



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 16 July 2015

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

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



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.

BYRON SHIRE COUNCIL

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. REQUESTS FOR LEAVE OF ABSENCE
4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
5. TABLING OF PECUNIARY INTEREST RETURNS (S450A LOCAL GOVERNMENT ACT 1993)
6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS
 - 6.1 Byron Shire Reserve Trust Committee held on 11 June 2015
 - 6.2 Ordinary Meeting held on 11 June 2015
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ORDINARY MEETING

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Infrastructure Services

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Nil

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Infrastructure Services

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

NOTICES OF MOTION

Notice of Motion No. 9.1 Meetings throughout the Shire

File No: I2015/465

5

I move that Council:

1. Hold three (3) Ordinary meetings within the Shire over the next 12 months: one in each of the following locations in Bangalow, Ocean Shores and Byron Bay.
2. Amend the adopted Meeting Schedule for 2015 to hold the 8 October 2015 Ordinary at a location, to be determined by the General Manager, in Bangalow.
3. Determine the dates for the Ordinary meetings to be held in Ocean Shores and Byron Bay when adopting the Ordinary Meeting Schedule for 2016

Councillor's Background Notes:

10

Recommended priority relative to other Delivery Plan tasks:

To be determined by Council.

15

Definition of the project/task:

That Council hold three (3) Ordinary meetings within the Shire over the next 12 months: one in each of the following locations in Bangalow, Ocean Shores and Byron Bay.

20

Source of Funds (if applicable):

Existing budgets

25

Signed: Cr Chris Cubis

Management Comments by Mark Arnold, Director Corporate and Community Services

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

30

Clarification of project/task:

The Notice of Motion is seeking that Council during the twelve (12) period from July 2015 to June 2016 hold three (3) Ordinary meetings at the following locations.

35

Bangalow
Ocean Shores
Byron Bay

40

Council under its adopted Code of Meeting Practice Policy No. 14/004 determines the meeting cycle, time, date and place of its Ordinary meetings in November/ December each year.

An extract from the Policy "Frequency of Ordinary Meetings of Council" has been reproduced below:

45

"4.1 Ordinary Meetings will be held on a three weekly meeting cycle excluding July and January each year.

4.2 The Council will by resolution, set the time, date and place of Ordinary meetings of the Council.

4.3 The scheduling of Ordinary meetings of Council may be changed by resolution of Council.

5

4.4 Unless determined to the contrary Special Purpose Committee meetings of Council are to be held according to Schedule "B".

10 Council at its Ordinary meeting held on 20 November 2015 considered a Report titled "Council Meeting Schedule for 2015" and resolved as follows:

"14-593 Resolved:

1. That Council adopts the following schedule of Ordinary Meetings for 2015: **Ordinary Meetings**

February – June

- 5 February 2015
- 26 February 2015
- 19 March 2015
- 9 April 2015
- 30 April 2015
- 21 May 2015
- 11 June 2015

July – December

- 16 July 2015
- 27 August 2015
- 17 September 2015
- 8 October 2015
- 29 October 2015
- 19 November 2015
- 10 December 2015

15 2. That the Ordinary Meetings commence at 9.00am and conclude no later than 6.00pm unless otherwise resolved by Council.

3. That Council hold all Ordinary Meetings in the Council Chambers, Mullumbimby. (Cubis/Woods)

20

On the basis that Council adopts the change proposed in the Notice of Motion, it is recommended that Council hold one Ordinary meeting in the July – December period of the 2015 Meeting Schedule at one of the nominated locations. Council could then determine the locations for the two other Ordinary meetings as part of adopting 2016 Meeting Schedule for February – June period and also consider alternate meeting places when scheduling for the July - December period.

25

This would allow both Councillors and staff to understand the financial and logistical implications of holding three (3) Ordinary meetings at other locations in the Shire when adopting the 2016 Meeting Schedule. It will also allow Councillor to assess the non tangible benefits.

30

Part 2 of the Notice of Motion would enable the General Manager to determine a meeting place, within the nominated location based on availability, and with consideration to required meeting facilities and other logistical requirements such as catering and space for the public gallery.

35

The logistics required to hold a council meeting off-site that meets the requirements of the staff, councillors and public include the following:

	Resource	Current Availability
1.	Laptop or PC which contains connectivity to Council's network for the purpose of Infocouncil functionality and the ability to access Council's document management system and Outlook.	This can be achieved with Council's current IT infrastructure but would require internet access to Council systems. The means of access will be dependent upon and determined by the location.
2.	A data projector and screen to allow for Councillors to	This can be achieved but

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.1

	witness live minute-taking and in order to provide the minute taker with assistance throughout the meeting. This would also help members of the public to follow the meeting process.	Councillors would not have access to individual screens or have a screen of the same quality as that in the Council Chambers.
3.	Sound and recording equipment to provide for both microphones and recording of the meeting.	This will need further investigation and has been referred to the Council's IT Team for consideration. It is anticipated that a solution can be sourced, but may not reproduce the sound and recording quality of the equipment in the Council Chambers
4.	A space which can accommodate at least 14 comfortable chairs and desks for Councillors and staff as well as a large enough area for the public gallery.	Depending on location, a space could be hired or a Council owned building could be used eg Cavanbah Centre in Ewingsdale
5.	Catering and a space for catering provisions which includes an area to lay out food, a kitchen with a fridge, coffee/tea equipment, crockery, cutlery and glassware, and possibly a bain marie (food warmer) if necessary.	Council's current catering supplier could cater to off-site locations. The space would need to be investigated for these requirements prior to booking
6.	Depending on the time of day the meeting is to be held and the location, overtime could be required for at least 2 staff members to set up and pack down the meeting before and/or after business hours as well as a staff member to be on site for catering purposes throughout the day.	Council's administration trainee and minute taker could be available to perform these functions.
7.	A phone to contact staff, if necessary, throughout the meeting.	Director's Council owned mobile phones available for use.

Director responsible for task implementation:

- 5 Director Corporate and Community Services

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

- 10 The holding of Ordinary Council meetings at alternative locations, would require additional staff time and resources to resource the setup, holding and pack up for the meetings. This would have a minor impact on the normal operations and activities of the Administration Team, which includes the Councillor Support function. The additional resourcing would be undertaken within allocated staff and resource budgets.
- 15 Any impacts should be considered in context, and balanced with the non financial benefits of Council holding its meetings in alternate locations other than Mullumbimby, and potentially involving community members from the alternate locations, to attend a Council meeting.

Financial and Resource Implications:

20

The costs of holding an Ordinary meeting would be resourced within existing budget allocation.

Legal and Policy Implications:

- 5 Council can amend its 2015 Meeting Schedule adopted via Resolution 14-593 in accordance with Clause 4. - Frequency of Ordinary Meeting of Council by Resolution of Council's Code of Meeting Practice 14/004 by a Resolution of Council.

- 10 Council in adopting its 2016 Meeting Schedule can consider and determine the time, date and place of Ordinary meetings of the Council for that twelve (12) month period.

Notice of Motion No. 9.2 **BMX Track**
File No: 12015/506

I move that Council receive a report on the implications of facilitating a BMX track or pump track within the Shire and to list possible locations.

5

Councillor's Background Notes:

10 Philippe Soria, of Byron BMX, has previously addressed Council asking if a BMX track or land could be provided; The nearest BMX track in the area is in Casino. There have been several unofficial tracks built in the shire, but Philippe and his group have asked for consideration of a more permanent track. Staff have met with Philippe to discuss needs and possibilities. I wish to formalise the process and inform other councillors of this discussion in the hope of finding a good outcome for this group, and pave the way for others within the shire.

15

Recommended priority relative to other Delivery Plan tasks:

Minimal impact.

20

Definition of the project/task:

Preparation of a report to Council.

25

Source of Funds (if applicable):

Section 94 funds are available in some areas.

30

Signed: Cr Chris Cubis

30

Management Comments by Phil Holloway, Director Community Infrastructure:

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

35

If a BMX or 'pump' track was built on a public reserve within Byron Shire, it would fall under Division 12 part 65 3(a) and 3(b) of the SEPP (Infrastructure) 2007 legislation and as such would be categorised as exempt development. The ultimate position of a BMX track or 'Pump' track will need to be assessed against the reserves existing uses and facilities and land categories as defined by the reserves Plan of Management.

40

Clarification of project/task:

45

Staff have conducted an initial review of possible sites for a purpose built BMX or 'Pump' Track within Suffolk Park and Byron Bay. It has been identified that the Cavanbah facility may accommodate a 'Pump' Track within the existing footprint. Introducing this sporting activity to the centre would add to the growing list of sport and recreational activities at the centre. The establishment of a larger scale BMX track, within the shire, will require a detailed assessment against planning and physical location constraints in effort to ensure appropriate placement.

50

Director responsible for task implementation:

Director, Infrastructure Services

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

Revised Plan of management for all sporting fields is to be delivered in this financial year. The revision shall consider this project.

5

Financial and Resource Implications:

The construction of a 'pump track' through to a BMX Australia approved track is in the range of \$20,000 - \$200,000 plus site preparation works.

10

Legal and Policy Implications:

Site adoption must consider zoning under LEP2014 and the reserves individual POM, including any ecological or physical constraints.

15

Notice of Motion No. 9.3 Citizen Jury - Byron People's Forum
File No: I2015/639

I move that Council receive a staff report on the formation of a Citizen Jury to be called the 'Byron People's Panel'. The identified task of the panel would be to recommend to Council – 'a financial plan to deliver the outcomes and strategies adopted in the Byron Bay Town Centre Masterplan'.

5

Councillor's Background Notes:

10 **What is a Citizen Jury?**

Citizen Juries have been tried in NSW, Victoria and South Australia to assist both local councils and state governments deal with complex policy issues requiring new ways of thinking. Byron Shire Council held one in 2007 to assist in the development of the Tourism Management Strategy.

15

The most recent example has been a panel tasked with developing a 10-year financial plan for Melbourne City Council. The council recently adopted most of the recommendations proposed.

Quick References:

20

1. <http://participate.melbourne.vic.gov.au/projects/10yearplan>
2. <http://www.theage.com.au/comment/experiment-pays-off-melbourne-peoples-panel-produces-robust-policy-20150628-ghzoz4>

25

Other examples include:

- 1) Solutions to Alcohol Fuelled Violence (SA State Government)
- 2) Ways for cyclists and Motorists to Safely Share Roads (SA State Government)
- 30 3) A Safe Nightlife (Sydney City Council)
- 4) Energy Policy (NSW State Government)
- 5) Rates and Council Services (Canada Bay Council)

35

Why use a Citizen Jury?

We always hear from the usual community groups, the media, letters to the editor, the staff, the management. We want to hear from regular people. They've come from outside, they are completely independent and they can give us some fresh, independent, well-researched advice.

40

A Citizen Jury brings a new approach to old problems.

A good starting point in understanding the benefits of such an approach is the information gathered through the two juries undertaken in South Australia.

45

<http://yoursay.sa.gov.au/what-is-a-citizens-jury-all-about>

Recently, at a workshop session for the Byron Bay Town Centre Masterplan a resident made the comment that he was very impressed with where the process was leading but was concerned with how it would be delivered.

50

As a Councillor I share this sentiment.

We have a wealth of financial, corporate and managerial experience in the residents of the Byron Shire. Provided with a worthwhile challenge that could make a lasting contribution to our community I believe they would welcome the opportunity to participate in a meaningful manner.

5 Developing the Byron Bay Town Centre Masterplan will be this council's legacy. The delivery of the plan will be the task of future councils. Recommendations proposed by the 'Byron People's Panel' will provide the necessary guidance for this to happen.

10 **What are the tasks that need to be identified?**

The following list is an example of the type of information required within the staff report. This is indicative and certainly not meant to be neither exhaustive nor prescriptive:

- 15
- Selection process for the jury
 - Key Focus Questions to be answered
 - Process to be adopted for jury deliberations
 - Time frame for delivery of recommendations
 - Budget required to undertake the jury

20 Recommended priority relative to other Delivery Plan tasks:

CM1: Effective governance, business, project and financial management.

25 Definition of the project/task:

Prepare a staff report to be presented to Council on the formation of a Citizen Jury to be called the 'Byron People's Panel'. The identified task of the panel would be to recommend to Council - 'a financial plan to deliver the outcomes and strategies adopted in the Byron Bay Town Centre Masterplan'.

30 Source of Funds (if applicable):

Not applicable

35 **Signed: Cr Paul Spooner**

40 **Management Comments by Ken Gainger, General Manager:**
(Management Comments must not include formatted recommendations – resolution 11-979)

Citizens Juries have been used widely within Australia and overseas for many years with considerable success and the utilisation of such forums is entirely consistent with Council's desire to engage effectively with the community. Citizens Juries can be utilised to involve communities in various levels of decision-making as outlined across the IAP2 spectrum, i.e. from inform/involve through to making autonomous determinations. The proposal from Cr Spooner sits mid way across the spectrum whereby the Jury considers an issue and advises the Council on expenditure proposals. Juries (or Citizens Panels) can be utilised by the Council for a broad range of tasks where community feedback is sought on critical projects and initiatives. The creation of such a Panel would be a welcome addition to Council's community engagement capability.

55 With respect to utilising the Citizens Jury to "recommend to Council -a financial plan to deliver the outcomes and strategies adopted in the Byron Bay Town Centre Master Plan" I believe that such a proposition is perhaps a little premature for the following reasons:

1. The Master Plan delivered by McGregor Coxall will be very broad in terms of what it is proposing
2. There will be no specific projects developed – rather broad concepts and strategies
3. Only the Catalyst Sites will have focused attention but again conceptually

5 Accordingly, the Council will need to establish an intermediate step to develop processes to translate the new strategic direction offered by the BBTCMP into specific projects. Such a process could, for example, be facilitated by staff and councillors in conjunction with the BBTCMP “Bounce” Group which has been engaged with this project from the start and has broad representation.

10 The proposal to engage a Citizen Jury to prepare a financial plan around the funding of such a significant project (once the specific BBTCMP projects are clearly enunciated and prioritised by the Council) is ambitious but achievable. Council funding is limited albeit boosted somewhat by revenue flowing from Paid Parking, but for any sizable projects to be funded will require commercial support, e.g. through Public Private Partnerships (PPPs). Such partnerships are heavily regulated by the state government.

15 I recently attended the Future of Local Government Summit held in Melbourne where a number of councils (including Melbourne City Council) showcased a similar Citizen Panel approach to financial planning.

20 Clarification of project/task:

Prepare a staff report to be presented to Council on the formation of a Citizen Jury to be called the ‘Byron People’s Panel’.

Director responsible for task implementation:

Sustainable Environment and Economy

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

Not applicable

35 Financial and Resource Implications:

Not applicable

Legal and Policy Implications:

40 Not applicable

observations over the past two decades of flooding on the roadway and of river gauge heights for GS 201001 Brunswick River at Sherrys Bridge. The heights are available on http://www.bom.gov.au/cgi-bin/wrap_fwo.pl?IDN60140.html

5 Part 5 addresses issues relating to signage and to the fact of rapid rise of flood waters in small coastal catchments such as the Brunswick River. There are shortfalls in static signage - regular drivers get used to the signs and don't 'see' them. The existing flood depth posts extend a long way upstream and downstream but danger is focussed at one location on the Road. Temporary signs suffer the "cry wolf" factor – "water over road" signs are placed some hours before water is over the road. The most recent flood (March or April 2015) covered the road from about midnight to 3am.

10 Localised electronic warning systems are available that will sense water level and turn a danger warning sign and flashing lights only while the hazard is present. These signs are not dissimilar to school "40 zones" but they only activate while the danger is actual. Examination of this option could lead to grant applications for this and other locations, once a program has been developed.

15



Main Arm Road: one-lane crossing at Blindmouth Creek



Main Arm Road: dangerous location near private bridge over Brunswick River



Brunswick River: private bridge near Main Arm Road

5

Recommended priority relative to other Delivery Plan tasks:

Parts 1 to 4 of the Motion relate to activities planned under current works programs.

Part 5 relates to flood warning and road safety.

5 Definition of the project/task:

Consider flood immunity for this upgrade within the context of that at other locations. Establish flood immunity at a location closer towards Mullumbimby. Consider an alternative flood warning system at that location.

10 Source of Funds (if applicable):

Parts 1, 2 and 4 of the Motion relate to activities within current works programs.

15 Part 3 is an additional task, requiring survey and design. I am advised that survey and design would require a budget of \$15,000 (construction may be of the order of \$150,000). Black spot funding may be able to be accessed for such a project.

20 Part 5 relates to flood warning and road safety. Staff could complete this task within current programs but it would have to be prioritised above other competing work. Alternatively a consultant could be engaged for the task at a cost estimated to be of the order of \$20,000. Staff please advise.

Signed: Cr Duncan Dey

Management Comments by Phil Holloway, Director Infrastructure Services:

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

Clarification of project/task:

30 Part 5 calls for a report. There has been insufficient time to fully assess the implications of Parts 1 – 4 as they pertain to design of this infrastructure. The report called for in Part 5 could be expanded to report on the first four parts also.

Staff have been investigating options for automated flood warning systems and funding may be available for this program.

35 Council is currently in the process of designing the Blindmouth Creek Causeway and changes in the design specification at this stage (i.e. Flood Immunity) may delay delivery.

Director responsible for task implementation:

40 Director Infrastructure Services

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

45 Project is included in the capital program

Financial and Resource Implications:

50 Parts 1 to 4 can be considered as part of the detailed design. Part 5 will need to be prioritized with available resources.

Legal and Policy Implications:

The implications of the design suggestions should be assessed.

Notice of Motion No. 9.5 **Middleton Street carpark**
File No: I2015/641

5 **I move that Council receive a report in August on the conflict between expansion as currently proposed for this foreshore carpark and the Byron Bay Town Centre Masterplan:**

Attachments:

1 Email attachment BBTCMP, E2015/41829

10 **Councillor's Background Notes:**

15 Item 4.2 at the 11 June meeting of the Byron Shire Reserve Trust Committee considered this matter and adopted the staff recommendation to confirm its support to reconstruct Middleton Street and Middleton Street Car Park and to allocate \$165,000 from the Crown Park Parking Reserve for the works in the 2015/16 budget.

Two options for the layout of the carpark were presented and each increases the number of parking spaces, by expanding the footprint of the carpark on Denning Park. These layouts appear in the Agenda for that meeting, on Council's website.

20 At the meeting and prior to it, I asked whether the project was compatible with the likely Masterplan outcome of preferring space for people over cars.

25 Presentations on town catalyst sites at a Masterplan workshop on 20 June listed short, medium and long term plans for the town, including this area. This car park proposal was not mentioned. I asked the Masterplan consultant about the matter by email on 24 June and received a reply (as attached) that the proposal conflicts with the Masterplan's strategies.

Recommended priority relative to other Delivery Plan tasks:

Resolving or at least articulating this conflict is not an onerous task but should be done before the car park proposal proceeds.

30 Definition of the project/task:

Examine the conflict between expansion of the carpark and strategies likely to be proposed under Byron Bay Town Centre Masterplan.

Source of Funds (if applicable):

35 Please advise.

Signed: Cr Duncan Dey

Management Comments by Phil Holloway, Director Infrastructure Services:

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

Clarification of project/task:

45 The Notice of Motion is requesting staff to prepare a Report to the August Ordinary meeting scheduled for 27 August 2015.

Director responsible for task implementation:

Director Infrastructure Services

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

5 The Middleton Street (North) Carpark Improvement Project forms part of the 2014/15 Capital Works Program adopted by Council at its ordinary meeting held on 12 June 2014 in the 2014/15 Budget. The funding provided in the Budget for the project being \$175,000 for design and construction sourced from S94 Funds.

10 The Reserve Trust at its Meeting held on 11 June in Resolution **15-292** resolved as follows:

“Resolved that Council, as the Reserve Trust Manager of Byron Bay (R82000) Reserve Trust, confirm its support to reconstruct Middleton Street and the Middleton Street Car park and Council allocate \$165,000 from Crown Paid Parking Reserve for the works in the 2015/16 Budget.”

15 The funding sourced from the Crown Paid Parking Reserve, being the funds required to fund the carparking works on the Crown Reserve.

20 The works for the Middleton Street (South) Carpark and Road Project were completed in previous budget periods, and were undertaken during the construction of the new Byron Bay Library project.

25 The works proposed in the report to the Reserve Trust meeting held on 11 June 2015, have been the subject of discussions between Council and the Crown since 2008. Council and the Crown were at that time in discussions over the construction of the Clarkes Beach Carpark, which has subsequently been constructed, with Council at the time being requested to develop a proposal to formalise the carparking arrangements at this location and to reconstruct the public road within the road reserve.

30 The Project which was supported by the Reserve Trust in Resolution 15-292, is also supported by Crown Lands, as it meets this request. This Project as proposed does require Council to either realign the public road within the road reserve or require Council to compulsorily acquire land from the Crown Reserve for the reconstruction of the public road. The realignment of the road would require additional earth works and add significantly to the cost of the Project.

35 This Project predates the MasterPlan process, and the overall Project has formed part of the Council’s adopted Capital Works Program for a number financial periods. Project as proposed resolves a long standing road encroachment and carparking issue which has been the subject of discussion for approximately seven (7) years.

40 The comment from Mr Cowdy that the few additional car parking spaces gained through this realignment might be at odds with the Master Plan consultants proposal to pedestrianise the Byron Bay township is frankly misguided.

Financial and Resource Implications:

45 Should the Council support this NOM the preparation of the report will be undertaken within existing allocated resources.

Legal and Policy Implications:

50 Not applicable.

Notice of Motion No. 9.6 Support for Waterlily Community Playspace
File No: I2015/642

I move that Council:

- 1. Supports the endeavours of Waterlily Community Playspace to establish a play area in Waterlily Park, Ocean Shores.**
- 2. Develops a formal relationship with Waterlily Community Playspace, as they are an independent community group formed to work on and improve a Council asset.**

5

Councillor's Background Notes:

10 Waterlily Park has the potential to become a highly frequented community hub focused on formal sporting and informal recreational activities. A community group- 'Waterlily Community Playspace' (WCP) has recently formed with the intention to design, fund and construct a play area for the community. They intend to work alongside Council, and to seek external funding to compliment their fundraising through local, state and commonwealth funding and with support of other pertinent agencies and organisations.

15

It is envisioned that the community will direct the design requirements, with the potential of a local design team supporting the community. Using the community 'barn raising' model seen across Australia and elsewhere, the whole space can be constructed over a 5-6 day period by hundreds of volunteers.

20

It is this model that holds the most excitement and potential for profound community development. With local businesses supporting, local schools engaging, local residents fundraising and local volunteers building the playground, this could be the unifying project that galvanises the community of Ocean Shores and the northern part of the Shire.

25

The relationship between WCP and Council is a replication of that which currently occurs between the Ocean Shores Tidy Town group and Council. Tidy Towns Ocean Shores is an independent group that works on and improves Council assets - in particular the Ocean Shores Lookout open space area. The relationship generally ensures Council can assist where required, for example, by providing insurance and support, whilst the group does the work.

30

Thus, support for this Notice of Motion should not commit Council to any significant financial impost, yet provide WCP the commitment and surety to commence fundraising and developing the project.

35

Currently, there is a Plan Of Management (PoM) for Waterlily Park, though this will soon be reviewed and redeveloped. Under the current PoM, the establishment of a playground is supported. Pertinent approval within the PoM exists for a playspace.

40

The section within the PoM, 'Strategies and Action Plan' contains an Actions Table that shows clear support for such an endeavour. Action 6- Quality of the Park Area (adequately provide for the recreational needs of the community,) contains the following performance targets:

- develop park area in Water Lily Park that caters for a number of different recreational opportunities reflective of identified needs,

- to upgrade and improve facilities, landscaping and equipment at Water Lily Park;
- to provide appropriate facilities for passive recreation for a variety of recreational pursuits.

5 The section within the PoM, 'Future Use and Development of the Land', expressly authorises for Water Lily Park, Ocean Shores within both the areas categorised as *Sportsground* and *Park* areas, development authorised for embellishments in the form of: drainage and irrigation, picnic facilities, playground equipment, lighting, walkway / cycleways, minor earthworks, landscaping and fencing.

10 The state and management of the other areas within Waterlily Park should be progressed where possible alongside this community initiative. Noting that the consultants work to study the lake area and propose options for its ongoing management is soon to commence. That, alongside the already commenced weeding operations and the playspace initiative all point towards a momentum of activation and beautification of Waterlily Park and an enhanced connection to it by the community. This would be a wonderful result for the localised environment, Council and the community.

15 This NoM is not intended to provide a direction on aspects such as cost, location, style and use of the playspace, these things will most appropriately form as the community develops the design and brief; it is simply to inform the community of willingness by Council to work alongside and assist where possible.

Recommended priority relative to other Delivery Plan tasks:

- 20 CI1.3 Plan for the provision of community facilities.
CI3.4 Ensure all public parks and open spaces are accessible, maintained and managed to meet the recreational needs of current and future residents.

Definition of the project/task:

25 Support the endeavours of the Waterlily Community Playspace and development a formal relationship

Source of Funds (if applicable):

30 N/A

Signed: Cr Simon Richardson

35 **Management Comments by Phil Holloway, Director Infrastructure Services:**
(Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:

40 To provide support and assistance to WCP for the development of a Playspace at Water Lily Park.

Director responsible for task implementation:

45 Director Infrastructure Services

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

50 Dependant on the proposed location of the Playspace, the current PoM may need to be amended as is proposed.

Financial and Resource Implications:

5 As this proposal is limited to forming a relationship with Waterlily Community Playspace there are no financial or resource implications.

Legal and Policy Implications:

10 Waterlily Park, Ocean Shores is zoned as RE1 Public recreation under LEP 2014 for which a playspace is a permitted land use. The current PoM references zoning and land categories in accordance with LEP 1988. As the development is within the permitted use under the current LEP and where the proposal is in accordance with the PoM or as redeveloped, the proposal could be categorised as exempt development under Division 12 part 65 3(b) of the SEPP (Infrastructure) 2007.

15

PETITIONS

Petition No. 10.1 **Mullumbimby Flying Fox Colony**
Directorate: Corporate and Community Services
Report Author: Gayle McCallum, Governance Officer
 Andrew Erskine, Open Space Technical Officer
File No: I2015/477
Theme: Ecology
 Land and Natural Environment

At Council's Ordinary meeting held on 21 May 2015 the Mayor Simon Richardson tabled a petition containing 1034 signatures which states:

"We, the undersigned, petition the Mayor and Councillors of Byron Shire Council to create and implement a Management Plan to address the negative impacts caused by an expanding flying fox colony camped in and around our residential area in Mullumbimby.

We request urgent action to factor in the annual winter migration of the flying fox, which will enable Vegetation control and stress free amendments to the habitat while unoccupied including tree-logging and removal of noxious species (eg camphor laurels)."

Comments from Director Infrastructure Services:

Council at this Ordinary Meeting on 21 May considered a Notice of Motion lodged by Cr Dey titled "Flying Fox Camp Interactions" wherein Council resolved:

15-214 **Resolved** that Council:

1. Acknowledge that there are conflicts (noise, smell) between residential amenity and activity in flying fox camps in at least three urban locations of the Shire;
2. Acknowledge that one such colony (Pine/Palm Avenues in Mullumbimby) resides in a recently planted Crown Reserve under Council control;
3. Consider and undertake any short-term works or measures that
 - (i) do not threaten the species, and
 - (ii) may ameliorate the impacts of the camp on neighbouring residents at Pine/Palm Avenues in Mullumbimby; and
4. Consider and report on similar measures and on the need for Camp Management Plans for camps at Eltham Place in Bangalow and at Beech Drive in Suffolk Park.
5. Receive a report on potential funding sources for the works resulting from Part 3 above, if available funds are not adequate.

The petitioner has been advised of Council's resolution in this matter

This resolution has been referred to Andy Erskine, Superintendent Parks, for action who advises;

Council has recently received a number of complaints regarding the flying-fox camp along Chinbible Creek, Yoga Bera Creek and Yalgan Gully in Mullumbimby. Council has been

5 monitoring the camp since 2010 when a small number of flying foxes were observed using the trees on a private property at the end of Garden Ave. The camp has significantly increased in size and location since then and is causing concerns to nearby residents. Council is aware of the issues raised by the flying-fox camp and the impacts on neighbouring residents, and is working to put in place management actions to address these impacts.

The camp is occupied by two species, the Black Flying-fox and Grey-headed Flying-fox.

10 Both species are protected under the *National Parks and Wildlife Act 1974*, and the Grey-headed Flying-fox is listed as a threatened species under the NSW *Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth). Given the protection afforded to flying foxes, any works which disturb or impact on their habitat requires approval from the NSW Office of Environment and Heritage (OEH). To facilitate this process OEH have a Flying-fox Camp Management Policy. This new policy differs from their previous policy in its focus on minimising the impacts of camps on people and its longer-term approach to camp management.

15 In order to gain approval for works which disturb or harm flying-foxes, landowners are required to prepare a flying-fox camp management plan. In regard to these management plans the policy states:

20 *Camp management plans are generally prepared by local government or public authorities who manage land, and set out the short-term, medium-term and long-term strategy for the management of specific flying-fox camps. They provide strategic guidance on managing flying-fox camps that is consistent with relevant policy and legislative provisions. Camp management plans should consider the full range of available options, following the hierarchy of options outlined in Section 3, and seek to balance community concerns with environmental outcomes and neighbourhood amenity. Plans should also include contingencies to manage unsuitable new camps. The camp management plan should be aligned with the community engagement strategy, and be publicly exhibited.*

25 The management of the Mullumbimby camp is made more complex as it occurs over various land tenures; including Council-owned, Crown and private land and also includes native riparian vegetation of high conservation value, including threatened plant species and communities. All stakeholders will need to be involved in the planning process to ensure a successful outcome. Council is currently liaising with the Office of Environment and Heritage and Crown Land Services to determine resource requirements and to map the process for the development of a flying-fox camp management plan.

30 Council has allocate funds towards development of a flying-fox management plan in the 2015/16 Delivery program (\$20,000). This allocation was confirmed at the Council Extraordinary Meeting on 25 June 2015.

35 Community consultation will be an integral part of the development of the management plan to be developed in the later half of 2015. Letters recently received from affected residents outlining concerns with the camp and incorporating suggestions as to a way forward will be considered when developing the management plan.

40 Council's monitoring has shown that the flying fox numbers significantly reduce or move completely in winter. Staff will be monitoring the camp to determine the flying foxes movements over winter and will look for opportunities to undertake some interim vegetation management works e.g. trimming of trees.

45 Council staff inspected the Mullumbimby Camp with a number of residents from Palm Avenue in May. From this onsite inspection it was identified that much of the possible interim works in the

5 immediate impact areas of the camp were on private land. It must be noted that Council cannot undertake or bear the cost of tree removal or lopping on land that it does not own or manage. Landowners in the immediately affected area of the camp that would like to undertake tree pruning or weed removal on their private property can contact Council's Ecological Planner, Sandra Pimm, on 02 6626 7104 for initial advice on the required procedure.

10 Council will engage with the community when developing the flying fox management plan to ensure that a solution acceptable to the community is developed. A detailed information sheet about flying-foxes in Byron Shire is available on Council's website, <http://www.byron.nsw.gov.au/publications/flying-fox-camps-in-byron-shire> and includes a list of references and further reading.

RECOMMENDATION:

1. That the petition regarding the Mullumbimby Flying Fox Colony be noted.
2. That the petition be referred to the Director Infrastructure Services.
3. That the petitioner be kept informed on Council's progress in this matter.

to local government by the Australian Centre of Excellence for Local Government (ACELG)

- The research aims to better understand how and why the activities of local governments, and their roles in society are valued by communities.
- Key Question: Thinking About Where You Live, Which Level Of Government Is Best Able To Make Decisions About Your Local Area? (N=2006)
 - ❖ Don't know 7.5%
 - ❖ Federal Government 2.0%
 - ❖ State Government 15.8%
 - ❖ Local Government 74.7%

Panel: Is Local Government a Real Partner?

Frank Panucci The Australia Council for the Arts

- Subjective Wellbeing-asking people how they feel themselves about their communities, their lives etc.
- Of all tiers, funding of the Arts has grown greatest in local government-11% between 2012-13 alone

Peter Crosier- Wentworth Group of Concerned Scientists

- Natural Environmental Implementations develop innovation and economic benefits. The notion that environmental works cannot occur due to imperiling economic wellbeing is a nonsense.
- We must change reactive planning and change economic signals that reward pollution, we must change the underinvestment in our threatened species and we must change our planning in the urban and human environments
- Recently produced a few documents- including: [Blueprint for a Healthy Environment and a Productive Economy](#) and [Using Markets to Preserve Natural Capital](#),
- If we remove the incentives to that which pollutes the environment and use this to support our natural capital the process is quite easy.
- All this can only happen if we have environmental accounts across regions- we need to know what we have and the status of what we have.
- WE need to stop kidding ourselves that short term decisions don't have long term impacts; we also need to stop kidding ourselves that the small group of people heavily involved- farmers, indigenous groups etc. have anywhere near enough funding to do what is needed.

Cassandra Goldie Australian Council of Social Services (ACOSS)

- Housing affordability is the top priority within the social services sector
- 7.5% affordable housing, 7.5% social housing development provisions just put in place by City of Sydney by 2030

White Paper on Taxation: John Comrie (Deloitte)

Tax Reform Options-Implications for Local Government

- 2010 Henry Review provided a comprehensive analysis of tax system; very few recommendations were implemented, or even debated.
- Is there a problem? Australia relies more on taxes than other countries, for example,

corporate and personal income taxes and State taxes.

- Vertical Fiscal Imbalance- Commonwealth generates more tax, States' costs exceed their own source revenue.
- White paper- asks a few questions relating to local government:
 1. Is there duplication and overlap between local government and other levels?
 2. What roles and responsibilities should be articulated?
 3. What reforms are required?
- Land/Property reform: to what extent would a potential future increase in state land tax impact on capacity of councils to revenue through rate increases?
- GST reform: if GST increases, would the Commonwealth government seek to pay less in FAG's- or should States be doing so?
- Local Government revenue from rates: NSW 34%, Vic 46%, SA 63%- (grants pretty much equal across the country 8-11%)
- Q and A: With all the impetus around property tax lead to more investment in shares? Perhaps and will be a consideration within debate

Leader of the Opposition, the Hon Bill Shorten MP

- In 10 years, there will be 4.5 million people living in capital cities-N.B: this will increase pressure on us in Byron as many seek to flee this explosion.
- The commonwealth government should use its 'fiscal horse power' to support state and local governments provide the appropriate infrastructure.

The Hon Dr John Bannon AO, former Premier of South Australia

(Member of the Commonwealth Government Federation Review Panel)

- This is a moment to be grasped.
- Magna Carta- the 800th anniversary was yesterday. Influenced the constitution makers of Australia- more so due the powers residing in its ideas. The Spirit of the Magna Carta remains.
- Within reform agenda- there is an incredible amount of disparate data that exists across sectors and States-this is one area that can be tackled easily.
- How can LG's role in the process be strategically managed? Must get past just recognition within constitution.
- Other ways? Approach needs to be through the State as it is there where it is LG needs are understood- at a high policy level, not just via various departments.

National Environment Agenda

National Climate Projections - CSIRO

- IPCC concluded that warming of the climate system is unequivocal-oceans have warmed, snow and ice have diminished and sea level has risen
- Greater than 95% chance that human influence is dominant cause of warming since the mid 20th century
- Australia: hotter since 1910, more rainfall in Nth since 1970s, less rainfall in south east

and west since 1970's, more extreme daily rain and fire weather, sea level rise

Climate projections with levels of confidence

- Temperature: 2100- rise between 1 degree to over 4 degrees. Projections of increased temperatures (Very high confidence); more frequent and hotter days (very high confidence)
- Rainfall: larger variability year to year than temperature. Overall-average rainfall will fall, but extreme events will rise. Southern Australia-many more drier years than wet years. Northern Australia- high confidence that natural variability will dominate. Increase in extreme rainfall events. (high confidence)
- Tropical cyclone: less in number, but higher intensity (medium confidence)
- Sea level rise: depending on emissions- rises up to a metre by 2100

Website: www.climatechangeinaustralia.gov.au

Emissions Reduction Fund – Department of the Environment

- Earn carbon credit –sell credits to government or to other businesses
- \$2.55 billion initial funding-\$600 M already committed
- Many benefits for participating: energy efficiency, land sector, waste and wastewater and transport
- Assistance available from AusIndustry
- Economies of scale: Aggregate- multiple activities into a single project, multiple projects into a single bid, manage risk across a broader portfolio of projects and participants.
- \$1.9 billion still available
- Updates: www.cleanenergyregulator.gov.au/emissions-reduction-fund

Signed: Cr Simon Richardson

STAFF REPORTS - GENERAL MANAGER

Report No. 13.1 Northern Rivers Joint Organisation**Directorate:** General Manager5 **Report Author:** Ken Gainger, General Manager**File No:** I2015/547**Theme:** Corporate Management

Governance Services

10

Summary:

Since 2011 Council has been participating in the NSW Government's local government reform process initially titled "Destination 2036" and later changed to "Fit for the Future". Following the presentation of a report from the Independent Local Government Review Panel (that was established by the government in 2012) recommending the establishment of regional Joint Organisations across regional NSW, the state government adopted the proposal. Subsequently five regions across the state were selected by the Minister for Local Government to participate in a JO trial program and he appointed Elton Consulting Group to facilitate and report upon the trial. The Northern Rivers Region was not selected to participate in the trial. A progress report on the trial will be completed in August 2015.

While the Northern Rivers Region was not selected to participate in the trial, the General Managers of the six Northern Rivers councils chose to initiate a process of developing an agreed basis for the establishment of a Northern Rivers Joint Organisation so as to be on the "front foot" in developing a model that worked for the constituent councils rather than await the outcome of the trial and have a mandatory blue print imposed upon them. The resultant NRJO model proposed is reflected in the NOROC Joint Organisation Discussion Paper which is included as an attachment to this report. This Discussion Paper was submitted to a meeting of NOROC held on Friday 5th June 2015 and was supported subject to all constituent councils also supporting the proposal.

This report seeks Council's support for the Northern Rivers Joint Organisation model outlined in the Discussion Paper.

35

RECOMMENDATION:

That Council endorse the proposed Northern Rivers Joint Organisation model proposed in the NOROC Discussion Paper.

