



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 29 October 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 Extraordinary Meeting held on 1 October 2015

6.2 Ordinary Meeting held on 8 October 2015

7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

8. MAYORAL MINUTE

9. NOTICES OF MOTION AND RESCISSION

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Sustainable Environment and Economy

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BYRON SHIRE COUNCIL

ORDINARY MEETING

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Sustainable Environment and Economy

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Infrastructure Services

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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 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 Rescission Motion No. 9.1

Nominations for the Joint Regional Planning Panel
(Rescind 15-498)

5 File No:

I2015/1237

We move that Council rescind Resolution No. 15-498 from its Ordinary meeting held on 1 October 2015 which reads as follows:

15-498 Resolved that Council nominate two Councillors, Crs Dey and Cameron, to the Joint Regional Planning Panel and Cr Ibrahim as an alternate. (Dey/Richardson)

If successful we intend to move:

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1. That Council nominate one Councillor being Cr Ibrahim with Cr Dey as an alternate to the Joint Regional Planning Panel.

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2. That Council nominate the Director of Sustainable Environment and Economy to the Joint Regional Planning Panel.

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**Signed: Cr Rose Wanchap
Cr Diane Woods
Cr Alan Hunter**

Notice of Motion No. 9.2 Road Repairs East and West of South Golden Beach
File No: I2015/1247

I move that Council receive a report on the costs associated with road repairs East and West Sides of South Golden Beach.

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Councillor's Background Notes:

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The recent sales of the Roundhouse Site was identified as being for infrastructure in the North of the Shire, and these works have been long overdue

Source of Funds (if applicable):

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Roundhouse Funds.
Other funding sources identified by staff

Signed: Cr Diane Woods

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Management Comments by Phillip Holloway, Director, Infrastructure Services:

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

25 The proposed sale of the Roundhouse sub-division is expected to yield Council additional revenue for infrastructure works in the north of the Shire. Residents of South Golden Beach have, for some time, been living with failing roads. These roads are beyond a simple re-seal and require reconstruction. South Golden Beach is also affected by poor drainage.

30 Staff are in the process of preparing a report for 19 November 2015 Ordinary Meeting, which addresses the issue of drainage in South Golden Beach and in tandem with that proposed program, reconstruction of the roads. Funding for these works is now potentially available from the income created by the Roundhouse sub-division sale.

35 Combining the two works programs in tandem provides Council with much better value for money and therefore more infrastructure works will be completed with the money available.

The costs of the proposed road reconstruction has not yet been finalised, however the requested report as requested through this notice of motion would include:-

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- A list of potential projects (including consideration of projects in other areas in the north of the Shire e.g. Ocean Shores)
- Anticipated costs
- Status of the planning/design/approvals required for the projects
- 45 • Previous commitments/consultation
- Leverage with other funding sources i.e. s94 Program, grants, RMS, Roads to Recovery etc
- Alignment with Council's "Fit For the Future" submission (Council Improvement Plan)

Clarification of project/task:

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To report to Council on costs associated with reconstruction of roads in South Golden Beach.

Director responsible for task implementation:

Infrastructure Services

5

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

It is proposed to costs such road repairs in tandem with the South Golden Beach drainage program.

10

Financial and Resource Implications:

It is proposed to use part of the \$4.2 million funds made available for infrastructure in the north of the Shire from the sale of the Roundhouse sub-division lots.

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Legal and Policy Implications:

20 Not Applicable

Notice of Motion No. 9.3 Use of Paid Parking Funds to Establish Further Public Infrastructure

File No: I2015/1280

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I move:

1. That Council utilise funds collected from paid parking in foreshore Crown Reserves to provide further public toilet facilities in Apex Park;
2. That Council ensure this further provision of public amenities include privacy screening;
3. That Council ensure the provision of extra public amenities is in place for the summer holiday period.

10 **Councillor's Background Notes:**

12 months ago, council faced a few realities:

- 15
1. The public toilets at the rear of the main beach surf club required a large injection of funds to completely renovate them, This was due to the spaces being at the end of their life span, that ongoing maintenance was no longer effective and the high level of complaints thoroughly illustrated the facilities were not meeting expectations.
 2. In the short to mid term, Main Beach was to undergo significant renewal and the development of the surf club and the provision of public amenities would be at the forefront of this
- 20 redevelopment.

Thus, Council made the logical and appropriate decision to close the ineffectual toilets, and instead put in temporary toilets to provide sufficient amenity until the long-term redevelopment was completed. The decision to use 1 bank of 3 *Exeloo*s was based on figures by *Exeloo* and best

25 estimates on potential visitation.

The reality was something no-one in the industry had seen before- over 1000 visits per day. Responding this, Council converted some toilets in the surf club to become urinals, taking some pressure off the *Exeloo*s.

30

However, the provision of public toilets is still insufficient in Apex Park. Thus, with more paid parking coming on-line at the newly redesigned and created paid parking area at the Bay St/Middleton St junction, we have more funds to spend on more infrastructure. This should occur in time for the summer visitor period.

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Definition of the project/task:

Use of paid parking funds on extra public toilet provision on main beach.

40 Source of Funds (if applicable):

Funds derived from the introduction of paid parking to Byron Bay.

Signed: Cr Simon Richardson

45

Management Comments by Michael Matthews, Manager Open Space and Resource Recovery:

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

5 Clarification of project/task:

Due to current high usage of the public toilet facilities in Apex Park, unacceptable queues and wait times are being experienced, particularly during peak holiday periods. These volumes are highly variable with highest usage coinciding with public holidays, local events and good weather.

10 A large number of community concerns combined with electronic data captured from existing units have highlighted a real need for additional facilities to be made available at this location.

Director responsible for task implementation:

15 Director, Infrastructure Services

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

20 Investigations by staff regarding the cost effectiveness of sourcing additional toilet facilities for Apex Park preceded this NoM and quotations from Exeloo for additional facilities had fortuitously already been obtained – these are included below under “Financial and Resource Implications”. It is clear that permanent Exeloo solutions cannot be delivered before the coming holiday period as the units have to be ordered, manufactured in NZ and then delivered to site and installed.

25 Therefore we will need to investigate temporary facilities to get us through the December/January period. These facilities should be a higher standard than the portaloos that we have used previously and should be directly plumbed in to remove the need for regular servicing. We will need to get additional quotes from the suppliers of such facilities. Should the Council support this NoM then it is proposed that the General Manager be authorised to source appropriate temporary facilities to supplement the existing Exeloo's over the summer holiday period and to continue negotiations with Exeloo for a permanent solution.

Financial and Resource Implications:

35 Adding additional Exeloo ambulant cubicles are priced in the order of:
Two (2) additional cubicles \$190k plus installation costs
Three (3) additional cubicles \$250k plus installation costs
Four (4) additional cubicles \$290k plus installation costs

40 Available funds are as follows:-

- Paid Parking Crown Reserve \$636,543
- Public Toilets Special Rate Variation (4195.11) \$154,700

45 Legal and Policy Implications:

Adding existing ambulant cubicles is exempt development under the infrastructure SEPP

PETITIONS

Petition No. 10.1 Paid Parking - Impact on Byron Bay Public School Staff and Community

Directorate: Infrastructure Services
Report Author: Simon Bennett, Traffic and Transport Planner
File No: I2015/1273
Theme: Community Infrastructure
 Local Roads and Drainage

At Council's Ordinary meeting held on 8 October 2015 the Mayor tabled a petition containing 523 signatures which states:

"We the undersigned request Council urgently review the introduction of paid parking and time limits in the vicinity of Byron Bay Public School in Kingsley and adjacent streets. Such restrictions impact unfairly on teachers, parents, students and community members attempting to access school facilities in this area..."

Comments from Director Infrastructure Services:

Council considered a staff report (I2015/1188) on pay parking and resident scheme time limits at their 8 October 2015 meeting and resolved (in part) as follows, which is believed to address the concerns raised by the petition.

15-519 Resolved (in part):

1. That Council proceed with pay parking as follows, which unless stated otherwise applies within current general permissive parking sites seven (7) days a week including public holidays between 9am and 6pm:

h) as located south of Byron Street, and on and east of Jonson Street, west of Tennyson Street and north of Browning Street, time limits remain unchanged except:

ii) the school side of Middleton Street and Carlyle Street, as adjacent to the Byron Bay Public School, be a 30 minute time limit during which free parking applies and is effective between 8am-10am and 2-4pm (School Days only), and no time limit apply at other times;

2. That a Resident Parking Permit Scheme apply on-street as follows:

b) the Schools Precinct, which includes and bounded by Kingsley Street between Middleton Street and Tennyson Street, Browning Street, west of Tennyson Street and east of Jonson Street and that:

i) residential tenants within the precinct receive two (2) free permits per household;

ii) the Byron Bay Public School receive free permits, with the quantity provided and their use subject of agreement between the school and Council management;

iii) upon correct display, the permit exempts a vehicle from the on-street time limit restrictions which apply in that precinct only;

iv) the proposed permit holders be consulted with in regard to the proposed time limit of a two hour (2P) time limit applying seven days a week including public holidays between 9am and 6pm.

Subsequent to the above Council staff have made contact with the school in regard to the number of permits they require with no reply or further concern being received at time of writing.

RECOMMENDATION:

1. That the petition regarding paid parking's impact on Byron Bay Public School staff and community be noted.
2. That the petition be referred to the Director Infrastructure Services.

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Attachments:

- 1 Petition from Byron Bay Public School - Paid Parking petition (523 signatures), S2015/11983

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DELEGATES' REPORTS

Delegate's Report No. 12.1 **Delegate Diary - Local Government NSW Conference 2015**
File No: I2015/1284

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This year the conference is hosted by Parramatta City and held at nearby Rosehill Racecourse, 11-13 October. Also in attendance from Byron Shire were the Mayor and Councillor's Hunter and Cubis.

Day 1 - Amalgamations - Fit for Future dominate.

The day opens with a conspicuous lack of a welcome to country or an acknowledgement to country, even though **Auntie Kerrie Kenton, Watte Wanne Knowledge Holder of the Darug Nation** had given a welcome at the reception the previous evening, but before a great many delegates had arrived. Perhaps in future this could be recorded and played back to delegates on the opening day of the conference. The situation was saved by the acknowledgement given by the first guest speaker, the **Hon. Michael Baird, Premier of NSW**.

Mr Baird wastes no time in making a determined and at times forceful case for amalgamations as part of the Fit For the Future (FFF) process. Overall his speech is loaded with bold slogans along the lines of 'better for ratepayers', 'increased services and infrastructure', yet is short on detail as to how this would be achieved.

The Premier states that councils who are deemed not fit for the future will be given 'one last chance' to comment on the IPART report, but it remains unclear whether this will happen prior to or after the Government considers the report. Further, he says that a plan timetable will be ready by the end of the year.

Questions put to the Premier reflected the fact that some Councils support and even promote amalgamations. At the same time the mood against the FFF process remains strongly distrustful with one delegate asking the Premier about a government media campaign that 'undermines' councils. Another refers to lack of community support for amalgamations, to which the response is to refute the suggestion and not to rule out forced amalgamations.

He also states that the next Council election timetable remained at September 2016, much to the relief of retiring delegates.

The only diversion from FFF in the questions is one about phasing out CSG and moving to renewables. Mr Baird's response is more defensive and familiar, referring to the situation the government 'inherited' and 'licences being given out like confetti' and the 'report of the Chief Scientist'. There was no response about the plan to move to renewables.

Address from the President

President, Cr Keith Rhoades is up next with a belated acknowledgement to country and a welcome to the Minister for Local Government and Shadow Minister in attendance. The business of the conference begins. The federal conference is briefly convened, then the state conference opens with standing orders adopted and a demonstration of the voting machines to establish that a quorum exists.

Cr Rhoades' opening address provides delegates with the Association's response to the Government's agenda. A key theme being that the 'sector reform' must be accompanied by 'financial reform'. This is pleasing as it echoes what Byron Council has argued since the beginning

of the FFF process.

The 'sector reform' includes more than FFF. Cr Rhoades also discusses the review of the Local Government Act, stating that 'community and council must benefit'. He says the Association's policy is for no forced amalgamations and notes that the support for amalgamations among Sydney residents is 1 in 5.

He refers to a substantial body of work pointing to the need for 'financial reform' as the main issue to ensure the fitness of councils. Familiar topics include rate capping and the need to address cost shifting, in particular a review of the heavy 'regulatory' burden imposed upon councils'. In short, the 'red tape'. A draft report is due by the end of 2016. Federal Assistance Grants (FAGS) and the formulas that determine the share of the pie are further compromised by a projected reduction of \$300 million of federal assistance in 2014-18.

The President thanks his fellow Board Members and we are off to morning tea in the 'trade exhibit' adjacent to the conference venue. This is an opportunity for a range of aspirant local government suppliers to impress a captive audience at all meal breaks. There is much touting and many lollies on offer as we wait in line for a cuppa and scone. It's not all tractors, waste contractors and street signs these days. There is a proliferation of various technology solutions from renewable energy to communications equipment, cloud services, even dedicated data handling networks so that Councils can avoid telco congestion.

One of the exhibitors of interest is the **Campervan and Motorhome Club of Australia** who say they fund the establishment of **freedom camping** facilities.

Treasurer's Report

There is a successful motion from the floor to bring forward presentation of the Treasurer's report, given by the outgoing Treasurer, **Cr Paul Braybrooks OAM**.

The Association has a surplus in excess of \$500k on a turnover of \$17 million. Business units performed oppositely with the Learning business unit returning a 26k profit and Management Solutions, a loss of 17k.

Memberships remain the biggest source of revenue and running costs, the main expense. The Association has investments of about \$60 million and there is a limit of 25% that can be in equities. There is also a bond scheme run to fund a loan facility available to member councils.

There is a vote of thanks and warm applause for the long serving Treasurer.

Consideration of motions.

Finally the business of the Conference can start. Miraculously we get through more than 90 motions by day's end, ticking over the 100 mark the following day and leaving only a handful to be referred to the Board. The secret to success is that motions on the same topic have been grouped together with a lead motion to be debated, that if successful also carries any number of attached motions. This allows for a great deal of the substantive matters to be put without consequential debate. This covers the most important bits reflecting the positions put forward by the President in his opening address regarding amalgamations, sector and financial reform as well as nuts and bolts stuff like infrastructure. Other motions of interest or relevance to our region include the following.

- Successful Board proposed motion to allow for 'betterment' in **natural disaster funding**, which may make repairs to infrastructure affected by landslips and the like better able to

withstand future storms.

- Lost after much debate and contention, a motion to remove 'self assessment from the NSW **10/50 Clearing Code**'.
- Lost, a motion put up by Leichhardt to have local government play a greater role in planning for **food security**...and for recognition of local government in the Federal Constitution.
- A comprehensive motion addressing **affordable housing** and proposed by the Board including support for a National Housing Strategy including 'aspirational targets' for 15% of housing stock to be available for affordable housing, improvements to NSW policies and greater coordination and partnerships with councils is carried.
- Liverpool City put up a motion calling for amendments to the **affordable housing SEPP** that address the 'lack of parking requirements' due to the increased demand for on street parking. After some debate, it was lost by a close margin.
- Another proposal by Leichhardt for LGNSW to adopt as 'a policy position **divesting investments in financial institutions that invest in the fossil fuels industry**' and calling on LGNSW to write to councils asking that they 'consider' a similar policy, was lost fairly comprehensively.
- Another lost was put up by Lismore calling for consultation and certain guarantees regarding the **Trans Pacific Partnership**.

Generally, proposals formulated by the **Board** are supported without debate and carried multiple attached motions. Others successful in this category are for a **code of conduct review** and a generally stated call for 'increased financial support and targeted services' to tackle **homelessness** that also carries an 'attached' motion from Tweed.

On matters affecting the **conduct of elections**. Successful is a proposal to require candidates to make signed declarations affirming they have no 'criminal', 'domestic and personal', 'Corporations Act', 'offence against children' convictions and are not bankrupt. Also successful was a motion calling for 'legislation' that 'prohibits' candidates standing as independents when they are members of a political party. However a proposal for 'smaller electorates' in 'rural and regional NSW' was knocked back.

Day 2 - Return to Amalgamations

We open with an introduction from MC for the day Ellen Fanning.

Hon Duncan Gay, Minister for Roads, Maritime and Freight is up next and he begins with a spruik of the flawed Wesconnex scheme and other massive investment in Sydney roads. This is not received well by delegates representing community's in the path of the projects and so it is on to the rural pitch. This can be summarised as \$190m plus \$150m plus \$400m for refurbishment of grain lines and transport routes. This is a rare breakdown of detail. Mostly its headline totals. The millions or even the occasional billion of 'poles and wires' money to be dedicated to 'regional' infrastructure sounds good until you divide it up over the vast area that is non-metropolitan NSW.

The standout quote from Minister Gay, 'doing nothing is not an option' he repeats loudly and then only once and more softly 'in Sydney

Minister Gay takes only two questions and I don't get to ask him how many of the poles and wires dollars might be available for regional transport, particularly refurbishment of rail infrastructure on the Far North Coast and cross border links.

Are We Fit For the Future?

Ellen Fanning introduces a panel discussion and Q&A on Fit For the Future (FFF)?

- **Hon. Peter Primrose MLC**, Shadow Minister for Local Government and ALP representative on the Parliamentary Inquiry into Local Government in NSW (Parliamentary

Inquiry).

- **Hon. Paul Green MLC**, Chair and Christian Democrat representative on the Parliamentary Inquiry.
- **Hon. David Shoebridge MLC**, Greens Party representative on the Parliamentary Inquiry.
- **Hon. Robert Borsak MLC**, Fishers and Shooters Party representative on the Parliamentary Inquiry.
- **Dr Joseph Drew** Research Fellow in Local Government at UNE Centre for Local Government.
- **Professor Percy Allen AM**, Principal Percy Allen and Associates.

Despite an invitation for Ministerial representation from the Government, there was none or any replacement. Instead the General Manager from Warringah (a pro amalgamation council) was prodded onto the stage as a last minute replacement.

This is a return to the themes of **President Rhoades'** opening address, but with a lot of detail.

Symptoms of the need for financial reform include

- Suggestion that capital growth lags behind operational growth and needs to catch up. A reflection of the 'regulatory burden' perhaps. Instead of 4%, capital growth should be 40-80%. Revenue needs to catch up.
- Local Government's ability to increase revenue is limited. Rate pegging needs to go or change. As one of the panelists put it, rate pegging allows state govt to keep squeezing local government.
- This 'structural' problem is exacerbated by the freezing of indexation of FAGS. The overlay of all these issues creates significant distortions. As one question on the FAGS formula put it. What has population got to do with roads especially in a large rural region, referring to a funding formula based on population, with the funds used to provide lengthy road links to far off places regardless of the size of the population.

Councillor Hunter was given the opportunity to ask the panel a question about the lack of recognition of tourism impacts in funding formulas. There was a general understanding of the issue and need to review the formula from **Peter Primrose** and **David Shoebridge**, the latter giving the best account of the 'tourism influx' experience faced by coastal towns, except that it is for 'three months' that this occurs, apparently.

Chair of the Parliamentary Inquiry states that the consistent message to the inquiry was that 'until we fix the funding, we can't talk about structural change'.

As on the opening day, there is a rising sense of frustration that the government appears to be avoiding many of the real issues to ensure fitness for the future. In this case it is the academics on the panel who make the most impassioned plea for evidence to support the amalgamation process. As with **Premier Baird**, the pro amalgamation argument involves running up a few simple statements ('lower rates', 'better services', 'more money for infrastructure') and boxing these up as benefits that may flow from adjustments to 'scale and capacity'. It seems that the Parliamentary Inquiry had asked many witnesses to explain this oft used phrase, but there was little consistency in the responses leaving the inquiry none the wiser as to what the proponents actually meant by

the phrase. Nevertheless, the panel tested some of the leading claims about scale and capacity as follows.

- Australia has large councils compared to Europe and the United States. Average size in Europe is 5000 residents, in the United States it is 7000 and in Australia it is 40,000.
- It is stated that the most 'efficient' council in the western world were the 'Lakewood' councils in the United States. Relatively small in size, they are run like body corporates.
- No compelling evidence that bigger means greater efficiency. Eg Blacktown Council is the largest Council in Sydney, but is still running a chronic deficit.

The pro-amalgamation case is put (poorly in my view) by the General Manager from Warringah, effectively standing in for the Minister at a moment's notice. His entire case rests on his previous experience with Auckland Council in New Zealand. He claims benefits along the lines of 'lower rates', 'better services', 'more money for infrastructure'. However no data is provided to show how this had occurred. This is lamingtons compared to pavlovas. It is difficult to assess because we don't know the legislative framework applying to Auckland and more importantly the nature of financial relations between the national and local governments is likely to be very different (no States with separate constitutional powers as in Australia for a start). For Byron and other non-metropolitan councils, it is difficult to measure up to a purely urban experience. We also need to consider the very real impact to the local economy of lost jobs and service income.

A further theme of the discussion was the idea that what mattered most to the Government is a desire to free up and streamline the development process across Sydney, especially for major infrastructure. Financial fitness being a secondary consideration. It is noted that the government could likely achieve its goal with a Joint Organisation (JO) type planning body without the pain of forced amalgamations or the expense of significant change for benefits that are unlikely to materialise.

One impressive point about this panel is how well informed and articulate all the 'minor' representatives on the Parliamentary Inquiry are. There is also clearly a good working relationship amongst themselves and the ALP. In fact there seems to be a bit of a bromance going on between the Christian Democrat Chair and the Shooter's Party with the former referring to the couple as 'Guns and Moses'.

The view from speakers and delegates is increasingly that councils had gone to Dubbo for Destination 2036, enjoyed frank discussions with the Minister and built a level of trust around the idea that yes, this time 'sector reform' would occur with 'financial reform' for the good of the whole community. Now this trust 'has evaporated' as **Peter Primrose** puts it.

Is the situation retrievable? We are about to find out because next up is the address from **Hon. Paul Toole MP, Minister for Local Government**.

Up front there is a request to take back his thanks to our councils and that is the end of Mr Nice Guy. Where the Premier had been determined, the Minister proves to be belligerent and hectoring in his delivery. 'I make no apology' he repeats regularly as he goes along on message about the FFF program, Local Government Act review, expansion of TCorp loans etc, along the way taking swipes at just about everybody in the room. He damns the upper house MLCs and academics making up the previous panel discussion as biased and one sided. Councils opposing amalgamations are labelled 'anarchists'. Other councillors engaging in the democratic process are 'time wasters' who 'ask too many questions'. It seems he intends to limit this fundamental democratic process. By the end it is only the party faithful who are clapping and cheering.

The Minister takes questions. I get to ask.

Minister. I would like to ask you to personally come and thank staff and to present to the community the evidence you say supports your case. Like many here today, I found your address quite hectoring and find that hard to reconcile with your stated aim of working together. Given this objective, why did you not see fit to be part of the previous panel?

Answer, with a straight bat. The Minister is too busy working for the people of NSW in parliament. Too busy to even send a lieutenant. The sentiment of the question seems to sum up delegates feelings by the applause.

Next up is **Shadow Minister for Local Government, Peter Primrose**, who gets an opportunity to impress delegates with his address. Taking a gentler tone than his opposite and beginning with the proviso that he is not going to be making any grand promises, he covers the following.

- The ALP have already barred developers from standing as ALP candidate. Calling for general legislation.
- Concerned about the secrecy of the pending IPART report and calling for access to the report prior to a decision by the government in form of right of reply.
- Party policy is to oppose forced amalgamations. Any amalgamations must have the support of the community and be a good business case. This would appear to create a problem for Government if it chooses forced amalgamations.
- ALP will not support amalgamations by stealth through boundary changes.
- ALP position is not to end rate pegging, but to address cost shifting and are seeking a full review on cost shifting and all other issues relating to financial and sector reform.
- Suggests that the Government is not running the FFF process and that treasury is for bureaucratic costing issues. Seems like everyone has a stake in amalgamations.
- Critical of the Code of Conduct review being undertaken by the Minister. In particular, the using of 'misbehaviour' provisions against councillors who ask too many questions and questions on notice. According to Shadow Minister Primrose, these have been flagged in the Minister's second reading speech.

Finally its lunch time. On our return we have a number of speakers and a panel discussion on **Federation and Constitutional issues**.

Aden Ridgeway representing Recognise campaign for indigenous recognition in the Australian Constitution.

Aden began with his personal story. He wants to have an inspirational conversation, rather than a bureaucratic or strategic approach. The way forward for the campaign is to engage on a personal level and to highlight our cultural connection and a need to reconcile.

He observes that its still early days and not that far back to the 1967 referendum, the turning point in Aboriginal relations.

The campaign needs to capture a sense of being nationally symbolic with everyone feeling that there is something in it for everyone. In essence, 'it needs to move people to feel pride in the national storybook'.

Aden refers to the adoption of the Haka in New Zealand culture to unify and create a shared sense

of the past. Putting aside a momentary reflection on the treatment of Adam Goodes for doing much the same thing, the question is how to inspire young people about their future? What is the missing chapter to connect a 60,000 year shared history?

Troy Pickard, President, Australian Local Government Association (ALGA)

Mr Pickard was perhaps too well prepared, however his key message is that Constitutional recognition of local government must be accompanied by financial reform of the federal system.

The one can not succeed without the other. It is an opportunity to adapt to changed circumstances. There is a move to spending on community based services with less of the pie going to infrastructure or 'operational' at the expense of 'capital' as an earlier speaker put it. We need to deal with other changed realities.

Local government has seven times more assets than the federal government and as we know the depreciation is a huge expense. Yet local government receives 38% of its revenue from rates compared to the 80% collected by the federal government from taxes.

Dr AJ Brown, Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University.

Dr Brown put the case for undertaking constitutional recognition of local government and indigenous people as well as financial reform all at once. After all, it's all about our identity. Who and what we are?

We need symbolic and substantive reform at the same time. It is difficult to know what is wanted by the public. Attitudes are not always consistent. He refers to 2007 when Kevin Rudd became PM and the good will that made it possible for change to happen. Had a referendum on constitutional recognition gone ahead in 2013 as had been slated by Rudd, it would undoubtedly have failed as Tony Abbott had become PM and attitudes had changed. It is necessary to 'capture the utopian moment', be prepared to take advantage when it comes along as in 2007. In getting prepared, it is local government that can take some of the load as important opinion leaders.

Signed: Cr Basil Cameron

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES**Report No. 13.1 Draft Amended Policy - Mayor and Councillors Payment of Expenses and Provision of Facilities**

Directorate: Corporate and Community Services
Report Author: Mila Jones, Team Leader Administrative Services
File No: I2015/939
Theme: Corporate Management
Governance Services

Summary:

In accordance with Section 253(5) of the Local Government Act 1993, Council resolved (15-384) on 27 August 2015 to give public notice of its intention to adopt the amended Policy - Mayor and Councillors Payment of Expenses and Provision of Facilities. Council also resolved that should any submissions be received, the Policy was to be reported back to Council.

Two submissions were received on the proposed amendments to the Policy which are detailed in the body of this report.

RECOMMENDATION:

1. That the amended Policy - Mayor and Councillors Payment of Expenses and Provision of Facilities as shown at Attachment 1(#E2015/45197) be adopted.
2. That in accordance with Section 253(4) of the Local Government Act 1993 a copy of the adopted Policy - Mayor and Councillors Payment of Expenses and Provisions of Facilities and public notice be forwarded to the Director-General.

Attachments:

- 1 Draft amended Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, E2015/45197

Report

On 27 August 2015, a report (E2015/718) was provided to Council in accordance with Section 252 of the Local Government Act 1993, which requires Council within 5 months after the end of each financial year to adopt a Policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to the mayor, the deputy mayor and the other councillors in relation to discharging the functions of civic office.

