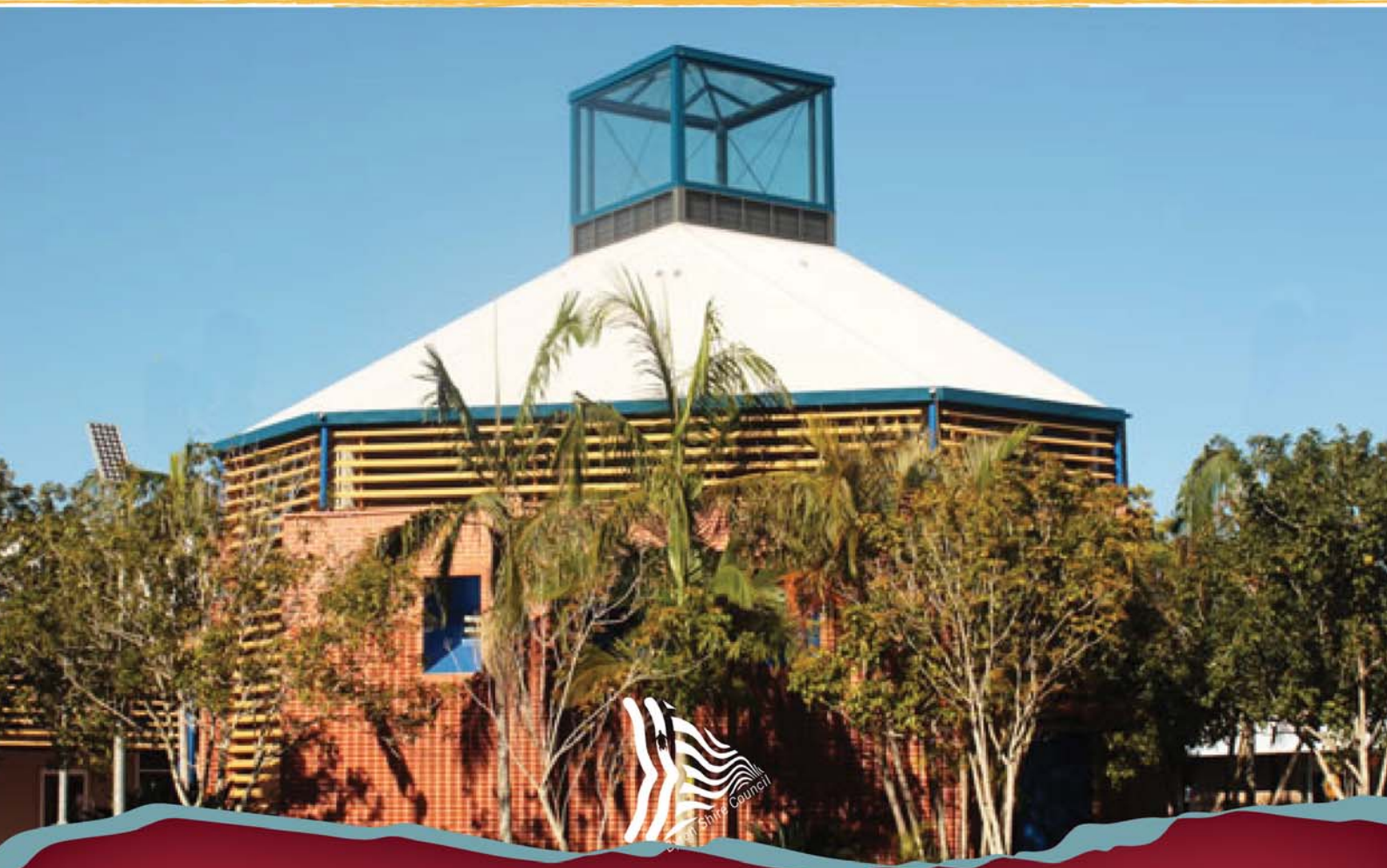




Byron Shire Council



Agenda

Extraordinary Meeting Thursday, 26 June 2014

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

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

A rectangular box containing a handwritten signature in black ink, which appears to be "Ken Gainger".

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BUSINESS OF EXTRAORDINARY MEETING

1. PUBLIC ACCESS

2. APOLOGIES

3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

4. NOTICE OF MOTION (to LGNSW Annual Conference 2014)

4.1 Public Transport in Rural Areas of NSW..... 2

5. STAFF REPORTS

Environment and Planning

5.1 PLANNING - Public Exhibition Report - Draft Byron Development Control Plan (DCP) 2014 and related documents..... 4

5.2 Northern Councils Environmental Zones Interim Report – Submission to Department of Planning and Environment 15

5.3 PLANNING –Report on the exhibition of the Draft Byron Developer Contributions Plan 2012..... 19

Corporate and Community Services and Environment and Planning

5.4 BSC at Gordon Highlands LEC 10216 of 2014 and 10284 of 2014 33

6. REPORTS DEFERRED FROM THE ORDINARY MEETING OF 12 JUNE 2014

*Please note the reports below have **not** been reproduced. Please bring your Ordinary Meeting Agenda of 12 June 2014. The page numbers below and related annexures refer to that Agenda.*

14. REPORTS OF COMMITTEES

Environment and Planning

14.3 Report of the Biodiversity and Sustainability Advisory Committee Meeting held on 8 May 2014 159

Infrastructure Services

14.5. Report of the Water, Waste and Sewer Advisory Committee Meeting held on 20 May 2014 164

NOTICE OF MOTION

Motion for submission to the LG NSW Annual Conference 2014

5

Notice of Motion No. 4.1 Public Transport in Rural Areas of NSW

#E2014/40302

We move:

- 10 1. That Local Government NSW inform the State Government of the dire lack of public transport in many rural areas of NSW, including within Byron Shire and between it and its neighbouring Shires.
- 15 2. That Local Government NSW ask the State Government to support public transport in rural NSW including those Shires by promoting and funding public transport initiatives in those Shires and groups of Shires (ie regional transport).

Select the relevant category:

20 Social Policy

Details of issue:

25 Some Rural and Regional areas such as Byron Shire, have very limited public transport options for their residents to be able to get to major regional centres.

This seriously affects those without their own transport or under age for a license are unable to make medical appointments, attend University or Trade College, or simply to be able to shop when there are no buses to coordinate their requirements.

30 It is simply unacceptable for a very ill person with an appointment in Tweed Heads having to travel early to make their appointment, wait potentially for hours for their appointment time, and then wait potentially for hours to get transport back home.

35 The current process of allocating funds to bus companies is totally inappropriate in that the consultation process for communities is flawed

40 The recent reissue of subsidies to Bus Companies in Byron Shire only came to notice by a small advertisement placed in a local paper, and a total of 2 community members, 2 Councillors and several bus company employees attended.

The loss of the train service has been the main focus of this area, and with its loss, no real effort has been but by the succession of State Governments to address the lack of appropriate transport options.

45

Signed: Crs Duncan Dey and Diane Woods

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(3)

Management Comments by Director Corporate and Community Services:

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

Clarification of project/task:

5

Council at its Ordinary Meeting considered *Report 16.1- Local Government NSW Annual Conference*. Following consideration of the report Council resolved as follows:

14-302 Resolved:

10

1. *That Council authorise the following Councillors to attend the Local Government NSW Annual Conference 2014 to be held in Coffs Harbour NSW from 19-21 October 2014:*

15

- *Cr Dey and Cr Woods to attend as the voting delegates.*

2. *That, at the Extraordinary Meeting on 26 June 2014, Council endorse the issues or motions that are to be provided to LGNSW by 1 August 2014.*

20

This motion has been prepared in accordance with part 2 of Resolution 14-302, in the format required by LGNSW for the submission of the motion, as a motion to the LG NSW Annual Conference 2014. The motion, if supported by Council, will be lodged with LGNSW by the due date of Friday 1 August 2014.

25

Director responsible for task implementation:

Director Corporate and Community Services

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

30

No impact.

Financial and Resource Implications:

35

No impact.

Legal and Policy Implications:

40

In accordance with Council's Policy Mayor and Councillors Expenses and Provision of Facilities, clause 8.4 states that "*Submission of motions for consideration by Council will be done by notice of motion, which can be considered during the year.*"

This Notice of Motion has been prepared in accordance with that requirement.

ENVIRONMENT AND PLANNING – STAFF REPORTS

Report No. 5.1. PLANNING - Public Exhibition Report - Draft Byron Development Control Plan (DCP) 2014 and related documents

5 **Executive Manager:** Environment and Planning
Report Author: Emma-Jayne Leckie, Acting Team Leader Strategic Land Planning, Greg Smith, Planner, Tara McGready, Senior Planner and Julie Francombe, Planner
File No: #E2014/30401

Theme: Environment, Land and Natural Environment

Summary: The Draft Byron Development Control Plan (DCP) 2014 and related documents were publicly exhibited for 35 days in accordance with Council resolution 14-118, from 12 April to 16 May 2014. A total of 32 submissions were received. The chapters most referred to in submissions were: B1, B4, B5, D1, D3 and E2.

After consideration of submissions and consultation with consultants and Councillors amendments have been made to the exhibited documents. Key changes relate to Chapters B1, B4, B5, D1, E5 and the Draft Climate Change Strategic Planning Policy.

It is recommended that Council adopt the Draft Byron DCP 2014 and related documents for commencement on 21 July 2014.

In order to implement the new flood planning framework it is recommended that Council endorse the use of updated flood mapping for the Belongil Creek and Tallow Creek catchments, prepared in accordance with Table 1 of the Climate Change Strategic Planning Policy (as revised), for the purposes of development assessment, planning proposals and issuing Section 149 planning certificates.

10 NOTE TO COUNCILLORS:

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.