Attachments:

- 40 1 Northern Rivers Joint Organisation Discussion Paper, E2015/37927
2 Fit for the Future Joint Organisations A roadmap for intergovernmental collaboration in NSW, E2015/37936

Report

5 Since 2011 Council has been participating in the NSW Government's local government reform process initially titled "Destination 2036" and later changed to "Fit for the Future". Following the presentation of a report from the Independent Local Government Review Panel (that was established by the government in 2012) recommending the establishment of regional Joint Organisations across regional NSW, the state government adopted the proposal. (See attached document "*Fit for the Future – Joint Organisations – A roadmap for intergovernmental collaboration in NSW*"). Subsequently five regions across the state were selected by the Minister for Local Government to participate in a JO trial program and he appointed Elton Consulting Group to facilitate and report upon the trial. The Northern Rivers Region was not selected to participate in the trial. A progress report on the trial will be completed in August 2015.

15 While the Northern Rivers Region was not selected to participate in the trial, the General Managers of the six Northern Rivers councils chose to initiate a process of developing an agreed basis for the establishment of a Northern Rivers Joint Organisation so as to be on the "front foot" in developing a model that worked for the constituent councils rather than await the outcome of the trial and have a mandatory blue print imposed upon them. The resultant NRJO model proposed is reflected in the NOROC Joint Organisation Discussion Paper which is included as an attachment to this report. This Discussion Paper was submitted to a meeting of NOROC held on Friday 5th June 2015 and was supported subject to all constituent councils also supporting the proposal.

25 This report seeks Council's support for the Northern Rivers Joint Organisation model outlined in the Discussion Paper.

What are the key features of the proposed NRJO?

The key features of the NOROC model are:

- 30 • Proposing a minimalist model so as to avoid creating another layer of bureaucracy
- Limiting the JO role (at least initially) to regional strategic planning, regional advocacy, and intergovernmental relations
- Appointing an Executive Officer (initially part time) at remuneration level equivalent to Director positions in councils
- 35 • Each Council to have two delegates appointed to the JO – the Mayor and one other councillor to be elected by each council
- Each council to have one vote per delegate regardless of council size
- Each council to pay the same annual fee, i.e. Kyogle pays the same as Tweed
- Membership of the JO is mandatory for each council (government directive)
- 40 • Associate members will be supported e.g. County Councils, bordering councils such as Tenterfield – Associate members will not receive a vote but will pay an annual membership fee
- Membership fees will increase by 66% overall – BSC's fee will increase from \$15K p.a. (current annual NOROC membership fee) to \$50K p.a.
- 45 • NOROC will be wound up once the NRJO is established

The NRJO model has been discussed with Ms Kim Anson, CEO of Elton Consulting Group, and is consistent with proposed structures of a number of the trial JOs.

Financial Implications

50 There are no financial implications for the 2015/16 financial year as the NRJO will most likely be established in the latter part of 2016. Therefore in the 2016/17 financial year Byron Council will need to fund the increased membership fee of \$50K (an increase of \$35K p.a.).

Statutory and Policy Compliance Implications

See attachment *Fit for the Future, Joint Organisations, A roadmap for intergovernmental collaboration in NSW.*

5

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.2 **Outstanding Actions from Cultural Plan**
Directorate: Corporate and Community Services
5 **Report Author:** Joanne McMurtry, Community Policy Officer
File No: I2015/473
Theme: Society and Culture
 Community Development

10 **Summary:**

At the 22 May 2014 ordinary meeting, a report was presented on the implementation of the Byron Shire Cultural Plan 2008 – 2013. Council subsequently resolved (14-246), to receive a further
15 report outlining the process to facilitate a number of outstanding strategies from the Cultural Plan.

RECOMMENDATION:

1. That Council note the provision of this report prepared in accordance with Parts 5 and 6 of resolution 14-246).
2. That Council note that cultural development activities occur across a number of Council directorates and that the Community Development team conduct a variety of cultural development activities across a diverse number of areas in the community
3. That Council note the action plan and comments enclosed in the report regarding public art and cultural development activities.

20

Report

At the 22 May 2014 ordinary meeting, a report was presented on the implementation of the Byron Shire Cultural Plan 2008 – 2013. Council subsequently resolved **(14-246)**:

- 5
1. That Council note the final report on implementation of the Byron Shire Cultural Plan 2008-2013.
 - 10 2. That Council note that of the 78 actions listed in the plan, 43 actions are complete (or ongoing), 16 are yet to commence and 19 have progressed/commenced.
 3. That Council note the recent changes at the Federal and State government level with the adoption of a NSW Creative Industries Action Plan.
 - 15 4. That Council note that the requirement under legislation for councils to have a Cultural Plan is no longer in force and that the outstanding actions from the Cultural Plan 2008 – 2013 are to be included in other strategies and plans of Council.
 - 20 5. That a report outlining a process to facilitate the provision of strategies 1, 2, 4, 6, 7 and 8 listed on page 60 of the report be presented to Council. (see below)
 - 25 6. That, as noted on page 60 of the report, consideration be given to providing increased resources to implement public art and/or community cultural development projects and that Council seek advice from the Public Art Assessment Panel.

Point 5 of resolution 14-246 refers to the following extract of the 22 May 2014 report:

- 30 “Strategies which have not been implemented due to lack of resources include:
1. Establish a Cultural Committee and seek funding for a cultural development officer to oversee the implementation of the plan.
 2. Cultural development research and partnerships with research organisations.
 3. ~~Development of a ‘new residents’ leaflet for information.~~
 4. The support of creative industry incubators/studios for cultural practitioners including home-based industries.
 - 35 5. ~~Access to cultural venues and activities for older people and people with disabilities needs improvement.~~
 6. Development and maintenance of community cultural facilities and better promotion of these facilities.
 7. Fostering private sector and philanthropic support.
 - 40 8. The support of local employment and educational opportunities in music and film.
 9. ~~The development of an Aboriginal Cultural Heritage Study.~~
 10. ~~The development of a Shire-wide Sport and Recreation Plan.~~
 11. ~~Development of Events Guidelines for event organisers.~~
 - 45 12. ~~The support of the Byron Bicycle Users Group to conduct a celebration of NSW Bike Week in the Shire.”~~

Point 6 of resolution 14-246 refers to the following quote from the 22 May 2014 report:

50 “It is not considered necessary to establish a cultural committee, however a resource to implement public art and any community cultural development projects on behalf of Council

would be beneficial. This is a resource that has been missed for a number of years by regional partners and community members.”

5 Action Plan to develop a report to Council as per resolution 14-246

As requested in resolution 14-246, an action plan has been developed to outline a process to facilitate the provision of strategies 1, 2, 4, 6, 7, and 8 from the list of strategies outlined above, including consideration given to providing increased resources to implement public art and/or community cultural development projects.

Ultimately, community cultural development is an important part of Community Development and projects are undertaken by all the Community Development staff and others, including via events (including New Year’s Eve), youth events and activities, Aboriginal events and projects, positive ageing and access activities, and even including committee work such as capacity building with some of the S355 committees, for example, Lone Goat Gallery committee.

A table identifying each strategy outlining some action to date and the proposed future action is included below.

Cultural Plan Action	Cultural Plan Reference	Comments/ Notes
Seek funding for a cultural development officer to oversee the implementation of the plan.	(3.3) Theme: cooperation and integration	The Public Art Assessment Panel was established in 2013. Cultural development is included in the Community Development area of responsibility and will be undertaken within the existing staff resource allocation. Additional cultural development staff would be subject to considerations in Council’s annual budget preparation process.
Encourage research into cultural development by developing partnerships and research projects with other organisations.	(1.1) Theme: identity and sense of place	The economic development team are progressing a joint research project with Arts Northern Rivers to define the economic value of the creative industries to assist with future funding opportunities.
Support creative industry incubators/ studios for cultural practitioners including home based industries.	(4.3) Theme: creativity, innovation and education	This action is also in the Northern Rivers Creative Industries Strategy for Byron Shire: “ <i>support the development of creative industries incubators and affordable workspaces</i> ” and will be included in the new Economic Development Strategy. The economic development team is assisting with the

		development of local industry driven initiatives focused on this outcome.
Develop registers for community cultural facilities and ensure facilities are well managed, well maintained and fees and charges are reviewed regularly.	(1.3) Theme: identity and sense of place	<p>This action is similar to one in the Northern Rivers Creative Industries Strategy for Byron Shire: “<i>review existing public infrastructure to identify opportunities for enhanced use of current assets, and integration or clustering of cultural facilities where advantageous.</i>”</p> <p>The Community Development team can develop a register of Council’s facilities, including types of creative/ cultural use of the spaces, details of facilities, size and begin to develop promotional material.</p>
Foster private sector and philanthropic support for the arts and cultural sector.	(3.1) Theme: cooperation and integration	<p>This action fits perfectly with the newly developed ‘Making Things Happen’ program. The economic development team is working on a project alongside industry, facilitating support for a creative development program in local schools (for students in yrs 9 and 10) and linked to industry experience opportunities.</p>
Support local employment and educational opportunities in music and film.	(4.4) Theme: creativity, innovation and education	<p>This action is already happening through events such as the Youth Council Youth Film Competition, Council’s working relationship with Northern Rivers Screenworks, many small and large events Council organises or supports such as band competitions etc.</p>
A resource to implement public art and any community cultural development projects on behalf of Council would be beneficial.	See first row.	See first row.

Financial Implications

5 Community cultural development activities are undertaken within current staff resources in the Community Development team and across other areas of Council. Any additional cultural development resources required for identified projects or initiatives will be included in Council’s annual budget preparations for consideration

Statutory and Policy Compliance Implications

Byron Shire Cultural Plan 2008 - 2013

Report No. 13.3 **Local Government NSW Annual Conference 2015**
Directorate: Corporate and Community Services
Report Author: Joylene McNamara, Senior Administration Officer
File No: I2015/474
5 **Theme:** Corporate Management
 Councillor Services

Summary:

10 In accordance with Council's Policy 14/010 Mayor and Councillors Payment of Expenses and Provision of Facilities, clause 8.4.1: *"A resolution of Council is required to authorise attendance of Councillors at Local Government and Shires Association Conference(s) as a voting delegate."*

15 The Local Government Association of NSW Annual Conference 2015 will be held from 11 to 13 October 2015 at Rosehill Gardens Racecourse, Sydney, NSW.

RECOMMENDATION:

That Council authorise the following Councillors to attend the Local Government Association of NSW Annual Conference 2015 to be held at Rosehill, Sydney NSW from 11 to 13 October 2015:

- **Cr (A) _____, Cr (B) _____ and Cr (C) _____ to attend as the voting delegates.**

20

Report

The Local Government Association of NSW Annual Conference 2015 will be held at Rosehill Gardens Racecourse, Sydney, NSW, from 11 - 13 October, 2015.

5

In accordance with Council's Policy 14/010 Mayor and Councillors Payment of Expenses and Provision of Facilities, clause 8.4.1(a) states: "A resolution of Council is required to authorise attendance of Councillors at (a) Local Government and Shires Association Conference(s) as a voting delegate."

10

Council is entitled to three voting delegates in the debating session. This number is determined by population.

15

Policy 14/010 also states at clause 8.4.4. that: "Submission of motions for consideration by Council will be done by notice of motion, which can be considered during the year" as motions must first be endorsed by Council prior to submission to the Local Government Association. A pro-forma for the submission of motions has yet to be made available and a due date for motions has not yet been set.

20

There is currently little information available regarding the Conference however, details are soon to be updated and placed on the Local Government Association website at:

<http://www.lgsa.org.au/events-training/local-government-nsw-annual-conference>

25 Financial Implications

Council has an allocation for Conferences of \$18,700 within the 2015/16 budget. There has been \$9,500 actual expenditure so far from this budget item and therefore Council is able to fund the cost of three (3) delegate(s) from this budget.

30

Where: Rosehill Racecourse, Rosehill Gardens, Sydney, NSW

Dates: Sunday 11 October - Tuesday 13 October 2015

35

Costs <i>per person</i>:	Registration Fee (<i>early bird by 31/8/15</i>)	\$900.00
	Flights	\$250.00
	Conference Functions	\$313.00
	Accommodation	<u>\$750.00</u>

40

Total	\$2,213.00
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(all costs approximate)

Statutory and Policy Compliance Implications

45

In accordance with Council's Policy 14/10 Mayor and Councillors Payment of Expenses and Provision of Facilities "A resolution of Council is required to authorise attendance of Councillors at Local Government and Shires Association Conference(s) as a voting delegate."

Report No. 13.4 **Policy - Disposal of Assets**
Directorate: Corporate and Community Services
Report Author: Bronwyn Challis, Strategic Procurement Co-ordinator
File No: I2015/498
5 **Theme:** Corporate Management
 Governance Services



Summary:

10 The Strategic Procurement Committee has developed a draft Asset Disposal Policy to provide guidance as to the proper process for disposal of assets, and this report recommends adoption of the Policy.

15 The development of a Asset Disposal Policy is an action detailed in the Council's Strategic Procurement Roadmap (#E2014/14117).

20 The implementation of the Strategic Procurement Roadmap falls within the key strategies adopted by Council in the Financial Sustainability Project Plan 2014/15 ("FSPP"), and the actions detailed within the FSPP in Chapter 6 – Strategic Procurement.

RECOMMENDATION:

1. **That Council adopt the draft Policy - Disposal of Assets for public exhibition and that the draft Policy be placed on public exhibition for a minimum period of 28 days, noting that the completion of information in the administrative table and numbering of the policy will be undertaken upon adoption of the Policy.**
2. **That in the event:**
 - a) **no submissions are received on the draft Policy – Disposal of Assets, that it be adopted and incorporated into Council's Policy Register.**

Or

 - b) **that any submissions received on the draft Policy – Disposal of Assets be reported back to Council for consideration prior to its adoption.**

25 **Attachments:**

- 1 Draft Asset Disposal Policy, E2015/31488

Report

5 Sometimes Council wishes to dispose of goods even while they still retain monetary value. It is important that these goods are disposed of properly to ensure probity requirements are upheld and Council obtains value for money.

10 Currently there is no guidance to staff as to how to properly dispose of these goods. One recommendation of Council's Procurement Roadmap is to develop an Asset Disposal Policy to address these issues.

The Strategic Procurement Committee has developed the attached Asset Disposal Policy to provide guidance as to the proper process for disposal of assets, and this report recommends adoption of the Policy.

15 Application of the Policy

The Asset Disposal Policy applies to all Councillors and staff of Council.

20 The Asset Disposal Policy applies to the disposal of assets that are:

- Owned by Council;
- Still in a serviceable condition;
- No longer required by Council; and
- Safe and pose no threat of physical or environmental harm.

25 The Policy does not apply to land and buildings.

Key Principles

30 The key principles to which staff must have regard when disposing of assets are:

- Ensuring open and effective competition, giving all interested parties equal opportunity to obtain the asset;
 - Obtaining the best value for money;
 - Impartiality, fairness, independence, openness and integrity in all discussions and negotiations.
- 35

Methods of Disposal

40 The Policy states that responsibility for the disposal of the asset rests with the manager who is responsible for the asset. The following methods of disposal may be available to the manager of the asset, depending on the value and nature of the asset:

- Trading in equipment to suppliers;
- Seeking expressions of interest from potential buyers;
- Seeking bids through an open tender process;
- 45 • Public auction;
- Destroy and dump;
- Sale via the RTRL libraries or second hand shop;
- Donation to a non-profit organisation.

50 Selection of a suitable disposal method will depend on:

- The public demand and interest in the item;
- The method likely to return the highest return;
- The value of the asset;
- The costs of the disposal method;

- Compliance with statutory and other obligations.

The following requirements apply to the disposal of assets:

- 5 • Written approval of the asset disposal method must be obtained from an officer with a financial delegation of at least the estimated value of the asset;
- Disposal of all assets with a value of \$150,000 or more must be by public tender unless resolved otherwise by a meeting of Council;
- Only assets with a value of less than \$1,000 can be sold via Council's second hand shop or the RTRL libraries;
- 10 • All donations must be approved by a Director or, if valued between \$50,000 and \$150,000, by the General Manager;
- Assets with a value over \$150,000 cannot be donated;
- 15 • Equipment provided to the Mayor or Councillors under the *Mayor and Councillors Payment of Expenses and Provision of Facilities Policy* may be purchased by the Mayor or Councillors in accordance with that policy.

Financial Implications

20 There are no financial implications arising from adoption of the Policy.

Statutory and Policy Compliance Implications

25 The related legislation, policies and plans are detailed in the administrative section of the Policy and in this Report.

Report No. 13.5 **Council Investments June 2015**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2015/606
5 **Theme:** Corporate Management
 Financial Services

Summary:

10

This report includes a list of investments and identifies Council's overall cash position as at 30 June 2015 for Council's information.

15

This report is prepared to comply with Regulation 212 of the Local Government (General) Regulation 2005.

RECOMMENDATION:

That the report listing Council's investments and overall cash position as at 30 June 2015 be noted.

Report

In relation to the investment portfolio for June 2015, Council has continued to maintain a diversified portfolio of investments. At the time of writing this report, the average 90 day bank bill rate (BBSW) for the month of June had not been released. Based on previous months and commentary received throughout June, the 90 day average BBSW is estimated to be around 2.15%. Council's performance for the month of June is a weighted average of 2.90%. This performance is again higher than the assumed benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits. Council's investment portfolio should continue to out-perform the benchmark as the capital protected investment earning 0% interest nears maturity.

There is now only one capital protected investment held by Council which is fully allocated to an underlying zero coupon bond. This investment is the Emu Note which will mature in October 2015.

The table below identifies the investments held by Council as at 30 June 2015:

Schedule of Investments held as at 30 June 2015

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
26/09/05	1,500,000	EMU NOTES	CP	AAA-	25/10/15	MFD	0.00%*	1,481,400.00
20/06/12	500,000	HERITAGE BANK LTD BONDS	N	BBB+	20/06/17	B	7.25%	530,000.00
23/02/15	2,000,000	ING BANK (AUSTRALIA)	N	A1	24/08/15	TD	3.11%	2,000,000.00
08/04/15	2,200,000	POLICE CREDIT UNION	P	NR	08/07/15	TD	3.06%	2,200,000.00
13/04/15	2,000,000	ME BANK	N	BBB	13/07/15	TD	2.90%	2,000,000.00
07/04/15	1,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	N	NR	07/07/15	TD	2.95%	1,000,000.00
11/06/15	2,000,000	NAB	N	AA-	09/09/15	TD	2.94%	2,000,000.00
05/06/15	2,000,000	NAB	N	AA-	03/09/15	TD	2.93%	2,000,000.00
03/03/15	2,000,000	NAB	N	AA-	03/09/15	TD	3.15%	2,000,000.00
09/06/15	2,000,000	BANKWEST	N	A1+	08/10/15	TD	2.90%	2,000,000.00
08/04/15	1,000,000	BANKWEST	N	A1+	07/07/15	TD	2.90%	1,000,000.00
14/05/15	2,000,000	NAB	N	AA-	14/08/15	TD	2.94%	2,000,000.00
25/05/15	2,000,000	NAB	N	AA-	23/11/15	TD	2.97%	2,000,000.00
03/06/15	2,000,000	PEOPLES CHOICE CREDIT UNION	N	BBB+	03/09/15	TD	2.85%	2,000,000.00
02/12/14	2,000,000	CREDIT UNION AUSTRALIA	N	BBB+	31/08/15	TD	3.55%	2,000,000.00
10/04/15	2,000,000	BANKWEST	N	A1+	09/07/15	TD	2.90%	2,000,000.00
08/04/15	2,000,000	SUNCORP	P	A+	08/09/15	TD	3.00%	2,000,000.00
04/06/15	2,000,000	BANKWEST	N	A1+	02/10/15	TD	2.90%	2,000,000.00
08/04/15	2,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	BBB	NR	07/07/15	TD	2.95%	2,000,000.00
29/05/15	2,000,000	BANK OF QUEENSLAND	N	A2	29/09/15	TD	2.80%	2,000,000.00
11/02/15	2,000,000	AMP BANK	N	A	12/08/15	TD	3.30%	2,000,000.00
03/03/15	2,000,000	NAB	N	AA-	03/07/15	TD	3.13%	2,000,000.00

BYRON SHIRE COUNCIL

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13.5

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
03/03/15	2,000,000	NAB	N	AA-	04/08/15	TD	3.15%	2,000,000.00
17/03/15	2,000,000	PEOPLES CHOICE CREDIT UNION	N	BBB+	16/07/15	TD	3.00%	2,000,000.00
15/04/15	1,000,000	NAB	N	AA-	16/07/15	TD	2.94%	1,000,000.00
28/04/15	2,000,000	PEOPLES CHOICE CREDIT UNION	N	BBB+	28/09/15	TD	2.94%	2,000,000.00
05/05/15	2,000,000	NAB	N	AA-	03/08/15	TD	2.85%	2,000,000.00
06/05/15	2,000,000	NAB	N	AA-	06/08/15	TD	2.94%	2,000,000.00
06/05/15	1,000,000	NAB	N	AA-	07/09/15	TD	2.95%	1,000,000.00
12/05/15	2,000,000	BANKWEST	N	A1+	11/08/15	TD	2.80%	2,000,000.00
13/05/15	1,000,000	NAB	N	AA-	11/08/15	TD	2.94%	1,000,000.00
13/05/15	1,000,000	MACQUARIE BANK	N	A1	08/02/16	TD	3.00%	1,000,000.00
14/05/15	3,000,000	BANKWEST	N	A1+	14/09/15	TD	3.00%	3,000,000.00
27/05/15	2,000,000	NAB	N	AA-	24/09/15	TD	2.94%	2,000,000.00
02/06/15	2,000,000	ME BANK	N	BBB	02/09/15	TD	2.85%	2,000,000.00
03/06/15	2,000,000	ME BANK	N	BBB	03/09/15	TD	2.85%	2,000,000.00
09/06/15	1,000,000	BENDIGO & ADELAIDE BANK	N	A2	07/09/15	TD	2.90%	1,000,000.00
09/06/15	2,000,000	NAB	N	AA-	09/11/15	TD	2.95%	2,000,000.00
N/A	2,719,430	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	1.80%	2,719,430.14
Total	70,919,430					AVG	2.90%	70,930,830.14

It should be noted that at the time of writing this report, Council had not received a valuation for the EMU Note for June 2015. This investment is highlighted in bold in the table above with the valuation reflective from 31 May 2015, this being the most recent current valuation received by Council.

5

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

Note 2.

Type	Description	
MFD	Managed Fund	Principal varies based on fund unit. Price valuation, interest payable varies depending upon fund performance.
TD	Term Deposit	Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
CALL	Call Account	Principal varies due to cash flow demands from deposits/withdrawals, interest is payable on the daily balance at the cash rate +0.50%

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

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

For the month of June 2015, as indicated in the table below, there is a dissection of the investment portfolio by investment type. It illustrates the current value of investments has increased since May, demonstrating a cumulative unrealised gain of \$11,400.00.

Dissection of Council Investment Portfolio as at 30 June 2015

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
66,200,000.00	Term Deposits	66,200,000.00	0.00
2,719,430.14	Business On-Line Saver (At Call)	2,719,430.14	0.00
1,500,000.00	Managed Funds	1,481,400.00	(18,600.00)
500,000.00	Bonds	530,000.00	30,000.00
70,919,430.14		70,930,830.14	11,400.00

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

The table below provides a reconciliation of investment purchases and maturities for the period 27 May 2015 to 30 June 2015 on a current market value basis.

Movement in Investment Portfolio – 27 May 2015 to 30 June 2015

Item	Current Market Value (at end of month) \$
Closing Balance at 27 May 2015	70,919,460.86
Add: New Investments Purchased	18,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	8,669.28
Less: Investments Matured	18,000,000.00
Less: Call Account Redemption	0.00
Add: Fair Value Movement for period	2,700.00
Closing Balance at 30 June 2015	70,930,830.14

Investments Maturities and Returns – 27 May 2015 to 30 June 2015

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	Bank of Queensland	TD	29/05/15	119	3.35%	21,843.84
2,000,000.00	Peoples Choice Credit Union	TD	03/06/15	92	2.90%	14,619.18
2,000,000.00	ING Bank	TD	03/06/15	184	3.56%	35,892.60
2,000,000.00	Bankwest	TD	04/06/15	90	3.10%	15,287.67
2,000,000.00	NAB	TD	05/06/15	88	3.13%	15,092.60
2,000,000.00	Newcastle Permanent	TD	09/06/15	92	3.00%	15,123.29
1,000,000.00	ING Bank	TD	09/06/15	182	3.55%	17,701.37
2,000,000.00	Bankwest	TD	09/06/15	92	3.13%	15,627.40
2,000,000.00	NAB	TD	11/06/15	93	3.12%	15,899.18
1,000,000.00	Rabobank	TD	15/06/15	122	3.10%	10,361.64
18,000,000.00						177,448.77

5 The overall 'cash position' of Council is not only measured by what funds Council has invested but also by what funds Council has retained in its consolidated fund or bank account as well for operational purposes. In this regard, for the month of June 2015 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 30 June 2015

10

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	66,200,000.00	66,200,000.00	0.00
Business On-Line Saver (At Call)	2,719,430.14	2,719,430.14	0.00
Managed Funds	1,500,000.00	1,481,400.00	(18,600.00)
Bonds	500,000.00	530,000.00	30,000.00
Total Investment Portfolio	70,919,430.14	70,930,830.14	11,400.00
Cash at Bank			
Consolidated Fund	2,130,201.26	2,130,201.26	0.00
Total Cash at Bank	2,130,201.26	2,130,201.26	0.00
Total Cash Position	73,049,631.40	73,061,031.40	11,400.00

Financial Implications

15 Council uses a diversified mix of investments to achieve short, medium and long-term results. Council's historical strategy is to use credit/equity markets for exposure to long term growth. It should be noted that Council's exposure to credit/equity products is capital protected when held to maturity, which ensures no matter what the market value of the product is at maturity, Council is

insured against any capital loss. The investment strategy associated with long term growth is now prohibited under the current Ministerial Investment Order utilising credit/equity markets to seek investment products. However, the 'grandfathering' provisions of the Ministerial Investment Order provides Council can retain investments now prohibited until they mature. It should be noted that
5 Council currently holds only one of these investments, the EMU notes. This investment will trend towards it's full principal value as it approaches maturity.

Council's investment strategy is currently to invest for the short term (generally 90 days on new investments) to take advantage of investment opportunities often offered in the market over and
10 above the 90day bank bill rate whilst ensuring sufficient liquidity to meet cash flow requirements. This provides the ability to take advantage of interest rate movements in the market as short term rates are currently not dissimilar to longer term rates (2 to 5 years).

Statutory and Policy Compliance Implications

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

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

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

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

Report No. 13.6 Positive Ageing Strategy 2012-2016 Implementation plan Progress Report

Directorate: Corporate and Community Services

Report Author: Karen Ingleman, Aged and Disability Officer

5 **File No:** I2015/610

Theme: Society and Culture

Community Development

10 **Summary:**

The purpose of this report is to advise Council on the progress of implementing activities and actions from Council's Positive Ageing Strategy 2012-2016 for the period July 2013 to July 2015. The report also provides an update on recent State Government Policy and Legislation changes relating to older people.

15

RECOMMENDATION:

That Council note the progress on implementation of the Byron Shire Council Positive Ageing Strategy 2012-2016 for the period July 2013 to July 2015.

Report

Byron Shire Council Positive Ageing Strategy 2012-2016 Update

5 The purpose of this report is to advise Council on the progress of implementing activities and actions from Council's Positive Ageing Strategy 2012-2016 for the period July 2013 to July 2015. The report also provides an update on recent State Government Policy and Legislation changes relating to older people.

10 The Positive Ageing Strategy (PAS) 2012-2016, is available at <http://www.byron.nsw.gov.au/older-people>.

15 It is predicted that by 2020, one in four people in Byron Shire will be over 60 years of age. The older population is changing in Australia, with different trends and needs from generations past. People are living longer, and have a different plan for their later years than previous generations, such as 'ageing in place'. Forward planning is essential to cater for the differing needs and expectations of older people. The current trend requires Council to focus not only on services but also on the strategies and opportunities to enhance and support ageing well.

20 'Positive Ageing' is related to the creation of an age-friendly community. That is, creating a community which facilitates older people's participation and involvement. It recognises the vital roles ageing people play as family members, carers, volunteers, neighbours, workers and consumers. Positive Ageing is also about how we, as a community, value our older citizens. Other terms used interchangeably with positive ageing are 'ageing well', 'successful ageing', 'productive ageing' or 'active ageing'.

25 The purpose of the Council's Positive Ageing Strategy and Action Plan is to provide sustainable strategic direction for Council to meet the needs of its older residents through effective use of its own resources and by working in partnership with others.

30 The Positive Ageing Strategy identifies priority issues, addresses Council's role, and outlines actions both in the short and the medium term. It also aligns with Council's Community Strategic Plan and, therefore, integrates into Council's various other plans and strategies to ensure its implementation.

35 **The following list highlights some of the actions implemented between the period July 2013 and July 2015, from the Positive Ageing Strategy and Action Plan 2012-2016:**

- 40 • Council successfully submitted an application to the LGA/NSW Liveable Communities Competition and was funded for an 'Intergenerational Playgroup Pilot Project' developed in collaboration with Byron Aged Care and Ballina/Byron Family Centre
- Seniors Week Mayors Morning Tea in collaboration with U3A Brunswick Valley and presentation of Positive Ageing Award – 2013 & 2014
- International Day of People with a Disability (IDPWD) information and training facilitated in collaboration with people living with a disability was held for staff, Councillors and community groups.
- 45 • A pool hoist was purchased for Mullumbimby Public Pool and launched during Social Inclusion Week 2014
- Harmony Day was held and celebrated in partnership with Mullumbimby Community Gardens - 2015
- 50 • *A Tradies Guide to Good Access* developed and launched at a Master Builders Association Information Evening
- Carers Week celebrated 2014 in collaboration with Mission Australia, Area Health, Playback Theatre and Mullumbimby Pottery
- National Volunteers Week celebrated with a thank you Volunteer's Morning Tea held May 2014

55

The following is list of actions implemented for the period July 2013 to July 2015, categorised by the key theme areas, including but not limited to:

<p>KEY AREA: Belonging Social Inclusion and Volunteering Vision: <i>A community where workers, volunteers, neighbours, friends, parents and grandparents, of all ages and culture, have the opportunity to participate in a variety of activities and develop a sense of belonging to a community where they feel respected and valued</i></p>	<p>KEY AREA: Support Services Vision: <i>A community where ageing residents have access to appropriate support services to assist them to maintain active and relatively independent lives.</i></p>
<ul style="list-style-type: none"> • Social Inclusion Week celebrated with Come n Try Beach Wheelchair & morning tea November 2013 • International Day of People with a Disability regional Festival of Ability supported and celebrated in Lismore November 2013 • Social Inclusion Week celebrated and new Pool Hoist launched at the Mullumbimby Pool November 2014 • Seniors Week Program of Events 2014 included : Lifeball, Your Brain matters Program (in collaboration with Alzheimers Association) • Annual Mayors Morning Tea and presentation of the Positive Ageing Award held in collaboration with U3A Brunswick Valley March 2014 and 2015, including intergenerational contact with Primary Schools and volunteer helpers from Youth Council. • <i>Music We Love</i>, Intergenerational Project funded by Small Grants Program presented at Mayor's Morning Tea 2014 • National Volunteers Week celebrated with a thank you Volunteer s Morning Tea held May 2014 • Harmony Day celebrated during Seniors Week, in partnership with the Mullumbimby Community Gardens March 2015 • Welcome to Country and Cultural Dancers performed at Mayors Morning Tea and Harmony Day Events 2015 • Australia Day Ceremony and Awards celebrated annually. • Reconciliation Week and NAIDOC week annually. • Carers Week celebrated 2014 in collaboration with Mission Australia, Northern NSW Local Health District, • Playback Theatre and Mullumbimby Pottery • Opportunities for various volunteering across Council advertised and promoted, including Byron Greeters, Section 355 Committees. • Volunteering with Council Policy adopted 10/12/2014. • Welcome declaration for refugees adopted June 2014 	<ul style="list-style-type: none"> • Seniors Week Program of Events 2014 including : Lifeball, Alzheimer's Association <i>The Brain Matters</i> • Carers Week celebrated and Young Carers Planning Group formed. • Aged and Disability Officer Attended North Coast Ageing symposium June 2014 • Byron Shire Council represented at the LGNSW Disability Inclusion and Liveable Communities forum September 2014 • Joined COTA as a corporate organization May 2014 • Continue to facilitate Byron Shire Interagency quarterly. • Successfully applied for Creating Liveable Communities Competition December 2014 (Intergenerational Playgroup Pilot Project Developed in collaboration with Byron Aged Care and Ballina Byron Family Centre). • Successfully applied for Creative Ageing Grant October 2014 (Celebrate Life - Elders Flash Mob to the Beat in collaboration with Byron Cultural and Community Centre) • Successfully applied for Carers Week Grant 2013 and 2014 • Successfully applied for NSW Seniors Week Grant 2013 and 2014 • Applied for NSW Sport and Recreation Disability Grant April 2015 <p>Partnerships/collaborations include but not limited to:</p> <ul style="list-style-type: none"> Alzheimers Association Arakwal Corporation Centrelink Mullumbimby Community Gardens Far North Coast Settlement Scheme Playback Theatre Mission Australia Northern NSW Local Health District Brunswick Valley U3A Guide Dogs NSW Ability Links Spinal Cord Injuries (SCIA) Byron Aged Care Feros Aged Care Ballina Byron Family Centre Mullumbimby Pottery Northern Rivers Regional Access Forum

	Mullumbimby Neighbourhood Centre Byron Community and Cultural Centre
<p>KEY AREA: Lifelong earning, Employment and Retirement Vision: <i>A community where lifelong learning and opportunities for employment and retirement, is supported</i></p>	<p>KEY AREA: Independence Housing and Accommodation Vision: <i>Ageing residents have access to appropriate, affordable housing and are supported to maintain their independence in line with their personal preferences</i></p>
<ul style="list-style-type: none"> Facilitated Information session on the Federal Budget Impact on Retirees and people in Aged Care in collaboration with Centrelink and COTA community educator September 2014. Facilitated Information session on Superannuation and Income Streams in collaboration with Centrelink October 2014. Regular sustainability workshops conducted Support to Indonesian Alliance Inc to provide a free Ethnic Radio presenters course February 2015 	<ul style="list-style-type: none"> Information on secondary dwellings on the website updated. Council currently reviewing the Byron Shire LEP to allow secondary dwellings and detached duplex occupancies in rural areas. Sustainable Small House Design Competition & Awards September 2014 Development Control Plan (DCP) 2014 (includes Universal Design principles and a chapter on Access and Mobility and) adopted June 2014
<p>KEY AREA: Information and Communication Vision: <i>Information provided to the community is regular, accessible and easy to understand.</i></p>	<p>KEY AREA: Access, Transport and Safety Vision: <i>A community where people can easily and safely move around using public walkways or through personal, community and public transport options</i></p>
<ul style="list-style-type: none"> Hearing Awareness Week celebrated August 2013 – Free Hearing Screening & information at Main Beach targeting Surfers Website Accessibility training for Staff August 2014 Installed a portable sound shuttle in Customer Service area for people with a hearing impairment May 2014 Customer service information session on customers with a visual impairment held May 2015 Sign interpreter engaged for Australia Day Awards January 2014 and 2015 Day Sign interpreter engaged for Harmony Day Event March 2015 Hearing Awareness Week celebrated with Free hearing Clinic in partnership with Northern NSW Local Health District August 2013 Continue to provide and circulate information via media releases and promotion via Council website, e-letters, block advertising, NRSDC, DAISI Newsletters, Byron Respite Care Newsletter, BSC Interagency, Libraries and Seniors Groups Inclusion in Sport Pamphlet currently being drafted in partnership with Ability Links. Information on projects presented to various Senior Groups including: U3A, CWA, and senior Citizens Autumn Clubs Continue to promote the availability of MLAK free of charge to eligible permanent Byron Shire residents, 	<ul style="list-style-type: none"> Completed Field trips with Access Committee and reviewed, updated, and launched the current Mobility Map May 2014 New Access Consultative Working Group (ACWG) re-activated February 2015. Two members of Access Consultative Working Group (ACWG) represented Council at the LGNSW Disability Inclusion and Liveable Communities forum September 2014 Three members of ACWG and Council's Aged and Disability Officer attended training on access to the Built environment hosted by Tweed Shire Council February 2015. ACWG group has completed access appraisals at Mullumbimby Community Gardens, assisted with the updating of the National Toilet Map, held training session for customer service consulted with staff on the PAMP and attended regional advisory access committee meeting. Pool ladder installed at Byron Bay Public Pool to increase access for older people Disability Parking Permit awareness campaign 'Give the Gift of Respect this Christmas' held in December 2013 Installed a ramp & path, and completed toilet refit to ensure accessibility at the Mullumbimby CWA building. Broad path across Apex Park to access vantage

<p>availability of the Beach Wheelchairs located in Byron Bay and Brunswick Heads and the National Companion Card to allow free access for carers of people with high support needs.</p> <ul style="list-style-type: none"> Continue to promote the Northern Rivers Transport Guide and website Going Places (initiatives of the Northern Rivers Social Development Council) 	<p>points above the beach</p> <ul style="list-style-type: none"> Constructed a BBQ shelter at Apex Park to provide shade and shelter. Constructed a path through the Shara Ave Community Gardens at Ocean shores to improve access. Exeloos installed in Apex park including fully accessible unisex toilet. Design and contractors currently being sourced for park upgrade at Jacaranda Park for new Intergenerational Playgroup . A <i>Tradies Guide to Good Access</i> developed and launched master Builders Association Information Evening 2014 IATA Access to the Built Environment Access Awareness Handbooks purchased 2013
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New Developments in State Legislation and Policy

5 In Australia, the concepts of positive ageing and age-friendly communities have been incorporated into Government Policy. Creating more liveable communities has been identified as a priority in NSW 2021, the NSW Ageing Strategy, the National Disability Strategy and the NSW Carers Strategy.

10 The Integrated Age-Friendly Toolkit for Local Government in NSW and three grant programs for NSW councils were launched in 2014 to assist and encourage all areas of council to work together in planning for an ageing population.

15 In December 2014 the NSW Government announced the commencement of the Disability Inclusion Act 2014 with the Government committed to working in partnership with the community to foster inclusion and enhance local communities to make them more inclusive for all residents.

