centre" (MDNC), refer
20 <http://www.byron.nsw.gov.au/meetings/2012-08-09-ordinary>. Council resolved **[12-600]** to
establish a sub-lease tenure for the MDNC over part Lot 8 DP758725, as shown in blue at
Annexure 6(d). The MDNC's sub-lease area includes land and two buildings – the main building
(known as the Old Council Chamber building) and a small annex building located between the
main building and the Mullumbimby Civic Hall.

25

The MDNC is a not for profit incorporated community organisation formed in 1987 to provide a
variety of community welfare services to people in the locality of Mullumbimby and surrounding
districts. These services include:

- 30
- emergency relief;
 - soup kitchen;
 - parenting/family support
 - drop-in centre;
 - community resources;
 - 35 • meeting room;
 - information and referral;
 - tax help;
 - financial counsellor;
 - women's resource service and domestic violence outreach service;
 - 40 • Brighter Future Program;
 - Shire Car Pool Project; and
 - community hub and community development.

Refer to Annexure 6(e) for a full copy of the MDNC's 2011/12 Annual Report.

45

Annex Building Fire

- At 1am Friday 23 August 2013, Council on-call property staff were alerted by Police to a fire in the
annex building of the Mullumbimby Neighbourhood Centre and were advised that even though the
50 fire was extinguished, the building had been gutted, and contents destroyed. Staff attended the
site at 6.30am for an initial inspection and ordered additional site fencing be installed for public
safety.

Police attended the site at 10am and conducted a thorough inspection to identify cause and origin. Investigations revealed the fire originated outside the building where the remains of 3 wheelie bins were found. Police concluded the bins were deliberately lit on fire close to the annex building, with the fire then spreading to the annex building. On the request of Council's insurance company an assessment of the damaged building was carried out by a structural engineer and asbestos consultant and an assessment report provided, refer Annexure 6(b). The Engineer's assessment found the structural integrity of the building was questionable, and made a recommendation to demolish and fully remove the building.

The Mullumbimby Civic Hall building (next door) sustained superficial damage to the north-western external corner due to the extreme heat in this area. The air-conditioning condenser units which were installed in accordance with resolution 12-971 only days before the fire suffered melting of the external plastic shroud fittings and damage to vital internal components. The damage to these is beyond repair and the units require replacement.

Insurance Cover

The insurance assessor has approved the fully funded replacement of the air-conditioning condenser units for the Mullumbimby Civic Hall, and the order has been placed to enable this work to occur subject to the availability of the replacement units.

As required by Crown Lease 453912, Council had the annex building insured against fire and other risks for full replacement.

Council's insurance assessor issued an instruction to undertake the demolition and removal of the annex building in accordance with the structural and asbestos consultant report. The demolition and removal was completed on 17 September 2013.

The extent of the insurance cover includes costs for full demolition and reconstruction of the building, as long it is in accordance with the original design or similar design. The insurance assessor has confirmed that the associated costs of replacement - consulting services for detailed construction documentation such as drawings, specifications and schedule of finishes; construction certificate and other approvals, certification and occupation approval etc – are also covered by insurance.

Staff costs for project coordination/client representation are not included.

Crown Lands and MDNC Consultation

As the annex building is located on Crown Land (Lot 8 DP 758725) and Council hold tenure under Crown Lease 453912, the fire was reported to Crown Land.

Staff also made enquiries to Crown lands to establish Council's obligations to rebuild the asset under the Crown Lease. Their response [Annexure 6(c)] dated 18 September 2013 notes:

“the Minister for Regional Infrastructure and Services position is that if this structure is essential to the Lessee and Sub-Lessee then it should be repaired, refurbished, replaced or reinstated as per the Lease. However, if this is not the case the Minister is willing to support the removal of the structure and reinstatement of the site to the satisfaction of the Lessor...”

On 18 September 2013, staff consulted with the MDNC, as the sub-lessee, to establish if the annex building is essential to their service delivery and operations. Their response [Annexure 6(f)]

“The MDNC, as the lessee, would like for the Annex building to be rebuilt. The loss of the building has an impact on our capacity to host the outreach services to Mullumbimby, including the Southern Cross Distance Education... Examples of what the Annex has been used for:

- 5 • Office (admin)
- Family Support Service Brighter Futures
- Bay Ami (mental health service)
- Meeting Room and workshop space
- Evolve (youth program)
- 10 • NAIDOC event
- Red Tent event
- Counselling

15 *“The Annex also housed the only public access shower which is was accessed approximately 800 times per year, not including an increase in times of very dry weather when tanks run dry.”*

Options

1. Demolition and removal, and reinstatement of the area to the satisfaction of Council and the MDNC.
- 20 2. Demolition, removal, and reconstruction of the annex building in accordance with the original structure.

Apart from staff time, both options are fully funded by the Council's insurers.

25 Option 1 is mostly completed, with the demolition and removal complete. Staff are currently arranging for the soil to be reinstated where the slab was located. Should Council determine to proceed with Option 1, this area will need to be reinstated to a minimum of a turf area.

30 Option 2 will require the engagement of appropriate consultants for the detailed construction documentation, construction and S.68 approvals, tender process for construction contract, and to obtain the Crown Lands consent for the works. Given the advice received from the Crown and MDNC, it is recommended in this report to proceed with option 2.

Temporary Accommodation

35 At the time of the fire, the annex building was used by Southern Cross Distance Education, who are auspiced by the MDNC to ensure cost free accommodation for a much needed service.

40 It is proposed to make temporarily available the front room of the Mullumbimby Civic Hall to the MDNC, to help them to continue to provide accommodation to the Southern Cross Distance Education, whilst Council ready the annex building for reconstruction. At the time of writing this report, staff had been advised that the Mullumbimby Civic Hall Board's is supportive of this proposal, but are yet to receive copies of the Board's minutes detailing their support of the proposal. Also, staff are still consulting with Crown Lands to establish if the proposed use of the Mullumbimby Civic Hall for Distance Education is consistent with the gazetted use of the Hall.

45 This report recommends that Council delegate authority to the General Manager to take the necessary steps to provide temporary accommodation to the MDNC for their continued accommodation of Southern Cross Distance Education whilst the annex building is being reconstructed.

50

Financial Implications

Costs for demolition and reconstruction of the building is covered by Councils insurance company.

The provision and allocation of the Staff resource required to implement option 2 is currently being explored as part of the organisational structure implementation.

Statutory and Policy Compliance Implications

5

The building sits on Crown Land (Lot 8 Section 8 DP 758725) and is the subject of Crown Lease 453912. Accordingly, any works to the building require the consent of Crown Lands.

Crown Lands Act 1989

- 10 34A Special provisions relating to Minister's powers over Crown reserves
- (1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a **relevant interest**.
- 15 (2) The following provisions apply in relation to the granting of a relevant interest:
- (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
- 20 (i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,
- (ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency—the Minister to whom that agency is responsible,
- (b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—
- 25 the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,
- (c) the Minister is not to grant the relevant interest unless the Minister:
- (i) is satisfied that it is in the public interest to grant the instrument, and
- (ii) has had due regard to the principles of Crown land management.
- 30 (3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.
- (4) The proceeds from a relevant interest are to be applied as directed by the Minister.
- (5) Without limiting subsection (4), any such direction by the Minister may include any of the following:
- 35 (a) a direction that the proceeds (or part of the proceeds) be paid to the Consolidated Fund or to the Public Reserves Management Fund constituted under the Public Reserves Management Fund Act 1987,
- (b) in the case of a relevant interest granted in respect of a Crown reserve for which a reserve trust has been appointed as trustee under Part 5—a direction that the proceeds (or part of the proceeds) be paid to the reserve trust or to another reserve trust,
- 40 (c) in the case of a relevant interest granted in respect of a travelling stock reserve under the care, control and management of a livestock health and pest authority—a direction that the proceeds (or part of the proceeds) be paid to that livestock health and pest authority,
- 45 (d) in the case of a Crown reserve referred to in subsection (2) (a) (ii)—a direction that the proceeds (or part of the proceeds) be paid to the relevant government agency.
- (6) The provisions of:
- 50 (a) Divisions 3 and 3A apply in relation to a lease granted under this section, and
- (b) Division 4 apply in relation to a licence granted under this section, and
- (c) Division 5 apply in relation to an easement granted under this section as though the easement was granted or created under that Division, and
- (d) Division 6 apply in relation to a permit granted under this section as though the permit was granted under that Division.

Accordingly, in relation to the granting of a relevant instrument, a reference in Divisions 3–6 to Crown land includes a reference to a Crown reserve.

(6A) Nothing in this section affects the operation of section 35.

(7) In this section:

5 **Crown reserve** means land that is, or is part of, a reserve within the meaning of Part 5, and includes:

(a) land within a travelling stock reserve, or

(b) land within any other reserves for public purposes under the control of trustees or other authorities.

10 (8) For the avoidance of any doubt, the power of the Minister to grant a relevant interest in respect of a Crown reserve under this section includes the power to enter into an agreement for such a relevant interest.

15 (9) A Crown reserve the subject of a special purpose lease within the meaning of Division 3A may be leased under this section, but only if the granting of a lease under this section is authorised by, and complies with, the terms of the special purpose lease.

Report No. 13.7. Access Deed for Telstra telecommunications facilities Suffolk Park

Executive Manager: Corporate Management

Report Author: Leslie Beardmore, Leasing and Licensing Coordinator

Trish Kirkland, Manager Property, Contracts and Information Systems

5 **File No:** #E2013/59765

Theme: Property, Procurements and Contract Services

Summary: Since 2003 a Telstra mobile phone telecommunications tower (antennae, equipment, cabling) has been located on the decommissioned Suffolk Park Reservoir which is located on Council owned Community Land. The original installation was undertaken in accordance with the provisions of the Telecommunications (Low Impact Facilities) Determination 1997.

Various attempts (since 2003) to have Telstra relocate the tower to another location have been unsuccessful with Telstra stating “*the existing installation at Suffolk Park remains an integral part of a national initiative by Telstra to provide improved mobile and broadband services across the country.*”

Council has not received rental for the Telstra facility since its construction in 2003.

This report seeks Council’s confirmation of its interest to enter into an Access Deed with Telstra.

RECOMMENDATION:

- 10
1. That Council authorise the General Manager to sign the in-principle agreement with Aurecon Australia Pty Ltd (acting on behalf of Telstra) as at Annexure 7(a) (#E2013/31823) as confirmation of Council’s interest to enter into an Access Deed with Telstra, with the following information to be provided or conditions proposed by Council for consideration in the preparation of the Access Deed:
- 15
- a) That Telstra note that it is the view of Council that the \$120,000 in capital works undertaken on the site to install their infrastructure, was for the benefit of the Telstra installation and not for the benefit of Council’s infrastructure or land holding.
 - 20
 - b) That Telstra provide clarity on the exclusion zones for Telstra infrastructure.
 - c) That the Access Deed include provisions to ensure any/all maintenance required to the decommissioned water reservoir is undertaken and funded by Telstra.
 - 25
 - d) That the Access Deed include clear provisions to ensure that the removal or demolition of the water reservoir is managed appropriately by both parties, should it become necessary for risk or safety reasons to remove the reservoir.
 - 30
 - e) That the Access Deed include an annual rental fee of \$14,684.00 per annum (ex GST) to ensure parity with IPART recommendations for a medium density rental. (Note: This is more than the current \$12,500 on offer from Telstra).

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(43)

- f) That the Access Deed include clear provisions to ensure the appropriate management by both parties upon any sale or development of the land should Council determine in the future to pursue one of these options.
- 5 g) That Telstra and Council agree, as part of the development of the Access Deed, to negotiate back rental as a sign of good faith to Council and the Suffolk park community effective from the date of installation.
- 10 h) That the Access Deed include clear provisions that allow continued access to the site by members of the public (with the exception of the exclusion zone).
2. That Council authorise the General Manager to undertake all necessary actions to negotiate and finalise the Access Deed with Telstra in accordance with item 1 above.