Council resolved at the meeting (**15-384**):

1. *That in accordance with Section 253(5) of the Local Government Act 1993, Council give public notice of its intention to adopt amended Policy Mayor and Councillors Payment of Expenses and Provision of Facilities as shown at Attachment A (E2015/45197) and allow at least 28 days for the making of public submissions.*

2. *That after close of the exhibition period:*

a) *Any submissions received, along with the Policy, be reported back to Council.*

OR

b) *In the event that no submissions are received, the Policy will be adopted and a copy forwarded to the Director General in accordance with section 254(4)*

On 10 September 2015 the Policy was placed on public exhibition for a period of 28 days. Two submissions were received during that period. The submissions have been reproduced here:

Submission 1	Staff comments
1. Section 6.2.3b: remove typo "the" from middle of line 1;	Typo removed.
2. Sections 7.2.4, 7.2.5 and 7.2.7: delete these sections as they are duplicates of 6.2.3. I call this another form of "shouting".	<p>Section 6 and Section 7 are both required components of the Policy and have been separated due to the separate roles that each section plays in the interpretation of the Policy. The separation of the sections is in accordance with previous recommendations from the Office of Local Government, to satisfy the S23A Guidelines issued by the Minister, for the payment of expenses and provision of facilities.</p> <p>Section 6 sets out, where applicable, the Monetary limits set by Council for the payment/reimbursement of expenses or benefits determined by Council, as being payable to the Mayor, Deputy Mayor and Councillors.</p> <p>Section 7 sets out a full listing of Facilities provided under the Policy. Section 7 is cross referenced to Section 6 where a monetary limit is applicable. No change is recommended.</p>
3. Section 7.2.9: delete last 2 paragraphs because this is no longer	First paragraph deleted however the last paragraph has been retained so that it provides

news.	direction to new future councillors on who will be arranging their email addresses (unless another system is in place in the future). The amended Policy when adopted by this Council will most likely be the Policy applicable at the time of the 2016 Local Government Elections.
4. Section 7.2.14: please add a phrase "including vegetarian or other specific sustenance for any Councillor who notifies such preference".	Added. Note that staff gain this information from Councillors at the commencement of each term and staff are then guided by these choices when arranging catering.
5. Section 7.2.21: re-write the second paragraph to say "If this option is utilised, that landline, mobile and or fax number is to be made available to the public".	<p>The current wording of Section 7.2.21 "encourages" Councillors to make public their landline telephone and fax numbers public. The requested amendment would require Councillors where reimbursement is sought to make these numbers public. This requested amendment is a matter for Council to determine.</p> <p>In regard to mobile phones Councillors are already required in Section 7.2.15 c) to make their mobile phone number public. No change to the Policy is required.</p> <p>"Landline" has been inserted in Section 7.2.21 to differentiate between these numbers and mobile phone numbers in Section 7.2.15.</p>
Submission 2	
Section 6.2.3b): Is there a shortfall in the Policy because it doesn't address potential mobile phone needs?	<p>6.2.3 amended to include laptops, tablets and smartphones in the heading.</p> <p>Minor amendments made to Section 6.2.3 to provide additional clarity to purpose.</p>

As noted in the staff comments above, the draft Policy has been amended to reflect the majority of the suggestions and the Policy is shown (with track changes) at Attachment 1 to this report.

5 Financial Implications

There are no further financial implications other than those reported on 27 August 2015 (Report 13.4, E2015/718).

10 Statutory and Policy Compliance Implications

The relevant sections of the Local Government Act 1993 are as follows:

252 Payment of expenses and provision of facilities

- (1) *Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.*

...

253 Requirements before policy concerning expenses and facilities can be adopted or amended

- 5 (1) *A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.*
- 10 (2) *Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.*
- 15 (3) *Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.*
- 20 (4) *Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:*
 (a) *a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and*
 (b) *a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and*
 (c) *a copy of the notice given under subsection (1).*
- 25 (5) *A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.*

254 Decision to be made in open meeting

- 30 *The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted or amended, or at which any proposal concerning those matters is discussed or considered.*

Report No. 13.2 **Section 355 Management Committees - Resignation and Appointment**
Directorate: Corporate and Community Services
Report Author: Lisa Brennan, EA Corporate and Community Services
File No: I2015/1108
5 **Theme:** Society and Culture
 Community Development

Summary:

10 Council has since the last Section 355 Management Committee report received the following resignation and appointment request.

15 Mullumbimby Civic Hall – resignation from Neil Johnson.

Brunswick Valley Community Centre – appointment request from Carmel Lancaster.

Information on the present membership of these Committees is included in this report.

20 This report aims to officially accept the resignation from Mr Johnson and thank him for his role on the Mullumbimby Civic Hall Section 355 Management Committee, call for expressions of interest for an additional member to that same Committee, and also to appoint Ms Lancaster to the Brunswick Valley Community Centre Section 355 Management Committee.

RECOMMENDATION:

1. **That with regard to the Mullumbimby Civic Hall Section 355 Management Committee Council:**
 - a) **accept the resignation from Neil Johnson and officially thank him for his contribution on this Committee**
 - b) **call for expressions of interest for a replacement (for Neil Johnson) member on this Committee.**
 - c) **establish an additional community member position on this committee and call for expressions of interest from the community to fill this new position.**
2. **That Council appoint Carmel Lancaster to the Brunswick Valley Community Centre Section 355 Management Committee for this term of Council ending September 2016.**

Attachments:

- 30 1 Confidential - Nomination Form from Carmel Lancaster for the Brunswick Valley Community Centre S355 Management Committee, S2015/12701

Report

Mullumbimby Civic Hall Section 355 Management Committee

5 A resignation has been received from Neil Johnson on this Committee.

Current members on this Committee are:

10 Cr Simon Richardson
Cr Duncan Dey
Andrea Danvers
Judy MacDonald
Alison Pearl
Philip Preston
15 Glenn Wright
Samuel Fell

20 The Committee have requested that Council call for expressions of interest for a replacement member on this Committee. They advise there are sometimes difficulties in achieving a quorum for meetings and having an odd number of Committee members makes it easier to achieve a quorum than an even number.

25 **Management Recommendation:** That Council accept the resignation from Neil Johnson and officially thank him for his contribution on this Committee and call for expressions of interest for an additional committee member on the Mullumbimby Civic Hall Section 355 Management Committee.

Brunswick Valley Community Centre Section 355 Management Committee

30 Council recently called for expressions of interest for an additional member on this Committee after the resignation of Gail Bridgman. An application has been received from Carmel Lancaster.

Current members on this Committee are:

35 Cr Diane Woods
Cr Duncan Dey (alternate)
Colin Munro
Jenny Moore
40 Fran Leske

Management Recommendation: That Council accept the nomination from Carmel Lancaster and officially appoint her to the Brunswick Valley Community Centre Section 355 Management Committee.

45 **Financial Implications**

Community Member of Section 355 Management Committees are volunteer positions unless otherwise resolved by Council.

50 **Statutory and Policy Compliance Implications**

Section 355 Committees operate under Committee Guidelines in which Committee membership it states

55 **3.2 Committee Membership**

The Committee membership will number not less than four (4) and not more than twelve (12) members as appointed by Council including office bearers unless otherwise decided by Council. Council reserves the right to appoint a Councillor to each Committee.

- 5 Further information on the operations and meeting minutes for these Committees can be found on Council's web site at <http://www.byron.nsw.gov.au/section-355-committees>

Report No. 13.3 Council Investments September 2015

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2015/1240

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 September 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 September 2015 be noted.

20

Report

In relation to the investment portfolio for September 2015, Council has continued to maintain a diversified portfolio of investments. The average 90 day bank bill rate (BBSW) for the month of September was 2.17%. Council's performance for the month of September is a weighted average of 2.84%. This performance is again higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits. Council's investment portfolio should continue to out-perform the benchmark as the capital protected 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 September 2015:

Schedule of Investments held as at 30 September 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%*	1,493,700.00
20/06/12	500,000	HERITAGE BANK LTD BONDS	N	BBB+	20/06/17	B	7.25%	536,250.00
08/07/15	2,200,000	POLICE CREDIT UNION	P	NR	30/11/15	TD	2.95%	2,200,000.00
13/07/15	2,000,000	ME BANK	P	BBB	12/10/15	TD	2.95%	2,000,000.00
07/07/15	1,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	P	BBB	05/10/15	TD	2.97%	1,000,000.00
09/09/15	2,000,000	NAB	P	AA-	09/12/15	TD	2.90%	2,000,000.00
04/09/15	2,000,000	NAB	N	AA-	04/12/15	TD	2.93%	2,000,000.00
03/09/15	2,000,000	NAB	N	AA-	04/01/16	TD	2.88%	2,000,000.00
09/06/15	2,000,000	BANKWEST	P	A1+	08/10/15	TD	2.90%	2,000,000.00
07/07/15	1,000,000	BANKWEST	N	A1+	04/11/15	TD	2.90%	1,000,000.00
14/08/15	2,000,000	NAB	N	AA-	12/11/15	TD	2.91%	2,000,000.00
25/05/15	2,000,000	NAB	N	AA-	23/11/15	TD	2.97%	2,000,000.00
08/09/15	2,000,000	SUNCORP	P	A+	07/12/15	TD	2.85%	2,000,000.00
04/06/15	2,000,000	BANKWEST	N	A1+	02/10/15	TD	2.90%	2,000,000.00
07/07/15	2,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	N	BBB	05/10/15	TD	2.97%	2,000,000.00
29/09/15	2,000,000	BANK OF QUEENSLAND	P	A2	24/02/16	TD	2.95%	2,000,000.00
12/08/15	2,000,000	AMP BANK	P	A	12/11/15	TD	2.75%	2,000,000.00
03/07/15	2,000,000	NAB	N	AA-	02/10/15	TD	2.98%	2,000,000.00
04/08/15	2,000,000	NAB	N	AA-	02/11/15	TD	2.92%	2,000,000.00
16/07/15	1,000,000	NAB	N	AA-	16/10/15	TD	2.95%	1,000,000.00
06/08/15	2,000,000	NAB	N	AA-	06/11/15	TD	2.92%	2,000,000.00
07/09/15	1,000,000	NAB	N	AA-	07/03/16	TD	2.93%	1,000,000.00
11/08/15	2,000,000	BANKWEST	N	A1+	09/12/15	TD	2.80%	2,000,000.00
11/08/15	1,000,000	NAB	N	AA-	09/11/15	TD	2.91%	1,000,000.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
13/05/15	1,000,000	MACQUARIE BANK	P	A1	08/02/16	TD	3.00%	1,000,000.00
14/09/15	3,000,000	BANKWEST	N	A1+	14/12/15	TD	2.85%	3,000,000.00
24/09/15	2,000,000	NAB	N	AA-	24/12/15	TD	2.97%	2,000,000.00
02/09/15	2,000,000	ME BANK	N	BBB	02/11/15	TD	2.55%	2,000,000.00
03/09/15	2,000,000	ME BANK	N	BBB	02/11/15	TD	2.55%	2,000,000.00
09/06/15	2,000,000	NAB	N	AA-	09/11/15	TD	2.95%	2,000,000.00
03/07/15	3,000,000	ME BANK	N	BBB	04/11/15	TD	2.95%	3,000,000.00
05/08/15	2,000,000	NAB	N	AA-	05/11/15	TD	2.92%	2,000,000.00
14/08/15	2,000,000	ME BANK	N	BBB	14/12/15	TD	2.80%	2,000,000.00
20/08/15	2,000,000	NAB	N	AA-	20/11/15	TD	2.90%	2,000,000.00
28/08/15	3,000,000	NAB	N	AA-	26/11/15	TD	2.87%	3,000,000.00
31/08/15	2,000,000	AMP BANK	N	A	29/02/16	TD	2.90%	2,000,000.00
03/09/15	2,000,000	NAB	N	AA-	01/02/16	TD	2.88%	2,000,000.00
07/09/15	2,000,000	NAB	N	AA-	06/01/16	TD	2.90%	2,000,000.00
08/09/15	2,000,000	SUNCORP	N	A+	05/02/16	TD	2.90%	2,000,000.00
N/A	2,732,474	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	1.80%	2,732,474.40
Total	75,932,474					AVG	2.84%	75,962,424.40

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.

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.

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For the month of September 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 by \$2,850.00 since August, demonstrating a cumulative unrealised gain of \$29,950.00.

Dissection of Council Investment Portfolio as at 30 September 2015

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
71,200,000.00	Term Deposits	71,200,000.00	0.00
2,732,474.40	Business On-Line Saver (At Call)	2,732,474.40	0.00
1,500,000.00	Managed Funds	1,493,700.00	(6,300.00)
500,000.00	Bonds	536,250.00	36,250.00
75,932,474.40		75,962,424.40	29,950.00

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 31 August 2015 to 30 September 2015 on a current market value basis.

Movement in Investment Portfolio – 31 August 2015 to 30 September 2015

Item	Current Market Value (at end of month) \$
Closing Balance at 31 August 2015	74,955,313.91
Add: New Investments Purchased	26,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	4,260.49
Less: Investments Matured	25,000,000.00
Less: Call Account Redemption	0.00
Add: Fair Value Movement for period	2,850.00
Closing Balance at 30 September 2015	75,962,424.40

Investments Maturities and Returns – 31 August 2015 to 30 September 2015

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	NAB	TD	03/09/15	184	3.15%	31,758.91
2,000,000.00	Peoples Choice Credit Union	TD	03/09/15	92	2.85%	14,367.12
2,000,000.00	ME Bank	TD	03/09/15	92	2.85%	14,367.12
2,000,000.00	NAB	TD	04/09/15	91	2.93%	14,609.87

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Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	NAB	TD	07/09/15	124	2.95%	10,021.92
2,000,000.00	ME Bank	TD	07/09/15	90	2.85%	14,367.12
1,000,000.00	Bendigo & Adelaide Bank	TD	07/09/15	90	2.90%	7,150.68
1,000,000.00	Suncorp	TD	08/09/15	153	3.00%	25,150.68
2,000,000.00	NAB	TD	09/09/15	90	2.94%	14,498.64
3,000,000.00	Bankwest	TD	14/09/15	123	3.00%	30,328.77
2,000,000.00	NAB	TD	24/09/15	120	2.94%	19,331.51
2,000,000.00	Peoples Choice Credit Union	TD	28/09/15	153	2.94%	24,647.67
2,000,000.00	Bank of Queensland	TD	29/09/15	123	2.80%	18,871.23
25,000,000.00						239,471.24

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 September 2015 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 30 September 2015

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	71,200,000.00	71,200,000.00	0.00
Business On-Line Saver (At Call)	2,732,474.40	2,732,474.40	0.00
Managed Funds	1,500,000.00	1,493,700.00	(6,300.00)
Bonds	500,000.00	536,250.00	36,250.00
Total Investment Portfolio	75,932,474.40	75,962,424.40	29,950.00
Cash at Bank			
Consolidated Fund	3,931,106.06	3,931,106.06	0.00
Total Cash at Bank	3,931,106.06	3,931,106.06	0.00
Total Cash Position	79,863,580.46	79,893,530.46	29,950.00

Financial Implications

Council uses a diversified mix of investments to achieve short, medium and long-term results. Council's historical strategy is to use credit/equity markets for exposure to long term growth. It should be noted that Council's exposure to credit/equity products is capital protected when held to maturity, which ensures no matter what the market value of the product is at maturity, Council is insured against any capital loss. The investment strategy associated with long term growth is now prohibited under the current Ministerial Investment Order utilising credit/equity markets to seek investment products. However, the 'grandfathering' provisions of the Ministerial Investment Order provides Council can retain investments now prohibited until they mature. It should be noted that

Council currently holds only one of these investments, the EMU notes. This investment will trend towards its full principal value as it approaches maturity.

5 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 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).

10 **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 reporting for one or more months.

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

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

35 Council at its Ordinary Meeting held 8 October 2015 resolved through resolution **15-515** to consider Ethical and Socially Responsible Investments when making investment decisions. As this report relates to investments held prior to Resolution **15-515** being adopted, there is no reporting regarding Ethical and Socially Responsible Investments. This will be considered as part of the October 2015 Investment Report to be reported to the 19 November 2015 Ordinary Council Meeting.

Report No. 13.4 Report of the Safe Summer in the Bay PRG meeting 16 September 2015

Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Policy Officer
File No: I2015/1246
Theme: Society and Culture
Community Development

Summary:

A Safe Summer in the Bay PRG meeting was held on 16 September 2015 and this report provides the minutes of that meeting.

RECOMMENDATION:

That Council note the report and attached supporting documentation for the Safe Summer in the Bay PRG meeting held 16 September 2015.

Attachments:

- 1 Minutes of Safe Summer in the Bay PRG meeting 16 September 2015, E2015/60643
- 2 Plan for New Year in Byron Bay 2015 - Progress report 10-9-15, E2015/65148

Report

A Safe Summer in the Bay PRG meeting was held on 16 September 2015. The minutes of the meeting are provided in attachment 1, along with a progress report of the Plan for New Year in Byron Bay in attachment 2.

The main points of discussion were:

- Traffic Management Plan
- An update on the progress report of the Plan for New Year in Byron Bay.

The committee made no recommendations to Council, however several action items were documented.

Financial Implications

Nil

Statutory and Policy Compliance Implications

Plan for New Year in Byron Bay 2015

Report No. 13.5 Draft 2014/2015 Financial Statements**Directorate:** Corporate and Community Services**Report Author:** James Brickley, Manager Finance**File No:** I2015/1286**Theme:** Corporate Management
Financial Services**Summary:**

The Draft 2014/2015 Financial Statements have been prepared and been subjected to external audit. This report recommends to Council the adoption of the Draft 2014/2015 Financial Statements and the completion of the statutory steps outlined in Section 418 to 420 of the Local Government Act 1993.

The Draft 2014/2015 Financial Statements have also been submitted to the Internal Audit Advisory Committee and considered at an Extraordinary Meeting of the Committee held on 22 October 2015.

The External Auditor, Thomas Noble and Russell has been invited to this Ordinary Council Meeting, to present on the Draft 2014/2015 Financial Statements, and answer any questions from Councillors on the Statements.

RECOMMENDATION:

- 1. That Council suspend standing orders to allow for a presentation from Council's External Auditor, Thomas Noble and Russell.**
- 2. That Council adopt the Draft 2014/2015 Financial Statements incorporating the General Purpose Financial Statements, Special Purpose Financial Statements and Special Schedules.**
- 3. That Council approve the signing of the "Statement by Councillors and Management" in accordance with Section 413(2)(c) of the Local Government Act 1993 and Clause 215 of the Local Government (General) Regulation 2005 in relation to the 2014/2015 Draft Financial Statements.**
- 4. That Council exhibit the Financial Statements and Auditor's Report and call for public submissions on those documents with submissions closing on 27 November 2015 in accordance with Section 420 of the Local Government Act 1993.**
- 5. That the Audited Financial Statements and Auditors Report be presented to the public at the Ordinary Meeting of Council scheduled for 19 November 2015 in accordance with Section 418(1) of the Local Government Act 1993.**

Attachments:

- 1 Draft 2014/2015 General Purpose Financial Statements, E2015/66974
- 2 Draft 2014/2015 Special Purpose Financial Reports, E2015/66976
- 3 Draft 2014/2015 Special Schedules, E2015/67408
- 4 Draft Audit Report 2014/2015 General Purpose Financial Statements, E2015/67648
- 5 Draft Audit Report 2014/2015 Special Purpose Financial Statements, E2015/67649
- 6 Draft Long Form Audit Report 2014/2015, E2015/67658

Report

The purpose of this report is to recommend the adoption and exhibition of the Financial Statements for the year ended 30 June 2015. The Financial Statements presented to Council for the financial year ended 30 June 2015 (refer to Attachments 1 to 6) are the final audited results and includes the Auditors Reports. Council has received an unqualified audit opinion for the 2015/2015 financial year.

The Draft 2014/2015 Financial Statements were also considered by the Internal Audit Advisory Committee at an Extraordinary Meeting held on 22 October 2015. This report was been completed prior to that meeting being held and Council will be advised by way of Memo of the Internal Audit Advisory Committee recommendations concerning the Draft 2014/2015 Financial Statements prior to this Ordinary Meeting.

The External Auditor, Thomas Noble and Russell has been invited to this Ordinary Council Meeting, to present on the Draft 2014/2015 Financial Statements, and answer any questions from Councillors on the Statements.

The Financial Statements and Auditor's Reports are a statutory requirement and provide information on the financial performance of Council over the previous twelve-month period.

The Council should place emphasis on the Auditor's Report contained at Attachment 6 relating to the attached documents as it provides some analysis of Council's financial operations overall and on a fund by fund basis (General, Water and Sewerage), and highlights the trending of major items within the Financial Statements.

The Draft 2014/2015 Financial Statements provided in the attachments are broken down into three sections being;

- General Purpose Financial Statements – Attachment 1
- Special Purpose Financial Statements – Attachment 2
- Special Schedules – Attachment 3

Brief explanations for each of these items are as follows.

General Purpose Financial Statements

These Statements provide an overview of the operating result, financial position, changes in equity and cash flow movement of Council as at 30 June 2015 on a consolidated basis with internal transactions between Council's General, Water and Sewerage Funds eliminated. The notes included within these reports provide details of major items of income and expenditure with comparisons to the previous financial year. The notes also highlight the cash position of Council and indicate which funds are externally restricted (i.e. may be used for a specific purpose only), and those that may be used at Council's discretion.

Special Purpose Financial Statements

These Statements are a result of the implementation of the National Competition Policy and relate to those aspects of Council's operations that are business orientated and compete with other businesses with similar operations outside the Council. Mandatory disclosures in the Special Purpose Financial Reports are Water and Sewerage. Additional disclosure relates to Council business units that Council deems 'commercial'. In this regard Council has traditionally reported its Caravan Park Operations being Suffolk Beachfront Holiday Park and First Sun Holiday Park on a combined basis. These financial reports must also classify business units in the following categories:

- Category 1 – operating turnover is greater than \$2million
- Category 2 – operating turnover is less than \$2million

All of Council's business units are classed as Category 1 with all having operating turnover greater than \$2million.

Another feature of the Special Purpose Financial Reports is to build in taxes and charges where not physically incurred into the financial results to measure the results in the sense of a level playing field with other organisations operating similar businesses whom are required to pay these additional taxes and charges. These taxes and charges include:

- Land tax – Council is normally exempt from this tax so notional land tax is applied.
- Income tax – Council is exempt from income tax and in regard to these reports, company tax. Any surplus generated has a notional company tax applied to it.
- Debt guarantee fees – Generally due to the low credit risk associated with Councils, Councils can often borrow loan funds at lower interest rates than the private sector. A debt guarantee fee inflates the borrowing costs by incorporating a notional cost between interest payable on loans at the interest rate borrowed by Council and one that would apply commercially.

In regard to the Special Purpose Financial Reports, these are prepared on a non consolidated basis or in other words grossed up to include any internal transactions with the General Fund.

Special Schedules

These schedules are prepared essentially for use by the Australian Bureau of Statistics and are primarily used to gather information for comparative purposes. Special Schedules 3 to 6 are also used by the NSW Office of Water in analysing the performance of the Water and Sewer Funds and are also non consolidated and grossed up including internal transactions. Special Schedule 7 provides an approximate value of what funds are needed for the maintenance and renewal of Council assets in comparison to what is currently allocated in the budget. For 2014/2015, Special Schedule 7 has continued to be amended in terms of disclosure with performance ratios. Special Schedule 8 regarding financial projections is no longer required and Special Schedule 9 has been included, which is a disclosure regarding Council's compliance with General Rate revenue raising and rate pegging. Special Schedule 9 is also subject to external audit.

Auditors Reports on the Financial Statements

Council's auditors, Thomas Noble and Russell, have completed their audit of the Draft 2014/2015 Financial Statements. All matters identified during the audit have been adjusted and included in the Draft 2014/2015 Financial Statements included at Attachments 1, 2 and 3. The Auditors Reports contained at Attachment 4, 5, and 6 is to report on the following:

- A report on the general purpose financial report. This report provides an analysis of various items within the General Purpose Financial Reports.
- Statutory independent audit reports for both the General Purpose and Special Purpose Financial Statements.

Specific Items relating to 2014/2015 Draft Financial Statements

The Draft 2014/2015 Financial Statement results have been impacted by the following items that require explanation to Council::

- Operating Result from Continuing Operations

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The 2014/2015 financial year has seen a further very significant improvement in the operating financial results of Council. Overall Council recorded a \$6.845million surplus compared to a \$3.436million surplus in 2013/2014. This represents a change of \$3.409million between financial years. This result incorporates the recognition of capital revenues such as capital grants and contributions.

A more important indicator is the operating result before capital grants and contributions. Whilst this result still presented Council with a deficit of \$425,000 for 2014/2015, it was a \$4.527million improvement on the 2013/2014 result of a deficit of \$4.952million.

If reference is made to the Income Statement to the General Purpose Financial Reports included at Attachment 1, the following table indicates the major changes between 2014/2015 and 2013/2014 by line item:

Item	Change between 2014/2015 and 2013/2014 \$'000	Change Outcome	Comment
Income			
Rates & Annual Charges	+\$1,606	Increase	Reflects imposition of rate peg increase for 2014/2015 of 2.3% and changes in annual charges from Council's adopted 2014/2015 Revenue Policy
User Charges and Fees	+\$1,165	Increase	Major changes include additional \$200k revenue for holiday parks, \$361k for planning and development fees, \$930k increase in waste fees and \$590k reduction in private works revenues. Further information is available in Note 3(b) in Attachment 1.
Interest and Investment Revenue	-\$328	Decrease	Decline in revenues due to decline in interest rates reflective of economic conditions. Additionally 2013/2014 Council realised a fair value gain on investments of \$443k whereas in 2014/2015 it was \$48k.
Other Revenues	-\$426	Decrease	Decline due to one off receipts in 2013/2014 from sale of Carbon Credits (Waste) \$269k and insurance claim recovery \$264k. Council did receive additional fine income of \$59k.
Grants & Contributions – Operating	+\$6,996	Increase	Increase in financial assistance grant \$1,394k due to timing of payments, \$710k recognition of Roads to Recovery grant as operating due to Code disclosure requirements, increased waste management grants \$644k and \$4,100k increase in Roads and Bridges contributions for restoration works of transport assets associated with recent natural disasters continuing.
Grants & Contributions – Capital	-\$1,119	Decrease	Decline due to reduction in developer contributions received \$614k, subdivider asset dedications \$948k and an increase in capital grants of \$505k.
Total Income Change	+\$7,894	Increase	
Expenditure			
Employee Benefits and Oncosts	-\$836	Decrease	Increased employee costs capitalised \$619k to capital works and not charged to operations. Gross salaries and wages \$457k but employee

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			leave entitlements increased by \$239k to recognise oncosts on long service leave related to superannuation but in real terms leave entitlements decreased.
Borrowing Costs	-\$366	Decrease	Results from Council gradually repaying loans and not borrowing new loans plus recognition of recent loan refinancing
Materials & Contracts	+\$7,918	Increase	Significant increase due to contracts related to restoration of transport assets following recent natural disasters continuing. Also increase in agency temporary staff of \$300k but slight reduction in legal costs and 99k reduction in operating lease costs for IT.
Depreciation	-\$1,833	Decrease	Major change is due to changes from revaluation of Transport and Stormwater Drainage Assets discussed on subsequent pages of this report.
Other Expenses	+\$29	Increase	Minor change but there were variation in line items as disclosed at Note 4(e) in Attachment 1.
Net Losses from Disposal of Assets	-\$426	Decrease	Reflection of the written down value of assets disposed at the end of financial year and is contingent upon the extent of assets disposed and their written down value at the time of disposal which can vary.
Total Expenditure Change	+\$4,485	Increase	
Change in Result	+\$3,409	Increase	

Following on from the operating results, there are new performance ratios disclosed at note 13 to the General Purpose Financial Statements and in Special Schedule 7. These ratios have been derived following the financial assessments undertaken by NSW Treasury Corporation on all NSW Councils in 2012 and are now incorporated into the latest update to the Code of Accounting Practice and Financial Reporting that determines the content of Council's Financial Statements. These ratios also have trend graphs and all look to be presenting either a stable or improving result for Council in Note 13. Council though in relation to the ratios for Special Schedule 7 in terms of Asset Management, whilst showing some improvement generally, still has a ways to go to meet the required benchmarks.

It is also important to note that the ratios and benchmarks outlined in Note 13 to the General Purpose Financial Statements and Special Schedule 7 are on an annual basis. Whilst some of these ratios were also benchmarks in Council's 'Fit for the Future' response, these were reported as a three year average as required. Therefore direct comparison cannot be made.