The Positive Ageing Strategy will continue to be informed by relevant State Government legislation and policy, as well as more local initiatives

20 The NSW North Coast Ageing Strategy was launched June 2014 with the aim to identify population ageing issues and “to work with local councils, community organisations and other stakeholders to develop a north Coast Ageing Strategy that caters for the region’s expected increase in older residents over the next 25 years”. The numbers of older people living on the North Coast continue to grow with the forecast showing an increase from 20% in 2011 to 30% in 2031.

25

Financial Implications

Implementation of Positive Ageing Strategy 2012-2016 will occur through prioritisation and the Annual Budget process.

30

Statutory and Policy Compliance Implications

- 35 Positive Ageing Policy 10/002
 Positive Ageing Strategy 2012-2016
 Disability Access and inclusion Plan 2008-2013
 Community Strategic Plan Delivery program 2014 - 2018

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.7 **PLANNING - Granting delegations to the General Manager to deal with Voluntary Planning Agreements**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Christopher Soulsby, Development Contributions Officer
File No: I2015/500
10 **Theme:** Ecology
 Development and Approvals

NOTE TO COUNCILLORS:

15 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
20 been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

That Council delegate to the General Manager authority to enter into a Voluntary Planning Agreement (VPA) with a developer where:

- a) **The VPA is for the payment of contribution in lieu of provision of onsite car parking for commercial developments; and**
- b) **The rate of payment per space or part thereof offered by the developer in the VPA is at the rates as set out in table 2 of this report (I2015/500).**

25

Report

The purpose of this report is to seek a resolution of Council delegating authority to the General Manger to exhibit and enter into voluntary planning agreements (VPA) for the provision of car parking associated with development applications.

5 This report will also set the cost per space that Council will accept for a VPA in each of the town centres where Council provides public car parks.

Background:

10 Council had adopted the Byron Developer Contributions Plan 2012 in December 2012. This plan levies contributions for residential development under the terms of Section 94 of the Environmental Planning and Assessment Act 1979. Contributions for all other types of non residential development such as commercial and industrial are levied under section 94A of the Act. Section 94A levies are calculated at 1% of the cost of construction of the development. Section 94A (2) states: "A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 94."

20 Under the terms of DCP 2010 and DCP 2014 contributions for car parking are only available for commercial development in town centres where Council has provided or will provide public car parking. Previously Council could have levied a section 94 contribution for the provision of carparking under the terms of the 2005 Section 94 contributions plan. Staff had delegations to impose these conditions of consent when approving a development application for commercial development. The adoption of the 2012 contributions plan meant that for commercial development staff could no longer impose a condition for parking contributions on a consent where there was also a requirement to pay the Section 94A levy. A solution to this problem was for Council to accept a VPA for the payment of the parking contributions.

30 The regulatory process for exhibiting and entering into a VPA has added an additional layer of bureaucracy to processing a development application for commercial development where there is a shortfall of car parking. The requirement to seek a resolution of Council to exhibit and then return to the VPA back to Council post exhibition to adopt imposes a significant time constraint and cost to developers. Granting delegations to staff would streamline this process resulting in time saving for both Council and the developer.

Rate of Contribution

35 The delegation to exhibit and enter into a VPA should be limited to circumstances where the developer has offered a VPA that accords to a cost per parking space that has been adopted by Council. At the meeting of 9 April 2015 Council considered report 13.7 (I2015/199) on a VPA for a development in Byron Bay town centre. This report set a rate of \$38,000 per space for the Byron Bay Town Centre. This was a reduction from the \$68,000 per space in adopted in the 2005 contributions plan. It is proposed to retain this rate until the completion of the Byron Bay Town Centre Masterplan when the scope and cost of provision of additional and relocated parking will be known and staff can review the rate.

45 The rates previously adopted in the 2005 contributions plan in the other town centres are shown in table 1.

Table 1 Current Parking Contributions Based on 2005 S94 Plan	
Locality	Per Space
Byron Bay CBD	68,094
Brunswick Heads CBD	61,690
Bangalow	28,162
Mullumbimby CBD	18,919

There are known issues with these rates and their validity is questionable. Council has undertaken recent car parking works in both Bangalow and Mullumbimby. Based on the cost of these works

and the number of spaces constructed staff have calculated what the new rate of contribution should be in these town centres. These rates are shown in table 2 below. There will be separate parking studies undertaken in Bangalow, Mullumbimby and Brunswick Heads that may require the provision of additional parking in these towns. When these studies are complete the rates may need to be further adjusted based upon the number and location of additional spaces to be constructed. No calculations have been completed for Brunswick Heads at this point in time and on this basis the rate from the 2005 contributions plan will be retained in the interim. A costing for Brunswick Heads will be dependant on the costing of the design plans for the Tweed Street Masterplan. These works are in progress and an amended rate per space for Brunswick Heads will be bought back to Council as a separate report.

Table 2 Proposed Contributions Rate Per Car Space for a VPA	
Locality	Per Space
Byron Bay CBD	38,000
Brunswick Heads CBD	61,690
Bangalow	5,600
Mullumbimby CBD	7,525

If a developer submits a VPA for the payment of contributions towards the provision of car parking using the rates as set out in table 2 then it is proposed that staff should be able to exhibit the VPA and then enter into the VPA under delegated authority. Staff will continue to seek legal advice as required on the form and process for future VPAs.

Financial Implications

There is no impact upon the general fund by amending the rates of contributions per car space as these rates reflect the actual cost to provide the car spaces. The cost of the preparation of the VPA and the legal advice to review will be bourn by the developer.

Statutory and Policy Compliance Implications

The delegation to the General Manager will be in accordance with section 377 of the Local Government Act 1993. There is nothing in this section that precludes Council from delegating this function to the General Manager. The General Manager may under section 378 of the Local Government Act 1993 delegate this function to another person.

Where Council resolves to grant these delegations to the General Manager then all future VPAs regarding car parking contributions, would not be reported back to Council for adoption after the close of exhibition unless there were submissions from that public that raised significant concerns about the VPA and the General Manager declined to exercise the delegation to enter in to the VPA.

Report No. 13.8 PLANNING - 10.2015.134.1 Multi dwelling development (3 units) at 29 Goondooloo Drive Ocean Shores

Directorate: Sustainable Environment and Economy

Report Author: Oli McIntosh, Planner

5 **File No:** I2015/425

Theme: Ecology
Development and Approvals

Proposal:

10

Property description: LOT: 1313 DP: 243480
29 Goondooloo Drive OCEAN SHORES

Parcel No/s: 28960

Applicant: Ms K D Barnes & Mr M Bown

Owner: Zenith Heights Pty Ltd

Zoning: Zone No. R2 Low Density Residential

Date received: 20 March 2015

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 1/4/15 to 21/04/15

Submissions: 61 (opposed)

Other approvals (S68/138): Roads Act (51); Stormwater (55); Water & Sewer (60)

Planning Review Committee: 19 May 2015

Delegation to determination: Council

Issues:

- Public objections
- Building height plane

Summary:

Development consent is sought for a multi dwelling housing development at 29 Goondooloo Drive, Ocean Shores, consisting of three x 3 bedroom detached units. Development Application No. 10.2014.70.1 (as amended) previously approved a dual occupancy on the subject site. The construction of one of the two dwellings approved under that application has been substantially completed. As such, it is proposed that 10.2014.70.1 (as amended) be modified by the deletion of the second dwelling as a condition of approval in the application currently before Council and the two new proposed units be constructed in its place.

A significant number of public submissions opposed to the development were received in response to the exhibition of the application. The assessment of the application and the public submissions raised a number of issues which were provided to the applicant for reconsideration of the proposed development. Amended plans and details addressing that issues raised were subsequently submitted by the applicant. The application, as amended, is considered to merit approval subject to the recommended conditions of consent.

NOTE TO COUNCILLORS:

15 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.

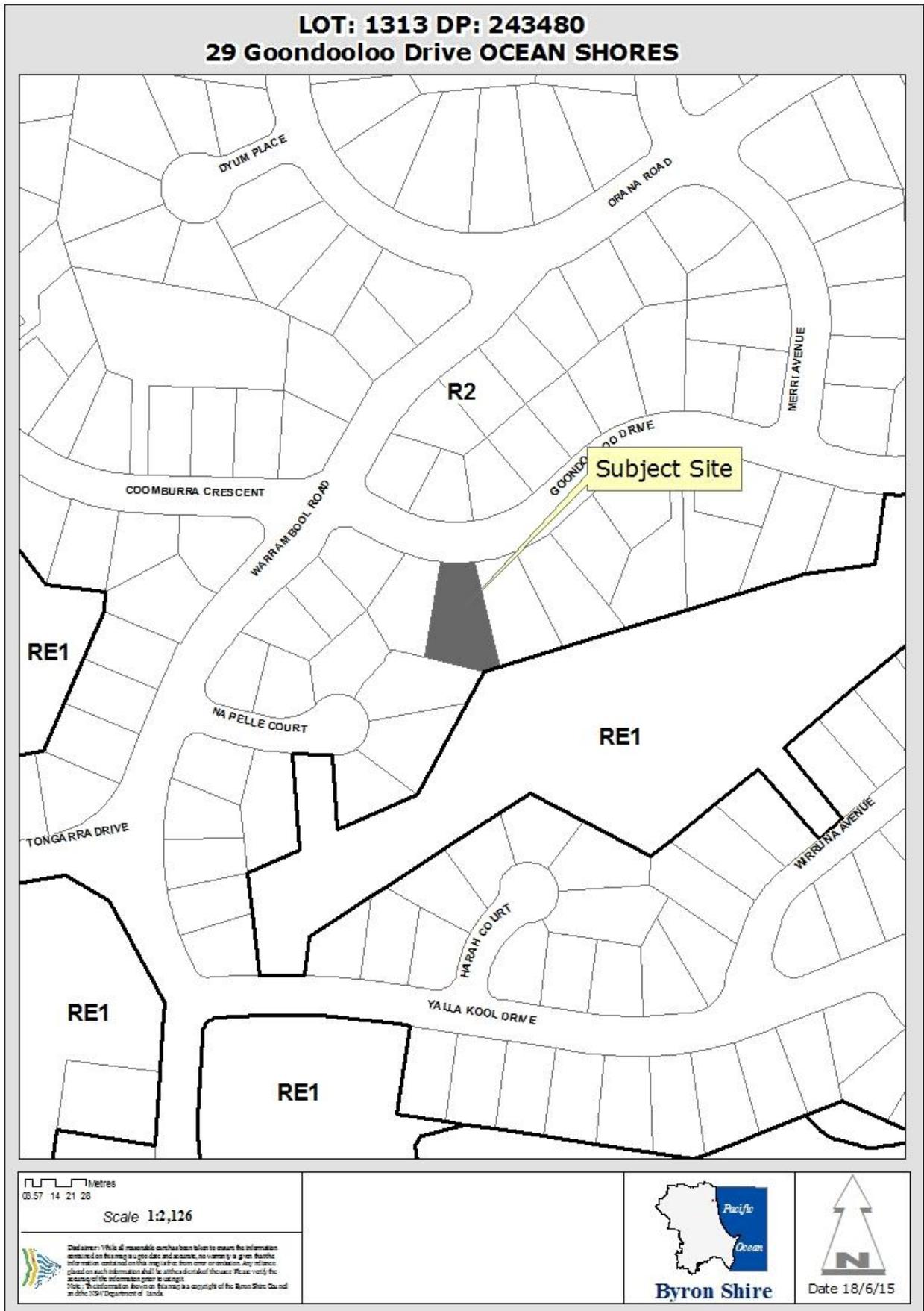
RECOMMENDATION:

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2015.134.1 for Multi dwelling development (3 units), granted deferred commencement (deferral period 12 months) consent, subject to the following conditions, listed in Attachment 2.

5 Attachments:

- 1 Proposed Plans 10.2015.134.1, E2015/39169
- 2 Deferred Commencement Consent 10.2015.134.1, E2015/39021
- 3 Confidential - Submissions 10.2015.134.1, E2015/40929

10



Assessment:

1. INTRODUCTION

5 1.1 History/Background

Determination No. 10.2014.70.1, dated 7 July 2014, and as amended by 10.2014.70.2 dated 16 October 2014, granted development consent for a staged dual occupancy and strata subdivision.

10 Determination No. 10.2014.70.2, dated 16 October 2014, approved an application under Section 96 of the EP&A Act 1979 to:

- Increase the size of the garage approx 1.5m to accommodate 2 vehicles to comply with DCP requirements.
- Increase the garage setback from the side (western) boundary from 1.2m to 1.5m in response to the existing rock retaining wall which runs along this boundary.
- 15 • Shift unit 2 main dwelling approx 1.8m east to retain a 4.0m gap between the dwelling and the garage.
- Include an additional stage to the construction phase to enable the temporary occupation of the garage, as a dwelling, with addition of a shower and a kitchen sink as a temporary measure.

20 At the time of writing this report construction of the rear dwelling approved under 10.2014.70.2 had been substantially completed. The current application proposes to modify the previous approval by the deletion of 'Stage 3' of the determination which related to the construction of 'Unit 1' at the front of the property. Should consent be granted a condition will need to be imposed, requiring that
25 determination No. 10.2014.70.2 be modified to be consistent with the new development consent.

1.2 Description of the site

30 The subject site is legally described as Lot 1313 DP 243480 and is located at 29 Goondooloo Drive, Ocean Shores. The site is on the southern side of Goondooloo Drive, approximately 50m east of the intersection Warrambool Road and near the crest of the hill. The land is a 'fan shaped' allotment with an approx area of 1256 m². The site slopes down considerably from its highest point of approximately 44m A.H.D along the northern boundary to approx 35m A.H.D. in its south east corner. The land is predominately cleared of vegetation.

35 Adjoining development consists predominantly of one and two storey single dwelling houses. Due to the site and surrounding topography, several properties to the west overlook the site to a significant degree. The subject site and surrounding properties also enjoy significant views towards the Pacific Ocean.

40

1.3 Description of the proposed development

45 Development consent is sought to modify Determination No. 10.2014.70.1, which granted conditional approval to the staged construction of and strata subdivision for a dual occupancy development. The effect of the proposed modification is to construct an additional two detached dwellings to have total of three detached dwellings on the site as described below.

Unit	Comment/ description
1	107.57m ² , 3 bedroom, 2 bathroom, DLUG, part 2 storey unit located northmost on the lot. The private open space is located within the front setback to Goondooloo Drive. Details of fencing and landscaping treatments for this area are illustrated within Plans A14-16.
2	129m ² , 3 bedroom, 2 bathroom, DLUG, office, part 2 storey unit located centrally on the lot.
3	128m ² , 3 bedroom, 2 bathroom, DLUG, part 2 storey unit located at the rear of the lot. NB Approval for this unit is not sought by this application – this unit was previously approved as 'Unit 2' within the dual occupancy development approved under 10.2014.70.2. Construction

	of this unit is currently near completion. A detached garage has been used as a temporary residence pending completion of the rest of the dwelling and is required to be rendered non-habitable prior to an OC being issued.
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A number of issues were raised with the applicant following an initial assessment of the application. In particular;

- 5 • Lack of proper BASIX certification
- Non-compliance with visitor parking requirement
- Unsatisfactory detail in relation to front setback Private Open Space, landscaping, and fencing.
- Unsatisfactory shadow diagrams, and
- 10 • Failure to satisfactorily demonstrate compliance with Chapter D1 of BDCP2014, especially with regard to;
 - Side setback
 - Privacy impacts
 - Underfloor screening
 - Insufficient details of materials and colours

Additional information and amendments submitted include;

- Increasing side setbacks to a minimum 1.5m
- Provision of a visitor parking space.
- 20 • Reconfiguration of windows and balconies to improve amenity and privacy impacts.
- Provision of privacy screens and devices.
- Detailed front fence & landscaping design to front setback Private Open Space area.
- Details of design and materials used to mitigate acoustic impacts.
- Screened underfloor areas.
- Details of proposed materials and colours.
- 25 • Details of proposed acoustic mitigation measures.
- Amended BASIX certification.

The development was proposed by the applicant to be carried out in the following stages:

30 **Stage 1:**
Construction of Unit 3 and strata subdivision to create 3 lots;

Stage 2:
35 Construction of unit 1 and 2.

A statutory assessment pursuant to Section 79C of the EP&A Act1979 of the amended proposal is outlined in the following sections of this report.

40 **2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS**
3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

	Summary of Issues
Development Engineer	Supported, subject to standard conditions (A2015/8338).
Water & Sewer	Supported, subject to standard conditions (A2015/8344).
ET Engineer	Water & sewer levies apply (A2015/9661).

Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Requirement	Proposed	Complies
NSW Coastal Policy 1997	Development within the Coastal Zone must be consistent with the Aims, Objectives and Strategic Actions of the Coastal Policy.	Satisfactory with regard to all relevant aims, objectives and actions.	Yes
Building Code of Australia	The proposal must be capable of compliance with the structural and safety requirements of the Building Code of Australia.	The proposed building works are considered to be capable of complying with the BCA. In the event of an approval being issued, it is recommended that a condition be included to ensure the BCA requirements are met.	Yes
SEPP (Building Sustainability Index: BASIX) 2004	BASIX Certificate Required for: <ul style="list-style-type: none"> • New dwellings • Alterations > \$50,000:00 • Pools > 40,000 kl 	BASIX Cert No. 642518M dated 21 June 2015.	Yes
State Environmental Planning Policy No. 55 – Remediation of Land	Council must: <ul style="list-style-type: none"> (a) considered whether the land is contaminated, and (b) if the land is contaminated, if the land is suitable in its contaminated state or after remediation, and (c) be satisfied the land will be remediated before the land is used. 	The site is an existing residential allotment with no known or likely sources of contamination.	Yes
State Environmental Planning Policy No. 71 – Coastal Protection	Council must consider the matters listed at Section 2 & 4 of SEPP 71. Matters for consideration for development within the coastal zone: <ul style="list-style-type: none"> • retention of existing public access to the coastal foreshore • impact of effluent disposal on water quality • development must not discharge untreated stormwater into a coastal water body 		Yes Yes Yes

5 **3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014**

Zone: Zone No. R2 Low Density Residential

Definition: Multi dwelling housing

LEP Requirement	Summary of Requirement	Proposed	Complies
2.3 Zone objectives and land use table	Must be permissible within the R2 zone	<i>Multi dwelling housing</i> – permissible with consent	Yes
	Must have regard to the R2 zone objectives.		Yes

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

LEP Requirement	Summary of Requirement	Proposed	Complies
	<ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provides facilities or services to meet day to day needs of residents. 		
4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	<i>To achieve planned residential density of;</i> 1000m ² min lot size for multi-dwelling housing in R3 zone.	Subject site = 1256m ² .	Yes
4.3 Height of buildings	9m Max	7.2m max	Yes
4.4 Floor space ratio	0.5:1 Max	0.3:1 (365m ² :1256m ²)	Yes
5.5 Development within the coastal zone	Protect coastal access, environment and amenity - must consider the matters listed under subclause (2) and not grant consent unless satisfied of the matters listed under subclause (3).	No significant impact on coastal access, environment, or amenity. Generally satisfactory with regard to matters under subclause 2 and 3.	Yes
5.9 Preservation of trees or vegetation	Must not remove or otherwise injure any vegetation prescribed by Chapter 2 of BDCP2014, without consent.	The application does not propose the removal of any vegetation requiring approval pursuant to Chapter B2 of BDCP2014.	Yes
5.10 Heritage conservation	Applies to any development in relation to a: <ul style="list-style-type: none"> Heritage item Aboriginal object Building etc in a heritage conservation area 	The subject site is not affected by any known heritage constraints.	N/A
6.1 Acid sulphate soils	Not disturb, expose or drain acid sulphate soils	The site is not identified as having potential acid sulphate soils.	N/A
6.2 Earthworks	Must consider matters listed under 6.2(3)	The proposed development has been designed to minimise the amount of excavation required, in accordance with DCP requirements.	Yes
6.3 Flood planning	Minimise the risk to life and property from development on land at or below the flood planning level.	The site is not identified as flood prone land.	N/A
6.6 Essential services	Essential services must be available.	All essential services are available to the site.	Yes
6.7: Affordable housing in residential areas	Council must consider the need for providing, maintaining or retaining affordable housing (In R2, R3, B2 & B4 Zones	The proposed development will contribute to small dwelling housing stock within the locality.	Yes

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014

5

DCP Clause	Requirement/ Comment	Satisfactory
Part B Controls Applying Generally to Development Applications		
B3 Services	Services, including stormwater management, are considered to be satisfactorily addressed by the application and/or the conditions of consent listed at the end of this report.	Yes
B4 Traffic Planning, Vehicle Parking, Circulation and Access	Required: 2 per 3br dwelling + 1 visitor space per 4 dwellings or part thereof. Proposed: Each unit is provided with a double lock up garage. A visitor car space, comprising part of the common property, is located in-between dwelling 1 and 2.	Yes
B8 Waste Minimisation & Management	Suitable space for the storage of bins is provided in the garage of each dwelling. It is recommended that a condition be imposed requiring a SWMMP for construction waste to be submitted prior to the issue of a Construction Certificate.	*Conditioned
B9 Landscaping	Proposed landscaping is considered to have been satisfactorily designed to enhance privacy and amenity of individual units while mitigating potential impacts on adjoining development. In accordance with Chapter B9, sufficient landscaped areas are available to each dwelling and over 25% of the site will remain as deep soil areas.	Yes
B14 Excavation & Fill	Proposed building footprints generally conform to site contours and will require minimal cut and fill.	Yes
<i>Part C Further Controls, Specific Constraints & Environmental Characteristics</i>		
C3 Visually Prominent Sites and View Sharing	<p>For the purpose of Byron DCP2014, <i>visually prominent site</i> is defined as;</p> <p align="center"><i>Means land that is wholly or partly located within the coastal zone; and land in Zone RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.</i></p> <p>The subject site is located within the coastal zone and therefore falls within the above definition. Section C3.2 of the DCP outlines a range of provisions to take into consideration when assessing the impacts of development on visually prominent sites. Having regard to these provisions, it is considered that the design of the proposed units takes advantage of available outlooks without causing any unreasonable impacts on views from surrounding properties. In particular it is noted that the significant northeasterly views from the first floor front patio of No. 31 Goondooloo are generally unaffected while the relatively minor bulk and scale of the individual units, small second floors, and the layout and spacing between the units ensures that adjoining properties will continue to benefit from other significant views toward the Pacific Ocean northeast and southeast of the site. (Note: Views directly east of the site</p>	Yes

	are blocked by existing development).	
Chapter D1 Residential Accommodation in Urban, Village & Special Purpose Zones		
D1.2.1 Building Height Plane	Building height planes are illustrated on Dwg. No. A07 & A09. Exemptions are sought for minor breaches of the BHP on the eastern elevation of both units. The breach on Unit1 primarily affects the eaves while the breach on unit 2 affects up to approximately 1.4m of the facade at its highest point. The breaches do not result in any significant increase in overshadowing of the property adjoining to the east and satisfactory measures to mitigate potential privacy, and acoustic impacts are detailed Dwg. No. A19 & A20.	No*
D1.2.2 Setbacks from Boundaries	<ul style="list-style-type: none"> • Local roads frontage: 4.5m • Garages/carports. 5.5m (local or secondary only) • Side/rear: 1.5m or BHP • 3m between units. 	Yes Yes Yes* Yes
D1.2.3 Screening the Underfloor Space of Buildings	Satisfactory underfloor screening proposed (with painted timber battens)	Yes
D1.2.4 Character & Visual Impact	There are no Prescriptive Measures. The proposed development is considered to be satisfactory with regard to the character of the existing and proposed built environment and the objectives of Clause D1.2.4	Yes
D1.2.5 Fences	A new 1.2m fence is proposed along the front boundary.	Yes
D1.6 Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings		
D1.6.1 Private Open Space Courtyards	Each unit has satisfactory provision a minimum of 30m ² of Private Open Space with a minimum dimension of 4m.	Yes
D1.6.2 Open Space Balcony	Satisfactory allocation of ground level Private Open Space provided to each dwelling. North facing decks provide additional amenity.	N/A
D1.6.3 Landscaping	A preliminary landscaping plan was submitted with the application. The proposed landscaping is generally satisfactory, however, a detailed landscaping plan is to be submitted with a Vegetation Management Plan prior to the issue of a CC.	Yes Yes Yes Yes
D1.6.4 On-Site Car Parking	Satisfactory car parking provided in accordance with this clause and Chapter B4.	Yes
D1.6.5 Landscaping	In accordance with Chapter B9, sufficient landscaped areas are available to each dwelling and over 25% of the site will remain as deep soil areas.	Yes
D1.5.6 Sound Proofing	The proposed dwellings are detached and oriented satisfactorily with regard to acoustic transmission.	Yes
D1.6.6 Clothes Drying Facilities	Satisfactory details of clothes drying facilities have been provided on the submitted Site Plan.	Yes
D1.6.7 Equity of Access and Mobility	The subject site is very steep and does not readily lend itself to adaptable housing, however, ambulant facilities can be easily retrofitted.	Yes

* Issues discussed below

Development Control Plan 2014 - Issues

D1.2.1 Building Height Plane

5 Byron DCP2014 prescribes a Building Height Plane (BHP) for residential developments. For the purpose of Byron DCP2014 the *Building Height Plane* is defined as;

Means the plane projected at an angle of 45^o over the land to be built upon, measured from a vertical distance of 1.8 metres above ground level (existing) at the site boundary.

10 Exemptions are sought for minor breaches of the BHP to the eastern facades of Unit 1 and Unit 2 (see plans A07 & A09). Both units have low skillion roofs that slope upwards towards the north at a similar degree to the site's topography. The breaches therefore affect the eaves and up to 1m of the wall at its highest point. Shadow analysis and privacy investigations have been provided and confirm that the development is unlikely to have any significant impacts, subject to compliance with proposed mitigation measures (see plans A15 – A 19).

15 The proposed breaches are considered to be minor and unlikely to result in any significant impacts. The proposed layout and design of the development responds satisfactorily to the constraints of the site and is considered to strike an appropriate balance between minimising impacts and achieving orderly and economic development of the land, in accordance the objectives of the Act and the R2 zone. The proposed development is generally satisfactory with regard to the objectives and performance criteria of Part D1.2.2.

20

D1.2.2 Setbacks from Boundaries

25 For single storey multi-dwelling housing, BDCP2015 prescribes a minimum side setback of 1.5m or otherwise governed by the BHP. The proposed dwellings are part two-storey structures, being single story in the vicinity of the eastern boundary. Following correspondence between the applicant and Council's assessing officer the plans were amended to achieve compliance with the 1.5m side setback requirement. However, a portion of the eaves and eastern facades of the proposed units continue to breach the BHP. As discussed above this breach is not considered to result in any deleterious effects and the development is considered to be generally satisfactory with regard to the objectives and performance criteria of Part D1.2.2.

30

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	No significant impacts.
Built environment	The proposed development is in keeping with the objectives of the R2 low density zone, and is in keeping with the planned density of (1000m ² minimum lot size for multi dwelling housing) while maintaining modest built forms. Several minor breaches of Council's prescriptive BHP controls are discussed elsewhere in this report.
Social Environment	The development caters directly to the current high demand for smaller, more affordable houses in the locality. The new dwellings will have a high level of amenity and are located within an established urban area with good connectivity to shops and services.
Economic impact	The construction will have short term benefits to the local economy.

35

3.5 The suitability of the site for the development

The site is an urban allotment within the R2 Low Density Residential zone, with high connectivity to local services and amenities. All planning and environmental constraints affecting the site are

considered to have been satisfactorily addressed by the application and/or the conditions of consent recommended at the end of this report. The site is suitable for the proposed development.

3.6 Submissions made in accordance with this Act or the regulations

5 The application was publicly notified in accordance with Section A14 *Public Notification and Exhibition of Development Applications* of the *Byron DCP2014*. Council received a total of sixty-one (61) submissions, objecting to the development. Fifty-nine (59) of the submissions received are signed copies of the same letter and one (1) is an expanded version of the same letter. The issues raised by the submissions are outlined below.

10

Issues Raised	Planner's Comment
The DA states that the proposed dwellings are 'units', when they are clearly 'houses' and the submitted BASIX is for a separate dwelling house, not for the proposed multi dwelling development.	The application (as notified) is for a 'Multi dwelling development'. Reference to the individual dwellings as either 'units' or 'houses' is a question of semantics and has no bearing on the assessment of the application. 'Multi dwelling housing' is defined form of development that is permissible with consent in the R2 zone. The issue of incorrect BASIX certification was raised with the applicant and has since been resolved.
The DA does not state how many bedrooms are in each house and does not show parking solutions for multiple cars in each residence.	Internal floor plans are generally not included as part of the public exhibition material for residential development for privacy reasons. The proposed dwellings each have three bedrooms and a double lock up garage. The application was referred to Council's development engineer and following amendments to provide for visitor car parking the proposed parking arrangements have been deemed to be satisfactorily in accordance with Council's DCP.
The approval of three separate dwellings on one block is not in the spirit of the existing streetscape or of the residential area in general. To compare Goondooloo Drive's large single brick house format on large blocks of land to Rajah Road's 3 storey apartment blocks, town houses and common wall dwellings is like comparing the space of Ewingsdale to the high density of Sunrise.	Multi dwelling housing is a permissible form of development (on lots over 1000m ²) within the R2 zone. The fact that development within the immediate locality is predominantly characterised by large single dwellings on large lots is, above all, a reflection of the market at the time that the area was originally developed. Infill development of the kind proposed by this DA is likely to become increasingly prevalent as demand for smaller types of dwelling increases. The bulk and scale of the proposed dwellings, as seen from the street, is considered to be similar to, or less than, the bulk and scale of surrounding structures.
There are currently two dual occupancy properties on Goondooloo Drive, both of which are at the bottom of the street and are on significantly larger parcels of land than the 268m ² and 281m ² proposed in this DA. These would appear far too small for two separate dwellings let alone 3.	The subject site is approximately 1256m ² in area which is over the 1000m ² minimum lot size standard prescribed by BLEP2014 for multi dwelling housing in the R2 zone. Each dwelling has been designed with sufficient provision of private open space, parking and are generally compliant with other requirements of BDCP2014.
The LEP requires 800m ² for two dwellings [dual occupancies], however, this application calls for two of the three dwellings to be built on a 549m ² block, which is surely in breach of the LEP.	As outlined above, the DA proposes a multi dwelling development, consisting of 3 dwellings, on a 1256m ² lot and is generally compliant with BLEP2014 and BDCP2014.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

<p>The proximity of the two houses, only 900mm from the eastern boundary will surely cause some privacy issues for that neighbour.</p>	<p>A number of amendments were made to the application following an initial assessment of the application by council. Amendments included buildings were moved to increase the eastern setbacks to comply with the 1500mm minimum prescribed by Part D1.2.2 of BDCP2014. A number of measures have also been introduced to mitigate potential privacy impacts. These include high/low windows, window boxes, window screens, and rearrangement of the Unit 1 first floor balcony.</p>
<p>The current Council LEP specifies that a 3 dwelling development must have a minimum frontage of 25m. The subject site has a frontage of only 16.8m</p>	<p>The 25m minimum frontage for multi dwelling development was a density control prescribed by Byron Development Control Plan 1988. No such control applies to the site under the current LEP or DCP.</p>
<p>The DA appears to have provision for only 1 car parking space per house. Most houses in this area have a minimum of two spaces per house. This part of Goondooloo Road is a busy thoroughfare and its steep grade and multiple curves become blind and dangerous when cars are parked on the road.</p>	<p>Each dwelling is proposed to have a double lock up garage. An additional space to be maintained as common property will be available for visitor parking.</p>
<p>If approved, it is logical that immediate adjoining neighbours will be impacted with the devaluation of their property and possible limitations on any future planning and development options for their properties.</p>	<p>The proposed development is generally compliant and satisfactory measures have been taken to mitigate potential impacts on adjoining properties, in accordance with Councils DCP. It is not considered likely that the development would have any significant effect on adjoining property values. Any future redevelopment of adjoining properties will be subject the same assessment requirements under the EP&A Act 1979, as have applied to the subject application.</p>
<p>This area is zoned for medium density housing and one of the main reasons families move to the area is for space and privacy. This development is probably classified as medium density but pushes the envelope into an unwanted high density classification.</p>	<p>Multi dwelling housing, as proposed by this application, is a form of permissible, medium density, development within the R2 zone. Privacy and the provision of private open space are discussed in the body of this report and are considered to have been satisfactorily provided, in accordance with the requirements of BDCP2014.</p>
<p>The previous approval of a dual occupancy on the site was unfortunate and unwanted by local residents. The new proposal for three free standing units is even more unwanted and clearly falls outside the guidelines stipulated by the current LEP. We fear it may be the thin edge for developers to come in, knock down houses to build multiple small houses on small blocks and change the entire dynamic of the area.</p>	<p>The obvious dislike of the proposed development by adjoining neighbours is noted, however, the proposed development is permissible and ultimately considered to be satisfactory with regard to the planning controls that apply to the site. The manner in which the local dynamic is likely to change as a result of this kind of development is open to speculation, however, it is likely that an increase in the availability of smaller, more affordable houses will help to ensure that new young families can continue to move into and live in the area.</p>
<p>The new DA appears to be rushed and haphazard in both content and specific detail, and at best it lacks important information for a sensible assessment</p>	<p>Amended plans and additional details were requested of and provided by the applicant during the assessment of the application to the satisfaction of council.</p>

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and decision to be made.	
We insist that the DA be put before the Planning Review Committee for in depth assessment and further canvassing of local opinion.	The application was provided to the Planning Review Committee meeting of 19 May 2015, where it was decided that the application will be best determined by the elected Council.
The 'weatherboard' style materials used on the first completed house have deteriorated in less than 6 months. The House, as far as we were told, was going to be white, but has been built in a mission brown colour which has already faded to a light tan.	The exterior colour of the near completed dwelling was changed in response to Council's requirements to use earth toned colours and avoid extensive use of whites. Details of proposed materials and finishes were requested from the applicant. The proposed materials and finishes are considered to be satisfactory.
The proposed development is likely to have dramatic adverse impacts on the privacy and amenity of adjoining properties and is unsympathetic to the character of the locality.	Some potential impacts of the development have been mitigated by amendments and additional details submitted during the assessment of the application. Issues of character, amenity and privacy are discussed within the body of this report and ultimately considered to be satisfactory with regard to council's planning controls.
Proposed access arrangements will create significant traffic conflict as the narrow (3.5m) width of the entry driveway will not permit exiting or entering vehicles to stop within the site to permit vehicles to pass them if they are travelling in the opposite direction at the same time.	Council's development engineer has reviewed the proposed development and is satisfied that the submitted parking and access details comply with Australian Standards. It is noted that a 5.5m wide curb crossover is proposed (and Roads Act approval concurrently sought) with enough room for an entering vehicle to pass an exiting vehicle.
The proposed parking arrangements will only comply if the current occupation of the existing garage as a dwelling ceases. If this does not occur, four dwellings will result on site, and the parking proposed will be totally at odds with Part D1.6.4 of DCP2014.	Agreed. The temporary fit-out and use of the garage (part of 'Unit 3') as a dwelling was permitted under 10.2014.70.2 to allow the owner/builder to occupy the site while construction of the rest of the dwelling was being constructed. A condition of consent was that the garage be rendered non-habitable and reinstated as a garage prior to the issue of an occupation certificate for Stage 1 of that development. Should the current application be approved, it is recommended that it be subject to conditions of consent requiring that Determination No. 10.2014.70.2 be modified to be consistent with the new consent, and that Stage 1 (of 10.2014.70.1) be completed (which includes the reinstatement of the garage) prior to the issue of a construction certificate for any further construction stage.
The proposed development incorporates balconies and first floor windows that overlook adjoining properties, at odds with the design objectives set within Part D1.6.1 of BDCP2014.	The issue of privacy has been discussed elsewhere in this report. Amendments have been made to the submitted plans, including modifications to windows and balconies and introduction of privacy devices. The amended proposal is considered to be satisfactory with regard to potential privacy impacts.
The three dwellings proposed cannot be considered to be a development which is compatible with a low density residential environment and fails to meet community expectations of a low density residential environment [zone].	The proposed development is a permissible form of development within the R2 zone and the subject site complies comfortably with the 1000m ² min lot size stipulated for this kind of development. As such, the proposed development is considered to be in keeping with the objectives of the R2 zone. It is likely that community expectations may be adjusting to increases in density resulting from the introduction of the 2014

	Byron LEP, however the proposed development is consistent with the requirements of the BLEP 2014.
The submitted plans approximate the building height planes based on the poor quality of plans assessed.	Amended plans were submitted with reviewed BHPs. This is discussed in detail under Section 3.3 of this report.
No underfloor screening is shown on the submitted plans, contrary to the requirements of the DCP.	The amended plans demonstrate screening of underfloor areas, in accordance with Part D1.2.3 of DCP2014.
Private open space for the northernmost unit is proposed within the front setback, contrary to council's DCP requirements.	The DCP2014 provisions relating to the provision of private open space for multi dwelling housing do not prohibit Private Open Space being provided within front setbacks. The applicant has provided additional details of proposed fencing and landscaping measures aimed at increasing the privacy and amenity of the subject Private Open Space area.

3.7 Public interest

5 Significant public objection to the proposed development is noted, however, it is considered that the development is permissible and likely impacts satisfactorily mitigated. It is considered that approval of the proposal, subject to the conditions of consent recommended at the end of this report, would represent a fair and consistent application of councils planning controls in the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

15 The application was referred to council's Systems Planning Engineer who has advised that payment of developer servicing charges will be required prior to issue of a construction certificate. The additional load generated by the development is equivalent to;

- **1.4 ET** for Councils Water & Bulk Water; and
- **2.0 ET** for Councils Sewerage systems.

