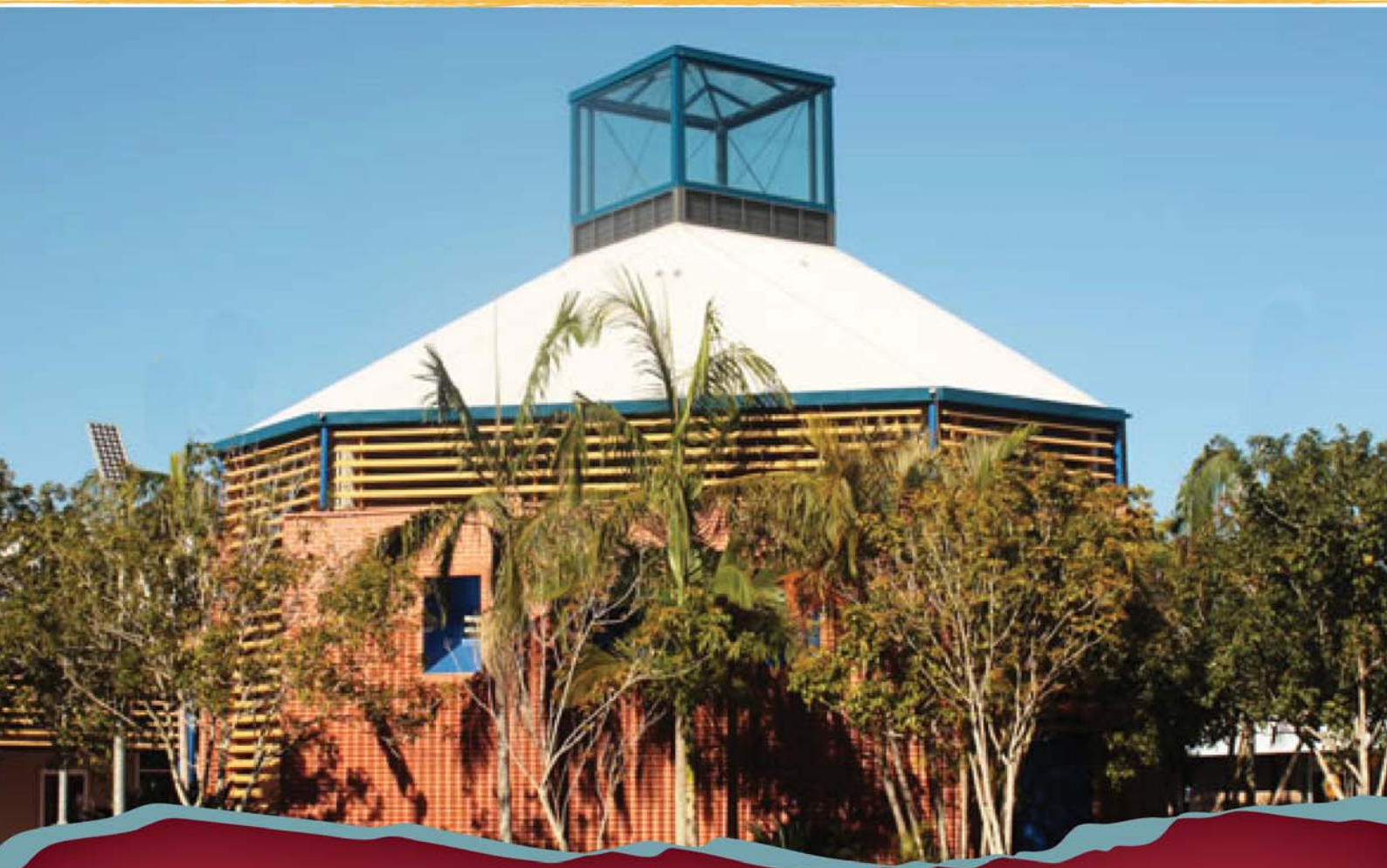




Byron Shire Council



Agenda

Extraordinary Meeting Thursday, 19 December 2013

held at Council Chambers, Station Street, Mullumbimby
commencing at 9.00am

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

A black and white signature of Ken Gainger, the General Manager, written in a cursive style.

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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EXTRAORDINARY MEETING

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(1)

BUSINESS OF EXTRAORDINARY MEETING

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CORPORATE AND COMMUNITY SERVICES – DIRECTOR’S REPORT

Report No. 3.1. Sub-lease for temporary tenure of part Mullumbimby Civic Hall

Director: Corporate and Community Services
Report Author: Leslie Beardmore, Leasing and Licensing Coordinator
File No: #E2013/82097

5

Theme: Corporate Management-Property, Procurements and Contract Services

Summary: At its Ordinary Meeting on 10 October 2013 Council received a report on the fire that destroyed the Mullumbimby Neighbourhood Centre Annex building.

Council resolved [13-516] to provide temporary tenure for the Mullumbimby and District Neighbourhood Centre, in the front room of the Mullumbimby Civic Hall, to enable them to continue to provide accommodation for the Southern Cross Distance Education program, until the annex building has been reconstructed.

A report seeking Council's authorisation to grant a sub-lease over that part of the Mullumbimby Civic Hall being part of Dedication 540006 site for council chambers was considered by Council at its Ordinary Meeting on 12 December 2013, and deferred it for further consideration on 19 December 2013.

RECOMMENDATION:

10

1. That Council grant a sub-lease (substantially in the form at Annexure 5(a) (#E2013/70410) over that part of the Mullumbimby Civic Hall being part of Dedication 540006 for council chambers, to Mullumbimby and District Neighbourhood Centre Inc (subject to Ministerial consent) on the following terms and conditions:

15

- a) Term of 12 months;
- b) Rent equivalent to Crown minimum rent (currently \$451.00 per annum ex GST);
- c) Permitted use – distance education by Southern Cross Distance Education.

20

2. That Council authorise the General Manager to affix the Council Seal to the Sub-lease of part Lot 8 Section 8 DP 758725 in accordance with Regulation 400 of the Local Government (General) Regulations 2005.

25

Attachments:

- Draft sub-lease agreement #E2013/70410 [15 pages] **Annexure 5(a)**
- Minutes #E2013/73781 [2 pages]..... **Annexure 5(b)**

30

Annexure 5(a): Due to the size of this document it has been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website and at community access points around the Shire.

Report

Land Information

- 5 Description: Part Lot 8 Section 8 DP 758725 at Dalley Street complex Mullumbimby being Crown Land (D540006)
 Dedication: Site for council chambers
 Gazetted: 16/10/25
 Owner: State of New South Wales (Crown Lands)
- 10 Legislation: Crown Lands Act 1989
 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 over neighbourhood centre and annex building only.
- 15
- Description: Part Lot 10 Section 8 DP 758725 at Dalley Street complex Mullumbimby being Crown Land (D1000362)
- 20 Dedication: Site for literary institute
 Gazetted: 1/11/29
 Owner: State of New South Wales (Crown Lands)
 Legislation: Trustees of School of Arts Enabling Act 1902
 Trustees: The Council of the Municipality of Mullumbimby appointed by gazette notification
- 25 13/12/29
 Tenure: Board of Management

At its Ordinary Meeting on 12 December 2013, Council considered report “12.4. Sub-lease for temporary tenure of part Mullumbimby Civic Hall” (<http://www.byron.nsw.gov.au/meetings/2013-12-12-ordinary>) and did not resolve on the matter. To allow for further consideration, the matter was deferred to this Extraordinary Meeting.

The below information has been reproduced from the report to Council’s Ordinary Meeting on 12 December 2013.

The Mullumbimby Civic Hall is primarily located upon Lot 10 Section 8 DP 758725 (Mullumbimby literary institute site) and encroaches the adjoining Lot 8 Section 8 DP 758725 (old Mullumbimby council chambers site).

At its Ordinary Meeting on 10 October 2013, Council considered a report titled “13.6. Mullumbimby and District Neighbourhood Centre - Annex Building Destroyed by Fire” (<http://www.byron.nsw.gov.au/meetings/2013-10-10-ordinary>) and resolved:

13-516

- “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.”

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5 This report addresses in part, item 2 of the above resolution regarding the temporary tenure of part of the Mullumbimby Civic Hall (the front room) by Mullumbimby and District Neighbourhood Centre Inc (MDNC) for a term of 12 months at Crown minimum rent whilst the Annex Building is reconstructed. The proposed temporary arrangement will allow MDNC to continue to provide accommodation for the Southern Cross Distance Education program.

10 The proposed temporary arrangement has the support of the Mullumbimby Civic Hall's Board of Management, see Annexure 5(b) attached.

Draft tenure documents (sub-lease and licence) were forwarded to NSW Trade and Investment Crown Lands Division for approval in principle under the provisions of the Crown Lands Act and Trustees of School of Arts Enabling Act.

15 In an email to Council dated 8 November 2013, Crown Lands provided their in principle support to the draft sub-lease and licence, subject to some minor alterations.

20 As the tenures are administered under different Acts, the requirements for Minister's consent are different.

Sub-lease over that part of the Mullumbimby Civic Hall being part of Dedication 540006 for council chambers

25 Council has tenure for the whole of the council chambers dedicated site under Crown Lease 453912 for business purposes dated 07/09/12.

30 Mullumbimby & District Neighbourhood Centre Inc (MDNC) has an approved Crown Sub-lease with Council for community welfare services over that part of the council chambers dedicated site that includes the old council chambers building (neighbourhood centre) and annex building (recently destroyed by fire).

35 A Crown Sub-lease for that part of the council chambers dedicated site that is part of the Mullumbimby Civic Hall (due to the encroachment) is to be granted to Mullumbimby & District Neighbourhood Centre Inc for the permitted use of distance education.

The draft sub-lease at Annexure 5(a) has Crown Lands in principle support.

40 Licence over that part of the Mullumbimby Civic Hall being part of Dedication 1000362 for literary institute

Council, as trustees of the Mullumbimby Literary Institute Site D1000362 will consider a separate report on the licence for that part of the literary institute dedicated site that is part of the Mullumbimby Civic Hall at its Reserve Trust Committee Meeting on 19 December 2013.

45 **Financial Implications**

The rental income will be limited to Crown Land minimum for the term of the licence.