- Asset Revaluations and Depreciation

During 2014/2015, there was a revaluation conducted for Council's Transport Assets and Stormwater Drainage Assets. The independent revaluation was conducted by Jeff Roorda and Associates (JRA). The revaluation was conducted as at 1 July 2014 and saw a write down in the value of the Assets revalued by \$190.506million. In terms of assets, Transport and Stormwater Drainage assets are the biggest category in terms of asset quantity and value on Council books. Council to assist the revaluation also conducted a condition assessment of the road network in 2014. In summary the valuation changes are as follows extracted from the JRA valuation report:

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Category (\$'000)	Note 9a 30 June 2014		2015 Revaluation Comparison		Variation from Source Data			
	CRC	Depreciation	CRC	Depreciation	CRC (\$)	CRC (%)	Depreciation (\$)	Depreciation (%)
Roads	\$317,122	\$5,889	\$286,058	\$4,943	-\$31,064	-10%	-\$946	-16%
Bridges	\$36,697	\$419	\$23,664	\$293	-\$13,033	-36%	-\$126	-30%
Footpaths	\$57,709	\$902	\$7,512	\$126	-\$50,197	-87%	-\$776	-86%
Bulk Earthworks	\$98,314	\$0.00	\$29,046	\$0.00	-\$69,268	-70%	\$0.00	0%
Stormwater Drainage	\$87,924	\$885	\$60,980	\$574	-\$26,944	-31%	-\$311	-35%
TOTAL	\$597,766	\$8,095	\$407,260	\$5,936	-\$190,506	-32%	-\$2,159	-27%

There has been a major review of the unit rates employed by Council to construct assets in that the view expressed in the revaluation was the unit rates employed by Council were too high. Unit rates of construction applied in the revaluation were a combination from the following sources:

- Council's construction costs.
- JRA knowledge of construction costs given their experience across Australia in this type of work,
- Rawlinsons Construction Cost Guide.

Some of the changes in unit rates applied in the valuation compared to those previously utilised by Council are demonstrated in the table below:

Asset Item	Council historical unit rate	JRA Valuation Unit Rate
Footpaths - Timber	\$20.00 to \$50 per sq metre	\$15.00 per sq metre
Footpaths - Asphalt	\$47.00 to \$95.00 per sq metre	\$34.00 per sq metre
Footpaths - Concrete	\$88.29 to \$96.43 per sq metre	\$54.00 per sq metre
Footpaths - Pavers	\$176.65 per sq metre	\$82.00 per sq metre
Roads formation (bulk earthworks)	\$26.00 to \$30.00 in 2010 per sq metre plus indexation	\$5.00 per sq metre
Kerb and Gutter	\$301.50 per metre	\$100.00 per metre
Carparks - formation	\$55.34 per sq metre	\$5.00 per sq metre
Carparks – sub base	\$55.34 per sq metre	\$20.00 per sq metre
Carparks - surface AC	\$73.79 per sq metre	\$24.00 per sq metre

In addition to the changes in the unit rates outlined above, there was also a reassessment of useful lives of transport and stormwater drainage assets as outlined in the table below:

Asset Item	Previous Useful Life by Council	Useful Life JRA Valuation
Sealed Road Surface	15 years	20 to 60 years
Sealed Road Base	50 years	40 to 60 years
Sealed Road Sub Base	50 years	200 years
Unsealed Roads Base	15 years	15 to 20 years
Bridge – Concrete	150 years	60 to 100 years
Bridge – Other	80 years	60 to 100 years
Footpaths – Concrete	50 to 70 years	83 years
Footpaths – Pavers	50 to 70 years	83 years

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Footpaths - Asphalt	50 to 70 years	26 years
Carparks – Surface	15 years	20 years
Carparks – Base	50 years	200 years
Stormwater – Pits	30 to 100 years	Short Life 100 years Long Life 200 years
Stormwater - Pipes	50 to 60 years	100 years

The consequence of the changes to unit rates of construction and useful lives of the assets has resulted in a reduction of annual depreciation expense of \$2.159million for the 2014/2015 financial year in relation to Transport and Stormwater Drainage Assets. The reduction in depreciation expense has been a significant contributor to the improved operating performance of Council. Depreciation expense overall saw a reduction of \$1.833million in total as there were changes to depreciation for other assets classes.

• Cash and Investments

As at 30 June 2015, Council has \$1.143million in unrestricted cash and investments, an improvement of \$107,000 over the previous year. This is an ongoing pleasing result and Council has been able to maintain another one of its short term financial goals of reaching unrestricted cash balance of \$1million. All other cash and investments totalling \$71.832million are restricted for specific purposes. Overall the cash and investment position of Council increased by \$9.537million during the year. Council's investment portfolio achieved a fair value gain of \$48,000 during the year which is a continuation of a recovery in the value of Council's longer term investments post the Global Financial Crisis and is reflective that as the investments get closer to maturity their value will increase. Council's last investment not yet to recover to its full capital value matures in October 2015. At this time Council will have finally have all investments compliant with the Ministerial Investment Order and no longer needing to access the 'grandfathering' provisions of that Order.

• Loan Borrowings

During 2014/2015 Council did not borrow any new loans but did payout three loans in the Sewerage Fund that were borrowed in the 1970s. In addition due to the financial strength of the Water Fund, the sole existing loan in that Fund was paid out in full during the year. The loan restructuring provided an opportunity consistent with the principals of the Financial Sustainability Project Plan (FSPP) in regards to Debt.

Council's outstanding loans as at 30 June 2015 are \$66.286million. Total loan expenditure for 2014/2015 included interest of \$4.976million and principal payments of \$3.262million. Total expenditure of Council in 2014/2015 related to loan repayments was \$8.238million or 13.3% of Councils revenue excluding all grants and contributions.

Outstanding loans by Fund totalling \$66.286million are as follows:

- General Fund \$16.154million
- Water Fund \$Nil
- Sewerage Fund \$50.132million

Liquidity

Council's balance sheet indicates net current assets of \$66.07million. It is on this basis in the opinion of the Responsible Accounting Officer that the short term financial position of Council remains in a satisfactory position and that Council can be confident it can meet its payment obligations as and when they fall due.

Council's Unrestricted Current Ratio has improved to 2.91 demonstrating Council has \$2.91 in unrestricted current assets compared to every \$1.00 of unrestricted current liabilities.

5 On a longer term basis Council will need to consider its financial position carefully but in isolation the financial results for 2014/2015 continue to be an ongoing significant improvement for Council and demonstrate the ongoing gains through the implementation of the Financial Sustainability Project Plan and the efforts of Council.

Financial Implications

10 There are no direct financial implications associated with this report as the report does not involve any future expenditure of Council funds but it is a report advising the financial outcomes of Council during the 2014/2015 financial year which are identified in this report, Attachments 1 to 3 and the Auditors reports in Attachments 4 to 7.

15 **Statutory and Policy Compliance Implications**

20 Section 413(2)(c) of the Local Government Act 1993 and Clause 215 of the Local Government (General) Regulation 2005 requires Council to specifically form an opinion on the financial statements. Specifically Council needs to sign off an opinion on the Financial Statements regarding their preparation and content as follows:

In this regard the Financial Statements have been prepared in accordance with:

- 25
- The Local Government Act 1993 (as amended) and the Regulations made thereunder.
 - The Australian Accounting Standards and professional pronouncements.
 - The Local Government Code of Accounting Practice and Financial Reporting.

And the content to the best of knowledge and belief:

- 30
- Present fairly the Council's operating result and financial position for the year.
 - Accord with Council's accounting and other records.
 - Management is not aware of any matter that would render the Reports false or misleading in any way.

35 Section 416(1) of the Local Government Act 1993, requires a Council's annual Financial Statements to be prepared and audited within four (4) months of the end of that financial year ie on or before 31 October 2015.

40 Section 417(4) of the Local Government Act 1993 requires, as soon as practicable after completing the audit, the Auditor must send a copy of the Auditor's Reports to the Director-General and to the Council.

45 Section 417(5) of the Local Government Act 1993 requires Council, as soon as practicable after receiving the Auditor's Reports, to send a copy of the Auditor's Reports on the Council's Financial Statements, together with a copy of the Council's audited Financial Statements, to the Director-General before 7 November 2015.

50 Section 418(1) of the Local Government Act 1993 requires Council to fix a date for the Meeting at which it proposes to present its audited Financial Statements, together with the Auditor's Reports, to the public, and must give public notice of the date so fixed. This requirement must be completed within five weeks after Council has received the Auditors Reports ie prior to 5 December 2015.

Section 420 of the Local Government Act 1993 requires Council to provide the opportunity for the public to submit submissions on the Financial Statements. Submissions are to be submitted within

seven days of the Financial Statements being presented to the public. In the case of the 2014/2015 Financial Statements, closing date for submissions will be 27 November 2015.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.6 **PLANNING - DA 10.2014.743.1 - Proposed five (5) lot into three (3) lot consolidation, two boundary adjustments, strata subdivision of multi dwelling housing, construction of thirty (30) townhouses and detached dual occupancy over four (4) stages at 2 Kulgun Court Ocean Shores**

Directorate: Sustainable Environment and Economy
Report Author: Ian McIntosh, Assessment Officer
Wayne Bertram, Manager Sustainable Development
File No: I2015/86
Theme: Ecology
Development and Approvals

DA No: 10.2014.743.1

Proposal: Proposed five (5) lot into three (3) lot consolidation, two boundary adjustments, construction and strata subdivision of thirty (30) of multi dwelling houses, and the addition of one dwelling to create a detached dual occupancy to be constructed over four (4) stages.

Property description: LOT: 954 DP: 241073, LOT: 12 DP: 1128095, LOT: 9 DP: 1046566, LOT: 892 DP: 241810, LOT: 893 DP: 241810, LOT: 944 DP: 241810
2 Kulgun Court OCEAN SHORES, 41 Matong Drive OCEAN SHORES, 43 Matong Drive OCEAN SHORES, Pacific Highway OCEAN SHORES

Parcel No/s: 40340, 240483, 238921, 51340, 51360, 119840

Applicant: Planit Consulting (NSW) Pty Ltd

Owner: Mr W G Sked & Kulgan Court Holdings Pty Ltd

Zoning: Zone No. R2 Low Density Residential

Date received: 9 December 2014

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 6/01/15 to 19/01/15

Submissions: For = 1 Against= 22

Other approvals (S68/138): Not applicable

Planning Review Committee: N/A

Delegation to determination: Council

Issues:

- Traffic
- Ecological
- Building Height Plan
- Stormwater

Summary:

The application, which involves a number of land parcels, proposes the consolidation and re subdivision of land five (5) lots to three (3) lots, the construction of 30 multi dwelling, dwelling-houses, one dwelling to create a dual occupancy, associated road and infrastructure works and strata subdivision.

The majority of the land is approved for a Senior's Living development under Development Consent 10.2008.757.1. Proposed Lot 1 is a consolidation of Lot 945 DP241073 and part of Lot 12 DP 1128095 and will incorporate development proposed as Stage 1 under Development Consent 10.2008.757.1.

This application proposes the following four Stages of construction:

Stage 1 will comprise the access road from Matong Drive, eight (8) dwellings as multi dwelling housing development, landscaping & visitor parking. A service vehicle turn around point will be constructed to allow service and trade vehicles to enter & leave in a forward direction.

Stage 2 will comprise the construction of an access road to and from Brunswick Valley Way, the construction of access road from Kulgun Court (if not already constructed under 10.2008.757.1), eight (8) dwelling houses, services, landscaping and visitor car parking. A temporary turning head will be constructed at the end of the internal road to accommodate vehicle manoeuvring up until Stage 3 commences.

Stage 3 will comprise an extension of the internal road from Stage 2 to a new temporary turning head and the construction of nine (9) dwelling-houses, services, landscaping and visitor car parking. A temporary turning head will be constructed at the end of the internal road to accommodate vehicle manoeuvring up until Stage 4 commences.

Stage 4 will comprise of the road extension to a permanent cul-de-sac at the lower (eastern), northern end of the development and construction of five (5) dwelling-houses, services, landscaping and visitor car parking.

The site is not considered to be 'core koala habitat' under SEPP 44 Koala Habitat Protection however the application originally proposed the removal of 4 large koala food trees. After the property owner met with Council staff, the application was amended so as to now only require the removal of one of those trees. A compensatory planting and Ecological Restoration Plan is recommended should approval be granted.

The proposal raises no other issues regarding state planning instruments and is considered to satisfy the provisions of Byron LEP 2014 and the controls of Byron DCP 2014.

The proposed dwellings are 3 bedroom single storey buildings and have an average floor area of approximately 130m². The construction of 31 of these dwellings will add housing stock into a market of low availability and will possibly result in a lower priced option for some buyers. The proposal is considered to be in the public interest and is supported by this report.

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 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2014.743.1 for a Proposed five (5) lots into three (3) lot consolidation, two boundary adjustments, construction and strata subdivision of thirty (30) of multi dwelling houses and a detached dual occupancy over four (4) stages, be granted consent subject to the conditions listed in Attachment 2 (E2015/61982).

Attachments:

- 5 1 Proposed plans prepared by Planit Consulting, Leisure Brothers, geotech report prepared by shaw
 urquhart consulting, noise impact assessment prepared by CRG, Letter from RMS, driveway access
 S138 approval dated 25/8/15, E2015/66089
- 2 Proposed conditions of consent DA 10.2014.743.1 2 Kulgun Court Ocean Shores, E2015/61982
- 3 Confidential - submissions 10.2014.743.1 2 Kulgun Court Ocean Shores, E2015/66099
- 10

Report

1. INTRODUCTION

1.1 History/Background

Lot 954 DP 241073 – 2 Kulgun Court

10.2008.757.1	Seniors living 94 units in 3 stages	Approved	10/06/2010
10.2014.608.1	30 Residential Units, Dual Occ, strata sub	Rejected	23/10/2014

Lot 12 DP 1128095 – 2 Kulgun Court

10.2008.757.1	Seniors living 94 units in 3 stages	Approved	10/06/2010
10.2014.608.1	30 Residential Units, Dual Occ, strata sub	Rejected	23/10/2014

Lot 9 DP 1046566 – 2 Kulgun Court

10.2008.757.1	Seniors living 94 units in 3 stages	Approved	10/06/2010
10.2014.608.1	30 Residential Units, Dual Occ, strata sub	Rejected	23/10/2014

Lot 893 DP 241810 – 43 Matong Drive

10.1999.766.1	Tree Removal	Approved	14/12/1999
10.2005.354.1	Community Title Sub 3 residential lots	Deferred	19/10/2006
10.2005.354.2	S96 to extend deferred commencement time	Approved	02/11/2007
10.2005.354.3	S96 to extend deferred commencement time	Approved	07/01/2009
10.2008.757.1	Seniors living 94 units in 3 stages	Approved	10/06/2010
10.2014.608.1	30 Residential Units, Dual Occ, strata sub	Rejected	23/10/2014

Lot 892 DP241810 – 41 Matong Drive

16.2001.5117.1	CDC Approved- New Dwelling	Approved	21/11/2001
10.2008.757.1	Seniors living 94 units in 3 stages	Approved	10/06/2010
10.2014.608.1	30 Residential Units, Dual Occ, strata sub	Rejected	23/10/2014

Lot 944 DP 241810

Council reserve - narrow strip of land ("2' wide") separates Lot 893 from Lot 9, requires either purchase from Council or creation of easement for services & access.

1.2 Description of the site

The subject land comprises five allotments two of which are a linear strip some 40m wide between Brunswick Valley Way and Balemo Drive being residue parcels created during the development of the now 'Old Pacific Highway' and subsequently not required. The collective lots back onto existing residences for the entire length.

There is a residential lot located at the western end of Kulgun Court and two residential lots accessed from Matong Court. Additionally a narrow strip of Council Operational Land is to be used for access purposes and the intention is to eventually purchase the lot (Lot 944) from Council.

For the purposes of the proposed development Council has given Owner's Consent to lodge the Development Application. The table below summarises the lot descriptions:

Table 1 - Lot descriptions

	Lot 954 DP 241073	Lot 12 DP 1128095	Lot 9 DP 1046566	Lot 893 DP 241810 (Eight (8) dwellings)	Lot 892 DP 241810 (Dual occupancy)	Lot 944 DP 241810 (Council Operational Land)
Area (m ²)	1,182	8,823	28,740	6,424	2,451	230
Zone R2 – Low Density Residential	✓	Part ✓	✓	✓	✓	✓
Deferred Matter Zone 7 (k) – Habitat Zone BLEP1988		✓				
RU2 – Rural Landscape			✓			

- 5 The area of the subject land proposed for development incorporates all of Lots 945 DP 241073, Lot 12 DP 1128095, Lot 893 DP 241810, Lot 892 DP 241810 and the southern area of Lot 9 DP 1046566 that is within Zone R2 – Low Density Residential. The application also includes Lot 944 DP 241810 which is a very narrow strip of Council owned land separating Lot 893 DP 241810 from Lot 9 DP 1046566 which requires access for emergency vehicles.

10



Previous consent 10.2008.757.1 required an easement to be created over Lot 944, this could be conditioned for this development consent. The applicant is currently negotiating purchase of Lot 944 and Council has given owner's consent for the lodgement of the Development Application. Lot 691 DP 240398 is also a narrow strip requiring an easement for access to a Council stormwater drain pipe for which consent can be conditioned.

The application proposes to consolidate Lot 954 with part of Lot 12 to create Lot 1. This lot will comprise the 'Seniors Living' development as approved by 10.2008.757.1 (Stage1). The application proposes a boundary adjustment between Lots 893 & Lot 892 (Matong Drive Lots). The application proposes to then consolidate the remainder of Lot 12 with Lot 9 and Lot 893, to create Lot 2. Proposed Lot 3 is Lot 892 after boundary adjustment.

The proposed development area is mostly cleared land with a few scattered trees present, within the grassed areas on the southern portions comprising Lots 12 & 954 and the southern portion of Lot 9.

Levels vary across the site from between 4.0 metres AHD and 26 metres AHD. The land is bordered to the north, east and south by existing residential development. To the west is bordered with road reserve and Council land. The two lots accessed from Matong Drive comprise more dense vegetation with a number of larger trees present on these lots and on the adjoining portion of Lot 9.

Part of Lot 9 DP 1046566 that is within Zone 7(k) under BLEP1988, but outside the development area, is vegetated largely with HCV containing rainforest, koala food trees and two identified endangered fauna species. The two endangered fauna species are Davidson's Plum (*Davidsonia jerviana*) and Green-leaved Rose Walnut (*Endriandra muellerii* subs. *bracteata*). This land is to be managed via a Restoration Management Plan.

The site of the proposed dual occupancy dwelling is described as Lot 892 DP 241810 and is located at 41 Matong Drive, Ocean Shores. The existing dwelling is sited at the elevated northern end of the steep lot, close to Matong Drive. The site contains a vegetated area in the centre of the lot which is to be retained and a cleared area at the southern end which is the proposed site for the dual occupancy dwelling.



The site of the proposed 8 multi dwellings houses is described as Lot 893 DP 241810 and is located on the southern side of Matong Drive. The allotment has an area of 6456m² and is located within the R2 Low Density Residential zone. The allotment is vacant of development but contains a number of native and exotic trees, including 2 large koala food trees.

The site falls moderately to steeply away from the street to the rear of the allotment with gently sloping cleared land found within the southern half of the allotment. Public land adjoins the full length of the western boundary of the allotment. A privately owned allotment occupied by a single storey dwelling-house adjoins to the east. The land adjoining to the south is currently undeveloped but has approval for Seniors Housing.

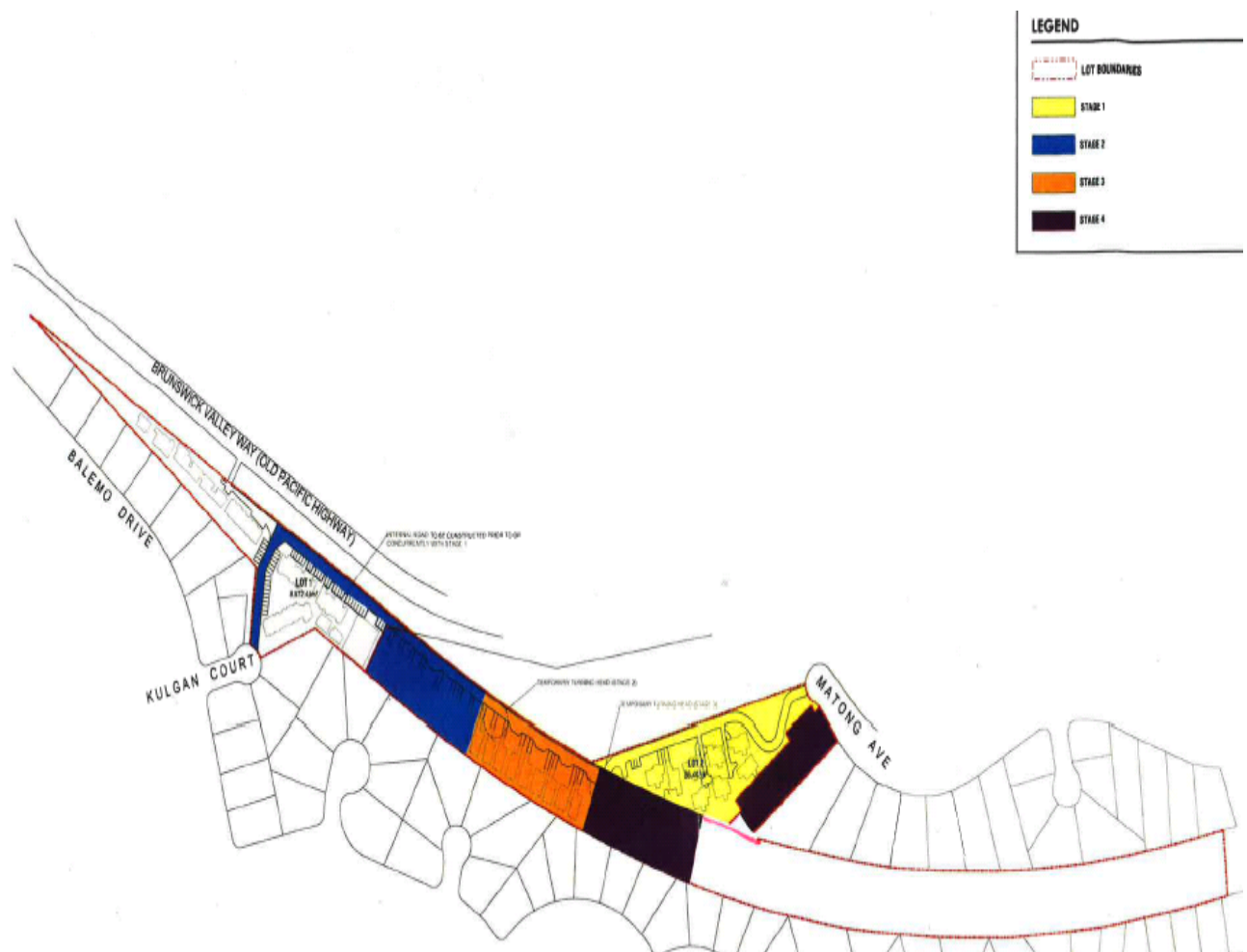
All the land subject to the application

1.3 Description of the proposed development

The application, which involves a number of land parcels, proposes the boundary adjustment of two lots and consolidation of land (5 lots to become 3 lots), the construction of 30 multi dwelling, dwelling-houses, one dwelling to create a dual occupancy, associated road and infrastructure works and strata subdivision.

Proposed Lot 1 is a consolidation of Lot 945 DP241073 and part of Lot 12 DP 1128095 and will incorporate the 'senior's living' development approved as Stage 1 under Development Consent 10.2008.757.1, over the majority of the subject land. The current development application seeks to retain Stage 1 which is entirely within Lot 12 and the Zoned RU2 Rural Landscape land, but not to proceed with Stages 2 and 3 of that development which are located within Zone R2 Low Density Residential land. The current proposal for multi dwelling housing is entirely within the R2 Low Density Residential zone land and incorporates four construction stages.

The application proposes the following four Stages of construction:



Stage 1 will comprise the access road from Matong Drive, eight (8) dwellings as multi dwelling housing development, landscaping & visitor parking. A service vehicle turn around point will be constructed to allow service and trade vehicles to enter & leave in a forward direction.

Stage 2 will comprise the construction of access road to and from Brunswick Valley Way, the construction of access road from Kulgun Court, eight (8) dwelling houses, services, landscaping

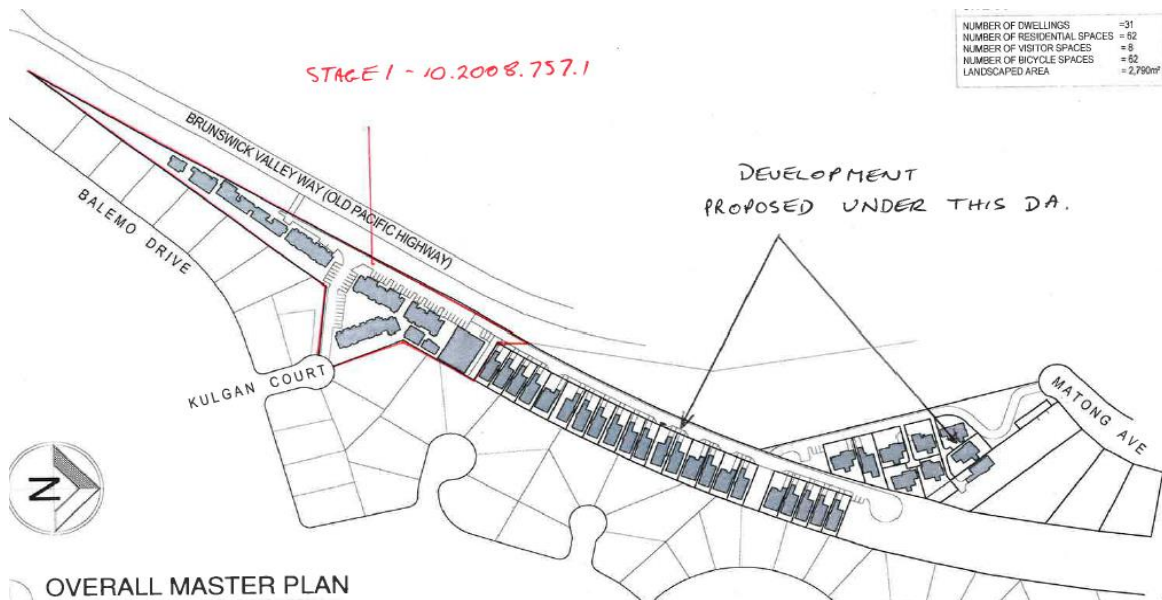
and visitor car parking. A temporary turning head will be constructed at the end of the internal road to accommodate vehicle manoeuvring up until Stage 3 commences.

5 Stage 3 will comprise an extension of the internal road from Stage 2 to a new temporary turning head and the construction of nine (9) dwelling-houses, services, landscaping and visitor car parking. A temporary turning head will be constructed at the end of the internal road to accommodate vehicle manoeuvring up until Stage 4 commences.

10 Stage 4 will comprise of the road extension to a permanent cul-de-sac at the lower (eastern), northern end of the development and construction of five (5) dwelling-houses, a dual occupancy dwelling, services, landscaping and visitor car parking.

15 The application proposes two boundary adjustments that comprise land swaps between Lot 893 & Lot 892 DP241810 Matong Drive, the reason being, to allow the required bushfire asset protection zones (APZ) to be established and maintained within the lot containing the dwellings that the APZ relates to, in accordance with bushfire legislation requirements.

20 It is proposed to strata subdivide the multi dwelling housing upon completion and the proposed strata lots & proposed boundary adjustments are illustrated in the 'Overall Master Plan' below.



25 The original application proposed through traffic between Matong Drive and Kulgun Court which was unlikely to receive Council support and caused concern for residents of Matong Drive and Kulgun Court. The proponents were informed that Council did not support the proposed access arrangements and subsequently amended the application. The previous consent 10.2008.757.1 for Senior's Living had an access approved onto Brunswick Valley Way but for emergency access vehicles only. The amended application included a Section 138 Roads Act application, for a proposed full public access driveway onto Brunswick Valley Way for construction in Stage 2 of the proposed development. Subsequently the application was referred to RMS for concurrence to the proposed driveway access.