4.2 Section 94 Contributions

20 Contributions will be required in accordance with the following table (current as at 16/06/2015):

Section 94 contributions Schedule for 10.2015.134.1						
Ocean Shores						
Catchment						
This schedule was calculated in spreadsheet #E2015/28112						
1 bedroom units =		0	@	0.55 SDU	=	0
2 bedroom units =		0	@	0.75 SDU	=	0
3 bedroom units/dwellings =		3	@	1 SDU	=	3
Allotments =		0	@	1	=	0
Less Site Credits =		1	@	-1	=	-1
Total SDU					=	2
Schedule valid until		25/07/2015		After this date contact Council for CPI update.		
Local Open Space & Recreation	(OS-OS)	2.00	SDU @	\$ 1,617.17	=	\$ 3,234.34

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LGA Wide Open Space & Recreation	(OS-SW)	2.00	SDU @	\$ 699.99	=	\$ 1,399.98
LGA wide Community Facilities	(CF-SW)	2.00	SDU @	\$ 1,025.21	=	\$ 2,050.42
Local Community Facilities	(CF-OS)	2.00	SDU @	\$ 1,396.26	=	\$ 2,792.52
Bikeways & Footpaths	(CW-OS)	2.00	SDU @	\$ 440.92	=	\$ 881.84
Shire Wide Bikeways & Footpaths	(CW-SW)	2.00	SDU @	\$ 75.20	=	\$ 150.40
Urban Roads	(R-OS)	2.00	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	2.00	SDU @	\$ 211.82	=	\$ 423.64
Rural Roads	#N/A	2.00	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	2.00	SDU @	\$ 1,058.79	=	\$ 2,117.58
Total				\$ 6,525.36	=	\$ 13,050.72

5. CONCLUSION

- 5 The application seeks development consent for a multi dwelling housing development at 29 Goondooloo Drive, Ocean Shores. An assessment of the proposed development pursuant to the relevant heads of consideration under Section 79C of the EP&A Act 1979 is outlined in the body of this report. The proposed development is considered to merit approval subject to the conditions of consent recommended in Attachment 2 of this report.
- 10 Determination No. 10.2014.70.2 previously approved a dual occupancy on the subject site. The construction of one of the two dwellings approved under that application has been substantially completed. Two dwellings, detailed within the subject application, are proposed to be constructed in place of the second dual occupancy unit previously approved by Council. As such, it is proposed that 10.2014.70.2 be modified by the deletion of the second dwelling as a condition of approval of this application and the two new proposed units be constructed as warranted development in its place.
- 15

6. RECOMMENDATION

- 20 **1. It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2015.134.1 for Multi dwelling development (3 units), granted deferred commencement (deferral period 12 months) consent, subject to the following conditions listed in Attachment 2.**

25 7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Report No. 13.9 Renewal of Caravan Park Approvals to Operate for the Terrace Reserve Holiday Park and Massey Green Holiday Park.

Directorate: Sustainable Environment and Economy
Report Author: Wayne Bertram, Manager Sustainable Development
Jon Rushforth, Team Leader Environmental Health
File No: I2015/413
Theme: Ecology
Development Certification

Summary:

Council has received two applications to renew the Approvals to Operate (ATO) both the Massey Greene and the Terrace Reserve Holiday Parks. An assessment of these applications has been undertaken by an independent assessor to determine the compliance of the existing Caravan Park and Camping grounds and to identify if Council is permitted to issue such as renewals under Section 107 of the *Local Government Act 1993*.

The independent assessment has advised that the renewal applications and the existing operation of the both Massey Greene and the Terrace Reserve Holiday Parks would require changes to the terms of the original approvals to operate. This would prevent Council from approving both the applications to renew the existing Approvals to Operate.

To facilitate compliance with the requirements of the *Local Government Act 1993* in addition to the applicant being advised that Council is not able to approve the request to renew the Approvals to Operate it has also been recommended that the applicant be invited to submit new applications for approval to operate which reflect the site layouts which are consistent with the respective adopted Plans of Management for the Massey Greene and The Terrace Crown reserve caravan parks and the boundaries as defined in Council's previous Resolutions 13-25, 12-995 and 12-627.

RECOMMENDATION:

- 1. That Council advise the applicant for the Crown Reserve Holiday Parks of Massey Greene and The Terrace, Brunswick Heads that the application for renewal or extension of the Approval to Operate cannot be approved, as the requested Approval to Operate has significant variances found during the independent assessments, that would require changing the terms of the original approval to operate.**
- 2. That the applicant be invited to submit new applications for approval to operate which reflects the site layout which are consistent with the respective adopted Plans of Management for the Massey Greene and The Terrace Crown reserve caravan parks and the boundaries as defined in Council's previous Resolutions 13-25, 12-995 and 12-627.**

Attachments:

- 1 Independent Assessment - Massey Greene Holiday Park - prepared by BCA dated 25 June 2015, E2015/41055
- 2 Independent Assessment Terrace Reserve Holiday Park prepared by BCA dated 25 June 2015, E2015/41045

Report

5 The “Massey Greene” and “Terrace Reserve” caravan parks were operated on Crown Reserves by Council for more than 60 years.

10 As part of the ‘evolution’ of Holiday parks and camping grounds over this long period of time, the land occupied for this purpose had expanded outside the boundaries of the Crown Reserves into road reserves and onto other Crown Reserve areas.

15 At the point, in 2007, when the Byron Shire Holiday Parks Reserve Trust ceased to be the operator of the parks, there were existing significant deviations from both the land titles occupied for the holiday parks and camping grounds and the specific layout of the parks in respect of the Local Government Regulations.

20 Notices of Compulsory Acquisition of Land and a Notice to add the acquired lands to reserved Crown Land (for the compulsory acquisition of lands adjoining the Crown Holiday Parks) was published in the New South Wales Government Gazette No. 47 dated 4 May 2012.

25 Council at its Ordinary Meeting held on 7 June 2012 considered a Notice of Motion titled Brunswick Holiday Park Licence renewal 2012. Council resolved as follows:

30 **12-438** *“that upon receipt of any application for licence renewal of Crown managed holiday parks, determination of the application by Council and the report provide clarification of the renewal that was given in 2006 for the Brunswick Holiday Parks after the dismissal of Byron Shire Council by providing the layout plan prior to 2006 and the approved 2006 licence layout”*

35 Applications for Renewal were received on 2 April 2012. Due to an administrative error at the time of the receipt and processing of the applications they were not brought to the attention of relevant staff until after 7 June 2012.

The applications were reported to Council on 9 August 2012.

www.byron.nsw.gov.au/meetings/2012-08-09-ordinary

40 In respect of the subject parks Council resolved (**12-627**) as follows:

- 45 1. *“That Council approve the Applications for Massey Greene Caravan Park, Terrace Reserve Caravan Park..., subject to compliance with the provisions of Section 68, Part F2 of the Local Government Act 1993; Local Government (General) Regulation 2005 and Local Government (Manufactured Home Estates, Holiday Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, in accordance with Annexures 11(q), 11(r) and 11(s) and subject to the following additional conditions:*

45 *Massey Greene*

That the following be excluded from the operational area:

- 50 *a. Lot 7005 DP1113421*
b. Part Lot 20 DP1169546 (Mona Lane and Tweed Street area)
c. A 3 metre buffer zone between the top of the river bank and the operational boundary of the Park (which is to be retained essentially as a public walkway (noting that public includes Park patrons).

The Terrace

- 55 *i. That the following be excluded from the operational area:*
a. Part Lot 416 DP728666

b. Part Lot 50 DP 1169550 Brunswick Terrace-4013m²

c. A 3 metre buffer zone between the top of the river bank and the operational boundary of the Park (which is to be retained essentially as a public walkway (noting that public includes Park patrons)).

5 ii. That the following be included in the operational area:

Lot 1 DP1169548 (park entrance) Terrace and Fingal Street junction-318m²”

On 6 December 2012 Council considered a report (#E2012/18681) on, inter alia, the 12 November meeting and resolved (12-927):

- 10 1. *“That Council receive and note this Report.*
- 15 2. *That Council confirm that there has been a constructive effort to consult with North Coast Accommodation Trust as to the conditions of approval imposed by Resolution 12-627, noting Council’s correspondence dated 20 August 2012 and 23 October 2012 and the meeting between representatives of the NCAT and Council held on 12 November 2012*
- 20 3. *That Council confirm that it has considered the implications of the conditions of approval imposed by Resolution 12-627 on the current operation of the Holiday Parks and that following that consideration;*
- 25 a) *supports the previously required fore-shore buffer zones being integrated within the NCHP Plans of Management.*
- 30 b) *notes the community view and reaffirms the terms and effect of Resolution 12-627 particularly that the foreshore area of each park must remain in public hands for unimpeded public access.*
- 35 c) *accepts that in implementing the resolution where foreshore access is limited by encroachment of Caravan Park infrastructure, including private vans, the relocation of that infrastructure should be planned now but executed as and when the long-term permanent resident vacates or chooses to relocate to an alternative suitable site within the park (i.e. residents personally occupying a permanent site as of Parks hand-over date in 2007 should remain undisturbed and their structure be relocated on their leaving the site, or before if the resident so asks, at Parks expense).*
- 40 d) *That Council’s licensing conditions as per Resolution 12-627 of 9 August 2012 is amended to include:*
- 45 i) *Part Lot 7005 – The operational boundary of the caravan park is to be aligned with the existing picket fence on the western side of Massy Greene adjoining site 88 through to the high water mark.*
- 50 4. *That Council advise the Division of Local Government in terms of 2 and 3 above.*
5. *That Council advise the North Coast Accommodation Trust and the Division of Local Government of its preference to also extend public foreshore area to retain the land north of the old Fins Building adjoining Part Lot 102 DP 851964 so as to integrate the foreshore into that RTA foreshore pathway. This land is the northern part of DP 804961.*
6. *That Council requests the North Coast Accommodation Trust and the Division of Local Government defer the development within the foreshore parklands known as the Terrace and Banner Park, pending further consultation with stakeholders, Council and NCAT/NCHP. These parklands are Part of Lot 416 DP728666.”*

The General Manager subsequently received a Notice of Motion (NoM) titled Crown Parks in Brunswick Heads. This NoM sought to further amend the operational boundaries of the Crown reserve holiday parks in Brunswick Heads.

Council at its Ordinary Meeting held on 20 December 2012, considered the NoM and the resolution adopted by Council as it relates to the subject parks is reproduced below:

12-995 "Resolved that Council inform itself and the Division of Local Government on some Caravan Park licence boundaries by defining them:

1. as lines on survey plans as follows:

a) at The Terrace:

i) a western boundary at the western side of Lot 50, the 4,110m² area outlined in red on page 5 of 8 of Annexure 1(d) to our papers of 6 December (note: this licence boundary allocates to the Park about 12.5m of the 30m wide road reserve of Brunswick Terrace);

ii) a northern boundary east of the 318m² area outlined in red on page 8 of 8 of Annexure 1(d) to our papers of 6 December is a line parallel to Fingal Street and 3.0m south of the centre of the footbridge where its timber ends at Fingal Street;

iii) a southern boundary through the centres of sites P190, P191 and U146 indicated on page 6 of 8 of Annexure 1(d) to our papers of 6 December plus a Christmas & Easter overflow to 10m south of the southern edge of the bitumen track within the Park and square (90°) to Brunswick Terrace.

b) at Massey Green:

i) an eastern boundary on the north-south join between Lot 409 and Lot 20 and extended south to the Old Pacific Highway;

ii) a southern boundary on the southern edge of Lot 20;

iii) a western boundary as defined in our Resolution 12-947 of 6 December, on the picket fence."

Following the meeting a Rescission motion was received by the General Manager in relation to Resolution **12-947**.

The Rescission Motion was considered by Council at its Ordinary Meeting held on 14 February 2013.

Council resolved via Resolution **13-23** to rescind Resolution **12-947** and adopt in its place Resolution **13-25** which reads as follows:

13-25 "Resolved:

1. That Council receive and note this Report.

2. That Council confirm that there has been a constructive effort to consult with North Coast Accommodation Trust as to the conditions of approval imposed by Resolution 12-627, noting Council's correspondence dated 20 August 2012 and 23 October 2012 and the meeting between representatives of the NCAT and Council held on 12 November 2012.

3. That Council confirm that it has considered the implications of the conditions of approval imposed by Resolution 12-627 on the current operation of the Holiday Parks and that following that consideration:

a) supports the previously required foreshore buffer zones being integrated within the NCHP Plans of Management.

- b) notes the community view and reaffirms the terms and effect of Resolution 12-627 particularly that the foreshore area of each park must remain in public hands for unimpeded public access.

- 5 c) requires that within three years, Park Management implements a 3m foreshore buffer zone in Terrace Park. For all parks, all foreshore buffer zones are to remain outside the operational area of the caravan parks for public use and all caravan park infrastructure, including permanent sites are to be relocated, with a minimum 10m building setback from the riverbank at NCHP's expense. All buffer and setback measurements are to be taken from the top of the riverbank and will be reviewed periodically. Alternate accommodation is to be provided ON A SITE IN THE SAME PARK for long term residents whose vans cannot be relocated or fails to comply with current legislation. All short term sites and camp sites are required to maintain a minimum 3m setback from foreshore buffer zone boundary in all caravan parks. New Plans of Management are to retain approx 30% sites for permanent residents in all caravan parks and precincts considered for long term sites. All new license conditions are required to be included in Plans of Managements.

- 10
- 15
- 20 d) that Council's licensing conditions as per Resolution 12-627 is amended to include Part Lot 7005 – The operational boundary of the caravan park is to be aligned with the existing picket fence on the western side of Massey Greene adjoining site 88 through to the high water mark.

- 25 4. That Council advise the Division of Local Government in terms of 2 and 3 above.

- 5. That Council advise the North Coast Accommodation Trust and the Division of Local Government of its preference to:

- 30 a) extend public foreshore area to retain the land north of the old Fin's Building adjoining Part Lot 102 DP 851964 so as to integrate the foreshore into that RTA foreshore pathway. This land is the northern part of DP 804961.

- 35 b) support NCHP's requests for the inclusion of additional lands (Old Pacific Hwy & Fins Building) within Ferry Holiday Park.

- 6. That Council requests the North Coast Accommodation Trust and the Division of Local Government defer the development within the foreshore parklands known as the Terrace and Banner Park, pending further consultation with stakeholders, Council and NCAT/NCHP. These parklands are Part of Lot 416 DP728666.

- 40
- 7. That Council reiterates the need to ensure the protection and appropriate management of all native vegetation including the stand of cypress pines within the Terrace Park to standards in accordance with applicable legislation.

- 45
- 8. That Council reiterates the need to retain and appropriately sign public vehicular access to the public boat ramp at Ferry Reserve."

50 On 15 February 2013 Council representatives met with representatives of the Office of the Premier and Cabinet, NCAT and the Department of Lands. The meeting was convened at the request of the representative from the Office of the Premier and Cabinet to discuss the conditions contained in the Approvals for the Terrace Reserve, Massey Greene and Ferry Reserve Holiday Parks determined by Council in Resolutions 12-627, 12-995 and 13-25. This action being undertaken at the request of the Minister for Local Government to bring the parties together to discuss these

55 conditions.

The Minutes of the meeting were taken by Council and distributed to each of the representatives at the meeting from Office of the Premier and Cabinet, Council, NCAT and the Department of Lands. The Minutes included the proposed actions to be implemented by Council and the NCAT.

5

Agreement was reached between the representatives from Office of the Premier and Cabinet, Council, NCAT and the Department of Lands on the actions proposed for both the Terrace Reserve and the Massey Greene Holiday Parks.

10 No agreement has been reached in relation to the actions proposed for the Ferry Reserve Holiday Park.

The Agreement reached is for the following actions:

15 Massey Greene Holiday Park

1. That Council grant an approval for 12 month period (from the date of issue) for the same operational area as defined in the 2007 Approval and on the same terms and conditions with the exception of the inclusion of an additional condition for a 3 metre buffer zone along the foreshore.

20

(Note: The 3 metre buffer zone has already been created and agreed to by Council and the NCAT)

2. That the NCAT prepare and exhibit a draft Plan of Management (POM) for the Caravan Park during this period.

25

3. That prior to placing the draft Plan of Management (POM) for the Caravan Park on exhibition that the NCAT facilitate a meeting with the parties to review the PoM, and to agree the maps used in the PoM, to define the operational boundaries.

30

(Note: Adoption of the POM within this period is subject to Ministerial processes and that the parties referred to in 3. above are the representatives of the stakeholders involved in the 15 February meeting.)

35 Terrace Reserve Holiday Park

1. That Council grant an approval for 12 month period (from the date of issue) for the same operational area as defined in the 2007 Approval and on the same terms and conditions.

2. That the NCAT prepare and exhibit a draft Plan of Management (POM) for the Caravan Park during this period.

40

3. That prior to placing the draft Plan of Management (POM) for the Caravan Park on exhibition that the NCAT facilitate a meeting with the parties to review the PoM, and to agree the maps used in the PoM, to define the operational boundaries.

45

(Note: Adoption of the POM within this period is subject to Ministerial processes and that the parties referred to in 3. above are the representatives of the stakeholders involved in the 15 February meeting.)

50

In relation to the above actions further Agreement was reached in respect of the terms to progress these actions, which included in a report to the 9 May 2013 Ordinary meeting of Council, to enable Council to consider a 12 month approval for each of the Massey Greene and Terrace Reserve Holiday Parks. <http://www.byron.nsw.gov.au/meetings/2013-05-09-ordinary>

55

At the Ordinary meeting of Council of the 9 May 2013, Council resolved:

13-237 “Resolved:

- 5 1. That Council note this report.
- 10 2. That Council approve the application for Massey Greene Caravan Park for a period of twelve (12) months from the date of this Resolution, subject to compliance with the provisions of Section 68, Part F2 of the Local Government Act 1993; Local Government (General) Regulation 2005 and Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, in accordance with Annexure 9(a) (#A2013/8382) hereof.
- 15 3. That Council approve the applications for Terrace Reserve Caravan Park for a period of twelve (12) months from the date of this Resolution, subject to compliance with the provisions of Section 68, Part F2 of the Local Government Act 1993; Local Government (General) Regulation 2005 and Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, in accordance with Annexure 9(b) (#A2013/8378) hereof.
- 20 4. That the NCAT prepare and exhibit a draft Plan of Management, for Massey Greene Caravan Park and Terrace Reserve Caravan Park within 6 months from the date of this resolution.
- 25 5. That prior to the draft Plan of Management, Council delegate authority to the General Manager, Mayor and Deputy Mayor to review the draft Plan of Management and continue negotiations with the other affected parties to find agreement on maps and to define operational boundaries.
- 30 6. Council reiterates its support for those boundaries as defined in Council's Resolution 13-25, 12-995 and 12-627.”

35 As a result of this resolution, 12 month ATO approvals for each of the Massey Greene and Terrace Reserve Holiday Parks were issued on the 10 May 2013. As the 12 month approval was due to lapse before the adoption of the Plans of Management for the Crown reserves, a request to renew the Approvals to Operate was made. An approval for an additional year, identical to the original terms of the 10 May 2013 approval was issued, as is permitted under Section 107 of the *Local Government Act 1993*.

40 Since this time, Massey Greene and the Terrace Reserve Holiday Parks have Plans of Management (PoM) adopted on the 2 June 2014. The details of each PoM which include authorisation for the use of part of the Crown Reserve for a caravan parks and camping ground are available at;
 45 http://www.lpma.nsw.gov.au/about_crown_land/publications/exhibition_and_information/plans_of_management/draft_plans_of_management_on_exhibit).

50 The current request to renew the Approvals to Operate for Massey Greene and Terrace Reserve Holiday Parks, which is the subject of this report, where made before the lapsing of the renewed approvals to operate.

Section 107 of the *Local Government Act 1993* advises that:

- 55 (1) *The council may determine to extend or renew an approval (but without changing the terms of the approval) if satisfied there is good cause for doing so.*

(2) *The renewal of an approval operates as if it were an approval granted on the date of renewal.*

5 (3) *The extension or renewal may be granted before the approval lapses or at any time within 3 months after the approval lapses.*

To assist Council in the determination of these applications an independent assessment of the applications for renewal was undertaken and a copy of the Assessment Reports has been provided as Attachments 1 and 2.

10 The independent assessment has advised that the renewal applications and the existing operation of the both Massey Greene and the Terrace Reserve Holiday Parks would require changes to the terms of the original approvals to operate. This would prevent Council from approving the applications seeking to renew the existing Approvals to Operate.

15 Council must ensure compliance with the requirements of the *Local Government Act 1993* is maintained for these caravan parks. To progress these matters, in addition to the applicant being advised that Council is not able to approve the request to renew the Approvals to Operate, it has been recommend that the applicant be invited to submit new applications for approval to operate which reflects the site layouts which are consistent with the respective adopted Plans of Management for the Massey Greene and The Terrace Crown reserve caravan parks and the boundaries as defined in Council's previous Resolutions 13-25, 12-995 and 12-627.

Financial Implications

25 The cost of obtaining the expert independent assessment of the two applications was \$7700.00.

Statutory and Policy Compliance Implications

30 The operation of caravan parks and camping grounds require Approval to Operate (ATO) under Section 68 (Part F2) of the Local Government Act 1993. Applications are lodged by the land owner to continue the operation of caravan park and camping ground activities and application fees are paid in accordance with Councils' adopted fees and charges.

35 The process of assessing and determining ATO applications is regulated under Chapter 7 Part 1 of the Local Government Act 1993. Part of the consideration of such applications involves the auditing of compliance with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 ("the Regulation").

40 Once it had been determined that the application represented the actual site activities, and satisfies the requirements of the Regulation, then an ATO approval is granted. Once an approval has been issued council may determine to extend or renew an approval (but without changing the terms of the approval) if satisfied there is good cause for doing so.

45 The relevant sections of the Local Government Act have been reproduced below:

LOCAL GOVERNMENT ACT 1993

72 Determination of applications by the Crown

50 (1) A council, in respect of an application for approval made by the Crown or a person prescribed by the regulations, must not:

55 (a) refuse to grant approval, except with the written consent of the Minister, or
(b) impose a condition of an approval, except with the written consent of the Minister or the applicant.

- (2) If the council proposes to refuse to grant approval or to impose a condition of approval, it must immediately notify the applicant.
- 5 (3) After the applicant is so notified, the council must submit to the Minister:
- (a) a copy of the application for approval, and
 - (b) details of its proposed determination of the application, and
 - (c) the reasons for the proposed determination, and
 - (d) any relevant reports of another public authority.
- 10 (4) The applicant may refer the application to the Minister whether or not the council complies with subsection (3).
- (5) After receiving the application from the council or the applicant, the Minister must notify the council and the applicant of:
- 15 (a) the Minister's consent to the refusal of approval, or
- (b) the Minister's consent to the imposition of the council's proposed conditions, or
- (c) the Minister's intention not to agree with the council's proposed refusal and the period within which the council may submit any conditions it wishes to impose as conditions of approval, or
- 20 (d) the Minister's refusal to agree with the council's proposed conditions and any conditions to which the Minister's consent may be assumed.
- (6) At the end of the period specified in subsection (5) (c), the Minister must notify the council and the applicant:
- 25 (a) whether the Minister consents to the imposition of any of the conditions submitted by the council during that period and, if so, which conditions, or
- (b) of the conditions to which the Minister's consent may be assumed.
- (7) The Minister must notify the council and the applicant of the reasons for a decision under subsection (5) or (6).
- 30 (8) If the council does not determine the application within the period notified by the Minister for the purpose, the council is taken, on the expiration of that period, to have determined the application in accordance with the Minister's consent.
- 35

73 Effect of council's failure to determine Crown application

- 40 (1) If the council does not determine an application to which section 72 applies within the relevant period specified in section 105, the council is taken, on the expiration of that period, to have refused the application.
- (2) If the application is taken to have been refused, the applicant may refer the application to the Minister for determination.
- 45 (3) The Minister may determine an application so referred to the Minister.
- (4) The Minister's determination has effect as if it were a determination of the council.

50 **74 Prohibition on appeals concerning Crown applications**

No review or appeal lies against a determination that the council is taken to have made under section 72 (8) or a decision or determination of the Minister under section 72 or 73.

105 Circumstances in which approval is taken to have been refused

- (1) If the council has not determined an application:
- 5 (a) within the period of 40 days after the application is lodged with it, except as provided by paragraph (b), or
- 10 (b) within the period of 80 days after the application is lodged with it in the case of an application for which the concurrence of a person or authority is required by or under this Act, the council is, for the purposes only of section 176, taken to have determined the application by refusing approval on the date on which that period expires.
- (2) Nothing in subsection (1) prevents the council from determining an application after the expiration of the 40-day or 80-day period, whether on a review under section 100 or otherwise.
- 15 (3) A determination under subsection (2) does not prejudice or affect the continuance or determination of an appeal made under section 176 in respect of a determination that is taken under subsection (1) to have been made, subject to subsection (4).
- 20 (4) Where a determination under subsection (2) is made by granting approval, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 176 in respect of a determination that is taken by subsection (1) to have been made, withdrawn at any time before the appeal is determined.

107 Can approvals be extended or renewed?

- (1) The council may determine to extend or renew an approval (but without changing the terms of the approval) if satisfied there is good cause for doing so.
- (2) The renewal of an approval operates as if it were an approval granted on the date of renewal.
- 30 (3) The extension or renewal may be granted before the approval lapses or at any time within 3 months after the approval lapses.
- (4) The relevant provisions of:
- (a) sections 72, 73, 74, 78, 79, 80, 84, 85, 87, 88, 99 and 105, and
- 35 (b) Division 1 of Part 5,

apply to an application made by the Crown or a person prescribed by the regulations referred to in section 72 (1) to extend or renew an approval in the same way as they apply to an application for an approval.

Plan of Management (Crown Lands Act 1989)

45 Development consent is normally necessary for the conducting of caravan park activities on any land is considered as part of the application under the Local Government Act 1993. As Council did not obtain development consent for the expansion of caravan park activities outside the various allotment boundaries under its control, prior to the Crown taking control in 2007, then it is now a requirement that the Crown restore compliance.

50 The Crown has more options available to restore compliance in relation to the Brunswick Heads Crown Reserve caravan parks. Under the State Environmental Planning Policy (Infrastructure) 2007 - Division 12 - Parks and other public reserves 2(d) the following development is permitted without development consent.

- (2) *Development for any purpose may be carried out without consent:*
 (d) *in the case of land that is a reserve within the meaning of Part 5 of the [Crown](#)*

Lands Act 1989, by or on behalf of the Director-General of the Department of Lands, a trustee of the reserve or (if appointed under that Act to manage the reserve) the Ministerial Corporation constituted under that Act or an administrator,

5 *if the development is for the purposes of implementing a plan of management adopted for the land under the Act referred to above in relation to the land.*

A Plan of Management (PoM) adopted under the Crown Lands Act 1989 is an equivalent development consent for the use of Crown Land.

10 At this time, the two Crown Reserve Holiday Parks have adopted PoM (2 June 2014). The details of each PoM which include authorisation for the use of part of the Crown Reserve for a caravan parks and camping ground are available at;

15 http://www.lpma.nsw.gov.au/about_crown_land/publications/exhibition_and_information/plans_of_management/draft_plans_of_management_on_exhibit).

20 The process of exhibiting and adopting Plans of Management is the equivalent legal process to establish the formal consent under the Environmental Planning and Assessment Act 1979 for the use of these Crown reserves.

25 Once the processes are completed and Plans of Management have been formerly adopted, the Crown Holiday Parks are still required to maintain ATO approval under section 68 of the Local Government Act 1993.

The ATO approvals relates only to specific operational conditions as set out under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, and are not a separate planning review process.

Report No. 13.10 **Report of the Planning Review Committee Meeting held on 4 June 2015**

Directorate: Sustainable Environment and Economy

Report Author: Wayne Bertram, Manager Sustainable Development

5 **File No:** I2015/487

Theme: Ecology
Development and Approvals

10 **Summary:**

This report provides the outcome of the Planning Review Committee Meeting held on 4 June, 2015.

RECOMMENDATION:

15 **That the report be noted.**

Report

5 Council has determined the following original development application. The Section 96 application to modify the development consent has been referred to the Planning Review Committee to decide if the modification application can be determined under delegated authority.

DA No.	Applicant	Property Address	Proposal	Reason/s	Outcome
10.2013.177.2	Holcim (Aus) Pty Ltd	10 Ewingsdale Rd Ewingsdale	S96 to delete requirement for construction certificate for carpark and silo (Additions/alterations to existing concrete works depot comprising the construction of an additional silo and an increase in production capacity)		Delegated Authority
10.2008.742.7	Greg Alderson & Associates Pty Ltd	35-43 Jonson St Byron Bay	S96 to amend approved layout		Delegated Authority
10.2009.314.9	GainsPlay	Tuckeroo Ave Coral Ave Mullumbimby	S96 to alter phasing		Delegated Authority
10.2008.498.2	A Kennedy	William Flick Rd Ewingsdale	S96 to change of use approved recreational facility (10.2008.498.4) from yoga studio to health studio		Delegated Authority

10 To provide increased information for Councillors regarding developments referred to the Planning Review Committee, all future reports to Planning Review Committee and all subsequent reports to Council will include the number of submissions received and the exhibition period.

Report No. 13.11 **Report of Sustainable Economy Committee Meeting 4 June 2015**
Directorate: Sustainable Environment and Economy
Report Author: Joanne McMurtry, Community Policy Officer
File No: I2015/496
5 **Theme:** Economy
 Economic Development

Summary:

10 Council resolved to establish the Sustainable Economy Committee in March (**15-108**) and resolved on a process for committee selection in April (**15-166**). This report outlines the selection process and result for the committee. It also provides the minutes of the inaugural meeting held on 4 June 2015.

RECOMMENDATION:

1. **That Council:**
 - a) **Note the selected representatives as described in this report for the Sustainable Economy Committee; and**
 - b) **Amend the Terms of Reference – Committee membership, to include three community members on the committee.**
2. **That Council endorse Cr Simon Richardson as the nominated Chair.**
3. **That Council amend the Terms of Reference on Section 3, bullet point 4, by adding the word ‘advice’ so the point reads; “Providing advice and assistance with implementation of strategies and actions within the Byron Shire Economic Development Strategy, the Tourism Management Plan, Events Strategy and any other plans relevant to the Economic Development & Tourism unit of Council”.**

Attachments:

- 1 Sustainable Economy Committee Terms of Reference - updated July 2015, E2015/36432
- 20 2 SEC Minutes 4 June 2015, E2015/35877

Report

In March 2015, Council resolved to establish the Sustainable Economy Committee (Res **15-108**) as follows:

- 5
1. *Establish a Sustainable Economy Committee (SEC) and call for nominations for the industry, community and environment members.*
 2. *Adopt the draft Terms of Reference for the SEC as attached (E2015/11805).*
 - a) *the objectives/purpose of the Committee*
 - 10 b) *Committee membership, and*
 - c) *that meetings be held quarterly or as required.*
 3. *Write to the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) extending an invitation to provide one representative if desired to the Committee.*
 4. *Nominate three Councillors to the SEC, being Crs Cameron, Richardson and Ibrahim.*
 - 15 5. *Note that the following meeting dates have been tentatively set aside for proposed SEC meetings:*
 - *Thursday 2 April*
 - *Thursday 4 June*
 - 20 ▪ *Thursday 3 September*
 - *Thursday 5 November*
 6. *Write to the current Tourism Advisory Committee members thanking them for their service to Council and the community and encouraging them to nominate for a position on the new SEC.*

25 In April 2015, Council resolved a process for Sustainable Economy Committee selection (Res **15-166**) as follows:

1. *Agree the EOI's for the Sustainable Economy Committee be provided to an assessment panel made up of Cr Cameron, Cr Ibrahim and Cr Richardson supported by the Economic Development & Tourism Coordinator and Tourism Officer for review and recommendation for*
30 *appointment to the Committee.*
2. *Provide delegation to the General Manager to authorise the recommended Sustainable Economy Committee appointments and issue letters of offer including a meetings schedule, confidentiality and conflict of interest agreements.*
- 35 3. *Receive a report at the Thursday 21 May 2015 Council meeting detailing the appointed Sustainable Economy Committee members.*

Selection Process and Result

40 In line with the resolutions, Council staff called for Expressions of Interest (EOI's) for the Sustainable Economy Committee in March and closed EOI's on 17 April with a total of 21 nominations received. The calibre and suitability of all nominees was very high and a testament to the interest business and community members has for sustaining and improving our local economy.

45 The assessment panel made up of Cr Richardson, Cr Cameron and Cr Ibrahim reviewed the EOI's on Thursday 7 May. The nominees were assessed and selected on the basis of their knowledge, experience and ability to represent key industry sectors or social responsibility areas such as the environment, community and indigenous culture.

The representation categories include:

- Tourism
- Agriculture/Food production

BYRON SHIRE COUNCIL

- 5 ▪ Creative Industries
- Business Services
- Education
- Environment
- Community
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

10 Each category was allocated one committee position, apart from community where 2 positions were allocated. However, the panel determined an advantage to the overall committee outcomes in expanding the number of community positions to 3.

The recommended representatives for each category are provided in the table below.

Category	Recommendation	Introduction
Tourism	Damian Antico	Damian and his family operate a local tourism business, La Vista Byron Bay which is currently ranked #2 B&B/Retreats in Byron Bay. Damian has a breadth of experience in business management and has been involved in a number of Council committees. Damian has a keen interest in transport and access and would like to see Byron's tourism sector attract higher yield with minimal environmental impact.
Agriculture/ Food production	Keith Byrne	Keith has an extensive background in business management and organisational change. His current role with Byron Bay Cookie company and involvement in the Shire's Food Processing and Manufacturing Cluster will provide the Committee with integral insights into the direction and opportunities for the Shire's Food Economy.
Creative Industries	Ajay McFadden	Ajay has a significant background in the creative industries sector, principally within music, arts and design however recently taking this experience into place making and public space activation. Ajay is an SCU University Medallist and holds a bachelor of Business with honours. He has a specialisation in alcohol related violence and situational crime prevention models for the night time economy. Ajay also sits on the PRG for the Vibrant Byron Strategy
Business Services	Rob Doolan	Rob has an extensive client base in the Byron shire providing consulting services and has a professional background spanning over 35 years in the Shire as a planning professional. Rob is passionate about local economic development and with his knowledge of town planning, location and policy infrastructure needs will provide another perspective to the committee and projects.
Education	Dr Meredith Wray	Meredith has had a long term association with SCU heading up major research projects for the Sustainable Tourism Research Centre and held positions as a Senior Lecturer in the School of Tourism & Hospitality Management. Meredith was instrumental in the development of Council current Tourism Management Plan. She is also a long term Byron local with a passion for local economic development and will provide an important critical thinking approach with links to the education sector.

Category	Recommendation	Introduction
Environment	Dr Charlie Zammit	Charlie is a retired senior public servant and academic, with a professional career spread between university research/teaching in environmental science and a public service career in environmental policy and sustainability development. He has been integral to the development of policies and programs to achieve and sustain development across a number of industry sectors in his career. Charlie has an interest in how local government can sustain economic development and the social capacities of its communities and industry while managing the environment.
Community	John Hertzberg	John is a long term Byron resident and a practicing solicitor for over 30 years. John is also a skilled mediator and has limited his current workload to focus on this endeavour. John's passion for community outcomes and excellent communication skills along with his experience on a number of community based boards and panels over the years will provide an important perspective for the committee.
	Nicole Reeve	Nicole has a family connection to Byron spanning over 70 years and has seen the Shire evolve. Nicole brings extensive experience in business and events management as well as media relations and promotions to the Committee, however sits on the committee as a community member who wants to ensure the relationship between business and the community is balanced and developed to achieve the best outcomes for all.
	Theodore Kabbout	Theodore (Ted) represents the local community with a specific interest in accessibility. Ted advocates a balanced perspective to achieve community outcomes and highlights the importance of developing local infrastructure, education, tourism and other business opportunities in a sustainable and meaningful way as the legacy we need to provide. Ted has been a member of Council's Access Committee and has qualification in business management and has applied this in global business markets.

Additional appointed Committee members will include Gavin Brown from Arakwal and representing Councillors: Cr Richardson, Cr Cameron and Cr Ibrahim.

5 In line with the resolution, the General Manager endorsed the panel's selection of nominated Committee members, including the additional community representative and successful nominees were notified prior to the scheduled 4 June Sustainable Economy Committee meeting. In addition, the unsuccessful nominees were also notified with an invitation to participate in future sub committees or project reference groups of the Sustainable Economy Committee to utilise their knowledge and expertise.

10

Management Recommendation

That Council:

- c) Note the selected representatives as described in this report for the Sustainable Economy Committee, and
- 15 d) Amend the Terms of Reference – committee membership, to include three community members on the committee.

An updated version of the Terms of Reference is attached, including the committee recommendation 3.2 as below.

Sustainable Economy Committee meeting 4 June 2015

The inaugural Sustainable Economy Committee meeting was held on 4 June 2015 and the minutes of the meeting are attached.

5

Two recommendations were made to Council, as follows:

Committee Recommendation 3.1

10 That the Sustainable Economy Committee recommend to Council that Cr Simon Richardson be nominated as Chair.

Committee Recommendation 3.2

15 That the Sustainable Economy Committee recommend to Council that in the Terms of Reference on Page 3, bullet point 4, that the word 'advice' be included so the point reads:

20 *"Providing advice and assistance with implementation of strategies and actions within the Byron Shire Economic Development Strategy, the Tourism Management Plan, Events Strategy and any other plans relevant to the Economic Development & Tourism unit of Council".*

Financial Implications

25 Nil

Statutory and Policy Compliance Implications

30 Operational Plan 2015/16
Byron Shire Tourism Management Plan
Destination Management Plan for the Byron Shire
Plans underway: Economic Development Strategy, Employment Lands Strategy, Events Policy and Events Strategy.

application be withdrawn to enable discussions with Council staff about what options exist for the Club and the future development of the land under their ownership. The applicant declined to withdraw this application to allow for the commencement of these discussions.

- Councils Legal Services area has also provided advice, noting in part, that approving development which is not permissible within the zone would be an unlawful act (see Section 2.1 of this report for the comments from Legal Services).

Summary:

5 The subject site comprises three (3) allotments, Lot 2 DP 867038 is level and contains the existing bowling greens and main club house building. Lot 1 DP 527315 fronts onto Marvell Street and contains an existing dwelling house. Lot 11 Section 32 DP 758207 has frontage to Carlyle Street and contains an existing dwelling house. Lot 11 also contains a bitumen car parking area associated with the existing bowling club use.

10 As described by the applicant Development Consent is sought to demolish two (2) existing dwelling houses on the subject land and construct ancillary tourist accommodation in 3 stages comprising:

- Stage 1 – demolition of existing dwelling house on Lot 1 DP 527315 and construction of 4 x 1 bedroom cabins, access and ancillary car parking;
- 15 • Stage 2 – demolition of existing dwelling house on Lot 11 Section 32 DP 758207 and construction of 2 x 2 bedroom cabins and 1 x 1 bedroom accessible cabin, access and ancillary car parking;
- Stage 3 – demolition of the existing bowls rooms and construction of an additional 2 bedroom cabin on Lot 1 DP 527315.