20 RECOMMENDATION:

1. That the Draft Byron Shire Development Control Plan 2014 at Annexure 1(a) incorporating any changes made in accordance with Recommendations 6 and 7 of this report, is approved pursuant to clause 21 of the *Environmental Planning & Assessment Regulation 2000* and will commence on 21 July 2014.
2. That the Byron Shire Climate Change Strategic Planning Policy at Annexure 1(b), be adopted for commencement on 21 July 2014.
3. That the Draft Byron Shire Comprehensive Guidelines for Stormwater Management at Annexure 1(c), be adopted for commencement on 21 July 2014.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(5)

4. That the Byron Shire Liquor Licensing and Approvals Policy at Annexure 1(d), be adopted for commencement on 21 July 2014.
5. That the Byron Shire Tree Preservation Order at Annexure 1(j), be adopted for commencement on the date it is advertised in the newspaper.
6. That Council adopt the recommended amendments to the Draft DCP 2014 and related documents outlined in the tables in Annexures 1(e), (f), (g), (h) and (i) for incorporation into the final Byron Shire DCP 2014 and related documents prior to commencement.
7. That Council delegates to the Executive Manager Environment and Planning the authority to make changes to the Draft DCP 2014, Byron Shire Liquor Licensing and Approval Policy, Byron Shire Climate Change Strategic Planning Policy, Comprehensive Guidelines for Stormwater Management and Tree Preservation Order in accordance with the recommendations above, as well as to make any non-policy amendments or changes required including those to ensure consistency with State legislation and Byron LEP 2014 and consistency between draft DCP chapters.
8. That Council, for the purposes of implementing the Byron Shire Climate Change Strategic Planning Policy, Byron LEP 2014 and Byron DCP 2014 in the development assessment process for planning proposals and in the issuing of Section 149 planning certificates, endorse the use of revised flood mapping prepared in accordance with the parameters in Table 1 of the Climate Change Strategic Planning Policy (at Annexure 1(b)) for the Belongil Creek catchment (as part of the Belongil Floodplain Risk Management Study and Plan in preparation) and the Tallow Creek catchment (through a revision to the Tallow Creek Floodplain Risk Management Study and Plan (2009)).
9. That once the relevant revisions have been completed in accordance with Recommendation 8 of this report, the revised Tallow Creek Floodplain Risk Management Plan be presented to Council for adoption.

Attachments:

- Draft Byron Shire Development Control Plan (DCP) 2014 [34 Chapters]:
 - Part A Preliminary #E2014/39356 [42 pages]
 - Part B Controls – DAs #E2014/39363 [14 Chapters - 249 pages]
 - Part C Controls – Land with Specific Constraints Environmental Characteristics #E2014/39366 [4 Chapters - 81 pages]
 - Part D Controls – Specific Land Uses #E2014/39367 [8 Chapters - 130 pages]
 - Part E Controls – Specific Localities #E2014/39368 [7 Chapters - 153 pages].....Annexure 1(a)
- Draft Climate Change Strategic Planning Policy #E2014/26920 [9 pages] Annexure 1(b)
- Draft Byron Shire Comprehensive Guidelines for Stormwater Management #E2014/33087 [31 pages]Annexure 1(c)
- Draft Byron Shire Liquor Licensing and Approval Policy #E2014/33077 [8 pages]..... Annexure 1(d)
- Submissions Analysis Table: Draft DCP and Related Documents #E2014/38988 [50 pages].....Annexure 1(e)
- Consultant Workshop: Outcomes and Recommendations #E2014/31814 [16 pages]..... Annexure 1(f)
- Consultant Follow-up Sessions: Outcomes and Recommendations #E2014/30282 [7 pages]..... Annexure 1(g)
- Staff Submission & Recommendations #E2014/38880 [12 pages] Annexure 1(h)
- Councillor Workshop: Outcomes and Recommendations #E2014/37371 [20 pages].....Annexure 1(i)
- Revised Byron Shire Tree Preservation Order #E2014/35575 [2 pages]Annexure 1(j)
- Form of Special Disclosure of Pecuniary Interest #E2012/2815 [2 pages].....Annexure 1(k)

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(6)

NOTE: Confidential submissions listed in #E2014/36881 have been provided on the Councillors' Agenda CD only.

5 *Annexure 1(a) and 1(e): 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.*

10 *Annexures 1(c), 1(f), 1(h) and 1(i) 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 and a hardcopy at community access points around the Shire.*

A copy of all annexures are available for Councillors in the Councillors' Room.

ReportBackground and Introduction

5 At its meeting on 20 March 2014 Council considered report 14.19 entitled 'Draft Byron Shire DCP 2014 for public exhibition' and resolved:

14-118:

- 10 1. *That the Draft Byron Shire Development Control Plan 2014, at Annexure 12(a) (#E2014/13920, #E2014/14508, #E2014/13912, #E2014/13914, #E2014/13917) incorporating any changes made in accordance with Recommendations 5. and 6. of this report, be placed on public exhibition for a minimum of 35 days in accordance with clause 18 of the Environmental Planning & Assessment Regulation 2000.*
- 15 2. *That the Byron Shire Liquor Licensing and Approvals Policy be amended in accordance with the draft DCP provisions in Chapter D4 and exhibited concurrently with the draft DCP for 35 days.*
- 20 3. *That the Draft Climate Change Strategic Planning Policy (at Annexure 12(c) #E2013/75179) as amended to align with the draft DCP provisions in Chapter C2, be exhibited concurrently with the draft DCP for 35 days.*
- 25 4. *That the Draft Byron Shire Comprehensive Guidelines for Stormwater Management (at Annexure 12(d) #E2014/13360) be exhibited concurrently with the draft DCP for 35 days.*
5. *That Council adopt the recommendations outlined in the table in Annexure 12(b) (#E2014/8246) for incorporation into the draft Byron Shire DCP 2014 prior to exhibition.*
- 30 6. *That Council delegates to the Executive Manager Environment & Planning the authority to make changes to the draft DCP 2014 in accordance with the recommendations above, as well as any non-policy amendments or changes required to ensure consistency with State legislation and the draft Byron LEP 2014, prior to exhibition.*
- 35 7. *That a workshop be held during the exhibition period with the planning and design professionals in the area that Council deal with, Councillors and Council staff to review key DCP chapters as required.*

40 The Draft Byron DCP 2014 and related documents were amended under delegated authority and publicly exhibited for 35 days between 12 April and 16 May 2014. A total of 32 submissions were received.

45 On 30 May 2014 Byron LEP 2014 was published on the NSW Legislation website and will commence on 21 July 2014.

The purpose of this report is to present the outcomes from the public exhibition of the Draft Byron DCP 2014 and related documents and to request Council to adopt the Draft DCP 2014 and related documents for commencement on 21 July 2014.

50 This report is structured as follows:

- Consultation
- Overview of submission issues
- Overview of key changes
- Specific Policy Matters
- 55 - Priorities for future DCP amendments
- Next Steps

A summary of issues raised, discussion and recommendations from public submissions, consultation with consultants, the staff submission and Councillor workshop are included at *Annexures 1(e), (f), (g), (h) and (i)* respectively. 'Tracked changes' versions of all Draft DCP chapters and related documents are included at *Annexures 1(a), (b), (c) and (d)*. The 'tracked changes' versions demonstrate where the recommended changes have been made compared to the exhibition version and the reason/source of the change. Most of the recommended changes have already been undertaken in the *Annexures 1(a), (b), (c) and (d)* however some will remain to be finalised under delegated authority prior to commencement of the new controls on 21 July (e.g. amendments to maps and flowcharts, minor grammatical errors, formatting etc).

Consultation

External

The public exhibition period was advertised on 8 April and 22 April in a local newspaper. The exhibited documents and supporting information (including key messages, overview and chapter summary table) were available on Council's website, at Council's Administration Building and at Community Access Points. A media release about the public exhibition was issued on 17 April.

Appointments were available with planners each day between 9am and 2pm. One appointment was undertaken. Council staff were present at the New Brighton, Mullumbimby and Bangalow Farmers Markets local market days for enquiries on the 2014/15 draft Integrated Planning documents, but were also available to discuss the draft DCP with interested persons.

Letters were sent to Government Agencies and other bodies and adjoining Councils advising of the exhibition and seeking comment. Information about the exhibition was also included in the April and May editions of the Brunswick Valley Landcare newsletter.

In accordance with Resolution 14-118 (Point 7.) a Consultant Workshop was held on 2 May. Seven (7) consultants, 6 Councillors and 7 staff attended the four hour workshop which was well received. The main chapters discussed at this workshop included:

- Part A – Preliminary
- Chapter D1 – Residential Development in Urban and Special Purpose Zones
- Chapter B6 – Buffers and Minimising Land Use Conflict
- Chapter D3 – Tourist Accommodation

Consultants were subsequently given the opportunity to attend an additional three (3) two-hour review sessions (between 9 and 16 May) focusing on Chapters B4 – Traffic Planning, Vehicle Access, Circulation and Parking, and B9 – Landscaping, of the draft DCP.

The outcomes and recommendations resulting from the Consultant workshop (including a compilation of all issues raised at the workshop but not discussed on the day) and the follow-up sessions are outlined in the Tables in *Annexures 1(f) and (g)* respectively.

Internal

A briefing session was held with development assessment planners at the start of the exhibition. Subsequent consultation was held with relevant staff in the preparation of this report. *Annexure 1(h)* outlines the issues raised and recommendations resulting from the staff submission.

A Councillor workshop (attended by five Councillors) was held on 5 June 2014. The outcomes and relevant recommendations from this workshop are outlined in the table at *Annexure 1(i)*.

Overview of submissions

5 A total of 32 submissions on the Draft DCP and related documents were received. The types of submissions are broken down as follows:

- Government Agency/other body: 8
- Community Group: 6
- 10 - Consultant: 6
- General public: 12

15 The issues raised in these submissions related to 25 of the 34 chapters in the DCP and each of the related documents. The thirty-two submissions received (not including the staff submission) generated over 190 comments (refer to *Annexure 1(e) – Submissions Analysis Table – Draft DCP and Related Documents*).