50 **Statutory and Policy Compliance Implications**

Crown Lands Act 1989

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

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(5)

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**.

- (2) The following provisions apply in relation to the granting of a relevant interest:
- 5 (a) the Minister is to consult the following persons or bodies before granting the relevant interest:
- (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,
- 10 (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,
- 15 (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.
- 20 (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:
- (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,
- 25 (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,
- 30 (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.
- 35 (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
- 40 (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.

- 45 (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:

- 50 (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.

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- (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.

5 Local Government (General) Regulation 2005

400 Council seal

- 10 (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
- 15 (a) the mayor and the general manager, or
(b) at least one councillor (other than the mayor) and the general manager, or
(c) the mayor and at least one other councillor, or
(d) at least 2 councillors other than the mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were
20 present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

ENVIRONMENT AND PLANNING – EXECUTIVE MANAGER'S REPORTS

Report No. 3.2. PLANNING - Report of Minutes from the Koala Plan of Management Meeting held 9 December 2013

Executive Manager: Environment and Planning
Report Author: Angus Underwood, Team Leader, Natural Environment
File No: #E2013/82322

5

Theme: Land and Natural Environment

Summary: In response to resolution 13-534 a stakeholder workshop was held on 22 November to discuss the data used to inform the drafting of section 6.5.3 *Music Festival* in the draft Byron Coast Koala Plan of Management (CKPOM).

Changes have been made to the draft CKPOM to reflect the outcomes of the meeting and the project reference group consider that a consensus has been reached between stakeholders and Council. A further minor amendment has been made to reference important ecological plantings that reinforce wildlife corridors between the coast and the hinterland.

The wording for provision 6.4.2 relating to retention of koala feed trees have been amended to provide for a more workable plan.

NOTE TO COUNCILLORS:

10

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

15

RECOMMENDATION:

20

1. That the outcome of the music festival stakeholder workshop be noted.
2. That the minutes and recommendation of the KPoM Project Reference Group be noted.
3. That the draft Byron Coast Comprehensive Koala Plan of Management as reported to Council on 10 October 2013 be placed on public exhibition in February 2014 following incorporation of amendments outlined in this report.

25

Attachments:

30

- Report of the Koala Plan of Management Project Reference Group meeting 9 December 2013 #E2013/80895 [3 pages] **Annexure 6**

Report

5 In response to resolution (13-534) a stakeholder workshop was held on 22 November to discuss the data used to inform the drafting of section 6.5.3 *Music Festival* in the draft Byron Coast Koala Plan of Management.

Landholders from North Byron Parkland, Bluesfest, Belongil Fields and Byron Beach Resort were invited to participate as stakeholders in local music festivals. Biolink and consultants on behalf of Bluesfest gave presentations on their interpretation of the data and all participants were given the opportunity to direct further questions at the koala ecologists and Council staff.

10 Following the workshop Council staff redrafted 6.5.3 *Music Festival* to reflect the issues raised and views of stakeholders at the workshop. This redraft was then sent to all stakeholders for further comment. The main changes to the provision were:

- Reducing the area of impact from 650m to 500m
- Requiring a site specific Music Festival Management Plan be submitted with a DA addressing the vegetation compensation requirements as well as other koala management issues such as stage and event layout to minimise impacts, fencing koala habitat, koala awareness and education for patron and workers, treatment of sick koalas.

20 A Project Reference Group meeting was held to discuss the workshop outcomes and determine if consensus had been reached to satisfy resolution 13-534 or whether an independent peer review of the data was required. The group considered the redrafted provision satisfied stakeholders while still responding the data.

The PRG gave the following recommendation:

Recommendations:

- 25 1. **The PRG consider a consensus is reached between PRG and stakeholders in regard to the wording of the amended 6.5.3 *Music Festivals* as tabled.**
2. **The draft Byron Coast Comprehensive Koala Plan of Management be placed on public exhibition in February 2014.**

30 The minutes of the meeting are attached as Annexure 6.

Following the PRG meeting further discussion were had with North Byron Parkland Management who raised an issue with part of the redrafted provision. Following consideration of their comments the Executive Manager made minor changes to part (v) to allow credit to be given for previous tree planting works within the area of impact if these works were undertaken within a Council mapped wildlife corridor. This is considered appropriate as it is consistent with Councils intent for mapped wildlife corridors to be the focus for environmental restoration and revegetation works and not allowing credit for these works could discourage landholders for continuing tree planting in these corridors.

40 The final wording of the redrafted provision is shown below:

6.5.3 Music Festivals

45 *Monitoring of koala exposed to the impacts of amplified sound associated with music festivals indicates that such exposure may cause aversive behaviour in the form of evacuation from individual home range areas.*

Some Koalas respond by temporarily moving outside of their normal home ranges during some events. Data suggests that koalas residing within 500m are more likely to be affected although responses will vary between sites and events. As such koala use of habitat within a 500 m radius of a festival may be reduced and enhancement or compensation is sought.

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- (i) *This section applies to a development application to undertake:*
- a) *a permanent music festival on any land;*
 - b) *or multiple music festivals on any land*
- that is within a KMP or a Habitat Buffer or a Strategic Linkage Area, or where a KAAR undertaken in accordance with Sec 6.3.2 has established the presence of koalas.*
- (ii) *For the purposes of this section a music festival is a public event characterised by stage based amplified music being played for large crowds over a number of consecutive days and nights.*
- (iii) *If a music festival is proposed to occur annually and/or on more than one occasion throughout the course of a calendar year and in addition to the requirements of 6.4 above, a site specific Music Festival Management Plan must be submitted with the development application for approval.*
- (iv) *The Music Festival Management Plan shall*
- a) *identify areas of preferred koala habitat within and surrounding the site that occur within radius of 500m from the centre of the staging areas with the objective of calculating compensatory planting or enhancement ;*
 - b) *provide for enhancement or compensation for any koala habitat identified within the impact area identified in a), which*
 - i. *shall be in accordance with the requirements of Section 7.1 and Part 8 of this Plan;*
 - ii. *shall be outside of the area of impact and located on the same property as that which the development application relates. Where compensation or enhancement cannot be created on the same property as that to which the development relates, the replacement area will be selected from that identified in Section 8.1 (ii) of the Plan; and*
 - iii. *may discount the total area of compensatory planting, or the amount of financial contribution or guarantee required by this Plan by up to 50% if no vegetation is to be removed*
 - c) *identify other hazards and/or threats to koalas at the festival site and surrounding lands and include measures for the long term protection of the resident koala population to mitigate those hazards and threats, including but not limited to:*
 - i. *site layout to ensure the stage and event layout minimise impacts on koala habitat,*
 - ii. *appropriate fencing, signage and the like which protect koala habitat,*
 - iii. *implement koala awareness education for patrons, and workers during an event,*
 - iv. *measures for the treatment of sick or injured koalas,*
 - v. *a monitoring program to measure the effectiveness of the management Plan, and*
 - vi. *any other identified matters.*
- (v) *Where the land owner or festival operators have already replanted koala food trees and habitat, a credit will be given for any compensatory planting for prior works if in the opinion of Council that planting*
- i. *is outside the area of potential impact or within a Council mapped wildlife corridor; and*
 - ii. *making a positive contribution to koala recovery by way of consistency with the visions, aims and objectives of this plan.*

A further amendment was also discussed at the PRG in relation to provision 6.4.2 Retention of Preferred Koala Feed trees. It was considered the initial draft wording was too restrictive and not achievable in circumstances such as ensuring assets protection areas for existing dwelling or for dangerous trees. A draft rewording was discussed based on principals of avoid, minimise and mitigate. The provision now read as follows:

6.4.2 Retention of Preferred Koala Food Trees (PKFT)

- 10 (i) *There shall be no removal of any PKFT >250mm dbh as a consequence of new subdivisions.*
- (ii) *For all other development applications the principals of avoidance, minimisation and mitigation of impacts on preferred koala feed trees and potential koala habitat must be applied.*
- 15 (iii) *The applicant must demonstrate by way of stadia survey that removal and/ or impact on preferred koala feed trees has been avoided to the maximum extent possible through development location, design, construction and management of development activities.*
- (iv) *Approval for clearing of preferred koala feed trees will only be granted if Council is satisfied:*
- 20 a. *all feasible ways of avoiding the removal of the preferred koala feed trees have been examined and demonstrated to be unachievable. Appropriate documentation to be submitted with the development application.*
- b. *the removal of preferred koala habitat is to be undertaken to the minimal possible extent.*
- 25 c. *priority has been given to the retention of preferred koala feed trees >250mm dbh*
- (v) *Where the applicant has demonstrated to Councils satisfaction that removal of PKFT is unavoidable then compensation for loss is required as per Part 7 of this Plan.*
- (vi) *The applicant must demonstrate to the satisfaction of Council that the protection of all preferred koala feed trees to be retained is consistent with the requirements of AS*
- 30 *4970-2009 (Protection of Trees on Development Sites)*
- (vii) *Preferred Koala Feed Trees retained that occur within residential allotments arising from the subdivision of land must be protected by an effective restriction on as to the user on title of the land where appropriate.*

35 Conclusion

It is intended to place the draft Comprehensive Koala Plan of Management on public exhibition in the early new year. It is considered that the revised wording as recommended by the PRG and as amended by staff for Music Festivals suitably addresses issues raised by the stakeholders and provides a suitable means for protecting koalas and enhancing habitat and enabling events to occur concurrently, whilst the wording for provision 6.4.2 provides for a more workable Plan.

It is likely following exhibition and review of submissions further amendments may be required to other parts of the CKPOM to address issue raised.

45 Financial Implications

Nil

50 Statutory and Policy Compliance Implications

Nil

Report No. 3.3. PLANNING - Belongil Interim Beach Access Stabilisation Works

Executive Manager: Environment and Planning
Report Author: Phillip Holloway, Director Infrastructure Services
File No: #E2013/75722

5

Theme: Ecology, Development and Approvals

Summary: This report presents to Council for determination a detailed design and a Statement of Review of Environmental Factors (REF) for potential Belongil Interim Beach Access Stabilisation (BAS) Works at Manfred, Border and Don Streets. The supporting documents have been prepared by consultants Water Research Laboratory (WRL) and Umwelt and it the report allows Council to consider the Review of Environmental Factors and determine whether it is satisfactory or not.