20 Following a review of the proposed development a letter was sent to the applicant dated 19 September 2014 seeking to clarify the proposed use of the cabins and raising concerns about the development and prohibition.

25 External legal advice was sought with regard to the legal ability to grant consent for the proposed development. The advice received concludes that it is reasonably arguable that this the proposed development is prohibited within the RE2 Private Recreation Zone. The basis for this being that the nature and extent of the proposed cabin accommodation is not able to be properly considered ancillary to the existing bowling club and greens for the following reasons:

- 30 • the provision of short term accommodation is not demonstrated to be a necessary part of conducting a bowling club use;
- the proposed development lacks integration with and a dependency on the bowling club and greens; and
- 35 • the scale and number of cabins proposed when compared to the bowling club and greens does not constitute a use that is subordinate and not independent of the use of the bowling club.

40 The proposed development is considered to be a form of ‘tourist and visitor accommodation’ as defined within Byron LEP 2014. All forms of ‘tourist and visitor accommodation’ including ‘hotel or motel accommodation’ are prohibited within the RE2 Private Recreation Zone.

It is noted that additional information relating to the proposed use was submitted by the applicant on 22 June 2015. This information was referred to Council’s external legal advisors who have confirmed that they remain of the view that providing overnight accommodation to people who are

attending events at the Club at the scale proposed is unlikely to be properly considered to be merely ancillary or subordinate to the existing bowling club and greens use for the reasons set out in Confidential Attachment 1.

- 5 Council's Legal Services team has analysed the external legal advice and provided comments as detailed in Section 2.1 of this report.

The application is unable to be supported as approving development which is prohibited within the zone would be an unlawful act.

10

NOTE TO COUNCILLORS:

15

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

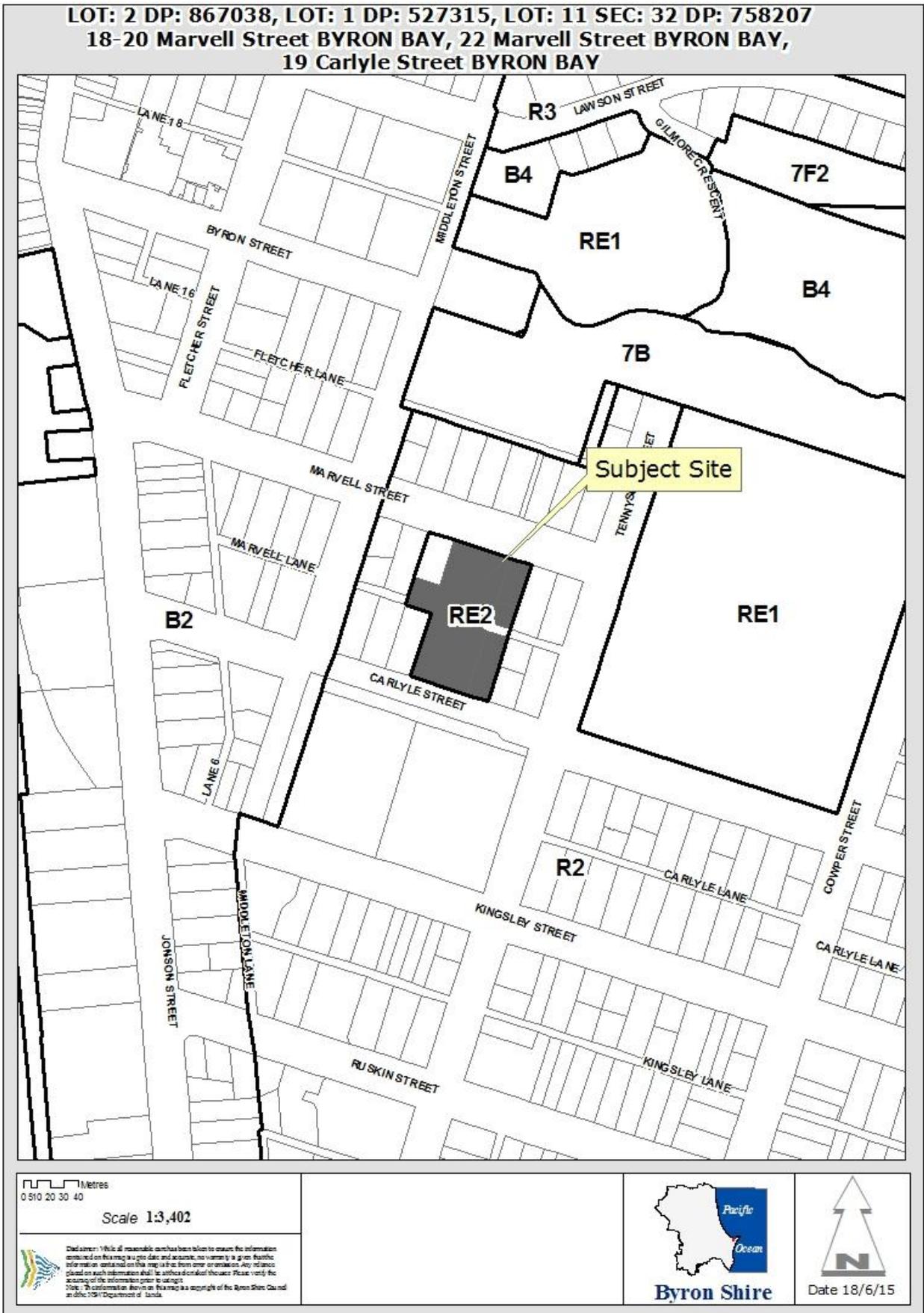
RECOMMENDATION:

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application. 10.2014.503.1 for Demolition of two (2) existing dwelling houses and shed/ bowls room. Erection of tourist and visitor accommodation (5 x 1 bedroom and 3 x 2 bedroom cabins) and associated removal of trees, be refused for the following reason:

- 1. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is considered to be a form of tourist and visitor accommodation (hotel or motel accommodation) and therefore prohibited within the RE2 Private Recreation Zone as set out in Part 2 of Byron Local Environmental Plan 2014.**

Attachments:

- 25
- 1 Confidential - Legal Advice Marsdens, E2015/22532
 - 2 Confidential - Submission 10.2014.503.1, E2015/38729
 - 3 Proposed Plans 10.2014.503.1, E2015/39662
 - 4 Additional information from Planners North dated 22/6/15, E2015/41438



Assessment:**1. INTRODUCTION****5 1.1 History/Background**

5.1992.295.1 Development application for alterations and additions to existing club involving an increase in total floor area of 78m². Consent granted 29 September 1992.

10 Section 102 modification of Development Consent 92/295. Amendments related to an addition on the south-east corner of the building. Modification application approved 18 March 1992.

15 **5.1994.195.1** Development application for commercial development. Development consent granted 14 July 1994.

20 **5.1995.189.1** Development application for commercial development - alterations and additions for bowlers locker and amenities rooms. Development consent granted 23 June 1995.

1.2 Description of the site

25 The subject site comprises three (3) allotments, as shown in **Figure 1**, the allotments are legally described as Lot 2 DP 867038, Lot 1 DP 527315 and Lot 11 Section 32 DP 758207. Lot 2 DP 867038 has a total area of 1067m². Lot 1 DP 527315 is rectangular in shape and has a total area of 599.3m². Lot 11 Section 32 DP 758207 has an area of 832m².

30 Lot 2 DP 867038 is level and contains the existing bowling greens and main club house building. The site also contains a shed/ bowls room which is located in between the other 2 properties the subject of this application.

35 Lot 1 DP 527315 is relatively level and contains an existing weatherboard and fibrous cement residence, several Eucalypts and a Melaleuca tree. The site has 17.1m frontage to Marvell Street to the north.

40 Lot 11 Section 32 DP 758207 has 17.13m frontage to Carlyle Street to the south and contains an existing fibrous cement residence the site also contains a bitumen car parking area associated with the existing bowling club use. The site varies in level from 3.53m AHD in the bitumen car parking area to 2.72m AHD adjacent to the existing fibrous cement residence. The site contains a concrete block retaining wall. The site contains existing landscaping comprising palms and 2 PVC tanks.

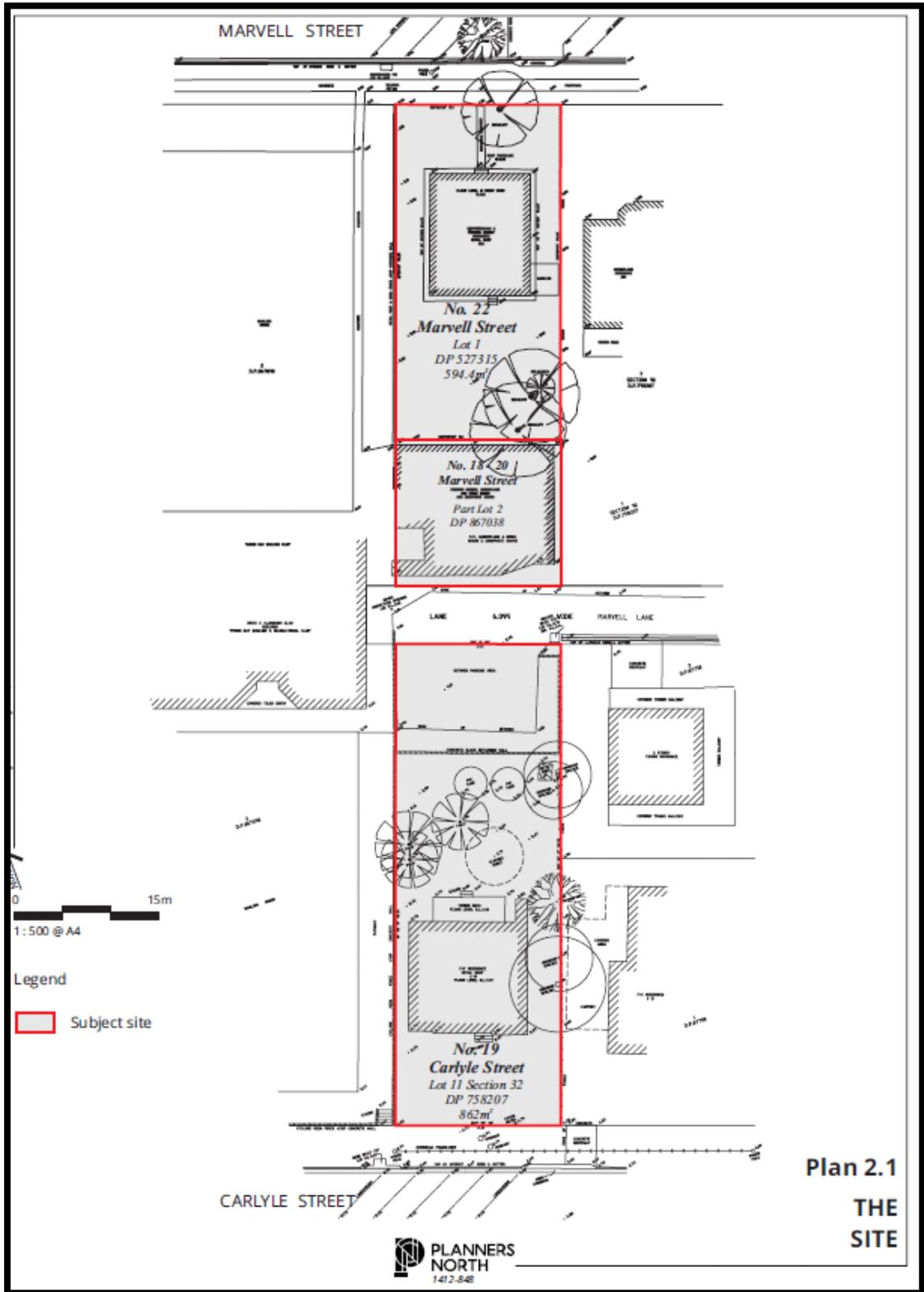


Figure 1 - Site plan submitted by applicant showing existing dwelling-houses and structures

5 **1.3 Description of the proposed development**

As described by the applicant, Development Consent is sought to demolish two (2) existing dwelling houses on the subject land and construct ancillary tourist accommodation in 3 stages comprising:

- Stage 1 – demolition of existing dwelling house on Lot 1 DP 527315 and construction of 4 x 1 bedroom cabins, access and ancillary car parking;
- 5 • Stage 2 – demolition of existing dwelling house on Lot 11 Section 32 DP 758207 and construction of 2 x 2 bedroom cabins and 1 x 1 bedroom accessible cabin, access and ancillary car parking;
- Stage 3 – demolition of the existing bowls rooms and construction of an additional 2 bedroom cabin on Lot 1 DP 527315.

10 Access to Stage 1 will provided via Marvell Street, and access to Stages 2 and 3 will be provided via Carlyle Street.

The proposed cabins contain kitchen and bathroom facilities and have the following floor areas:

- 15 • Type 1 – 1 Bedroom Cabin – 21.6m²
- Type 2 – 2 Bedroom Cabin – 51.84m²
- Type 3 – 1 Bedroom Accessible – 34.56m².

20 As previously stated, the proposed accommodation is ancillary to the existing bowling and recreation club and will be managed by the club.

The proposed cabins would be constructed of Austech insulated vinyl siding to exterior walls with colourbond roof sheeting.

25 The proposed development would also result in the removal of several existing landscaping trees on the subject land including a Melaleuca and Eucalypt on 22 Marvell Street and several palms and unknown species on 19 Carlyle Street.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

30

	Summary of Issues
Council's Legal Services	See Section 2.1 of this report for comments from Council's Legal Services.
Development Engineer	No objection to proposal subject to conditions. See Doc No. A2014/23421.
Environmental Officer	No objection to proposal subject to conditions. See Doc No. A2014/2349.
Water & Waste Services	Final comments from Council's Water and Sewer officer had not been received at the time of writing this report.
ET Engineer	No objection to proposal subject to conditions. See Doc No. A2014/23425.
Section 94 Contribution Officer	Should the application have been considered favourably a condition to require payment of the Section94A levy would have been imposed.

2.1 Comments from Council's Legal Services team

35 The following advice was received from Council's Legal Services area:

That Council obtained external legal advice about the permissibility of the accommodation proposal in zone RE2 - private recreation. Such advice was obtained and has been provided in Confidential Attachment 1

40

From a legal perspective such a use would not be a permissible within the zone, because it unlikely to be considered to be ancillary to the dominant use of the site as a bowling club.

5 There is nothing necessarily consequential or ancillary for bowling club use to involve accommodation cabins. The fact that the club has conducted operations from many years without accommodation tends to suggest that short-term accommodation is not a necessary incident of conducting a bowling club use.

Given tourist accommodation is not of itself a permissible use in the zone, if the accommodation cannot be regarded as ancillary to the current use, then it will be prohibited.

10 Legal services note this matter raises a further complication.

15 Legal services has seen correspondence from the proponent indicating Council has previously advised that the accommodation proposal would be permissible under the zone, and that no change of the permissible uses within the zone was required to allow the proposal to proceed.

The proponent relies on this advice to, in part, assert that the “proposed accommodation is ancillary to the existing recreation facility (outdoor) use of the land.”

20 In characterisation of land use the focus must be on the purpose of that use. The focus is upon a town planning purpose and not upon a personal purpose. Accordingly, a statement of purpose by a proponent is irrelevant to the question of the town planning characterisation of the purpose.

25 Even accepting such representations were made by Council through its staff, legal services’ view is that it is well established that Council is not bound by a previous representation that would result in Council acting *ultra vires* in relation to its function under the *Environmental Planning and Assessment Act 1979* to assess development applications according to law.

30 That is, the fact Council staff may have made an inaccurate representation to the proponent that the proposed use would be permissible is not enough, of itself, to allow the proposal to proceed. The previous representation cannot compel Council into an unlawful act. Approving development not permissible within the zone would be an unlawful act.

35 The accuracy, or not, of the previous representation has no bearing on Council’s decision regarding the planning proposal. Council’s statutory obligation to make planning decisions according to law is a separate issue to any common law duty of care it may owe to parties that rely on information it provides to them.

40 **3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

45 Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Proposed	Complies
<p>State Environmental Planning Policy No 55 - Remediation of Land Clause 7 of SEPP No.55 sets out Council’s obligations in the assessment of land contamination and remediation. Clause 7(1)(a) specifies: “(1) A consent authority must not consent to the</p>	<p>Council’s Environmental Officer has reviewed a preliminary Contaminated Land Assessment, prepared by Greg Alderson and Associates, dated 25 September 2014. Council’s Environmental Officer has advised the proposal</p>	<p>Yes</p>

BYRON SHIRE COUNCIL

Requirement	Proposed	Complies
<p><i>carrying out of any development on land unless:</i></p> <p>(a) <i>it has considered whether the land is contaminated, and</i></p> <p>(b) <i>if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</i></p> <p>(c) <i>if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."</i></p>	is satisfactory with regard to SEPP No.55 requirements subject to conditions (should the application have been assessed favourably).	
<p>State Environmental Planning Policy No. 71 - Coastal Protection Matters for consideration for development within the coastal zone include:</p> <ul style="list-style-type: none"> - retention of existing public access to the coastal foreshore - impact of effluent disposal on water quality - development must not discharge untreated stormwater into a coastal water body 	The proposal is considered to be consistent with the provisions and matters for consideration detailed in SEPP No.71.	Yes
<p>NSW Coastal Policy 1997 Development within the Coastal Zone must be consistent with the Aims, Objectives and Strategic Actions of the Coastal Policy.</p>	The proposed development is considered to be consistent with the relevant provisions of the NSW Coastal Policy.	Yes
<p>Building Code of Australia The proposal must be capable of compliance with the structural and safety requirements of the Building Code of Australia.</p>	It is considered the proposal is able to satisfy requirements of the Building Code of Australia.	Yes
<p>Demolition Demolition works must be in accordance with AS 2601 - Australian Standard AS 2601- 1991: <i>The Demolition of Structures</i>, published by Standards Australia, and as in force at 1 July 1993.</p>	Should the application have been recommended for approval a condition would have been included to require demolition works to accord with AS2601.	Yes
<p>Disability Access (DDA) Access for persons with disabilities and integration into surrounding streetscapes without creating barriers. (Council Res.10-1118)</p>	One (1) accessible cabin (No.5) has been proposed (it includes an access ramp and accessible parking space).	Yes

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

Zone: RE2 Private Recreation Zone

Definition: Tourist and visitor accommodation (hotel or motel accommodation)

Summary of LEP 2014 requirement	Proposed	Complies
<p>Objectives of RE2 zone</p> <ul style="list-style-type: none"> • To enable land to be used for private open space 	It has not been demonstrated	No

Summary of LEP 2014 requirement	Proposed	Complies
<p>or recreational purposes.</p> <ul style="list-style-type: none"> To provide a range of recreational settings and activities and compatible land uses. To protect and enhance the natural environment for recreational purposes. 	<p>that the proposed 'tourist and visitor accommodation' is consistent with the objectives of the RE2 Private Recreation Zone.</p>	
<p>RE2 Land Use Table Permitted with consent Boat launching ramps; Boat sheds; Car parks; Child care centres; Community facilities; Emergency services facilities; Environmental facilities; Flood mitigation works; Function centres; Helipads; Information and education facilities; Jetties; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Signage</p> <p>Prohibited Any development not specified in item 2 or 3</p>	<p>*See assessment following this Table. The proposed development is not considered to be ancillary to the existing bowling club and greens use. The proposal is considered, most appropriately, to be a type of 'tourist and visitor accommodation' as defined within LEP 2014. 'Hotel or motel accommodation' is a prohibited form of development within the RE2 Private Recreation Zone.</p>	<p align="center">No*</p>
<p>4.4 Floor space ratio (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the <u>Floor Space Ratio Map</u>. The FSR Map identifies the site to have a maximum FSR of 0.6:1.</p>	<p>The subject site does not have a maximum FSR specified on the FSR Map.</p>	<p align="center">N/A</p>
<p>5.10 Heritage conservation (4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6). (5) Heritage assessment The consent authority may, before granting consent to any development: (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>Opposite the subject site on Carlyle Street is a Heritage Item (Byron Bay Public School) and the Kingsley Street Conservation Area. Both the Public School and Conservation Area are listed to be of local heritage significance within Byron LEP 2014.</p> <p>The proposed nearest cabin is setback 10.0m from the Carlyle Street frontage and it is considered the proposed development is likely to detract from the setting of the adjacent Heritage Item and Conservation Area.</p>	<p align="center">Yes</p>

Summary of LEP 2014 requirement	Proposed	Complies
<p>5.5 Development within the coastal zone Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered all the matters detailed in Clause 5.5.</p>	<p>The proposed development is considered to be acceptable with regard to the matters for consideration detailed within Clause 5.5 - Development within the coastal zone.</p>	<p align="center">Yes</p>
<p>5.9 Preservation of trees or vegetation (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council. <i>Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.</i> (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by: (a) development consent, or (b) a permit granted by the Council.</p>	<p>The proposal seeks consent for the removal of three (3) existing trees including a melaleuca and a eucalypt. In accordance with Clause 5.9 the application seeks development consent for the removal of the subject trees.</p>	<p align="center">Yes</p>
<p>6.3 Flood planning (2) This clause applies to land at or below the flood planning level. (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: (a) is compatible with the flood hazard of the land, and (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and (c) incorporates appropriate measures to manage risk to life from flood, and (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. (4) In determining a development application for development at or below the future flood planning level, the consent authority must, in addition to the matters referred to in subclause (3), also consider</p>	<p>Council's Senior Development Engineer has advised in accordance with Council's LEP 2014 and DCP 2014, which takes into account revised Climate Change impacts, the Flood Planning Level (FPL) is RL 3.6m. AHD. The proposed cabins are designed with a floor level of RL 3.6m. AHD.</p>	<p align="center">Yes</p>

Summary of LEP 2014 requirement	Proposed	Complies				
<p>the following matters:</p> <p>(a) the proximity of the development to the current flood planning area,</p> <p>(b) the intended design life and scale of the development,</p> <p>(c) the sensitivity of the development in relation to managing the risk to life from any flood,</p> <p>(d) the potential to modify, relocate or remove the development.</p>						
<p>6.1 Acid sulfate soils</p> <p>(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p> <p>(2) Development consent is required for the carrying out of works described in the table to this subclause on land shown on the <u>Acid Sulfate Soils Map</u> as being of the class specified for those works.</p> <table border="0" data-bbox="207 873 877 1108"> <thead> <tr> <th align="left" data-bbox="207 873 319 940">Class of land</th> <th align="left" data-bbox="526 873 638 907">Works</th> </tr> </thead> <tbody> <tr> <td data-bbox="239 952 319 985">3</td> <td data-bbox="319 952 877 1108">Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.</td> </tr> </tbody> </table> <p>(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.</p> <p>(6) Despite subclause (2), development consent is not required under this clause to carry out any works if:</p> <p>(a) the works involve the disturbance of less than 1 tonne of soil, and</p> <p>(b) the works are not likely to lower the watertable.</p>	Class of land	Works	3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.	<p>The subject site is identified as containing Class 3 acid sulfate soils by Council's LEP 2014 mapping. Council's Environmental Officer has advised that the land is relatively flat and the earthworks resulting from the development are unlikely to disturb acid sulphate soils more than 1 metre of the natural ground level.</p>	<p align="center">Yes</p>
Class of land	Works					
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.					
<p>6.2 Earthworks</p> <p>(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters detailed in Section 6.2.</p>	<p>The proposal does not seek to alter the levels of the land. Only limited ancillary earthworks associated with foundations and the installation of services are likely to be required.</p>	<p align="center">Yes</p>				

* Non-complying issues discussed below

Byron Local Environmental Plan 2014 - Issues

Following a review of the development proposal legal advice was sought with regard to the legal ability to grant consent to the proposed development.

5 The current development proposal is not considered to be permissible with consent with the RE2 Private Recreation Zone. The basis for this being that the nature and extent of the cabin accommodation as proposed is not able to be properly considered ancillary and or subordinate to the existing bowling club use for the following reasons:

- 10 • the provision of short term accommodation is not demonstrated to be a necessary part of conducting a bowling club use;
- the proposed development lacks integration with and a dependency on the bowling club and greens; and
- 15 • the scale and number of cabins proposed when compared to the bowling club and greens does not constitute a use that is subordinate and not independent of the use of the bowling club.

The proposed development is most appropriately considered to be an independent form of 'tourist and visitor accommodation':

20 ***tourist and visitor accommodation*** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:
 (a) backpackers' accommodation,
 (b) bed and breakfast accommodation,
 (c) farm stay accommodation,
 25 (d) hotel or motel accommodation,
 (e) serviced apartments,
 but does not include:
 (f) camping grounds, or
 (g) caravan parks, or
 30 (h) eco-tourist facilities.

The proposal would fall within the following definition of 'hotel or motel accommodation':

35 ***hotel or motel accommodation*** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:
 (a) comprises rooms or self-contained suites, and
 (b) may provide meals to guests or the general public and facilities for the parking of
 40 guests' vehicles,
 but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

45 Pursuant to Byron LEP 2014 all forms of 'tourist and visitor accommodation' including hotel or motel accommodation' are identified as prohibited development within the RE2 Private Recreation Zone.

Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority

50 No relevant Draft Environmental Planning Instrument has been identified for this development application.

3.3 DEVELOPMENT CONTROL PLAN

Byron Development Control Plan 2014		
Control	Assessment	Compliance
Chapter C1 - Non-Indigenous Heritage		
<p>C1.3.1 General Streetscape Context Prescriptive Measures</p> <ol style="list-style-type: none"> 1. The original front facades of buildings should not be altered. Additions may be better sited at the side or rear. 2. Infill development must not make replica copies of existing buildings, but must follow proportions and scale. 3. Developments must not use a mixture of features from different eras, nor add historical features to new buildings that are incompatible with the heritage context. 4. The following components of the streetscape must be illustrated and addressed in detail in a development application, and must demonstrate that the proposed development complements the character and heritage significance of established streetscapes: <ol style="list-style-type: none"> a) front setback of dwellings b) materials, colours, textures c) roof form and pitch d) scale, height and proportion of buildings e) landscaping and garden treatment f) spaces between buildings g) facade treatment, verandahs and window placement h) floor levels i) height and design of fences j) placement and design of garages and driveways k) existing street trees l) balance between solid walls and openings 	<p>The proposal seeks consent for the demolition of an existing cottage fronting Carlyle Street which is located directly opposite Byron Bay Public School (Heritage Item) and the Kingsley Street Conservation Area. The proposed redevelopment incorporates a 10.0m building setback to Carlyle Street. The proposal is unlikely to be obtrusive when considering its impact on the setting of the Kingsley Street Conservation Area and the Byron Bay Public School.</p> <p>In this instance the proposed development is not considered to require the submission of a heritage management document.</p>	<p>Yes</p>
Chapter D3 – Tourist Accommodation		
<p>(Note: Chapter D3 is not specifically applicable within the RE2 Zone as tourist accommodation is a prohibited form of development within the RE2 Zone)</p>		
<p>D3.2.1 Location and Siting The siting, design and operation of tourist accommodation and associated development must not adversely affect important conservation values, ecological systems or characteristics of the site or the Shire. Development must respect and contribute to the natural environmental systems and values of its location and surrounds.</p>	<p>It is considered that the proposed development is unlikely to adversely affect conservation values and respect the natural environment.</p>	<p>Yes</p>
<p>Development applications for proposals located in or near ecologically sensitive areas, areas of high conservation values and/ or important natural features or sites must include a full description of those ecological, conservation and natural values and systems, together with a comprehensive, professional assessment of the impact of the proposed development thereon. The impact assessment must include an evaluation of the effectiveness and sustainability of any proposed amelioration and management measures.</p>	<p>The site is located in an ecologically sensitive area.</p>	<p>Yes</p>

Byron Development Control Plan 2014		
Control	Assessment	Compliance
<p>D3.3.6 Hotel or Motel Accommodation The design and operation of hotel or motel accommodation must be compatible with the streetscape and character of development in the locality.</p> <p>Development applications must demonstrate that the proposed development will be appropriately designed and landscaped consistent with the requirements of Chapters B11 Planning for Crime Prevention and B9 Landscaping.</p> <p>Hotel or motel accommodation development must not adversely affect the amenity of the precinct in which it is located. Development applications may need to be accompanied by a Social Impact Assessment prepared pursuant to Chapter B12 Social Impact Assessment, where applicable.</p> <p>External pedestrian access must be provided between accommodation units and other facilities associated with the development, including car parking. The access must comprise covered connecting pathways or access balconies with an all-weather surface and must be integrated with the overall landscape plan for the development.</p> <p>Motels must incorporate eating and living areas and facilities, together with outdoor recreation/ living areas with access to winter sun and summer shade. They may also include self-contained cooking facilities.</p> <p>Development must be designed and constructed to minimise noise and vibration impacts on occupants of adjoining or nearby dwellings or buildings.</p>	<p>The proposed cabins are to be positioned forward of the front building line of existing dwelling-houses on Marvell Street. The proposed positioning of the cabins does not address the Marvell Street frontage only presenting the side elevation of a cabin.</p> <p>The proposed design is not considered to be compatible with the streetscape of Marvell Street and the character of development in the locality. Should the application have been permissible further discussions would have been had with the applicant aimed at improving the design and appearance of the development when viewed from Marvell Street.</p>	No
Section B8 Waste Minimisation and Management		
<p>A Site Waste Minimisation and Management Plan (SWMMP) is to be submitted with a Development Application and must show all matters specified within Section B8.4.</p>	<p>The application was accompanied by SWMMP generally in accordance with Section B8.4.2.</p>	Yes
Chapter B4 Traffic Planning, vehicle parking, circulation and access		
<p>B4.2.5 Car Parking Requirements 1. Unless otherwise specified elsewhere in this DCP, car parking is to be provided in accordance with the schedule contained in Table B4.1</p>	<p>The proposed number of parking spaces and the access arrangements has been assessed as satisfactory by Council's Senior Development Engineer.</p>	Yes

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

- 5 Should the proposed development have been permissible concerns would have been raised regarding the compatibility of the development with the existing streetscape. Proposed Cabin 1 is setback 4.53m from the Marvell Street boundary. The proposed development involves the side elevation of a cabin being positioned forward of the front building line of existing dwellings on the

southern side of Marvell Street. The development has not been designed to adequately address the Marvell Street frontage.

5 Opposite the site on Carlyle Street is the location of a Heritage Item (Byron Bay Public School) and the Kingsley Street Conservation Area. Both the Public School and Conservation Area are listed to be of local heritage significance within Byron LEP 2014. The proposed nearest cabin is setback 10.0m from the Carlyle Street frontage and it is considered the proposed development is unlikely to detract from the setting of the Heritage Item and the Conservation Area.

10 **3.5 The suitability of the site for the development**

The subject site is identified as having Class 3 potential acid sulphate soils and is subject to flooding. As discussed in Section 3.2 of this report should the application have been considered favourably conditions would have been imposed to address these site constraints.

15 **3.6 Submissions made in accordance with this Act or the regulations**

20 The application was notified in accordance with the Level 2 requirements of Byron DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications. Council’s records indicate that one (1) submission was received in response to the proposal however the submission was received outside the public exhibition period.

Following is a summary of the matters raised in the submission:

Issue	Comment
Concerns regarding the location of the proposed cabins within a residential zone.	The site of the proposed cabins is located within the RE2 Private Recreation Zone. It is acknowledged that the site does adjoin residential properties within the R2 Low Density Residential Zone.
Concerns regarding the loss of privacy for an adjacent dwelling-house. Request for the erection of a high fence along the common boundary to stop cabin guests from viewing into the neighbouring dwelling and to screen views of the cabins.	Should the application have been considered favourably conditions aimed at maintaining the privacy of the adjoining property would have been included.
Concerns regarding flood lights spilling light onto adjoining residential properties.	The subject development application does not seek consent for flood lighting. Should the application have been considered favourably conditions to prevent light spillage to adjoining properties could have been imposed.
Request for notification to adjoining neighbour before the commencement of Stage 2 works. Concerns regarding the short terms impacts noise, dust and asbestos removal during works.	This is a matter for the construction certification stage. Should the application have been considered favourably a note could have been placed on the consent to notify the adjoining property holder.
Concerns if the level of the land is to be raised the impacts that will have on drainage and runoff to adjoining allotments.	The proposal does not seek consent to raise the level of the subject land. The proposed structures are to be elevated above the flood planning level by way of stumps/posts.

Issue	Comment
Stormwater drains in the area back up during heavy rain causing flooding into the yards of houses. The proposal may increase the amount of runoff and increase flooding. Request that an upgrade to the present storm water drain	It has not been demonstrated that the proposed development would increase the amount of runoff from the land. Should the application have been considered favourably stormwater from the development would be required to be drained to the existing street system.

3.7 Public interest

5 The proposed development is not considered to be in the public interest as it is prohibited by Byron Local Environmental Plan 2014 (a planning instrument that has undergone extensive community consultation).

4. DEVELOPER CONTRIBUTIONS

10

4.1 Water & Sewer Levies

Council's ET Engineer has advised that the development generates an additional load onto Councils Water & Bulk Water and Sewer System.

15

Should the application have been recommended for approval Section 64 charges under the *Water Management Act* would have been recommended.

4.2 Section 94 Contributions

20

Council's Section 94 Officer has advised that should the application be granted consent a condition would need to be imposed to require payment of the Section 94A levy.

5. CONCLUSION

25

External legal advice was sought with regard to the legal ability to grant consent for the proposed development. The advice received concludes that the proposed development is not considered to be permissible with consent within the RE2 Private Recreation Zone.

30

The proposed development is considered to be a form of 'tourist and visitor accommodation' as defined within Byron LEP 2014. All forms of 'tourist and visitor accommodation' including 'hotel or motel accommodation' are prohibited within the RE2 Private Recreation Zone.

35

Council's Legal Services team has analysed the external legal advice as discussed in Section 2.1 of this report. The application is unable to be supported as approving development which is not permissible within the zone would be an unlawful act.

6 DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

40

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Nil.

Report No. 13.13 PLANNING - 10.2007.286.3 S96 application to modify the development consent to create an additional (34th) residential allotment in the location approved for community facilities and modify staging of construction at Hayters Drive, Suffolk Park

5 **Directorate:** Sustainable Environment and Economy
Report Author: Paul Mills, Senior Assessment Officer - Planning
File No: I2015/552
Theme: Ecology
10 Development and Approvals

Proposal:

Proposed modification: To modify the development consent to create an additional (34th) residential allotment in the location approved for community facilities and modify staging of construction.

Original Development: Community title subdivision incorporating one (1) community lot and thirty three (33) dwelling lots.

Type of S.96 sought: S96(2) Other modification

Property description: LOT: 2 DP: 631285
Hayters Drive SUFFOLK PARK

Parcel No/s: 4060

Applicant: Mr J Levy

Owner: Unison Projects Pty Ltd

Zoning: Part Zone R2 Low Density Residential (Byron LEP 2014) and Part 7(d) Scenic/Escarpment Zone and Part 7(b) Habitat Protection Zone (Byron LEP 1988)

S96 date received: 24 July 2014

Original DA determination date: 14 February 2008

Integrated Development: Yes – Controlled Activity Approval and Bush Fire Safety Authority

Public notification or exhibition:

- Level 2 advertising under DCP 2010 Chapter 17 – Public Notification and Exhibition of Development Applications
- Exhibition period: 5/08/14 to 18/08/14
- Submissions: Ten (10) [including two (2) submissions received outside the exhibition period]

Planning Review Committee: Yes - Meeting held 19 September 2014

Delegation to determination: Meeting of full Council

Issues:

- Minimum allotment size within the R2 Low Density Residential Zone of Byron LEP 2014
- Subdivision of bush fire prone land
- Loss of community facilities site

Summary of modification:

It is noted that the subject application when first lodged with Council sought a number modifications to the existing Development Consent including amendments to:

- the Community Management Statement;
- removal of the Title restriction preventing Secondary Dwellings on residential allotments.

During the course of the assessment the application was amended by the applicant to seek consent only for the creation of the additional (34th) residential allotment in the area of the approved community facilities and modify the staging of construction.

The proposed additional residential allotment has an area of 789m² and is located within Stage 2 of the approved development. The proposal seeks to delete the reference to community facilities from the approved plans.

The revised proposal also seeks to amend the construction staging of the consent to reallocate Lots No.12, No.13 and proposed Lot No.35 from Stage 2 into Stage 3 works.

NOTE TO COUNCILLORS:

- 5 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.

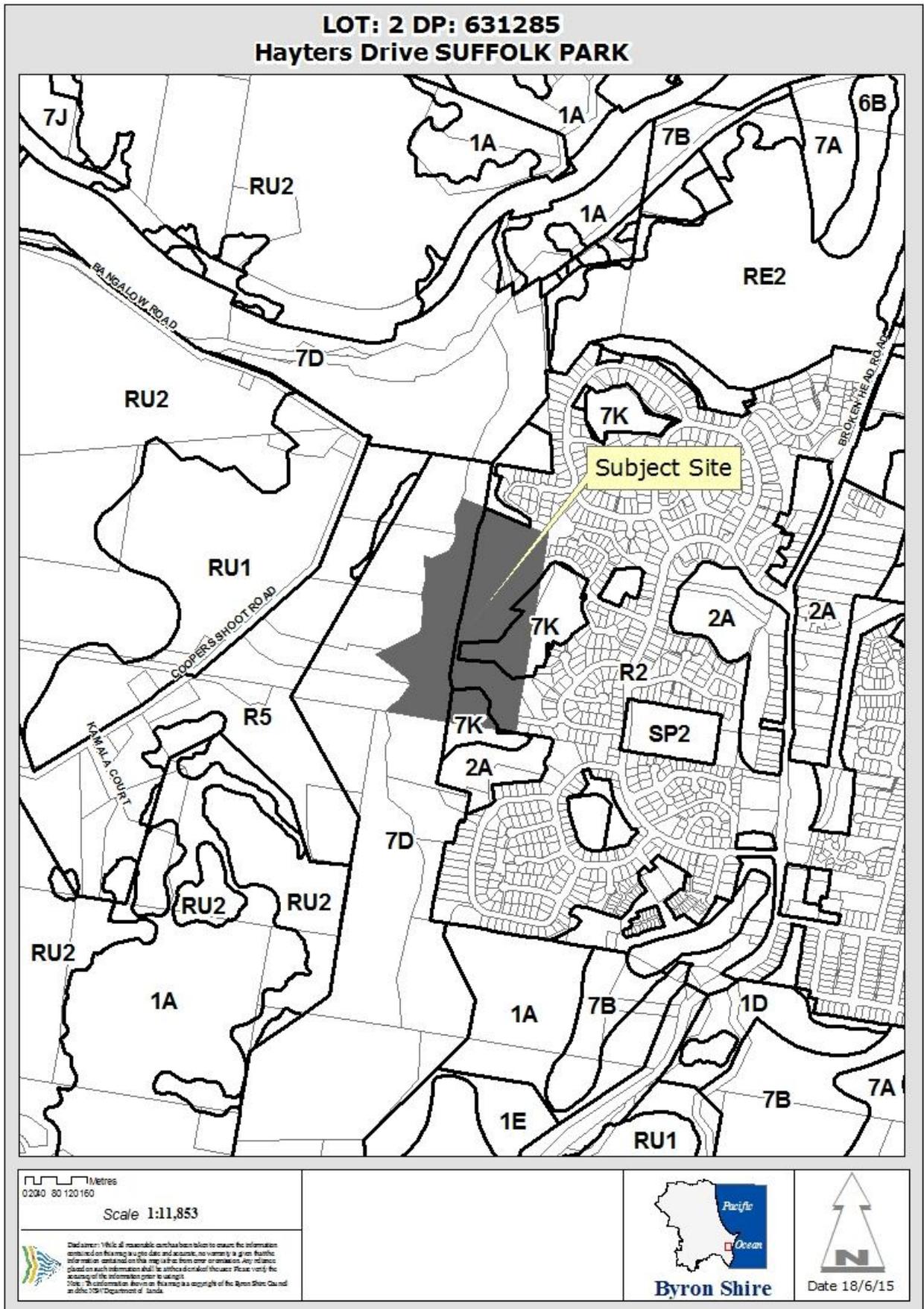
RECOMMENDATION:

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that application 10.2007.286.3 for creation of an additional (34th) residential allotment, be approved by modifying development consent 10.2007.286.2 as detailed in Attachment 2 (E2015/40638).