35 RMS granted concurrence on 25/08/2015. Consent conditions will require the new access driveway design and construction to comply with the Roads & Maritime Services' letter of approval dated 25/8/2015. The access between Lot 893, 43 Matong Drive and the land accessed via Brunswick Valley Way and Kulgun Court will now be only accessible to emergency vehicles and will be gated to prevent through traffic entering the site from Matong Drive.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

	Summary of Issues
Development Engineer	Conditional support
Environmental Health Officer	Conditional support
Water & Waste Services	Conditional support
Building Surveyor	Not required
System Engineers	Conditional support + ETs payable
Ecologist	Consent conditions provided. Compensation for loss of biodiversity required.
S94 officer	S94 contributions apply.
Government Authorities	NSWRFS - S100B granted + conditions

2.1 SECTION 100B – Bushfire Safety Authority**Integrated Development for 954//241073, 12//1128095, 9//1046566 & 892, 893 & 944//241810 - 2 Kulgun Court, 41 & 43 Matong Drive and Pacific Highway, Ocean Shores**

Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

1. The development proposal is to comply with the layout identified on the following drawings:

- a) 'Proposed Staging' plan (Revision 02), prepared by Planit Consulting, dated 2 April 2015;
- b) 'Overall Master Plan' (Amendment No.6), prepared by Leisure Brothers, dated 7 April 2015;
- c) 'Part Site Plan 1' (Amendment No.4), prepared by Leisure Brothers, dated 11 September 2014; and
- d) 'Part Site Plan 2' (Amendment No.5), prepared by Leisure Brothers, dated 7 April 2015, except as modified by the following conditions.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

2. At the commencement of development and in perpetuity, the entire property (proposed Lots 1, 2 and 3) except the area greater than 15 metres north of proposed 'House 22' and greater than 15 metres east of proposed 'House 29' and 'House 30' shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'. The reticulated water supply, including hydrants, shall extend into the development.

Access

The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

4. Access shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006', except that road widths are to comply with Table 4.1.

5. Temporary turning areas and/or turning circles for Stages 1, 2 and 3 shall comply with the following requirements:

- a) turning areas or reversing bays shall be not less than 6 metres wide and 8 metres deep with an inner minimum turning radius of 6 metres and outer minimum radius of 12 metres; and
- b) turning circles shall have a minimum outer radius of 12 metres.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. New construction shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

7. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.

8. Fencing shall be non-combustible.

Landscaping

9. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

General Advice – consent authority to note

Establishment asset protection zones may require the clearing of vegetation.

This bush fire safety authority does not authorise the clearing of any vegetation, nor does it include an assessment of potential flora and fauna impacts of clearing vegetation for the purpose of establishing asset protection zones. Approvals necessary for the clearing of vegetation should be obtained prior to the establishment of the proposed asset protection zones.

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

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.

State/Regional Planning Policies and instruments - Issues**3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS**

Requirement	Requirement	Proposed	Complies
State Environmental Planning Policy (Housing for Seniors or People		This application is for Multi dwelling housing, however 'Housing for Seniors or People with a Disability' applies to part of the subject land under 10.2008.757.1 (Stage 1), and will be subject to strata subdivision in	Yes

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

with a Disability) 2004 (referred to in the report as 'the SEPP')		this application.	
State Environmental Planning Policy No 44 – Koala Habit Protection.	<p>Council must determine if the land is a <i>potential koala habitat</i> (feed tree species constitute at least 15% of the trees in the upper or lower strata of the tree component)</p> <p>OR</p> <p>Where land has been identified as is a <i>potential koala habitat</i> Council must determine if the land is a <i>core koala habitat</i>.</p>	<p>Parts of the site within Lots 892 & 893 were considered 'potential' koala habitat. These allotments at less than 1 hectare in size and therefore would not be considered under SEPP No 44 – Koala Habit Protection. Additionally there have been no records of koalas on these allotments and the most recent closest recorded sightings are approximately 1 kilometre to the south west on the other side of the Pacific Motorway in 2006 and one approximately 1 kilometre to the north on the opposite side of Shara Boulevard in 1986. The original application sought consent for the removal of 4 large koala food trees. The plans were amended after a meeting between the proponents and Council's Ecologist and Planner and two were saved by a redesign of the access to the proposed dual occupancy on Lot 892. A further meeting with the planner resulted in an agreement to redesign the access to save an additional tree. The tree proposed for removal is suffering from termite infestation and is partly dying. An Arborist's report was submitted for the tree proposed for removal stating that there is 'evidence of termite infestation compromising 30% of the tree which will continue to compromise the trees health'. Should this tree fall it would possibly reach a number of the proposed dwellings and as such the removal of this one tree is proposed. A compensatory planting of 10 koala food trees can be accommodated in the development.</p>	Yes
SEPP55 - Remediation of Land	<p>Council must:</p> <p>(a) considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, if the land is suitable in its contaminated state or after remediation, and</p> <p>(c) be satisfied the land will be remediated before the land is used.</p>	<p>The lands were previously assessed under DAs 10.2005.354.1 & 10.2008.757.1 and were considered to be not contaminated and suitable for residential use. Nothing has taken place on the subject lands since those assessments that would be likely to change the status.</p>	Yes
SEPP71 - Coastal Protection	<p>Matters for consideration for development within the coastal</p>	<p>The proposal is generally consistent with the aims and does not conflict</p>	Yes

	zone: – 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	with the matters for consideration detailed within SEPP No. 71.	
SEPPBASIX	A BASIX Certificate is required for each dwelling	Certification provided via Certificate 575291M dated 23/9/2014 (for 31 dwellings).	Yes
NSW Coastal Policy 1997	Development within the Coastal Zone must be consistent with the Aims, Objectives and Strategic Actions of the Coastal Policy.	Generally consistent, unlikely impact on coastal amenity, access and environment.	Yes
Building Code of Australia	The proposal must be capable of compliance with the structural and safety requirements of the Building Code of Australia.	Consent can be conditioned.	Yes
Demolition	N/A	N/A	Yes
Disability Access (DDA)	Access for persons with disabilities and integration into surrounding streetscapes without creating barriers. (Council Res.10-1118)	Private dwellings - N/A, However no barriers to access in streetscape for persons with disabilities .	Yes

* Non-complying issues discussed below

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

5 Zone: Zone R2 Low Density Residential

Definition: Multi Dwelling Housing, Dual Occupancy Subdivision (boundary adjustment) & Strata Subdivision.

LEP Requirement	Proposed	Complies
Consistency with R2 zone objectives: <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 provide facilities or services to meet the day to day needs of residents. 	The proposed development is considered to be consistent with the objectives of the R2 Zone. The replacement of 26 previously approved double storey dwelling apartments with 22 single storey dwellings. Additionally 8 single dwellings are proposed for a lot in Matong Drive previously approved for a community title subdivision comprising 6 dwellings on 3 x dwelling lots.	Yes
Permissibility - <i>multi dwelling housing</i> means 3 or more dwellings (whether attached or detached) on one lot of	More than 3 detached dwellings are proposed	Yes

LEP Requirement	Proposed	Complies
land, each with access at ground level, but does not include a residential flat building.	over the two lots.	
4.1 Minimum subdivision lot size Any lots created not to be less than the minimum lot size shown on the map R2 = 600m ² - RU2 = 40ha	The consolidation of Lot 954 DP 241073 & Lot 12 DP1128095 will include approximately 3,000m ² of land within the R2 zone. Lot 12 contains the land within the RU2 zone and there will be no change to that after consolidation.	Yes
4.1C Minimum subdivision lot size for boundary adjustments in certain rural & residential zones (1) The objectives of this clause are as follows: (a) to permit boundary adjustment subdivision between existing lots in rural areas where one or more of the resulting lots would be less than the minimum subdivision lot size, (3) Despite clause 4.1, development consent may be granted for a subdivision that consists of an adjustment of boundaries between existing lots where the size of one or more of the resulting lots will be less than the minimum subdivision lot size shown on the Lot Size Map in relation to those lots, if: (a) the subdivision will not result in the creation of any additional lots or the opportunity for additional dwellings (or both), and (b) the subdivision will minimise the further fragmentation and alienation of resource lands or lands with natural and ecological values, and (c) the subdivision is likely to minimise actual or potential land use conflict, and (d) the subdivision is not likely to affect the rural character, environmental heritage and scenic quality of the land.	Lot 12 contains approx. 7,200m ² of land within the RU2 zone there will be no change to that after consolidation i.e. the RU2 zoned land will remain within one lot (proposed Lot 1 which comprises the Seniors Living Stage 1 of 10.2008.757.1.	Yes
4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings Multi dwelling Zone R2 Low Density Dual Occupancy – housing = 1,000m ² Residential detached = 800m ²	The area of each of the two allotments applying for multi dwelling housing is > 1,000m ² . The dual occupancy lot is > 800m ²	Yes
4.3 Height of buildings (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map . The maximum height as shown on the map is 9.0m.	Maximum height of the proposed buildings is less than 9.0m (max 5.6m)	Yes
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 Floor Space Ratio Map . Maximum FSR shown on the map is 0.5:1.	The proposed development has been calculated to propose a FSR of approx. 0.10:1 for the multi dwelling housing and approx. 0.12:1 for the dual occupancy. *Multi dwelling housing –	Yes

LEP Requirement	Proposed	Complies
	land area = 12,040m ² floor area = 3,900m ² DO - land area = 2,451m ² floor area = 320m ²	
<p>5.5 Development within the coastal zone</p> <p>(2) 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:</p> <p>(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:</p> <p>(i) maintaining existing public access and, where possible, improving that access, and</p> <p>(ii) identifying opportunities for new public access, and</p> <p>(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:</p> <p>(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and</p> <p>(ii) the location, and</p> <p>(iii) the bulk, scale, size and overall built form design of any building or work involved, and</p> <p>(c) the impact of the proposed development on the amenity of the coastal foreshore including:</p> <p>(i) any significant overshadowing of the coastal foreshore,</p> <p>(ii) any loss of views from a public place to the coastal foreshore, and</p> <p>(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and</p> <p>(e) how biodiversity and ecosystems, including:</p> <p>(i) native coastal vegetation and existing wildlife corridors,</p> <p>(ii) rock platforms, and</p> <p>(iii) water quality of coastal waterbodies, and</p> <p>(iv) native fauna and native flora, and their habitats, can be conserved, and</p> <p>(f) the cumulative impacts of the proposed development and other development on the coastal catchment.</p> <p>(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:</p> <p>(a) the proposed development will not impede or</p>	<p>The proposed development does not restrict public access to the coastal foreshore.</p> <p>The subject site is located within an existing urban area and is unlikely to result in any unacceptable impacts on the coastal zone.</p> <p>The proposal is considered to be acceptable in terms of overshadowing, visual amenity, biodiversity and ecosystems, or cumulative impacts. An Ecological Restoration Plan & compensatory planting is proposed to be included as a condition of development consent.</p> <p>Services are available and the development is able to connect to these existing services.</p>	<p align="center">Yes</p>

LEP Requirement	Proposed	Complies
<p>diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and</p> <p>(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</p> <p>(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and</p> <p>(d) the proposed development will not:</p> <ul style="list-style-type: none"> (i) be significantly affected by coastal hazards, or (ii) have a significant impact on coastal hazards, or (iii) increase the risk of coastal hazards in relation to any other land. 		
<p>5.9 Preservation of trees</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>(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:</p> <ul style="list-style-type: none"> (a) development consent, or (b) a permit granted by the Council. 	<p>Consent is sought for the removal of 19 trees. Most of the trees have been approved for removal via previous consents with the exception for two large koala food trees within Lot 892.</p> <p>An agreement with the property owner to redesign of the access way within Lot 892 Matong Drive has resulted in only one tree now being required to be removed.</p> <p>An Ecological Restoration Plan forms part of the conditions of consent and includes the requirement for suitable plantings to compensate for biodiversity loss.</p>	<p>Yes</p>
<p>6.1 Acid sulfate soils</p>	<p>Conditions of consent have been recommended</p>	<p>Yes</p>

LEP Requirement	Proposed	Complies
5 Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	to address works disturbing Acid Sulfate Soils.	
6.2 Earthworks (3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters: (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development, (b) the effect of the development on the likely future use or redevelopment of the land, (c) the quality of the fill or the soil to be excavated, or both, (d) the effect of the development on the existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	<p>The Engineering report states that approximately 2,000m³ will be excavated over the entire site and that up to 300m³ or approximately 27 truck loads of fill will be required to be imported onto the site.</p> <p>The consent can be conditioned to ensure that clean fill only is imported and that truck movements are restricted to between business hours. Sediment and erosion controls to be conditioned.</p> <p>A consent condition will require a Traffic Management Plan to manager traffic entering and leaving the site via all access points.</p>	Yes
6.6 Essential services Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required: (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	Services are available to the site.	Yes
6.7 Affordable housing in residential and business zones (1) The objectives of this clause are as follows: (a) to increase the supply of affordable housing for very low, low and moderate income earning households, (b) to provide accommodation to support a diverse residential population inclusive of all income groups within Byron, (c) to ensure a housing mix and tenure choice including affordable housing,	The proposed multi dwelling housing does not contain 'affordable housing' as defined in State Environmental Planning Policy (Affordable Rental Housing) 2009 or Clause 6.7 in the BLEP 2014.	N/A Yes

LEP Requirement	Proposed	Complies
<p>(d) to ensure that affordable housing is identified by the Council as in demand and located close to transport and services appropriate to the intended households.</p> <p>(2) Development consent must not be granted for the purposes of residential accommodation or to the subdivision of any land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone B2 Local Centre or Zone B4 Mixed Use unless the consent authority has considered:</p> <p>(a) the need for providing, maintaining or retaining affordable housing, and</p> <p>(b) the need for imposing conditions relating to providing, maintaining or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.</p> <p>(3) For the purposes of this clause, affordable housing means housing for very low income households, low income households or moderate income households.</p>	<p>The proposed dwellings are 3 bedroom single storey buildings and have an average floor area of approximately 130m². The construction of 31 of these dwellings will add housing stock into a market of low availability and will possibly result in a lower priced option for some buyers.</p>	

Byron Local Environmental Plan 2014- Issues

- 5 The development is generally compliant with the Byron Local Environmental Plan 2014 with any matters nominated to be addressed by consent conditions.

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

- 10 Nil

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014

- 15

Byron Development Control Plan 2014		
Control	Assessment	Complies
Section B7 Mosquitoes and biting midges		
<p>B7.2.1 Mosquito and Biting Midge Risk Zones</p> <p>The following measures apply to areas identified in Map B7.1. Development Applications must address biting insect mitigation and management issues.</p> <p>Where the presence of biting insect risk is disputed, the onus of proof is on the developer to demonstrate that mosquitoes and biting midge nuisances and/or associated disease problems are not serious. In those cases it will be necessary for the developer to submit a report prepared by a suitably qualified and experienced entomologist engaged to carry out</p>	<p>The site is located within an identified risk zone shown on Map B7.1.</p> <p>It is not considered warranted in this instance (in view of the separation distance of the subject site from the potential source of flying insects) to require a report from a suitably qualified and experienced entomologist addressing mosquito and biting midge risks and management measures.</p>	Yes

Byron Development Control Plan 2014		
Control	Assessment	Complies
the scientific investigations necessary to evaluate Mosquitoes and Biting Midge nuisance and/or disease risks. The report will need to address the issues in Table B7.1. Furthermore it will be necessary for both the entomologist and his/her proposed methodology to be acceptable to the Council.	However the statement of environmental effects states that the site engineering has been designed to minimise areas of stagnant water and potential mosquito breeding areas.	
<p>B7.2.2 Strategies and Guidelines for proposed developments within risk zones</p> <p>a) All development must provide effective insect screening to all windows, doors and other openings to all parts of the development used for residential purposes.</p> <p>b) All development must incorporate an effectively screened outdoor area of a size commensurate with the number of people who are likely to use it, to enable an outdoor lifestyle to continue to be enjoyed during periods of high mosquito and biting midge activity. This may be a communal area for development incorporating more than one dwelling or more than one tourist accommodation unit.</p> <p>c) Measures arising from the entomologist's recommendations to minimise the potential impact on residents from mosquitoes and biting midges must be based on a demonstrated investigation strategy and sound knowledge of all the nearby habitats that could be expected to significantly affect the breeding and harbourage of mosquitoes and biting midges.</p> <p>d) Establishment of any buffers required must be within the development site and not reliant upon neighbouring or adjoining land, public reserves, Crown Land and Nature Reserves. Buffers must be on land of low biodiversity significance.</p>	<p>It is not considered warranted in this instance (in view of the separation distance of the subject site from the potential source of flying insects) to require a report from a suitably qualified and experienced entomologist addressing mosquito and biting midge risks and management measures.</p> <p>The statement of environmental effects states that the site engineering has been designed to minimise areas of stagnant water and potential mosquito breeding areas.</p> <p>A condition has been included to require that all windows and doors of the proposed dwellings are to incorporate fly/insect screens.</p>	Yes (Subject to condition)
Section B8 Waste Minimisation and Management		
<p>B8.4.2 Multi Dwelling Housing</p> <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 B8.4.2.</p>	The applicant has submitted a SWMMP generally in accordance with B8.4.2 using Council's standard template form. The applicant submitted more detailed SWMMP plan details on 10 February 2014.	Yes (subject to condition)
Section B9 Landscaping		
<p>B9.4.1 Multi Dwelling Housing</p> <p>The following design requirements apply to</p>	The proposal includes 31 dwellings with a floor plan over 90m ²	Yes

Byron Development Control Plan 2014										
Control	Assessment	Complies								
<p>multi dwelling housing, attached dwellings and residential flat buildings developments:</p> <ul style="list-style-type: none">- retention of suitable existing vegetation;- screen planting to street frontages and driveway areas, to provide privacy between dwelling houses and around the boundaries of the site;- provision of pleasant landscaped settings for the enjoyment of residents;- planting selection that relates to building scale and mass. <p>The common landscaped area of the site must not be less than the total of the areas required for each dwelling house, calculated from the following table, less the total of the areas of approved private courtyards and approved private open space balconies in accordance with Chapter D1 Residential Development in Urban and Special Purpose Zones.</p> <p>Common Landscape area requirements: Table B9.1 – Dwelling Size to Landscape Area</p> <table><tr><th>Dwelling(D) Size</th><th>Landscaped Area(D)</th></tr><tr><td>Small - under 55 m2 in floor plan area(D)</td><td>50 m2</td></tr><tr><td>Medium - 55-85m2 in floor plan area(D)</td><td>70 m2</td></tr><tr><td>Large - over 85 m2 in floor plan area(D)</td><td>90 m2</td></tr></table>	Dwelling(D) Size	Landscaped Area(D)	Small - under 55 m2 in floor plan area(D)	50 m2	Medium - 55-85m2 in floor plan area(D)	70 m2	Large - over 85 m2 in floor plan area(D)	90 m2	<p>(31 x 50m²= 1,550m²)</p> <p>Combined area of private open space balconies and/or private open space is 930m².</p> <p>Common landscape area required is (1,550m²-930m²) 620m². The proposed development provides a common landscape area of > 620m² (excluding hard surfaces).</p> <p>The proposed development satisfies the landscape requirements of Clause B9.4.1.</p> <p>Additionally a Vegetation Management Plan will be required as a consent condition, to manage the HCV located outside the development area on Lot 9 DP 1046566.</p>	
Dwelling(D) Size	Landscaped Area(D)									
Small - under 55 m2 in floor plan area(D)	50 m2									
Medium - 55-85m2 in floor plan area(D)	70 m2									
Large - over 85 m2 in floor plan area(D)	90 m2									
<p>B9.4.2 Common Landscaped Areas A minimum of 75% of the total common landscaped area of the site must consist of deep soil areas. Areas of landscaping over underground car parks, and the like, cannot be included in the calculation of deep soil areas.</p> <p>The landscape design must address:</p> <ul style="list-style-type: none">- the retention and provision of appropriate trees on the site;- the use of earth mounding and terraced areas to create useful and visually pleasing recreation areas and to assist screening;- the orientation of landscape areas with regard to sunlight and prevailing winds;- the provision of sufficient areas adequately shaded against the summer sun and giving adequate access to the winter sun.- Areas used for the management of on-site	<p>More than 75% of the common landscape area consists of deep soil area.</p> <p>The proposed landscape plan is considered to provide adequate plantings to satisfy the specified landscape design measures.</p>	<p>Yes</p> <p>Yes</p>								

Byron Development Control Plan 2014		
Control	Assessment	Complies
sewage effluent must be excluded from calculations of the common landscaped area .		
Chapter B13 – Access and Mobility		
B13.2.2 Multi Dwelling Housing Design and Access in accordance with AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings (for class 3, 5, 6, 7, 8 and 9 buildings) and AS 4299 -Adaptable Housing must be provided to and within new developments and major alterations for residential development to which this Section applies as follows:	Stage 2 of the development includes the construction of 3 of the 30 multi housing dwellings as adaptable housing dwellings. 10% of the total number as required.	Yes
Chapter B14 – Excavation and Fill		
Unless otherwise stated, excavation and filling must be limited to a depth of 1 metre. The maximum excavation restriction is not applicable where the excavation is incorporated into the dwelling structure to satisfy minimum car parking requirements up to a maximum height of 2 metres.	Maximum cut proposed is approximately 1.16m for driveway access through the multi dwelling lot in Matong Drive. The Engineering report states that approximately 2,000m ³ will be excavated over the entire site and that up to 300m ³ or approximately 27 truck loads of fill will be required to be imported onto the site. The consent can be conditioned to ensure that clean fill only is imported. A consent condition will require a Traffic Management Plan to manage traffic entering and leaving the site via all access points and that truck movements are restricted to between business hours. Sediment and erosion controls to be conditioned.	Yes
Section D1.2 General Provisions		
D1.2.1 Building Height Plane	The proposed development is able to comply with the BHP for all dwellings	Yes
D1.2.2 Setbacks from Boundaries <u>Minimum Street Frontage Setbacks</u> A minimum setback of 4.5metres is to be provided to non-classified roads. 3. Minimum Setbacks for Residential Flat	The proposed development provides a setback from Kulgun Court of greater than 100 metres and greater than 50 metres from Matong Drive	Yes

Byron Development Control Plan 2014								
Control	Assessment	Complies						
Buildings and Multi-Dwelling Housing Side and rear setback – 1.5 metres for single storey; otherwise governed by the building height plane .	Side & rear setbacks proposed are greater than 1.5 metres.							
D1.2.3 Screening the Underfloor Space of Buildings	Consent can be conditioned.	Yes						
D1.2.4 Character & Visual Impact	The proposed infill dwellings are low set with skillion roofs and are within character of the eclectic mix of residential housing in the Ocean Shores area. All dwellings comply with setback and building height plane requirements and are unlikely to significantly impact on views enjoyed by existing residential development.	Yes						
D1.2.5 Fences <table><tr><td>Front Fence</td><td>1.2 metres.</td></tr><tr><td>Side Fence</td><td>1.2 metres within the building line setback and 1.8 metres for the remainder.</td></tr><tr><td>Rear Fence</td><td>1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply.</td></tr></table>	Front Fence	1.2 metres.	Side Fence	1.2 metres within the building line setback and 1.8 metres for the remainder.	Rear Fence	1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply.	1.8 metre high side and rear fences are proposed for all dwellings. No fences are proposed forward of the building line of any dwelling.	Yes
Front Fence	1.2 metres.							
Side Fence	1.2 metres within the building line setback and 1.8 metres for the remainder.							
Rear Fence	1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply.							
D1.2.7 Pedestrian and Cycle Access Development applications for residential accommodation of more than 3 dwellings must demonstrate that the pedestrian/cycleway network detailed in Council’s adopted Byron Shire Bike Strategy and Action Plan will be incorporated into new development. Refer to Chapter B5 Providing for Cycling and Chapter B13 Access and Mobility.	The proposed development provides adequate connectivity to the local bicycle network.	Yes						
Section D1.6 Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings								
D1.6.1 Private Open Space (POS) Courtyards Each dwelling must have access to an individual courtyard at ground level having a minimum area of 30m ² and a minimum length and width each of 4 metres, not including any area used exclusively for the circulation or parking of vehicles. The courtyard must be designed to facilitate access to winter sunshine	Each of the proposed dwellings has its own POS equal to more than the minimum 30m ² requirement (50m ² proposed). However a number of the dwellings cannot provide the required Prescriptive Measure of 30 m ² with a 4m width and only 3.9m wide is proposed. Considering that the	Yes						

Byron Development Control Plan 2014		
Control	Assessment	Complies
<p>and must be landscaped to Council's satisfaction.</p> <p>The private open space area must not include any areas used for the management of on-site sewage effluent.</p>	<p>POS provided is 30% greater in area than required and that the proposed POS satisfies the Objective & Performance Criteria the minimal variation is supported.</p> <p>The proposed landscaping and orientation of the courtyards is considered to be acceptable.</p> <p>The development as proposed is sewerer and therefore none of the POS courtyards include any areas used for the management of on-site sewage effluent.</p>	
<p>D1.6.2 Open Space Balcony This provision is only activated when it is not possible to allocate POA at ground level.</p> <p>A private open space balcony must have a minimum area of 15m² and a minimum length and width of 2.4 metres. A private open space balcony must be demonstrated to have appropriate orientation and adequate provision for winter sun and summer shade.</p>	<p>N/A – single storey dwellings with adequate POS at ground level.</p>	Yes
<p>D1.6.3 Landscaping</p> <p>To provide attractive landscapes that reinforce the function of the street, enhance the amenity of dwellings and the built environment, and allow preservation of significant vegetation. Refer B9</p>	<p>The applicant has submitted a landscape plan which is considered to satisfy the requirements of Section D1.6.3.</p> <p>Note: A Vegetation Management Plan for the HCV area Lot 9, that is not to be developed, will be conditioned.</p>	Yes
<p>D1.6.4 On-Site Car Parking Refer to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access for detailed provisions regarding vehicle access, numbers, dimensions and layout of car parking spaces.</p> <p>Large areas of car parking must be broken up by variation in layout, pavement treatment, landscaping, mounding and/or other means to Council's satisfaction.</p>	<p>Two (2) parking spaces are required for each dwelling under the DCP 2014 Chapter B4 and one (1) visitor parking space for each 4 dwellings or part thereof. Accordingly DCP 2014 requires the provision of seventy three (73) parking spaces including 62 resident parking spaces and 4 visitor parking spaces. A total of three (3) on-site parking spaces are proposed to be provided for People with a Disability (PWD), at the three proposed adaptable housing dwellings. Proposed associated landscaping is satisfactory.</p>	Yes

Byron Development Control Plan 2014		
Control	Assessment	Complies
<p>D1.6.5 Sound Proofing Division walls between dwellings must be of sound-resisting construction to Council's satisfaction.</p> <p>The floors in single storey multi-dwelling housing, residential flat buildings and attached dwellings must be so constructed or treated as to minimise the conduct of sound between dwellings.</p>	<p>It is understood that the BCA construction requirements provide for adequate sound insulation between dwellings.</p> <p>Consent condition applies.</p>	Yes
<p>D1.6.6 Clothes Drying Facilities Prescriptive measures The minimum provision of clothes drying facilities must be at the rate of 7.5 metres of line per dwelling, located in suitably screened external drying areas.</p>	<p>A suitable external clothes drying area can be proposed for each dwelling at ground level.</p> <p>Consent condition applies.</p>	Yes
<p>D1.6.7 Equity of Access and Mobility Provision for access and mobility must be made pursuant to Chapter B13 Access and Mobility.</p> <p>B13.2.2 Multi dwelling housing Design and access to accord with AS1428.1. <u>Dwelling units:</u> a minimum of 10% units should be adaptable housing. Access to the upper level of townhouses can be by lift, stair lift, inclinator or platform lift in accordance with Australian Standards. <u>Access:</u> A continuous path of travel in accordance with AS1428 between main street entrance to residential complex. <u>Car Parking:</u> At least one accessible car parking space for the disabled must for each adaptable housing unit.</p>	<p>The proposed development incorporates three (3) adaptable dwellings to be constructed in Stage 2. Stage 1 being on sloping ground and therefore less suitable for adaptable dwellings.</p> <p>One (1) accessible parking space is proposed for each adaptable dwelling.</p>	Yes
<p>D1.6.8 Pipes and Vents All service pipes and vents must be concealed within the walls of residential flat buildings, multi-dwelling housing and attached dwellings. Provision of recessed service pipes in external walls may be acceptable where it is demonstrated that the proposal is consistent with the Objectives. Access to pipes and vents must be provided as required by relevant authorities.</p>	<p>The proposed plans do not indicate that pipes and vents will be external to the proposed building.</p>	Yes
<p>D1.6.9 TV Antennae Each development must be provided with a common television reception system designed to minimise adverse visual impacts whilst enabling high quality reception for each dwelling.</p>	<p>Each dwelling is detached and will be provided with individual antennae.</p>	Yes

Byron Development Control Plan 2014		
Control	Assessment	Complies
<p>D1.7.1 Affordable Housing in R2, R3, B2 and B4 Zones</p> <p>1. Council shall consider the matters listed in clause 6.7 Affordable housing in residential and business zones of LEP 2014 when considering development applications in Zones R2, R3, B2 or B4 for:</p> <p>a) subdivision of 25 or more lots where a diversity of lot sizes can be provided;</p> <p>b) residential accommodation of 25 or more dwellings where a diversity of dwelling types can be provided;</p> <p>c) redevelopment of existing housing where a reduced number of dwellings and/or a reduced diversity of dwelling types are proposed.</p> <p>2. Council may consider applying a condition to the development consent for affordable housing requiring that the development not be used for the purposes of tourist and visitor accommodation including holiday letting.</p> <p>3. Council may consider varying density controls for subdivision to allow additional lots to be created for dedication to a public housing provider.</p> <p>4. The meaning of 'very low income household', 'low income household' and 'moderate income household' is the same as provided in clause 6 of <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>.</p>	<p>The proposal development does not provide 'affordable housing'.</p> <p>However the creation of 31 new dwellings each on its own strata title will provide more choice to the market and may result in more affordable housing choices in the area.</p>	<p>Yes</p>

Development Control Plan 2014 - Issues

No issues

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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

Natural Environment

10

Parts of the site within Lots 892 & 893 are considered 'potential' koala habitat. However there are no records of koalas on the site. According to Council's GIS the most recent, closest recorded sightings of koalas are approximately 1 kilometre to the south west on the other side of the Pacific Motorway and to the south eastern on the golf course in 2006, and one approximately 1 kilometre to the north on the opposite side of Shara Boulevard in 1986.