These works as designed would, if approved, replace existing interim BAS works installed in 2001/2002 that have been damaged, as an interim measure pending a long term coastal management policy being adopted.

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 in relation to the proposed Belongil Interim Beach Stabilisation Works, Council resolves:

20

1. **That the Review of Environmental Factors satisfies the Provisions of Section 111 of the Environmental Planning and Assessment Act 1979 and that the proposed works are considered unlikely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats.**

25

2. **That Council endorses the Review of Environmental Factors for the Interim Beach Access Stabilisation Works at Belongil, Byron Bay (Annexure 1(b)) and adopts the design for the Belongil Interim Beach Access Stabilisation Works (Annexure 1(a) #E2013/79294) subject to:**

30

a) **the inclusion of a modular stair structure and/or stairs, that can be removed in order to restrict access when beach conditions are unsafe; and**

35

b) **the removal of the reference to the sandbagging of kerb inlet in Table 5.6 of the REF.**

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Attachments:

- 5 • Detailed Design by WRL 2013 #E2013/79294 [84 pages].....**Annexure 1(a)**
- Review of Environmental Factors #E2013/79218* [93 pages]..... **Annexure 1(b)**
- Arakwal Correspondence #E2013/78921 [1 page]**Annexure 1(c)**

* For appendix 1 of Annexure 1(b) see Annexure 1(a).

10

Annexures 1(a) and 1(b): Due to the size of these documents they have been provided on the Councillors' Agenda CD only; an electronic copy can be viewed on Council's website.

Report

History/Background

5 In 2001/2002 Council constructed interim beach stabilisation measures at five (5) locations at Byron Bay, which included works at Manfred, Border, and Don Streets. These works were undertaken in accordance with the Development Application and accompanying Statement of Environmental Effects (SEE) prepared by GHD (2001). The purpose of these works was to mitigate erosion caused by small seas and high tides as an interim measure pending adoption of a coastal management strategy.

10 The construction of the interim beach stabilisation measures involved some sand nourishment of the rear sections of beach at each location and construction of walls utilising geofabric bags filled with sand obtained from sections of Belongil Beach and Clarkes Beach.

15 These works were intended as interim measures to mitigate some impacts of coastal erosion during the period required for Byron Shire Council (BSC) to develop and implement a long-term coastline management plan. Since their installation, these works have exceeded their design expectations. They have been subject to damage and repaired but they have exceeded their design life.

20 As a result, Council propose the installation of interim Beach Access Stabilisation (BAS) works at three (3) sites at Manfred, Border, and Don Streets. These works are interim, until a long term coastal management policy has been adopted by BSC.

25 Under the provisions of Clause 129(1) of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), development for the purpose of *'waterway or foreshore management activities may be carried out by or on behalf of a public authority without consent on any land'*. Clause 129(2) defines development for the purpose of waterway or foreshore management activities to include *'construction works'* and *'environmental management works'*. As the proposed works require the construction of structures for the purpose of providing interim BAS at Manfred, Border and Don Streets, Belongil until a long term coastal management policy has been adopted, the works are considered to be consistent with the definition of *'construction works'* and *'environmental management works'* as defined in Clause 129(2) (a) and (d) respectively of the SEPP. The works are not considered to fall within the definition of temporary protection works as defined under the Coastal Management Act 1979 being:

- 30
- 35
- (a) *sand, or fabric bags filled with sand, (other than sand taken from a beach or a sand dune adjacent to a beach),*
 - 40 (b) *other objects or material prescribed by the regulations (other than rocks, concrete, construction waste or other debris).*

45 Given that development consent is not required under the Infrastructure SEPP 2007, the environmental management works can be undertaken as an activity under Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), with BSC as the determining authority. A Controlled Activity Approval under Section 91(2) of the *Water Management Act 2000* is not required for the proposed works, as in accordance with the provisions of Clause 38 of the *Water Management (General) Regulation 2011*, the works are being undertaken by or on behalf of a public authority (i.e. BSC).

50 Council entered into a Funding Agreement for Financial Assistance under the 2012/2013 Coastal Management Program from NSW Office of Environment and Heritage (OEH) and under that funding agreement the Water Floodplains and Coast Unit of OEH have provided comments during the drafting of the documents. The draft detailed design report and a statement of review of environmental factors (REF) has been amended in consideration of OEH comments.

55

The application was referred to the NSW Office of Environment and Heritage (both Regional Operations and the Water Floodplains and Coast unit), the NSW Department of Planning and Infrastructure, NSW Fisheries, the Cape Byron Marine Park Authority, NSW Trade and Investment (Crown Lands) and the Coastal Panel for comment.

5

All comments have been considered and addressed either directly, in a response by WRL (Appendix 2, REF (Environmental Assessment)) or by Umwelt in the reworked final REF.

10 Landowner consultation was undertaken to identify any perceived issues that may arise as a result of the proposal. One-on-one meetings were offered to each of the 8 directly affected landowners. Five of the directly affected landowners participated in the one-on one meetings with council staff and WRL. In addition a “drop-in” forum, whereby members of the project team answered one-on-one questions from community members was undertaken at Belongil.

15 Correspondence was sent to all properties (residential and commercial), the Arakwal, and environmental and user groups in Belongil seeking feedback on the proposed works. A number of completed questionnaires and letters were received.

20 The REF has been finalised for presentation to Council so that it can review the environmental factors itself and make the necessary final determination.

Background Resolutions

25 On 21 March 2013 Council resolved **(13-146)**

1. *That Council authorise the General Manager to expediently pursue options for rock/hard materials for the purpose of providing interim protection at Manfred, Border and Don Streets, Belongil; noting that this is an interim position until a long term coastal management policy has been adopted.*
- 30 2. *That within the Belongil Beach area the prioritisation of sites for reconsideration of interim protection works be Manfred, Border then Don Street sites (noting that this is an internal prioritisation only for these sites and depending on prevailing circumstances there may be higher priority areas or projects in the Shire).*
- 35 3. *That the Old Jetty Site not be considered further by Council as it is owned and managed by Crown Lands Division of NSW Trade & Investment (formerly Crown Lands).*
- 40 4. *That Council confirm that it does not object to the concept of interim erosion control works on the Old Jetty Site provided any specific design will not adversely impact the environment or the public interest including beach users.*
- 45 5. *That Council delegate authority to the General Manager to advance the consideration of rock/hard materials, including without limitation:*
 - a) *securing external funding from, for example, landowners or State or Federal Government funding (to the extent that any funds beyond current budget allocations are required);*
 - b) *applying for and obtaining all necessary approvals and permits including without limitation from State Government, Crown Lands, the Marine Park Authority and all affected landowners;*
 - 50 c) *proceeding to construction if all preconditions are able to be satisfied;*
 - d) *that if the Coastal Panel does not support or recommends against the proposal the matter be brought back to Council; and that Council require periodic reports to be provided to Council.*
6. *That Council note that the matter will be reported back if any preconditions are unable to be satisfied.*
- 55 7. *That Council recognise that interim and unapproved works may, one day, have to be removed from the area.*

Council engaged the Water Research Laboratory (WRL) of University of New South Wales to prepare a design for the interim BAS works. A statement of Review of Environmental Factors (REF) has been prepared by Umwelt (Australia) Pty Limited (Umwelt) on behalf of WRL.

5

The REF is an independent assessment of the potential environmental impacts of the proposed interim BAS works, in accordance with the relevant requirements of Part 5 of the EP&A Act. Its purpose is to provide Council with assistance so that Council, as the determining body, can itself carry out the necessary review of the environmental factors and make the final determination.

10

Under the OEH funding agreement the Water Floodplains and Coast Unit have provided comments during the drafting of the documents.

Description of Site

15

The proposed interim beach access stabilisation (BAS) works are to be located at Manfred, Border and Don Streets along Belongil Beach, Byron Bay (see REF Site Locality Plan (Annexure 1(b))).

20

The Project is primarily located within Crown (Lot 408 DP 729057) and Council-owned (Lots 1-2 DP 521030) land, however, the works will also require some construction on private property at Don Street (Lot 21 Section 1 DP1623 and SP 65430) and Manfred Street (Lots 11-14 DP 1040635) (refer REF Figures 1.3-1.5).

Description of Proposed Development

25

The Water Research Laboratory (WRL) of the School of Civil and Environmental Engineering at the University of New South Wales was engaged by BSC to design these proposed structures. The study consists of three key tasks, namely:

30

- Task 1: Design Options Evaluation
- Task 2: Design and Costing; and
- Task 3: Preparation of Review of Environmental Factors (REF)

35

The works required by Council are for interim protection measures (as per BSC resolution 13-146, Clause 1 carried on 21 March 2013). As such, replacement of the existing structures with sand-filled geotextile containers was not considered as an option, based on an analysis of capital costs, potential for damage over the adopted design life for the proposed interim structures and given the extent of damage that has occurred to these existing structures since their installation in 2001.

40

Options Assessment

Details of the design procedure are provided in Table 1 Appendix 1 of Annexure 1(a).

45

In summary, a total of 25 design steps were undertaken as part of the design process.

A total of four (4) design options were considered and evaluated according to their advantages and disadvantages, with an assessment of the suitability of each made based on these considerations.

50

A summary of the design options is provided in Table 2.1 Annexure 1(a)).

Conventional rock armoured coastal structures, commonly referred to as rubble mound structures, usually comprise two layers of graded primary armour stones overlying one or more layers of graded secondary armour stones. Slopes of between 1V:1.5H and 1V:3H are typically used. If the rock is too small or not durable enough, damage or failure of the structure is likely.

55

Based on an assessment of the advantages and disadvantages of each of the design options, as well as discussions with Council, rock rubble structures were determined in the design report to be the most appropriate for possible future works for the sites at Manfred, Don and Border Streets. Based on current information, this is because they:

5

- a) could be flexible and may be reshaped
- b) can be modified and/or they could be easier to remove than other structures (subject to relevant conditions/approvals etc)
- c) they are a lower maintenance option
- d) more easily interface with existing rock structures; and
- e) rock may be able to be sourced from a number of quarries close to the site

10

Figure 8.1* below depicts a typical structure cross section of the proposed works. Due to existing geobag walls, WRL has adopted an alignment similar to the existing sandbag structures. As the Border Street has now been relocated further inland, it may be possible to reduce the southward extent of this structure relative to the existing sandbag structure.