The **key issues** raised in submissions included:

- 20 • Issues related to **Chapter B1 Natural Environment** including the interplay between the exhibited provisions and other legislation as well as the Environmental zone review and draft Comprehensive Koala Plan of Management, triggers for preparation of flora and fauna assessments and the need for mapping to set out where the provisions apply.
- Issues related to **Chapter D3 Tourist Accommodation** and provisions for backpackers' accommodation, farm stay accommodation and hotel or motel accommodation.
- 25 • Issues related to **Chapter B4 Traffic Planning, Vehicle Parking, Circulation & Access** including the calculation of car parking credits in an urban redevelopment situation and car parking rates
- Flood controls and standards to be applied to new development.
- Thresholds at which **Chapter B5 Providing for Cycling** applies to development applications.
- 30 • Issues related to **Chapter E2 Bangalow** including heritage controls, urban design issues and development in urban release areas.
- North Byron Beach Resort site specific controls
- Holiday letting in residential areas
- Heritage controls for heritage items and heritage conservation areas
- 35 • Issues related to **Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones** including building height plane, setback, pedestrian and cycle access and private open space and clothes drying facilities for multi dwelling housing, residential flat building and attached dwellings.
- Use of local definitions in the DCP and consistency with standard LEP where possible.
- 40 • Issues related to the **Draft Byron Shire Comprehensive Guidelines for Stormwater Management** including connection of stormwater from a development site to a tidal waterway and suggestions to make reference to approval requirements under other legislation.

45 The key issues identified above are not limited to those featured most in submissions but include key policy matters.

Overview of key changes

50 All issues raised in submissions (including the staff submission) and through consultation with Councillors and consultants have been considered in relation to the Draft DCP and related documents and changes have been recommended in this report.

The **key changes** recommended to the publicly exhibited Draft DCP include:

- 5 • **Chapter B1 Natural Environment** – changes to the triggers for preparation of flora and fauna assessments and vegetation management plans (refer to ‘Specific Policy Matters’ below), inclusion of additional assistance to proponents via information sources and the assistance of Council staff (pending availability), outlining the mechanisms available to protect significant areas into the future and deletion of B1.2.5 Koala Habitat with some provisions included in B1.2.3 In-Situ Conservation.
- 10 • **Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access** – amendments in relation to the information that is required to be submitted in support of particular development applications, public use of car parking areas, prevention of underground / basement car park flooding, removal of consideration of informal/unconstructed parking areas in the calculation of parking credits, addition of provisions related to on street parking, relocation of some bicycle provisions to B5, clarification of coach parking and monetary contribution provisions, and general clarification of the parking rates / loading bay tables.
- 15 • **Chapter B5 Providing for Cycling** – amendments to B5.1.2 Application of Chapter to provide thresholds for when proposed development must comply with this Chapter, in particular tourist and visitor accommodation of 5 beds or more and commercial premises of 100m² gross floor area or more.
- 20 • **Chapter D1 Chapter D1 Residential Accommodation in Urban, Village and Special Purpose zones** – amendments in relation to building height plane, setback, privacy, pedestrian and cycle access, expanded houses, on-site car parking, private open space, clothes drying facilities for multi dwelling housing, residential flat building and attached dwellings, sound proofing for shop top housing, ancillary housing in Business Park and Industry zones and studios related controls.
- 25 • **Chapter D3 Tourist Accommodation** – amendments to provisions for backpackers’ accommodation, bed and breakfast accommodation, hotel or motel accommodation; inclusion of a new definition for ‘rural tourist accommodation’ and deletion of reference to ‘cabins’; and changes to density provisions for ‘rural tourist accommodation’ and eco tourist facilities.
- 30 • **Chapter E2 Bangalow** – deletion of residential density provisions applying to the Bangalow Release Areas as density is adequately provided for in Byron LEP 2014, refer also to ‘Specific Policy Matters’ below for future recommended changes.
- 35 • **Chapter E5 Certain locations in Byron Bay and Ewingsdale** (Section E5.7 The North Byron Beach Resort Site) - changes in response to a submission and additional amendments to recognise the SP3 Tourist zoning and to better set out Council’s expectations about the built form of development on the site taking into account existing approvals on the land.
- 40 • **Chapter E5 Certain locations in Byron Bay and Ewingsdale** (Section E5.7 The North Byron Beach Resort Site) - changes in response to a submission and additional amendments to recognise the SP3 Tourist zoning and to better set out Council’s expectations about the built form of development on the site taking into account existing approvals on the land.

45 The **key changes** recommended to the related documents (as exhibited) include:

- 50 • **Draft Comprehensive Guidelines for Stormwater Management** – Inclusion of provisions to ensure that the connection of stormwater from a development site to a tidal waterway is located at or above 1m AHD to ensure ongoing effective operation by limiting obstruction by silt and inundation by tides. Also included are references to possible approval requirements under the *Fisheries Management Act 1994* and other considerations under State Environmental Planning Policy No. 62 – Sustainable Aquaculture.

- **Draft Revised Liquor Licensing and Approval Policy** – Changing the hours of operation for licensed premises back to those that apply under Council’s current Liquor Licensing and Approval Policy.
- 5 • **Draft Revised Climate Change Strategic Planning Policy** – Reduction in the tailwater levels for 2050 and 2100 in Table 1: Climate Change Scenarios for use in Flood Modelling and Flood Planning, amendments to Section 3.1 clarifying the use of the sea level rise planning benchmarks in the Policy generally, and the inclusion of a new section titled ‘Coastline Management Planning’.

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For all recommended changes refer to *Annexures 1(e), (f), (g), (h) and (i)*.

15 Although amendments are recommended in this report **re-exhibition of the Draft DCP is not considered necessary** as the changes proposed to the DCP and related documents have, for the most part, consisted of responding to submissions and clarifying and improving on the useability and interpretation of the controls. If Council does not wish to support the recommended changes outlined in this report those particular changes can be exhibited as an amendment to the DCP in future. It is within Council’s control to develop, exhibit and approve amendments to DCP provisions at any time. Future amendments to the DCP are expected and have been recommended in some instances in this report.

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Specific Policy Matters

Amendments proposed to Chapter E2 Bangalow

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A submission (#E2014/32684) was received from local design professionals Design Advisory Panel Northern Rivers (DAP) which proposed an alternate Chapter E2 Bangalow.

The key changes proposed to the publicly exhibited chapter relate to the following:

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- Adoption of a master plan for the village centre identifying both existing and future character areas and connectivity within Bangalow.
- Adoption of six character objectives and twelve illustrated prescriptive measures to achieve those objectives.
- Additional urban design criteria that address building height, parapets, verandahs and signage in the heritage conservation area.
- Additional design and site criteria relating to proposed urban release areas including footpaths, cycleways and parks.

35

40 The submission is well thought out and comprehensive however it proposes to substantially change some of the opportunities in relation to land in the CBD of Bangalow and the urban release areas. To implement such changes to Chapter E2 as outlined in the submission requires a Councillor workshop and full community consultation. As this process cannot currently be accommodated this report recommends at *Annexure 1(e)* that the material supplied in the submission be reviewed by Council staff and Councillors and if considered appropriate, exhibited as a full stand alone review of Chapter E2 as soon as possible after the DCP has been commenced. In the meantime the exhibited provisions (as amended by this report) should be adopted.

45

Amendments to Chapter B1 Natural Environment

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In response to comments raised at the Councillor workshop on 5th June (refer to *Annexure 1(i)* for all matters raised and recommendations) in relation to streamlining the supporting information requirements set out in B1.2.1 Flora and Fauna Assessment, staff undertook a further review of the provisions. If the development only involves the removal or disturbance of up to 3 trees in an area of high conservation value vegetation and habitats or up to 3 koala food trees then a ‘Flora and

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Fauna Assessment' or 'Vegetation Management Plan' will now not be required. For those developments only basic information is requested and Council staff (pending availability) may be able to assist with preparing it (including identification of trees and undertaking koala activity assessments if they are required).

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Flood Planning and Climate Change

As presented in 20 March council report, the purpose of Draft Chapter C2 – Areas affected by Flood and the revised Draft Climate Change Strategic Planning Policy is to support and implement the objectives and provisions of Byron LEP 2014 relating to flood liable land in Byron Shire. The flood planning provisions in Chapter C2 have been developed having regard to the overall framework of Council's Climate Change Strategic Planning Policy ('Policy') as well as existing flood studies prepared in accordance with that Policy. It is noted that the current Policy, which sets out Council's accepted climate change parameters to inform the decision making process for strategic, infrastructure and operational planning, was amended to apply a 2050 climate change planning horizon to the majority of development in the Shire in the publicly exhibited Revised Draft Policy. This follows Council consideration of a report presenting LEP flood planning options in June 2013, where the need to revise the application of the Policy's 'planning horizons' according to development type, design life, etc. was acknowledged in *Resolution 13-305*.

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Although both Chapter C2 - *Areas affected by Flood* and the Revised Draft Policy were exhibited concurrently (given their strong connection), no significant issues were raised in the few public submissions received nor at the 9th May consultants' workshop. Despite this, both documents have been extensively reviewed (during the exhibition period) by internal staff including Council's Drainage / Flood Engineer and Development Assessment Engineer, to ensure they reflect current practice at the development assessment stage and are less complex for the public to understand. This has resulted in the inclusion of a flow chart illustrating the process for determining flood planning controls to assist with the interpretation and application of Chapter C2 – Areas affected by Flood by end-users.

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Other changes made as a result of the review of these documents are presented (in 'track changes') in *Annexures 1(a) and 1(b)*.

Selection of Tailwater Condition (Table 1 – Climate Change Strategic Planning Policy)

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Tailwater levels can vary dependent on location, storm sizes for a location and outlet type (i.e Ocean Beach Berm / ICOLL type outlet or River mouth type (where there is less wave set up)). At 5 June workshop Councillors considered a discussion paper comparing tailwater levels used in previous reports for locations near to and within Byron Shire, as well as presenting tailwater options for inclusion in Council's revised draft Climate Change Strategic Planning Policy. The recommended option presented at the workshop (and included in the draft Climate Change Strategic Planning Policy at *Annexure 1(b)* to this report) included a reduced tailwater level for the 100 year event in both the 2050 and 2100 climate change scenarios. The reduced figures are justifiably less conservative than those exhibited in recognition that some climate change effects are already incorporated in the long-accepted tailwater figure of 2.6m for the current conditions 100 year event.