15

The original application sought consent for the removal of 4 large koala food trees (2 on Lot 892). The plans were amended after a meeting between the proponents and Council's Ecologist and

Planner and two were saved by a redesign of the access to the proposed dual occupancy on Lot 892.

A further meeting with the planner resulted in an agreement to redesign the access to save an additional tree. The one tree of the four proposed for removal is suffering from termite infestation and is partly dying. An Arborist's report was submitted for the tree proposed for removal stating that there is 'evidence of termite infestation compromising 30% of the tree which will continue to compromise the trees health. As the tree would possibly reach any one of four proposed dwellings should it fall it is proposed to allow the removal of that one tree. A compensatory planting of 10 koala food trees can be accommodated on that lot.

Should consent be granted Council's Ecologist has provided a number of consent conditions including compensatory planting and an Ecological Restoration Plan to be submitted prior to construction certificate being issued.

3.5 The suitability of the site for the development

The land is bushfire prone however a S100B Bushfire Safety Authority has been granted by the NSW Rural Fire Service.

The area of the development proposed by this Development Application is not affected by any flood liable land.

The land is or is able to be fully serviced by water, sewer, electricity and telephone. Adequate access can be provided to the development and the proposed roadways and access ways are supported subject to development consent conditions.

The proposed development is likely to result in an extended construction phase and as such noise management required. A development consent condition is proposed to be included to reduce the impact of construction noise.

To ensure protection of the environment and human health, it is recommended that an Environmental Management Plan (EMP) be prepared and submitted to Council prior to the issue of the Construction Certificate. The EMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure that construction works do not result in any off-site impacts that could interfere with neighbourhood amenity, by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise and all works must be undertaken in accordance with NSW WorkCover Authority.

As the abovementioned issues relating to the development can be resolved the suitability of the site for the development is considered to be adequate.

3.6 Submissions made in accordance with this Act or the regulations

There were 22 submissions made on the development application.

- 21 Against
- 1 For

Note 2 of the submissions were received in the months following the end of the exhibition period.

Issue	Comment
Flooding in the Alooda Crescent Balemo Drive location to the east already floods this development may exacerbate the flooding. Proposed dwellings 18 to 22 are in a flood prone area.	Council is satisfied the proposed stormwater management adequate, as it was previously approved in DA 10.2008.757.1 on the same site.

Issue	Comment
The existing Council stormwater drain between Nos 9 & 11 Alooda Cr does not cope now during flooding rain	
I adjoin the development and I am pleased that this development, unlike the previous approval for senior's living, is single storey	Noted, all the proposed dwellings are modest single storey design.
As an adjoining renter I support and encourage the development of other affordable medium density housing developments in the area. I understand that there will be no through traffic from Matong to Kulgun.	While not 'affordable housing' as defined by the SEPP, the creation of an additional 31 x 3 bedroom dwellings may have an influence on the current high prices for housing in the locale by increasing supply. The original proposal included through traffic however Council indicated that it would not support that proposal. Subsequently the proposal was amended to prohibit all but emergency access through 43 Matong Drive.
In the 1980's when I purchased my adjoining property the land was to be a temporary access road while the new highway was built and then it was to be returned to a wildlife corridor. It is an overdevelopment of unsuitable land.	The land proposed for development was previously approved for more intensive construction, 26 double storey apartments within this part of the land now proposed for 22 single storey dwellings. The land already containing high conservation value vegetation at the northern end of the site will be protected by a VMP as a consent condition.
Traffic	
Three bedroom dwellings will attract shared renters and so will increase traffic levels will see Matong Drive become more dangerous as it is narrow and vehicles already park along the shoulder making it hard to see. All those vehicles using the through traffic from Kulgun to Matong will be unbearable.	As with all dwellings, the property owner can choose to occupy the residence or lease the premises. Parking arrangement in accordance with DCP 2014 are proposed. Through traffic from Kulgun Court to Matong Drive will be limited to emergency vehicles with a locked gate required to be provided. The two lots (and additional 9 dwellings) with existing Matong Drive access will be permitted to use Matong Drive.
It makes better planning sense to have the development accessed via Brunswick Valley Way (Old Pacific Highway)	Noted and agreed. This is proposed and concurrence has been granted by RMS.
There are already sink holes opening up on Matong Drive the added traffic will exacerbate this.	See above now only 9 additional dwellings to have access via Matong Drive (being 3 more than that already approved via 10.2005.354 as amended).
Matong Dive already floods at the northern end adjacent No 13.	The development will have no impact on flooding in Matong Drive as the development will drain to the south and east.
I ask that the residents of this high density development are of good character.	This is outside the scope of planning controls.
I am concerned with the building of multi storey dwelling houses that people will be able to look	The development does not adjoin the submitter's property. The privacy impacts have been assessed as acceptable.

Issue	Comment
into my property.	
For such a large development Council should require the developer to hold public meetings.	There is no legislative requirement for this. The DA was exhibited in accordance with the BDCP2014 requirements – and extended by way of acceptance of late submissions. The previously approved Senior's Housing development was for 26 double storey apartments within this part of the land now proposed for 22 single storey dwellings.
When I bought my land in 2000 it backed onto a nature reserve. This development will have a negative impact on that.	The objector's property backs onto the northern part of Lot 9 DP1046566 which is private property and part of the development site that contains HCV and is to remain protected via the existing land zoning and an Ecological Restoration Plan as a condition of consent which will include compensatory plantings in this area.
All that traffic will increase the need for footpaths it is already difficult to walk along Matong drive because vehicles park on the nature strip. Access should be via Brunswick Valley Way	Section 94 contributions for footpath are proposed to be imposed on this development. Parking areas are proposed to be provided in accordance with DCP 2014 so that vehicles should not need to be parked on the nature strip. Access via Brunswick Valley Way is proposed and concurrence has been granted by RMS.
Through traffic through a secondary koala habitat.	The application as amended removes through traffic from Kulgun Court and only the two lots with existing Matong Drive access will be permitted to use Matong Drive - i.e. an additional 9 dwellings. Note: no koalas have been recorded on the site, with the most recent recorded closest sightings being approximately 1 kilometre to the south west on the other side of the Pacific Motorway in 2006 and one approximately 1 kilometre to the north on the opposite side of Shara Boulevard in 1986.
The narrow Reserve (Lot 11 DP 1128095), between the development and a number of adjoining dwellings mine included, should be planted out as a screen and not sold to the developer.	The land is currently classified as operational land however sale of the land is independent of this Development Application and is not part of this proposal. Should Council want to consider the future sale of this land it is normal practice to consult with adjoining residents (and other parties), and inviting the adjoining residents to submit expressions of interest prior to any sale of Council land.
Over development too many houses on the lots. The area is made up mostly of large dwellings on large lots.	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. 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.
We, Matong Drive residents don't want our street tuned into a hovel for low income drug addicted people which generally rent town houses of this description.	There is no nexus between the proposed 9 additional dwellings that have Matong Drive frontage & access and the use of the buildings by any future occupiers.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

Issue	Comment
If this DA goes through I will sell my business & house and move away, I would rather live next door to a McDonalds. Greedy developers go back to the city.	
Matong Drive is a cul-de-sac it should not be allowed to become a through road between Kulgun Ct, Brunswick Valley way & Matong Drive.	Application as amended removes through traffic from Kulgun Court and only the two lots with existing Matong Drive access will be permitted to use Matong Drive - i.e. and additional 9 dwellings
This type of development is springing up throughout Ocean Shores and is changing the established residential pattern and character. We moved here many years ago for the large houses on large blocks	The manner in which the local character of the area 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 increase the housing stock within this area.
Our property values in Matong Drive will go down.	This is not a planning consideration however it is unlikely that the construction of 9 additional dwellings in Matong Dive which currently has 40 existing dwellings, will have a negative impact on existing property values.
The development proposes that the development would be for Seniors, does that mean over 55s?	No - There is an existing approval for the three lots accessed from Kulgun Court for 'Seniors Living' only. Stage 1 of that development has already commenced. Stages 2 to 4 of this proposal for multi dwelling housing will see 26 double storey apartments replaced with 22 single storey dwellings. These 22 dwellings will not have access through Matong Drive. * multi dwelling houses are proposed for 43 Matong and an additional dwelling to create a dual occupancy is proposed for 41 Matong Drive.
The SEE itself notes that the southern portion of the site is flood prone	The flood prone land of Lot 9 DP 1046566 is to the south of the approved Seniors living development and is outside the area proposed by this development.
Insufficient time to comment and over Christmas break is not right for exhibition period as people are away on holidays.	The application was registered to Council on 9/12/14 – adjoining owners were notified 15/12/2014 – The Exhibition period was held off until after Christmas and New Year and was exhibited from 6/1/2015 until 19/1/2015 in accordance with Council's DCP 2014.
The purchase of the 'narrow strip of land' one of the letters written to the developers in this regard says 'Please note that consultation will Matong Drive residents and/or calls for expressions of interest from other parties may be required'. We haven't been consulted or allowed make an expression of interest.	The land is currently classified as operational land however sale of the land is independent of this Development Application. Should Council want to consider the future sale of this land it is normal practice to consult with adjoining residents (and other parties), and inviting the adjoining residents to submit expressions of interest prior to any sale of Council land.
It is our understanding that all sewage & stormwater from the site will flow into existing	The proposed stormwater management regime is similar to that granted consent under 10.2008.757.1.

Issue	Comment
stormwater facilities. In Kulgun & Alooda and then into our Golf Course.	

3.7 Public interest

5 The application proposes multi dwelling housing to construct twenty two (22), single storey, detached dwellings, in an area previously approved for fifty two (52) attached, two storey seniors living dwellings. These dwellings are to be accessed via Kulgun Court, and Brunswick Valley Way via a new driveway access.

10 Additionally eight (8) single storey detached dwellings, as multi dwelling housing, at 43 Matong Drive and a dwelling to create a dual occupancy at 41 Matong Drive are also proposed. Originally the access was right through the development from Matong Drive to Kulgun Court however the resulting increase in traffic through an existing quiet residential area created concern from the residents of Matong Drive and was not supported by Council. Access via Matong Drive is now only for the Matong Drive dwellings and emergency vehicles.

15 The provision of an additional 31 dwellings into the market could possibly result in a lower priced option for some buyers or increased rental supply of housing. In this regard the proposed multi dwelling housing is considered to be in the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

25 The existing ET entitlement for this property is:

- **5.80 ET** for Water & Bulk Water; and
- **5.00 ET** for Sewer.

30 This development generates an additional load onto Councils Water, Bulk Water and Sewer System

Council requires Payment of Developer Servicing Charges of:

Stage 1

- **0.60 ET** for Water & Bulk Water; and
- **3.00 ET** for Sewer.

Stage 2

- **6.40 ET** for Water & Bulk Water; and
- **8.00 ET** for Sewer.

Stage 3

- **7.20 ET** for Water & Bulk Water; and
- **9.00 ET** for Sewer.

Stage 4

- **4.80 ET** for Water & Bulk Water; and
 - **6.00 ET** for Sewer.
- (refer to ET assessment report #A2015/15511)

4.2 Section 94 Contributions

(S94 assessment#E2015/49936) - Credits should be allocated at the first (dwelling construction), stage.

Credits

Lot 954 DP 241073	1
Lot 12 DP 1128095	Nil already used in DA 10.2014.757.1
Lot 9 DP 1046566	1
Lot 892 DP 241810	1
Lot 893 DP 241810	1
Lot 944 DP 241810	Nil Public Reserve

Developer Contributions to be paid for Stage 2 (8 Townhouses)

Section 94 contributions Schedule for 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 =		8	@	1 SDU	=	8
Allotments =		0	@	1	=	0
Less Site Credits =		4	@	-1	=	-4
Total SDU					=	4
Schedule valid until		24/10/2015		After this date contact Council for CPI update.		
Local Open Space & Recreation	(OS-OS)	4.00	SDU @	\$ 1,632.24	=	\$ 6,528.96
LGA Wide Open Space & Recreation	(OS-SW)	4.00	SDU @	\$ 706.51	=	\$ 2,826.04
LGA wide Community Facilities	(CF-SW)	4.00	SDU @	\$ 1,034.77	=	\$ 4,139.08
Local Community Facilities	(CF-OS)	4.00	SDU @	\$ 1,409.27	=	\$ 5,637.08
Bikeways & Footpaths	(CW-OS)	4.00	SDU @	\$ 445.02	=	\$ 1,780.08
Shire Wide Bikeways & Footpaths	(CW-SW)	4.00	SDU @	\$ 75.90	=	\$ 303.60
Urban Roads	(R-OS)	4.00	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	4.00	SDU @	\$ 213.79	=	\$ 855.16
Rural Roads	#N/A	4.00	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	4.00	SDU @	\$ 1,068.66	=	\$ 4,274.64
Total				\$ 6,586.16	=	\$ 26,344.64

Developer Contributions to be paid for Stage 3 (8 Townhouses)

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

Section 94 contributions Schedule for 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 =		8	@	1 SDU	=	8
Allotments =		0	@	1	=	0
Less Site Credits =		0	@	-1	=	0
Total SDU					=	8
Schedule valid until		24/10/2015	After this date contact Council for CPI update.			
Local Open Space & Recreation	(OS-OS)	8.00	SDU @	\$ 1,632.24	=	\$ 13,057.92
LGA Wide Open Space & Recreation	(OS-SW)	8.00	SDU @	\$ 706.51	=	\$ 5,652.08
LGA wide Community Facilities	(CF-SW)	8.00	SDU @	\$ 1,034.77	=	\$ 8,278.16
Local Community Facilities	(CF-OS)	8.00	SDU @	\$ 1,409.27	=	\$ 11,274.16
Bikeways & Footpaths	(CW-OS)	8.00	SDU @	\$ 445.02	=	\$ 3,560.16
Shire Wide Bikeways & Footpaths	(CW-SW)	8.00	SDU @	\$ 75.90	=	\$ 607.20
Urban Roads	(R-OS)	8.00	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	8.00	SDU @	\$ 213.79	=	\$ 1,710.32
Rural Roads	#N/A	8.00	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	8.00	SDU @	\$ 1,068.66	=	\$ 8,549.28
Total				\$ 6,586.16	=	\$ 52,689.28

Developer Contributions to be paid for Stage 4 (9 Townhouses)

Section 94 contributions Schedule for 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 =		9	@	1 SDU	=	9
Allotments =		0	@	1	=	0
Less Site Credits =		0	@	-1	=	0
Total SDU					=	9
Schedule valid until		24/10/2015	After this date contact Council for CPI update.			
Local Open Space & Recreation	(OS-OS)	9.00	SDU @	\$ 1,632.24	=	\$ 14,690.16
LGA Wide Open Space & Recreation	(OS-SW)	9.00	SDU @	\$ 706.51	=	\$ 6,358.59
LGA wide Community Facilities	(CF-SW)	9.00	SDU @	\$ 1,034.77	=	\$ 9,312.93
Local Community Facilities	(CF-OS)	9.00	SDU @	\$ 1,409.27	=	\$ 12,683.43
Bikeways & Footpaths	(CW-OS)	9.00	SDU @	\$ 445.02	=	\$ 4,005.18
Shire Wide Bikeways & Footpaths	(CW-SW)	9.00	SDU @	\$ 75.90	=	\$ 683.10
Urban Roads	(R-OS)	9.00	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	9.00	SDU @	\$ 213.79	=	\$ 1,924.11
Rural Roads	#N/A	9.00	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	9.00	SDU @	\$ 1,068.66	=	\$ 9,617.94
Total				\$ 6,586.16	=	\$ 59,275.44

Developer Contributions to be paid for Stage 5 (5 Townhouses and Dual Occupancy)

Section 94 contributions Schedule for						
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 =		6	@	1 SDU	=	6
Allotments =		0	@	1	=	0
Less Site Credits =		0	@	-1	=	0
Total SDU					=	6
Schedule valid until		24/10/2015	After this date contact Council for			
			CPI update.			
Local Open Space & Recreation	(OS-OS)	6.00	SDU @	\$ 1,632.24	=	\$ 9,793.44
LGA Wide Open Space & Recreation	(OS-SW)	6.00	SDU @	\$ 706.51	=	\$ 4,239.06
LGA wide Community Facilities	(CF-SW)	6.00	SDU @	\$ 1,034.77	=	\$ 6,208.62
Local Community Facilities	(CF-OS)	6.00	SDU @	\$ 1,409.27	=	\$ 8,455.62
Bikeways & Footpaths	(CW-OS)	6.00	SDU @	\$ 445.02	=	\$ 2,670.12
Shire Wide Bikeways & Footpaths	(CW-SW)	6.00	SDU @	\$ 75.90	=	\$ 455.40
Urban Roads	(R-OS)	6.00	SDU @	\$ -	=	\$ -
LGA Wide Roads	(R-SW)	6.00	SDU @	\$ 213.79	=	\$ 1,282.74
Rural Roads	#N/A	6.00	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	6.00	SDU @	\$ 1,068.66	=	\$ 6,411.96
Total				\$ 6,586.16	=	\$ 39,516.96

5. CONCLUSION

The application seeks development consent for a multi dwelling housing development on several lots of connected land at Kulgun Court & Matong 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 and the proposed development is considered acceptable for approval subject to the recommended conditions of consent.

6. RECOMMENDATION

It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2014.743.1 for a proposed five (5) lots into three (3) lot consolidation, two boundary adjustments, construction and strata subdivision of thirty (30) of multi dwelling houses and a detached dual occupancy over four (4) stages, be granted consent subject to the conditions listed in Attachment 2 (E2015/61982) of this report.

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

Provide Disclosure Statement register details here:

Report No. 13.7 **PLANNING - Section 82A Application to review the refusal of Development Application No. 10.2014.742.1 for a Motel Development at 33 Lawson Street Byron Bay.**

Directorate: Sustainable Environment and Economy
Report Author: Wayne Bertram, Manager Sustainable Development
File No: I2015/1119
Theme: Ecology
 Development and Approvals

Proposal:

Review of Development Application No.	10.2014.742.1
Applicant:	D P Roberts Planning Solutions
Development:	Demolition of existing single-storey motel building. Erection of a three (3) storey motel accommodation building plus two (2) levels of basement parking at 33 Lawson Street, Byron Bay.
Parcel No.:	41820
Location:	LOT: 8 SEC: 8 DP: 758207, 33 Lawson Street BYRON BAY
Date of Refusal:	21 May 2015
Public Exhibition:	13 August 2015 to 26 August 2015
Submissions received:	Nil

Summary:

Council has received a request under Section 82A of the *Environmental Planning and Assessment Act 1979* to review the determination of a Development Application 10.2014.742.1.

Council at its Ordinary Meeting held on 21 May 2015 determined Development Application 10.2014.742.1, by refusal, as per Council resolution 15-215 provided below:

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, Development Application 10.2014.742.1 for demolition of existing single-storey motel building and erection of a three (3) storey motel accommodation building plus two (2) levels of basement parking, be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the height of the proposed building exceeds the maximum height shown for the land on the Height of Buildings Map, contrary to Clause 4.3 of Byron Local Environmental Plan 2014.*
- 2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the floor space ratio of the proposed building exceeds the floor space ratio shown for the land on the Floor Space Ratio Map, contrary to Clause 4.4 of Byron Local Environmental Plan 2014.*
- 3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, an acid sulphate soils management plan (or a preliminary assessment) has not been provided to Council, in accordance with Clause 6.1 of Byron Local Environmental Plan 2014 development consent must not be granted.*
- 4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it has not been demonstrated that the subject land is not contaminated and in accordance with Clause 7 of State Environmental Planning Policy No.55 (Remediation of land). Council must not consent to the carrying out of any development on land unless it has determined whether the land is contaminated or suitable for the purpose.*

5. *Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed height, bulk and scale of the proposed building is likely to have a negative impact on the built environment of the locality.*

6. *Pursuant to 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 possible environmental impacts.* (Dey/Richardson)

An assessment of the amended design and additional information provided with the Section 82A Review Application has been undertaken and it is recommended that Development Application 10.2014.742.1 now be granted as a deferred commencement consent, with conditions as listed Attachment 3 of this report.

NOTE TO COUNCILLORS:

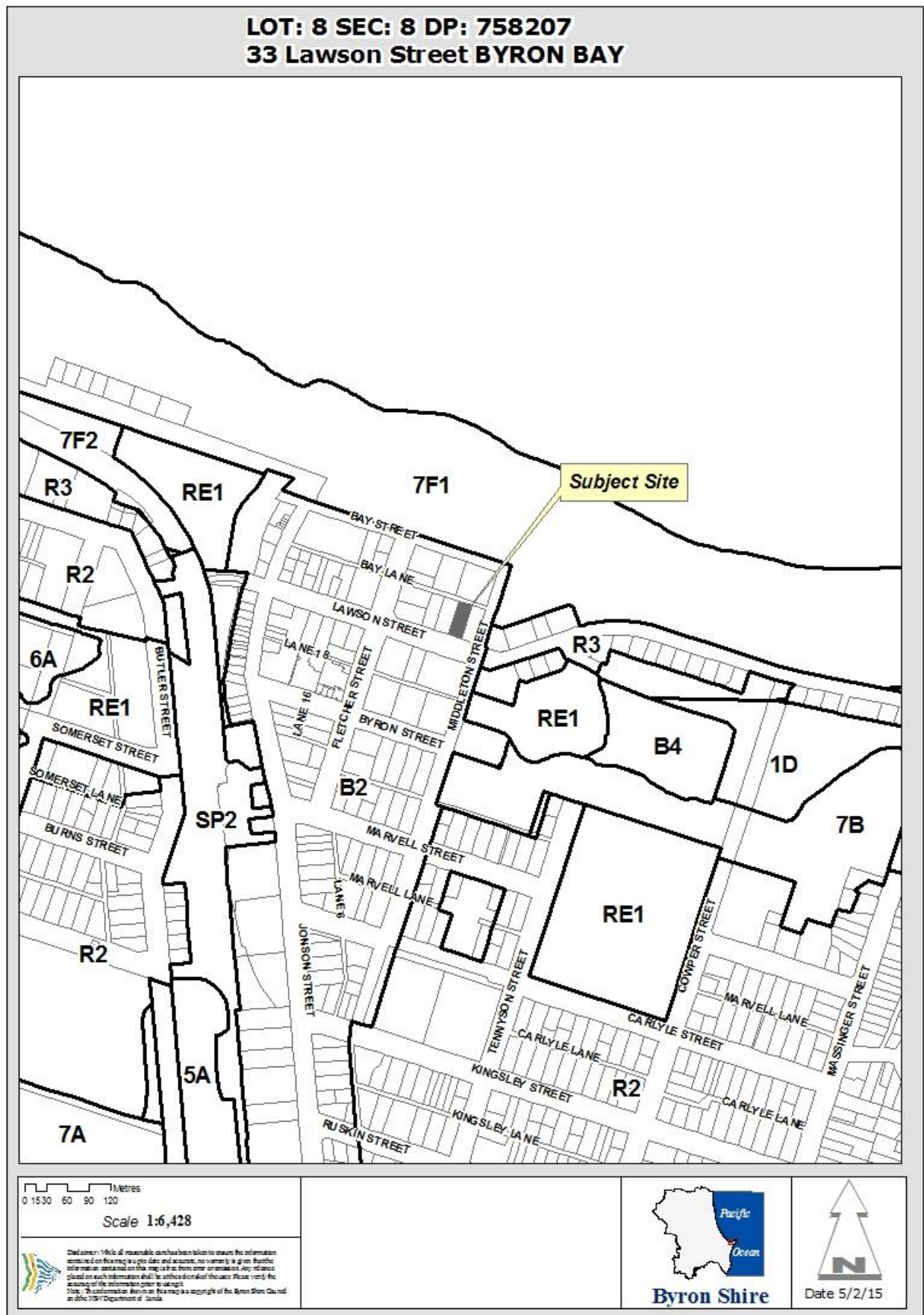
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes 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 No. 10.2014.742.1 for the demolition of existing single-storey motel building and the erection of a three (3) storey motel accommodation building plus two (2) levels of basement parking, be granted deferred commencement consent approval subject to conditions listed in Attachment 3 (E2015/68207) of this report.

Attachments:

- 1 Report to Ordinary meeting of Council 21/5/15, I2015/375
- 2 Proposed Plans S82A Review - DA 10.2014.742.1, E2015/66913
- 3 Draft Conditions of Development Consent - DA 10.2014.742.1, E2015/68207



Report

Council has received a request under Section 82A of the *Environmental Planning and Assessment Act 1979* to review the determination of a Development Application 10.2014.742.1.

The Section 82A Review application was accompanied by amended plans, a new Statement of Environmental Effects, a site contamination assessment and a preliminary dewatering management plan. The most significant amendment made to the proposed development is a reduction in the height of the building from 10.64 metres to 9.9 metres (excluding the lift overrun).

The proposed number of motel units remains the same as originally proposed, being 43 in total. The amended plans submitted showed a reduction in car parking spaces within the proposed basement levels from 47 to 44 spaces. Council's Engineer has previously assessed the development to require a minimum of 46 on-site car parking spaces which was discussed with the applicant and additional amended plans showing the minimum of 46 on-site car parking spaces were subsequently provided.

Following receipt of the Section 82A application, with an amended design and additional information addressing the reasons for refusal of the original development application, the application was publicly notified from the 13 August 2015 to 26 August 2015 with no submission being received.

The following provides an assessment of the proposal having regards to the reasons for refusal listed in the original Notice of Determination:

1. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the height of the proposed building exceeds the maximum height shown for the land on the Height of Buildings Map, contrary to Clause 4.3 of Byron Local Environmental Plan 2014.

The amended proposal has reduced the height of the main roof structure by 740mm to achieve an overall height of 9.9 metres (excluding the lift overrun). The application is accompanied by a request for a variation to the 9.0 metre maximum height of buildings standard under Clause 4.6 of Byron Local Environmental Plan 2014. The following justification is provided:

Comment: Compliance with Clause 4.3 Height of buildings development standard is considered unreasonable and unnecessary in the circumstances of the case, and sufficient environmental planning grounds exist to justify contravening the development standard. The following justification is provided:

- a) The existing 'Waves' building at 35 Lawson Street adjoining the site to the east is 14.14m in height, which is taller than the proposed building.
- b) A recent approval (development application 10.2014.361.1) for alterations and additions to the 'Waves' building allowed for a new building height of 13.03m, which is still taller than the proposed building.
- c) The proposed building is not out of context in the streetscape in terms of height and bulk and scale, and not expected to adversely impact on the character or amenity of the locality.
- d) The design and articulating features of the building, as well as landscaping, provides interest and improves the visual amenity of the building.
- e) The proposal is expected to result in negligible impacts to disruption of views, loss of privacy and loss of solar access, to existing development.
- f) The non-compliance in building height is partially a result of the flood prone nature of the land and required ground floor levels required to achieve compliance.
- g) All feasible avenues have been explored by the client to reduce building height. The current amended proposal is 0.74 less than the original building height proposed as part of refused DA I2015/375. This height has been verbally agreed to by Council staff.
- h) The proposed building height is not more than 10 per cent over the 9 metre building height standard, which therefore represents a minor variation.
- i) The proposal is in the public interest. It will provide additional and improved tourist and visitor accommodation options within proximity to the Byron Bay CBD and beach with negligible impacts on the environment. The benefits to the public include encouraging walking and cycling and reducing dependency on motor vehicles, thus easing road congestion and parking demand in Byron. Other benefits from the proposal include to the local economy, such as to local businesses from visitor spending.
- j) The proposal complies with all other relevant provisions and standards, with the exception of a very minor non-compliance with the Floor Space Ratio (see separately attached Application to vary a standard).