15

Attachments:

- In Principle Agreement dated 19/3/12 #E2013/31823 [2 pages] **Annexure 7(a)**
- **CONFIDENTIAL** Legal Advice dated 10/09/2013 #E2013/59052 [7 pages] **Annexure 7(b)**
- 20 • GIS Map #E2013/48305 [1 page]..... **Annexure 7(c)**
- Letter to Aurecon Australia dated 31 July 2013 #E2013/47318 [2 pages]..... **Annexure 7(d)**
- Letter to Urbis Services dated 31 July 2013 #E2013/47307 [2 pages]..... **Annexure 7(e)**

ReportLand Information

5 Lot 1 DP 577559 known as Suffolk Park Reservoir (decommissioned reservoir) located at the end of Pecan Court, Suffolk Park (off Bottlebrush Crescent)

Owner – Byron Shire Council

Classification – Community Land categorised as Natural Area - Bushland

Plan of Management - #599743 Adopted 24 February 2005

10 Refer GIS Map at Annexure 7(c)

Background

15 The land known as Suffolk Park Reservoir contains a disused water reservoir, on which is located telecommunications antenna. Other telecommunication equipment is located in a shed close to the disused reservoir.

15 The Telstra mobile phone service infrastructure was located on the Suffolk Park Reservoir in 2003, under the powers provided by the Land Access and Activity Notice provisions of the Telecommunications Act 1997.

20 At its Ordinary Meeting held 28 June 2012, Council considered a report titled “12.14 Co-location of telecommunications facilities in Suffolk Park by Telstra Corporation Limited”, refer

25 <http://www.byron.nsw.gov.au/meetings/2012-06-28-ordinary>. The report provided copies of correspondence from Telstra, Department of Broadband, Communications and the Digital Economy, and Aurecon Australia (who act on behalf of Telstra) as Annexure to the report. The report provided the following information:

- Comprehensive history of previous resolutions and actions (previous resolutions include: **03-663**, **11-135**, and **11-792** all have been actioned and closed)
- 30 • Actions taken in response to resolution **11-1063** after consideration of a Notice of Motion titled “8.8 Telstra Mobile Tower in Suffolk Park” at Council’s Ordinary Meeting held 15 December 2011, refer <http://www.byron.nsw.gov.au/meetings/2011-12-15-ordinary>
- Previous challenges to have the telecommunications infrastructure removed have been unsuccessful
- Advice from Telstra that their intention is to remain on that site in that location
- 35 • Advice from Telstra that no other suitable locations provide adequate service coverage for the Suffolk Park residents
- Request from Telstra to enter into “in-principle” agreement to formalise a Deed of Agreement with Council for a yearly value of \$12,500 per annum with 4% annual indexation
- 40 • Information regarding the reclassification of the land from Community to Operational to allow for its sale.

45 The report recommended that Council authorise the General Manager to sign the “in-principle” agreement to confirm its interest to enter into an Access Deed with Telstra for this site. Council resolved **12-473**:

1. *That Council request Telstra to provide a presentation with regard to its future Telecommunications facilities with the Shire.*
- 50 2. *That Council authorise the General Manager to sign the In Principle Agreement with Aurecon Australia Pty Ltd (acting on behalf of Telstra) at Annexure 27(c) (#1211481), as confirmation of Council’s interest to enter into an Access Deed with Telstra.*

55 At its Ordinary Meeting held 9 August 2012, Council considered a Notice of Rescission Motion titled “9.1 Co-location of telecommunications facilities in Suffolk Park by Telstra Corporation Limited” <http://www.byron.nsw.gov.au/meetings/2012-08-09-ordinary>.

Resolved 12-646:

That Council rescind Resolution No. 12-473 from its Ordinary meeting held on 28 June 2012 which reads as follows:

5

12-473 Resolved:

1. That Council request Telstra to provide a presentation with regard to its future Telecommunications facilities with the Shire.
2. That Council authorise the General Manager to sign the In Principle Agreement with Aurecon Australia Pty Ltd (acting on behalf of Telstra) at Annexure 27(c) (#1211481), as confirmation of Council's interest to enter into an Access Deed with Telstra.

10

Resolved 12-647:

15

That Council authorise the General Manager to produce a further report establishing options for the future of the site including the change of the site to operational and potential sale and return the funds to a reserve to be used for community purposes.

On 28 February 2013, Council considered a report titled "12.13 Council Resolutions Review October to December 2012", refer <http://www.byron.nsw.gov.au/meetings/2013-02-28-ordinary>. Comments included for resolution [12-647] are set out below:

20

Community Land Lot 1 DP 577559, Suffolk Park contains a disused Council water reservoir, on which is located telecommunications antenna. Other telecommunications equipment is located in a shed.

25

The Telstra mobile phone service infrastructure was located on the Suffolk Park Reservoir in 2003, under the powers provided by the Land Access and Activity Notice provisions of the Telecommunications Act 1997. Previous Council resolutions include: 03-663, 11-135, 11-792, 11-1063 all of which have been actioned and closed.

30

On 28 June 2012, Council considered a report titled "Co-location of telecommunications facilities in Suffolk Park by Telstra Corporation Limited", which provided the following information:

35

- Comprehensive history of previous resolutions and actions.
- Previous challenges to have the infrastructure removed have failed.
- Telstra have advised their intention to retain the current location.
- Telstra have advised that no other suitable locations provide adequate service coverage to Suffolk Park residents
- Telstra are seeking to formalise an access deed with Council for a yearly rental of \$12,500 per annum with 4% annual indexation.
- Information regarding reclassification and sale of the land.

40

The resulting resolution is 12-647. This resolution requires appropriate resources to progress, and no resources have been identified to progress the resolution. Council's Leasing and Licensing Coordinator has capacity to progress granting an Access Deed to Telstra should Council seek to do so.

45

Recommendation: Close resolution 12-647.

50

Should Council close the Resolution a further report will be prepared to allow Council to consider granting a formal Deed of Access to Telstra for yearly rental \$12,500 per annum plus 4% annual indexation. Should Council resolve not to close this Resolution, that Council consider the allocation of funding at the next quarterly budget review to progress resolution 12-647.

55

13-94 Resolved, in part:

That Council hold a workshop in respect of the following resolutions:

- 5 • 12-647

13-95 Resolved:

10 *That Council prepare a lease to Telstra regarding the watertower site at Suffolk Park and a report made back to Council.*

At its Ordinary Meeting held 27 June 2013, Council considered a report titled "12.10 Access Deed for Telstra telecommunications facilities Suffolk Park", refer
<http://www.byron.nsw.gov.au/meetings/2013-06-27-ordinary>.

15 The report was prepared in accordance with Resolution 13-95 and provided the information on the actions required to implement the resolution [13-95], and recommended that Council authorise the General Manager to enter into the "in-principle" agreement with Aurecon as confirmation of Council's interest to enter into an Access Deed with Telstra. Council following consideration of the
 20 Report resolved as follows:

13-340 Resolved:

25 *That the matter of an Access Deed be deferred to a workshop (as mooted for August) to consider additional issues and options, namely:*

1. *a term of five years with options to extend being available to Council; call*
2. *the long-term future of the facility*
3. *the option of selling the facility*
- 30 4. *recovering rent in arrears*
5. *rental at the market rate*
6. *the potential for increased radiation once NBN is connected to the site*
7. *the legal advice cited at line 46 on page 90 of the report.*
8. *more information on upgrade and expansion planned by Telstra through its agent Urbis*

35

Current

In accordance with resolution **13-340**, on 31 July 2013, Council wrote to Aurecon Australia and Urbis Services. Refer Annexure 7(d) and 7(e). Council received the following responses from Aurecon on 27 August 2013:

40

"In response to the points in your letter, I would note the following:

- 45 1. *An Access Deed is merely a mechanism to facilitate payment of an Access Fee to a party, Byron Council in this instance, where a Land Access and Activity Notice (LAAN) has been served. It is not a proposed Lease or Licence that may be subject to negotiation. The Deed also provides Council with assurances regarding Telstra's insurance and indemnity and makes provision for make good works if Telstra were to decommission the site.*
- 50 2. *The creation of an Access Deed does not set the parameters for the tenure. The LAAN establishes Telstra's tenure in perpetuity. Refer to point 1 above.*
- 55 3. *I understand that an alteration to the subject facility has recently been undertaken, as outlined by correspondence from Telstra's agent Urbis. We are not aware of any future upgrades, which is not to say there will not be further alterations in the future, which may be unforeseeable at this point.*

4. *A draft Access Deed would be issued when an in-principle agreement has been reached between the parties. Refer to Point 1 above.*
5. *Telstra does not consider that that 'back rent' is appropriate. It is noted that Telstra did complete significant capital improvements to the Council's water reservoir by way of restoring the decommissioned utility to a condition readily suitable for practical usage. The restoration works were in the order of approximately \$120,000 and were wholly funded by Telstra.*
- 6A) *If Council were to sell the site - No Access Deed in place - Telstra occupies this site by virtue of a Notice served under Schedule 3 of The Telecommunications Act 1997 (Cth) ("the Act"). Once a Facility has been installed pursuant to the Carrier's powers and Immunities under Schedule 3 of the Act, that Carrier is entitled to operate that Facility in perpetuity. Schedule 42 of the Act contains provision for a landowner to claim Compensation in the event it suffers a loss as a result of the Carrier's exercising of its powers and immunities pursuant to Schedule 3.*

In the event of Council wishing to sell the land, Telstra's interest in that land remains pursuant to the Notice served under Schedule 3 and is therefore unaffected. In the event that Council, or indeed a new landowner, wishes to redevelop that land, and would be unable to do so with the Facility in-situ, there exists no requirement for Telstra to relocate its Facility, however, and without prejudice, we would expect it sensible that the parties would work together to seek a mutually acceptable outcome.

- 6B) *If Council were to sell the site - Deed in Place - Entirely as per scenario A, however an Access Deed offers benefits to both parties insomuch as it 1) formalises a commercial arrangement whereby the Carrier pays the landowner an Access Fee in lieu of the landowner having to seek Compensation under Schedule 42 of the Act through a Court; and 2) it formalises the more operational and logistical workings of the Carrier's occupation and use of the site, such as access times etc.*

In the event of a sale of land, the Carrier's occupation of that land remains pursuant to its Notice served under Schedule 3 of the Act, however the rights and obligations of the parties under the Access Deed do not transfer upon sale unless the Assignee is required to enter into an Access Deed by the Assignor. In the event of the landowner wishing to redevelop the land, the Access Deed does not change the status of the Carrier's occupation of the land under scenario 1, and therefore again we would expect it sensible that the parties would work together to seek a mutually acceptable outcome."

Aurecon has also confirmed in a further email that Telstra's previous offer (dated 22 May 2013) of an Access Deed still stands.

On 30 August 2013, Council sought legal advice as to the legal accuracy of the response received from Aurecon about the infrastructure and land sale/development options available to Council. The legal advice received is contained at Confidential Annexure 7(b).

In accordance with resolution **13-94**, Council held a workshop to review outstanding resolutions **12-647** and **13-340**. It was understood from the workshop that Council, in accordance with Resolution 13-95, would receive a further report to enable it to consider entering into the in-principle agreement with Aurecon Australia Pty Ltd (acting on behalf of Telstra), in a form similar that shown at Annexure 7(a). The in-principle agreement will confirm Council's interest to enter into an Access Deed with Telstra, with the following information to be provided or conditions proposed by Council for consideration in the preparation of the Access Deed:

- That Telstra note that it is the view of Council that the \$120,000 in capital works undertaken on the site to install their infrastructure, was for the benefit of the Telstra installation and not for the benefit of Council's infrastructure or land holding.