10

Attachments:

- 15 1 Proposed S96 Plans 10.2007.286.3 , E2015/40635
2 S96 conditions of consent 10.2007.286.3, E2015/40638
3 Confidential - submissions S96 10.2007.286.3, E2015/40674



Report

1. INTRODUCTION

5 1.1 Details of approved development and any subsequent modifications

The following past development approval over the subject site is noted:

10 10.2007.286.1 Development application seeking consent to create ‘Seacliffs’, a community title subdivision with one (1) community lot and 33 dwelling lots. Development consent granted 27 February 2008.

15 10.2007.286.2 Section 96 Application seeking to modify Development Consent 10.2007.286.1 by minor adjustment to the road alignment that included the removal of some additional trees. Application was approved 22 February 2013 subject to modifying conditions relating to the preparation of a Vegetation Management Plan and amending Conditions No.1, 7, 8 & 36.

20 1.2 Section 96 modifications sought

It is noted that the subject application when first lodged with Council sought a number modifications to the existing Development Consent including amendments to:

- 25 - the Community Management Statement;
- removal of the Title restriction preventing Secondary Dwellings on residential allotments;
- land to be dedicated to Council as Public Open Space, and
- the creation of an additional residential allotment and deleting the approved community facilities including swimming pool.

30 During the course of the assessment the application was amended by the applicant to seek consent only for the creation of the additional (34th) residential allotment in the area of the approved community facilities. The proposed additional residential allotment has an area of 789m² and is located within Stage 2 of the approved development (as can be seen in **Figures 1 & 2**). The revised proposal also seeks to amend the staging of construction to reallocate Lots No.12, No.13 and proposed Lot No.35 from Stage 2 works into Stage 3 works.

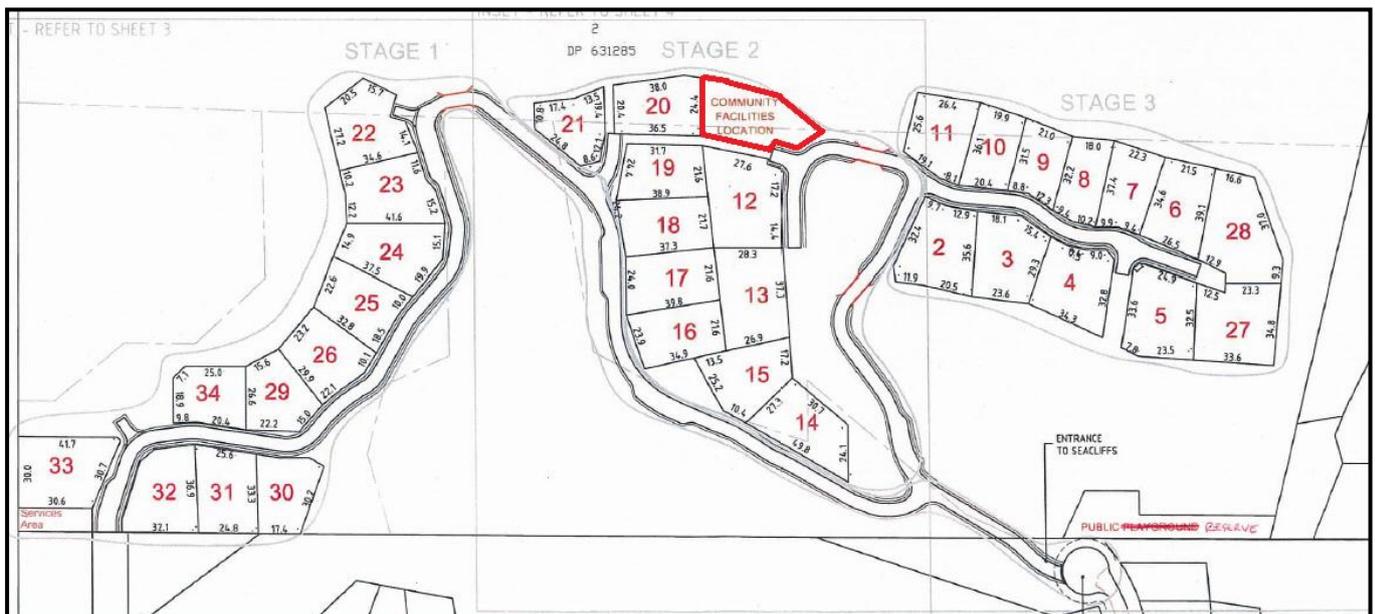


Figure 1 – Extract from approved plan of subdivision with area of approved community facilities shown in red

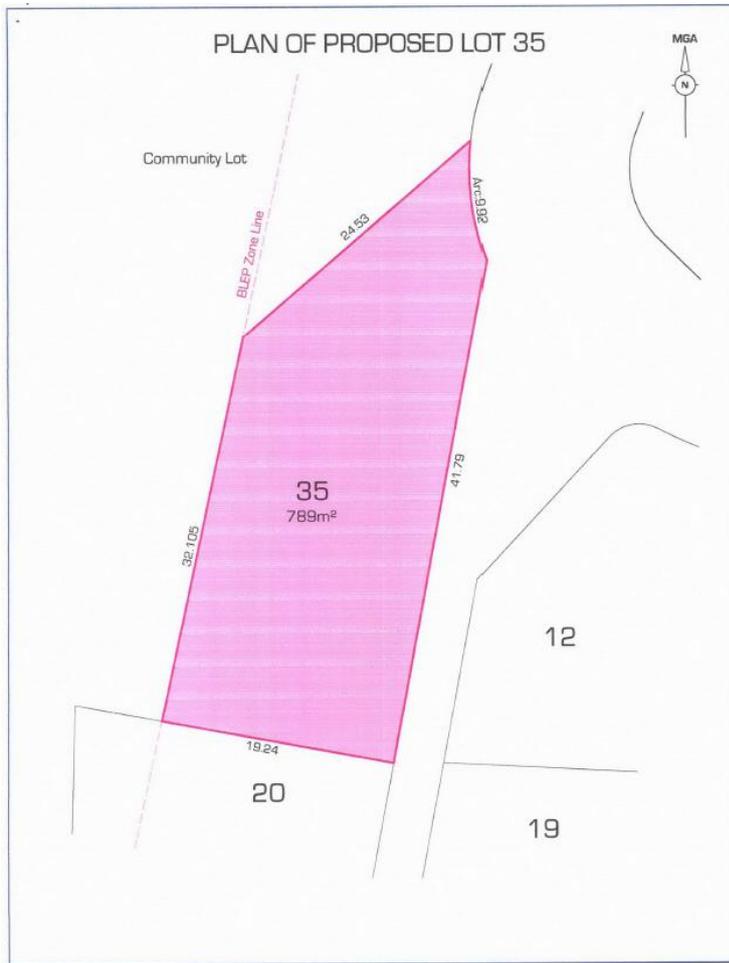


Figure 2 – Configuration of proposed additional residential Lot (area of approved community facilities)

5

1.3 Section 96(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Assessment: The proposal seeks to maintain the configuration of the 33 approved residential allotments. The proposal seeks the addition of one (1) residential allotment within an area approved to provide community facilities for the development. At time of site inspection Stage 2 of the development appeared to be under construction.

The proposal represents only a very small percentage increase to the approved number of residential allotments. The location of the proposed allotment is approved for an alternative form of development and it is considered the proposal is substantially the same as that for which development consent was originally granted.

The applicant has submitted amended plans locating all of the proposed additional lot within the R2 Low Density Residential Zone without encroaching into the adjacent 7(d) Scenic Escarpment Zone.

It is considered that the environmental and visual impact of residential development in this location would be similar to that of the community facilities.

5 (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

10 Assessment: The application was referred to the NSW Rural Fire Service (RFS) for review of the relevant conditions of the integrated Section 100B approval issued under the Rural Fires Act 1997. In correspondence dated 19 May 2015 the RFS issued a complete set of revised conditions of approval, these conditions have been included in the recommendation of this report.

15 The former NSW Department of Water and Energy issued the General Terms of Approval for a permit for the construction of proposed watercourse crossings. The application was referred to the NSW Office of Water on 10 December 2014 in accordance with Section 96(2)(b). The Office of Water has confirmed by letter dated 9 April 2015 that the existing General Terms of Approval (for 'works' requiring a Controlled Activity Approval under the Water Management Act 2000), issued on
20 23 August 2007 remain valid for the amended proposal.

25 The application was not referred to the NSW Department of Environment and Planning which granted concurrence to the original proposal (allotments within the 7(d) and 7(k) zones) as no conditions were imposed by the then Department of Planning in granting concurrence. In addition,
the amended proposal (additional allotment) does not include land within the 7(d) or 7(k) zones and does not involve any breach of LEP 2014 minimum lot size controls. The proposed allotment exceeds the 600m² minimum lot size for the subject land.

30 (c) *it has notified the application in accordance with:*
 (i) *the regulations, if the regulations so require, or*
 (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

35 Assessment: The application was notified in accordance with the Level 2 provisions of Council's DCP 2010 Chapter 17 Public Exhibition and Notification of Development Applications. It is noted that following the submission of various amended plans by the applicant the application was not publically renotified as the plan amendments were not considered likely to have any significant implications for neighbouring land holders.
40

40 (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

45 Assessment: A total of ten (10) submissions were received [including two (2) submissions received outside the exhibition period] in response to the public notification process. Following is a summary of the matters raised in the submissions:

Summary of matters raised in submissions	Comment
Concerns regarding the proposal to allow a secondary dwelling on each allotment. This should be subject of a new development application.	Following the public exhibition of the proposed amendments the application was amended to no longer seek to allow for secondary dwellings on each allotment.

Summary of matters raised in submissions	Comment
Concerns regarding two-way traffic using the existing bridge to Tea Tree Court this should be emergency vehicle access only. The single lane bridge is not wide enough to allow pedestrian access. Objection to the widening of the road leading to this bridge to allow two-way traffic. This bridge was not design to accommodate the amount of traffic for the existing approval let along the increased traffic created by secondary dwellings. In this regard concerns about vehicle and pedestrian safety are raised.	As noted above, following the public exhibition of the proposal the application was amended to no longer seek to removal of the Title restriction preventing Secondary Dwellings on residential allotments.
Council has not addressed visitor parking for the properties at No.5, 6 and a third dwelling next to No.5 Tea Tree Court. This is a real concern if no parking is been provided with families and children having to park in the cul-de-sac of Tee Tree Court then having to walk the existing homes posing a safety concern.	This proposal seeks consent for only the creation of a single additional residential allotment. It is considered this proposed additional allotment will not result in any significant increase the number of vehicle movements using the access road connecting to Tea Tree Court.
Concerns about the hours of construction works for the development and construction traffic and parking causing congestion on the existing roadway.	Construction matters are required to be managed by the appointed Principal Certifying Authority with contact details made visible via site signage. This would not prevent the lawful parking of vehicles within a roadway.
Concerns regarding public notification of the proposed amendments.	The application was notified in accordance with Level 2 notification requirements of Council's DCP 2014.
Concerns the proposal will have an impact on the local wildlife.	The proposed location of the additional residential allotment is within an area approved for community facilities. It is considered that the environmental and visual impact of residential development in this location would not be dissimilar to that of the approved community facilities.

(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Assessment: See Section 3 of this report.

2. SUMMARY OF REFERRALS

	Summary of Issues
Senior Development Engineer	No objection to proposal subject to revised conditions relating to staging of construction.

Summary of Issues	
Section 94 Contributions Officer	No objection to proposal subject to revised conditions relating to payment of Section 94 Contributions.
ET Engineer	No objection to proposal subject to conditions which where appropriate have been included in the recommendation of this report.
Ecologist	No objection to the proposal, ensure that the amended proposal does not encroach on environmental protection land (7k - Habitat) to any greater degree than the approved development.
NSW Rural Fire Service	A revised Section 100B Bush Fire Safety Authority was issued by the NSW Rural Fire Service dated 19 May 2015. The revised conditions for the Bush Fire Safety Authority have been included in the recommendation.
NSW Office of Water	The Office of Water has confirmed in a letter dated 9 April 2015 that the existing General Terms of Approval (for 'works' requiring a Controlled Activity Approval under the Water Management Act 2000), issued on 23 August 2007 remain valid for the amended proposal.
	No other referrals

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

5 Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

10 No issues identified.

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

15 On the 21 July 2014 Byron LEP 2014 was published on the NSW Legislation website and commenced operation. The subject application was lodged on the 24 July 2014. Revised plans have been submitted which identify the proposed additional residential allotment is located entirely within the R2 Low Density Residential Zone of Byron LEP 2014. The proposed allotment exceeds the 600m² minimum lot size for the subject land.

3.3 BYRON LOCAL ENVIRONMENTAL PLAN 1988

20 The areas of the site subject within Byron LEP 1988 are outside the proposed allotment. No further subdivision of land within the 7(d) and 7(k) Zones are proposed by this application.

Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues

25 No relevant Draft Environmental Planning Instrument has been identified.

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014 and 2010

35 The proposed modified development is considered to be generally consistent with the relevant provisions of DCP 2014 and 2010 including the controls relating specifically to Subdivision and Suffolk Park. The location of the proposed additional allotment is within the area of DCP 2014.

It is noted, for the information of Council that Section 7 of DCP 2010 states, in part:

Section 7 Community and commercial facilities

Detailed Objective

5 *To provide for a full range of community and commercial services and facilities commensurate with the needs of the existing and future population of Suffolk Park.*

General Requirements to Satisfy Objective

10 *Applications for subdivision to adequately demonstrate that facilities for retailing, recreational purposes, education and other community purposes are provided and designed to meet the needs of the residents of Suffolk Park.*

15 There are no requirements within Byron LEP 2014 and DCP 2014 to require the development to provide community recreation facilities. The additional allotment has generated the need for the payment of additional development contributions which have been imposed as revised conditions for this application.

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

20 In view of the assessment from Council’s Ecologist it is considered the proposal is unlikely to have any unacceptable impacts on the natural environment.

25 The proposal to remove the approved community recreation facilities (‘common’ building and pool) and replace the area with a residential allotment containing a single dwelling house is not considered likely to have any significant difference in impact on the built environment. Both the approved and modified proposal would likely result in a similar intensity of development.

30 The proposed omission of the approved community recreation facilities is likely to have a minor but acceptable social impact on the residents of the community. The proposal should not have any unacceptable economic impacts in the locality.

3.5 The suitability of the site for the development

35 Aboriginal Heritage Assessment

40 The proposed allotment is located within an area of the approved community facilities. The original development application was approved following consideration of an Aboriginal Heritage Assessment (AHA) prepared by Jacqueline Collins dated May 2007. Section 1.3 of the AHA specifies, in part:

45 *“Unless identified and protected or salvaged, it is anticipated that all sites occurring within the development footprint will eventually be destroyed if the development proceeds. However, potential threats to undisturbed heritage resources have been mitigated through the plan to confine the development to the previously cleared and/or disturbed Zone 2(a) land, and to limit the modification of creek banks to the construction of three two lane bridges on narrow upper reaches of the creeks.”*

50 As the proposed allotment is located entirely on land now within the R2 Low Density Residential Zone it is considered, in principle, that potential threats to undisturbed heritage resources have not been increased. Condition No.20 requires temporary fencing to be provided during subdivision works around aboriginal artefacts identified within the AHA.

55

Bush fire prone land

5 The NSW Rural Fire Services has issued a revised Bush Fire Safety Authority for the revised proposal. This revised Bush Fire Safety Authority includes conditions requiring bush fire mitigation measures to be established and maintained.

3.6 Submissions made in accordance with this Act or the regulations

10 See Section 1.3 of this report for an assessment of the submissions received.

3.7 Public interest

15 The proposed modification to allow for the creation of an additional residential Lot and the deletion of the approved community facilities is not considered to be contrary to the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

20 Council’s ET Engineer has calculated that ETs applicable for the overall development as follow:

ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT
[ET Policy No:13/005]

Water	32.80 ET
Bulk Water	32.80 ET
Sewer	33.00 ET

25

4.2 Section 94 Contributions

30 Council’s Section 94 Officer has provided a revised Section 94 Contributions condition and note to replace those existing on the consent. The revised calculations include the proposed additional lot.

5. CONCLUSION

35 During the assessment the applicant has submitted revised plans which identify the proposed additional residential allotment as located entirely within the R2 Low Density Residential Zone of Byron LEP 2014. The proposed allotment exceeds the 600m² minimum lot size for the subject land.

40 The proposal to replace the area identified for community recreation facilities (‘common’ building and pool) with a residential allotment containing a single dwelling-house is not considered likely to have any significant difference in impact on the built and natural environment. The modified proposal is a similar intensity of development to that of the proposed community facilities. There are no requirements within Byron LEP 2014 and DCP 2014 to require the development to provide community recreation facilities.

45 The areas of the site subject within Byron LEP 1988 are outside the proposed allotment. No further subdivision of land within the 7(d) and 7(k) Environmental Protection Zones is proposed by this application.

The proposed development is considered to have sufficient planning merit to warrant approval subject to conditions.

6. RECOMMENDATION

5 That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that application no. 10.2007.286.3 for creation of an additional (34th) residential allotment, be approved by modifying development consent 10.2007.286.2 as listed in Attachment 2 #E2015/40638.

10

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

15 Provide Disclosure Statement register details here: Nil.

Report No. 13.14 **PLANNING - 82A Review 10.2014.714.1 Demolition of existing dwelling and garage and all other structures at 9 Station Street Bangalow**

Directorate: Sustainable Environment and Economy

Report Author: Wayne Bertram, Manager Sustainable Development

5 **File No:** I2015/557

Theme: Ecology
Development and Approvals

10 **Summary:**

15 The 82A application seeks a review of the determination of development application 10.2014.714.1 for the demolition of the existing single-storey dwelling house (cottage); a freestanding four (4) car garage and two (2) small outbuildings in the rear yard on the subject site. Council, at its meeting of the 9 April 2015, resolved to determine development application 10.2014.714.1 by refusal.

20 As a result of the refusal of this application, an application for review under 82A of the *Environmental Planning and Assessment Act 1979* and additional information has been provided in the form of a ten (10) page submission, prepared and submitted by applicant's town planner Mr Paul De Fina.

25 Mr. De Fina's report provides additional background to the proposal and sets out arguments aimed at specifically addressing the reasons for the refusal of the original application. In spite of this, it is noted that the reasons for refusal all pertain to matters of 'heritage' and none of the information provided has not been prepared by a qualified heritage consultant. As such, the revised submission is not considered to adequately address the specific matters for refusal of the original application to enable Council to satisfactorily reconsider its original determination.

Proposal:

30 To review the determination of development application 10.2014.714.1 for the demolition of the existing single-storey dwelling house (cottage); a freestanding four (4) car garage and two (2) small outbuildings in the rear yard on the subject site.

Background:

35 A previous development application over the subject site (DA 10.2013.570.1) sought consent for removal and demolition of existing dwelling and garage, erection of a two (2) storey mixed-use residential and commercial building including a residential flat building, (comprising eight (8) dwellings), three (3) shops and basement car parking for twenty-one (21) vehicles. Council
40 resolved to refuse that application and this decision was subsequently appealed in the NSW Land & Environment Court. The appeal was dismissed 7 October 2014.

45 Council received a subsequent development application, being DA 10.2014.714.1 for the demolition of the existing single-storey dwelling house (cottage); a freestanding four (4) car garage and two (2) small outbuildings in the rear yard on the subject site. Council, at its meeting of the 9 April 2015 resolved to determine development application 10.2014.714.1 by refusal for the following reason:

- 50 1. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it has not been demonstrated that the proposed demolition will not detract from the character, appearance and streetscape of the Bangalow Conservation Area and the setting of the A&I Hall (Heritage Item) which is a matter for consideration within Clause 5.10(4) of Byron Local Environmental Plan 2014.
- 55 2. Pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, it has not been demonstrated that the proposed demolition will not detract from the character,

appearance and streetscape of the Bangalow Conservation Area and the setting of the A&I Hall (Heritage Item) contrary to the provisions of Byron Development Control Plan 2014, Chapter C1 Non-indigenous Heritage.

- 5 3. Pursuant to the provisions of Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is considered to be contrary to the public interest in terms of the impact on the Bangalow Conservation Area and the setting of the Bangalow A&I Hall.

A copy of original report has been provided in attachment 1.

10

Assessment:

15 Additional information to enable the review of the development determination has been provided in the form of a ten (10) page submission, prepared and submitted by applicant's town planner Mr Paul De Fina. A Timber Pest Inspection Report by Paul Mantel of Fairview Inspections has also been provided.

Mr. De Fina's report provides additional background to the proposal and sets out arguments aimed at specifically addressing the reasons for the refusal of the original application. The reasons for the refusal of the original application all pertained to matters of 'heritage' consideration.

20 In response to the public notification process a total of two (2) submissions were received - One (1) submission for the demolition and one (1) submission against.

The matters raised in the submission for the development included:

- 25
- The residence is affected by termites and beyond viable repair.
 - The land is zoned to allow for commercial development.
 - The house has no significant historic value.
 - Consideration was also requested to ensure termites were to be treated, adequate fencing to be provided and asbestos to be safely removed.
- 30
- If this house is left standing it will potentially become vandalised and become an eyesore in what is a prominent position.

The matters raised in the submission against the development included:

- 35
- Concerns the proposal will detract from the character and appearance of the Bangalow Conservation Area and the setting of nearby Heritage Items and that the existing building is inextricably tied to the site and its relationship with the streetscape,
 - A decision to demolish the cottage should not be undertaken until there is evidence to answer the **'Helou' planning principle**,
- 40
- The submitted Statement of Heritage Impact was prepared for a previous development application to redevelop the subject site and not leave the site vacant.
 - The demolition may create a precedent not in keeping with the current and future DCP which is currently being developed for Bangalow.
 - Not to allow the demolition of building in Bangalow's Heritage Conservation Area without the developer submitting plans to Council for redevelopment of the site.
- 45

Planning Principle - *Helou v Strathfield Municipal Council* [2006] NSWLEC 66 at 43-46

50 This planning principle advises that most Local Environmental Plans include a heritage provision that requires a proposal's impact on the heritage significance of an item or conservation area to be assessed. This planning principle applies only to contributory items in a conservation area, not to listed heritage items.

A contributory item in a conservation area is a building that is not individually listed as a heritage

item, but by virtue of age, scale, materials, details, design style or intactness is consistent with the conservation area, and therefore reinforces its heritage significance.

The demolition of a building which contributes to a conservation area will impact on the area's heritage significance even if its replacement building "fits" into the conservation area. Although the replacement building may be a satisfactory streetscape or urban design outcome, this does not address heritage impacts as the original heritage element has been removed. Despite this, it is open to the consent authority still to permit the demolition of a contributory element, for example, if the replacement has other planning benefits that the original does not.

The following questions should be addressed in assessing whether the demolition should be permitted:

1. What is the heritage significance of the conservation area?

2. What contribution does the individual building make to the significance of the conservation area? The starting point for these questions is the Statement of Significance of the conservation area. This may be in the relevant LEP or in the heritage study that led to its designation. If the contributory value of the building is not evident from these sources, expert opinion should be sought.

3. Is the building structurally unsafe?

Although lack of structural safety will give weight to permitting demolition, there is still a need to consider the extent of the contribution the building makes to the heritage significance of the conservation area.

4. If the building is or can be rendered structurally safe, is there any scope for extending or altering it to achieve the development aspirations of the applicant in a way that would have a lesser effect on the integrity of the conservation area than demolition? If the answer is yes, the cost of the necessary remediation/rectification works should be considered.

5. Are these costs so high that they impose an unacceptable burden on the owner of the building? Is the cost of altering or extending or incorporating the contributory building into a development of the site (that is within the reasonable expectations for the use of the site under the applicable statutes and controls) so unreasonable that demolition should be permitted? If these costs are reasonable, then remediation/rectification (whether accompanied by alteration and/or extension or not) should be preferred to demolition and rebuilding.

6. Is the replacement of such quality that it will fit into the conservation area?

If the replacement does not fit, the building should be retained until a proposal of suitable quality is approved.

In reviewing the Council Planner's Assessment Report of the original application it is clear that the information submitted with the original application was inadequate and failed to satisfactorily demonstrate that the proposed demolition would not have a detrimental impact on the Bangalow Heritage Conservation Area, and the setting of adjacent Heritage Items. In particular;

- The submitted Statement of Heritage Impact (SoHI) had been prepared for a previous development proposal (which was also refused and later upheld by the L&E Court) and failed to specifically consider the impact of leaving the site **vacant**. The report also fails to consider issues such as security fencing for the site, which were specific to the current application.
- The applicant refused to provide a heritage management document specifically addressing the proposed demolition and impact of leaving the site vacant. The requirement for such a

document is stipulated by Clause 5.10(5) of Byron LEP 2014, and is also established in the planning principles set out by the L&E Court in *Helou v Strathfield Council*.

- The application failed to adequately demonstrate that the proposed demolition and leaving the site vacant would not have a detrimental impact on the existing streetscape, and how it would be in the public interest.

The above issues have not been resolved by the S.82A submission. A revised SoHI or any other kind of Heritage Management Document, specifically addressing the proposal to demolish all structures and leave the site vacant has not been provided.

In his S.82A submission Mr. De Fina has asserted;

The owner has sought development approval on three occasions to demolish the existing dwelling and outbuildings and replace them with a new development...

At no time had council's planners indicated the existing dwelling should be retained.

The Council itself however rejected the staff recommendations to approve the redevelopment of the site determining the proposed development unacceptable.

At no time did council reject the development applications on the grounds the existing dwelling was a heritage item and a contributory building within the conservation Area.

[*Note: the it is unclear what the 'third occasion' is that Mr. Defina refers to. The current application was for demolition only and was not in any way supported by staff.]

In the above excerpt Mr. De Fina appears to have inadvertently highlighted one of the key issues relating to the refusal of this application, that being; the application has not provided any detail of any suitable replacement development. It is noted that in the assessment of the original application Council considered advice from a Consultant Heritage Advisor, who stated;

In my professional experience and opinion, it would be a very unwise decision on the part of Council to permit demolition of a cottage in a conservation area and in the immediate vicinity of a heritage listed building, without linking that consent to approval of a replacement dwelling.

It is worth noting that the opinion expressed in the excerpt above has been consistently reflected in heritage advice, received and upheld by Council staff since the adoption of the Byron LEP 2014 and DCP 2014. For example, Development Application No. 10.2014.741.1, an application for a boundary adjustment and demolition of outbuildings on a heritage listed property at 93 Station Street, Mullumbimby was also determined by refusal. The heritage advice (from a different heritage consultant) received for this application included the following comment;

Concept plans for any such development should be provided at the same time... to enable Council to consider the potential impact of the future development on the significance and setting of the heritage item.

It is considered that an approval of the demolition being proposed by this application, without consideration of a satisfactory replacement development would set an undesirable precedent. Likewise, without satisfactory evidence to the contrary it is considered that the proposed development is likely to detract from the significance of the Bangalow HCA and adjoining Heritage Items.

In his submission Mr. De Fina also asserts that;

The owner is proposing to remove the dwelling because it is structurally unsound and no longer habitable.

The dwelling has been assessed by a structural Engineer and a pest inspector and both experts have reported the dwelling is unsafe for occupation and use.

The above assertions are inconsistent with statements elsewhere in Mr. De Fina's report that suggest that the 'original core of the dwelling may be resited'.

The purpose of the structural engineering report is to determine if the existing buildings are unsafe, or a danger to the public or whether they are structurally adequate or as defined by DCP 2014 not whether they are structurally capable of reasonable and economic use.

5 At no stage does the structural engineering report consider any of these buildings unsafe and a danger to the public, nor does it indicate that the existing dwelling is structurally unsound. Rather it recommends demolition only on the fact that the amount of works required to rectify many parts of the building would be so great that it would be easier to demolish and start again. As such, it may be concluded that the dwelling, with a good deal of rectification works, and the shed are structurally capable of reasonable and economic use.

10 Likewise, at no stage does the pest report consider any of the buildings to be unsafe and a danger to the public. The report finds that there was evidence of wood rot and borers but no active termites. For the age of the building it is commonplace to have had termite activity in the past and evidence of wood rot.

Conclusion:

15 From the additional information provided it can be concluded that the reasons for refusal presented in the original determination were valid and well founded. Furthermore, the S.82A submission fails to present any new information that would satisfactorily justify a decision by Council to overturn its original determination.

20 However it is clear that the derelict nature of the existing house and buildings on the property has become a target for vandalism which is creating a situation where the demolition of the structure(s) is occurring where the structures are not being maintained. Whilst the planning merit to recommend the approval of development application 10.2014.714.1 has not been provided with the S82A application for review, Council may still determine the development application to allow for an approval for these demolition works. In order to enable this application to be determined as an approval, draft conditions have also been prepared and are attached in Attachment 2.

NOTE TO COUNCILLORS:

30 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.

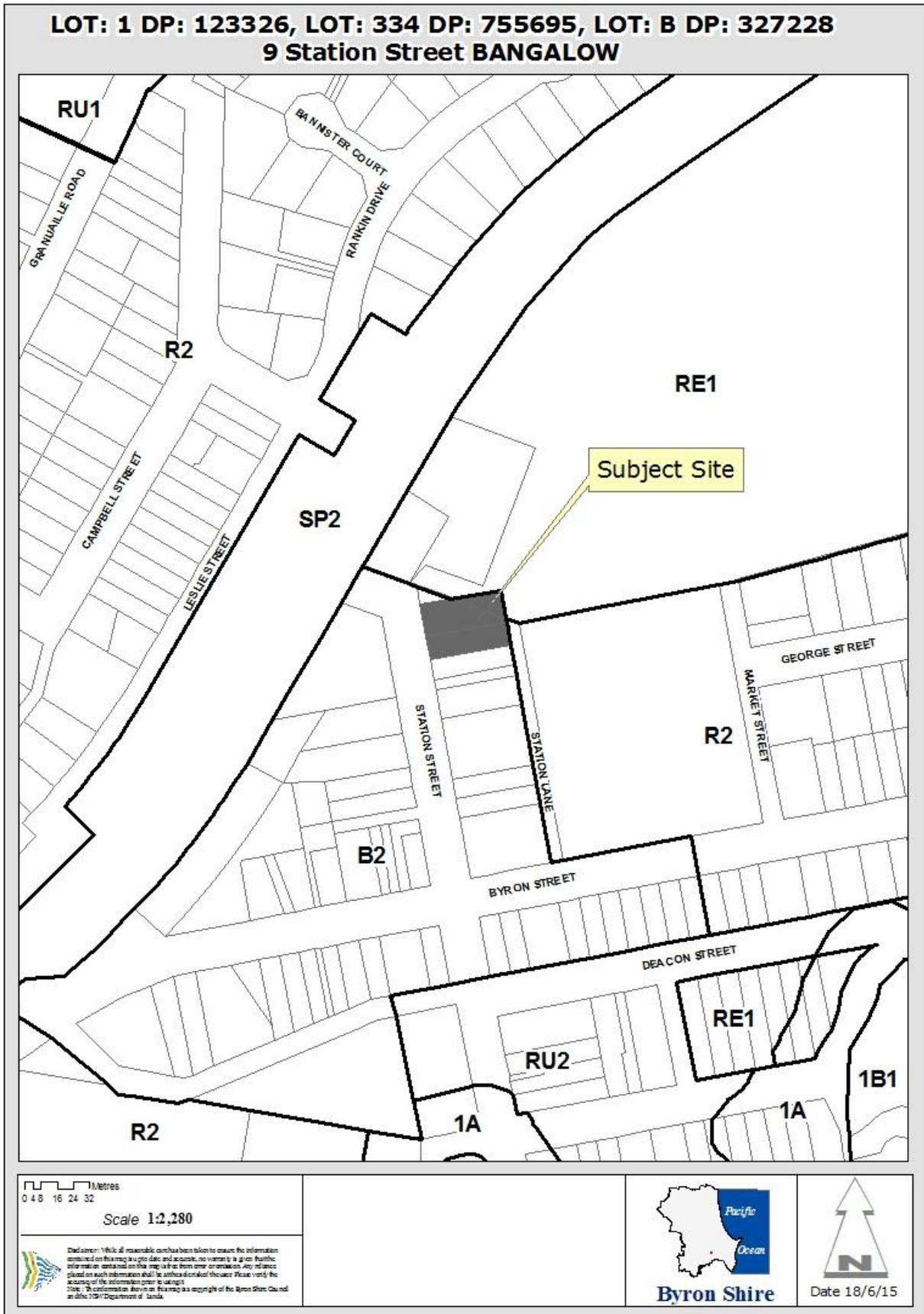
35

RECOMMENDATION:

That Council uphold the original determination to refuse the proposed development.

Attachments:

- 40
- 1 Report 09/04/2015 Council PLANNING - 10.2014.714.1 - Demolition of existing dwelling, garage, and all other structures at 9 Station Street Bangalow, I2015/219
 - 2 Draft conditions for S82A Review 10.2014.714.1, E2015/22246
 - 3 Confidential - Submissions S82A Review 10.2014.714.1 Station St Bangalow, E2015/38978



Report No. 13.15 PLANNING - S96 10.2000.348.7 to delete condition B8 (Access and crossing over creek) and accept a cash contribution at 220-231 Fowlers Lane, Bangalow

Directorate: Sustainable Environment and Economy
Report Author: Joe Davidson, Planning Team Leader
File No: I2015/558
Theme: Ecology
 Development and Approvals

Proposal:

Property description: LOT: 4 DP: 707671, LOT: 1 DP: 285736 and adjoining road reserve
 220 Fowlers Lane BANGALOW, 231 Fowlers Lane BANGALOW

Parcel No/s: 25080, 238772

Applicant: Mr P J Richmond

Owner: Ms M J Wilson

S96 date received: 27 March 2015

Original DA determination date: 19 September 2000

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 8/4/15 to 21/4/15
- Submissions: For 0 Against 2

Planning Review Committee: 17 March 2015

Delegation to determination: Council

Issues:

- Requirements of Section 96(1) of the Environmental Planning and Assessment Act 1979
- Land owners consent

Summary:

An application has been received under Section 96(1) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No. 10.2013.132. The proposal seeks to *“delete Condition B8 and [sic] accept a cash contribution instead”*. This modification does not correct a minor error, misdescription or miscalculation within the original development consent and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979. The consent of the land owner has not been submitted with the application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000. None of Council’s current or previous Section 94 Plans allowed Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway. It is therefore recommended that the application be refused.

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.