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Revision of existing flood mapping for the Belongil Creek and Tallow Creek Catchments

The aim of having a coherent flood planning framework in place, one that is underpinned by Council's Climate Change Strategic Planning Policy and implemented through corresponding LEP and DCP provisions, requires up to date flood mapping to ensure a consistent standard is applied to development proposals across the Shire. The main mapping updates required prior to the commencement of new LEP/DCP relate to the *Belongil Creek and Tallow Creek Catchments*, noting that new studies are already underway for the Brunswick and Marshalls Creek catchments (see below).

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5 The process to commence these mapping updates is now awaiting Council's adoption of a revised Climate Change Policy and in particular, the corresponding tailwater levels to be applied in these catchments. Accordingly on commencement of the new LEP and DCP updated mapping is expected to be available for the Belongil Creek and Tallow Creek Catchments. However when the new controls commence the mapping will not have been formally considered by Council in the context of the Draft Belongil Creek Floodplain Risk Management Study and Plan (under preparation) or as a revision to the adopted Tallow Creek Floodplain Risk Management Plan. As an interim measure Council is requested to endorse the use of revised mapping for the Tallow 10 Creek and Belongil Creek catchments for the purposes of development assessment, planning proposals and issuing Section 149 planning certificates until such time as a revised Tallow Creek Floodplain Risk Management Plan and Draft Belongil Floodplain Risk Management Study and Plan are presented to Council.

15 *Mapping for the Brunswick River, Marshalls Creek and Simpsons Creek Catchments (known collectively as the North Byron Coastal Creeks)*

20 The North Byron Coastal Creeks Flood Study is currently in preparation and covers Mullumbimby, Brunswick Heads, Ocean Shores, New Brighton, South Golden Beach and Billinudgel. The draft Study will be prepared according to the parameters of the revised Climate Change Strategic Planning Policy to be adopted by Council after considering the recommendations of this report. It is expected the draft Study will be reported to Council later this year.

25 Following the adoption of the Study the revised mapping will be used for development assessment planning proposals and issuing of Section 149 planning certificates.

Amendment of Byron Tree Preservation Order

30 Amendments are required to the existing Tree Preservation Order to ensure that it applies only to the land which is to remain subject to Byron LEP 1988 (i.e. the deferred areas from Byron LEP 2014). The revised Tree Preservation Order is attached at *Annexure 1(j)*. To ensure its commencement coincides with the new LEP and DCP, Council is requested to adopt the revised Order as presented in *Annexure 1(j)*. For land subject to Byron LEP 2014 the controls in B2 Preservation of Trees and Other Vegetation will apply.

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Future Priorities for amendment to the DCP

Development of a 'Significant Tree Register'

40 SEPP (Exempt and Complying Development Codes) 2008 contains provisions allowing tree removal or pruning as complying development under certain circumstances. A part of these provisions state that the tree removal, as specified under the SEPP, can occur as long as the tree is not listed on a significant tree register (STR) kept by Council. As a result of this provision, draft DCP *Chapter B2 – Preservation of Trees and Other Vegetation* includes a Significant Tree 45 Register which lists Koala food trees.

50 There are no statutory guidelines provided by the state government as to the content or preparation of STRs. Other NSW Councils STRs typically list individual trees of visual or cultural significance in specific locations. It is proposed that any individual trees, or species of trees that have environmental, cultural, visual or heritage significance of such importance which warrant their exclusion from removal under the Codes SEPP, be considered for listing in the STR.

55 At this stage only Koala food tree species have been listed in the register in Chapter B2 (Appendix B2.1). However it is recommended that Council develop a set of criteria for other trees that may be eligible for listing in the STR, and that the STR be updated based on these guidelines.

Amendments to consider other matters

5 It is acknowledged that amendments to the DCP will be necessary in future to reflect updates to policy (e.g. after the outcomes of the review of environmental zones is known; when the Byron Coast Comprehensive Koala Plan of Management is finalised; when coastal planning provisions are included in the LEP; after existing land use strategies are reviewed; etc.).

10 This report recommends that Chapter E2 Bangalow be amended as soon as possible after the commencement of the new DCP.

Next Steps

15 Changes will be made to the Draft DCP and related documents under delegation in accordance with Council's resolution/s and the commencement of the new provisions on 21 July will be advertised in accordance with the legislation. Staff will also undertake the necessary operational procedures/arrangements related to lodgement and assessment of development applications, issuing of s149 certificates and information for the public on Council's website.

Financial Implications

20 Finalisation of Draft Byron DCP 2014 and related documents (including the required advertisements) has been budgeted for in the current 2013/14 'Community Planning' budget. This includes the updates to flood mapping for the Tallow Creek catchment to implement Council's revised Climate Change Strategic Planning Policy, LEP 2014 and DCP 2014. Mapping updates
25 required outside these catchments can/will be incorporated into the scope of works and budget for preparation of flood studies and plans. Therefore the allocation of additional funds for this purpose is not required.

30 The necessary operational arrangements to support the commencement of the new LEP and DCP can be accommodated by existing staff resources and budgets.

Statutory and Policy Compliance Implications

35 The Draft DCP and related documents have been prepared, notified and exhibited in accordance with the relevant legislation. Unless otherwise stated, the provisions of Draft DCP 2014 and related documents are consistent with the relevant legislative requirements. The commencement of the new controls and policies will be advertised in accordance with legislative requirements.

40 This report recommends that Council adopt a revised Climate Change Strategic Planning Policy. The revised policy has been prepared to support the flood planning provisions of Byron LEP 2014. Council adoption of an update to the 'Tallow Creek Floodplain Risk Management Study and Plan' (2009) is required for consistency with the revised policy.

Report No. 5.2. Northern Councils Environmental Zones Interim Report – Submission to Department of Planning and Environment

Executive Manager: Environment and Planning
Report Author: Sharyn French, Manager Land and Natural Environment
File No: #E2014/35297

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Theme: Environment, Land and Natural Environment

Summary: The *Northern Councils Environmental Zones Interim Report* that reviewed how northern councils applied environmental zones in their standard instrument local environmental plans was released for public comment until 5 June 2014.

Council requested an extension to the public exhibition period so that Council could formally consider a response. No extension was granted however, the Department advised that they would give due consideration to Councils endorsed submission in finalising the recommendations.

A draft submission is provided for Council’s consideration. The recommendations have been separated in order that Council can amend or delete as a final submission in line with Annexure 2(a).

RECOMMENDATION:

10 **That in relation to Council’s submission on Parsons Brinckerhoff’s *Northern Councils Environmental Zones Review Interim Report*, Council adopt for:**

1. **Recommendations 1, 2, 6, 7 and 12: Application of E2 Environmental Conservation and E3 Environmental Management zones:**

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a) **Environmental Protection - Coastal lands:**
 Council reiterates previous requests for new zones to appropriately manage development within coastal hazard areas and call on the Minister to support the inclusion of coastal hazard zones in the SI LEP as recommended by the Local Planning Panel in 2012. In the interim, until new coastal hazard zones are provided, it is Councils preference for 7(f1) Environmental Protection – Coastal Lands and 7(f2) Environmental Protection – Urban Coastal Lands to be included in the E2 zone criteria, and in the absence of this to remain with their current zoning under Byron LEP 1988.

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b) **Environmental Protection - Scenic escarpment:**
 Council would prefer that a compatible zone to the current 7(d) is provided in the SI LEP to manage development in scenic escarpments and in the absence of this zone support Parsons Brinckerhoff’s recommendation that scenic escarpment values be included on an overlay map with an accompanying clause in the LEP.

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c) **Threatened Species – Koala:**
 Council requests clarification that the E2 zone applies to koala habitat (Primary, Secondary A and B) as per the E2 Zone criteria number 4. This position is supported, and if this is not the case, Council support an alternative that core koala habitat (as identified in a Comprehensive Koala Plan of Management or

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SEPP44) is zoned E2 and all other koala habitat (using Primary, Secondary A and B definitions) should be included as a criteria for E3.

d) Riparian Corridors:

i) Council requests that consideration be given to landscape scale biodiversity conservation issues such as riparian buffers in the environmental zoning criteria and overlay methodology.

ii) Council requests justification as to why previous Department of Planning and Environment advice stating that riparian corridors are to be zoned E2 are no longer acknowledged under Parsons Brinckerhoff's environmental zoning criteria.

iii) In the absence of riparian corridors being included in the environmental zone criteria, Council prefers Parsons Brinckerhoff's overlay and clause methodology over the Departments, as Council believes it is important to recognise the significant environmental values riparian areas provide at the landscape scale.

e) E2 Zone Criteria:

i) Council requests justification as to why previous Department of Planning and Environment advice stating that old growth forests, riparian corridors and coastal foreshores and land subject to coastal hazards, including climate change effects should be zoned E2, have not been applied in Parsons Brinckerhoff's environmental zoning criteria.

ii) Council supports criteria 1,2,5,6 and 7 of the proposed E2 zone criteria.

iii) Council supports in principle criteria 3 and 4 of the proposed E2 Zone Criteria and requests clarification on how to interpret and apply this criteria.

f) E3 Zone Criteria:

i) Council supports criteria 1 and 4 of the proposed E2 zone criteria.

ii) Council supports in principle criteria 3, 5 and 6 of the proposed E2 Zone Criteria and requests clarification on how to interpret and apply this criteria.

iii) Council does not support criteria 2, Old Growth Forest, as an E3 criteria and recommend that this should be included in the E2 zone criteria.

g) Additional Criteria:

Council request that a mechanism be provided to allow some degree of flexibility to zone an area for environmental protection that does not meet the proposed criteria and where there is Landholders support.