That Telstra provide clarity on the exclusion zones for Telstra infrastructure

- 5 • That the Access Deed include provisions to ensure any/all maintenance required to the decommissioned water reservoir is undertaken and funded by Telstra
- That the Access Deed include clear provisions to ensure that the removal or demolition of the water reservoir is managed appropriately by both parties, should it become necessary for risk or safety reasons to remove the reservoir.
- 10 • That the Access Deed include an annual rental fee of \$14,684.00 per annum (ex GST) to ensure parity with IPART recommendations for a medium density rental. (Note: This is more than the current \$12,500 on offer from Telstra)
- 15 • That the Access Deed include clear provisions to ensure the appropriate management by both parties upon any sale or development of the land should Council determine in the future to pursue one of these options.
- That Telstra and Council agree, as part of the development of the Access Deed, to negotiate back rental as a sign of good faith to Council and the Suffolk park community effective from the date of installation.
- 20 • That the Access Deed include clear provisions that allow continued access to the site by members of the public (with the exception of the exclusion zone).
- 25 It is envisaged that some negotiations with Telstra will be required to include these requirements in the draft Access Deed. Once a draft has been achieved, staff will seek legal advice on the Access Deed documentation prior to finalising the arrangements.

30 **Financial Implications**

Council has not received rental for the existing site at Suffolk Park since its construction in 2003. It is unlikely that Council is in a position to remove the telecommunication facility unless Telstra does so voluntarily. It is therefore an option to ensure that adequate rental is paid for such a site.

- 35 The offer from Telstra is to enter into an Access Deed with a yearly rental of \$12,500 and rental increases of 4% per annum for a term of five (5) years.

The IPART recommendation for a medium density rental on Crown Land as at 1 July 2012 is \$14,684.00 per annum ex GST.

40 **Statutory and Policy Compliance Implications**

In February 2005, Council adopted its Generic Plan of Management for Community Land Categorized as a Natural Area #599743. The Plan of Management authorises lease and licences in accordance with the Local Government Act 1993.

Commonwealth of Australia Constitution Act – Sec 51

50 The Parliament shall, subject to this Constitution, have power to makes law for the peace, order, and good government of the Commonwealth with respect to:

- (v) postal, telegraphic, telephonic, and other like services.

Telecommunications Act 1997 (CTH)

32 Public mobile telecommunications service

- (1) For the purposes of this Act, if:
- 5 (a) an end-user can use a carriage service while moving continuously between places; and
 - (b) the customer equipment used for or in relation to the supply of the service is not in physical contact with any part of the telecommunications network by means of which the service is supplied; and
 - 10 (c) the service is supplied by use of a telecommunications network that has intercell hand-over functions; and
 - (d) the service is not an exempt service (as defined by subsection (2), (3) or (4));
- the service is a **public mobile telecommunications service**.

15 All Public Mobile Telecommunications Service providers are licensed by the Australian Communications and Media Authority (ACMA) which regulates fixed line and mobile telecommunications.

20 Decisions of the Full Court of the High Court of Australia have supported the proposition that licensed Telecommunications carriers are to be afforded the same consideration in the use of public space as any public utility service.

25 Telecommunication carrier's powers and obligations when proposing to install telecommunications facilities without landowner consent and/or local planning approval are provided by a legislative scheme comprising of Schedule 3 to the Telecommunications Act 1997, the Telecommunications Code of Practice 1997 and the Telecommunications (Low Impact Facilities) Determination 1997. In brief, a carrier has the power to install "low-impact" facilities without the consent of the landowner provided the carrier adheres to obligations imposed by the Act and Code.

30 The combined effect of Schedule 3 to the Act and the Code of Practice is that in order to exercise its rights, a carrier must serve notice of its proposal on an owner or occupier of affected land. In turn, an owner or occupier has (limited) rights of objection to the proposal.

Local Government Act 1993

46 Leases, licences and other estates in respect of community land—generally

- (1) A lease, licence or other estate in respect of community land:
- 35 (a) may be granted for the provision of public utilities and works associated with or ancillary to public utilities, or
 - (a1) may be granted for the purpose of providing pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider, or
 - 40 (b) may be granted, in accordance with an express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the lease, licence or other estate:
 - 45 (i) for a purpose prescribed by subsection (4), or for a purpose prescribed by any of sections 36E to 36N as a core objective of the categorisation of the land concerned, or
 - (ii) for a purpose prescribed by the regulations, if the plan of management applies to several areas of community land, or
 - (iii) for a short-term, casual purpose prescribed by the regulations, or
 - (iv) for a residential purpose in relation to housing owned by the council, or
 - 50 (v) (Repealed)

- (c) may be granted in order to allow a filming project to be carried out, whether or not the project is in accordance with the plan of management or is consistent with the core objectives of the categorisation of the land concerned, but may not otherwise be granted.
- 5 (2) Despite subsection (1), a lease, licence or other estate in respect of community land may be granted for a purpose mentioned in subsection (1) (b) only if the purpose for which it is granted is consistent with the core objectives, as prescribed in this Part, of its categorisation.
- (3) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 30 years.
- 10 (4) The following purposes are prescribed for the purposes of subsection (1) (b) (i):
- (a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following:
- 15 (i) public recreation,
- (ii) the physical, cultural, social and intellectual welfare or development of persons,
- (b) the provision of public roads.
- (5) Purposes prescribed by subsection (4) in relation to the matters mentioned in subsection (4) (a) (ii) include, but are not limited to, maternity welfare centres, infant welfare centres, kindergartens, nurseries, child care centres, family day-care centres, surf life saving clubs, restaurants or refreshment kiosks.
- 20 (5A) A council must grant an application under subsection (1) (c) for a lease, licence or other estate in respect of community land in order to allow a filming project to be carried out on the land unless:
- (a) the community land is land referred to in section 47AA (1), or
- 25 (b) the plan of management for the land expressly prohibits use of the land for the purposes of filming projects, or
- (c) the council is satisfied that there are exceptional circumstances that warrant refusal of the application.
- (5B) Before refusing an application on a ground referred to in subsection (5A) (c), the council must consider whether any concerns it has could be addressed by imposing conditions on the grant.
- 30 (5C) If the council refuses an application, it must:
- (a) inform the applicant in writing of its decision as soon as practicable after it is made, and
- (b) give the applicant reasons in writing for its decision within 3 business days after it is made.
- 35 (6) A plan of management is void to the extent that it purports to authorise the grant of a lease, licence or other estate in contravention of this section.
- 47 Leases, licences and other estates in respect of community land—terms greater than 5 years
- (1) If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:
- 40 (a) give public notice of the proposal, and
- (b) exhibit notice of the proposal on the land to which the proposal relates, and
- (c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and
- 45 (d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.
- 50 (2) A notice of the proposal must include:
- information sufficient to identify the community land concerned
 - the purpose for which the land will be used under the proposed lease, licence or other estate

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(51)

- the term of the proposed lease, licence or other estate (including particulars of any options for renewal)
- the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)
- 5 • a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.
- (3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.
- (4) Before granting the lease, licence or other estate, the council must consider all submissions 10 duly made to it.
- (5) If a person makes a submission by way of objection to the proposal, the council must not grant the lease, licence or other estate except with the Minister's consent.
- (6) If the council applies for the Minister's consent, it must forward with its application:
 - a copy of the plan of management for the land
 - 15 • details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision
 - a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate
 - a copy of the newspaper notice of the proposal
 - 20 • a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate
 - a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the 25 needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.
- (7) On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.
- (8) After considering the application and any report of the Director of Planning, the Minister, if 30 satisfied that:
 - (a) subsections (1), (2) and (6) have been complied with, and
 - (b) such consent would not contravene section 46, and
 - (c) in all the circumstances, it is desirable to grant consent,may consent to the granting of a lease, licence or other estate in respect of the whole or part 35 of the land to which the application relates, subject to such terms and conditions as the Minister specifies.
- (8A) On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the 40 granting of a lease, licence or other estate in accordance with subsection (8).
- (9) The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).
- (10) For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the 45 council:
 - (a) would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or
 - (b) would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted,50 is taken to confer an option for renewal for a term equal to the further term.
- 47A Leases, licences and other estates in respect of community land-terms of 5 years or less
- (1) This section applies to a lease, licence or other estate in respect of community land 55 granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.

- (2) If a council proposes to grant a lease, licence or other estate to which this section applies:
- (a) the proposal must be notified and exhibited in the manner prescribed by section 47, and
 - 5 (b) the provisions of section 47 (3) and (4) apply to the proposal, and
 - (c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47 (5)-(9) are to apply to the proposal.
- (3) If the Minister, under subsection (2) (c), determines that the provisions of section 47 (5)-
- 10 (9) are to apply to the proposal:
- (a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47 (1)-(8), and
 - (b) section 47 (9) has effect with respect to the Minister's consent.

47B Lease or licence in respect of natural area

- 15 (1) A lease, licence or other estate must not be granted, in respect of community land categorised as a natural area:
- (a) to authorise the erection or use of a building or structure that is not a building or structure of a kind prescribed by this section or the regulations, or
 - 20 (b) to authorise the erection or use of a building or structure that is not for a purpose prescribed by this section or the regulations.
- (2) A lease, licence or instrument granting any other estate is void to the extent that its provisions are inconsistent with this section.
- (3) In this section, **erection** of a building or structure includes rebuilding or replacement of a building or structure.
- 25 (4) The following buildings and structures are prescribed for the purposes of subsection (1) (a):
- (a) walkways,
 - (b) pathways,
 - (c) bridges,
 - (d) causeways,
 - 30 (e) observation platforms,
 - (f) signs.
- (5) The following purposes are prescribed for the purposes of subsection (1) (b):
- (a) information kiosks,
 - (b) refreshment kiosks (but not restaurants),
 - 35 (c) work sheds or storage sheds required in connection with the maintenance of the land,
 - (d) toilets or rest rooms.
- (6) Despite subsection (1), a lease, licence or other estate may be granted, in respect of community land categorised as a natural area, to authorise the erection or use of any building or structure necessary to enable a filming project to be carried out, subject to the conditions prescribed by subsection (7) and the regulations.
- 40 (7) It is a condition of any lease, licence or other estate referred to in subsection (6):
- (a) that any building or structure so erected must be temporary in nature, and
 - (b) that as soon as practicable after the termination of the lease, licence or other estate:
 - (i) any building or structure erected must be removed, and
 - 45 (ii) any damage to the land caused by the erection or use of a building or structure must be made good, and
 - (iii) the land must be restored as nearly as possible to the condition that it was in at the time the lease, licence or other estate was granted,
- at the expense of the person to whom the lease, licence or other estate was granted.

ENVIRONMENT AND PLANNING – EXECUTIVE MANAGER’S REPORTS

Report No. 13.8. Byron Coast Comprehensive Koala Plan of Management

Executive Manager: Environment and Planning

5 **Report Author:** Angus Underwood, Team Leader Natural Environment

File No: #E2013/54949

Theme: Land and Natural Environment

Summary: The Koala Plan of Management Project Reference Group held their sixth meeting on 16 August 2013. The PRG has made a recommendation that the draft Byron Coast Comprehensive Koala Plan of Management be placed on public exhibition.

This report provides a brief overview of the plan and the public engagement activities proposed to be carried out during the exhibition period.

10 **RECOMMENDATION:**

That Council adopt the recommendations of the Koala Plan of Management PRG from the 16 August 2013 meeting as follows:

- 15 a) **That the draft Byron Coast Comprehensive Koala Plan of Management (Annexure 3(b) #E2013/59202) be placed on an extended public exhibition period for 8 weeks.**
- b) **That public engagement activities during the exhibition period be carried out in line with the revised Communication and Engagement plan (Annexure 3(d) #E2013/17392).**

20

Attachments:

- 25 • Minutes Koala Plan of Management PRG 16 August 2013 #E2013/52223 [3 pages].....**Annexure 3(a)**
- Draft Byron Coast Comprehensive Koala Plan of Management #E2013/59202 [83 pages] . **Annexure 3(b)**
- Addendum to Koala Habitat Study #E2013/58394 [5 pages].....**Annexure 3(c)**
- Communication and Engagement Plan #E2013/17392 [7 pages] **Annexure 3(d)**

30 *Annexure 3(b): Due to the size of this document it has been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website.*

Report

5 Council resolved **11-137** to prepare a Comprehensive Koala Plan of Management (CKPOM) and to establish a project reference group (PRG) (11-299, 11-300, 11-473 and 12-771) to assist in the preparation of the CKPOM in accordance with the statutory requirements of SEPP 44. Previous recommendations from the PRG have been reported to Council in March 2013 (13-142).