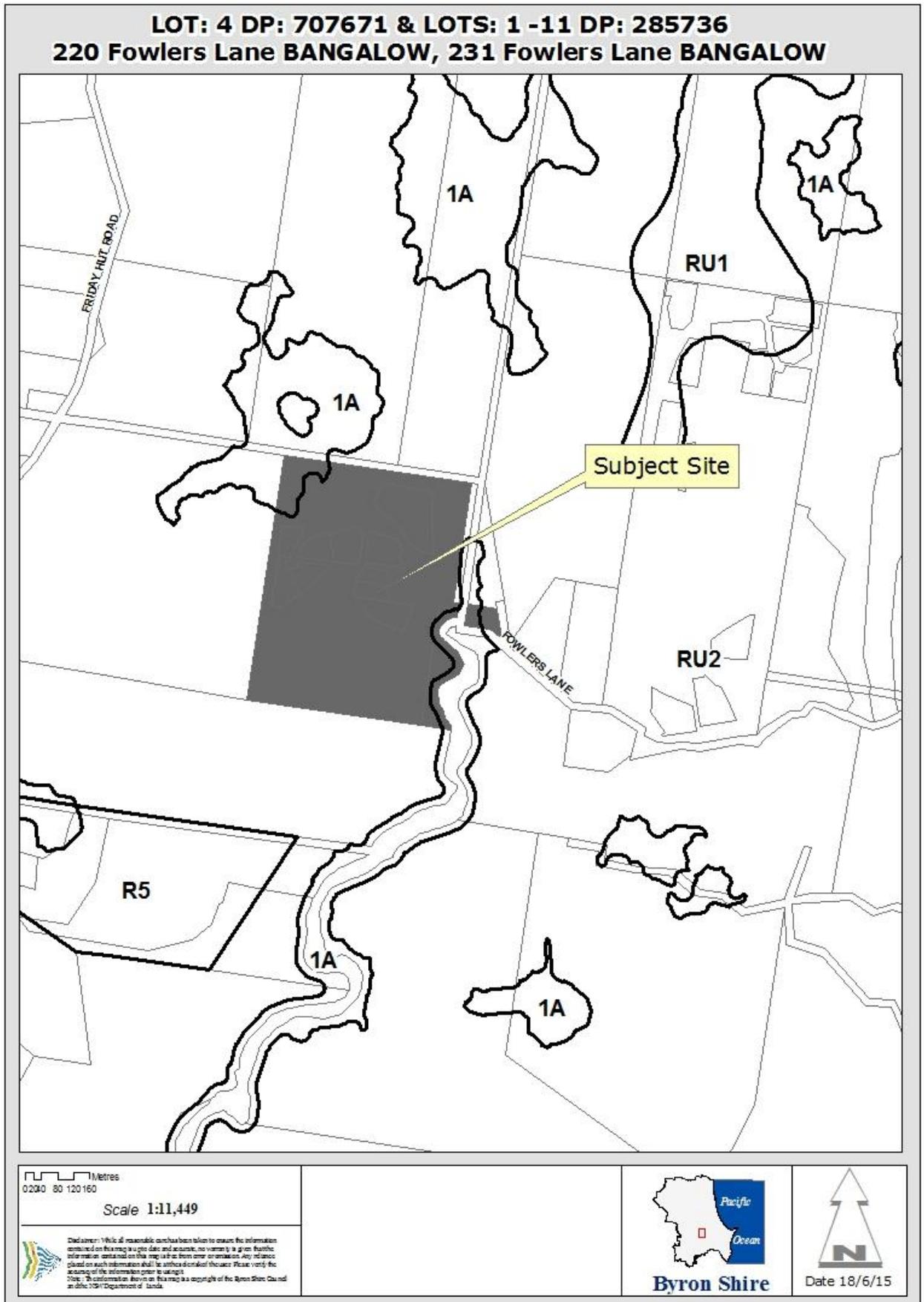
RECOMMENDATION:

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that Section 96 Application 10.2000.348.7, to delete requirement to construct creek crossing works and accept a cash contribution instead, be refused for the following reasons:

- 1. The modification is not to correct a minor error, misdescription or miscalculation, and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979.**
- 2. A statement signed by the owner of the land, to the effect that the owner consents to the making of the application, was not provided with the Section 96(1) Application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000.**
- 3. None of Council's current or previous Section 94 Plans allowed Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway**

Attachments:

- 1 Confidential - submissions S96 10.2000.348.7, E2015/39996



Assessment:

1. INTRODUCTION

5 1.1 Details of approved development and any subsequent modifications

Development Application No. 10.2000.348.1 for a community title subdivision comprising 11 dwelling lots and 1 neighbourhood property lot was approved by Council on 19 September 2000. The following relevant conditions were included within the development consent:

7. *Fowlers Lane shall be upgraded at no cost to Council to the following standard:-*

10 *Intersection - to RTA satisfaction.*
0 to 170m 7.0m seal on 8.0m formation;
170m to 1760m 5.5m seal on a 7.0m formation with traffic calming devices at 180,
800 and 1200 metres;
 15 *1760m to 2300m 4m seal on a 6m formation;*
Crests and S-bends to be upgraded to 6.0m wide seal.

Culvert at Sleepy Creek constructed to 5 year ARI event.

20 *Prior to commencement of any work, detailed engineering plans are to be submitted and approved by Councils Development Engineer and the RTA*

8. *The proposed new access and crossing over Possum Creek shall be contained wholly within the crown road reserve and shall be designed and constructed to a 5 year ARI event. Flood markers and appropriate warning signs shall be provided at either end of the causeway advising against crossing of flood levels exceed 50mm over the causeway. Any requirements in a permit under Part 3A of the Rivers and Foreshore, Improvement Act 1948 shall be undertaken.*

30 *Prior to construction commencing, detailed engineering plans shall be submitted and approved by Councils Development Engineer including details of means to protect against scouring during overtopping.*

35 *9. Council will apply to the Department of Land and Water Conservation for the unmade Crown Road Reserve to be dedicated prior to any construction being undertaken. The applicant shall pay the cost of the application.*

Section 96 Application No. 10.2000.348.2 was granted approval on 16 April 2002 to delete Condition No. 7 above.

Section 96 Application No. 10.2000.348.3 to amend the access road requirements was withdrawn on 22 April 2008.

40 Section 96 Application No. 10.2000.348.4 to again amend the access road requirements approved on 31 August 2009.

Section 96 Application No. 10.2000.348.5 to amend consent conditions was approved on 7 December 2009.

45 Section 96 Application No. 10.2000.348.6 to modify property access and creek crossing arrangements was refused by Council on 20 December 2012.

Condition Nos. 7 and 9 of the development consent have been deleted as a result of the above Section 96 modifications. Condition Nos. 8 and 8a) of the most recently amended development consent are as follows:

50 *8. The proposed new access and crossing over Possum Creek shall be in accordance with the approved plans labelled "Road and Culvert Works", dated 2009/07/02*

Prior to construction commencing, a construction certificate must be issued,

8 a) Road Construction

Road and drainage construction for the proposed works shown on the approved plan. The proposed cul-de-sac shall be provided with a minimum 8.5m radius sealed pavement. Appropriate signage shall define the commencement of the private driveway access.

5 1.2 The site of the proposed development

Development Application No. 10.2000.348.1 was granted consent for works to be undertaken within Lot 5 DP 707671 and Lot 1 DP 285736. The approval also required access works to be completed within Lot 4 DP 707671 and within the adjoining road reserve. With the registration of the Community Title subdivision on 15 April 2004, the property description changed to Lot 1 DP 285736, but works were still to be undertaken within Lot 4 DP 707671 and within the adjoining road reserve.



15 Photographs of the western end of Fowlers Lane and creek crossing taken on 22 June 2015

1.3 Section 96 modifications sought

20 The Section 96 Application form submitted to Council nominates the proposal as a modification under Section 96(1) of the Environmental Planning & Assessment Act 1979, and describes the proposed modification as follows:

As detailed in the accompanying report, this development has previously made a cash contribution in lieu of consent required works [00-114 + 00-1115 Dec. 2000].[Re Condition B7] Hence this amendment seeks to delete Condition B8 an [sic] accept a cash contribution instead. Specifically, Council has had in its possession a National Australia Bank letter or guarantee for a sum of \$95,000 [ninety five thousand dollars] for almost exactly twelve years. Council has been provided and estimate for the crossing and the approaches that is less then this amount. The approaches are being done separately. The estimate, minus the approaches, is 85% of the bonded amount.*

**As an attachment to a letter addressed to Ray Darney dated 30/9/14.*

10 Documentation submitted with the application included a 14 page report titled “Allied Report to Two Section 96 Applications – 10.2000.348.7 & 10.2013.132.3 – 27th February 2015”.

Section 96(1) of the Environmental Planning and Assessment Act 1979 states the following:

(1) Modifications involving minor error, misdescription or miscalculation

15 *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6), section 96AB and Division 8 do not apply to such a modification.*

20 1.4 Is the modification to correct a minor error, misdescription or miscalculation?

When development consent was issued to Development Application No. 10.2000.348.1, Byron Shire Council intentionally applied conditions of consent that required works to create safe access to the site, including creek crossing works. The inclusion of such conditions was not a minor error, misdescription nor miscalculation within the original development consent.

Accordingly, the modification cannot proceed under Section 96(1) of the Environmental Planning & Assessment Act 1979.

30 2. SUMMARY OF REFERRALS

2.1 Section 94 Planner

Council’s Section 94 Planner has advised of the following in relation to this application:

35 Cash Contribution in Lieu of Works Condition

The applicant has proposed to delete condition B8 and impose a condition that requires the payment of a cash contribution to the upgrading of the causeway.

Legislative Framework: Section 80A of the Environmental Planning and Assessment Act 1979 is set out below:

40 80A Imposition of conditions

(1) Conditions—generally

A condition of development consent may be imposed if:

- (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or
- 45 (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or

- (c) it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates), or
- 5 (d) it limits the period during which development may be carried out in accordance with the consent so granted, or
- (e) it requires the removal of buildings and works (or any part of them) at the expiration of the period referred to in paragraph (d), or
- 10 (f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or
- (g) it modifies details of the development the subject of the development application, or
- 15 (h) it is authorised to be imposed under section 80 (3) or (5), subsections (5)–(9) of this section or section 94, 94A, 94EF or 94F.

Condition B8 was imposed under the terms of 80A (1) (f) as it is a condition that requires the carrying out of a work. In *Fairfield City Council v N & S Olivieri P/L* [2003] NSWCA 41 (7 March 2003) the Court of Appeal considered the difference between a condition imposed on a consent that required the carrying out of works and a condition that required the payment of a monetary contribution. It has long been held that section 94 is the sole power by which Council can impose a condition that requires the payment of a monetary contribution.

Section 94B as set out below restrains Council’s ability to require payments to only those payments authorised by a contributions plan.

25 94B Section 94 or 94A conditions subject to contributions plan

- (1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

Council has adopted a number of contributions plans over time. These are the 1993 Section 94 Plan, 2001 Section 94 Plan, 2005 Section 94 Plan and the 2012 Byron Developer Contributions Plan (Amendment 3) (2012 CP). None of these plans sought to impose conditions of development consent to collect monetary payment to fund the upgrading of this causeway. As this causeway is not identified as a work within the schedules of the 2012 CP Council does not have the power to impose a condition of consent on this developer requiring a payment. As such the application must be refused.

2.2 Property Division

The subject application relates to development within Council owned/managed land. Pursuant to Clause 115(1)(h) of the Environmental Planning and Assessment Regulation 2000, if the applicant is not the owner of the land, a statement signed by the owner of the land must be provided to the effect that the owner consents to the making of the application. The proposal was referred to Council’s Property Division, however land owners consent was not provided in this instance.

The Section 96(1) Application cannot proceed without the consent of the land owner.

3. STATUTORY ASSESSMENT

Section 96(1) of the Environmental Planning and Assessment Act 1979 clearly states that there is no requirement for a consent authority to consider the matters referred to in section 79C(1) of the

Act when considering a modification under Section 96(1). Accordingly, Council is not required to consider any of the following:

(a) the provisions of:

(i) any environmental planning instrument, and

5 (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

10 (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

15 (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

20 (d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

It is noted that although not obliged to do so, Council publicly notified the Section 96 Application and accepted public submissions for a 2 week period between 8 and 21 April 2015. Two submissions were received in objection to the proposal with reasons.

25

4. APPEAL RIGHTS

Section 96(1) of the Environmental Planning and Assessment Act 1979 provides that an Applicant has no appeal rights with respect to a determination of a Section 96(1) modification.

30

5. CONCLUSION

35 An application has been received under Section 96(1) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No. 10.2013.132. The proposal seeks to *"delete Condition B8 and [sic] accept a cash contribution instead"*. This modification does not correct a minor error, misdescription or miscalculation within the original development consent, and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979. The consent of the land owner has not been submitted with the application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000. None of

40

Council's current or previous Section 94 Plans allowed Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway. It is therefore recommended that the application be refused.

6. RECOMMENDATION

45

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that Section 96 Application 10.2000.348.7, to delete requirement to construct creek crossing works and accept a cash contribution instead, be refused for the following reasons:

- 5 1. The modification is not to correct a minor error, misdescription or miscalculation, and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979.
- 10 2. A statement signed by the owner of the land, to the effect that the owner consents to the making of the application, was not provided with the Section 96(1) Application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000.
- 15 3. None of Council’s current or previous Section 94 Plans allowed Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway.

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

15

Has a Disclosure Statement been received in relation to this application	No
Have staff received a ‘gift’ from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Report No. 13.16 PLANNING - 10.2013.132.3 - S96 to delete requirement to construct creek crossing at 220 Fowlers Lane Bangalow

Directorate: Sustainable Environment and Economy

Report Author: Joe Davidson, Planning Team Leader

5 **File No:** I2015/559

Theme: Ecology
Development and Approvals

10 **Proposal:**

Property description: LOT: 4 DP: 707671 No. 220 Fowlers Lane BANGALOW
and adjacent ROAD RESERVE

Parcel No/s: 25080

Applicant: Mr P J Richmond

Owner: Ms M J Wilson and Byron Shire Council

S96 date received: 27 February 2015

Original DA determination date: 29 August 2013

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 18/3/15 to 31/3/15
- Submissions: For 0 Against 2

Planning Review Committee: 17 March 2015

Delegation to determination: Council

Issues:

- Requirements of Section 96(1) of the Environmental Planning and Assessment Act 1979
- Land owners consent

Summary:

15 An application has been received under Section 96(1) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No. 10.2013.132. The proposal seeks to “delete all conditions that describe work or performance related to building a public asset – a 1:1 ARI Flood immunity crossing – and accept a cash contribution instead”. This modification does not correct an error, misdescription or miscalculation, and therefore cannot be dealt with under Section 20 96(1) of the Environmental Planning and Assessment Act 1979. The consent of the land owner has not been submitted with the application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000.

It is therefore recommended that the application be refused

25 **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 30 been called by the mover and seconder of all motions relating to this report.

Attachments:

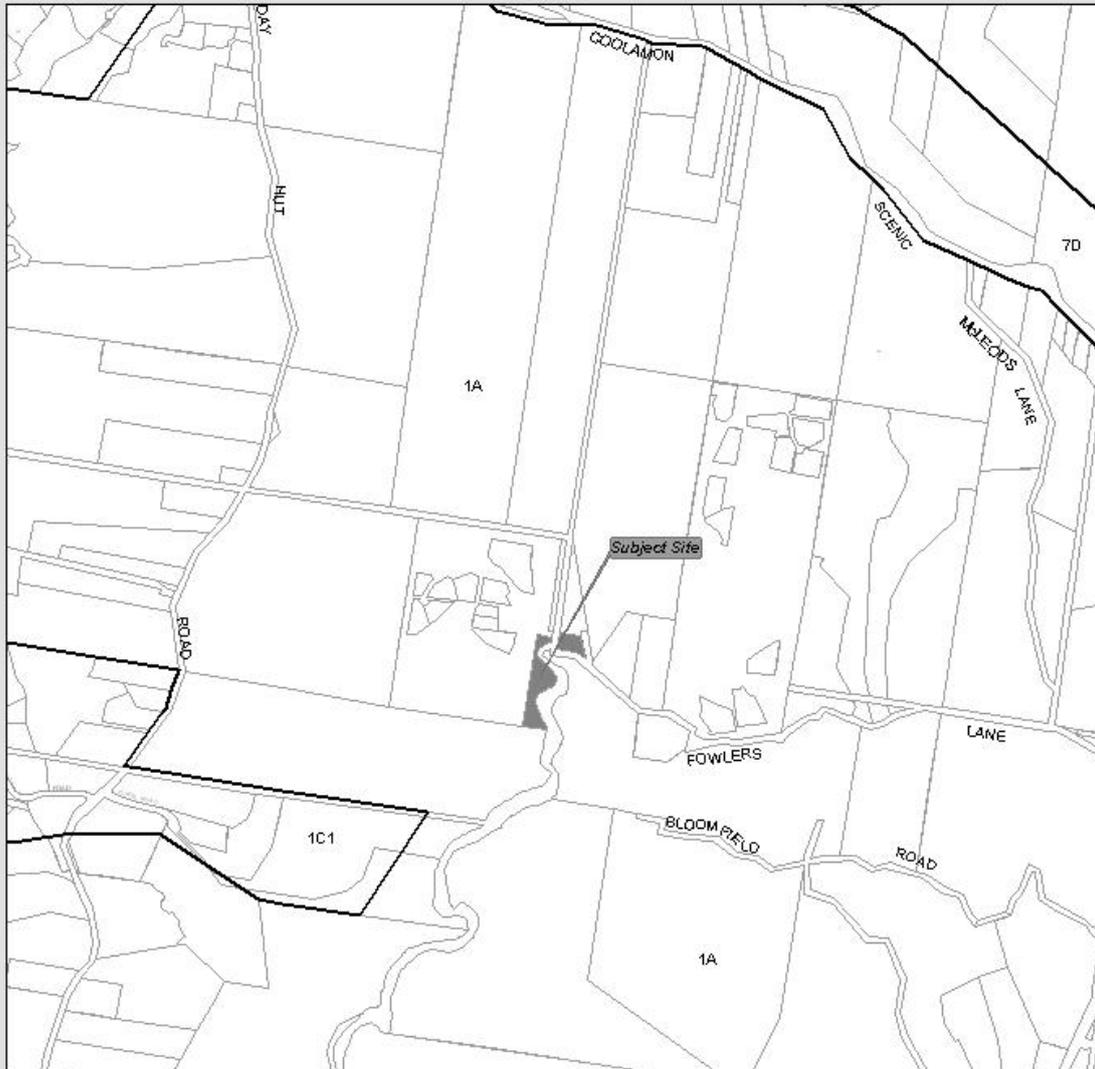
35 Refer to Attachment 1 of the previous report in this Agenda for DA 10.2000.348.7 Fowlers Lane, Bangalow

RECOMMENDATION:

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that Section 96 Application 10.2013.132.3, to delete requirement to construct creek crossing works and accept a cash contribution instead, be refused for the following reasons:

- 1. The modification is not to correct a minor error, misdescription or miscalculation, and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979.**
- 2. A statement signed by the owner of the land, to the effect that the owner consents to the making of the application, was not provided with the Section 96(1) Application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000.**
- 3. That Council's current Section 94 Plan does not allow Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway.**

Lot 4 DP 707671, 220 Fowlers Lane BANGALOW



Legend			

Scale 1:20,000

1 Metres

Date 6/8/13

Disclaimer: While all reasonable care has been taken to ensure the information contained in this map is up to date and accurate, we warrant to provide the information contained in this map only from our records. No reliance should be placed on this information shall bear the responsibility of the user only. The information does not constitute a warranty of the information provided.

Assessment:

5

1. INTRODUCTION

1.1 Details of approved development and any subsequent modifications

Development Application No. 10.2013.132.1 was granted consent on 29 August 2013 for the construction of "Culvert Creek Crossing and Access Approaches" within land at the western end of Fowlers Lane, Bangalow.

10 Section 96 Application No. 10.2013.132.2 to modify the development consent was approved by Council on 28 August 2014. The following condition was added to the consent:

4A) Completion of works under Section 138 of Roads Act 1993

That the s138 Road Act Approval to be carried by Council include a requirement for the culvert and roadworks to be completed by 27 February 2015.

15 The Notice of Determination indicates that the development consent was scheduled to lapse on 30 September 2014. No evidence was submitted with the Section 96 Application to indicate whether this consent was lawfully commenced.



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Photographs of the western end of Fowlers Lane and creek crossing taken on 22 June 2015

1.2 The site of the proposed development

Development Application No. 10.2013.132.1 was granted consent for works to be undertaken within Lot 4 DP 707671 and within the adjoining road reserve. Lot 4 is under private ownership and the road reserve is under the ownership/management of Byron Shire Council.

1.3 Section 96 modifications sought

The Section 96 Application form submitted to Council nominates the proposal as a modification under Section 96(1) of the Environmental Planning & Assessment Act 1979, and describes the proposed modification as follows:

As detailed in the accompanying report, this development has previously made a cash contribution in lieu of consent required works [00-114 + 00-1115 Dec. 2000].[ie. B7 of 10.2000.348.2]

Hence this amendment seeks to delete all conditions that describe work or performance related to building a public asset – a 1:1 ARI Flood immunity crossing – and accept a cash contribution instead.

Specifically, Council has had in its possession a National Australia Bank letter or guarantee for the sum of \$95,000 [ninety five thousand dollars] for almost exactly twelve years.

Council has been provided and estimate for the crossing and the approaches that is less than this amount. The approaches are being done separately. The estimate, minus the approaches, is 85% of the bonded amount.*

**As an attachment to a letter addressed to Ray Darney dated 30/9/14.*

Documentation submitted with the application included a 14 page report titled “Allied Report to Two Section 96 Applications – 10.2000.348.7 & 10.2013.132.3 – 27th February 2015”.

Section 96(1) of the Environmental Planning and Assessment Act 1979 states the following:

(1) **Modifications involving minor error, misdescription or miscalculation**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6), section 96AB and Division 8 do not apply to such a modification.

1.4 Is the modification to correct a minor error, misdescription or miscalculation?

Under Development Application No. 10.2013.132.1, the Applicant applied for, and was granted consent for, carrying out works in the form of “Culvert Creek Crossing and Access Approaches”. The proposed modification seeks to “delete all conditions that describe work or performance related to building a public asset”. The application does not relate to a minor error, misdescription nor miscalculation within the original development consent.

Accordingly, the modification cannot proceed under Section 96(1) of the Environmental Planning & Assessment Act 1979.

2. SUMMARY OF REFERRALS

2.1 Development Contributions Officer

Council’s Section 94 Planner has advised of the following in relation to this application:

Legislative Framework: Section 80A of the Environmental Planning and Assessment Act 1979 is set out below:

80A Imposition of conditions

(1) Conditions—generally

A condition of development consent may be imposed if:

- 5 (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or
- (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or
- 10 (c) it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates), or
- (d) it limits the period during which development may be carried out in accordance with the consent so granted, or
- 15 (e) it requires the removal of buildings and works (or any part of them) at the expiration of the period referred to in paragraph (d), or
- (f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or
- 20 (g) it modifies details of the development the subject of the development application, or
- (h) it is authorised to be imposed under section 80 (3) or (5), subsections (5)–(9) of this section or section 94, 94A, 94EF or 94F.....

25 In *Fairfield City Council v N & S Olivieri P/L* [2003] NSWCA 41 (7 March 2003) the Court of Appeal considered the difference between a condition imposed on a consent that required the carrying out of works and a condition that required the payment of a monetary contribution. It has long been held that section 94 is the sole power by which Council can impose a condition that requires the payment of a monetary contribution.

30 Section 94B as set out below restrains Council’s ability to require payments to only those payments authorised by a contributions plan.

94B Section 94 or 94A conditions subject to contributions plan

- (1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

35 Council has adopted a number of contributions plans over time. These are the 1993 Section 94 Plan, 2001 Section 94 Plan, 2005 Section 94 Plan and the 2012 Byron Developer Contributions Plan (Amendment 3) (2012 CP). None of these plans sought to impose conditions of development consent to collect monetary payment to fund the upgrading of this causeway. As this causeway is not identified as a work within the schedules of the 2012 CP Council does not have the power to

40 impose a condition of consent on this developer requiring a payment. As such the application must be refused.

Note: As Development Application No. 10.2013.132.1 was granted consent on 29 August 2013 only the 2012 Byron Developer Contributions Plan would only be applicable for consideration in the assessment of this application.

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2.2 Property Division

The subject application relates to development within Council owned/managed land. Pursuant to Clause 115(1)(h) of the Environmental Planning and Assessment Regulation 2000, if the applicant is not the owner of the land, a statement signed by the owner of the land must be provided to the effect that the owner consents to the making of the application. The proposal was referred to Council’s Property Division, however land owners consent was not provided in this instance.

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The Section 96(1) Application cannot proceed without the consent of the land owner.

3. STATUTORY ASSESSMENT

Section 96(1) of the Environmental Planning and Assessment Act 1979 clearly states that there is no requirement for a consent authority to consider the matters referred to in section 79C(1) of the Act when considering a modification under Section 96(1). Accordingly, Council is not required to consider any of the following:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

It is noted that although not obliged to do so, Council publicly notified the Section 96 Application and accepted public submissions for a 2 week period between 18 and 31 March 2015. Two submissions were received in objection to the proposal with reasons.

4. APPEAL RIGHTS

Section 96(1) of the Environmental Planning and Assessment Act 1979 provides that an Applicant has no appeal rights with respect to a determination of a Section 96(1) modification.

5. CONCLUSION

An application has been received under Section 96(1) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No. 10.2013.132. The proposal seeks to *"delete all conditions that describe work or performance related to building a public asset – a 1:1 ARI Flood immunity crossing – and accept a cash contribution instead"*. This modification does not correct an error, misdescription or miscalculation, and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979. The consent of the land owner has not been submitted with the application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000. None of Council's current or previous Section 94 Plans allowed Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway.

It is therefore recommended that the application be refused.

6. RECOMMENDATION

5 That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that Section 96 Application 10.2013.132.3, to delete requirement to construct creek crossing works and accept a cash contribution instead, be refused for the following reasons:

1. The modification is not to correct a minor error, misdescription or miscalculation, and therefore cannot be dealt with under Section 96(1) of the Environmental Planning and Assessment Act 1979.
- 10 2. A statement signed by the owner of the land, to the effect that the owner consents to the making of the application, was not provided with the Section 96(1) Application, as required under Clause 115 of the Environmental Planning and Assessment Regulation 2000.
- 15 3. That Council’s current Section 94 Plan does not allow Council to impose conditions of development consent to collect monetary payment to fund the upgrading of the subject causeway.

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a ‘gift’ from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

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Report No. 13.17 **PLANNING - 10.2014.398.1 Motel - two storey 16 guest rooms with a roof top terrace and basement parking for 27 cars at 3-7 Shirley Street, Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Senior Planner

File No: I2015/561

Theme: Ecology
Development and Approvals

Property description: LOT: 1 DP: 123737, LOT: A DP: 346870, LOT: B DP: 346870, LOT: 1 DP: 1068193, LOT: 2 DP: 1073355, LOT: 13 DP: 1143269
3 Shirley Street BYRON BAY, 7 Shirley Street BYRON BAY, 5 Shirley Street BYRON BAY

Parcel No/s: 7400, 83040, 83030, 239166, 239405, 240879

Applicant: Mr R McEwen

Owner: McEwen Holdings Pty Ltd

Zoning: Zone No. 2(a) - Residential Zone
Zone No. 7(f2) – Urban Coastal Lands

Date received: 16 July 2014

Integrated Development: No

Public notification or exhibition: – Level 2 advertising under DCP 2010 Chapter 17 – Public Notification and Exhibition of Development Applications

– Exhibition period: 29/07/14 to 11/8/14

– Four submissions were received

Other approvals (S68/138): Not applicable

Planning Review Committee: N/A

Delegation to determination: Council

Proposal

Development consent is sought for a 16 room boutique motel with a restaurant, spa area, swimming pools and associated landscaping at 3-7 Shirley Street opposite the Byron Bay Police Station. Car parking is provided within a basement arrangement for 27 vehicles, whilst part of the roof area will contain a pool and terrace area orientated towards the northern rear boundary to take in distant ocean views across the first Sun Caravan Park.

The original motel concept as submitted to Council included an eclectic mix of built forms including bull nose verandahs, a stone tower and a Victorian turret and flagpole in the centre of the building. It was considered this concept although grand in style and nature, was not in keeping with the sub-tropical character of Byron Shire as generally required under Clause C3.1 of DCP 2010. Council has negotiated with the applicant to amend the design and appearance of the building which has created some delays in finalising the assessment of the application. The amended proposal is a better fit for the site, which is on the main thoroughfare into Byron Bay and provides for a cohesive building which is well proportioned in terms of the property's size and dimensions, and wide frontage to Shirley Street. (For further detail see images below in the body of the report and attached plans)

Background

The Development Application was lodged with Council on 16 July 2014 which prior to the commencement of Byron Local Environmental Plan 2014. Accordingly, the proposal is required to be assessed against Byron Local Environmental Plan 1988 and Byron Development Control Plan 2010. It is noted that the Environmental Planning and Assessment Act 1979 requires Council to consider Byron Local Environmental Plan 2014 as a draft instrument only.

Summary

The building in part exceeds the 9 metre height limit under Clause 40 of Byron LEP 1988 and a variation is supported under SEPP 1. This encroachment arises from the two pitched roof elements within the centre of the building and an access staircase to the roof top terrace. From Shirley Street it is unlikely that the public will be able to discern that these building elements exceed the height limit, whilst the pitched roofs provide articulation and shape to the motel, and will not detract from the streetscape. A variation is also sought to the 4.5 metre upper floor level provision under clause 40 in terms of this roof top terrace. This is also supported as the control is no longer relevant under Byron LEP 2014, plus the terrace area is within the centre of the building and is unlikely to impact on neighbours privacy and from overlooking.

The proposed motel is permissible with consent in the 2(a) residential zone under Byron LEP 1988. The land under Byron LEP 2014 is zoned R3 Medium Density under Byron LEP 2014 which lists *hotel/motel accommodation* as a prohibited form of development. Although the proposal is not being assessed against the 2014 instrument, the following is of relevance in justifying this inconsistency. In this regard, *serviced apartments* being self contained tourist and visitor accommodation that are regularly serviced and cleaned, are similar to motels in many respects and are permissible with consent in the R3 Zone. The reasoning for this prohibition is unclear in Byron LEP 2014, considering this area of Byron Bay is dominated with all manner of tourist accommodation including motels. The proposal could be amended to fit within the *serviced apartment* definition by way of providing small kitchenettes as the motel rooms are generous in area and dimensions. However there is little to gain in requiring this, considering the applicable planning instrument is Byron LEP 1988 and it is unlikely to alter the appearance of the building, or its use as tourist and visitor accommodation, other than satisfying the particulars of the *serviced apartment* definition. Further the motel will include a restaurant to cater for guests, whilst the site is within walking distance to a multitude of eating and drinking establishments in the Byron Bay town centre.

The proposal is unlikely to have a detrimental impact on the built or natural environment, however issues relating to swimming pools and spas need to be carefully managed and appropriate conditions are recommended in terms of use and noise attenuation of plant and equipment. The property sits on the periphery of the Byron Bay CBD, is within close walking distance to shops, cafes, restaurants and the Beach and is considered suitable for motel accommodation.

The property also adjoins the North Coast Railway Line and with it is likely reactivation in the near future, conditions are also recommended in terms of noise fencing along the boundary. In conclusion the proposal is unlikely to prejudice or compromise the public interest and is recommended for approval subject to Conditions of consent

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.

RECOMMENDATION:

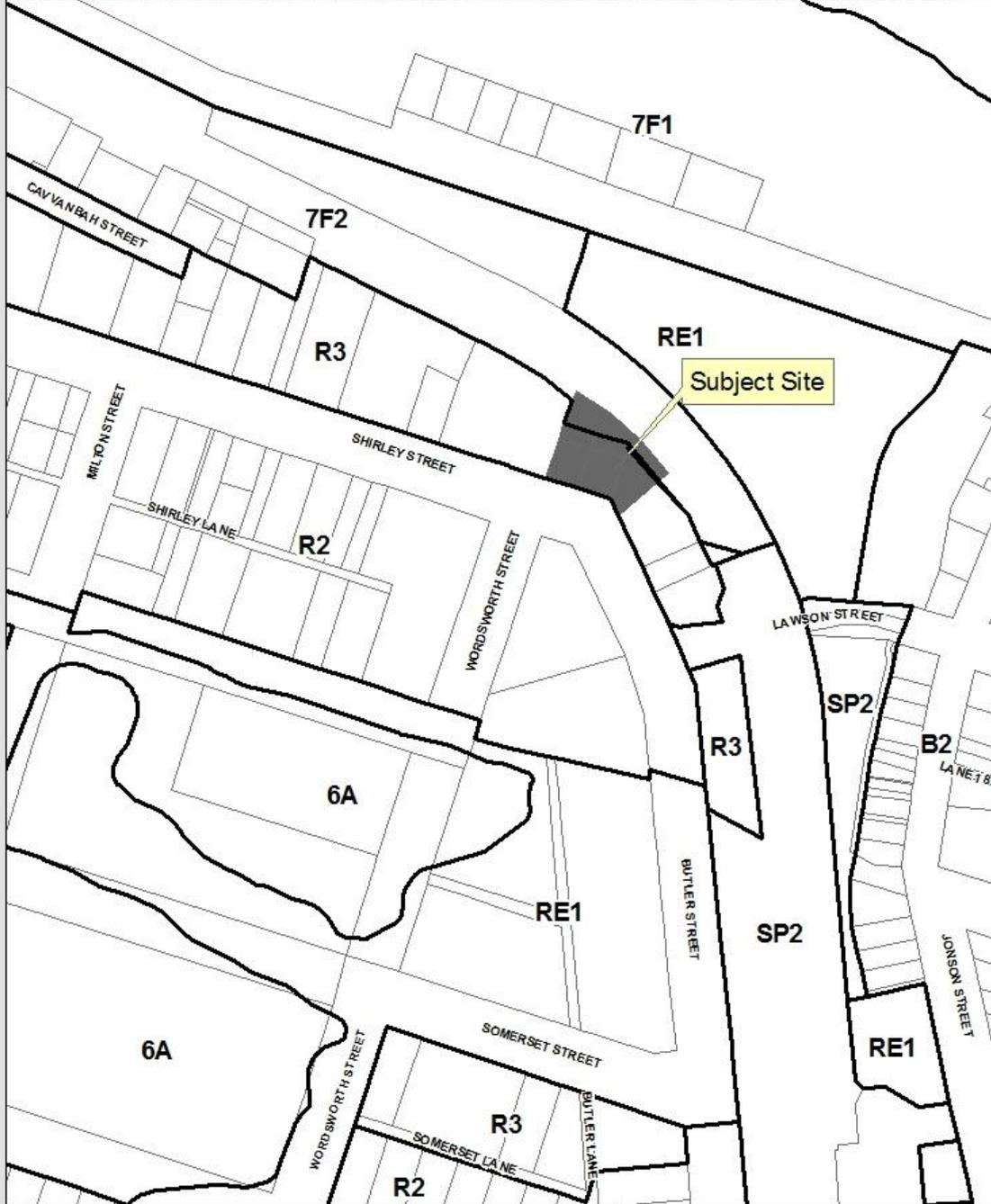
That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2014.398.1 for Motel - two storey 16 guest rooms with a roof top terrace and basement parking for 27 cars, be granted a deferred commencement consent subject to the following conditions listed in Attachment 2.

Attachments:

- 1 Proposed Plans 10.2014.398.1 3-7 Shirley St Byron Bay, E2015/39974
- 5 2 Proposed conditions 10.2014.398.1 3-7 Shirley St, Byron Bay, E2015/39760
- 3 Confidential - submission 10.2014.398.1, E2015/39977

BYRON SHIRE COUNCIL

LOT: 1 DP: 123737, LOT: A DP: 346870, LOT: B DP: 346870, LOT: 1 DP: 1068193,
 LOT: 2 DP: 1073355, LOT: 13 DP: 1143269
 3 Shirley Street BYRON BAY, 7 Shirley Street BYRON BAY, 5 Shirley Street BYRON BAY



<p>Scale 12,797</p>	<p><small>Disclaimer: While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given. Further information contained on this map is the best case information. Any reliance placed on such information shall be at the user's sole risk. Please verify the accuracy of the information prior to using it. Note: The information shown on this map is a copyright of the Byron Shire Council and the 2014 Department of Lands.</small></p>	<p>Byron Shire</p>	<p>Date 18/6/15</p>
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Assessment:**1. INTRODUCTION****5 1.1 History/Background**

The subject property contains three small dwellings which appear to have been erected in the 1950's/ 60's. No details of approval are registered in Councils records.

10 1.2 Description of the site

The subject site is commonly known as 3-7 Shirley Street and comprises six properties legally described as:

- 15 - Lot 1 DP 123737
- Lot A DP 346870
- Lot B DP 346870
- 20 - Lot 1 DP 1068193
- Lot 2 DP 1073355
- Lot 13 DP 1143269

The property is zoned 2(a) and 7(f2) Urban Coastal Lands under Byron LEP 1988 and R3 Medium Density pursuant to Byron LEP 2014. The property has a total area of 2283m² and is generally level with no recognisable topographic features. The property adjoins the North Coast Railway Line along its rear boundary and overlooks the First Sun Caravan Park. Adjoining development to the west and east is best described as holiday apartments, whilst opposite the property is the Byron Bay Police Station and Hospital. The area due to its proximity to the town centre and the beach is best characterised as a "tourist precinct" with other development in Shirley Street including motels, holiday/ serviced apartments, backpacker hostels and holiday homes.

The North Coast Railway Line is likely to be utilised for a regular tourist train service from the Elements Resort at Bayshore Drive into Byron Bay in the very near future, and a Development Application having been submitted for the construction of two new platforms in the rail corridor. Other uses of the railway line including a rail trail or cycleway may also occur in the future.

1.3 Description of the proposed development

40 The application seeks consent for the construction of a boutique motel comprising the following:

- Demolition of the existing dwellings and ancillary structures.
- Excavation and construction of a basement car park to contain 27 parking spaces.
- 45 - 16 guest rooms and a managers unit;
- Ground level pool and deck area at the rear;
- Restaurant;
- Roof top pool and deck area;
- Private spa baths for three units;
- Port cochere and mini bus pickup and set down area; and
- 50 - Landscaping

The plans originally submitted to Council included an eclectic mix of built form including bull nose verandahs, a stone tower and a Victorian Turret with flagpole in the centre of the building. Council staff worked with the applicant to amend the design and appearance of the development, which, although grand in style and nature, was considered to be incompatible with the sub-tropical

character of Byron Shire and having regards to its visual prominence on the main road into the heart of Byron Bay. The original and amended concepts are shown below.

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2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

The proposal was referred to the Country Railway Infrastructure Authority who raised no objection to the development.

3. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

5 Having regard for the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979, the following is a summary of the evaluation of the issues.

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Policy	Proposed	Complies
State Environmental Planning Policy 55 – Contaminated Land	The applicant has undertaken an initial assessment of the land with minor elevated lead levels found on the site. Appropriate conditions of consent are recommended in terms of remediating the site.	Yes
State Environmental Planning Policy No.1	<p>The proposal contains a roof top area which does not comply with Clause 40 of Byron LEP 1988 being a floor level greater than 4.5metres in height. It should be noted that under Byron LEP 2014 which now applies to the site, this height restriction is no longer applicable. In support of the proposal the roof top area is well set back from boundaries and will not have an impact on adjacent properties in terms of overlooking and privacy being orientated to overlook the First Sun Caravan Park to the Beach and Pacific Ocean. Further the adjacent Outrigger Bay Apartments is three storeys in part and also exceeds the overall 9 metre height limit. Having regards to the above and the height permissibility under BLEP 2014, It is considered that strict compliance with the 4.5 metre development standard is unreasonable and unnecessary in this instance.</p> <p>The pitched roof elements at the front of the building will exceed the 9 metre height limit, however with the removal of the “Victorian turret” and flag pole, the overall height of the building is substantially less. A small roof top entrance will also exceed the 9 metre height limit. The applicant in the SEPP 1 objection stated that these elements will not impact on adjacent properties in terms of overshadowing, view loss or privacy and is lower than the adjacent Outrigger Building.</p> <p>In terms of the amended design, the roof top entrance within the centre of the terrace area exceeds the height limit by less than 10% at 9.87 metres and the two roof elements at the pitch exceeding the height limit by approximately 12% at 10.09 metres. It is considered that from the street it will be difficult to discern that these parts of the building exceed the height limit, considering the dimensions of the property and setback to Shirley Street. Further, the roof top entrance is not readily visible from the public domain, whilst the two pitched roof elements provide articulation and shape to the front elevation, reflect the subtropical character sought under Byron DCP 2010 (see Section 3.3 below) and will not adversely affect the streetscape. Strict compliance with the development standard is unnecessary or unreasonable in this instance, but conditions are recommended to ensure the development does not exceed the heights as indicated in the amended plans.</p>	Yes

SEPP 71 Coastal Protection	The subject land is within the Coastal Zones and the provisions of the SEPP apply. The proposal raises no specific issues having regards to the matters listed under Clauses 8 and 14, and being a serviced lot complies with Clause 15 and 16 in relation to effluent disposal and stormwater management.	Yes
Demolition	Appropriate conditions of consent to apply to ensure demolition carried out in accordance with AS2601.	Yes
Disability Access (DDA)	Two accessible units are provided,	Yes

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

5 Clause 9 – Zone objectives and development control table
Definition: Motel

2(a) Residential Zone:

10 Motels are listed as a permissible use in the 2(a) Zone. The motel meets the objectives of the zone having regard to the tourist characteristics of this area.