2. Recommendation 14: Application of E4 Environmental Living zone:

a) Council generally supports the application of a residential zone to the areas proposed to be zoned E4 in the exhibited draft Byron LEP 2014.

b) Council requests clarification if any of the Environmental Zones (E2, E3 and E4) can be applied in urban areas where sensitive environmental attributes are present. If not, zoning urban areas with tangible environmental attributes to an

urban residential zone reinforces the need for terrestrial biodiversity overlays to consider the impact of development on these sensitive areas.

- 5 c) Council requests clarification that Council would not be excluded from applying environmental zones, particularly E4, to future urban release areas if proposed.
- 3. Recommendations 4 and 5: Permissibility of 'extensive agriculture' in EZones, Council request that 'extensive agriculture' is prohibited in E2 to allow conservation to remain the focus of land use in these areas and is consistent with current 7(j) zone. If not, the SI LEP objectives for the E2 Environmental Conservation zone should be amended.
- 10 4. Recommendations 10, 16 and 17: Environmental Overlays and associated clauses, Council support Parsons Brinckerhoff's overlay and clause methodology, as Council believes it is important to recognise the significant environmental values wildlife corridors and buffers provide at the landscape scale.
- 15 5. Recommendation 13: Aesthetic values should be removed as an attribute from the E3 zone, the same as for Recommendation 1. b) above.
- 20 6. Recommendation 15: Application of rural zone:
 - a) Council are supportive of applying a relevant rural zone if used for agricultural production (confirmed via onsite investigation) and it is shown as containing mapped State or Regionally Significant Farmland.
 - 25 b) Council request clarification as to which mapping methodology (environmental zones and state significant farmland) is applied in the first instance.
- 30 7. Additional Considerations, Council seek financial assistance from the Department to ensure that Councils current vegetation mapping review methodology is robust and complies with the Interim Reports direction for 80% accuracy.
- 35 8. General Comments:
 - a) That Table 2.5 on page 62 of the interim report be amended to show that Council considered the following criteria in applying E2 zones:
 - i) Significance to local and regional habitat corridors/ contribution to wildlife corridors
 - ii) Extent to which ecosystem already reserved in local and regional context
 - 40 iii) Vegetation growth stage, structure condition
 - b) That discussion be included in the Interim Report on statistical representative sample size methodology compared to the actual sample size and selection method the Interim Report is based on.
- 45 9. That in relation to Councils submission on Parsons Brinckerhoff's *Northern Councils Environmental Zones Interim Report* Council, adopt the draft submission in Annexure 2(a), with any changes so made, and submit to the Department of Planning and Environment as Council's adopted position.

50 **Attachments:**

- Draft submission on the Northern Councils EZone Review Interim Report #E2014/37086 [10 pages] **Annexure 2(a)**
- 55 • Form of Special Disclosure of Pecuniary Interest #E2012/2815 [2 pages]..... **Annexure 2(b)**

Report

5 In September 2012, the Minister for Planning announced a review into the way environmental zones and overlays are applied to land on the Far North Coast. Consultant Parsons Brinckerhoff were appointed to review how E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living zones were applied in the Ballina, Byron, Lismore, Tweed and Kyogle local government areas.

10 The consultant has provided the Department of Planning & Environment (DPE) with an interim report which outlines recommendations for the application of environmental zones and overlays on the Far North Coast. The interim report was on exhibition for public comment until 5 June 2014. Council requested an extension to the submission deadline in order to formally consider a position at today's meeting. The Department of Planning and Environment advised via email received 3 June 2014:

15 *In the interests of progressing the Review, it is not intended to formally extend the exhibition period. However, considering Council's specific request and noting Council's intention to consider the recommendations of the interim report at a Council meeting, Council is encouraged to lodge its submission as soon as possible, it is suggested by the end of June.*
20 *If Council is in a position to lodge a "draft" submission it could be accepted by the Department on the basis that it is not endorsed and will be followed by Council's adopted submission. Council's endorsed submission will be given due consideration in the process to prepare the final recommendations.*

25 A draft preliminary submission was lodged on the 5 June containing staffs advice and advising the Department that Councils adopted submission would be sent after 26 June.

30 Council's draft submission is provided in Annexure 2(a). In preparing this submission, staff liaised with neighbouring councils; presented the recommendations to Councils Strategic Planning Committee Meeting on 29 May 2014; held a presentation by the consultants and the Department for staff and councillors; and presented the recommendations in the report on the 11 June 2014 to the Environmental Values on Rural Lands workshop (17 November 2012) participants in accordance with resolution 13-26.

35 **Financial Implications**

Nil

40 **Statutory and Policy Compliance Implications**

Nil

Report No. 5.3. PLANNING –Report on the exhibition of the Draft Byron Developer Contributions Plan 2012

Executive Manager: Environment and Planning
Report Author: Chris Soulsby, Section 94 Officer
File No: #E2014/33297

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

Summary: Council resolved at the Ordinary meeting held 20 March 2014 (**14-116**) the Draft Byron Developer Contributions Plan 2012 (Amendment 2) be placed on exhibition with the amendments.

The Draft Byron Developer Contributions Plan was exhibited from 22 April to 20 May, 2014 Council received 10 submissions.

14-116 – Point 4 “That the “Draft Byron Developer Contribution Plan 2012 (Amendment 2)” be reported back to Council for consideration following any submissions received during the public exhibition period .

The works schedules have been amended by the inclusion of new works and there has been consequential changes to the rates of contributions. These changes do not warrant re-exhibition of the plan.

NOTE TO COUNCILLORS:

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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.

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RECOMMENDATION:

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1. That Council resolve to adopt the Byron Shire Developer Contributions Plan 2012 as listed in Annexure 3 #E2014/35850 (with the removal of all green highlighting).

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2. That Council notify the adoption of the plan in the local newspaper in accordance with Clause 30 of EP&A Regulation 1994.

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3. That the Byron Shire Developer Contributions Plan 2012 commence operation on Monday, 15 July 2014.

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4. That Council allocate a budget of \$134,000 out of the Section 94 Ocean Shores Community Facilities account to the South Golden Beach Community Hall Alterations and Additions Project.

5. That Council allocate a budget of \$114,000 out of the Section 94 Mullumbimby Community Facilities account for the Civic Hall precinct works upgrades. Work to include landscaping and Crime Prevention through Environmental Design (CPTED) upgrades.

6. That Council allocate a budget of \$16,000 out of the Pre plan Rural Roads account for the Upgrade of Skinners Shoot Road south of Yagers Lane.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(20)

Attachments:

- 5 • Section 94 Plan #2014/35850 [180 pages] **Annexure 3**
NOTE: Confidential submissions #E2014/39343 has been provided on the Councillors' Agenda CD only.

Report

At the Ordinary meeting of 20 March 2014 Council considered a report on the review of the 2012 Byron Developer contributions plan. At the meeting Council resolved:

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14-116 Resolved:

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1. That the “Draft Byron Developer Contribution Plan 2012 (Amendment 2)” Annexure 7 #E2014/10907 be placed on public exhibition in accordance with the Environmental Planning and Assessment Act, 1979 and Regulation, for a period of 28 days.
2. That the Urban Roads schedule of Annexure 7 #E2014/1090 be amended prior to exhibition to incorporate an item for expenditure of Bangalow Car parking funds on Deacon Street at a value of \$196,000.
3. That the Community Facilities schedule of Annexure 7 #E2014/1090 be amended prior to exhibition by:
 - a) Inclusion of a new line item in the schedule for “Installation of a Solar Photo-Voltaic generation system and a solar hot water system on the BRSCC”.
 - b) That \$150,000 of pre 30 June 2012 reconciliation funds from the Community Facilities account that were to be allocated to the Byron Bay Master Plan project be allocated to Installation of a Solar Photo-Voltaic generation system and a solar hot water system on the BRSCC”.
 - c) That the reconciliation funds allocated to the Implementation of works identified in the Byron Bay Town Centre Master Plan be reduced by \$150,000.
 - d) That the \$8,841.34 of Rural North Community facilities funds not be allocated to the toilets at Waterlily Park and that these funds be held in trust in the Rural North Catchment pending further community consultation.
4. That the “Draft Byron Developer Contribution Plan 2012 (Amendment 2)” be reported back to Council for consideration following any submissions received during the public exhibition period. (Dey/Cameron)

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The plan was amended in accordance with the resolution and placed on public exhibition from 22 April to 20 May 2014. During the exhibition period 10 submissions were received. The following table sets out a brief summary of the submissions and a staff comment.