10 The PRG meeting held on 16 August 2013 was the sixth meeting of the group. See Annexure 3(a) for minutes of the meeting. The most recent draft of the CKPoM was reviewed and discussed at the meeting. The group discussed additional changes required to the draft and once these changes were made it was considered the plan would be ready for public exhibition. In order to ensure the public were informed about the plan's content and able to make informed submissions, the group considered that an extended public exhibition period would be beneficial and should include a number of community engagement activities. The following recommendations were made:

Recommendation:

1. That the draft Byron Coast Comprehensive Koala Plan of Management be placed on an extended public exhibition period for 8 weeks.
- 20 2. That public engagement activities during the exhibition period be carried out in line with the revised Communication and Engagement plan.

The draft Byron Coast Comprehensive Koala Plan of Management is attached as Annexure 3(b).

25 A Comprehensive Koala Plan of Management (CKPoM) is defined under *State Environmental Planning Policy No. 44 – Koala Habitat Protection*. The plan aims to encourage conservation and management of koala habitat, ensure a permanent free-living population over their present range and reverse the state-wide trend of koala population decline.

30 Koalas are listed as a vulnerable species under both New South Wales and Commonwealth legislation and a CKPoM will help to address the threats facing koalas in Byron Shire. The Department of Planning and Infrastructure and the Office of Environment and Heritage support Councils developing CKPoM's. The existence of a CKPoM for the Byron Coast will provide a more consistent approach to koala management, more certainty to developers and removes the need for individual developments to prepare a Koala Plan of Management.

35 The CKPOM encompasses the area within which the greatest level of perceived future urban growth is expected and thus greatest potential impact on koala populations. The planning area includes the major urban and residential centres of Byron Bay, Brunswick Heads, Ocean Shores, Broken Head, Mullumbimby and Myocum, an area of approximately 13,790 hectares (see Fig 1.2 in the CKPoM, Annexure 3(b)).

45 The framework for the CKPOM is based on the results of the *Byron Coast Koala Habitat Study 2011* and uses Koala Management Areas (KMA) and Koala Management Precincts (KMP). Two Koala Management Areas (KMA) have been established which are separated by the Brunswick River and have different management aims. North Byron Coast KMA occurs north of the Brunswick River and koalas in this area are identified as genetically different from those in the south. The koala population in this KMA has significantly declined as a result of bushfire events in 2004 and 2009 and its long term survival is in doubt without appropriate management. South Byron KMA includes land south of the Brunswick River where the population is more established but occurs in a highly fragmented landscape.

50 Five Koala Management Precincts (KMP) have been established- North Ocean Shores, West Mullumbimby, Brunswick Heads-Tyagarah, West Byron–St Helena, Suffolk Park–Broken Head. KMP boundaries have been aligned with property boundaries and encompass one or more

resident koala populations considered capable of long term survival given appropriate management. The KMP locations have been established using the same principals of identifying core koala habitat as defined by SEPP 44. KMP's are the focus for protection and conservation for koalas in the Shire.

5

The draft CKPoM contains both regulatory and non regulatory components all of which aim to increase community and stakeholder coordination of koala management and conservation. The regulatory components mainly relate to the development assessment and control. This section provides a consistent approach to assessing koala habitat and activity during the development application process and provides development standards to be met to minimise impacts on koalas. Development standards relate to habitat clearing, swimming pools, domestic dogs, fencing and road design.

10

15

Non regulatory components of the plan relate to other threats faced by koalas including road kill, fire, koala care, community education. The CKPoM aims to increase collaboration between Council and various agencies and stakeholders to manage activities so they minimise the threats to koalas within the Shire.

20

In order to compensate for loss of habitat as a result of development a compensation mechanism has been established that requires developers / landowners to contribute to a Koala Habitat Rehabilitation Program when habitat is removed as a result of development. The Koala Habitat Rehabilitation Program will be developed and managed by Council and will enable a strategic response to compensate for lost habitat rather than an ad hoc approach that occurs when compensation works are identified in isolation.

25

After the completion of the Koala Habitat Study two issues of relevance to management of koalas arose including habitat mapping and impacts associated with music festivals. The Addendum to the Koala Habitat Study is attached as Annexure 3(c) and has been produced as a recommendation by the PRG (13-142). The addendum outlines the changes to the habitat mapping carried out following the completion of the habitat study, and an analysis of the results of koala monitoring at the Tyagarah property where Bluesfest is held. The addendum provides the background to the controls outlined in 6.5.3 of the CKPoM.

30

Communication and engagement

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The communication and engagement activities proposed to be carried out during the public exhibition period are outlined in Annexure 3(d). This outlines stakeholder engagement activities that have been undertaken during the development of the CKPOM and those planned for the exhibition period. To date activities include the formation of the PRG, a public forum following the release of the Koala habitat study, and three (3) stakeholder workshops held prior to drafting of the CKPoM. These workshops covered topics including Landscapes and Linkages; Fire; and Development Controls.

40

The extended exhibition period of 8 weeks will allow for more intensive community engagement activities to be carried out during the exhibition period. These will include two (2) public forums, one (1) forum for practitioners (consultants, developers, ecologists etc), attendance at farmers markets, production of information sheets, written correspondence to landholders in KMP's, media releases, community contact with relevant Council staff, information on Councils website and newsletters.

45

Financial Implications

The public exhibition activities are estimated to cost around \$1800 plus staff time, which can be covered under existing budgets.

50

Statutory and Policy Compliance Implications

Public exhibition of Comprehensive Koala Plans of Management is a requirement under SEPP 44 – koala habitat.

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Report No. 13.9. PLANNING - Former Telstra Site Station Street Mullumbimby

Executive Manager: Environment and Planning

Report Author: Chris Larkin, Acting Manager Land and Natural Environment

File No: #E2013/62670 x 86080

5

Theme: Environment, Land and Natural Environment

Summary: Council resolved at the 19 September 2013 Ordinary meeting to call for a late report on the former Telstra Site at Station Street Mullumbimby regarding the possible zoning to B4. The change in zoning has not been exhibited and as the land is owned by Council, Council could proceed to rezone the site to B4 as a separate planning proposal. Such a planning proposal could happen concurrently while the Shirewide LEP is being finalised. However, Council has the option of proceeding to amend the draft LEP on the understanding that the change from B2 to B4 may lead to more beneficial social housing and community outcomes and this is not a significant planning issue as the site is currently zoned 2(a) Residential under the 1988 Byron LEP..

NOTE TO COUNCILLORS:

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

15

RECOMMENDATION:

That Lot 1 DP 435267 Station Street Mullumbimby be zoned B4 Mixed Use in the Draft Byron LEP 2012.

20

Report

Council resolved at its Ordinary meeting of 19 September 2013 the following in relation to land known as the 'Former Telstra site':

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Res No. 13-511 (part 17)

17. That a late report be brought to Council at the Ordinary Meeting on 10 October 2013 regarding the possible zoning of the Former Telstra site in Lot 1 DP 435267 Station Street Mullumbimby to B4. (Ibrahim/Dey)

10

This report discusses the site's current zoning under Byron LEP 1988, proposed zoning under the draft LEP 2012, and potential for zoning the land B4 Mixed uses having regards to the various issues and matters relating to the site. It is noted Council purchased the site in 2008 and it has since been used in part as a depot for Council work associated with the Mullumbimby Sewage Treatment Plant

15

Byron LEP 1988

The former Telstra site is identified as Lot 1 DP 435267 Station Street Mullumbimby. The land was previously utilised by Telstra as a depot office area for its local operations in Byron Shire but is currently zoned 2(a) Residential under Byron LEP 1988. The property has a height limit of 9 metres, is flood prone as is the remainder of Mullumbimby, and is located in close proximity to the CBD of Mullumbimby.

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Draft Byron LEP 2012

Due to the history of the site's use for a commercial purpose along with its proximity to the town centre, the Council Chambers, Woolworths and local cafes, the land was zoned B2 Local Centre under the draft LEP with other minor zone boundary adjustments across Station Street incorporating the Poinciana Café (see zoning map below).

55

Under the Draft LEP the site has a 9 metre height limit, a floor space ratio of 0.6:1.0 and a minimum lot size for subdivision of 200 m². Permissible uses include commercial and retail premises, child care centres, boarding houses, educational establishments, shop top housing, and tourist and visitor accommodation.

5

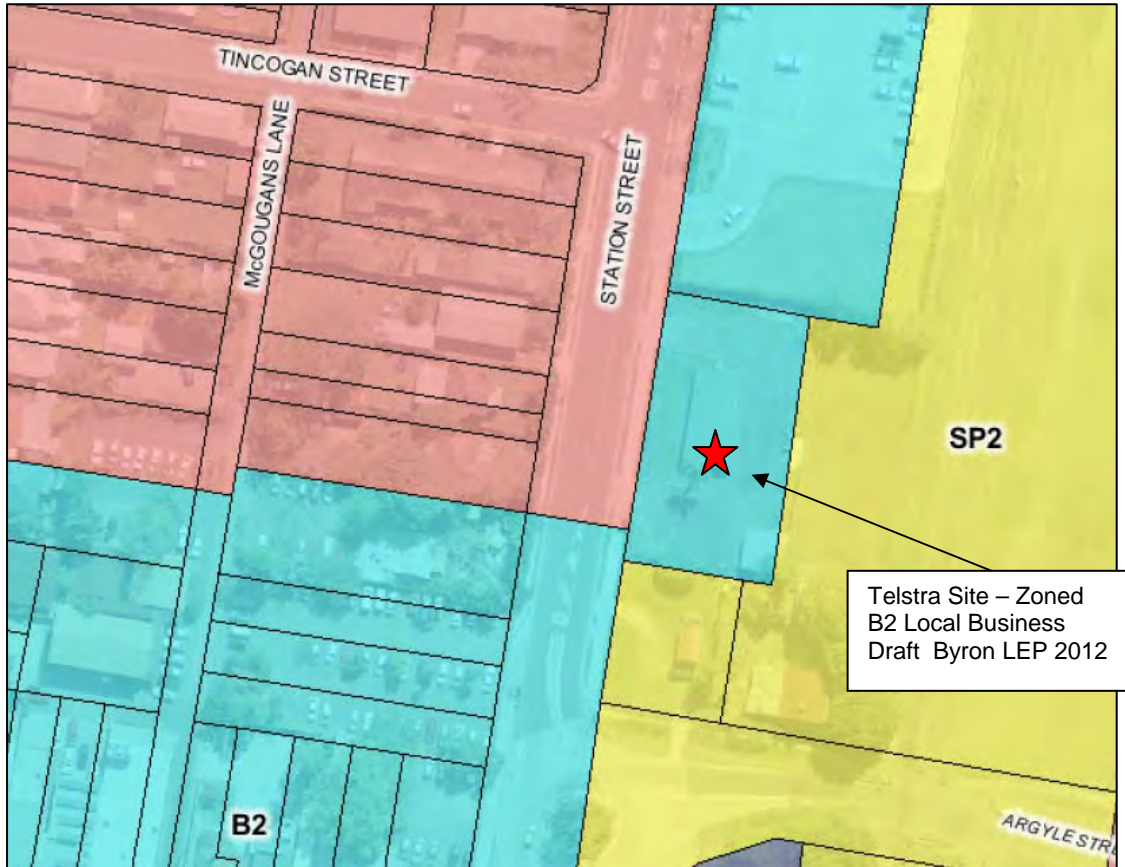
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The B4 Mixed Use Zone

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Compared to the B2 Zone, the B4 Zone allows for a wider range of uses including dwelling houses, retail and commercial premises, hostels, boarding houses, light industries, medical centres, multi dwelling housing, residential flat buildings, shop top housing and seniors housing; although tourist and visitor accommodation is prohibited.

40

Because a B4 zoning allows for a broader range of uses, the potential for light industrial uses may raise some amenity issues with residents opposite the site.

45

Council has received submissions from a Local residents group to use the site for a number of options including

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- Tourist Information Centre
- Events Bookings
- Local Food Café
- Local Arts and Crafts sales
- Affordable housing
- Artisan studio apartments
- Community Functions

5 Such uses would not be incongruous with surrounding residential development to the west and north-west of the site, and in general the B4 Zone provides a mechanism to enable land owners to transition from commercial to residential or vice versa and added flexibility in dealing with market forces.