- k) As detailed in the responses above, the proposal is considered to be in the public interest and meet the objectives of the standard and the objectives of Zone B2 Local Centre.

It is accepted that the adjoining development to the east has a height that is significantly greater than the 9.0 metre requirement under Clause 4.3 and that a recent approval has been granted for further additions to this building that are also greater than 9.0 metres in height.

However, with the gazettal of Byron Local Environmental Plan 2014 in July 2014, Council has set the direction for development within this area of Byron Bay. A maximum building height of 9.0 metres has been adopted, irrespective of past approvals in the locality. The Statement of Environmental Effects that was submitted with the Section 82A Review includes a request for a variation to the maximum height of the building. The proposed development is within 10% of compliance with the 9.0 metre requirement (with the exception of the lift overrun) and site constraints such as flooding and topography, necessitate that the lowest habitable floor level is above the existing ground level. With the existing buildings within the street scape and the site constraints being considered, the proposed development would not be out of context in the streetscape in terms of height. It is therefore accepted that the proposed development in terms of height as amended is now considered to be acceptable.

2. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the floor space ratio of the proposed building exceeds the floor space ratio shown for the land on the Floor Space Ratio Map, contrary to Clause 4.4 of Byron Local Environmental Plan 2014.

Byron Local Environmental Plan 2014 prescribes a maximum floor space ratio of 1.3:1 within the subject site. With a site area of 1,013 m², a maximum floor space of 1,316.9 m² is permitted under the Local Environmental Plan. The amended proposal has a gross floor area of 1,338.6 m², which is 21.4 m² greater than that permitted.

The Statement of Environmental Effects that was submitted with the Section 82A Review Application includes a request for a variation to the maximum floor space ratio. The request, made under Clause 4.6 of Byron Local Environmental Plan 2014, provides the following justification:

Comment: Compliance with Clause 4.4 Floor Space Ratio is considered unreasonable and unnecessary in the circumstances of the case, and sufficient environmental planning grounds exist to justify contravening the development standard. The following justification is provided:

- a) The minor variation of 1.6% to the FSR standard will have negligible to no impact on the overall bulk and scale of the development compared to if full compliance was achieved.
- b) The proposal complies with all other relevant provisions and standards, with the exception of a minor non-compliance with the Building Height Standard (see separately attached Application to vary a standard). It is noted that every effort was made to reduce the building height to a level that is mutually satisfactory with the client and Council. This new building height of 9.9m reduces the overall bulk and scale of the development. Building height and FSR standards both control the bulk and scale of development. It is considered, despite the minor variation to both standards, the proposed development is not out of context in the streetscape in terms of bulk and scale, and not expected to adversely impact on the character, amenity and environment of the locality. As noted in the accompanying Application to vary a standard regarding building height, the adjoining property to the east ('Waves') is taller than the proposed building and a recent application was approved by Council allowing a revised building height that will still be taller than the proposed building.

- c) The design and articulating features of the building, as well as landscaping, provides interest and improves the visual amenity of the building.
- d) The proposal is in the public interest. It will provide additional and improved tourist and visitor accommodation options within proximity to the Byron Bay CBD and beach with negligible impacts on the environment. The benefits to the public include encouraging walking and cycling and reducing dependency on motor vehicles, thus easing road congestion and parking demand in Byron. Other benefits from the proposal include to the local economy, such as to local businesses from visitor spending.
- e) As detailed in the responses above, the proposal is considered to be in the public interest and meet the objectives of the standard and the objectives of Zone B2 Local Centre. The relevant objectives are reprinted below:

A review of Byron Local Environmental Plan 2014 confirms that the objectives of Clause 4.4, to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality and to provide floor space in the business and industrial zones adequate for the foreseeable future.

The proposal includes a three storey development (plus two basement levels) containing 43 motel units. If one unit was deleted from the proposal and that floor area converted to a terrace area, whilst the development would then comply with Clause 4.4 of the LEP 2014, little would be achieved in terms of reducing the bulk and scale of the development.

Whilst compliance with the maximum floor space ratio development standard could be achieved, it could also be considered unreasonable and unnecessary due to the minor nature of the variation and the context of the development in the existing streetscape in terms of bulk and scale. It is therefore accepted that the proposed development will not be out of context in the streetscape in terms of bulk and scale and the proposed amended design with a gross floor area of 1,338.6 m² is considered to be acceptable.

3. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, an acid sulphate soils management plan (or a preliminary assessment) has not been provided to Council, in accordance with Clause 6.1 of Byron Local Environmental Plan 2014 development consent must not be granted.

The Applicant has responded to this reason for refusal as follows:

As previously mentioned, a Phase 1 Contamination Assessment and Preliminary Dewatering Management Plan support this application and are included as Attachments D and E.

The Phase 1 Contamination Assessment report concludes that there is a low potential for Acid Sulfate Soils beneath the site, and therefore preparation of a management plan for treatment of excavated soil is not considered necessary. The report does identify that excavation of subsurface for the basement car park construction has the potential to lower the water table and expose Acid Sulfate Soils located beneath neighbouring properties. The Preliminary Dewatering Management Plan expands on this investigation and recommends further assessment be made. It is considered reasonable that any further assessment be required via suitable conditions from Council.

A review of the Phase 1 Contamination Assessment report shows that there is a low potential for the presence of acid sulphate soils beneath the site. However, the proposal does have the potential to lower the water table and expose acid sulphate soils located beneath neighbouring properties. The report recommends that a comprehensive dewatering management plan be prepared to address this constraint.

The amended application does not include a preliminary assessment of the proposed works carried out in accordance with the Acid Sulphate Soils Manual and would be required prior to the

commencement of the development. This is recommended to be undertaken as a deferred commencement condition for this development.

4. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, it has not been demonstrated that the subject land is not contaminated and in accordance with Clause 7 of State Environmental Planning Policy No.55 (Remediation of land). Council must not consent to the carrying out of any development on land unless it has determined whether the land is contaminated or suitable for the purpose.

The Section 82A Review application is accompanied by a Phase 1 Contamination Assessment report which concludes that the site is suitable for residential use after the development is carried out.

5. Pursuant to Section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed height, bulk and scale of the proposed building is likely to have a negative impact on the built environment of the locality.

The proposed building is to be constructed with no setback to the eastern boundary, a 1.2m setback to the western boundary, a 1.0m setback to the rear lane and a 2.5m setback (excluding ground floor terraces) to the Lawson Street frontage.

Byron Development Control Plan 2014 states that tourist accommodation within the B2 Local Centre Zone should be designed to be compatible with the character and amenity of development in the locality. The bulk and scale of the proposal could have been further reduced by stepping the upper floors in from the front, side and rear boundaries. However where Council is satisfied that it is acceptable for the maximum height of the building to 9.9 metres (excluding the lift overrun), and that the variation of the maximum floor space ratio development standard are considered minor nature, the context of the development in the existing streetscape in terms of bulk and scale could also be considered to be acceptable.

It is therefore accepted that the proposed development will not be out of context in the streetscape in terms of height, bulk and scale of the proposed building is unlikely to have a negative impact on the built environment of the locality and is therefore considered to be adequate.

6. Pursuant to 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 possible environmental impacts.

The issue of public interest has been resolved by the amendments are made to the design of the building to be more consistent with the reduced building height, floor space ratio and scale requirements of Byron Local Environmental Plan 2014 and Development Control Plan 2014.

However, the issue relating to acid sulphate soils remains a public interest matter given the likely impacts that will result from dewatering the site. An Acid Sulphate Soils Management Plan prepared in accordance with the Acid Sulphate Soils manual is still required for the development.

Byron Local Environmental Plan 2014 requires such to be provided before development consent is issued. However no submissions were received to the public exhibition of this application and with the changes made to the building design it could now be considered to be in the public interest to support the development application.

RECOMMENDATION:

That pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 10.2014.742.1 for the demolition of existing single-storey motel building and the erection of a three (3) storey motel accommodation building

plus two (2) levels of basement parking, be granted deferred commencement consent approval subject to conditions listed in Attachment 3 (E2015/68207) of this report.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

5

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. 13.8 **Place Activation Plan (Masterplan) for Mullumbimby and Bangalow**
Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2015/1217
Theme: Ecology
 Planning Policy and Natural Environment

Summary:

Council resolved to prepare a masterplan for Mullumbimby. Work on preparing the masterplan is programmed to commence at the completion of the Byron Bay Town Centre Masterplan.

Council conducted a number of targeted stakeholder engagement meetings earlier this year to inform the development of a Development Control Plan (DCP) for the Bangalow Town Centre.

During these meetings the community raised a number of issues that are outside the scope of a DCP; issues that are generally considered in a masterplan.

The NOROC Planners group arranged an action learning two day Place Creation workshop on place making for the Northern Rivers Councils in July this year.

The Queensland Sunshine Coast Council held a Place Creation workshop attended by Council staff, councillors, and community and business representatives to inform the development of the Nambour Activation Plan, which has recently been publicly exhibited.

An Activation Plan is a different, contemporary, simpler and less costly approach to urban revitalisation and activation than the more traditional and costly infrastructure response. The concept is to effect change and influence perception of a place quickly by trialling new ideas and activating the streets with events and creative responses, and to build business and community confidence. These temporary solutions, if successful, may then be the catalyst to inform long term infrastructure investment for more permanent solutions.

This report proposes that Council hold a two day Place Creation Workshop to inform the preparation of Place Activation Plans for both Mullumbimby and Bangalow town centres.

RECOMMENDATION:

- 1. That Council host a two day Place Creation Workshop to inform the preparation of Place Activation Plans for Mullumbimby and Bangalow.**
- 2. That \$40,000 comprised from s94 funds (\$12,000) and existing Development Services budget (\$28,000), to be reported in the December quarterly review, be used for the Place Creation Workshop and development of the Place Activation Plans for Mullumbimby and Bangalow.**

Attachments:

- 1 Draft Nambour Activation Plan and Action Sheets, E2015/64611
- 2 Draft Bangalow DCP - Issues raised during consultation with the Community in May 2015 that are outside the scope of the DCP and could be considered in a Masterplan for Bangalow, E2015/62015

Report

NOROC Planners - Place Creation Workshop, July 2015

Andrew Hammonds from Placefocus conducted an intensive two day Place Creation workshop for planners (from both Council and private consultancies), engineers and Councillors from Lismore, Tweed, Ballina, Byron, Kyogle and Richmond Valley Councils'.

Key sites from six local government areas were used as the basis for the workshop in which the thirty-six attendees worked in groups to explore and discover placemaking and its relationship to urban design for their unique site. The two days were interspersed with theory, on site examples and workshop exercises in which participants worked through a series of questions to understand the nature of their site, what works and what doesn't before arriving at solutions. Participants were required at the end of each exercise to present their findings and the workshop culminated in the development of an action map for each site.

One of the sites chosen for the workshop was the Mullumbimby Civic Precinct, the top end of town including the Council administration building, Council chambers, library, Apex Park and immediate surrounds. Given much of this land is in Council ownership, Council has the ability to trial a number of place activation initiatives in these spaces to test community acceptance. The area is large and is currently underutilised with people entering this space on formal council business or passing through and rarely lingering. The workshop slogan 'don't judge a book by its cover', was intended to get people to see this space not just for civic matters but an area that is welcoming to all, one that inspires learning, innovation, art and creativity (as well as playing on the library's location).

Council is currently reviewing our customer service expectations to improve the way we do business. Reimagining Council can include not only the type of services and how we provide them but reimagining our spaces to make them accessible and inviting; a place to spend time not just for council business.

Some short term simple and quick ideas generated at the workshop included:

- Placing an urn and a few cafe style seats near council chambers on council meeting days for the public to make a cuppa using freshly picked ingredients from the food garden bordering the chambers such as lemongrass tea. This could be done in partnership with the Mullumbimby Food Gardens to raise awareness of growing local food and ways to use produce.
- Spilling the existing Sustainability and Biodiversity Seminar Series out onto the lawn surrounding the council chambers. Many of these events involve the screening of a movie. An outdoor cinema can be set up and patrons encouraged to BYO chair along with the purchase of several bean bags that can be used by day at the Library. This could lead to other outdoor cinema nights run during school holidays by inviting groups to use this space.
- Allowing the Library to spill out into the much underutilised Council Administration building's rear courtyard garden. Patrons could sign out a book or take their laptop and connect to the library's wifi in the outdoors, relaxing on a bean bag or the existing furniture.
- Better use of the awning frontage along Station Street, when seasons and time of day is optimal, to provide spaces for creative markets, pop-up art installations provided in partnership with local artists, 'storybook' trails actively leading young and old on a discovery walk along the footpath to the library door.

Draft Nambour Place Activation Plan, Sunshine Coast Council

The Place Creation workshop was the precursor to the Sunshine Coast Council's Draft Nambour Activation Plan; a different, contemporary, simpler and less costly approach to urban revitalisation and activation than the more traditional and costly infrastructure response. The concept is to effect change and influence perception of a place quickly by trialling new ideas and activating the streets

with events and creative responses, and to build business and community confidence. These temporary solutions, if successful, may then be the catalyst to inform long term infrastructure investment for more permanent solutions.

- 5 The two day place making workshop for the Nambour town centre was attended by Council staff, councillors and community and business representatives. It resulted in the development of the Draft Nambour Activation Plan, recently on exhibition in August 2015, **Attachment 1**.

- 10 The draft Plan is based on an aspirational story of Nambour which is underpinned by ideas and actions (short and long term) to stimulate business, land owner investment and community activities. The Plan sets the framework to allow activities to happen, investment to occur and focuses on five placemaking locations. The Plan is supported by an action sheet that provides greater detail in regard to the types of projects, how these projects may be achieved, and identifies the lead agency. Council's role in the Draft Nambour Activation Plan is that of an 'enabler' and as
15 an 'advocate' for Nambour. The success of the Draft Nambour Activation Plan rests with the local businesses, land owners and the community.

Mullumbimby Masterplan

- 20 Council resolved (Resolution 14-318) to allocate S94 funds to develop a masterplan for Mullumbimby. This came about on the back of the Mullumbimby Big Picture Show that was organised by Creative Mullumbimby and held in the Mullumbimby Civic Hall on 31 May 2014.

- 25 The S94 Contributions Plan allocates \$60,000 to the development of the Mullumbimby Town Centre Masterplan. This comprises approximately \$12,000 developer contributions, with Councils apportionment from existing budgeted staff wages. The S94 plan also attributes funds to implement the masterplan; \$100,000 to footpath, landscaping etc. and \$200,000 to traffic management.

- 30 The development of a masterplan for Mullumbimby is on hold pending the finalisation of the Byron Bay Town Centre Masterplan.

This report recommends that Council prepare an Activation Plan for Mullumbimby.

Bangalow Masterplan

- 35 The need to develop a masterplan for Bangalow has arisen through the development of the Bangalow Town Centre Development Control Plan (DCP). During this process the community have clearly expressed a desire to see a number of issues addressed which fall outside a DCP and would generally be considered through a masterplan process, **Attachment 2**. Some of these issues are longer term issues and to some extent rely on private developers to provide such as
40 caravan park, parking for caravans, housing diversity and retirement village. An Activation Plan is a strategic planning document, supported by Council, state government and the community and by capturing the community's longer term needs it provides a foundation on which further investigations and economic investment can follow.

- 45 This report recommends that Council prepare an Activation Plan for Bangalow.

There are no funds allocated in the S94 plan for the development of an Activation Plan for Bangalow.

- 50 At a recent Council Business Roundtable Meeting, Bangalow representatives mentioned that the 1994 Bangalow Main Street Plan produced for the Bangalow Chamber of Commerce contained recommendations that are still relevant today. Staff are liaising with the Bangalow Roundtable representatives on this Plan to ascertain those matters still of relevance.

55

Activation Plan (Masterplan) for Mullumbimby and Bangalow

It is proposed that a two day Place Creation Workshop be held from which an activation plan similar to Nambour's is produced for both Mullumbimby and Bangalow. It is recommended that the workshop be attended by Council planners, engineers, librarians (Mullumbimby) and park staff, Councillors, and key community and business leaders from Mullumbimby and Bangalow. It is proposed that the workshop be held in Mullumbimby and that during the workshop ideas generated from the July Place Creation Workshop or others be trialled for both workshop attendees and public feedback. See above for some ideas generated at the July workshop.

- 5
- 10 The outcomes of the workshop will be recorded and used to inform the preparation of the Activation Plans. The draft Activation Plans will be reported to Council for consideration and public exhibition.

15 It is proposed that the workshop be run in early 2016.

Financial Implications

The cost to prepare and run a 2 day workshop, test run a place activation initiative and prepare the Activation Plans is approximately \$40,000 to cover consultant and administration costs.

- 20 That \$12,000 from S94 funds and \$28,000 from the existing Development Services budget, to be reported in the December quarterly review, be used to fund the two day Place Creation Workshop and development of the Activation Plans for Mullumbimby and Bangalow.

Statutory and Policy Compliance Implications

- 25 Nil

Report No. 13.9 PLANNING - Rural Land Strategy – Site Suitability Criteria & Mapping Methodology

Directorate: Sustainable Environment and Economy

Report Author: Alex Caras, Senior Planner

File No: I2015/1239

Theme: Ecology
Planning Policy and Natural Environment

Summary:

Council resolved to prepare a Rural Land Use Strategy to provide a strategic framework for the future management and use of rural land. The Strategy is being prepared in five stages. This report presents the outcomes of Stage 2 – ‘Site Suitability Criteria and Mapping Methodology’ for Council’s endorsement. Once endorsed, this will become a key document to inform preparation of the related Stage 2 mapping and Stage 3 – ‘Policy Directions Paper’. Together both of these documents will inform preparation of the draft Rural Land Use Strategy. This report also includes a revised timeline showing key milestones to be met in order for the Strategy to be finalised for Council’s adoption in July 2016.

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:

- 1. That Council endorse the Site Suitability Criteria and Mapping Methodology contained in Attachment 1 to this report, as a key document to inform preparation of the related Stage 2 mapping and Stage 3 – ‘Policy Directions Paper’.**
- 2. That Council commit to achieving the revised milestone deadlines identified in this report to ensure adoption of the Rural Land Use Strategy by end of July 2016.**

Attachments:

- 1 Draft Rural Land Use Strategy - Site Suitability Criteria and Mapping Methodology, E2015/51734
- 2 Form of Special Disclosure of Pecuniary Interest, E2012/2815

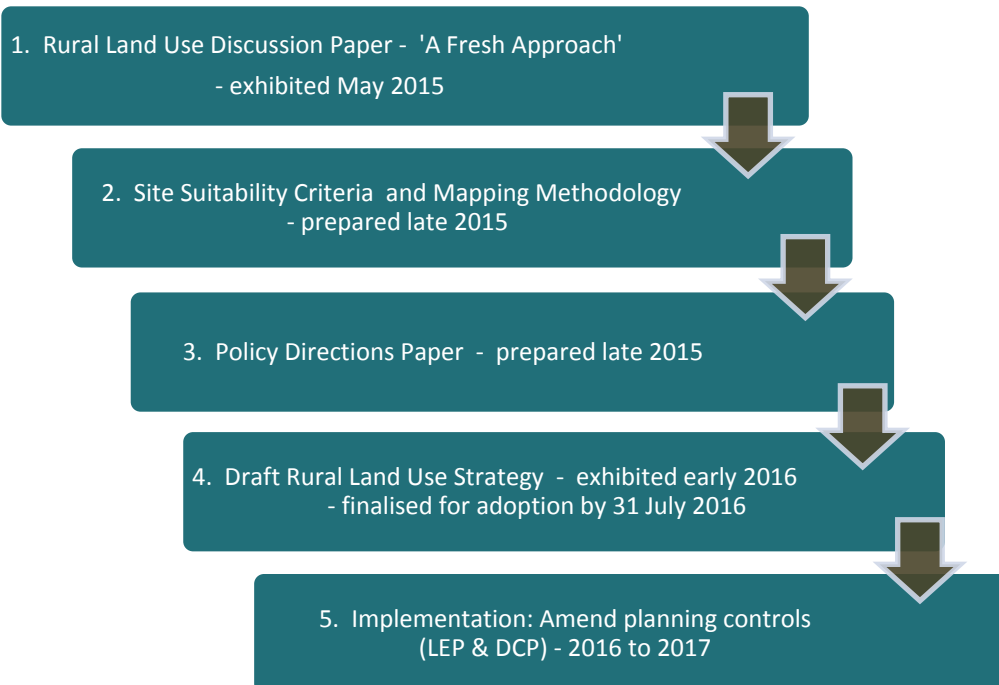
Background

Council at its Ordinary Meeting on 11 June 2015 resolved the following in relation to the Rural Land Use Strategy:

15-286 Resolved:

1. That an amount of \$50,000 be made available to support staff in the progression of the Rural Land Use Strategy, in particular Stage 2 Rural Land Use Opportunities and Constraints Mapping phase and that a report be brought back to Council with the outcomes of stage 2 including site selection criteria and their application.
2. That the project plan and time frames be amended to ensure that the RLUS is completed for adoption by 30 June 2016.

Preparation of a new Rural Land Use Strategy commenced in early 2015 and is being undertaken in the following stages:



This report presents the draft site suitability criteria and mapping methodology relating to Stage 2 above, a copy of which is contained in Attachment '1'. The criteria have been informed by a range of planning sources at the state, regional and/or local level. Once adopted, this framework will inform the preparation of the related Stage 2 mapping and Stage 3 – Policy Directions Paper. Together both of these documents will inform preparation of the draft Rural Land Use Strategy.

Report

The Site Suitability Criteria and Mapping Methodology (SSCMM) provide a framework for determining future rural development potential based on a range of natural resource management, risk avoidance and social/economic servicing criteria. It also identifies future rural development priorities based on service catchment and road infrastructure criteria.

The Department of Planning and Environment are preparing a North Coast Regional Plan to replace the Far North Coast Regional Strategy. In preparing the criteria and mapping methodology,

staff liaised with the Department to ensure that the Rural Land Use Strategy mapping methodology direction is consistent with the policy principles of the working draft North Coast Regional Strategy. The criteria were also informed by other relevant state, regional and/or local planning documents and best practice planning principles.

For purposes of the SSCMM, the term '*future rural development*' includes tourism, conventional rural residential, multiple occupancies, community title or other non-agricultural land uses.

The SSCMM (Attachment '1') will be used to map the following categories of land:

1. Constrained Land

This identifies areas where any of the criteria listed in Table 1 are present. Constrained land will not be considered for *future rural development* as it includes important environmental and resource values and/or presents unacceptable risks. Examples include extreme bushfire risk, steep slopes and certain acid sulphate soils.

2. Assessable Land

This identifies areas not encumbered by any of the Constrained Land criteria in Table 1 but potentially affected by one or more of the criteria listed in Table 2. Assessable Land encompass environmental, economic and risk avoidance criteria which may not necessarily preclude *future rural development* on the land but rather indicate a need for a more detailed site specific investigations to determine the site's full development potential. Examples include biophysical strategic agricultural lands, flood liable land and scenic/visually prominent landscape features.

The Assessable Land criteria are not comprehensive and there may be other matters which need to be taken into consideration to determine a site's development potential.

3. Unconstrained Land

This identifies areas that are neither encumbered by Constrained Land criteria (Table 1) nor affected by Assessable Land criteria (Table 2).

4. Future Rural Development Priorities

This identifies priorities for *future rural development* of Unconstrained Land and Assessable Land using the 'Service Catchment and Road Infrastructure Criteria' in Table 3. This reflects the premise that *future rural development* should be within a reasonable distance of village and town services and be provided with a standard of road access that does not place a financial burden on the wider community. From a service catchment standpoint, priority will be given to land within 2km of a rural village, public primary school, general store or community hall, or 5km of a town containing a high school (Mullumbimby and Byron Bay) as follows:

- Priority 1: Unconstrained Land within a 2km/5km service catchment
- Priority 2: Assessable land within a 2km/5km service catchment
- Priority 3: Unconstrained Land outside 2km/5km service catchments

This is consistent with the service catchment rationale and distances applied in the Byron Rural Settlement Strategy 1998.

In considering *future rural lifestyle living opportunities* (i.e. multiple occupancy; conventional / community title rural residential subdivision) the following road infrastructure criteria has been applied to the above priorities:

- Priority 1 & 2 land — must be capable of providing an acceptable standard of road

infrastructure at no cost to the wider community

Priority 3 land outside 2km/5km service catchments unlikely to be considered for *future rural lifestyle living opportunities* within the timeframe of this Strategy.

5

Key milestones to be met

Council considered the draft SSCMM at its 1 October 2015 Extraordinary Meeting and resolved (15-499) to defer consideration of this matter until the 29 October Ordinary Meeting.

10

Recognising that Council previously resolved (15-286) to finalise the Rural Land Use Strategy for adoption by June 2016, the decision to defer consideration of the draft SSCMM until the 29 October Ordinary Meeting has resulted in the following revised project milestones:

Remaining Strategy stages	Date to enable exhibition by March 2016
Stage 2 - Site Suitability Criteria and Mapping Methodology (SSCMM) endorsed by Council (to inform related mapping and Policy Directions Paper)	29 October 2015 Council Meeting
Stage 2 - SSCMM and Consequential mapping and Stage 3 – Draft Policy Directions Paper adopted for exhibition in March 2016 (with draft Strategy)	10 December 2015 Council Meeting 19 November 2015 Council Meeting
Stage 4 – Draft Rural Land Use Strategy adopted for exhibition – public exhibition – final adoption by Council	February 2016 Council Meeting March – April 2016 July 2016

15

It should be noted the July 2016 adoption deadline is dependant on the exhibition of the draft Strategy commencing no later than mid-March 2016. Any delays to the above revised milestones that prevent this from occurring will push Council's final adoption date to beyond July 2016.

Use of a "Bounce Group"

20

At the 24 September Strategic Planning workshop some councillors suggested using a "bounce group" of rural community and industry representatives to test ideas and provide feedback on the above strategy components prior to formal public exhibition in 2016. It was considered that this could operate similar to the "bounce group" set up as part of the Place making and Master planning work undertaken for the Byron Bay Town Centre. The use of a separate stakeholder focus group was further discussed at the 15 October Strategic Planning workshop and after considering a range of options, staff suggested the following opportunities could be available for this group to provide robust review and input into the draft Strategy process:

25

- after adoption of Stage 3 – Draft Policy Directions Paper on 19 November 2015;
- during Stage 4 public exhibition of Draft Rural Land Use Strategy (March – April 2016)

Targeting the group's involvement to these stages of the Strategy process will best ensure that Council remains on track to meet the (revised) July 2016 adoption target.

Conclusion

- 5 It is recommended that Council endorse the Site Suitability Criteria and Mapping Methodology contained in Attachment '1' as a key document to inform preparation of the related Stage 2 mapping and Stage 3 – Policy Directions Paper. Once preparation of the Stage 2 (both SSCMM and related mapping) and Stage 3 documents is completed, they will be presented to Council to adopt for public exhibition as supporting background material when the draft Rural Land Use Strategy is exhibited. There may be subsequent refinements to the language and format of the SSCMM to improve legibility prior to being exhibited. Such changes would not affect the criteria and mapping methodology adopted by Council.

- 15 It is also recommended that Council commit to the above revised milestones so that the Rural Land Use Strategy can be finalised for adoption by end of July 2016.

Financial Implications

- 20 This is a component of a Council initiated strategy and therefore the administration cost has been met by Council.

Statutory and Policy Compliance Implications

- 25 The Site Suitability Criteria and Mapping Methodology have been informed by the relevant state, regional and/or local planning framework and best practice planning principles.