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

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Submitter	Issue Summary	New Works	Staff Response
Submitter 1	Comment on Byron Bay Master Plan that tourism should contribute.	NA	Tourism does contribute to new town centre works via a S94A levy on all new Commercial development.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(22)

Submitter	Issue Summary	New Works	Staff Response
	<p>A comparison of Gross Domestic Product (GDP) between Byron Bay and the Hinterland is required.</p>	<p>NA</p>	<p>There is limited economic data available from the ABS on Gross Regional Product (GRP). There is also employment data available although the employment data and GRP data is not sufficiently detailed to allow for an analysis of GRP between and individual towns and the hinterland. Such data whilst useful for other purposes is not necessarily required for preparation of a S94 plan.</p>
	<p>The plan fails to address the expenditure of section 94 funds on an equitable basis. Allocation of Shire Wide community facilities funds to Byron Bay master plan is not equitable</p>	<p>NA</p>	<p>The equity issue pertaining to the expenditure of Shire Wide Community Facility Funds in the Byron Catchments has been addressed by redirecting funds to the Mullumbimby master plan.</p> <p>Open space works in Bangalow will be receiving up to 25% of their funding from Shire Wide Open Space collections.</p> <p>Open space works in Mullumbimby will be receiving up to 25% of their funding from Shire Wide Open Space collections.</p> <p>The Sports Fields at Shara Blvd in Ocean Shores have been allocated 1,250,000.00 of Shire Wide Open Space funds and will benefit from a further 25% of their costs being collected Shire Wide.</p> <p>Staff have tried to target the expenditure of Shire Wide funds to the projects of greatest need.</p>
	<p>A Mullumbimby Master plan should be included in plan.</p>	<p>Yes. Refer table of new works below.</p>	<p>Staff have amended some of the existing works in Mullumbimby and have specifically added an item for a Mullumbimby town centre master plan.</p>

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(23)

Submitter	Issue Summary	New Works	Staff Response
Submitter 2	A Mullumbimby Master plan and Sculpture walk should be included in plan.	Yes. Refer table of new works below.	Staff have amended some of the existing works in Mullumbimby and have specifically added an item for a Mullumbimby town centre master plan.
Submitter 3	The draft plan does not include any works for the Rural North, Rural South or Bangalow catchments that would directly and substantially support the growth of the visitor economy.	NA	The current S94 plan is designed to service the needs of new permanent residents of the LGA. It has not been designed to address rural tourism. There is insufficient information about the rate of growth of the visitor population upon which to base a contribution.
	<p>1. \$50,000 minimum to develop a Hinterland Master Plan³ for Bangalow and Surrounds.</p> <p>2. Plus \$80,000 minimum to develop critical components of the Hinterland Master Plan</p> <p>3. Plus \$65,000 towards the implementation of two "Welcome to the Hinterland Gateway" visitor bays, one at the Bangalow Pacific Highway new eastern roundabout and another at the entry to Coolamon Scenic Drive (via the current Pacific Highway)</p> <p>4. Plus \$145,000 minimum to support the development of a "farmgate" outlet as a</p>	Only the parkland upgrades in Bangalow have been included in the amended plan.	<p>Master plans are a urban design exercise that would not be appropriate for rural tourism. A master plan can be funded from S94 funds as it is a statement of the public works and facilities that are to be built. The submitter is seeking funding for a rural tourism strategy.</p> <p>The S94 plan is designed to fund the facilities demanded by new permanent residential population. It is difficult to justify charging new residential population for facilities used by tourists.</p> <p>S94 funding is best targeted at high use urban facilities to get the best value for Council's share of the apportionment funds.</p> <p>Park upgrades as proposed at Bangalow can be justified on the basis that new residential population will use these works.</p>

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(24)

Submitter	Issue Summary	New Works	Staff Response
	<p>permanent community farmers producer co-operative.</p> <p>Plus \$55,000 towards establishing a Botanical Garden as a visitor attraction and community space around the Weir and Bangalow Heritage House historical precinct areas</p>		
Submitter 4	A Mullumbimby Master plan should be included in plan.	Yes. Refer table of new works below.	Staff have amended some of the existing works in Mullumbimby and have specifically added an item for a Mullumbimby town centre master plan.
	<p>The plan fails to address the expenditure of section 94 funds on an equitable basis. Cr Cameron provided an extensive commentary to demonstrate the inequitable distribution of shire wide pre 30 June 2012 reconciliation funds. An analysis of new works proposed was also provided.</p>	NA	<p>The equity issue pertaining to the expenditure of Shire Wide Community Facility Funds in the Byron Catchments has been addressed by redirecting funds to the Mullumbimby master plan.</p> <p>Open space works in Bangalow will be receiving up to 25% of their funding from Shire Wide Open Space collections.</p> <p>Open space works in Mullumbimby will be receiving up to 25% of their funding from Shire Wide Open Space collections.</p> <p>The Sports Fields at Shara Blvd in Ocean Shores have been allocated 1,250,000.00 of Shire Wide Open Space funds. This is 100% of the reconciliation funds available. These fields will benefit from 25% of their costs being collected Shire Wide.</p> <p>Staff have tried to target the expenditure of Shire Wide funds to the projects of greatest need.</p>

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(25)

Submitter	Issue Summary	New Works	Staff Response
	<p>Mullumbimby Master Plan Development \$40,000</p> <p>Mullumbimby Master Plan Works \$200,000</p> <p>Seed funding for sculpture walk* \$10,000</p>	<p>Yes. Refer table of new works below.</p>	<p>Staff have proposed \$695,000.00 of works. Of which \$100,000 is to be funded from shire wide community facilities reconciliations funds and 135,000 from Mullumbimby Car parking funds. The remainder is to be funded form new collections.</p>
	<p>The long-term diversion of shire wide s 94 (and SRV) funds from shire wide to Byron Bay is have in an adverse impact on infrastructure. This is particularly so regarding roads. The Shire Wide pools in the plan for roads reflect this inequity. All roads in the Shire have been allocated a 100% local use apportionment with the exception of projects proposed for Ewingsdale Road upgrades, which has been given an 80% local use and 20% Shire Wide use.</p>	<p>NA</p>	<p>The current S94 plan uses a catchment methodology to collect and expend funds. There are some exceptions to this where it can be demonstrated that the demands for a facility are shire wide. Examples of this are the road works on Ewingsdale Road and sports field upgrades at Bangalow Mullumbimby and Ocean Shores.</p> <p>The 80/20 split for between the local and shire wide collections for Projects on Ewingsdale Road is based on the MR 545 Opes Study. This study gave staff the data to make a split in the collection of new contributions.</p> <p>The 75/25 split for sporting facilities in Bangalow and Mullumbimby was based upon staff assumptions regarding training, playing and use of the fields year round by local and away teams.</p> <p>For Ocean Shores sports fields a 50/50 split was used. A 75/20 split would have been more appropriate as used for Bangalow and Mullumbimby. However a 50/50 split was selected due to the very low growth in Ocean Shores and the lack of facilities in this catchment. Due to the poor service levels in this catchment a greater proportion of shire wide funds was directed to this project to correct past inequities.</p> <p>Staff have not made any split to the collection for rural roads as there was no data or even a</p>

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(26)

Submitter	Issue Summary	New Works	Staff Response
			<p>methodology to create some assumptions about what the spit should be. Without an extensive and expensive traffic study to justify the split between local and shire wide use it would be extremely difficult to determine what the split should be.</p> <p>A possible solution would be to have all rural roads collected for on a shire wide basis. This would result in significant cross subsidisation from the urban to rural population. Due to the very low growth in the rural catchments compared to the urban areas this cross subsidisation is likely to be very high and may be subject to challenge. For example it is easy to demonstrate (based on the MR 545 Study) that a new resident of Ocean Shores will use the works on Ewingsdale Road. But it is significantly more difficult to demonstrate that a resident of West Byron will use the proposed upgrade to Greys Lane (other than a miniscule amount). On this basis staff have not made any changes to the rural road collection methodology.</p>
Submitter 5	<p>A minimum of \$270,000 be shifted from Byron Bay Town Centre Master Plan - Shire wide program to support the redevelopment of the Mullumbimby Town Centre.</p> <p>\$40,000 minimum to develop a Town Centre Master Plan (in line with the current submission to council)</p> <p>\$180,000 minimum to develop prioritised components of the Town Centre Master</p>	Yes. Refer table of new works below	<p>Staff have proposed \$695,000.00 of works. Of which \$100,000 is to be funded from shire wide community facilities reconciliations funds and 135,000 from Mullumbimby Car parking funds. The remainder is to be funded from new collections.</p> <p>S94 funds cannot be used for maintenance so the works in Summers Park have been excluded.</p>

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(27)

Submitter	Issue Summary	New Works	Staff Response
	<p>Plan;</p> <p>\$30,000 toward the implementation of the Palm Park Sculpture Walk; and</p> <p>\$20,000 toward the maintenance and landscaping of the creek and trees bounding Summers Park in which the Mullumbimby Museum is located.</p>		
Submitter 6	The current Draft Byron Shire S94 Plan 2012 does not include any S94 or program funds at all for the Mullumbimby Town Centre	NA	Council had previously allocated \$100,000 of new collections to fund traffic management in the town centre of Mullumbimby. This has now been significantly expanded.
	<p>\$40,000 minimum to develop a Town Centre Master Plan (in line with the current submission to council)</p> <p>\$180,000 minimum to develop prioritised components of the Town Centre Master Plan;</p> <p>\$30,000 toward the implementation of the Palm Park Sculpture Walk.</p>	Yes. Refer table of new works below	Staff have proposed \$695,000.00 of works. Of which \$100,000 is to be funded from shire wide community facilities reconciliations funds and 135,000 from Mullumbimby Car parking funds. The remainder is to be funded from new collections.
Submitter 7	<p>A minimum of \$250,000 be shifted from Byron Bay Town Centre Master Plan - Shire wide program to support the redevelopment of the Mullumbimby Town Centre. In particular we ask for:</p> <p>\$40,000 minimum to develop a Town Centre Master Plan (in line with the current submission</p>	Yes. Refer table of new works below	Staff have proposed \$695,000.00 of works. Of which \$100,000 is to be funded from shire wide community facilities reconciliations funds and 135,000 from Mullumbimby Car parking funds. The remainder is to be funded from new collections.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(28)

Submitter	Issue Summary	New Works	Staff Response
	<p>to council)</p> <p>\$180,000 minimum to develop prioritised components of the Town Centre Master Plan; and</p> <p>\$30,000 toward the implementation of the Palm Park Sculpture Walk.</p>		
Submitter 8	<p>Community Facilities Works Schedule for the Rural South Catchment has been deleted in the exhibited draft amendment. The schedule includes proposed upgrading works to the Broken Head hall to the value of \$113,416.</p>	<p>No. Works were in the plan and accidentally were deleted from the exhibition copy.</p>	<p>Staff have corrected this error and re-instated the expenditure.</p>
Submitter 9	<p>Significant concern about the requirement to pay contributions for a dual occupancy in Mullumbimby where there are two existing lots and one existing dwelling.</p>	<p>No new work but an amendment to the text of the plan has been undertaken.</p>	<p>The plan was originally drafted this way to make it consistent with the Water and Sewer ET policy that applied at the date of adoption. Since then the ET policy has been amended such that two lots with one dwelling on them (such as occurs often in Mullumbimby) will both have an entitlement. As we are one organisation it would propose to bring the section 94 plan into line with the ET policy. This requires an amendment to clause 2.13 Credits and Exemptions for Certain Types of Development.</p>
Submitter 10	<p>The Skinners shoot residents wish to make petition to the plan for funds of \$16,000 for the upgrade to increase capacity of Skinners Shoot Rd beyond Yaegers Lane.</p>	<p>Yes. See table below.</p>	<p>Staff have reallocated 16,000 of pre 1993 rural roads funds from the Main Arm Causeway project to this job.</p>