15

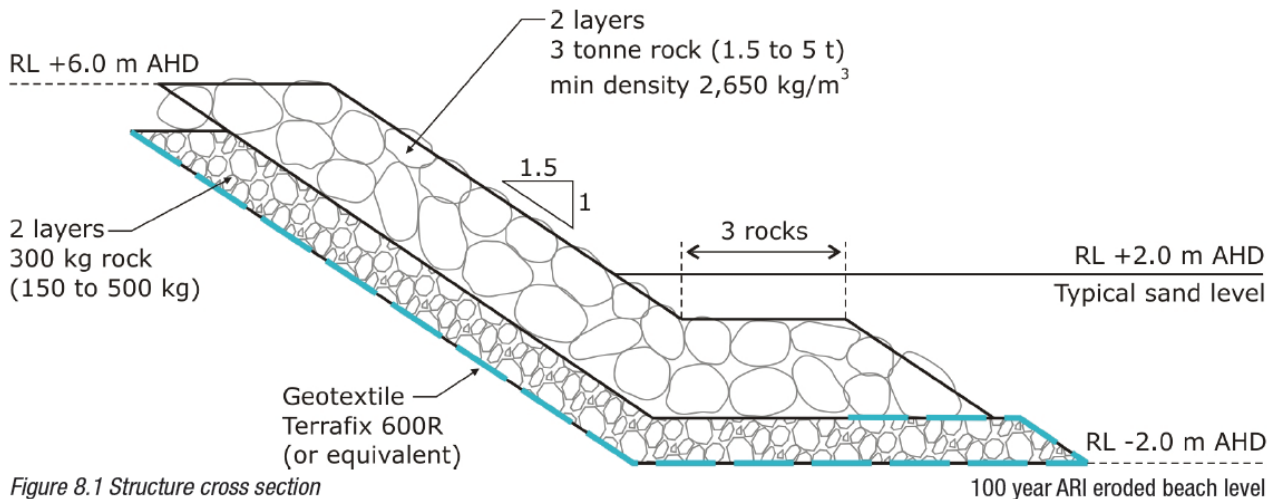


Figure 8.1 Structure cross section

100 year ARI eroded beach level

20 *(Source WRL 2013)

Summary of Government/External Referrals

Summary of Issues	
Office of Environment and Heritage (Water Floodplains and Coast Unit)	The Water Floodplains and Coast Unit of OEH consider from an overall perspective, the WRL report is detailed and accords with current best practice design principles and techniques. Issues of concern relate to the significance of the plan footprint of the proposed rock structure and the substantial impact this might have on the public recreational beach space. The proposed design is likely to result in a structure that may have the largest plan footprint per lineal metre of any structure along Belongil Spit. Considering the project is about delivering stabilisation to beach access along Belongil Spit, the public recreational amenity (and the impacts thereon) of the proposed structure would be envisaged to have some bearing on the assessment process. It is similarly noted that the afore-mentioned matters are not considered in the associated REF.
Office of Environment and Heritage (Regional Operations Unit)	The key issues raised by the Regional Operations Unit of the OEH relate to the adequate assessment of coastal matters; and the adequate assessment of aboriginal cultural heritage matters
Cape Byron Marine Park	The REF fails to refer to the Cape Byron Marine Park or the Marine

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<p>Authority</p>	<p>Parks Act. The REF does not adequately address potential impacts of the proposed works on coastal processes, particularly processes that may impact on the Belongil Creek estuary and environs</p>
<p>Fisheries NSW</p>	<p>The creation of a bund and of the dewatering process requires approval under the Fisheries Management Act. No consideration of the Cape Byron Marine Park. Fisheries NSW are concerned that the proposal adds to the cumulative loss of access and amenity of the public beach at Belongil. Fisheries NSW recommend that the REF be reworked to address omissions before determination is considered.</p>
<p>NSW Planning & Infrastructure</p>	<p>Whilst not specific to part 5 of the EP & A Act NSW P& I consider that the heads of consideration under: a. Section 55M of the Coastal Protection Act; b. Clause 8 of SEPP 71-Coastal protection; c. The Principles of the NSW Coastal Policy, and d. Section 32B of the North coast Regional Environmental Plan 1988</p>
<p>Coastal Panel</p>	<p>The Coastal Panel (CP) is of the view that the proposed works have the potential to exceed the design life of 10 years and that there could be long term impacts. The Panel advises that a contingency plan should be developed that considers that the works may in fact remain in place for longer than the proposed design life. The CP has concerns about the alignment of the proposed works and the possibility that the works will create a headland situation through creation of unintended end effects on existing walls and property. The CP is concerned about the possible impact of the proposed toe apron on the beach itself. The Panel notes that the wall design results in an apron that protrudes well onto the existing beach area. The Panel is concerned that the beach may be compromised by large rocks which may pose threats to public safety and compromise beach amenity. The CP recommends a modular staircase design which will allow for removal of stairs at times when rocks are exposed on the beach and public access is not safe. The CP notes that the design drawings show a 'typical sand' layer at a height of +2m AHD. Due to the well known phenomenon of beach lowering during the erosion cycle, the CP does not consider this to be a realistic level. The impacts of misinterpreting the level of sand would mean more frequent exposure of sand in the vicinity of the proposed works. The CP is concerned that the design of the proposed works may create mini rip embayments with resultant risks to public safety for beach users, especially swimmers and surfers. This could be addressed by aligning the wall as far landward as possible. The CP also advises that Council should consider the maintenance and long term management of impacts of the proposed works on adjoining land.</p>
<p>Trade & Investment Crown Lands</p>	<p><u>Long term planning issues</u> The REF doesn't assess geotextile bags (existing option) and therefore the use of hard rock as an 'interim' protection measure in lieu of geotextile bags is not evaluated. The design life of the 'interim' proposed works for Belongil beach is specified as 10 years however a preliminary review of the design suggests that the works may perform beyond the stated design life and result in longer term impacts. The longer term impacts of the works are not adequately considered at this stage, particularly the</p>

	<p>impact on the beach and other properties fronting the beach. Crown Lands understands that a Coastal Zone Management Plan (CZMP) is currently under consideration for the beach. The proposed works may prejudice the development of the CZMP and significantly limit the scope of the future plan. The construction of the proposed works may set a precedent for the type and scale of works acceptable or necessitated on Belongil beach without careful consideration and understanding of the long term effects of the development of extensive rock walls along the beachfront.</p> <p><u>Potential Erosion and Beach Safety Issues</u></p> <p>The proposed works appear to be considered in isolation and they may create a headland situation through creation of unintended end effects on existing walls and property. A broader plan for protection of the beach should be considered through the CZMP.</p> <p>The current proposal does not consider necessary safeguards to manage beach amenity and safety issues. The design drawings show a 'typical sand' layer at a height of +2m AHD. Beach lowering may occur as part of an erosion cycle resulting in frequent exposure of the rock apron in the beach area. This may result in a beach comprised of large rocks, which may pose threats to public safety and compromise beach amenity.</p> <p>The design of the proposed works may create mini rip embayments with resultant risks to public safety for beach users, especially swimmers and surfers. This could be addressed by aligning the wall as far landward as possible.</p> <p>The proposal does not provide sufficient detail of information concerning the maintenance and long term management of impacts of the proposed works on adjoining land. It is requested that Council consider the long term impact of the works on adjoining Crown land, including potential erosion to the Old Jetty Site.</p> <p><u>Licence Requirements</u></p> <p>The nature of proposed works are not consistent with current licence (L494336) issued to Byron Shire Council. The terms of the licence only allow provide for erosion protection structures to be constructed in accordance with the Draft Coastal Zone Management Plan for Byron Shire Coast Line (Parsons Brinkerhoff 2010). In addition, the footprints of the proposed works at each site appear to be partly located outside the existing licence area. To ensure appropriate tenure for these works Byron Shire Council will need to seek an amendment to the existing licence or pursue a new licence prior to the commencement of any works.</p>
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5 Copies of stakeholder correspondence are located in Appendix 2 of the REF. A formal response from WRL to the comments provided by the agencies is also provided in Appendix 2 of the REF, while where appropriate, the response to matters raised has been incorporated in the REF.

Matters addressed in response to agency comments with respect to the REF are located in the following sections of the reworked final REF:

- 10 1. Fisheries NSW
 - a. Table 4.5 acknowledges that notification and / or issuing of a permit by the Minister for the proposed activity in accordance with s.200(1) of the Fisheries Management Act is required

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- 5 b. Table 4.5 identifies that the activity is located within the Belongil Beach, Main Beach and Clarkes Beach Habitat Protection Zone of the Cape Byron Marine Park. Accordingly s.19(3)(a) of the Marine Parks Act 1997 requires certain matters to be taken into consideration (refer Section 4.3.2.1)
- 10 2. Cape Byron Marine Park Authority
- a. Table 4.5 identifies that the activity is located within the Belongil Beach, Main Beach and Clarkes Beach Habitat Protection Zone of the Cape Byron Marine Park. Accordingly s.19(3)(a) of the Marine Parks Act 1997 requires certain matters to be taken into consideration (refer Section 4.3.2.1)
- 15 3. Trade and Investment (Crown Lands)
- a. Table 4.5 identifies that part of the proposed activity are located on Crown Land and that a licence is required under the Crown Lands Act for works undertaken within a Crown Reserve. To ensure appropriate tenure for the proposed works Council will need to seek an amendment to the existing licence or pursue a new licence prior to the commencement of any works.
- 20

Staff endorse the consultant's responses to the submissions received but add/note as follows:

- 25 1. The Coastal Panel has pointed out and the consultants have concurred that the proposed alignment of the works is not optimal. The consultant's response indicates that the proposed alignment is simply the 'status quo' pending adoption of a CZMP because a more landward alignment as was recommended by the Coastal Panel could have impacts on private properties. Council has no choice but to adopt the 'status quo' alignment if it wants to carry out the works now but it is relevant to note that if a realignment is required to increase future beach amenity, additional future costs will result.
- 30
2. The Coastal Panel expressed concern about the possible impact of the proposed toe apron on the beach itself. The Panel notes that the wall design results in an apron that protrudes well onto the existing beach area. The Panel is concerned that the beach may be compromised by large rocks which may pose threats to public safety and compromise beach amenity.
- 35
3. The proposed works are interim with a 10 year design life. In the event of larger storm events the interim protection works can be embellished or upgraded and or removed depending upon any recommendations for the broader protection of the coast being considered through the CZMP.
- 40

Community Consultation

- 45 a) Arakwal Aboriginal Corporation
Correspondence received from the Arakwal Aboriginal Corporation (AAC) indicates that while AAC believe that the whole of the landscape is important to the Bundjalung people, to its knowledge there are no sites of significance in the area of the proposed works. A full copy of correspondence is provided in Annexure 1(c).
- 50
- b) Landowner Consultation
- Landowner consultation was undertaken to identify any perceived issues that may arise as a result of the proposal. One-on-one meetings were offered to each of the eight directly affected landowners. Five of the directly affected landowners participated in the one-on one meetings with Council staff and WRL.
- 55

5 Each of the directly affected landowners supported the proposed rock rubble design and are keen for Council to commence works as soon as possible. In addition, all of the directly affected landowners interviewed were happy to provide access for construction and maintenance and enter into a formal agreement to achieve that end.