Report No. 13.10**Directorate:****Report Author:****File No:****Theme:****Adoption of the Scores on Doors program**

Sustainable Environment and Economy

Michael Bingham, Environmental Health Officer

I2015/1241

Ecology

Development Certification

Summary:

This reports seeks Council's adoption of the non statutory Scores on Doors program as part of the food safety compliance program in which Council's Environmental Health Officers inspect some 650 food business throughout Byron Shire annually.

The Scores on Doors program incentivises food safety compliance for food businesses via competitiveness (with other food businesses) and potential reductions in food safety regulatory costs when businesses demonstrate an ongoing 5 star rating.

Introduction of the program to the Byron Shire is considered an important tool in improving food safety standards for locals and tourists that will help sustain our thriving and growing food industry. There are 47 Councils in NSW currently participating in Scores on Doors.

RECOMMENDATION:

1. That Council adopt the "Scores on Doors" food safety compliance program enhancement to promote compliance with hygiene and food safety standards, promote consumer trust in food businesses, to further the reputation and economy of food businesses in the Byron Shire.
2. That the initiative be included in Council's Food Safety compliance service and activity program for 2015/2016.

Attachments:

- 1 Ordinary Meeting 29 October 2015
Attachment 1: Scores on Doors case studies and example Scores on Doors certificate., E2015/65158

Report

The role that food businesses play in the local community is becoming more important, as people's lives get busier and they source their food from outside their home. Food businesses also form an important part of the local economy creating economic activity, employment, bringing people into the area and retaining those who live and work in it by providing reliable meal options.

Council and the community benefit from the local food industry, and rely on food premises and the part they play in the diverse local economy.

At the same time, consumer expectations are on the increase, in particular that:

- food premises have the highest levels of compliance with hygiene and food safety standards,
- consumers are able to have access to official information so they can make their own decision about where they eat, and
- Council activity such as food inspections are not only being done, but consumers have evidence of the results of those inspections.

Council's Environmental Health Officers already undertake food safety inspections to ensure compliance with hygiene and food safety requirements and where necessary, they undertake compliance action. Food premises issued with on-the-spot Penalty Notices may appear on the NSW Food Authority's high profile Name & Shame register.

Program details

Scores on Doors is the NSW state-wide program that displays onsite the results of food premises inspections for hygiene and food safety. The program is focussed on retail food service businesses that process and sell food that is ready-to-eat, intended for immediate consumption, and potentially hazardous if not handled correctly and under the right conditions.

These are the higher risk premises that have the greatest potential to cause food borne illness if food is not handled correctly. These businesses include: restaurants, pub bistros, hotels, cafes, bakeries, clubs, and takeaway outlets.

Scores on Doors is not intended for supermarkets, delicatessens or greengrocers, low risk food premises or businesses that serve pre-packaged food such as service stations and convenience stores or businesses that hold a NSW Food Authority licence and are separately audited such as butchers.

In NSW, this voluntary program was first piloted in 2010 and was then expanded to a trial in 2011-2012. Following feedback from councils and food industry stakeholders a few elements of the program have been enhanced to reduce perceived barriers to participation in the program (for example businesses will no longer be asked to sign a legal agreement to participate).

Importantly, the rating certificate that is displayed carries an explanation of what it represents, a warning about relying solely on the rating and a disclaimer from liability for the Council for any acts by the food business or about the condition of the premises.

At the end of 2013, the program had been taken up by some 25 councils throughout NSW and as at September 2015, 47 NSW Councils were participating and the NSW Food Authority is now working with councils to provide support and increase that number. Food safety programs similar to Scores on Doors are in place to varying degrees in other states and other countries.

Given the number of food businesses in the Byron Shire area eligible to participate (approximately 250 fixed premises and potentially a further 200 market or mobile food premises) and the number of festivals where food is a feature, the Scores on Doors program would greatly assist promotion of the area as a food destination and reliable place to visit and dine out.

How would the Scores on Doors program work in the Byron Shire?

The Scores on Doors program rewards food premises that 'do the right thing by their customers. The program provides food premises throughout the council area with a public incentive to raise standards. Scores in Doors offers the potential that higher standards in food premises could mean fewer compliance issues requiring follow up and fewer consumer complaints. A Food Safety program that includes Scores on Doors will help provide our community with clean and healthy value-for-money food products and services, which positively showcase the many culinary attractions in our shire.

Following Council's existing routine inspections, eligible food premises would receive a hygiene and food safety rating based on points allocated under the Scores on Doors guidelines, akin to a demerit system; the standard Food Premises Assessment Report that Council inspectors use promotes consistency in point's allocation.

NSW Food Authority provides the certificates free of charge to councils for each of the three ratings: Good, Very Good or Excellent; businesses assessed with critical breaches or too many lesser breaches are not awarded any grade or certificate.

Certificates would be sent out shortly after the inspection for those eligible businesses that elect to participate i.e. it is not compulsory to participate in the Score on Doors program. The rating certificate would be displayed on the front window or near the entrance to the premises.

There need be no extra work for Council staff as a result of participating in the program except in the issuing of the certificate (one printed page).

Financial Implications

The Scores on Doors rating and certificate is proposed to be only issued at the time of routine food safety compliance inspection. Council also undertakes reinspections where the primary inspection requires actions to be undertaken that have to be verified via re-inspection that, in some cases, provides a second opportunity to achieve a Scores on Doors rating in that year.

The Scores on Doors program is designed to minimise any impact on Council resources. Council Environmental Health Officers (EHO) already undertake the inspections on which the rating is based using the standard inspection Food Premises Assessment Report (FPAR) checklist. The NSW Food Authority provides the display certificates and EHO can issue the appropriate certificate when the relevant details are overprinted on the certificate which is then dispatched from the office. This would be a minor additional financial cost which will be able to be met within the recurrent budget. i.e. less than \$1000 (printing cost and administration time).

Having businesses participate in Scores on Doors can actually save work for EHO's by increasing the number of high performing businesses in the area and thereby reducing the need for follow-up re-inspections. Councils can also opt for a lower inspection frequency for well performing businesses, creating a further saving as the awareness of food safety culture and compliance within premises increases.

Participation in the Scores on Doors program can reduce regulatory costs for business as recommended by the Independent Pricing and Regulatory Tribunal. It is anticipated that only a small number of business will initially participate, however implementation of the program at other councils has demonstrated that as participation escalates, so does competitiveness and food safety compliance to have businesses be perceived as 5 stars.

Statutory and Policy Compliance Implications

- 5 The Scores on Doors program is a non statutory program that would assist the food safety compliance program of Council which is a statutory requirement. The Scores on Doors program would compliment the existing food safety compliance objectives and policies.

Report No. 13.11 PLANNING 10.2015.196.1 (Redesign of proposed development) at 40 Mullumbimbi Street Brunswick Heads

Directorate: Sustainable Environment and Economy

Report Author: Ian McIntosh, Assessment Officer

File No: I2015/1242

Theme: Ecology
Development and Approvals

Summary:

Council previously considered Development Application 10.2015.196.1 for alterations to an existing dwelling and the erection of a new residential flat building to create eight serviced apartments and a manager's residence, at its Ordinary Meeting on the 17 September 2015. At this meeting Council resolved to defer determination of the application to enable the applicant to consider the redesign of the rear area of the development.

Subsequently, Council staff requested the applicant consider the redesign of the development in accordance with Council Resolution 15-454, and as a result of this request the applicant has amended the application by addressing each of the areas to be considered by the resolution.

It is recommended that Council accepts the redesigned development and grants development consent with conditions, to the amended application.

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 10.2015.196.1 for alterations to a dwelling and erection of a new residential flat building to create eight serviced apartments and manager's residence, be granted consent subject to the amended conditions listed in Attachment 3 (#E2015/49495).

Attachments:

- 1 Letter from Frank Stewart amended plans, Arboricultural Impact Assessment Report, E2015/65292
- 2 Report Ordinary Council 17/9/15 10.2015.196.1, I2015/812
- 3 Amended conditions 10.2015.196.1 40 Mullumbimbi Street Brunswick Heads, E2015/49495

Report

Council previously considered Development Application 10.2015.196.1 for alterations to an existing dwelling and the erection of a new residential flat building to create eight serviced apartments and manager's residence, at its Ordinary Meeting on the 17 September 2015. At this meeting Council resolved:

15-454

1. *That the determination of the development application 10.2015.196.1 be deferred to enable the applicant to consider the redesign of the rear area of the development, including but not limited to:*

- a) *Where Cypress Tree "A" is proposed to be retained – that an arborist report be prepared to provide details of the likely longevity of this tree and chance for survival once the proposed building is constructed.*
- b) *Where the Cypress tree is not proposed to be retained, the relocation of the proposed (Oyster) building 2.8 metres to the east.*
- c) *The relocation of the proposed pool and associated decking to the western side of the proposed walkway and the retention of the existing landscape plantings in the previously proposed pool area. Where appropriate the swimming pool could be removed from the development.*
- d) *The reduction in the height of the rear fence from 1.8 metres to 1.2 metres.*
- e) *Where possible the reduction in height of the car park area so as to reduce the overall height of the building.*
- f) *To reverse the pitch of the roof of the proposed Oyster building so as to reduce the height of the building at the rear lane.*
- g) *Wall treatment to the southern elevation of the proposed (Oyster) building so as to break up the stark nature of the flat walls. (Richardson/Dey)*

Assessment:

In accordance with Council Resolution 15-454, the applicant has submitted new plans and amended the application in an attempt to address all the areas asked to be reconsidered. Specifically the issues have been addressed as follows (in bold print):

a) Where Cypress Tree "A" is proposed to be retained – that an arborist report be prepared to provide details of the likely longevity of this tree and chance for survival once the proposed building is constructed.

Applicant's Response: Please find attached Arborist report from Michael Hallinan of Arbor Ecological recommending removal of Cypress tree.

b) Where the Cypress tree is not proposed to be retained, the relocation of the proposed (Oyster) building 2.8 metres to the east.

Applicant's Response: Arborist report attached recommending removal. The owner wishes to retain the stump of the Cypress tree (to 1.5 metres above ground level) which contains the Native Honey Bees, in its current location.

As such the Oyster building is proposed to be relocated 800mm towards the east. This relocation will increase the west boundary setback to 2.0 metres from the current 1.2 metres. This in turn will increase sun and light into the yard of the property to the west.

Attached are shadow diagrams which demonstrate that substantial sun and light will be available to this area between the hours of 9am and 3pm in Winter (21 June) and Autumn and Spring months

(21 March/September). It is noted that the yard on the adjacent property to the west is currently partly shaded by 2 x 5 metre high trees on this common boundary.

5 Relocating the Oyster building 2.8 metres to the east would have disrupted the flow of movement via the proposed pedestrian walkway between the existing and proposed buildings. Relocating the walkway would also have required removal of existing landscape plants in the 'previously proposed pool area', which has requested in item c) below.

10 *c) The relocation of the proposed pool and associated decking to the western side of the proposed walkway and the retention of the existing landscape plantings in the previously proposed pool area. Where appropriate the swimming pool could be removed from the development.*

15 Applicant's Response: The pool could not be successfully relocated to the western side of the walkway as there is not enough space (5.6 metres) between the two buildings in that area and, if relocated, the pool would be too close to Unit 4 and impact on the amenity of that Unit.

20 As a result, the pool and associated pool fence is proposed to be deleted. A 300mm deep garden pond is to be incorporated into the landscaped garden and deck area. This pond will provide a habitat for Eastern Water Dragons and Blue Tongue Lizards which currently live under the house.

25 The site plan (drawing A1) now includes more information about existing landscape planting to be retained. This shows a total of 12 mature established trees to be kept on site including 4 trees of the 6 in the 'previously proposed pool area.' The trees to be removed from this area are a Mango and an Avocado. Additional planting detailed in the site/landscape plan are to be added to this area to provide additional privacy screening.

d) The reduction in the height of the rear fence from 1.8 metres to 1.2 metres.

30 Applicant's Response: The rear fence height is proposed to be reduced from 1.8 metres to 1.2 metres.

e) Where possible the reduction in height of the car park area so as to reduce the overall height of the building.

35 Applicant's Response: The car park area cannot be reduced in height as Australian Standard AS2890.6 requires 2.5 metres of headroom for an accessible car space. The proposed floor to floor height is 2.7 metres. This allows for 200mm of structural floor.

40 The Level 3 ceiling height in the Oyster building is proposed to be reduced by 100mm to make the total building height 8.9 metres instead of 9.0 metres.

f) To reverse the pitch of the roof of the proposed Oyster building so as to reduce the height of the building at the rear lane.

45 Response: The pitch of the roof of the Oyster building is proposed to be reversed to reduce the height of the proposed Oyster building at the rear lane from 9.0 metres to 8.4 metres.

50 *g) Wall treatment to the southern elevation of the proposed (Oyster) building so as to break up the stark nature of the flat walls.*

Response: The southern elevation of the Oyster building is proposed to be amended by the following:

- The height of the east section of the wall has been reduced from 9.0 metres to 8.4 metres.
- Cladding to the west section has been changed from block work to timber.

- Colour of the east section (rendered block work) has been changed from white to grey.
- Screens, planter boxes & climbing vines have been added to the east section of wall.

5 Attachment A comprises amended drawings A1, A9, A13, A14 issue C and A16 issue B plus model views with details of the proposed amendments & model views showing additional detail of shadows on the yard at 42 Mullumbimbi Street Mullumbimby.

Comment from Planner

- 10 Considering the subject property is within Zone B2 – Local Centre which allows zero side setbacks, and does not require a building height plane and overshadowing assessment, the applicant has responded in a very positive manner to the Council Resolution. It is recommended that Council approve development application 10.2015.196.1 as amended.

Report No. 13.12 **Report of the Planning Review Committee Meeting held on 1 October, 2015**

Directorate: Sustainable Environment and Economy

Report Author: Wayne Bertram, Manager Sustainable Development

File No: I2015/1243

Theme: Ecology
Development and Approvals

Summary:

This report provides the outcome of the Planning Review Committee Meeting held on 1 October, 2015.

RECOMMENDATION:

That the report be noted.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.12

Report:

The meeting commenced at 12.00pm and was then adjourned and reconvened at 2:20pm. The meeting concluded at 2:35pm.

Present: Crs Woods, Dey, Ibrahim, Wanchap, Spooner.
(Cr Wanchap left the meeting for DA 10.2015.376.1).

The following development applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2015.424.1	Byron Shire Council	Bayshore Drive Byron Bay	Installation of bitumen emulsion tank and aggregation bin	Level 1 24/7/15 to 6/8/15 No submissions received.	Delegated Authority
10.2015.376.1	Ardill Payne and Partners	74-78 Bangalow Rd Byron Bay	Partial change of use from hostel/backpackers to health consulting rooms, dwelling and hostel/backpackers.	Level 1 10/7/15 to 23/7/15 No submissions received.	Delegated Authority

As 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	Exhibition Submissions	Reason/s Outcome
10.2013.559.3	Mr A & Mrs J P Hunter	31 Pinegroves Rd Myocum	Section 96 Modification to permit access for light vehicles Saturdays, Sundays and Public Holidays between the hours of 7.00am to 6.00pm for the trial period of 2 years	Level 1 11/9/15 to 24/9/15 3 submissions 4 submissions received after the exhibition period closed.	The number of public submissions. The perceived public significance of the application. Report to Council

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.13

Report No. 13.13 **PLANNING - 26.2015.6.1 Amendment Byron LEP 1988 - West Byron**
Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Senior Planner
File No: I2015/1282
5 **Theme:** Ecology
 Planning Policy and Natural Environment

Summary:

10 The Department of Planning and Environment on the 14 November 2014 amended Byron LEP 1988 by inserting Clauses 65 – 101 into the LEP for the West Byron Development Site. On review of these provisions it is apparent that the new clauses raise a number of issues in terms of the logical development of this area as was intended and the applicant has submitted a Planning
15 Proposal to correct these matters.

20 Two residential zones, the R2 Low Density zone and the R3 Medium Density zone apply to approximately 55 hectares of the site. Clauses 82 and 83 of Byron LEP 1988 permit identical residential densities for various types of housing in both zones including dual occupancies, multi dwelling housing and integrated housing. Potentially, as West Byron develops there will be little distinction between these residential zones. This is a concern not only for Council and the community, but also the land owners. The planning proposal recommends that Clauses 82 and 83 be amended to specifically decrease the potential residential yields in the R2 Low Density Residential zone to provide a clear distinction with the R3 Medium Density Residential zone. This
25 will provide greater clarity for residents, Council and the community where medium density housing can occur in the R2 Zone.

30 A second issue is the ability for the developer to install necessary infrastructure throughout the estate which will necessitate some works in the E2 and E3 Zones. This includes stormwater management, earthworks, water reticulation and sewer reticulation works. The planning proposal recommends that a new clause be inserted into the Byron LEP 1988 to facilitate the installation of necessary urban infrastructure at West Byron.

35 Finally, the provisions for subdivisions on land with split environmental and urban zones requires any residual E2 and E3 Zoned land to be 40 hectares or more. The variation provisions (Clause 85) under Byron LEP 1988 do permit one lot to be less than the minimum area, but with West Byron comprising multiple lots with split zones and multiple land owners, it is considered the variation clause does not contain sufficient flexibility to enable the development of West Byron to occur in a logical manner. In this regard all existing parcels at West Byron that contain land zoned
40 E2 or E3 are substantially less than 40 hectares in area, and any subdivision along zone lines may be construed as prohibited despite the residual environmental area not being fragmented by subdivision. The planning proposal recommends that Clause 85 be amended to address this issue.

45 The Planning Proposal was reported to Council on the 1 October 2015, however the matter was deferred pending a further Councillor Workshop and to allow for further awareness and understanding. A Councillor Workshop was held on the 15 October 2015 as per the Council resolution.

50 This report recommends that the LEP amendments in the attached Planning Proposal be supported and sent to the Department of Planning and Environment for a Gateway Determination.

NOTE TO COUNCILLORS:

55 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.

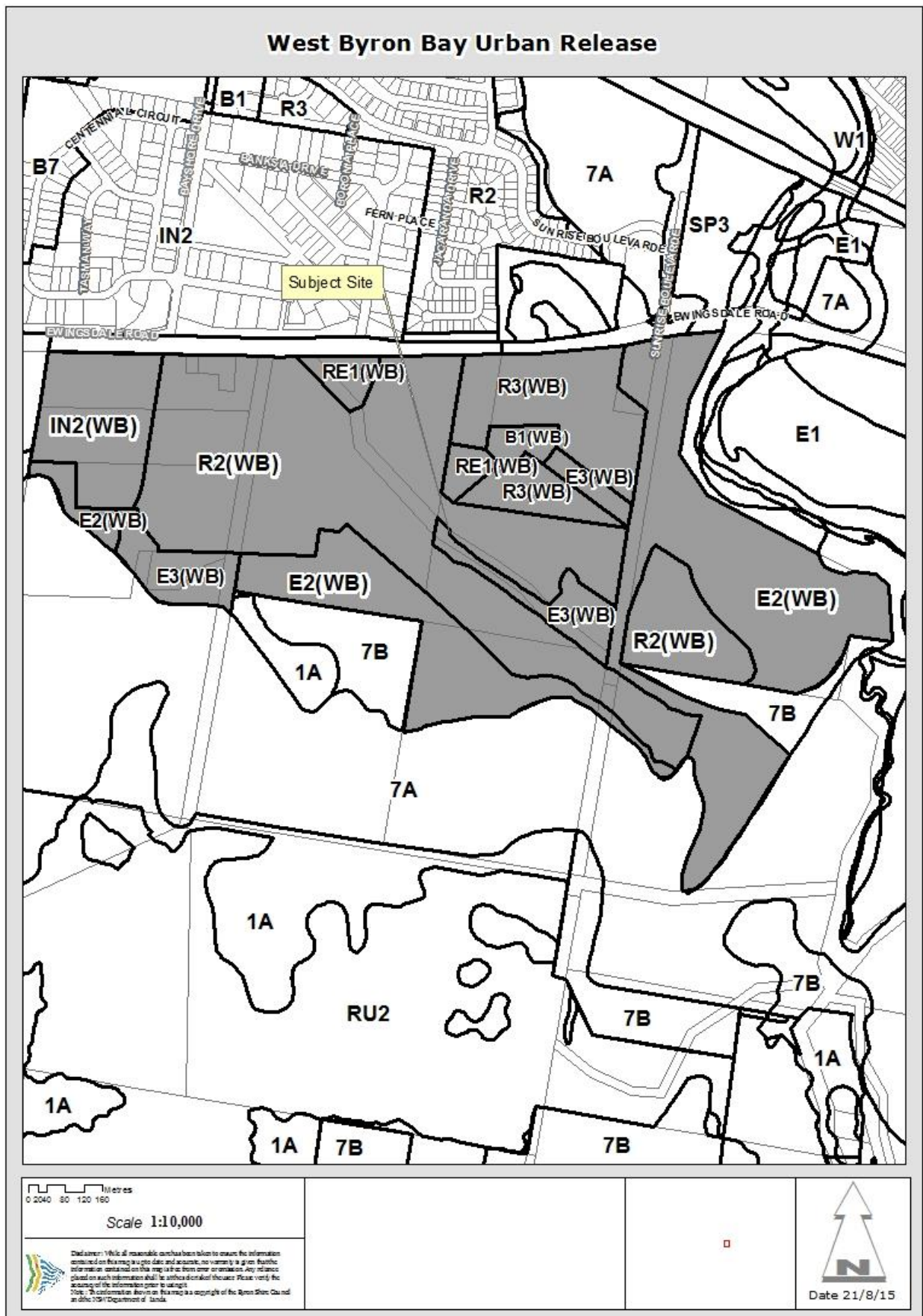
RECOMMENDATION:

- 1. That Council proceed with the planning proposal in Attachment 1 and forward it to the Department of Planning and Environment for a Gateway determination.**
- 2. That Council request the Department of Planning and Environment to delegate to Council the preparation and making of the LEP Amendment.**

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Attachments:

- | | |
|------|---|
| 1 | Draft Planning Proposal - Amendment to Byron LEP 1988 - West Byron Bay, E2015/58967 |
| 2 | Email from Department of Planning & Environment, E2015/55003 |
| 10 3 | Letter from Landowners in support , E2015/47362 |



Report

With the amendments to Byron LEP 1988 for the area of land known as West Byron, two residential zones were applied being the R2 Low Density Residential zone and the R3 Medium Density Residential zone. Clause 81 establishes minimum lot sizes for subdivision being 450m² and 200m² for the R2 and R3 Zones respectively. Clause 82 and 83 also establish minimum lot sizes for various medium density forms and in summary will permit:

Development form	Zoning	Lot size
Dual Occupancy (attached)	R2 and R3	300 m ²
Dual Occupancy (detached)	R2 and R3	400 m ²
Multi Dwelling Housing	R2 and R3	450 m ²
Residential Flat Buildings	R3	1000 m ²
Integrated Housing - Subdivision of land into 3 or more lots and a dwelling erected on each lot	R2 and R3	150 m ² per attached or semi attached dwellings = 450 m ² min for 3 dwellings 200m ² per detached dwellings = 600m ² min for 3 dwellings

The provisions relating to the R3 Medium Density Residential zone are relevant in that one of the objectives of that zone is to “provide a variety of housing within a medium density environment. However the use of the same provisions for the R2 Low Density Residential zone will enable any lot normally created for a single dwelling house of 450m² to be further developed for either dual occupancy, multi dwelling housing or integrated housing. The adopted densities are considered to be at odds with the first objective of the R2 Zone being “to provide for the housing needs of the community within a low density residential environment”. Further as the West Byron Estate is developed it is likely to lead to tension between developers, homeowners, and the community as to the correct scale of development in the R2 Zone.

Mechanisms have been considered as part of the drafting of the West Byron DCP to control these medium density housing forms in the R2 Zone. These include the nomination of lots for these housing types as part of the subdivision and restrictions on title via the Conveyancing Act 1919 preventing other lots not nominated being developed for such housing. Legally though, these controls would be seeking in part to override LEP provisions, which is something a DCP is not permitted to do. Further, the use of the Conveyancing Act is a clumsy mechanism for what is in effect a planning issue and should therefore be resolved through the planning controls.

There is also a concern from the existing landowners as to the final form of the West Byron development after the land has been subdivided and sold. Some in the community have also expressed views that West Byron may harbour upwards of 1500 dwellings or more due to the provisions relating to the R2 Zone. This issue was also raised at the community Workshop on 2 July 2015 with the general density of 1 dwelling/ 150m² being considered as too small.

The planning proposal (Attachment 1) recommends that Clause 82 of Byron LEP 1988 be amended to provide a minimum lot size in the R2 Low Density Residential Zone for dual occupancy (attached) of 600 m², a minimum lot size of Dual Occupancy (detached) of 700 m², a minimum lot size for multi- dwelling housing of 1000 m². As to Clause 83 it is recommended that the density provisions for development in the R2 Low Density Zone be amended to require 1 dwelling house per 300 m² and 1 semi attached or attached dwelling house per 250m².

The amended clauses are shown below with changes notated in red ink.

82 *Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings*

- (1) *The objective of this clause is to achieve planned residential density in certain zones.*
 (2) *Despite clause 81, development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, only if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.*

Column 1	Column 2	Column 3
Dual occupancy (attached)	R2 Low Density Residential R3 Medium Density Residential	300 600 square metres 300 square metres
Dual occupancy (detached)	R2 Low Density Residential R3 Medium Density Residential	400 700 Square metres 400 square metres
Multi dwelling housing	R2 Low Density Residential R3 Medium Density Residential	450 1000 square metres 450 square metres
Residential flat building	R3 Medium Density Residential	1,000 square metres

83 Exceptions to minimum subdivision lot sizes for certain residential development

1. *The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
 2. *This clause applies to development on land in the following zones:*
 a) *Zone R2 Low Density Residential,*
 b) *Zone R3 Medium Density Residential.*
 3. *Development consent may be granted for a single development application for development to which this clause applies that is both of the following:*
 a) *the subdivision of land into 3 or more lots,*
 b) *the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 i) *for the erection of a dwelling house—300 square metres for R2 and 200 square metres for R3;*
 ii) *for the erection of an attached dwelling—250 square metres for R2 and 150 square metres for R3;*
 iii) *for the erection of a semi-detached dwelling—250 square metres for R2 and 150 square metres for R3.*

The lot sizes and densities now proposed under these clauses will still provide for a range of housing types and densities across the R2 Low Density Residential Zone whilst providing a clear differentiation with the R3 Zone of which there is 11 hectares to be developed specifically for small lot housing and medium density development.

Further, as residential land is released at West Byron, it will be more apparent for new residents, Council and the broader community, where in the R2 Zone, from the size of the lots, which land can be developed for densities greater than a single dwelling house. The proposed draft provisions for dual occupancy would ensure a suitable sized lot for two dwelling houses to be sited comfortably on the land, and on a 1000m² site for multi dwelling housing, applicants may, depending on the size of the dwellings, erect three or more dwellings in a strata title or community title arrangement. Under the proposed amendment to Clause 83, integrated housing would be permitted on lots of 750m² or more.

The proposed changes to clauses 82 & 83 are supported by the Byron Bay West Landowners Association (see Attachment 3).

This matter was also referred to the Department of Planning and Environment (DPE) who advised that Council could amend the Byron LEP 1988 provisions for West Byron through the planning

proposal process. (See Attachment 2) The Department advised that they “would expect such an amendment to be relatively minor and generally consistent with the SEPP (West Byron) 2014” (which amended Byron LEP 1988) so that an appropriate lot/ dwelling yield will still be achieved for West Byron.