7(f2) Urban Coastal Lands

15 The northern third of the site adjacent to the railway corridor is within the 7(f2) Zone and is identified as falling within Precinct 2 under Part J Coastal Erosion Lands of Byron DCP 2010. Motels are permissible in the zone. Should a coastal erosion event ever effects the property the consent will cease and the building may then need to be demolished. Appropriate conditions of consent to apply.

Clause 24 – Flooding

20 The land is elevated above Councils design flood levels for this area of Byron Bay and is not affected by flooding. Clause 24 does not apply to the proposal.

Clause 32 - Development within Zone No 7 (f2) (Urban Coastal Land Zone)

Council must consider the following for development on land in the 7(f2) Zone:

- 25 (a) the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,
- (b) the need to relocate buildings in the long term,
- (c) the need for the development consent to be limited to a particular period,
- (d) the form, bulk, intensity and nature of the development, and
- 30 (e) continued safe public access to the site.

35 The subject site sits within Precinct 2 under Part J Coastal Erosion Lands of Byron DCP 2010. As discussed above, conditions of consent are recommended for the consent to lapse in the event that the site is potentially at risk of coastal erosion and for the building to be demolished. In terms of the bulk and nature of the development, the use of the site for tourist accommodation is appropriate, whilst safe public access can be provided to the site from Shirley Street which is the main thoroughfare into Byron Bay.

40 It is noted amendment No.66 does not apply to the site which prohibited motels and other forms of development in some 7(f2) Zone locations (eg Belongil Beach)

Clause 40 Height

The proposed development exceeds the height limits but a variation is supported under State Environmental Planning Policy No.1. (See above discussion in section 3.1)

5 **Clause 45 Provisions of Services**

All necessary services can be provided to the site

Clause 52 Tree Preservation

10 Approval is sought for the removal of garden vegetation and palms and one semi mature hoop pine which appears to be damaged from either recent hail storms or suffering from die back. The proposal includes substantial landscaping with native vegetation which will replace any vegetation removed from the site during construction. .

Clause 63 Acid Sulfate Soils

15 The site is identified as containing Class 5 potential acid sulfate soils. A preliminary investigation has been carried out by the applicant and appropriate conditions of consent are recommended in relation to managing acid sulfate soils and dewatering. A separate approval is required under the Water Management Act 2000 for dewatering activities.

20 **Byron Local Environmental Plan 2014**

Since the DA was lodged Byron LEP 2014 has been made and is now in force. The savings provisions under Clause 1.8A apply which state:

25 ***“1.8A Savings provision relating to development applications***

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced”

30 The development has been assessed against the aims and objectives of the Byron LEP 2014. It is noted that *hotel/ motel accommodation* is prohibited in the R3 Zone, however *serviced apartments* being self contained tourist and visitor accommodation that are regularly serviced and cleaned are similar to motels in many respects and are permissible with consent in the R3 Zone. The reasoning for this prohibition is unclear in Byron LEP 2014, considering this area of Byron Bay is dominated
35 with all manner of tourist accommodation including motels, hostels and holiday apartments. The proposal could be amended to fit within the *serviced apartment* definition by way of providing small kitchenettes as the motel rooms are generous in area and dimensions. However there is little to gain in requiring this, considering the above savings provisions and it is unlikely to alter the appearance of the building other than satisfying the particulars of the *serviced apartment* definition.
40 A restaurant is included in the motel to service guests needs, whilst guests also have access to a number of eating houses within close walking distance. Overall the proposal is generally consistent with the aims and objectives of the Byron LEP 2014.

45 **Draft EPI that is or has been placed on public exhibition and details of which have been notified to the consent authority - Issues**

No draft Environmental planning instruments affect the development.

50 **3.3 DEVELOPMENT CONTROL PLANS****Development Control Plan 2010**

The application has been assessed under the provisions of Byron Development Control Plan 2010 (DCP 2010). The following comment is provided on relevant components of the DCP.

C2.5 Setbacks

5 The proposed development generally exceeds the 6.5 metre setback to Shirley Street, however the Porte Cochere extends into the setback by 300 mm. Having regards to the width of the site, landscaping proposed, and the purpose of the structure that intrudes being an open sided building on 3 sides, it is consider the proposal is satisfactory in terms of the performance criteria underpinning this design element.

C2.6 Building Height Plane

10 The proposal complies with the building height plane provisions applying to the site.

C2.7 Earthworks

15 The basement car park will exceed the 1 metre cut provisions under C2.7. Notwithstanding this, the provision of the basement car park hides the car parking area, and reduces hardstand area placing it under the proposed building footprint, and allowing for a greater landscaped area. A variation is acceptable in this instance. Appropriate conditions of consent are recommended in relation to sedimentation and erosion control fencing, acid sulfate soils and any dewatering that may be required.

C3.1 Visual Impact

20 The original concept submitted to Council included an eclectic mix of built form including bull nose verandahs, a stone turret, and a Victorian turret and flagpole in the centre of the building. Council worked with the applicant to amend the design and appearance of the development, which, although grand in style and nature, was considered to be incompatible with the sub-tropical character of Byron Shire. This has created some delays in finalising the assessment of the application, but the amended proposal provides for a more cohesive building, which is on the main thoroughfare into Byron Bay. The proposed motel is considered to satisfy the provisions under C3.1 though use of materials including stone and timber, roof pitches, covered verandahs and articulated elevations.

30

C9.1 Element – Density Control Element

The proposal complies with the floor space ratio (FSR) provisions of 1.2:1.0.

C9.2 Element – Equity of Access and Mobility

35 Of the 16 motel units, two are designed as accessible units which complies with the requirement of 1 unit per 10 to be accessible.

C9.3 Element – Character of Motel Units and Cabins

40 The proposal although not providing self catering facilities in each room, provides for a high degree of outdoor recreational opportunities. The motel provides for a restaurant within the development to cater for guests dietary requirements whilst the site is within close walking distance to a range of restaurants, cafes and other eating establishments in Byron Bay. The proposal is considered acceptable.

C9.6 Element – Landscaped Area

50 The application proposes 16 units and one managers residence all of which are greater than 30m² in floor area and as such generate a total of 510 m² of landscape area across the site (17 units x 30m²). The application proposes 745m² of landscaped area with 360m² of deep soil area which is compliant with this control. A concept landscape plan has been provided with the application which is considered satisfactory. Conditions of consent are recommended requiring the landscaping to comply with Part H of DCP 2010.

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Part G Vehicle Circulation and Parking

Under Part G the motel generates a total of 40 spaces as follows

- 16 motel units @ 1.5 spaces/unit = 24 spaces
- Manager’s Unit = 2 spaces
- Restaurant 90m² = 9 x 1.5 = 13.5 spaces

The application proposes to provide 27 spaces including one disabled space. This is a shortfall of 13 spaces. The applicant has submitted a parking study which justifies the shortfall based on the following:

- Reliance on a 30% reduction in parking due to statistical evidence that only 74% of guests travel by car. This is not unreasonable considering that Byron Bay is serviced by two domestic airports, one of which also has international flights; and
- Consideration of the new adopted DCP 2014 rates.

The number of on site car spaces required for this development in accordance with Council’s DCP 2014 is as follows:

Motel suites @ 16 @ 1/suite.....	16 Spaces
Manager suite @ 1 @ 1/suite.....	1 Space
Onsite staff @ 8 @ ½ staff.....	4 Spaces
Restaurant open to public @ 90m2 @ 1/20m2 GFA.....	4.5 Spaces
TOTAL	25.5 Spaces (26)

Further the motel units are generally designed for couples as opposed to larger family groups. As such, it is considered the applicants parking study reflects Councils new controls for motel style developments. Accordingly, the car parking proposed can be supported under Part G as it satisfies the performance criteria and objectives underpinning this design element by providing sufficient and convenient parking to meet user needs.

In terms of design, the car park, porte cochere, access and egress arrangements and loading bays are considered satisfactory. Appropriate conditions of consent are recommended.

Part J Coastal Erosion Lands

The subject site falls into Precinct 2 and sits between the immediate Impact Line and 50 Year Erosion Line. Development will be granted consent on the proviso that should the erosion escarpment come within 50 metres of any building then the development consent will cease and the building not being a dwelling house in this instance will need to be demolished. Conditions of consent are recommended in this regard.

3.4 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will not have a detrimental impact on the built or natural environment in this location. Appropriate conditions of consent are recommended to control hours of work, builders waste, construction noise and the like. Economically, the development will generate short term employment through the construction phase and long term employment once operational. Socially, the motel will provide an alternative to holiday let accommodation which has grown substantially over the past decade in Byron Shire, with on-site management. The restaurant is likely to be licensed with the applicant noting most issues relating to alcohol related crime occurring after 11 pm and into the early hours of the morning. It is unlikely this restaurant would ever become a major night spot like some of the nightclubs in Byron Bay, while its positioning opposite the Byron Bay

Police Station should have a positive impact on general patron behaviour. In terms of the size of the motel with only 16 guest rooms, restrictions on hours of operation for the public, the restaurant is unlikely to have an adverse social impact.

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3.5 The suitability of the site for the development

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The site is fully serviced with all necessary infrastructure and is situated in an area strongly characterised by tourist accommodation due to its location and proximity to the Byron Bay town centre and local beaches.

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The property adjoins the north coast railway line and railway noise from the new tourist train is a potential issue. The applicant has advised they are willing to erect an appropriate noise fence, and conditions of consent have been recommended requiring this to occur.

In terms of hazards, ground water, acid sulphate soils and coastal erosion are noted above in the report and appropriate conditions of consent have been recommended to address these issues.

20

The site is considered suitable for the proposed development.

3.6 Submissions made in accordance with this Act or the regulations

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There were **four (4)** submissions made on the development application. The applicant has provided a response to the submissions which forms an attachment to this report.

Issue	Comment
Inappropriate character of design	This concern was raised with the applicant and subsequently they have revised the elevation of the building to provide for a sub-tropical feel – as opposed to the original concept which could be described as “Victorian” or “colonial” in appearance. The amended design as discussed above in Section 3.3 provides for a more cohesive built form and is considered to be a satisfactory response to the sites frontage to Shirley Street.
Location of outdoor terrace areas and spas on first floor, upper level pool and impact on neighbours from noise	It is considered there is sufficient spatial separation (approximately 9 metres) between the development and the adjoining outrigger apartments to provide an adequate level of privacy and amenity. The upper level pool area is situated within the centre of the building and its impact on adjoining properties is also substantially limited due to the distance to adjoining properties and the pool areas orientation to the rear of the property. Conditions of consent are recommended in regards to the usage of pool and spa areas to address amenity concerns.
Impact on street parking from public restaurant and ability for adjoining property to put out street bins	Car parking is considered adequate for the development. Like many residential streets potential for conflict may arise as there are no restrictions at present on street parking in Shirley Street. However, the restaurant is unlikely to be in operation when garbage is collected from the Outrigger Resort and the bins may need to be put out later for collection if there is an issue. It is also noted with paid parking and other changes being investigated through the Byron Bay Town Centre Masterplan, parking in this area of Byron may be come more regulated in the future.
The site is a high profile site and	Plans have been amended to reflect a more cohesive building

Issue	Comment
proposed design uses different architectural styles which don't compliment each other	style which is generally subtropical in nature and consistent with the DCP provisions.
Amendment 66 to Byron LEP 1988 prohibits motels in the 7f2 Zone Coastal erosion	Amendment 66 does not apply to the site. Conditions to apply in relation to requiring the applicant to enter into the appropriate S88E restriction as per Part J of DCP 2010 to remove the development and for the consent to cease in the event of a coastal erosion event.
Roof top terrace should be removed	It is considered the provisions of the roof top terrace in light of the height requirements under BLEP 2014 is justified. Further its location within the centre of the building and orientation to the rear of the site is unlikely to result in a negative amenity impact on adjoining properties.
Motels now prohibited under BLEP 2014 in the R3 Zone	Proposal was submitted under LEP 88 and can be considered against that LEP where motels are a permissible use with consent.
Inadequate Parking	The proposal included a traffic and parking study which has been assessed by Councils Engineer as adequate for the number of car parking spaces provided.

3.7 Public interest

5 It is considered the development will not compromise or prejudice the public interest.

4. DEVELOPER CONTRIBUTIONS

10 4.1 Water & Sewer Levies

15 The property has a credit of 3 ET for water bulk water and sewer. The development will generate 12.99 ET for Water and Bulk Water and 16.67 ET for Sewer. Headworks charges to apply as follows

- **12.99 – 3.00 = 9.99 ET** for Water & Bulk Water;
- **16.67 – 3.00 = 13.67 ET** for Sewer.

20 Council can supply water services to the proposed development on payment of Developer servicing Charges. Conditions to apply.

4.2 Section 94 Contributions

25 Section 94 Contributions are payable as per the adopted S94A levy. Conditions to apply.

5. CONCLUSION

5 It is considered the proposed development is satisfactory having regards to the planning controls applying to the site. It is noted the plans have not been completed to a final standard for development approval. The matter was discussed with the applicant who has agreed to a deferred commencement consent whereby full architectural plans are to be submitted to Council for approval. The application is recommended for approval.

10

6. RECOMMENDATION

15 **It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2014.398.1 for Motel - two storey 16 quest rooms with a roof top terrace and basement parking for 27 cars, be granted deferred commencement consent subject to the conditions listed in Attachment 2.**

20

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Report

On 9 April 2015, Council resolved as follows with respect to the establishment of a Heritage Advisory Committee for Byron Shire:

- 5 1. *Establish a Heritage Advisory Committee that includes community representation.*
- 2. *Prepare a draft constitution based on the Eurobodalla Shire Council model and report to Council for approval to establish a selection process and subsequent appointment of Members.*
- 10 3. *Apply for grant funding from the NSW Office of Environment and Heritage for a local Heritage Advisory Service to support the work of the Committee.*
- 4. *Consider allocation of recurrent funding in the 2015/2016 budget process.*

Parts 2-4 of the resolution are addressed separately below:

15 *Draft constitution for a Heritage Advisory Committee*

A draft Committee Terms of Reference (constitution) for the Byron Shire Heritage Advisory Committee (HAC) is tabled for Council’s consideration at Attachment 1. It should be noted that section 3 ‘Membership’ is incomplete and requires Council’s specific consideration regarding:

- 20 1. The number of and the individual Councillor Members.
- 2. The number of Community Members.

25 Table 1 details the key steps and timeframes for establishing the HAC. It is recommended that the number of Community Members, and who they are/which interests and groups will be represented, is determined through an expression of interest (EOI) process. To expedite this process, it is recommended that authority be delegated to the Councillor Members of the HAC to consider the EOIs and determine the Community Members as per table 1 below.

30 Table 1: Selection process proposal

Step	
1. Advertise for a pool of suitable Community Members through an EOI process, 2. Request membership nominations from the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and Tweed Byron Local Aboriginal Land Councils. 3. Seek membership nominations from the known local historical societies.	July 2015
4. Receive EOIs from potential Community Members. 5. Receive membership nominations from the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and Tweed Byron Local Aboriginal Land Councils. 6. Receive membership nominations from the known local historical societies.	August 2015
7. Councillor members convene to consider EOIs and determine the Community Members under delegated authority from Council.	August 2015
8. First approximate meeting date set.	September 2015

Accordingly, it is recommended that Council determine the number of and the individual Councillor members of the HAC, and that the draft Committee Terms of Reference at Attachment 1 be amended accordingly.

- 5 Further, that Council adopt the amended draft Committee Terms of Reference noting that the specific composition of the community membership be determined as per the process at Table 1.

Grant funding application for a Heritage Advisory Service

- 10 Byron Shire Council has been successful in our application to the Office of Environment and Heritage for funding to appoint a Local Government Heritage Advisor for the 2015-16 financial year. This will allow us to manage local heritage properties and assist in the establishment and running of the Heritage Advisory Committee.

15 Recurrent funding for a Heritage Advisory Service

- Consideration has been given to recurrent funding through the 2015-2016 budget process to support a Heritage Advisory Service. This funding will be confirmed through the June Budget review once confirmation of the grant funding is formally received from the Office of Environment and Heritage.
- 20

Financial Implications

- 25 The administrative functions associated with the HAC will be undertaken using existing staff planning and resources in the SEE directorate.

Statutory and Policy Compliance Implications

- 30 The establishment of a HAC is consistent with the recommendations in the Community Based Heritage Study Volume 1 as endorsed by Council.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 14.1 Report of the Biodiversity and Sustainability Advisory Committee Meeting held on 14 May 2015

5 **Directorate:** Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2015/421
Theme: Ecology
10 Planning Policy and Natural Environment

Summary:

15 This report presents the minutes of 14 May 2015 Biodiversity and Sustainability Advisory Committee meeting. All committee recommendations are for noting and supported by management.

RECOMMENDATION:

That Council note the minutes of the Biodiversity and Sustainability Advisory Committee Meeting held on 14 May 2015.

Attachments:

20 1 Minutes 14/05/2015 Biodiversity and Sustainability Advisory Committee, I2015/383

Report

- 5 The attachment to this report provides the minutes of the Biodiversity and Sustainability Advisory Committee Meeting of 14 May 2015 for determination by Council. The following is a link to the agenda:
http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2015/05/BSAC_14052015_AGN_391_AT.PDF
- 10 Committee recommendations 5.1 regarding Integrated Weed Management Strategy Workshop and 5.2 regarding Byron Shire - Zero Emissions Community are supported by management and are provided in the attachment to this report.

Financial Implications

- 15 As per the Reports listed within the Biodiversity and Sustainability Advisory Committee Meeting of 14 May 2015.

Statutory and Policy Compliance Implications

- 20 As per the Reports listed within the Biodiversity and Sustainability Advisory Committee Meeting of 14 May 2015.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.2 Report of the North Byron Coastal Creeks Flood Risk Management Committee Meeting held on 23 June 2015

5 **Directorate:** Infrastructure Services
Report Author: James Flockton, Drainage Flood Engineer
File No: I2015/621
Theme: Community Infrastructure
10 Emergency Services and Floods

Summary:

15 This report provides the minutes of the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 23 June 2015 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the North Byron Coastal Creeks Flood Risk Management Committee Meeting held on 23 June 2015.
2. That Council adopt the following Committee Recommendation:

Report No. 5.1 North Byron Coastal Creeks Draft Flood Study Review
File No: I2015/470

Moved 5.1.1

That Council notes:

1. that there are discrepancies in the draft Flood Study for the 1987 flood in Mullumbimby that require verification of divergent sets of data
2. that the Committee will meet again on 18 August 2015 to see the results of the verification and a new draft Flood Study

20 **Attachments:**

- 1 Minutes North Byron Coastal Creeks Floodplain Risk Management Committee Meeting 23/06/15, I2015/564

Report

The attachment to this report provides the minutes of the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 23 June 2015 for determination by Council.

5

The agenda may be viewed at <http://www.byron.nsw.gov.au/meetings>

Committee Recommendation 5.1.1

10

That Council notes:

1. that there are discrepancies in the draft Flood Study for the 1987 flood in Mullumbimby that require verification of divergent sets of data
2. that the Committee will meet again on 18 August 2015 to see the results of the verification and a new draft Flood Study

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Management Comments

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The Committee recommendation is supported by management and is provided in the attachment to this report.

Financial Implications

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As per the Reports listed within the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 23 June 2015.

Statutory and Policy Compliance Implications

30

As per the Reports listed within the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 23 June 2015.

Report No. 14.3 **Report of the Local Traffic Committee Meeting held on 24 June 2015**
Directorate: Infrastructure Services
Report Author: Simon Bennett, Traffic and Transport Planner
File No: I2015/622
5 **Theme:** Community Infrastructure
 Roads and Maritime Services

Summary:

10 The attachment to this report provides the minutes and recommendations of the Local Traffic Committee Meeting of 24 June 2015 for determination by Council.

RECOMMENDATION:

1. **That Council notes the minutes of the Local Traffic Committee Meeting held 24 June 2015.**
2. **That Council adopt the following Committee Recommendation:**

Report No. 6.1 Wilsons Creek Public School Bus Zone Changes and New Bus Bay
File No: I2015/566

RECOMMENDATION:

1. **That the new school side bus bay at Wilsons Creek Public School be endorsed and signed as a bus zone, effective school days 8.45am-9.45am and 3.30pm-4.00pm (subject to confirmation with the School).**
2. **That Council note that there remain safety issues that will be overcome by having the westbound bus able to turn around east of the School, which if occurs would remove the need to consider a contra flow which is not supported by the Local Traffic Committee at this time.**
3. **That Council note that staff will investigate further grant opportunities to achieve the safety described in point two.**
4. **That once works are complete Council examine procedures, such as contra flow for the buses or other possible options, to minimise risk to the children and the need for them to cross the road.**
5. **That following completion of the bus bay, staff examine parking options west of the School, including safety and sightlines.**

15

3. **That Council adopt the following Committee Recommendation:**

Report No. 6.2 Two Lanes Inbound, Lawson Street, Byron Bay
File No: I2015/567

RECOMMENDATION:

1. **That the GHD engineering design plan for the proposed 'Two Lanes Inbound (Lawson Street, Byron Bay)' be endorsed for the creation of a second inbound lane on Lawson Street, Byron Bay, commencing from 50m north of the Butler Street roundabout and continuing east to the existing two lane configuration west of the Jonson Street roundabout, including:**

- a) the existing No Stopping on the east side of Shirley Street be extended further north of the Butler Street roundabout to the driveway of 3 Shirley Street (approximately a 40m extension resulting in a loss 5 car spaces)
 - b) a new 'left turn only' lane
 - c) left in and left out movement only allowed on the Lawson Street access and egress locations at the First Sun Caravan Park and the Caltex Service Station, both of which lose their protected on-street right-turn bays; and
 - d) acceptance the design does not and cannot provide for or include dedicated on road cycling space due to limited, existing road width.
2. That Council notes and accepts the compromises and risks as detailed in the attached 'Issues Register' and the 'Safety in Design Risk Assessment'.
 3. That the design be referred to John Holland Rail for their concurrence and requirements regarding changes upon or that affect state owned rail infrastructure.
4. That Council adopt the following Committee Recommendation:

Report No. 6.3 NAIDOC Event, Jonson Street Parade, Byron Bay 9 July 2015

File No: I2015/568

RECOMMENDATION:

That Council endorses the NAIDOC Celebration, Street Walk and Family Day to be held in Byron Bay on Thursday 9 July 2015, subject to the:

- a) use of an accredited designed and implemented Traffic Control Plan, OR under Police escort
 - b) event being advertised in the local newspaper and notified on Council's website
 - c) consideration of any submissions received
 - d) proponent's lodgement of current and appropriate levels of insurance and liability cover
 - e) attainment (by the event proponent) of written authority to hold the street walk from the Police
5. That Council adopt the following Committee Recommendation:

Report No. 6.4 Middleton Street, Byron Bay - Changes and Car Park Upon Crown Reserve

File No: I2015/569

RECOMMENDATION:

1. That Council notes that the Local Traffic Committee prefers Option 1 for proposed changes to the north end of Middleton Street, Byron Bay, including consideration of a turning circle or roundabout for traffic at the Bay Lane – Middleton Street intersection.
2. That such changes be the subject of an approved detailed design, including line

marking and signage, all of which can proceed subject to meeting of standards and that adequate 'One-Way', 'No Entry', and 'Road Ends' signage and pavement marking be provided where required.

3. That 'No Stopping' be endorsed for the west side of Middleton Street, between Bay Street and Bay Lane.

6. That Council adopt the following Committee Recommendation:

Report No. 6.5 Byron Bay Writers Festival, Bayshore Drive Traffic Management, 7-9 August 2015

File No: I2015/570

RECOMMENDATION:

That Council approves the temporary traffic control measures related to the August 2015 Byron Bay Writers Festival subject to the:

- a) use of an accredited designed and implemented Traffic Control Plan
 - b) meeting of the advertising requirements of the Roads Act 1993
 - c) consideration of any submissions received
 - d) event being notified on Council's website
 - e) timely lodgement of current and appropriate levels of insurance and liability cover
-
7. That Council adopt the following Committee Recommendation:
- Report No. 6.6 Road Closure, Byron Lighthouse Run, Byron Bay - Sunday 18 October 2015**
- File No: I2015/571
- RECOMMENDATION:**
- That Council endorses the 10km Byron Lighthouse Fun Run to be held in Byron Bay on Sunday 18 October 2015, subject to:**
- a) the use of an accredited designed and implemented Traffic Control Plan
 - b) meeting of the advertising requirements of the Roads Act 1993
 - c) the event being notified on Council's website
 - d) consideration by Council staff should any submissions be received
 - e) the proponent's lodgement of current and appropriate levels of insurance and liability cover; and
 - f) the attainment (by the event proponent) of Cape Byron Headland Trust written concurrence of the event
-
8. That Council adopt the following Committee Recommendation:

Report No. 6.7 10th Annual Rainbow Ride Cycle Challenge, 20 September 2015

File No: I2015/572

RECOMMENDATION:

That the temporary traffic arrangements for the Rainbow Ride Cycle Challenge be endorsed for Sunday 20 September 2015, including the road closure of William Flick Lane, Ewingsdale between 9am and 3pm, subject to the:

- a) **use of accredited designed and implemented traffic control plans that comply with the NSW Guidelines for Bicycle Road Races**
- b) **organisers implementing plans for signage, motor escort, advertising and other details as proposed in their submission**
- c) **public liability insurance being current and not less than \$20 million**
- d) **concurrence of the Police and RMS, independent of the Local Traffic Committee endorsement**
- e) **advertising in accordance with the Roads Act 1993**
- f) **event and road closure being notified on Council's website**
- g) **proponent providing Council a copy of written acceptance of the road closure from the relevant RMS manager or their nominated representative overseeing the Pacific Highway upgrade**

9. That Council adopt the following Committee Recommendation:

Report No. 6.8 Request for 60kph limit, Ewingsdale Road from Pacific Highway to west of McGettigans Lane

File No: I2015/573

RECOMMENDATION:

That Council supports the Local Traffic Committee endorsement that the existing 60kph speed limit on Ewingsdale Road, Ewingsdale west of Woodford Lane be extended 270m eastward to the western boundary of the new Ambulance Station allotment, once the Byron Central Hospital roundabout is operational and subject to RMS approval.

10. That Council adopt the following Committee Recommendation:

Report No. 6.9 Proposed No Entry - Authorised Vehicles Excepted - Suffolk Park Holiday Park

File No: I2015/574

RECOMMENDATION:

1. **That the Council owned land which operates the Suffolk Park Holiday Park, as located at 143 Alcorn Street, Suffolk Park (Parcel Number 237911, Lot 100, DP 1023737), be endorsed and signed as 'No Entry – Authorised Vehicles Excepted'.**
2. **That Council note the Local Traffic Committee preference for the sign or signs to be located inside the property near the office and not on Alcorn Street.**

11. That Council adopt the following Committee Recommendation:

**Report No. 6.10 Request for Time Limit, Bayshore Drive, Arts and Industry Estate,
Byron Bay**

File No: I2015/577

RECOMMENDATION:

- 1. That 'No Stopping' apply for a 15m length on the west side of Bayshore Drive, north of Grevillea Street, Byron Bay.**
- 2. That 'No Parking' be signed for the length of the bus stop, which is to be demarcated by a single J-Pole, relocated south of its existing site on the west side of Bayshore Drive to 30m north of Grevillea Street, Byron Bay.**
- 3. That on the west side of Bayshore Drive, between 35m and 77m north of Grevillea Street, Byron Bay a 1P time limit be signed as effective Monday to Friday 9am to 6pm and Saturday 9am to 12.00 noon, conforming with such limits nearby.**
- 4. That consultation with all tenants with access to and from the west side of Bayshore Drive (between Grevillea Street and Banksia Street) and those on Banksia Drive (between Bayshore Drive and Acacia Street) be undertaken to ascertain support of adopting such time limits.**

12. That Council adopt the following Committee Recommendation:

**Report No. 6.11 Request for No Stopping Driveway Access to Bus Depot, 11-15 Smith
Street, Mullumbimby**

File No: I2015/578

RECOMMENDATION:

- 1. That 'No Stopping' apply on the north side from 5m west of the driveway of number 11 Smith Street to 5m east of the driveway of number 15 Smith Street, Mullumbimby.**
- 2. That Council review the new arrangement, including the potential physical changes to driveway access.**

13. That Council adopt the following Committee Recommendation:

**Report No. 6.12 Proposed Driveway Access, New Aged Care Facility, Brunswick Valley
Way, Ocean Shores**

File No: I2015/580

RECOMMENDATION:

That subject to meeting the AustRoads standard for driveway design and sight distances and the separate attainment of RMS s138 Roads Act concurrence, an unrestricted driveway access on Brunswick Valley Way be supported at the south end of the property of 2 Kulgun Court, Ocean Shores (Lot 12 DP 1128095, Parcel No. 240483).

14. That Council adopt the following Committee Recommendation:

Report No. 6.13 Proposed Speed Humps, Bayshore Drive, North of Rail Line, Elements of Byron DA

File No: I2015/581

RECOMMENDATION:

That Council notes that the Local Traffic Committee has no objections to the speed humps proposed for Bayshore Drive, Byron Bay, north of the rail line, on the proviso they accord with relevant standards, guidelines and any DA conditions.

15. That Council adopt the following Committee Recommendation:

Report No. 6.14 Proposal for Market Street turnaround, Bangalow Showgrounds

File No: I2015/582

RECOMMENDATION:

That consultation be undertaken with the adjacent School and neighbours, including the Showground Trust (or s355 Committee), and report back to Council in regard to restricting car parking and improving traffic flow upon Market Street, Bangalow, including the potential for the provision of vehicle turning circle at its northern end.

16. That Council adopt the following Committee Recommendation:

Report No. 6.15 Proposed One-Way, Mullumbimbi Lane, Brunswick Heads

File No: I2015/583

RECOMMENDATION:

- 1. That a public notice, along with direct consultation with adjacent and neighbouring properties (those located on Park Street between Mullumbimbi Street and Fingal Street), the Brunswick Heads Chamber of Commerce and Progress Association, be undertaken in regard to the resident proposal to make Mullumbimbi Lane, Brunswick Heads one-way from Tweed Street to Park Street.**
- 2. That the results of the above consultation be tabled and reported back to Council when completed and to the Local Traffic Committee if required.**

17. That Council adopt the following Committee Recommendation:

Report No. 6.16 Endorsement of Existing Front-In Angled Parking, Dalley Street, Mullumbimby

File No: I2015/585

RECOMMENDATION:

That parking be signed as 'front to kerb' on Dalley Street, Mullumbimby from 10m south of Whian Street to the north side of the driveway at 140 Dalley Street.

18. That Council adopt the following Committee Recommendation:

Report No. 6.17 Proposed Revised Regulatory Signposting for Scarrabelottis Bridge

File No: I2015/602

RECOMMENDATION:

That Council supports the Local Traffic Committee endorsement that risk measures are implemented at Scarrabelottis Bridge, being a 20km/h speed limit on the bridge structure and a revised bridge load limit, in accordance with the outcomes of the structural assessment being undertaken in July 2015, subject to RMS approval if required.

19. That Council adopt the following Committee Recommendation:

Report No. 6.18 Concept Designs - Proposed Marine Parade Footpath and One-Way Traffic

File No: I2015/604

RECOMMENDATION:

That Council supports the Local Traffic Committee endorsement of either of the proposed one-way traffic options for the beach front section of Marine Parade, Wategos from west to east through to the intersection of Julian Place.

20. That Council adopt the following Committee Recommendation:

Report No. 6.19 Proposed road closure Acacia Street, Arts and Industrial Estate, Byron Bay

File No: I2015/605

RECOMMENDATION:

- 1. That Council note that the Local Traffic Committee has no objection to the proposed road closure of Acacia Street, Byron Bay, subject to the following:**
 - a) Council approvals, where required, are firstly obtained and met**
 - b) the closure apply to the last Saturday of the month between 8am and 5pm only and for a maximum of three events**
 - c) the organisers be responsible for providing and implementing a Traffic Control Plan to Council, designed and implemented by those with appropriate accreditation**
 - d) public liability insurance be in place for the sum of at least \$20 million and a copy be provided to Council**
 - e) in accordance with the Roads Act, each event be advertised within Council's public notice section of the local newspaper, with the cost charged to the event organiser**
 - f) the event be notified on Council's website**
- 2. This endorsement lapses on 31 December 2015**

Attachments:

- 1 Minutes of the Local Traffic Committee Meeting held 24/06/15, I2015/608
- 2 GHD Issues Register 10 June 2015, E2015/40986
- 5 3 GHD Safety In Design Risk Assessment 23 June 2015 , E2015/40984
- 4 GHD Preliminary Design 26 June 2015, E2015/40983

Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 24 June 2015 for determination by Council.

5

Committee Recommendation

The Committee recommendations, along with Committee and Management comments, are contained within the minutes.

10

Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 24 June 2015.

15

Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 24 June 2015.

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CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 16.1 **CONFIDENTIAL - Tender Assessment - Supply, Installation and Maintenance of CCTV systems in Byron Bay**

5 **Directorate:** Corporate and Community Services
Report Author: Joanne McMurtry, Community Policy Officer
File No: I2015/504
Theme: Society and Culture
10 Community Development

Summary:

15 Following an invitation from the Federal Government to apply for funds for CCTV and appropriate lighting in Apex Park and Jonson Street, Byron Bay, Council resolved to apply for, and accept the funds (refer Resolution **14-226**, **14-369** and **14-370**). Progress on the implementation of the project was provided as a report to Council at the 9 April 2015 Ordinary Meeting.

20 The Project has been progressed to the Tender phase and the open tender method was selected. A Request For Tender for Supply, Installation and Maintenance of CCTV systems in Byron Bay was prepared and advertised. The Tender process opened on 21 April and closed on 20 May 2015.

25 This report is presented to Council on the Tender evaluation assessment outcome, to enable Council to determine the successful Tenderer.

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

30

RECOMMENDATION:

- 35 1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender Assessment - Supply, Installation and Maintenance of CCTV systems in Byron Bay.
- 40 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
- a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
- 45 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:

To enter a new line, hit ctrl enter.

45 Example reasons only - delete/change as required (and delete these first 2 lines):
(a) disclosure could prejudice the Council's position in litigation; and (b) disclosure could adversely impact Council's position in the upcoming negotiations.

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

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RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender Assessment - Supply, Installation and Maintenance of

CCTV systems in Byron Bay are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.

- 5 **2. That Council adopt the recommendation set out on the final page of the Report.**

Attachments:

- 10 1 Tender Evaluation Panel Recommendation Report - Supply, Installation and Maintenance of CCTV systems in Byron Bay - tender 2015-0011, E2015/31174

Report No. 16.2 **CONFIDENTIAL - Tender Assessment Management Agreement, Mullumbimby Petria Thomas Swimming Pool**

Directorate: Corporate and Community Services

Report Author: Trish Kirkland, Manager Governance Services

5 **File No:** I2015/649

Theme: Community Infrastructure
Facilities Management

10 **Summary:**

The current management agreement for the Mullumbimby Petria Thomas Swimming Pool expires 31 August 2015. Setting up and establishing the facility for the 2015/16 open season will take approximately 4 weeks, and occur with the support of, and handover from, the current managers. Consequently, the new management agreement is to be awarded, signed and in place with the successful tender by 31 July 2015.

15

The General Manager authorised the open tender method for establishing a new management agreement. The tender process opened on 9 June 2015 and closed on 30 June 2015.

20 Tenders have been assessed in accordance with the provisions of the Local government (General) Regulations 2005, and the tender evaluation assessment outcome to enable council to determine the successful tenderer.

25

RECOMMENDATION:

1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender Assessment Management Agreement, Mullumbimby Petria Thomas Swimming Pool.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as disclosure could adversely impact Council's position in the upcoming negotiations.

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

RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act 1993, resolve that the Attachments to this report, Tender Assessment – Management Agreement Mullumbimby Petria Thomas Swimming Pool are to be treated as confidential as they relate to matters specified in Section 10A(2)(d)l of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of this Report.

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CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.3 **CONFIDENTIAL - Tender - Hire of Plant and Equipment Contract 2015-0007**

5 **Directorate:** Infrastructure Services
Report Author: Karen Mackay, Administration Officer
File No: I2015/548
Theme: Community Infrastructure
10 Local Roads and Drainage

Summary:

15 At the Ordinary meeting on 11 June 2015, Council resolved 15-271 to award tenders for the Hire of Plant and Equipment to all Tenderers as a Panel Contract in accordance with the contract documents and the rates and information supplied in their tenders.

20 Since the Council meeting, an administration and quality control error has been found whereby eight (8) conforming tenders were omitted from the list of tenderers included in the report to Council as the attachment E2015/32635 Hire of Plant & Equipment Schedule PDF.

25 These omitted tenders were assessed in accordance with the provisions of the Local Government (General) Regulation 2005 with the other tenders and should have been included in the report to Council on 11 June 2015.

RECOMMENDATION:

- 30 1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender - Hire of Plant and Equipment Contract 2015-0007.
- 35 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
- a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
- b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
- 40 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:

 The report contains the details of all teneederers for the Hire of Plant & Equipment Contract.

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

RECOMMENDATION:

- 50 1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender - Hire of Plant and Equipment Contract 2015-0007 are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d)i of the Local Government Act 1993.
- 55 2. That Council adopt the recommendation set out on the final page of the Report.