In response to the submissions staff have made the following changes to the exhibited plan.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(29)

Table showing changes to the draft plan and funding sources				
New Works	S94 Funding Source	Timing	Cost indexed to April 2014	Pre 30 June 2012 Reconciliation Funds allocated
Additional car parking in Mullumbimby town centre (expenditure of s94 car parking funds)	Mullumbimby Car Parking	Works to commence upon completion of the Mullumbimby Town Canter Master plan	135,254.06	135,254.06
Town Centre Traffic Mgmt. Implementation of Mullumbimby Town Centre Master Plan	Mullumbimby Urban Roads	Works to commence upon completion of the Mullumbimby Town Canter Master plan	200,000.00	-
Implementation of works identified in the Mullumbimby Town Centre Master Plan. Being community Facilities works such as tourist information kiosks, art installations and public toilet upgrades.	Shire Wide Community Facilities 100,000 redirected from Implementation of Byron Bay Town Centre Master plan	Works to commence upon completion of the Mullumbimby Town Canter Master plan	200,000.00	100,000.00
Mullumbimby town Centre Master plan. (Existing budgeted staff wages cost to be used to fund Council share of the apportionment)	Mullumbimby Local Open Space	To be commenced upon completion of the Byron Bay Town Centre Master plan (2016-2017)	60,000.00	0.00
Implementation of Mullumbimby Town Centre Master plan. Works include: Footpath upgrades, landscaping, bicycle facilities, kerb and gutter works, drainage, benches, street	Mullumbimby Local Open Space and Shire Wide Open Space	Works to commence upon completion of the Mullumbimby Town Canter Master plan	100,000	0.00

tree planting and landscaping.				
Upgrade of Skinners Shoot Road south of Yagers Lane.	Pre Plan Rural Roads. Reallocation of funds from Main Arm Causeway	2015	16,000	16,000
Banglaow: Park and landscaping upgrades on Parklands South of Deacon Street Bangalow	Bangalow Catchment	After 2025	60,000.	0.00

These changes are shown highlighted green in Annexure 3

5 In additional to these changes staff have modified clause 2.13 of the exhibited plan. Clause 2.13 related to *Credits and Exemptions for certain types of development*. This clause has been modified to bring it into line with Council’s adopted water and sewer ET policy. The modified clause 2.13 is set out as follows with the amendment highlighted in green.

2.13 Credits and Exemptions for Certain Types of Development

10 *This plan is based around the concept of the standard dwelling unit (SDU). One SDU is a three or more bedroom dwelling with an occupancy rate of 2.4 persons. The following rates will be adopted for dwellings of less than three bedrooms:*

- 2 bedroom dwelling (0.75 SDU)
- 1 bedroom dwelling (0.55 SDU)

15 *This plan assumes that all existing allotments have an underlying credit of one SDU except in the following circumstances:*

- (a) Lots created without Council approval by way of departmental subdivision by the Crown; or
- (b) Lots created for the purposes of utility installations; or
- 20 (c) [Deleted in amendment 2]; or
- (d) Lots created by way of the closure of a public or crown road; or
- (e) Lots to which clause 15 of the Byron LEP applies and that form part of an existing holding where a dwelling has already been erected upon another lot within that holding; or
- (f) Vacant lots within commercial or industrial zones.

25 *Lots that meet the criteria listed in (a) to (f) do not have any credit and development upon this land that increases population will be required to pay a contribution.*

30 This modification means that where a landowner has two allotments with one dwelling straddling the boundary such as occurs in Mullumbimby both those allotments will have a credit. Allotments that were created without Council approval i.e. departments subdivisions done by the Crown will still be liable to pay contributions if they are re-developed.

Financial Implications

Staff have taken the opportunity of the modification of the plan to index the cost of works. To date the only indexation has occurred at the end of the process when the developer pays their contributions and the cost of works that Council could expend has remained static. Indexing the cost of work to the April CPI means that the developers cost does not change, as their contributions would have been indexed at the date of payment regardless, but it represents the increased cost to Council. The indexation period is October 2012 to April 2014 and has increased the cost of works by 3.33%.

The changes to the to the reconciliation amounts allocated to projects has resulted in the rate per SDU changing. The comparison between the exhibited plan and the amended plan is shown in the tables below. In all cases the change is minor.

The cost per SDU from the exhibited plan and the amended plan are set out in table below.

	Byron Bay Suffolk Park	Bangalow	Mullumbimby	Ocean Shores	Rural North	Rural South	Brunswick Heads
Amended	12,130.33	9,226.92	17,635.00	6,396.99	16,641.61	16,641.61	8,654.86
Exhibited	11,843.48	8,867.72	17,008.92	6,245.96	16,346.80	16,346.80	8,409.70

The indexation caused only a minor change to the charge. The majority of the change has been caused by the inclusion of new works in the plan.

The issues relating to the affordability of the plan have not changed significantly to that reported to the Meeting of 20 March 2014.

Budget Inclusions

The recommendation to this report also seeks to have Council allocate a budget to enable expenditure of section 94 funds on various projects. These are projects that have been planned for and have been awaiting the modification to the plan. This report seeks to have budgets allocated for the following works:

- 1 \$134,000 out of the Section 94 Ocean Shores Community Facilities account to the South Golden Beach Community Hall Alterations and Additions Project; and
- 2 \$114,000 out of the Section 94 Mullumbimby Community Facilities account for the Civic Hall precinct works upgrades.
- 3 \$16,000 out of the Pre plan Rural Roads account for the Upgrade of Skinners Shoot Road south of Yagers Lane.

Statutory and Policy Compliance Implications

Clause 31 of the Environmental Planning and Assessment Regulation 2000 as set out below indicates the options available to Council to deal with the exhibited contributions plan:

31 Approval of contributions plan by council
(cf clause 30 of EP&A Regulation 1994)

(1) After considering any submissions about the draft contributions plan that have been duly made, the council:

(a) may approve the plan in the form in which it was publicly exhibited, or

(b) may approve the plan with such alterations as the council thinks fit, or

(c) may decide not to proceed with the plan.

- 5 (2) *The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.*
- (3) *Notice of a decision not to proceed with a contributions plan must include the council's reasons for the decision.*
- 10 (4) *A contributions plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.*

15 It is proposed to commence the operation of the plan on Monday 15 July. The modifications in the plan generally relate to how Council allocates existing funds to differing projects. These are not so significant as to warrant re-exhibition of the plan.

20 It is considered that the changes to the works schedules as a result of submissions and the allocation of currently held funds in the reconciliation process does not change the plan sufficiently to warrant re-exhibition.

If Council wishes to make significant changes to the works schedules then re-exhibition of the plan may be required.

CORPORATE AND COMMUNITY SERVICES and ENVIRONMENT AND PLANNING – STAFF REPORT

5 **Report No. 5.4.** **BSC ats Gordon Highlands LEC 10216 of 2014 and 10284 of 2014**

Executive Manager: Environment and Planning

Report Author: Ray Darney, Executive Manager Environment and Planning
Ralph James, Manager Governance

File No: #E2014/39478

Theme: Corporate Management – Legal Services

Summary: The Applicant will be amending their development proposal before asking the Land and Environment Court to determine their applications. This report presents the development application as amended for Council's consideration and presents options for finalisation of the Court proceedings if the Council is of a mind to approval the proposal with the amendments.

Note to Councillors: 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.

10

RECOMMENDATION:

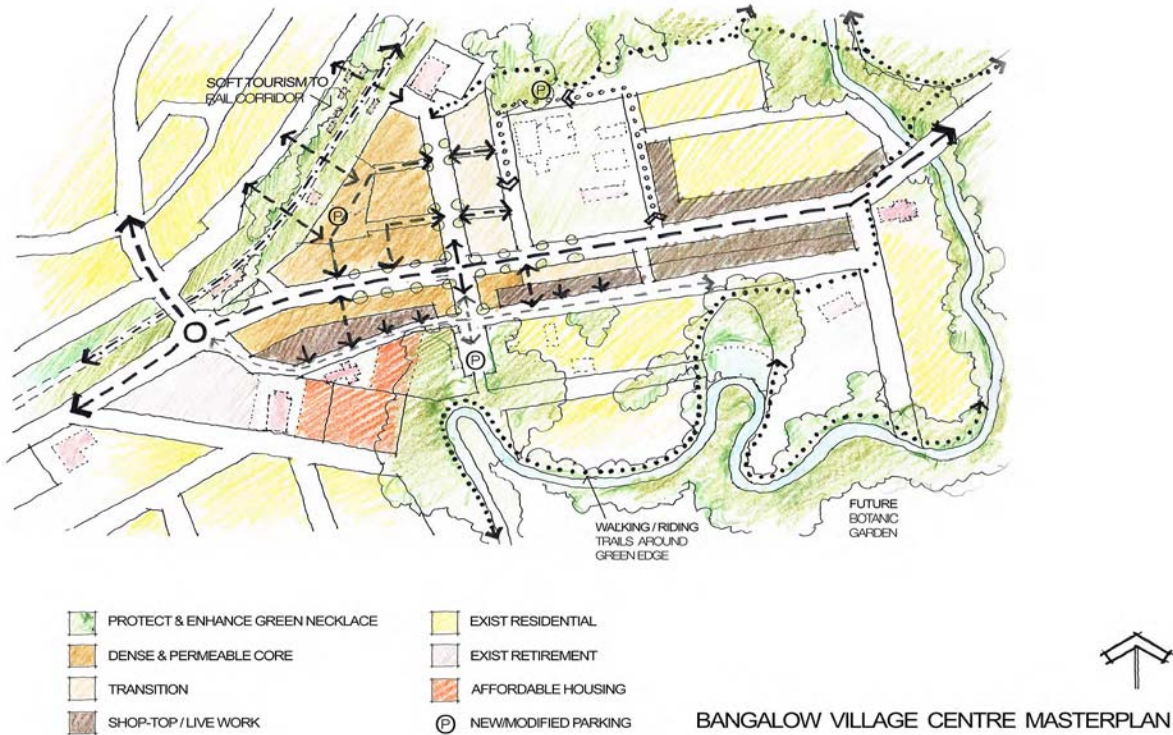
15 **That the General Manager be authorised to enter into a s34 Conciliation Agreement approving development application 10.2013.570.1, as amended, subject to appropriate conditions to be finalised under delegation.**