10 The land is in part identified as having contamination issues from its previous use as a Telstra Depot. These outstanding contamination issues are of less of a concern for a commercial use than a residential use. Should the land be ultimately developed for a residential purposes as would be permitted under the B4 Zone, potentially the contamination issue will be come more expensive to resolve and to rehabilitate the site as will be required under the provisions of SEPP 55 Remediation of Contaminated Lands.

15 It is noted the Department of Planning and Infrastructure (previously Department of Urban Affairs and Planning) have issued best practice guidelines for LEPS and Council Owned Land dated January 1997. These give guidance to Council to satisfactorily deal with any conflict of interest issues, perceived or real, when Council is acting as both a regulator and developer in relation top Council owned land.

20 In terms of any conflict of interest, the B2 and B4 zonings are similar in a lot of respects and the B4 option will not add any significant value to the land. The proposed change to a B4 zoning would however facilitate the inclusion of community based proposals received by the Council for the establishment of social/affordable housing options on this site. A B4 Zone, being a combination of B2 and Residential would enable such a development and can be readily and reasonably
25 accommodated in this LEP process.

30 While an alternative process of proceeding with a gateway LEP amendment to affect the rezoning is preferred by the DOPI's Best Practice Guidelines for LEPS and Council Owned Land, it is not considered necessary in this instance given that motivation for the changed zoning is driven by a desire to include scope for community based social/affordable housing options in an area which is directly adjacent to current residential areas and there is no perceived financial advantage to the Council should a B4 zoning proceed. This longer process would also unnecessarily delay/impede Council's expressed desire to actively consider community based proposals for this site.

35 **Financial Implications**

40 Should Council resolve to prepare a separate LEP Amendment to zone the site B4, then additional resources may be required to facilitate that LEP amendment. Although Council's minimum fee for a Gateway Proposal is \$2000 under the adopted fees and charges for 2013 – 2014, this is unlikely to be levied internally for rezoning of council land. However the cost of any supporting studies, external consultants, etc. can be funded out of future sale proceeds from the land.

Statutory and Policy Compliance Implications

45 Having regards to the Department of Planning and Infrastructure (previously Department of Urban Affairs and Planning) Best Practice Guidelines for LEPS and Council Owned Land, an option for Council is to prepare a separate LEP amendment for the subject site and appropriately address any potential conflict of interest issues. However, Council could conclude that there is a preferred social and community outcome by rezoning to B4 in the current draft LEP and could resolve:
50 "That Lot 1 DP 435267, Station Street Mullumbimby, be zoned B4 Mixed Use in the draft Byron LEP 2012".

Report No. 13.10. Byron Shire Coastline Hazards Assessment Update Report

Executive Manager: Environment and Planning
Report Author: Catherine Knight, Coastal and Estuary Officer
File No: #E2013/50121

5

Theme: Environment, Land and Natural Environment

Summary: The Byron Shire Coastline Hazards Assessment Update (BMT WBM, 2013) is tabled for Council’s consideration.

The report represents a thorough, contemporary and robust analysis of the coastal processes and hazards relevant to the Byron Shire coastline. The coastal hazards analysed include: beach erosion, shoreline recession, coastal lake or watercourse entrance instability, coastal inundation and tidal inundation. The hazards have been assessed and mapped with respect to the immediate, 2050 and 2100 planning timeframes as informed by the BSC Climate Change Strategic Planning Policy.

The report has been prepared in accordance with the *Coastal Protection Act 1979* and the *Guidelines for Preparing Coastal Zone Management Plans* (OEH, 2013), providing the necessary information for progression to the management study phase of the coastal zone management plan for the Byron Bay Embayment.

The progress of the draft Coastal Zone Management Plan for the Byron Bay Embayment is tabled for information.

RECOMMENDATION:

- 10 1. That Council endorse the report **Byron Shire Coastline Hazards Assessment Update (BMT WBM, 2013), Annexure 4 (#E2013/62937)**, for informing and incorporation into the draft Coastal Zone Management Plan for the Byron Bay Embayment.
- 15 2. That an additional budget allocation of \$35,000 be provided from unallocated environmental levy funds for the preparation of the CZMP for the BBE, and that an additional \$35,000 variation to the CZMP grant be requested from the state government through the Coastal Management Program for the preparation of the CZMP for the BBE.

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Attachments:

- Byron Shire Coastline Hazards Assessment Update (BMT WBM, 2013) #E2013/62937 [247 pages] **Annexure 4**

25

Annexure 4: Due to the size of this document it has been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website. A hardcopy of the report is available in the Councillors Room.

Report

At the Ordinary Meeting of 11 August 2011 Council resolved to prepare a coastal zone management plan (CZMP) for the Byron Bay Embayment (BBE).

5

Resolution 11-634 (relevant parts only)

That Council:

- 10 3. *Prepares the Draft Coastal Zone Management Plan for the Byron Bay Embayment (CZMP for the BBE) in accordance with the approach outlined in this report and the process detailed in Table 1 'Proposed methodology for preparing a CZMP for the BBE.'*

At Ordinary Meeting 8 November 2012, Council resolved:

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Resolution 12-867 (relevant parts only)

- 20 1. *That Council note that a review of the Climate Change Parameters in the Climate Change Strategic Planning Policy has been undertaken as a result of the withdrawal of the NSW Sea Level Rise Policy Statement (DECCW, 2009), and that as a result of the review, the Climate Change Parameters are considered adequate in light of existing scientific data and available information.*
- 25 2. *That Council re-confirms its commitment to the Climate Change Strategic Planning Policy as formerly adopted by Council on 12 November 2009.*

At Ordinary Meeting 20 December 2012, Council received a report on the progression of the CZMP for the BBE. As part of the meeting, a briefing was provided by the consultants BMT WBM, who were engaged by Council to undertake Task (1) of the CZMP - 'Review risks from coastal hazards'. Dr Dean Patterson (Director BMT WBM) provided an overview and presentation on the draft report 'Byron Shire Coastline Hazard Study Update' (BMT WBM, November 2012 draft). Council resolved as follows:

30

12-983 Resolved:

35

1. *That Council notes the progress on the Draft Coastal Zone Management Plan for the Byron Bay Embayment including the working draft report at Annexure 8(a) (#E2012/24321) which is applicable to the Byron Shire Coastline Hazard Study Update.*
- 40 2. *That Council endorse the proposed variation to the Byron Shire Coastline Hazard Study Update, as documented at CONFIDENTIAL Annexure 8(b) (#E2012/24045) to incorporate 2012-13 photogrammetry should this data become available in early 2013 and that funds to subsidise the additional cost of \$7,500 associated with this variation are sought from the state government.*
- 45 3. *That an additional \$34,500 of Council funds be allocated towards the preparation of the Draft Coastal Zone Management Plan for the Byron Bay Embayment and that Council amends the current 2012/2013 budget as per Table 4 of this report, noting that the total allocation of \$106,500 funds will be sourced from account 2605.005 (Coastal Management Plan Preparation), Environment and Planning Reserve, the Environmental Levy Reserve and grant revenue of \$67,000 from the Office of Environment and Heritage.*
- 50

Since 2012, two draft reports have been received from the consultant with respect to Task (1). In addition to the scope of works outlined in the Request for Quotation (project brief), the consultant has incorporated two additional tasks, as follows:

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1. Modelling Erosion Protection Structures \$9,700 ex GST
2. Additional 2012-13 photogrammetry \$7,500 ex GST

5

The project included a regional component undertaken in collaboration with Tweed Shire Council. This collaboration will be the subject of a paper to be presented at the NSW Coastal Conference 2013 titled *'Collaborating on the Coast – Tweed and Byron Shire Councils' Regional Coastal Processes and Hazards Assessment'*.

10

The cost associated with the regional component was shared between the two organisations and hence for a relatively modest amount, provided a regional scale of analysis that gave insight into coastal processes occurring at the local scale. The project was also able to utilise comprehensive regional analysis and modelling already undertaken.

15

The regional component of the draft report was reviewed by staff from Tweed Shire Council, Byron Shire Council and the Office of Environment and Heritage. The remainder of the report was reviewed by staff from Byron Shire Council and the Office of Environment and Heritage.

20

An overview of the methodology and findings of the project was presented to Councillors at a workshop on 12 September 2013 by Dr Patterson. Since this time the OEH review of the draft report has been finalised, the report amended and a final report has been issued by the consultant. This report, 'Byron Shire Coastline Hazards Assessment Update' (BMT WBM, September 2013) is attached at Annexure 4; noting that the 'Appendix' to the report provides a useful summary of the major findings for each coastal compartment. A hardcopy of the report is available in the Councillors' Room.

25

The report represents a thorough, contemporary and robust analysis of the coastal processes and hazards relevant to the Byron Shire coastline. This includes in-depth analysis of coastal processes relevant to the developed coastal compartments along the Byron Shire Coastline.

30

The coastal hazards analysed in the report include: beach erosion, shoreline recession, coastal lake or watercourse entrance instability, coastal inundation and tidal inundation. The hazards have been analysed with respect to the immediate, 2050 and 2100 planning timeframes with due consideration of the BSC Climate Change Strategic Planning Policy. The beach erosion and shoreline recession hazards have been assessed under two different scenarios:

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1. Scenario 1: Retention and ongoing maintenance of all existing coastal erosion protection works and interim beach access stabilisation works within the Byron Bay Embayment.
2. Scenario 2: Retention of only the Jonson Street protection works and removal of all other coastal erosion protection works and interim beach access stabilisation works within the Byron Bay Embayment.

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The report provides the necessary information to progress to the next stages of preparing the draft CZMP for the BBE. In this context, it is recommended that Council endorse the report for informing and incorporation into the draft Coastal Zone Management Plan for the Byron Bay Embayment.

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Progress of the draft Coastal Zone Management Plan for the Byron Bay Embayment

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Table 1 below details the stages and indicative time frames for the preparation of the draft Coastal Zone Management Plan for the Byron Bay Embayment, also providing an indication of the completion/progression of the stages.

Table 1 Stages and indicative time frames for the preparation of the draft Coastal Zone Management Plan for the Byron Bay Embayment.