With the exception of one directly affected landowner, the remainder of participants agreed to make a contribution towards the construction and maintenance of rockworks.

10 Following the meeting, written support for the project was received from three of the directly affected landowners.

c) Community Drop In-Session

15 A Community Drop In-Session was undertaken at the Old Jetty, Childe Street. The Drop In-Session was attended by the consultant and Council staff. A total of 33 people attended the session. All attendees indicated strong support for the proposed rock rubble walls.

20 A community questionnaire was prepared. Six completed questionnaires were received. All the comments were in support of the proposed works.

d) Community Consultation

25 Correspondence was sent to all premises (residential and commercial) in the Belongil precinct. In addition, the REF was placed on exhibition at Council's Administration Offices, Shire libraries and community centre. Two emails and two telephone calls were received in support of the proposed works.

30 Copies of completed questionnaires and incoming correspondence from community members are available in the Councillors' room for perusal by Councillors.

Design Life and Conditions Adopted

35 The overarching principle of the design brief was driven by Council's resolution that the coastal protection works should be 'interim' in nature. As such, a design life of 10 years was adopted for the works, based on discussions with Council, consideration of AS4997-2005 and ISO 21650:2007, and evaluation of the response and current condition of the existing coastal protection interim works at Belongil, which have been in place since 2001.

40 In summary, the parameters adopted for the design of the rock rubble structures are as follows:

a) 10 year design life

45 b) 20 year ARI event for 'initial damage' (serviceability) which has a 39% encounter probability; and

50 c) 100 year ARI event for 'failure' (limit state) which has a 10% encounter probability. The interim BAS works could be upgraded to exceed the above criteria if their design life is to be extended.

Construction Methods

55 A generic draft construction program for the interim BAS works is provided in section 3.4 of the REF for descriptive purposes only. The detailed construction program would be finalised as part of the tendering process for the construction works and may vary between sites to cater for localised site conditions.

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5 Construction at each site is expected to occur for a period of two to three weeks, dependent on weather and local surf conditions. Access to the work site will be via the existing beach accesses at each site. Construction works will be undertaken during standard working hours from 7.00 am to 6.00 pm Monday to Friday and from 8.00 am to 1.00 pm on Saturdays, with no works to be undertaken on Sundays. If any works are required outside of these hours, approval will be sought from Council.

Statutory and Policy Compliance Implications

10 Having regard for the matters for consideration to meet Council's Environmental Impact Assessment (EIA) obligations under part 5 of the *Environmental Planning & Assessment Act 1979* the following is a summary of the evaluation of the issues.

15 Environmental Assessment of the Significance of the "Activity" under Part 5 of the EP& A ACT 1979

20 Under the provisions of Clause 129(1) of State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP), development for the purpose of '*waterway or foreshore management activities may be carried out by or on behalf of a public authority without consent on any land*'. Clause 129(2) defines development for the purpose of waterway or foreshore management activities to include '*construction works*' and '*environmental management works*'. As the proposed works require the construction of structures for the purpose of providing interim BAS at Manfred, Border and Don Streets, Belongil until a long term coastal management policy has been adopted, the works are considered to be consistent with the definition of '*construction works*' and 25 '*environmental management works*' as defined in Clause 129(2)(a) and (d) respectively of the SEPP.

Section 111 Environmental Planning & Assessment Act

Section 111(2), (3) & (4) of the EP & A Act 1979 requires consideration of the effect of the activity on the following:

(a) Any conservation agreement entered into under the NP&W Act 1974 and applying to the whole or part of the land to which the activity relates

Comment (if applicable):

There are no conservation agreements applying to the land to which this activity relates

(b) Any plan of management adopted under the NP&W Act 1974 for the conservation area to which the agreement relates

Comment (if applicable):

There are no conservation areas within the Project area.

(c) Any joint management agreement entered into under the Threatened Species Conservation Act 1995

Comment (if applicable):

No joint management agreements are applicable to this Project.

(d) Any biobanking agreement entering into under Part 7A of the Threatened Species Conservation Act 1995 that applies to the whole or part of the land to which the activity relates

Comment (if applicable):

There is no bio-banking agreement entered into which applies to the land to which this Project applies.

(e) Any wilderness area (within the meaning of the Wilderness Act 1987) in the locality in which the activity is intended to be carried on

[NOTE: Declared wilderness areas in the Northern Rivers region include Banyabba Nature Reserve, Border Ranges

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National Park, Bundjalung National Park, Fortis Creek National Park and Limpinwood Nature Reserve]
Comment (if applicable): There are no wilderness areas within the locality to which this activity relates.
(f) Critical habitat
Comment (if applicable): There are no areas of critical habitat within the proposed area of works.
(g) Any threatened species, populations or ecological communities, or those habitats
Comment (if applicable): The proposed activity involves the removal and insitu replacement of the existing geotextile sandbags with a rock rubble structure at each location. The structures are located in the intertidal and supratidal zones. The existing geotextile structures are of very limited habitat value, while the disturbance area will be limited to the existing anthropogenic structures only. Any disturbance to intertidal habitats through the emplacement of the base and toe of the rubble structures will be temporary and minimal. The disturbance area represents very limited habitat value for threatened species, population of ecological communities listed under the <i>Threatened Species Conservation Act 1995</i> and the <i>Fisheries Management Act 1994</i> . The proposed activity is also not consistent with any Key Threatening Process listed under these Acts. As such, there is no requirement to address s.5A of the EP&A Act. In addition, the choice of a rock rubble structure provides the greatest potential for creation of ecological habitat compared to other design options considered.
(h) Any other protected fauna or protected native plants within the meaning of the NP&W Act 1974
Comment (if applicable): The disturbance area represents very limited habitat value for threatened species, population of ecological communities listed under the <i>Threatened Species Conservation Act 1995</i> and the <i>Fisheries Management Act 1994</i> .

Byron Local Environmental Plan (LEP) 1988

- 5 The land within the Project area is located wholly within the Byron Local Government Area (LGA). The Byron LEP 1988 would normally apply to land within the Byron LGA. As indicated above, however, the land is subject to State Environmental Planning Policy (Infrastructure) 2007 and as such consent is not required.

Guidelines

- 10 In 2011 the NSW government published draft guidelines for assessing the impacts of seawalls (DECCW, 2011). The guidelines provide information to support proponents and consent authorities in the consideration of the social, environmental and economic impacts of seawalls.
- 15 It is noted that the proposed activity is for the insitu replacement of the existing damaged geotextile interim coastal protection works with rock rubble structures. Notwithstanding, the REF has addressed the requirements of the guidelines as follows:
- 20 a) The potential impacts of the replacement interim BAS works are addressed in **Section 5.0** of the REF.
- b) The potential erosion impacts of the interim BAS works are addressed in **Appendix 1** and **Section 5.0** of the REF.
- c) The potential impacts of the replacement interim BAS works on ecosystems are addressed in **Section 5.0** of the REF.

Environmental Impacts

5 A Construction Noise Impact Assessment (CNIA) has been undertaken in accordance with the NSW *Industrial Noise Policy* (INP) (Environment Protection Authority (EPA), 2000) and the *Interim Construction Noise Guideline* (ICNG) (Department of Environment and Climate Change (DECC), 2009) with the objective of addressing the key issues relating to construction noise. It is noted that this assessment relates only to construction noise (as opposed to operational noise).

10 It is anticipated that the noise impacts from establishment of the compound area will be minimal, due to the short timeframe assumed (in the absence of a construction work program) for site establishment (approximately two days).

15 The construction of the interim BAS works is anticipated to take between two to three weeks, dependent on weather and local surf conditions. The noise impacts on the residences are likely to be a result of truck and excavator movements. A series of mitigation measures have been developed.

20 The construction noise levels at residential receivers R1, R3, R8, R11 and R14 are predicted to exceed the construction noise management level of 55 dB(A) during standard hours. The construction noise levels at residential receivers R2, R4 – 5, R7, R9 – 10 and R13 are not predicted to exceed the construction noise management level of 55 dB(A) during standard hours. The construction noise management levels are not predicted to exceed the construction noise management level at the non-residential receivers (Receivers 6, 12 and 15) surrounding the
25 construction works during any phase of the construction works.

30 In accordance with the ICNG (DECC, 2009), Council needs to inform all potentially impacted residents of the nature of works to be carried out, the expected noise levels and duration, as well as provide contact details as outlined in the ICNG (DECC, 2009). As a result of the community consultation, BSC may need to consider modifying times of construction to account for any specific needs or requirements of the affected residences.

A summary of work practices to minimise noise is provided in Table 5.6 of the REF.

35 Summary of Mitigation Measures

40 Table 5.6 provides a summary of mitigation measures to be implemented for the project to ensure that the potential for environmental impacts is minimised. These measures are to be included in a CEMP for the project to be prepared by the construction contractor and approved by Council prior to commencement of construction works.