20 **Attachments:**

- **CONFIDENTIAL** Letter of advice from Marsdens Law Group #E2014/39858 [3 pages].....**Annexure 4(a)**
- Amended Plans #E2014/40660 [9 pages]..... **Annexure 4(b)**

ReportBackground

- 5 On 20 March 2014 Council considered a report on development application 10.2013.570.1 for removal of existing dwelling, and demolition of existing garage, erection of a two-storey mixed residential and commercial building including eight dwellings (residential flat building), three shops with basement car park and attic and resolved to refuse the application with reasons **(Res 14-87)**.
- 10 The applicant has appealed Council's refusal to the Land and Environment Court.
- (NB The applicant has also appealed the refusal, under delegation, of an associated development application 10.2014.4.1 for the removal of two trees and the two court cases are being case managed together. No further resolution from Council on 10.2014.4.1 is required, as this application was determined under delegation which means that staff retain delegated authority to finalise this appeal.)
- 15
- A s34 Conciliation Conference before Commissioner Morris was held at Council on Monday 16 June, 2014, commencing on site and continuing at Council's offices.
- 20
- The Applicants were represented by Garry Green of Pike and Verekers Lawyers. Council was represented by Adam Seton of Marsdens Law Group. Representatives of the owner and their consultants as well as staff were also in attendance.
- 25 The Conciliation was productive, in that the Applicant indicated it will amend its proposal in a number of respects including:
- reductions in height of the building of between 700 – 1200cm, with the result being that no part of the building will be higher than 10m;
 - 30 - removing the driveway and entry/exit onto Station Street and converting part of that area into landscaped open space, with access and egress proposed via Station Lane;
 - refinement of some of the architectural components;
 - increasing the building setback on the northern side and provide some landscaping between the building and boundary;
 - 35 - reducing the total floor space of the building to make the ratio between commercial and residential space between 23-25%;
 - and as a flow on from the above changes, making changes to the basement carparking;
 - retaining one of the street trees which was previously proposed for removal.
- 40 This report and the recommendation has been prepared on 19 June for inclusion in the Agenda for the Extraordinary Meeting but the amended plans will not be submitted until 20 June. The report and recommendation is premised on the basis that the plans that are submitted on 20 June will be as discussed and understood at the recent Conciliation Conference. If there is any deviation staff will advise separately when the plans are provided.
- 45
- Below is a concept put forward by the Development Advisory Panel's submission to the DCP Chapter for Bangalow (which is yet to be considered by Council), indicating a desire to retain permeability or pedestrian access to key parts of the centre of Bangalow, and the applicant's representatives at the Conciliation Conference indicated that they would review the design to provide some form of walkway access through the site if that was possible.
- 50



Map from Development Advisory Panel submission.

5 In order for the development to provide for increased setbacks, north and south of the proposal, it was noted that adjustments would need to be made to the plan and designs from those that were considered previously and refused by Council.

The outcome of the Conciliation Conference was:

- 10
1. The Applicant is going to amend their applications before the Court.
 2. The Applicant will provide amended plans in as much details as possible to Council by lunchtime Friday 20 June 2014.
 - 15
 3. Staff will prepare a report to the Council Extraordinary meeting on 26 June 2014, to enable Council an opportunity to consider the amended applications.
 - 20
 4. The Applications were adjourned to 30 June 2014 to allow the parties time to consider and inform the Court of the outcome of the Council meeting.

25 Agreement was also reached at the conference that the Applicant's architect will make himself available to attend an information session with community members (proposed for 24 June 2014) for the purposes of providing information on the changes made to the applications before the Court.

30 Staff offered to coordinate the arranging of that meeting as a means to get information on the changes to the community before the extraordinary meeting. That meeting is scheduled for 24 June 2014 and people who lodged submissions to the development application, the Bangalow Chamber of Commerce and the Development Advisory Group have been invited to attend.

Amended Development Application

5 Once the amended plans and schedule of changes has been supplied by the applicant they will be supplied as a Annexure to this report, together with staff comments on the amended proposal as submitted.

10 Staff will not in a position to put proposed conditions to this extraordinary meeting but if the staff recommendation in this report is adopted, the conditions can be finalised under delegation. The conditions would be based on the conditions which were reported to Council on the last occasion, changed or added to as necessary to address the matters arising from the amendment to the development proposal.

The Court Proceedings

15 The Conciliation Conference has been adjourned to give the people who lodged submissions, through the community meeting, and the Council a chance to consider the development proposal with the amendments the applicant has made.

20 Council needs to make a decision whether it maintains its refusal of the application, as amended, or endorses approval of the amended application, subject of course to suitable conditions.

If Council maintains its refusal of the application, then:

- 25 - The 2 Appeals will proceed to a defended hearing.
- Council will retain external experts to give expert witness evidence on Council's behalf.
- 30 - The expert witnesses are required to give their evidence independently and without bias ie they do not act as advocates for either party. That is, Council's evidence before the Court will be that of its independent experts who may agree or disagree with the Council refusal.
- Those people who made submissions to the original application will be advised of the hearing date and will have an opportunity, if they want to, to present a verbal submission to the Commissioner.
- 35 - The Commissioner will finally determine both development applications.

40 If Council endorses approval of the amended development proposal, it can authorise staff to enter into either a Conciliation Agreement or Consent Orders, which would approve the development applications, as amended, subject to conditions which staff would finalise under delegation.

The differences between finalising the Court proceedings via a Conciliation Agreement compared to Consent Orders are as follows:

45 1. A Conciliation Agreement is between Council and the applicant ie Council stays the determining authority. The Conciliation Agreement could be entered into immediately as the Conciliation Conference which started on Monday was adjourned and is still 'on foot' so a s34 Conciliation Agreement can be entered into.

50 Use of a Conciliation Agreement would bring the Court cases to an end immediately and without the need for Council to include any expert witness costs or any legal costs beyond the minor costs associated with finalising the Conciliation Agreement.

55 This is the option recommended by staff.

2. Consent Orders are Orders issued by the Court by agreement ie the Court becomes the determining authority and has the power to refuse to issue the orders the parties are asking for and/or to make different orders instead. With a Consent Orders hearing, everything, including the proposed conditions, is open to the Court to finally determine and, for example, a Commissioner might disagree with proposed conditions and issue orders with different conditions.

Because the Court becomes the determining authority, Consent Orders will not be entered by the Court without a hearing. That means a hearing would need to be held (usually commencing on-site then adjourning to a local Court house) and solicitors, expert witnesses and people who lodged an objection who wished to make a verbal submission to the hearing would have to attend, and Council would incur the associated legal and witnesses costs.

Usually, Consent Orders Hearing are shorter than defended hearings, often only 2 - 4 hours instead of the minimum full day hearing or more, but the hearing still needs to be prepared for and attended, just like a defended hearing would be, which means that the vast majority of the costs are still incurred.

Due to the reduced certainty and the higher costs, this is usually not the option recommended by staff for disposal of the court cases where Conciliation Agreement option is still available, as is the case here.

Taking into account the amendments that the applicant has made, the technical staff opinions, the confidential legal advice and the estimated costs of either a defended hearing or a consent orders hearing, staff recommend that Council endorse approval of the development applications, as amended, and authorise staff to finalise the appeal by way of a s34 Conciliation Agreement approving the development subject to conditions. Staff will finalise the second appeal in a similar manner.

Financial Implications

The estimated legal costs of defending this appeal are \$20,000 - \$22,000, excluding GST, assuming that there is no further Conciliation Conference and the hearing in the matter only takes 1 day. If there is further conciliation or the hearing takes longer the legal costs will be higher.

Because Council staff recommended that this development be approved, Council would have to retain the services of independent external experts. This has not been done yet (because staff did not want to start including expert witness costs before the outcome of the Conciliation Conference was known), so actual estimates of costs have not been obtained from those experts.

The likely costs of 2 external expert witnesses (traffic engineering and planner) is \$30,000 (on the assumption that there is no further conciliation or amendments and a 1 day hearing). If other experts are required to be retained, that would be at additional cost.

A full estimate of costs based on the above assumptions is therefore \$50,000 - \$52,000.

Statutory and Policy Compliance Implications

Following the Conciliation Conference staff requested advice from Marsdens on the prospects of success of defending the appeals (both the original applications and assuming the amendments discussed at the Conciliation were made to the application.

That advice is covered by legal professional privilege and is presented as CONFIDENTIAL at Annexure 4(a) #E2014/39858.

BYRON SHIRE COUNCIL

EXTRAORDINARY MEETING

26 JUNE 2014

(38)

It is recommended that Council move into confidential session If Councillors want to discuss the legal advice as per the following recommended motion:

- 5 1. That pursuant to Section 10A(2)(g) of the Local Government Act, 1993, Council resolve into Confidential Session to discuss BSC ats Gordon Highlands LEC 10216 of 2014 and 10284 of 2014.

- 10 2. That the reasons for closing the meeting to the public to consider this item are that Annexure 4(a) to the report contains advice concerning litigation and advice that would be privileged from production in legal proceedings on the grounds of legal professional privilege.

- 15 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 it could compromise the position of the Council in the legal proceedings.