Task name and description	Indicative time frames and hold points* (indicated in red)	Who is responsible for task and progression of this task where relevant (in red)
1) Review Risks from Coastal Hazards	16 months Jun 2012 to Sep 2013	Consultant (BMT WBM)
a) Identify coastal processes and hazards		<i>Complete</i>
b) Update coastal hazard lines for Byron Shire Coastline – immediate, 2050 and 2100		
c) Report to Council (draft report)	20/12/12	<i>Complete</i>
d) Workshop with Councillors	12/09/13	<i>Complete</i>
e) Report to Council	10/10/13	<i>This report</i>
2) Management Options Evaluation	6.5 months Oct 2013 to Apr 2014	Consultant <i>Quotations evaluated, funding being finalised.</i>
a) Analyse property risk and response categories <ul style="list-style-type: none"> ▪ detail buildings and significant infrastructure within coastal hazard areas ▪ determine property risk and response categories for all properties in hazard areas 	Jan 2014	
b) Evaluate and identify technically and physically feasible hazard management options	Oct 2013 to Jan 2014	
c) Evaluate the social, environmental and economic impacts of the feasible management options	Oct 2013 to Jan 2014	
▪ community consultation		
▪ agency consultation		
d) Prepare draft recommendation regarding coastal hazard management strategy	Feb to Mar 2014	
e) Workshop with Councillors	tba	
f) Report to Council (draft report)	tba	
3) Prepare ‘Community Uses of the Coastal Zone’ assessment	2 months	BSC, SCU intern

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(64)

Task name and description	Indicative time frames and hold points* (indicated in red)	Who is responsible for task and progression of this task where relevant (in red)
	Oct to Jan 2014	<i>SCU intern starting Oct (8 weeks)</i>
a) Describe beach, headland and waterway access arrangements, their adequacy and any environmental impacts		
b) Describe any potential impacts (erosion, inundation, accretion) on access arrangements		
c) Describe cultural and heritage significance of the plan's area		
d) Recommend proposed actions to manage impacts		
4) Prepare Implementation Schedule	2 months Apr to May 2014	BSC
a) Review 2010 CZMP schedule and incorporate any new actions from (2) – (3), include details such as responsibility and funding for/of actions		
b) If the construction of coastal protection works is proposed, describe the proposed arrangements for the adequate maintenance of the works and for managing associated impacts of such works		
c) Liaise with staff, agencies and community groups regarding funding and responsibility for actions per section 55C(2)(b) of CP Act		
5) Emergency Action Sub Plan	2 months Apr to May 2014	BSC
a) Review relevant sections of draft EASP Byron Shire coastline b) Liaise with relevant landowners c) Liaise with staff, agencies, community groups regarding funding and responsibility for actions per section 55C(2)(b) of CP Act		
6) Prepare first draft CZMP	3 months Apr to May 2014	BSC
a) Review and make changes to any relevant chapters of 2010 Draft CZMP as per the Act and Guidelines		

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(65)

Task name and description	Indicative time frames and hold points* (indicated in red)	Who is responsible for task and progression of this task where relevant (in red)
b) Incorporate any new or reviewed sections into new draft CZMP c) Include description of how coastal management principles have been incorporated into plan d) Format the document, incorporate maps, figures, tables		
e) Workshop with Councillors	May 2014	
f) Report to Council (draft report)	May 2014	
g) Finalise exhibition draft and advertising		
7) Draft CZMP exhibition	3 weeks NB min statutory requirement 21 days Jun 2014	BSC
8) Prepare second draft CZMP (for the Minister)	1 month Jun 2014	BSC
a) Analyse submissions and prepare report		
b) Workshop with Councillors	Jun 2014	
c) Report to Council	27 Jun 2014	
d) Finalise draft CZMP and send to Minister	30 June 2014	

Financial Implications

- 5 The expenses and funding for preparing the Byron Shire Coastline Hazards Assessment Update (BMT WBM, September 2013) are outlined in Table 1 below. The Table excludes the internal BSC costs for managing and administering the project.

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(66)

Table 1 Expenses and funding for preparing the Byron Shire Coastline Hazards Assessment Update (BMT WBM, September 2013)

Expenditure Description	BSC funds	State Government funds	Total Expenditure*
	Res 11-634 Res 12-983		
Original contract amount to BMT WBM	\$25,000	\$25,000	\$50,000
Variation 1: Additional modelling - structures and works in place, Belongil	\$4,850	\$4,850**	\$9,700
Variation 2: Additional analysis and reporting 2012 photogrammetry data	\$3,750	\$3,750**	\$7,500
Total	\$33,600	\$33,600	\$67,200

- 5
- * Excluding internal BSC costs for managing and administering the project, reviewing reports etc
 - ** Subject to approval by the OEH of an \$8,600 variation request.

Draft CZMP Budget

- 10
- The priority project for the coastal and estuary work program is preparing and submitting the coastal zone management plan for the Byron Bay Embayment (CZMP) by June 2014 as per the Minister for the Environment's Direction. The total current funding allocation and expenditure for this project to-date (excluding internal project management and administration costs) is shown at
- 15 Table 1.

Table 1 Current funding and sources CZMP for BBE and total expenditure to date

Description	Resolution	Amount
Funding Source		
BSC (Environmental Levy)	Res 11-634	\$42,000
BSC (Environmental Levy, Environment and Planning Reserve)	Res 12-984	\$34,500
OEH (Hazards Study Grant)	Res 11-634	\$25,000*
OEH (CZMP grant)	Res 11-634	\$42,000
Total current budget		\$143,500*
Expenditure item		
Hazard Study		\$67,200
Remaining budget for CZMP		\$76,300

- 20
- * Noting that this amount may be increased by \$8,600 if a variation request is approved by OEH, however for the purpose of this report a 'worse case' scenario has been assumed.

As can be appreciated from Table 1, the total cost for preparing the Byron Shire Coastline Hazards Assessment Update (BMT WBM, 2013) was \$67,200.

Therefore the remaining budget for the preparation of the draft CZMP, which includes the Byron Bay Embayment Coastal Zone Management Study (management study) and any additional costs associated with the actual preparation of the draft CZMP itself, is \$76,300. It was on this basis that the Request for Quotation for the management study provided for a budget in the order of \$80,000.

5 Feedback obtained through the management study Request for Quotation process indicates that, given the scope of the study and the issues involved, as well as the quantitative analysis and consultation required, the current budget is unlikely to be adequate for the management study alone. In addition the current budget does not provide for any remaining funds to assist with
10 additional tasks that may be required for the actual preparation of the draft CZMP itself (e.g. GIS and mapping, preparation of implementation schedules and agency/stakeholder consultation, review of relevant legislation and approval processes, report preparation, peer review, preparing consultation materials, delivering consultation/public exhibition). Noting that although many of these tasks, and others relevant to the preparation of the draft CZMP, will be undertaken in-house
15 by Council staff, additional funding would allow for professional assistance that would help to expedite the process in the most timely manner.

In light of these considerations it is recommended that an additional allocation of \$35,000 be provided for the preparation of the draft CZMP for the BBE from the environmental levy, and that
20 an additional \$35,000 variation to the draft CZMP grant be requested from the state government through the Coastal Management Program. Assuming the variation for OEH funds was to be approved, the total draft CZMP budget (including hazard study but largely excluding in-house staff and administration costs) would be in the order of \$213,500 with an allocation of \$146,300 to the management study and the draft CZMP preparation and exhibition process.

25 **Statutory and Policy Compliance Implications**

Under section 55B of the *Coastal Protection Act 1979* (CP Act), Council has been directed by the
30 Minister to prepare and submit a draft CZMP for the BBE by June 2014, which must be prepared in accordance with the Minister's guidelines (section 55D of the CP Act).

The Byron Shire Coastline Hazards Assessment Update (BMT WBM, September 2013) has been prepared in accordance with the gazetted 'Guidelines for Preparing Coastal Zone Management
35 Plans' (OEH, 2013), specifically section 3.2.1 Table 2 'Minimum assessment criteria for coastal hazards' where these relate to coastline hazards, as opposed to estuarine hazards. Throughout the report's preparation, technical advice on interpreting the Guidelines has been provided by staff from the OEH.

As a result of the withdrawal of the NSW Government's sea level rise benchmarks, where relevant,
40 the report has been prepared in accordance with Resolution 12-867, using the parameters contained in the BSC Climate Change Strategic Planning Policy as adopted by Council on 12 November 2009.

It is recommended that Council endorse the report for informing and incorporation into the draft
45 Coastal Zone Management Plan for the Byron Bay Embayment. This will not result in the report or the information contained therein representing an adopted Council policy, rather the report will simply inform the work that still needs to be done. The subsequent stages involved in preparing the draft CZMP for the BBE will entail consideration of the information contained in the report and this will assist in the development of Council's policy with respect to coastal hazards risk management.

SOCIETY AND CULTURE - MANAGER'S REPORT

Report No. 13.11. Report of the Public Art Assessment Panel meeting held on 13 September 2013

Executive Manager: Society and Culture

5 **Report Author:** Joanne McMurtry, Community Policy Officer

File No: #E2013/60437

Theme: Society and Culture, Community Services

Summary: This report provides the minutes of the Public Art Assessment Panel and recommendations for Council's consideration.

The Public Art Assessment Panel met on 13 September 2013. The panel considered proposals submitted following a call for expressions of interest / request for quote process to commission artwork for the 'Kick Wall' at Byron Regional Sport and Cultural Complex. This resulted in only one recommendation to Council.

10 **RECOMMENDATION:**

That Council adopt the following recommendation in relation to commissioning of artwork for the Kick Wall at Byron Regional Sport and Cultural Complex made by the Public Art Assessment Panel:

15 **Panel Recommendation 5.1.**

That Council:

- 20 1. **Commission Christian Griffiths from Sauce to undertake the artwork on the Kick Wall for the following reasons:**
 - 25 a) **Very experienced and website shows a very broad range of works**
 - b) **Work would deter graffiti and appeal to youth (whereas some of the other submissions considered would not meet this purpose)**
 - c) **The PAAP particularly liked the work where patterns were featured**
 - d) **Has indicated the project can be completed within the budget allocation.**
- 30 2. **Allocate a maximum of \$3,000 to the project.**

Attachments:

- 35 • Minutes of the Public Art Assessment Panel meeting held on 13 September 2013 #E2013/60151 [3 pages] **Annexure 1**

Report

The Public Art Assessment Panel met on 13 September 2013. The panel considered proposals submitted following a call for expressions of interest / request for quote process to commission artwork for the 'Kick Wall' at Byron Regional Sport and Cultural Complex. This resulted in only one recommendation to Council.

The panel considered further information about the Mullumbimby Sculpture Walk and a new draft of the Public Art Guidelines and Criteria following a review by staff to streamline the procedures, however no recommendations were made to Council regarding these items.

With regards to item 5.1, Commissioning artwork for the Kick Wall at Byron Regional Sport & Cultural Complex, the panel made the following recommendation:

Panel Recommendation 5.1

That the Public Art Assessment Panel recommend that Council:

1. Commission Christian Griffiths from Sauce to undertake the artwork on the Kick Wall for the following reasons:
 - a. Very experienced and website shows a very broad range of works
 - b. Work would deter graffiti and appeal to youth (whereas some of the other submissions considered would not meet this purpose)
 - c. The PAAP particularly liked the work where patterns were featured
 - d. Has indicated the project can be completed within the budget allocation.
2. To allocate a maximum of \$3,000 to the project.

Management Comments:

Management support this recommendation. The panel made several suggestions to pass on to the artist regarding the concept design and one panel member has volunteered to meet with the artist and staff.

The Public Art Guidelines and Criteria require 'community consultation' for public art projects. The relevant text from the Guidelines is found under 6.3 and is as follows:

A community consultation process will then be undertaken to enable the Public Art Assessment Panel to gain a perspective of how the community relates to the project. This will include Council block advertising over a 28-day period in community newspapers where the art is likely to be located, for example Bangalow Heartbeat in Bangalow. Advertising usually appears twice during the 28-day period in which time members of the community will be able to send their submissions to Council.

However, management recommend that in this instance, the public exhibition process not be implemented due to the following reasons:

- The Kick Wall artwork is on Council owned infrastructure on Council owned land
- There are no near neighbours
- It is not located in a high pedestrian precinct

Financial Implications

The panel has allocated a budget of \$3,000 for the commissioning of artwork for the Kick Wall at Byron Regional Sport and Cultural Complex.

The total annual budget allocation for public art in the 2013/14 financial year is \$5,100.

Statutory and Policy Compliance Implications

Public Art Policy number 10/011
Public Art Guidelines and Criteria

WATER AND RECYCLING - EXECUTIVE MANAGER'S REPORT

Report No. 13.12. Mullumbimby Water Trunk Main Replacement – Approval to Tender

Executive Manager: Water and Recycling

5 **Report Author:** Peter Rees, Manager, System Operations Water

File No: #E2013/54371

Theme: Community Infrastructure, Water Services

Summary: There are 2 pipelines supplying water from the Mullumbimby Water Treatment Plant to the water reservoirs located at Scotts Wood Grove and Azalea Street which supply water to the township of Mullumbimby. These pipelines are 150 mm cast iron approximately 80 years old; and 200 mm asbestos cement approximately 40 years old. Due to age and deterioration, these pipelines have been progressively replaced from the reservoirs westward to Yankee Creek.

This report is seeking allocation of funding to complete the remaining sections of pipeline from Yankee Creek to Mullumbimby Water Treatment Plant. In the 2013-14 budget there is already \$528,200 allocated to the project. Detailed design and survey of the pipelines has resulted in an estimated project cost of \$1,500,000 inclusive of project management. An additional \$971,800 is required to be allocated prior to tendering for the work.