Table 5.6 – Summary of Mitigation Measures

Issue	Mitigation
Ecology	Any dune vegetation disturbed by the construction activities should be assisted to regenerate through stabilisation planting of areas in lee of the structures.
Water	If dewatering from within the bunded area is required, the pipe ingress should be screened with a mesh to prevent ingress of fish.
Aboriginal Archaeology	<ul style="list-style-type: none"> a. BSC to ensure that all parties involved in the works are aware of offences under Section 86 of the NPW Act (harm or desecrate an Aboriginal object unless that harm or desecration is the subject of an Aboriginal Heritage Impact Permit). b. Ensure the extent of the project disturbance area is consistent with description in this report. c. In the event that an Aboriginal object (or objects) is uncovered during the proposed works, ground disturbance works should cease within 20 metres of the object(s) and OEH and the relevant Local Aboriginal Land Council

should be contacted so that appropriate management strategies can be identified.

- d. In the unlikely event that a potential burial site or potential human skeletal material is exposed within the Project area, procedure should be followed in accordance with the Policy Directive – Exhumation of Human Remains (NSW Department of Health, 2008), Skeletal Remains – Guidelines for the Management of Human Skeletal Remains under the *Heritage Act 1977* (NSW Heritage Office, 1998) and the Aboriginal Cultural Heritage Standards and Guidelines Kit (NPWS, 1997).

Historical Heritage Should any suspected historic heritage structures or items be discovered during construction works, all work should cease and the area secured. BSC's Project Manager should be contacted immediately and provided with as much detail as possible regarding structures/items found.

Soils The following sequence shall be undertaken to minimise soil erosion and downslope sedimentation:
install sediment fences, and temporary construction entry/exit; and undertake site works in accordance with engineering plans. Phase the construction works to minimise disturbance areas at any one time and confine disturbance to workable areas.
Final landscaping to be undertaken as soon as possible, not more than 20 days following completion of construction works.

Groundwater No mitigation considered necessary.

Noise A summary of work practices to minimise noise is provided below.

Community Notification

Contact potentially noise affected neighbours at the earliest possible time before any site work begins.

Given that the majority of affected residences are used in holiday periods, undertake works outside of school holiday periods if possible.

Inform potentially noise affected neighbours about the nature of the construction stages and the duration of noisier activities – for example, excavation and rock-breaking.

Describe any noise controls, or use of silenced equipment.

Keep potentially noise affected neighbours up to date on progress.

Provide contact details on a site board at the front of the site, and maintain a complaints register suited to the scale of works.

Ask about any concerns that potentially noise affected neighbours may have and discuss possible solutions.

Operation of Plant in a Quiet and Efficient Manner

Where practical, undertake the noisiest works during the recommended standard hours.

Turn off plant that is not being used.

Examine, and implement where feasible and reasonable, alternative work practices which generate less noise – for example, use of electric equipment instead of diesel or petrol powered equipment.

Examine, and implement where feasible and reasonable, the use of silenced equipment and noise shielding around stationary plant, subject to manufacturers' design requirements.

Ensure plant is regularly maintained, and repair or replace equipment that becomes noisy.

Arrange the work site to minimise the use of movement alarms on vehicles and mobile plant.

Consider use of 'quacker' type reversing alarm

Locate noisy plant away from potentially noise affected neighbours or behind barriers, such as sheds or walls.

Involving Workers in Minimising Noise

Avoid dropping materials from a height.

Talk to workers about noise from the works at the identified land uses and how it can be reduced.

Use radios and stereos indoors rather than outdoors.

Appropriate Complaints Handling

Keep staff responsible for handling telephone complaints informed regarding

	current and upcoming works and the relevant contacts for these works. Handle complaints in a prompt and responsive manner. Where there are complaints about noise from an identified work activity, review and implement, where feasible and reasonable, actions additional to those described above to minimise noise output.
Traffic	A traffic control plan to AS1742.3 will be prepared and submitted to BSC for approval by the principal contractor prior to commencement of construction works.
Air Quality	No mitigation considered necessary.
Waste	On site waste generation shall be managed via the use of appropriate waste receptacles for light weight waste materials and litter. The receptors are to be emptied as necessary and disposal shall be in a manner approved by the BSC project manager.
Community Use/Locality	Appropriate advertising, signage and access restrictions shall be employed throughout the duration of the construction period.
Coastal Processes	No mitigation considered necessary.
Cumulative Impacts	No mitigation considered necessary.
Visual Amenity	No mitigation considered necessary.

Conclusion

- 5 The construction controls and mitigation measures outlined in the REF have been designed to minimise potential impacts of the proposed installation of interim BAS works at Belongil on the environment and community. The REF has identified that the proposed activity will not significantly impact on the environment or community.
- 10 Based on the lack of suitable habitat for threatened species listed under the Threatened Species Conservation Act and Fisheries Management Act, a Seven Part Test of Significance was determined to be not required and as such the proposed works are unlikely to have a significant impact on threatened species or threatened ecological communities due to the relatively small area of ground disturbance, existing disturbed nature of the activity area and the works involving replacement of existing structures. A species impact statement is therefore not required. Further,
- 15 as no Aboriginal sites were identified within the proposed activity area and given the low archaeological potential of the proposed activity area, there is a low likelihood that the proposed activity will result in harm to Aboriginal objects.
- 20 It is considered the proposal satisfies the provisions of Section 111 of the Environmental Planning and Assessment Act 1979 and that the works are considered unlikely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats. An EIS is not required nor is development consent required under Part IV of the EPA Act 1979. It is concluded that the interim beach access stabilisation works can proceed as documented in the Review of Environmental Factors by Umwelt dated December 2013
- 25 and the detailed design documentation by Water Research Laboratory dated December 2013.

INFRASTRUCTURE SERVICES - DIRECTOR'S REPORTS

Report No. 3.4. Roundhouse Subdivision - Sale of lots
Director: Infrastructure Services
Report Author: Phil Warner, Manager Assets and Major Projects
File No: #E2013/79984



Theme: Community Infrastructure, Waste and Recycling

Summary: The purpose of this report is to seek approval to delegate to the General Manager authority to sell all the lots of the Roundhouse subdivision and to attach the Council seal to all documents associated with the subdivision and sale where necessary.

10 RECOMMENDATION:

That Council delegate to the General Manager, authority to sell all eleven lots of the Roundhouse subdivision and to attach the Council seal to all documents associated with the subdivision and sale where necessary.

15

Report

In August Council considered a report on the tender assessment for the Roundhouse subdivision works and resolved to award a tender to J&M Bashforth & Sons.

5 Construction of the subdivision has progressed and will be substantially completed by Christmas. All works will be completed by February, subject to weather conditions.

10 An EOI process has been conducted for real estate marketing and sales services. The Professionals Mullumbimby, Brunswick Heads and Ocean Shores have been engaged to complete this work.

It is expected sales inspections of the subdivision will commence from Christmas onwards.

15 The sales process will aim to achieve at least enough sales this financial year to cover the cost of the subdivision works.

20 Formal valuations will be used to inform the sales process and will be completed as soon as the lots are pegged out.

The purpose of this report is to seek approval from Council to delegate to the General Manager authority to sell all the lots of the Roundhouse subdivision and to attach the Council seal to all documents associated with the subdivision and sale where necessary.

25 Financial Implications

The sale of the Roundhouse subdivision is an integral component of Council's Financial Sustainability Project Plan.

30 Council has previously resolved in part:

Res 13-170

35 *10. That in conjunction with the proposed establishment of an Infrastructure Reserve Fund as a repository for revenue derived from Council asset sales (as recently endorsed by the Council's Strategic Planning Committee), Council include Ocean Shores infrastructure renewal projects listed in the Council's Asset Management Plans as high priorities in the expenditure of those Reserve funds.*

40 Statutory and Policy Compliance Implications

377 General power of the council to delegate

45 (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:

(h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment)

Local Government (General) Regulation 2005

50 400 Council seal

(1) The seal of a council must be kept by the mayor or the general manager, as the council determines.

55 (2) The seal of a council may be affixed to a document only in the presence of:

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- (a) the mayor and the general manager, or
- (b) at least one councillor (other than the mayor) and the general manager, or
- (c) the mayor and at least one other councillor, or
- (d) at least 2 councillors other than the mayor.

- 5
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.
- 10
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

Report No. 3.5. Rous Water Future Water Strategy
Director: Infrastructure Services
Report Author: Phil Warner, Manager Assets and Major Projects
File No: #E2013/80282

5

Theme: Community Infrastructure, Waste and Recycling

Summary: The purpose of this report is to advise Council of the status of the Rous Water Future Water Strategy. It is proposed that the draft Strategy be placed on public exhibition in early 2014 and Rous Water has offered to make a presentation to Council in January / early February if desired.

RECOMMENDATION:

10 **That Council declines the offer from Rous Water for a presentation in January/early February due to the Council recess, but notes the information provided in this report regarding the status and progression of the Future Water Strategy.**

15 **Attachments:**

- Rous Water Summary of Future Water Strategy #E2013/81210 [4 pages]..... **Annexure 3**

Report

Rous Water has been working with representatives of the four constituent Councils since 2009 to develop a draft Future Water Strategy.

5 The purpose of the Strategy is to develop an updated plan to maintain a secure and sustainable water supply until at least 2060.

The scope of the Strategy has included:

- 10
1. 50 year demand and supply forecasts — how much water the region will need, compared against how much water its current sources can reliably supply
 - 15 2. water efficiency measures — to maximise the use and benefit provided by our existing water sources
 3. new water sources — identification and assessment of potential new water sources to help meet future demand
 - 20 4. Dunoon Dam — whether the proposed Dunoon Dam shall be included in the strategy

The Strategy considers the relationship with townships that currently have independent water supplies but can be supplied by Rous, such as Mullumbimby and Wardell.

25 Development of the Strategy has been guided by a Project Reference Group with members including Rous Councillors, staff from constituent councils, representatives from state agencies and members of the public.

30 There have been many supporting studies completed to inform development of the Strategy, including a regional water loss management report, savings from rainwater tanks investigation, groundwater sources study and desalination study.

35 More detail regarding the draft Future Water Strategy is provided at Annexure 3, as a short summary provided by Rous Water.

40 The draft Strategy is now ready to be placed on public exhibition. In association with this process Rous Water has extended an offer to the elected Councils to make a presentation on the Future Water Strategy. Public exhibition of the draft Strategy will commence in February 2014, following briefings for constituent Councils where requested.