10 **RECOMMENDATION:**

1. **That Council allocate an additional \$971,800 to the Mullumbimby Water Trunk main Replacement project funded from available Water Fund Section 64 contributions.**
- 15 2. **That Council approve an open tender process for the construction of the Mullumbimby Water Trunk Main Replacement project.**

Report

5 The drinking water for Mullumbimby is supplied from the Mullumbimby Water Treatment plant located at Laverty's Gap, Wilsons Creek. The water is conveyed to the water reservoirs in Azalea Street and Scotts Wood Grove via 2 trunk mains – one 150mm diameter cast iron pipeline and one 200 mm diameter asbestos cement (AC) pipeline. These pipelines are approximately 80 years and 40 years old respectively.

10 Due to age and deterioration, these pipelines have been progressively replaced from the reservoirs westward up to Yankee Creek from 2001 up to 2007. This project is to replace the remaining sections of pipelines from Yankee Creek up to the Water Treatment Plant with one pipeline of 200 mm diameter ductile iron. The replacement of these sections has been identified in the water supply 30 year capital programme and reflects the critical nature of these pipelines. The planning phase has taken some years to develop due to the following issues

- 15
- The 200 mm AC pipeline is not entirely located in an easement
 - The terrain for construction up to the Water Treatment Plant is steep and constrained and technically difficult to construct.
 - It has been necessary to undertake detailed survey and investigation of the route to ensure the
- 20 new line is located wholly within easements.

Detailed drawings have been prepared and a quantity survey undertaken. The estimated total cost of the project including project management is \$1.5 million. The current Capital Works programme has allocated \$528,200. The purpose of this report is to seek Council approval to allocate an

25 additional \$971,800 in funds to the project.

It is important to undertake this project as both existing pipelines are located under portions of the Wilsons Creek Road in the steep incline section. They present a danger to the road being washed out should a pipeline break occur. In July 2013 there was a break in the 200 mm AC pipeline in this

30 area that caused a partial washout of the road. Only timely intervention by Council's water operators prevented a total washout of the road. In addition to the risk to the road, pipe failure is very difficult to restore in these steep locations and threatens continuity of water supply to Mullumbimby.

35 These sections of pipeline are also considered to be a high risk for undetectable water losses due to their age and the high operating pressures.

Financial Implications

40 The additional funding required to complete this work is \$971,800. As at 30 June 2013, there is \$9.25million available in Section 64 contributions for the Water Fund. The current 2013/2014 budget for the Water Fund includes the utilisation of \$3.20million in available Section 64 contributions inclusive of carryover works items from 2012/2013 financial year not completed.

45 If Council approves the expenditure of a further \$971,800 to complete the works subject of this report, a total of \$4.171 million in Section 64 contributions relevant to the Water Fund are proposed to be utilised in the 2013/2014 financial year on the assumption all works are completed.

50 On this basis, adequate funding is available to fund the additional cost of the works to enable Council to determine the proposed budget prior to the work being tendered/commenced in accordance with Regulation 211 of the Local Government (General) Regulation 2005.

Statutory and Policy Compliance Implications

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 211

Authorisation of expenditure

- 5
- (1) A council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the council at the annual meeting held in accordance with subclause (2) or at a later ordinary meeting:
- 10
- (a) has approved the expenditure, and
- (b) has voted the money necessary to meet the expenditure.
- 15
- (2) A council must each year hold a meeting for the purpose of approving expenditure and voting money.

This project is consistent with Council's Asset Management Plan (Water) February 2012.

COMMUNITY INFRASTRUCTURE - COMMITTEE REPORT

Report No. 14.1. Byron Bay New Year's Eve Traffic Management

Executive Manager: Community Infrastructure

5 **Report Author:** Simon Bennett, Traffic and Transport Planner

File No: #E2013/62639

Theme: Community Infrastructure, Local Roads and Drainage

Summary: At the Ordinary Meeting held 19 September 2013 Council resolved on several matters regarding road closures and traffic management for the planned activities for Byron Bay New Year's Eve. In efforts to expedite these matters an out-of-session report was provided to the Local Traffic Committee (LTC). This report reproduces that report and the issues raised by the Committee.

10 **RECOMMENDATION:**

That Council endorse the Local Traffic Committee recommendation as follows:

- 15 1. That subject to the meeting of Roads Act 1993 requirements, the temporary traffic arrangements proposed for Byron Bay New Year's Eve on 31 December 2013 be endorsed, including the temporary road closure of:
- 20 a) Jonson Street, Byron Bay between Lawson Street through to the north side of the entrance to the car park area upon state rail land and be in place from 6.00 am 31 December 2013 to 6.00 am 1 January 2014;
- 25 b) Ewingsdale Road, Byron Bay, as implemented between 10.00 am and 12 midnight and on the western side only of the roundabout at the Byron Regional Sports and Cultural Complex (BRSCC) and for the purpose of separating permissible, exempt and non-permissible vehicles from continuing eastward or not;
- 30 c) Bangalow Road, Byron Bay, as implemented between 10.00 am and 12 midnight at the intersection with the high school access road and for the purpose of separating permissible, exempt and non-permissible vehicles from continuing north or not.
- 35 2. That the organisers be responsible for implementing a Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation.
- 40 3. That public liability insurance be in place for the sum of at least \$20 million.
4. That extensive advertising and consultation be undertaken, including the requirements outlined in the Roads Act 1993.
5. That the event be notified on Council's website.

That Council endorse the Management Recommendation as follows:

45 **Staff report back on the use of suitable land for the provision of overflow car parking for vehicles unable to be accommodated at the park and ride site proposed at Byron Bay High School.**

Report

On 19 September 2013 Council received the report (#E2013/54131) of Council's 'Community Summer Safety and Cultural Activities Committee' who are developing a program for summer safety and cultural activities (to be branded as "Safe Summer in the Bay").

Central to these activities are the plans for Byron Bay New Year's Eve, which in relation to road closures and traffic management, include closing roads on 31 December 2013 at:

1. both the BRSCC and at the Byron Bay High School, whereupon park and ride services will operate; and
2. Jonson Street, from Lawson Street to the north side of the 'rails' car park entry

As these matters require Local Traffic Committee (LTC) approval, an out-of-session report was compiled and issued to the Committee on 23 September 2013. This report provides the details submitted to the Committee, including their comments and recommendation as now tabled.

Report to LTC (#E2013/61692)

Byron Bay New Year's Eve Road Closures.

The Local Traffic Committee received a report on this matter at their August 2013 Committee Meeting. This was subsequently reported to Council on 29 August 2013, noting Council adopted the Committee recommendation as per Resolution 13-419 in regard to support of road closures subject to usual conditions, eg Traffic Control Plan (TCP), advertising, etc and that the specific details be provided to LTC.

13-419 Resolved that in relation to the Byron Bay New Year's Eve (31 December 2013) traffic management proposals the Local Traffic Committee:

1. support the temporary road closures subject to the:
 - a) provision of a town centre vehicular detour,
 - b) specific details of road closures being provided for Committee and Council endorsement prior to the event;
 - c) meeting of the requirements of the Roads Act 1993, including advanced advertising, for example commencing at least one month prior;
 - d) provision of a detailed traffic control plan with particular attention to end-of-queue management including the use of Woodford Lane and a stream-lined vehicle selection process to distinguish between vehicles permitted to pass road closure areas such as that proposed at the Byron Regional Sports and Cultural Centre roundabout 249 Ewingsdale Road.
2. requires the following to be complied with:
 - a) undertaken as per an accredited designed and implemented Traffic Control Plan;
 - b) meeting of the advertising requirements of the Roads Act 1993;
 - c) event being notified on Council's website;
 - d) consideration of any submissions received;
 - e) written approval of Police separate to the LTC; and
 - f) held under current and appropriate levels of insurance and liability cover.

This is now possible following the report (E2013/54131) of Council's Community Advisory Committee overseeing development of Byron Bay New Year as tabled to Council 19 September 2013, noting a copy of their report is within Council's Meeting Agenda if required; see Report No. 13.6 as available on Council's website:

<http://www.byron.nsw.gov.au/meetings/2013-09-19-ordinary>

5 However in summary Council, via **resolution 13-498**, adopted a range of measures in regard to road closures, most relevant being part 2 (xii) and edited accordingly as follows:

NB: if needed, a full copy of the resolution is available within the Council minutes on the above web link

10 2 (xii) Council implement the following traffic management measures on New Year's Eve with the purpose of reducing the numbers of people in Byron Bay to within the town's capacity, noting the cost to implement will be approximately \$70,000, and refer to the Local Traffic Committee:

15 a) Road closed at roundabout at Byron Regional Sport & Cultural Complex (BRSCC) and at Bangalow Rd/ Broken Head Road intersection from 10am to midnight 31/12/13.

20 d) Close off Jonson Street north of entrance to The Railway carpark (at public amenities), at Byron Street, at Lawson Street and a dummy barrier at entrance lane way to Lawson Street South car park (this will be the emergency vehicle access).

25 e) Close to further vehicles entering Jonson Street at 6am 31/12/13, reopen road at 6am 1/1/14.

f) Taxi rank to be temporarily moved for the night to south of the bus stop (where existing 'overflow' taxi rank is).

30 Details of these proposals are further outlined on the attached (see below) and while Committee endorsement is sought the issue raised in the attached should be noted and any concern brought forward.

Attachment to LTC Report E2013/61692

35 Sticker system

While the 'sticker system' is not a matter for LTC endorsement, there is potential of long traffic queues and time delays due to the 'stop and go' traffic control required.

40 Under this system, stickers must be obtained prior to New Year's Eve and displayed on vehicle windscreens to allow easier identification of permissible vehicles and reduce impact of stopping vehicles unnecessarily.

45 The stickers will be provided free to the following groups:

1. to any resident or ratepayer of Byron shire, and presumably upon request only, noting those who live in the road closed area can also gain access via use of their drivers licence or other form of ID with address details; and
- 50 2. employers operating within the road closure and who will be responsible to obtain and provide stickers to their respective employees.

For \$20 per vehicle the sticker can be purchased prior to the day by the following:

- 55 1. venues holding a 'ticketed' event (so to provide to patrons attending)
2. accommodation providers, who are to purchase on behalf of their guests; and

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(76)

3. guests (or the host on their behalf) who require to drive into Byron Bay on the day, for example residents expecting friends, family or other visitors on New Year's Eve.

Exception to the sticker system will be vehicles related to:

1. emergency and public transport services, including taxi and accommodation providers;
2. those undertaking a commercial operation / delivery, for example delivery of goods; and
3. professional charter services, such as a certified tourist or coach operator and not (for example) a privately hired or owned vehicle (unless proof of destination *and* accommodation can be provided / cited)

Those not covered by the above list (for example day trippers) will therefore not be able to drive their vehicle beyond the closure and will either need to turn around / leave or 'park and ride' (\$30 per vehicle) which will operate shuttle services through to 2.00 am to / from the road closure points at the BRSCC and high school (west and south of town respectively).

Vehicle Volumes and 'Park and Ride' Numbers

In summary, the numbers are approximately as follows:

Vehicles per day	BRSCC	High School
Park and ride	800	82
Volumes	20,000	20,000

Both park and ride sites may accommodate up to 1,000 vehicles at most, subject to confirmation. This will mainly be at the BRSCC site, as the high school principal has confirmed the sealed car park will only be available for use (not the fields) and can accommodate 82 vehicles. There may be another 20 to 50 spaces by using the cul-de-sac and (upon agreement of the School) St Finbarr's sealed car park.

As for daily traffic volumes, over 20,000 vehicles travel on Ewingsdale Road (west of town) and a further 20,000 vehicles on Bangalow Road (south of town) during summer. This is a significant number of vehicles that cannot be accommodated by park and ride and most it is presumed will not have obtained a sticker prior to the day and most likely due to being unaware of the requirement, however a large and extensive advertising and promotional campaign is to be undertaken commencing in the coming month.

Nevertheless many people are likely to be impacted and the number of vehicles to manage significant and therefore careful attention to detail in the traffic control plan and its implementation is required; both of which Council will undertake.