45 The purpose of this report is to advise Council of the status of the Rous Water Future Water Strategy, the proposed public exhibition of the draft document and to advise of the offer from Rous Water to make a presentation to Council if desired.

Financial Implications

Implementation of the Future Water Strategy will impact on the price of bulk water. In turn, this cost will impact on service pricing for Byron Shire customers.

50 The cost implications for the various options considered in the Future Water Strategy are detailed and assessed in the draft Strategy.

Statutory and Policy Compliance Implications

55 There are no statutory and policy compliance implications.

Report No. 3.6. Upper Coopers Creek - Temporary Road

Director: Infrastructure Services

Report Author: Michael King, Manager Infrastructure Planning

File No: #E2013/77579

5

Theme: Community Infrastructure, Local Roads and Drainage

Summary: Upper Coopers Creek Road collapsed during the Natural Disaster in January 2013.

This resulted in the isolation of a number of residents. Amongst other activities taking place to plan the restoration of the road, provision was made for an emergency access road through private property. Further, planning commenced on the provision of a temporary road for general purposes through private property.

This report now makes the recommendation not to proceed with any further planning, or the construction of the proposed temporary road.

RECOMMENDATION:

- 10
- 1. That Council not proceed with any further planning or the construction of the proposed temporary road around the land slip on Upper Coopers Creek Road via Tickle Road and Englishes Road.**
- 15
- 2. That staff advise affected residents, residents beyond the current slip, the Member for Lismore Thomas George MP, RMS and the Department of Emergency Services of the decision to not proceed.**

Report

During the Australia Day 2013 Natural Disaster one of the most seriously damaged roads across the Shire was Upper Coopers Creek Road.

5 Since that time, certain actions have been taken to ensure the residents that were isolated on the uphill side of the road slip were taken care of, including:

1. State Government intervention with emergency services
- 10 2. provision for an Emergency Access Road via private land – ie for emergency purposes only, with no general access permitted
3. open Upper Coopers Creek Road to single lane access, under controlled conditions and load limited

15 The impact on the community uphill of the collapsed road is recognised. There have been many meetings and discussions involving all of the residents and a number of State Government authorities over this time. Further detailed discussion in the context of this report on the social impacts is not necessary and the best thing we can do now is to act on getting the restoration work started and completed as soon as possible.



Figure 1: Locality Plan of Upper Coopers Creek

25 The engineering restoration of Upper Coopers Creek Road is complex, with issues involving:

1. steep terrain
2. isolated locality
3. single access road
- 30 4. works within private land
5. complex technologies for the restoration of the road

As a result of these complexities and the time required to undertake the restoration, investigations into developing a temporary access road through private land, via Tickle's Road and Englishes Road, commenced.

35

The Roads and Maritime Services (RMS), as the funding authority for natural disaster relief, agreed to fund the investigation into this temporary road.

Investigations to-date have reached the following stage:

- 5 1. preliminary survey and design to establish costs for construction, impacts on property and environment
2. environmental assessments completed
3. consultation with affected residents carried out
- 10 4. valuations on affected lands as to compensation for entering into a lease
5. letters advising of valuation for leases to seven (7) property owners – formal leases have not been progressed
6. receipt of two letters from owners agreeing to enter into a lease
- 15 7. estimate of construction and ongoing costs for the temporary road

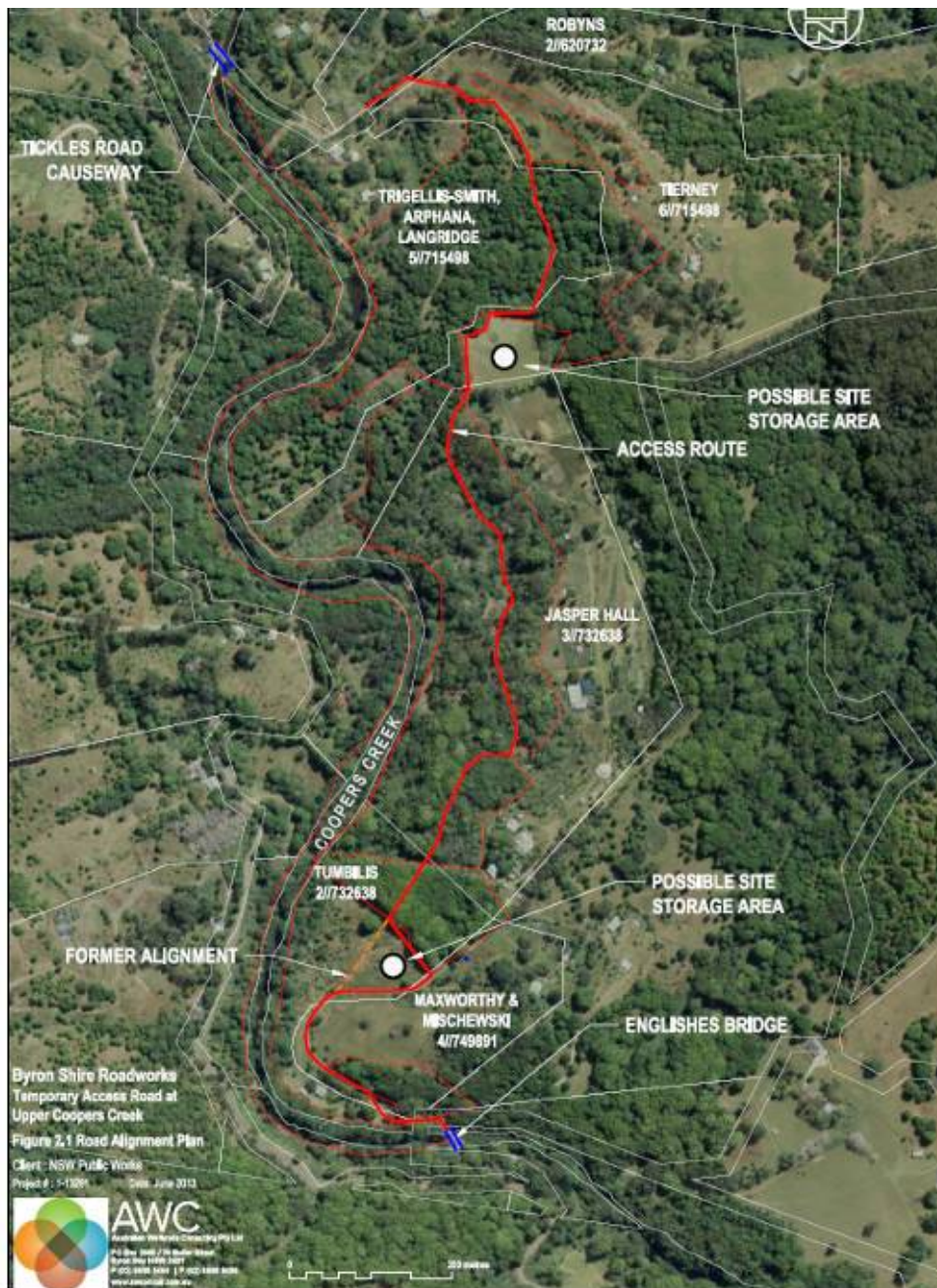


Figure 2: Proposed alignment of the temporary road (bold red line) and affected properties

The estimated cost for the construction of the road is \$1.5 million. The RMS has advised that they will not fund the construction of this road.

Restoration Project Update

5 Tenders for the restoration of the road closed on Thursday, 28 November 2013. A separate report on the tender analysis and recommended contractor is contained in the same agenda as this report.

10 It is anticipated that the work will commence early in 2014, probably around February.

15 Work will take place 'under traffic'. As for the restoration of Lighthouse Road, whilst work will take place under traffic and this comes at a cost, there will be occasions during work when there will need to be periods of full closure. A process will be put in place for this to happen to ensure limited impact on residents and school bus movements.

20 The timing of the work to take place on the road restoration and the additional work needed before actual construction could start on the proposed temporary road, means that the temporary road is not required. Also, the RMS has advised that they will not fund the temporary road, in part due to the timing issues. Therefore, unless Council provides the funds to proceed with it, there is no possibility of it happening.

Financial Implications

25 If Council determines that the temporary road is to be built, it will cost at least \$1.5 million. There is currently no funding within the 2013/2014 budget estimates for this purpose and if it is to proceed Council will need to determine a funding source.

Statutory and Policy Compliance Implications

30 Nil

INFRASTRUCTURE SERVICES AND ENVIRONMENT AND PLANNING – DIRECTORS’ REPORT

Report No. 3.7. Possible Land Purchase for Community Benefit

5 **Director:** Phillip Holloway, Infrastructure Services
Executive Manager: Ray Darney, Environment and Planning
Report Author: Michael King, Infrastructure Planning
Chris Soulsby, Section 94 Officer

10 **File No:** #E2013/78737

Theme: Community Infrastructure, Local Roads and Drainage
Environment and Planning, Section 94 Planning

Summary: Council has entered a ‘due diligence’ period to 30 December 2013 regarding the purchase of Lot 5 Shara Boulevard.

This report details the issues that have been considered to-date and recommends authority be granted to the General Manager to negotiate a purchase price for the land to achieve substantial community benefit to enable the development of a sports field upon the land.

RECOMMENDATION:

15 **That Council resolve in accordance with Option A from confidential document #E2013/71076 (Annexure 4(c)).**

Attachments:

- 20
- **CONFIDENTIAL** Report to Council 31 October 201 Possible Land Purchase for Community Benefit #E2013/69380 [12 pages] **Annexure 4(a)**
 - Flood Assessment Report by BMT WBM #E2013/81359 [9 pages] **Annexure 4(b)**
 - **CONFIDENTIAL** Options E2013/71076 [2 pages]..... **Annexure 4(c)**
- 25

Report

At Council's Ordinary Meeting held 31 October 2013, Council considered a late Confidential Report regarding 'Possible Land Purchase for Community Benefit'. A copy of this report is provided at Confidential Annexure 4(a). The land in question is as shown in Figure 1 below.

5

Figure 1: Locality Map of Lot 5 DP 880917



10

Council resolved as follows:

Resolution 13-591

15 "That Council resolve in accordance with Option C from Confidential document #E2013/71076."