Traffic Management

In essence the sticker system is attempting to stop vehicles without a sticker entering town, while those displaying the sticker will be allowed to pass, preferably without stopping or little delay. In discussing how to achieve this, local Police have offered their services at the two road closure points who would benefit from a 'spotter' located some distance prior to the road closure area.

These 'spotter' locations (who are not to undertake any traffic control) could be as shown, ie approximately 2.3km west of BRSCC at Woodford Lane, which is 130m east of the Pacific Highway Ewingsdale interchange, and north-west side of the Broken Head / Bangalow Road intersection which is approximately 400m south of the High School road closure point.

The spotter would identify vehicles without a sticker displayed and communicate details regarding such vehicles to the road closure locations depicted and discussed in more detail below.



Pink circle: 'spotter' site, Woodford Lane



Pink circle: proposed 'spotter' site approx 200m south of Red Devils entry. Yellow circles: shows road closure points at high school and to the west at Old Bangalow Rd (shown as per yellow line)

In addition to spotters, other traffic management will need to include:

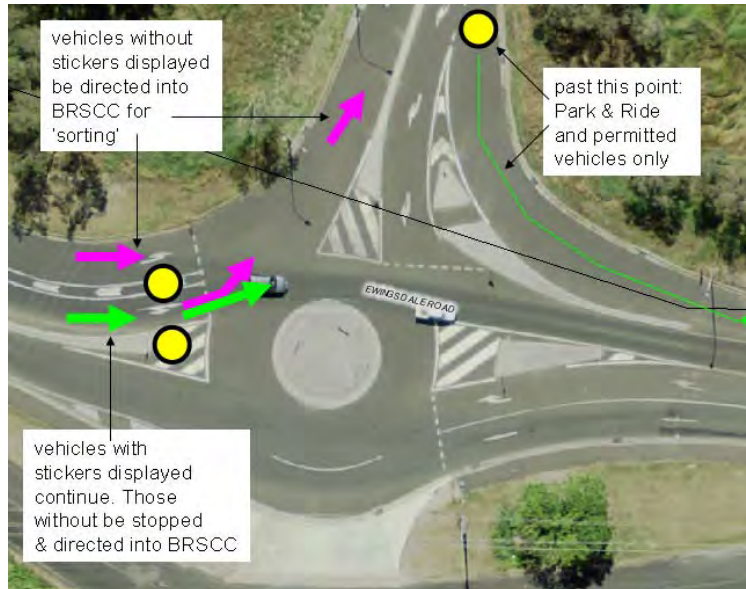
- 5 a. reducing existing speed limits on Ewingsdale Road by 20km/hr (eg 60 becomes 40)
- b. reduce speed limit on Bangalow Road to 40kph prior to the Broken Head Road intersection
- c. the closure of the western end of Old Bangalow Road (at the Bangalow Road intersection)

10 As for physically managing vehicles with and without a sticker, it is proposed the traffic management is to be established as shown below and be signed in advance, ie efforts be made to delineate approaching traffic with vehicles with stickers be signed and advised to enter the through lanes, while those without stickers to be directed into the park and ride sites for queuing and

15 'sorting' between those permitted and not permitted to drive into the road closed area.

 The opportunity to separate vehicles is limited yet possible by using the approximately 160m left turn in lane to west of the BRSCC and roundabout and creating a through lane of approximately 300m length in the sealed road shoulder south of the High School.

20 It is noted however the high volume of traffic expected to be diverted into each site for 'sorting' will require substantial staff levels and control to ensure 'quick turnover' and minimise queuing on the main roads. The right turn into the High School will require 'stop and go' and likely result in delays for south bound vehicles.



At BRSCC



At High School

Committee comments

5 The RMS has advised the following:

RMS do not object to the proposal for the road closure under Section 116 of the Roads Act 1993 for the purposes of Byron Bay's New Years Eve Festival.

10 *RMS is concerned about the number of car parking spaces available at the high school. Council will need to consider options for overflow parking. The use of the road shoulder/verge of Bangalow Road is not considered appropriate. In the event that the parking area at the high school overflows council should have a signposted alternative prepared in advance. EG remove road closure and direct vehicles to Tennyson Street sports fields where Park and Walk can be affected.*

15 *In the unlikely event that the traffic queue on Ewingsdale Road should reach the Pacific Highway interchange area then the road closure is to be removed immediately or an alternative queue area provided EG Woodford Lane.*

20 *Both park and ride areas should be monitored. A debrief should be held following the closure to assist with future management.*

25 *It should also be noted that this is a detour route as part of the RMS Incident Response Plans for the Pacific Highway.*

30 *It would be appropriate to provide advance warning of the road closure with VMS on The Coast Road (say south of Ross Lane and again south of another link to the highway north of Ross Lane) and on the Pacific Highway either side of the Ewingsdale Road interchange to give motorists an opportunity to Google the event for more information so they can decide whether to continue towards Byron Bay or not. The highway VMS should be hired from Coates in Ballina so an asset number can be provided. These can then be monitored and controlled remotely by RMS Traffic Operation's staff. The messages to be displayed will need RMS approval.*

35 *The RMS Live Traffic website can also be utilised. RMS Traffic Operations Manager can provide more detail when required.*

Another idea is to contact Google and when anyone searches for anything to do with 'Byron Bay' in the weeks leading up to Christmas a message will appear as the top line of the search advising of the New Year's Eve road closures.

5 Management Comments

Based on the Committee comments, it is proposed that Council endorse staff to investigate and report back on options for the provision of overflow car parking to cater for vehicles unable to be accommodated at the park and ride site established at the High School.

10

Financial Implications

As previously reported to Council, current cost estimate for traffic management is \$70,000. Council accepted this estimate and resolved that external funding be sought to contribute toward this amount.

15

Currently funding is being sought from a range of stakeholders, including state government and local business. A report on the success of these efforts will be provided back to Council in due course.

20

Statutory and Policy Compliance Implications

Nil

ENVIRONMENT AND PLANNING - COMMITTEE REPORT

Report No. 14.2. Report of the Planning Review Committee Meeting held on Wednesday 18 September 2013

File No: #E2013/61090

5

PRESENT: Councillors: Cr Dey
Cr Wanchap
Cr Wood
Cr Hunter

10

Staff: Wayne Bertram, Manager, Development and Certification

DA No.	Applicant	Property Address	Proposal	Outcome
10.2012.363.2	Bluesfest Services Pty Ltd C/- Geolink	Pacific Highway Tyagarah	S96 to amend conditions relating to patron numbers, inspection fees, stage orientation, access to Grays Lane and Occupation Certificate requirements (Boomerang Indigenous Cultural festival: October Long Weekend 2013-2014)	Delegated Authority
10.2011.306.2	Mr M MacPherson	139 Broken Head Rd Broken Head	S96 Delete conditions 11 & 16 (Subdivision, Tourist Facility & Dwelling) - Ecology Tourist Facility	Delegated Authority

RECOMMENDATION

15

That the report be noted.

WATER AND RECYCLING - CONFIDENTIAL REPORTS

Report No. 15.1. CONFIDENTIAL Tender 2013-0022 - Assessment of the Hire or Purchase of a Landfill Gas Utilisation Plant for Myocum Landfill

Executive Manager: Water and Recycling

5 **Report Author:** Warren Burgess, Manager Waste and Recycling Services

File No: #E2013/55257

Theme: Community Infrastructure, Waste and Recycling Services

Summary: The purpose of this report is to present to Council the evaluation of tenders submitted for the Hire or Purchase of a Landfill Gas Utilisation Plant and the Expansion of the Gas Collection System.

10 **RECOMMENDATION:**

1. That pursuant to Section 10A(2)(d) of the Local Government Act, 1993, Council resolve to enter into Confidential Session to discuss the following report, namely Assessment of Tenders for the Hire or Purchase of a Landfill Gas Utilisation Plant for the Myocum Landfill Tender 2013-0022.
15
2. That the reasons for closing the meeting to the public to consider this item be that:
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, confer a commercial advantage on a competitor, or reveal a trade secret.
20
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
25
 - a) Disclosure of the confidential information could adversely affect Council's ability to contract with preferred tenderers or could affect Council's ability to attract competitive tenders in the event that fresh tenders are invited;
- 30 4. In accordance with Sections 10A(4) of the *Local Government Act 1993*, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

35 **OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:**

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexure to the report, Tender Assessment - are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d) of the Local Government Act 1993.
40
2. That Council adopt the recommendation set out on the final page of the Report.

Attachment:

- 45
- **CONFIDENTIAL** Assessment Panel Recommendation Report #E2013/55282 [14 pages]..... **Annexure 12**

BYRON SHIRE COUNCIL

Report No. 15.2. CONFIDENTIAL Tender Assessment - Register of Pre-qualified Suppliers 2013-0032

Executive Manager: Water and Recycling
Report Author: Warren Burgess, Manager Waste and Recycling Services
File No: #E2013/60154

5

Theme: Community Infrastructure, Waste and Recycling Services

Summary: The purpose of this report is to present to Council the outcome of a public tender to establish a panel of Pre-qualified Suppliers (Environmental Management, Engineering and Waste Management Services) for a period of two years.

RECOMMENDATION:

- 10 1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report, namely Tender Assessment, Register of Pre-qualified Suppliers: Environmental Management, Engineering and Waste Management Services 2013-0032.
- 15 2. That the reasons for closing the meeting to the public to consider this item be that:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, confer a commercial advantage on a competitor, or reveal a trade secret.
- 20 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
 - 25 a) Disclosure of the confidential information could adversely affect Council’s ability to contract with preferred Tenderers or could affect Council’s ability to attract competitive tenders in the event that fresh tenders are invited;
 - 30 b) Tender respondents have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by tender respondents could result in the withholding of such information by those respondents and a reduction in the provision of information relevant to Council’s decision.
- 35 4. In accordance with Sections 10A(4) of the *Local Government Act 1993*, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

- 40 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender Assessment - 2012-0032 are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d) of the Local Government Act 1993.
- 2. That Council adopt the recommendation set out on the final page of the Report.

45 **Attachments:**

- **CONFIDENTIAL** Memo to GM re Register of Pre-Qualified Suppliers #E2013/46182 [2 pages] **Annexure 11(a)**
- **CONFIDENTIAL** Tender Assessment Panel Report #E2013/59491 [15 pages]..... **Annexure 11(b)**

Report No. 15.3. CONFIDENTIAL Tender Assessment - Bulk Chemical Supply for Treatment Plants

Executive Manager: Water and Recycling
Report Author: Peter Rees, Manager System Operations Water
File No: #E2013/54117

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Theme: Community Infrastructure, Water and Sewer Services

Summary: Byron Shire Council Water and Sewerage operations participated in a regional Chemical Supply tender administered by Regional Procurement Initiative (a division of Hunter Councils Inc). The chemicals are required for the operation of Council's four Sewage and one Water treatment plants.

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005.

Acceptance of the tendered rates will realise an approximate 10% savings over the current cost of chemicals. In 2012/2013 the combined chemical expenditure was \$419,292.

RECOMMENDATION:

- 10 1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely Tender Assessment, Treatment Plants Bulk Chemical Supply Tender.
- 15 2. That the reasons for closing the meeting to the public to consider this item be that:
- 20 a) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business;
- b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, confer a commercial advantage on a competitor, or reveal a trade secret.
- 25 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
- 30 a) Disclosure of the confidential information could adversely affect Council's ability to contract with preferred tenderers or could affect Council's ability to attract competitive tenders in the event that fresh tenders are invited;
- b) Tender respondents have provided sensitive information about their operations in the confidence that their details will not be made public by Council. The practice of publication of sensitive information provided by tender respondents could result in the withholding of such information by those respondents and a reduction in the provision of information relevant to Council's decision.
- 35 4. In accordance with Sections 10A(4) of the *Local Government Act 1993*, that the Chairperson allow members of the public to make representations as to whether this part of the meeting should be closed.

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 OCTOBER 2013

(93)

OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

- 5
1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender Assessment - are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d) of the Local Government Act 1993.
 2. That Council adopt the recommendation set out on the final page of the Report.

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Attachment:

- **CONFIDENTIAL** Tender Evaluation Report Final #E2013/61237 [10 pages] **Annexure 9**