The document referred to in Res 13-591 remains confidential because:

- 20 (a) it contains information that would if disclosed confer a commercial advantage on a person with who the Council is conducting or proposes to conduct business; and
- (b) on balance the receipt and discussion of the content of that document in open Council would be contrary to the public interest, as disclosure could prejudice the Council's positions in current negotiations relating to the potential purchase of land.

25

Council entered into an exclusive 'due diligence period' which ends on 30 December 2013. During the due diligence period, Council has undertaken the following activities to advance the assessment of the suitability of the site for development as a sports field:

- 30 1. engaged SGL Consulting Group Australia Pty Ltd (Sport, Leisure and Tourism Planners) to assist with the assessment of the suitability to meet potential current and future demand 3. undertaken a preliminary flood study of the site with BMT WBM consultants

2. engaged Planit Consulting to undertake an ecological assessment

Due Diligence Period

5 Council secured exclusivity during the due diligence period by the payment of a non-refundable \$5,000. This due diligence period has enabled Council some time to undertake relevant investigations.

10 The exclusivity period ends on 30 December 2013. After this date the vendors of the property would be free to enter into negotiations or a contract with anyone.

SGL Consulting

15 SGL Consulting specialise in planning and management of sporting and recreation facilities, ranging from local area facilities, to large scale state and national facilities capable of being used for such things as Olympic Games, Commonwealth Games and other such events. SGL is currently contracted to assist Council in the development of a management plan for the Byron Regional Sport and Cultural Complex.

20 SGL was directly briefed in relation to this site to draw together all elements of the Lot 5 site and assess its suitability to be developed for sports fields. The Brief they were provided with to assess the site for the potential for up to two soccer fields, one to be established as soon as possible, with the potential for a second field or another sport field to be developed within a period of five (5)
25 years, or as the demand dictates, if possible.

One key element of SGL's investigations was to speak to key stakeholders involved in the demand for sports fields in the north of the Shire. This took place in the early part of the week of 9 – 13
30 December.

Another key element of their investigation was a site inspection in the company of several Council officers. This involved a walk around the site and along the two road frontages (Shara Boulevard and Brunswick Valley Way), the Old New Brighton Road (cycleway) and Kolora Way. The key positive features of the site that were observed during this inspection included:

- 35
1. accessibility from two road frontages and a third access via the shared path / cycleway along Old New Brighton Road;
 2. availability to the site of services such as water, sewer and power;
 - 40 3. paved pathways / cycleways from the site to the major residential areas of Ocean Shores (north and south), Billinudgel, New Brighton, South Golden Beach and Fern Beach
 - 45 4. the passive surveillance afforded by the two road frontages from vehicles, bike riders and pedestrians;
 5. the absence of close-by residential properties.

The obvious concerns about the site included the flood plain and the potential environmental impacts.
50

The SGL report will be distributed to Councillors as soon as it has been received.

Preliminary Flood Study

A preliminary flood impact assessment has been carried out by BMT WBM – a copy of their advice is contained at Annexure 4(b).

5 This assessment was based on a scenario of the site accommodating two soccer fields, one being at the locality of the existing building pad and the other to the eastern end of the site.

In summary:

- 10
1. the assessment was carried out using the TUFLOW model developed for the Tweed-Byron Coastal Creeks Flood Study (2010);
 2. the site lies within the Marshalls Creek Floodplain;
 - 15 3. the assessment confirmed the existing filled pad is flood immune to the 100 year Annual Recurrence Interval (ARI) Flood;
 4. the floodway design considerations included:
 - 20 (a) two fields, levels to achieve five (5) year ARI flood immunity and provision of an internal service / access road to the fields;
 - (b) a requirement that any fill material is to be sourced from within the site
 - 25 6. the assessment confirmed that there would be no increase in peak flood levels external to the site for design flood events
 7. then two site layouts were assessed:
 - 30 (a) layout 1 – two fields concentrated at northern part of the site - this layout constrained the flow from the Highway floodway and the lower floodway was insufficient in mitigating this constraint;
 - 35 (b) layout 2 was used to mitigate the upstream impacts of layout 1
 8. for layout 2 there:
 - 40 (a) was a resultant increase in flood level upstream of the site of about 0.015m
 - (b) no flood impacts downstream of the site
 - (c) for the 100, 50 and 20 year ARI, there are negligible increases in flood levels external to the site (<0.01m)
 - 45 (d) for the 10 and 5 year ARI, there are marginal increases in flood levels upstream to the site (about 0.01m).

50 From the above, either layout of fields has limited impacts on the floodplain. Assessments for any other sports field layout, such as cricket or AFL, were not considered.

55 There was no assessment of the potential layout and location of car parking or amenities / administration buildings on the site, as there is no detailed layout available at this time. Most car parking for the site could be provided on a paved area of the road shoulder of Shara Boulevard across the frontage of Lot 5 and beyond, in an easterly direction.

Further, some on site parking might be able to be provided for servicing the site. It is possible that an amenities block could be provided at the north eastern corner of the site.

5 Ecological Assessment – Comments from Ray Darney, Executive Manager Environment & Planning

10 Council had difficulty locating an available consultant to do an ecological assessment of the site, which Council's records indicate contains High Conservation Value vegetation. Council has now been able to contract Planit Consulting, who will provide an Ecological Report by 18 December, 2013.

It is apparent that part of the site required for a second field contains an area of Swamp Sclerophylls.

15 Notwithstanding this attribute, it may still be possible to develop the second field via compensatory habitat planting, depending upon the Planit report.

The Planit Consulting report will be distributed to Councillors as soon as it has been received.

20 **Financial Implications**

The funding details from the previous report of 31 October 2013 (refer to Confidential Annexures 4(a) and 4(c)) remain the same.

25 There have been no plans developed to date as to the potential layout and location of car parking and an amenities / administration building. In regards to these items, they have not been costed, as no designs have been carried out. Potential development costs could be considered in more detail when the time arises for such things as another sports field, flood lighting, stands etc.

30 **Statutory and Policy Compliance Implications**

The statutory and policy issues remain as per the report of 31 October 2013 (refer Confidential Annexure 4(a)).

35 Annexures 4(a) and (c) to this report are Confidential. If Council want to discuss the content of the confidential annexures it can move into Confidential session pursuant to s10A(2)(c) of the Local Government Act and it would be recommended that Council resolve as follows:

- 40 1. That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely "Possible Land Purchase for Community Benefit.
- 45 2. That the reasons for closing the meeting to the public to consider this item be that, the report contains information that could if disclosed confer a commercial advantage on a person with whom the council is conducting or proposing to conduct business.
- 50 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure of the information could compromise the commercial position of the Council in negotiations relating to the potential purchase of land.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 4.1. **CONFIDENTIAL Tender Assessment Contract Management Land Slips 2013-0052**

Director: Infrastructure Services
Report Author: Tony Nash, Manager Works
File No: #E2013/79040

Theme: Community Infrastructure, Local Roads and Drainage

Summary: Tenders for the provision of contract management services for the restoration of the landslips caused by the natural disasters in January and February 2013 have been invited by Council using the Vendor Panel process for preferred supplier panels provided by NSW local Government Procurement (LGP), an organisation prescribed under section 55 of the Local Government Act.

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

RECOMMENDATION:

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, Contract Management - Land Slips.
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.
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:
 - 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.
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.

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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.

10

Attachments:

- 15
- **CONFIDENTIAL** Tender Panel Assessment Report #E2013/80775 [7 pages].....**Annexure 2(a)**
 - **CONFIDENTIAL** Tender Assessment Rates #E2013/80786 [2 pages]..... **Annexure 2(b)**
 - **CONFIDENTIAL** Tender Assessment Weighted Score #E2013/81119 [1 page].....**Annexure 2(c)**

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

19 DECEMBER 2013

(45)

Report No. 4.2. CONFIDENTIAL Tender Assessment Federal Drive Landslip Repair Works 2013-0046

Director: Infrastructure Services
Report Author: Phillip Holloway, Director Infrastructure Services
File No: #E2013/78294

5

Theme: Community Infrastructure, Local Roads and Drainage

Summary: The General Manager on 14 October 2013, approved [E2013/66536] to prepare and advertise tenders for the construction of landslip repair works on Federal Drive.

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

RECOMMENDATION:

- 10 1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely Tender Assessment, Federal Drive 2013-0046.
- 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.

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 - 2013- 0046 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.
- 45 2. That Council adopt the recommendation set out on the final page of the Report.

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EXTRAORDINARY MEETING

19 DECEMBER 2013

(49)

Report No. 4.3. CONFIDENTIAL Tender Assessment Wilsons Creek Slip Micropiled Anchored Wall 2013-0036

Director: Infrastructure Services
Report Author: Phillip Holloway, Director Infrastructure Services
File No: #E2013/78278

5

Theme: Community Infrastructure, Local Roads and Drainage

Summary: At the Ordinary meeting 20 December 2012, Council resolved 12-1029 to proceed to an open tendering method for the repair of the Wilsons Creek Slip.

Tenders closed on 24 October 2013 for the proposed micropiled anchored wall.

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

RECOMMENDATION:

- 10 1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely Tender Assessment, Wilsons Creek Slip Micropiled Anchored Wall 2013-0036.
- 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:
- 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;
- 25 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.
- 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:

- 40 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.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

19 DECEMBER 2013

(54)

Report No. 4.4. CONFIDENTIAL Tender Assessment - Upper Coopers Creek – Construction of Landslip Repair Works 2013-0038

Director: Infrastructure Services
Report Author: Phillip Holloway, Director Infrastructure Services
File No: #E2013/78304

5

Theme: Community Infrastructure, Local Roads and Drainage

Summary: The General Manager on 14 October 2013, approved (#E2013/66536) to prepare and advertise tenders for the construction of landslip repair works on Upper Coopers Creek Road.

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

RECOMMENDATION:

- 10 1. That pursuant to Section 10A(2)(c) and (d) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the following report, namely Tender Assessment, Upper Coopers Creek construction of landslip repair works 2013-0038.
- 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.

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

- 40 • That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender Assessment - 2013-0038 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.
- 45 • That Council adopt the recommendation set out on the final page of the Report.