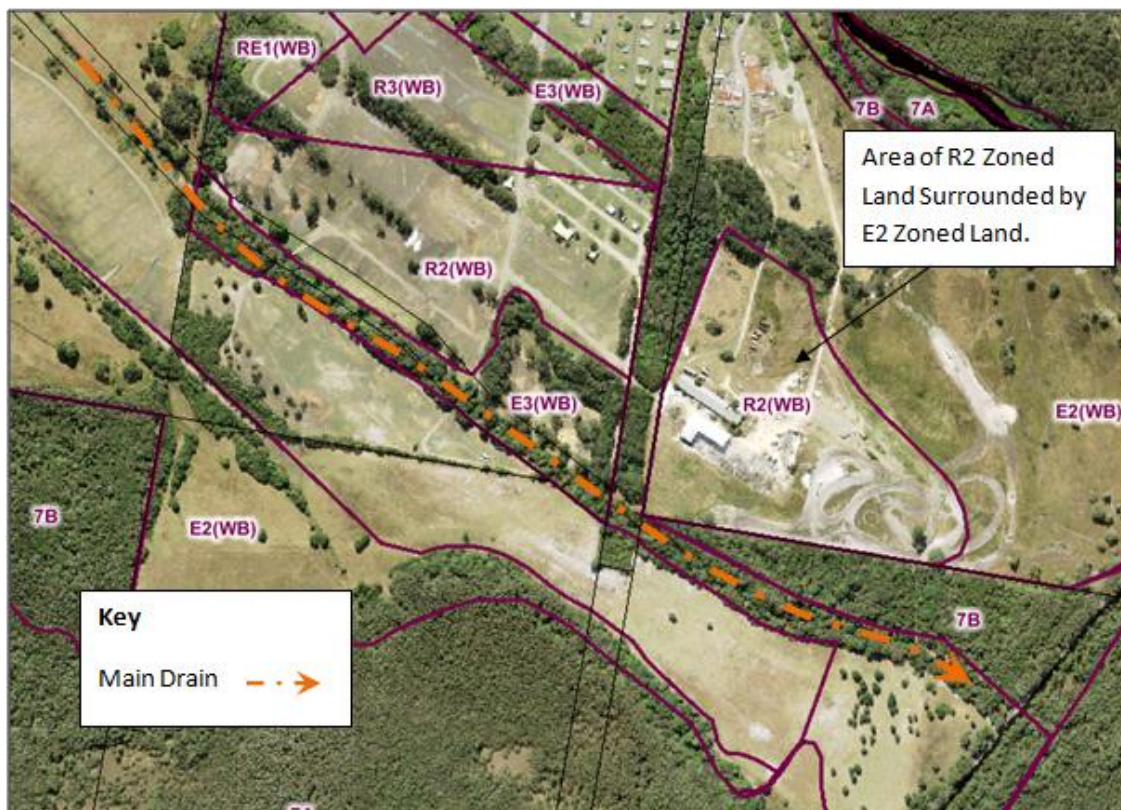
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Other amendments

Infrastructure Provisions

10 The Planning Proposal also seeks to address the permissibility of essential infrastructure and works throughout the estate for stormwater, water, sewage and earthworks. The legality of such works throughout West Byron is questionable due to the way in which the zoning tables and ancillary clauses have been drafted. It is possible such works may be considered ancillary to subdivision or other permissible development; however a question will arise in terms of characterisation where such works cross into an E2 Environmental Conservation zone or E3 Environmental Management zone. These zones apply in part to the main drain running through the site which takes stormwater from the existing industrial estate and Ewingsdale Road through to Belongil Creek. It is highly likely the drain will require some embellishment such as widening and deepening to facilitate the drainage of stormwater from the urban areas of West Byron. It is also likely other drainage works will be required in the E2 Zone to enable the development to drain to a legal point of discharge. It is arguable such works are not permitted in the E2 Environmental Conservation and the E3 Environmental Management Zones.

20



25

Figure 1 – Extract from Council GIS showing Byron LEP 1988 Zone line and the main drain.

This issue is also problematic in part for the section of R2 land in the south east of the West Byron Estate which is surrounded by E2 zoned land (Figure 1) and the legality of providing necessary infrastructure to service that residential area. The above mapping extract shows the Main Drain and the area of residential land surrounded by E2 Zoned land.

30

The following table provides a summary of the permissibility of infrastructure at West Byron under Byron LEP 1988 for the respective zones.

ZONE	Permissibility of Works and Infrastructure				
	ROADS	EARTHWORKS (FILLING)	DRAINAGE(1)	WATER SUPPLY SYSTEMS(2)	SEWER RETICULATION SYSTEMS(3)
B1	PWC*	PWC*	PWC*	Prohibited	PWC*
E2	PWC*	Prohibited	Prohibited	Prohibited	Prohibited
E3	PWC*	Prohibited	Prohibited	Prohibited	Prohibited
IN2	PWC*	PWC*	PWC*	Prohibited	PWC*
R2	PWC*	PWC*	PWC*	Prohibited	PWC*
R3	PWC*	PWC*	PWC*	Prohibited	PWC*
RE1	PWC*	Prohibited	Prohibited	Prohibited	Prohibited

*PWC – Permissible With Consent

Notes:

1. State Environmental Planning Policy (Infrastructure) 2007, at Clause 111(1) and 125(1) permits stormwater management systems, and water reticulation systems by a public authority without consent on any land. Clause 106(3)(b) permits a sewage reticulation system by any person on any land with development consent
2. Water Reticulation Systems are a type of Water Supply System
3. Drainage although defined in the Standard Instrument LEP, is not nominated as a type of development to be included in the Land Use Tables for zones as per Planning Note PN11-003 issued by the Department of Planning dated 10/3/2011. It is therefore characterised as an ancillary type of land use activity and would only be permissible if it's associated with another land use that's permissible in the zone.

A review of State Environmental Planning Policy (Infrastructure) 2007, found that despite the zoning, sewer reticulation systems are permissible on any land with development consent. However stormwater systems and water supply systems/ water reticulation systems are only permissible under the SEPP if the works are carried out by a Public Authority. Although the works will be a requirement of Council and in most circumstances will be dedicated to Council as public infrastructure, they will be completed by the developer to facilitate the private subdivision and development of land. In terms of characterisation, if it was deemed that such works are for a development purpose that was prohibited in the zone (e.g. multi dwelling housing in the E3 Zone) then it may be considered that the infrastructure works are also prohibited in that zone.

One option is to amend the zoning tables to include those land uses in the various zones, like roads, as permissible with consent. The planning proposal however has recommended an enabling clause be inserted into the LEP to allow such infrastructure to be installed with development consent and to remove all ambiguity on this issue. The final wording of any enabling clause would be completed by Parliamentary Counsel prior to the amendment of the LEP, but based on a similar stormwater management clause in the Ballina LEP 2013, the draft clause may read as follows:

Development for the purpose of providing infrastructure in West Byron

- (1) *The objective of this clause is to ensure that any person can carry out development for the purpose of stormwater management system, earthworks, water reticulation system and*

sewage reticulation system on any land.

- (2) *Despite any other provisions of this Plan, development consent may be granted to development for the purpose of earthworks, stormwater management system, water reticulation system and sewage reticulation system on any land.*

Split Zone Subdivisions

A number of properties in West Byron comprise a mixture of urban and environmental zones. The area of land zoned either E2 Environmental Conservation or E3 Environmental Management in these lots range from approximately 0.7ha to 15.4 ha. The minimum lot size provisions specify a minimum area of 40 hectares for these two zones. The variation provisions under Clause 85 of Byron LEP 1988 permit one lot to be less than the minimum area, but with West Byron comprising multiple lots with split zones and multiple land owners, it is considered the variation clause does not contain sufficient flexibility to enable the development of West Byron to occur in a logical manner.

Although the final wording of the amended clause would be up to Parliamentary Counsel, the planning proposal recommends that Clause 85 be amended as follows:

Clause 85(6A)

(6A) Notwithstanding Clause 81 and Clause 85(6), development consent may be granted for a subdivision of land within zones B1, IN2, R2, R3, RE1, E2 and E3 if the area of E2 and E3 zoned land is not fragmented and is contained in one residue lot.

This proposed amendment to the variation clause 85(6A) is appropriate as it will facilitate the subdivision of the urban zoned land provided the areas identified as E2 or E3 are not fragmented and remain in one residue lot.

Extraordinary Council Meeting 1 October 2015

The planning proposal was reported to Council on the 1 October 2015 whereby Council resolved:

1. *That consideration of amending Clause 82 and 83 of Byron LEP 1988 be deferred until the Ordinary Meeting of 29 October 2015 to allow for appropriate community awareness and understanding.*
2. *That Council, in principle, not support the planning proposal concerning Infrastructure Provisions and Split Zone Subdivisions (within Attachment 1).*
3. *That a Councillor workshop be held to discuss matters of infrastructure provisions within E Zones.*

A Councillor Workshop was held on the 15 October 2015 and the details of the planning proposal were discussed in terms of the purpose and outcomes of the residential density clauses, the split zone provisions and the infrastructure clause to enable works in the E Zones.

Conclusion

It is considered the amendments proposed within Planning Proposal (Attachment 1) are relatively minor from a planning administration perspective and are consistent with the planning controls for West Byron under the Byron LEP 1988. It is recommended that Council submit the Planning Proposal to the DPE for a Gateway Determination.

Financial Implications

The costs for proceeding with the planning proposal will be borne by the landowners, as provided for in a 'Cost and Expenses Agreement' under Council's 2015/16 Fees & Charges.

Statutory and Policy Compliance Implications

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The relevant policy considerations specific to the three issues are addressed above and in the attached planning proposal, which has been prepared in accordance with the DPE Guide to Preparing Local Environmental Plans dated April 2013.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.14 **Upgrade of Blindmouth Creek Causeway**
Directorate: Infrastructure Services
Report Author: Phil Warner, Manager Assets and Major Projects
File No: I2015/1277
Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

The purpose of this report is to provide a response to Council on parts 2-4 of Res 15-330 pertaining to the upgrade of Blindmouth Creek causeway on Main Arm road.

RECOMMENDATION:

That the Blindmouth Creek causeway upgrade be designed to a flood immunity (ARI) of 10 years.

Report

The purpose of this report is to provide a response to Council on parts 2 - 4 of resolution 15-330 as follows:

Resolved that Council:

1. When choosing the level of flood immunity for the proposed upgrade to the causeway on Main Arm Road over Blindmouth Creek, include consideration of the actual flood immunity along the rest of Main Arm Road (ie up and down the Brunswick Valley)
2. In particular, calculate the level of flood immunity of the road section near 470 Main Arm Road for that purpose
3. Survey the road section near that location so that flooding impacts can be assessed and upgrade options considered and designed
4. If detailed hydraulic modelling at that location is onerous, a simple relationship be considered whereby gauge height of 2.5m at the nearby government 'Gauging Station' at Sherry Crossing is taken to approximate the "water over road" condition
5. Receive a report on parts 2 to 4 of this resolution
6. Receive a report on options for more modern warning system(s) across the Shire than the current permanent flip-down signing and portable signing like "water over road". The report is to also propose a program for upgrading the Shire's flood signage if and where appropriate.

Survey of the Main Arm Road in the vicinity of Blindmouth Creek was conducted in accordance with Part 3 of the resolution.

Assessment of flood modelling was conducted by consultants BMT WBM to inform Parts 2 and 4 of the resolution.

Analysis of the survey and modelling results suggests that the following table of flood immunity (Average Recurrence Interval - ARI), flow rate, required causeway level increase, and causeway level could be used to inform the scope and design of the project in accordance with the resolution of Council.

Table 1: Flood Immunity Levels for Blindmouth Causeway

ARI (yrs)	Flow rate (m ³ /s)	Required Causeway Level rise (m)	Road CL RL (m AHD)
0.25	9.59	-	30.52
0.3	-	Existing	30.78
0.5	26.01	0.28	31.06
0.75	34.96	0.44	31.22
1	38.83	0.82	31.60
2	59.45	1.17	31.95
5	90.59	1.57	32.35
10	107.57	1.67	32.45
20	130.53	1.82	32.60
50	143.50	1.92	32.70
100	165.50	2.02	32.80

ARI – Average Recurrence Interval
CL – Centre Line

RL – Reduced Level (AHD)

5 The resolution points to a relationship with the downstream flooding of Main Arm Road and the survey of Main Arm Road for 400m in the vicinity of 470 Main Arm Road shows variable height from a lowest level of RL16.9m AHD to a high of RL18m AHD.

10 The survey shows RL.17.12m AHD coincides with the 4m mark on the flood gauge. Thus RL 15.62 m AHD coincides with the 2.5m mark on the flood gauge. The resolution suggests that a correlation exists between 2.5m on the flood gauge and the "water over road" condition on the road in the vicinity of 470 Main Arm Road, which, from the table below appears to be accurate.

15 Consultant BMT WBM has completed flood modelling of the northern coastal waterways, including the Sherrys Bridge area and has supplied the following information.

Table 2: Flood Levels at Main Arm Road

ARI (years)	Flow (RAFTS) (m3/sec)	Flood Level (m AHD)
5	219.1	17.33
10	243.1	17.41
20	386.7	17.94
50	484.7	18.28
100	627.5	18.74

20 In an ARI 5 year flood event, it is estimated that about 120 lineal metres of pavement would be inundated to a maximum of 500mm depth at peak flow.

In an ARI 10 year flood event, it is estimated that about 400 lineal metres of pavement would be inundated to a maximum of 600mm depth at peak flow.

25 It is reasonable to conclude that over the 100 year life of the upgraded Blindmouth Creek causeway, it is conceivable the Main Arm road pavement could be raised such that the road would be trafficable with care in an ARI 10 year flood event.

Sherrys Bridge deck at 19.13m AHD is well clear of ARI 100yrs flood event.

30 It is recommended that the Blindmouth Creek causeway upgrade be designed to an ARI of 10 years.

Financial Implications

35 Council has a 2015/16 budget of \$549,900 for progression of the Blindmouth Creek causeway upgrade.

40 A grant application for the federal government Round 2 Bridge Replacement Program was submitted on 31 August for an ARI 10 year, box culvert, two lane and 50km/hr approaches, estimated at \$1.375M.

Statutory and Policy Compliance Implications

45 In general, design standards call for ARI values of 20 yrs to 100 yrs for bridge upgrades. However, increasing the flood immunity increases the cost and it is reasonable for Council to adopt a lower flood immunity level that reflects the potential improvement in the flood immunity of surrounding, related infrastructure within the lifespan of the proposed upgrade.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES**Report No. 14.1 Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 19 August 2015**

Directorate: Corporate and Community Services
Report Author: Belle Arnold, Aboriginal Projects Officer
File No: I2015/1089
Theme: Society and Culture
Community Development

Summary:

The Arakwal Memorandum of Understanding Advisory Committee met on 19 August 2015 to discuss priority projects, the adoption of a 2015/16 Implementation Plan and other business as raised by staff and committee members.

RECOMMENDATION:

1. That Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 19 August 2015.

2. That Council adopt the following Committee Recommendation:

Report No. 5.1 Arakwal MoU Implementation Plan 2015 -16
File No: I2015/373

Committee Recommendation 5.1.1

That Council endorse the 2015/16 Arakwal MoU Implementation Plan (E2015/50307).

3. That Council adopt the following Committee Recommendation:

Report No. 5.2 Ti Tree Lake Plan of Management
File No: I2015/816

Committee Recommendation 5.2.1

1. That Council note the progress report on the Ti Tree Lake Plan of Management.

2. That Council write to the Office of Environment and Heritage and National Parks and Wildlife Service providing a copy of the progress report (E2015/50137).

4. That Council adopt the following Committee Recommendation:

Report No. 5.3 Bundjalung of Byron Bay, Arakwal People Cemetery Provisions
File No: I2015/817

Committee Recommendation 5.3.1

That the Arakwal MoU Committee seek information from Council staff on the processes required and the scope of works for the Bundjalung of Byron Bay, Arakwal People to have an identified area in the Byron Bay Cemetery for further consideration.

5. That Council adopt the following Committee Recommendation:

Report No. 5.4 NAIDOC Week Byron Shire 2015

File No: I2015/819

Committee Recommendation 5.4.1

That Council note the success of the Byron Shire NAIDOC Week 2015 Program and the increase in the community partnerships involved in the delivery of the program of events.

Attachments:

5

- 1 Minutes of the Arakwal (MoU) Advisory Committee Meeting held on 19 August 2015, I2015/858

Report

The attachment to this report provides the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting of 19 August 2015 for determination by Council.

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The committee recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

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As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 19 August 2015.

Statutory and Policy Compliance Implications

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As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 19 August 2015.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY**Report No. 14.2 Report of the Biodiversity and Sustainability Advisory Committee
Meeting held on 1 October 2015**

Directorate: Sustainable Environment and Economy
Report Author: Sharyn French, Manager Environmental and Economic Planning
File No: I2015/1244
Theme: Ecology
Planning Policy and Natural Environment

Summary:

This report provides the minutes and recommendations of the Biodiversity & Sustainability Advisory Committee meeting held on 1 October 2015 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Biodiversity and Sustainability Advisory Committee Meeting held on 1 October 2015.

2. That Council adopt the following Committee Recommendations:

Report No. 5.1 Biodiversity, revegetation and rural residential living
File No: I2015/838

Committee Recommendation 5.1.1

That the Biodiversity and Sustainability Advisory Committee:

1. note this report.
2. request that Biodiversity and Sustainability Advisory Committee members be considered members on the Rural Land Use Bounce group, if formed.
3. request staff explore the ability to use rural development contributions for biodiversity enhancement works.
4. receive regular updates on the Rural Land Use Strategy by it becoming a regular agenda item for this Committee.
5. support staff exploring landowner incentive options for biodiversity enhancement works at the local property and landscape scale.

3. That Council adopt the following Committee Recommendations:

Report No. 5.2 Event Sustainability
File No: I2015/1104

Committee Recommendation 5.2.1

That the Biodiversity and Sustainability Committee:

1. note the report and provide feedback to Council's Events and Grants Officer.

- 2. encourage further conversations with event providers to facilitate rail based transport to and from the sites.**

Attachments:

5

- 1 Minutes 01/10/2015 Biodiversity and Sustainability Advisory Committee, I2015/1213

Report

- 5 The attachment to this report provides the minutes of the Biodiversity and Sustainability Advisory Committee Meeting of 1 October 2015 for determination by Council. The agenda for the meeting can be found via the following link:

http://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2015/10/BSAC_01102015_AGN_440_AT.PDF

- 10 The committee recommendations 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 1 October 2015.

Statutory and Policy Compliance Implications

- 20 As per the Reports listed within the Biodiversity and Sustainability Advisory Committee Meeting of 1 October 2015.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**Report No. 14.3 Report of the Water, Waste and Sewer Advisory Committee Meeting held on 8 October 2015**

Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2015/1274
Theme: Community Infrastructure
Waste and Recycling Services

Summary:

This report provides the recommendations of the Water, Waste and Sewer Advisory Committee Meeting of 8 October 2015 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Water, Waste and Sewer Advisory Committee Meeting held on 8 October 2015.
2. That Council note the memo E2015/64015 of 1 October 2015 to the Committee and that further expenditure will be needed to achieve approval for an expansion of landfill at Myocum.
3. That Council adopt the following Committee Recommendation:

Report No. 5.1 Update of the CERA Program
File No: I2015/876

Committee Recommendation 5.1.1

That Council note the progress to date with regard to the Community Engagement and Risk Communication Program for On-site Sewage Management.

Attachments:

- 1 Minutes 08/10/2015 Water, Waste and Sewer Advisory Committee, I2015/1112
- 2 Memo Myocum Quarry Landfill , E2015/64015
- 3 Myocum Landfill Leachate Management, E2015/66192
- 4 New Byron Central Hospital Sewer Rising Main Plan, E2015/66183

Report

The attachment to this report provides the minutes of the Water, Waste and Sewer Advisory Committee Meeting of 8 October 2015 for determination by Council.

5

The agenda for this meeting can be found at <http://www.byron.nsw.gov.au/meetings>.

Committee Recommendation

- 10 That Council note the memo E2015/64015 of 1 October 2015 to the Committee and that further expenditure will be needed to achieve approval for an expansion of landfill at Myocum.

Committee Recommendation 5.1.1

- 15 That Council note the progress to date with regard to the Community Engagement and Risk Communication Program for On-site Sewage Management.

The committee recommendations are supported by management and are provided in the attachment to this report.

20 **Financial Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 8 October 2015.

25 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Water, Waste and Sewer Advisory Committee Meeting of 8 October 2015.

QUESTIONS WITH NOTICE

Question with Notice No. 15.1 Construction of the IBAS at Belongil
File No: I2015/945

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Cr Dey asks the following question:

1. Why was the fact that the contractor selected in 2015 to construct the IBAS was prosecuted 4 years ago by Council and put on a 12-month good behaviour bond for breaching the Protection of the Environment Operations Act, not a relevant consideration when assessing and later selecting that contractor?
2. Given that the initial assessment of tenders found the selected contractor's offer deeply flawed, what was the process by which that quote was raised from 'junk status' to being recommended for the project?
3. Why was the same assistance not given to the other contractors who submitted quotes?
4. How confident are we that the selected contractor has the ability and the financial & technical capacity to carry out quality work in an environmentally sensitive (and highly contentious) area of the shire?
5. Are coastal engineer Angus Jackson and his company International Coastal Management of the Gold Coast and Dubai nominated to work on this project? What are their roles and responsibilities?
6. Have the contractor and their subcontractors such as ICM lodged "conflict of interest" disclosures and if not why not?
7. Clause 5.2 of Council's Procurement and Purchasing Policy no 2.6 of December 2010 espouses the Principle of "Fair, Honest and Consistent Dealings", which says:
 - a) Council and Council staff must at all times comply with all statutory obligations and obligations under Council's Code of Conduct, Policies and Procedures.
 - b) Council must not invite tenders without a firm intention and the capacity to proceed with a contract, including having funds available.
 - c) To promote confidence and accountability in Council's procurement systems, Council must ensure:
 - i) There is consistency in all aspects of its purchasing and procurement procedures and practices;
 - ii) That all aspects of its purchasing and procurement procedures and practices are open, clear, transparent, well documented and defensible.

Was the assistance given to the selected contractor to 'get them over the line' consistent with the principles adopted in this Policy?

8. Did this assistance not give the selected contractor an unfair advantage over the other bidding contractors, who were not assisted?
9. Why are the contractors who were asked to quote after an Expression of Interest process not in effect "selected tenders", under Section 55 (4) of the Local Government Act?
10. At Council's Ordinary meeting of 9 October 2014, Council resolved (14-498) that we not call tenders for the beach access stabilisation because of extenuating circumstances including "c) the flexibility of direct contracting". The Resolution argues that the proposed works could be affected by weather and external influences, or in other words there is a high level of risk to

Council.

The contract is for \$1,225,047 (ex GST). Council's budget allocation is \$1,267,000 leaving a contingency for unknowns of \$41,953 or 3.4% of the quote.

As the work is of such high risk and circumstances are extenuating (on the beach front and exposed to the impact of weather and other external influences) the 3.4% contingency is unlikely to cover the final cost. Standard contingencies are usually 10% or 20% but in these circumstances a higher figure would be wise.

Has the high risk of over-run been assessed and, if so, why was contingency not included in the quotation and in the budget allocation?

11. If cost overrun occurs, would not the need to bring a report to Council for additional funding create delays that fly in the face of the extenuating circumstances?
12. Am I right in recalling that the IBAS design was modified at some stage by removal of the apron?
13. Does the design still cover some area of Crown Land?
14. Is that the matter for which Minister for Land's consent was obtained?
15. When was delegation given for staff to sign on Council's behalf the Review of Environmental Factors for the IBAS?

Response Director Infrastructure Services and Coordinator Legal Services:

QWN	Response to QWN
<p>1. Why was the fact that the contractor selected in 2015 to construct the IBAS was prosecuted 4 years ago by Council and put on a 12-month good behaviour bond for breaching the Protection of the Environment Operations Act, not a relevant consideration when assessing and later selecting that contractor?</p>	<p>On 17 March 2010 Council issued a \$5000 penalty infringement notice to Uki Holdings Pty Ltd (trading as Hardings Earthmoving) under Section 143(1) of the Protection of the Environment Operations Act 1997. The offence was in relation to the transportation of waste (soil) to a place that cannot be lawfully used as a waste facility (that being a Crown road reserve located at Tyagarah). The date of the alleged offence was the 30 November 2009.</p> <p>The penalty infringement notice was appealed. At the Byron Bay Local Court on 14 January 2011 Uki Holdings Pty Ltd pleaded guilty to the offence. The offence was found proven but Uki Holdings Pty Ltd was discharged under section 10 of the Crimes (Sentencing Procedure) Act 1999 on entering a good behaviour bond for 12 months. The court also ordered Uki Holdings Pty Ltd to pay Council \$3000 in professional costs.</p> <p>The 12 month good behaviour bond issued was not breached. Section 8 of the Criminal Records Act provides that in the case of a finding that an offence has been proved and discharged conditionally (a bond) the conviction is spent on satisfactory completion of the bond period. The institution and outcome of the 2010 proceedings was not a relevant consideration.</p>
<p>2. Given that the initial assessment of tenders found the selected contractor's offer deeply flawed, what was the process by which that quote was raised from 'junk status' to being recommended for the</p>	<p>Council requested additional information from the contractor, including in relation to methodology, identification of quality assurance protocols and clarification re changed addendums. The provision of the additional information satisfied Council that the contractor had suitable capabilities for the project.</p>

project?	
3. Why was the same assistance not given to the other contractors who submitted quotes?	The same process was applied to all contractors in relation to clarification.
4. How confident are we that the selected contractor has the ability and the financial & technical capacity to carry out quality work in an environmentally sensitive (and highly contentious) area of the shire?	Confident, based on the information provided as part of the quotation process.
5. Are coastal engineer Angus Jackson and his company International Coastal Management of the Gold Coast and Dubai nominated to work on this project? What are their roles and responsibilities?	No, Council has not engaged ICM nor Angus Jackson for this project. ICM are subcontractors of Harding's Earthmoving providing QA and engineering support to the contractor.
6. Have the contractor and their subcontractors such as ICM lodged "conflict of interest" disclosures and if not why not?	Not applicable
7. Clause 5.2 of Council's Procurement and Purchasing Policy no 2.6 of December 2010 espouses the Principle of "Fair, Honest and Consistent Dealings", which says:	The contractor has been financially assessed by Council's Finance Manager. No issues of concern had been identified on the information provided in accordance with the tender process.
a) Council and Council staff must at all times comply with all statutory obligations and obligations under Council's Code of Conduct, Policies and Procedures.	(Clause 5.2 of Council's Procurement and Purchasing Policy does not appear to relate to the question).
b) Council must not invite tenders without a firm intention and the capacity to proceed with a contract, including having funds available.	
c) To promote confidence and accountability in Council's procurement systems, Council must ensure:	

- iii) There is consistency in all aspects of its purchasing and procurement procedures and practices;
- iv) That all aspects of its purchasing and procurement procedures and practices are open, clear, transparent, well documented and defensible.

Was the assistance given to the selected contractor to 'get them over the line' consistent with the principles adopted in this Policy?

The same opportunities to provide information and clarification were available to all potential contractors.

8. Did this assistance not give the selected contractor an unfair advantage over the other bidding contractors, who were not assisted?

No, the requests for additional information and clarification were consistent with normal process to clarify quotations given.

9. Why are the contractors who were asked to quote after an Expression of Interest process not in effect "selected tenders", under Section 55 (4) of the Local Government Act?

No, by Council resolving to utilise the "extenuating Circumstances provision" it stepped out of s55 of the LGA. Therefore this was not a tender or EOI, but a quotation.

10. At Council's Ordinary meeting of 9 October 2014, Council resolved (14-498) that we not call tenders for the beach access stabilisation because of extenuating circumstances including "c) the flexibility of direct contracting". The Resolution argues that the proposed works could be affected by weather and external influences, or in other words there is a high level of risk to Council.

The purpose of the report to the 21 May 2015 Ordinary Meeting was for Council to consider the quotations as they were above the then existing budget allocation, which meant that the General Manager did not have delegation to appoint the contractor. The report provided Council advice on the quotations submitted and allowed Council to both consider a) allocation of further funds and b) the appointment of a contractor.

There is always a risk with any contract that issues may arise that cause variations in price that exceed the allocated budget.

If this occurs Council will be informed of the variations and requested to allocate additional funds if required.

The contract is for \$1,225,047 (ex GST). Council's budget allocation is \$1,267,000 leaving a contingency for unknowns of \$41,953 or 3.4% of the quote.

As the work is of such high risk and circumstances are extenuating (on the beach front and exposed to the impact of weather and other external influences) the 3.4% contingency is unlikely to cover the final cost. Standard contingencies are usually 10% or 20% but in these circumstances a higher figure would be wise.

Has the high risk of overrun been assessed and, if so, why was contingency not included in the quotation and in the budget allocation?

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| <p>11. If cost overrun occurs, would not the need to bring a report to Council for additional funding create delays that fly in the face of the extenuating circumstances?</p> | <p>If this occurs Council will be informed of the variations and requested to allocate additional funds if required.</p> |
| <p>12. Am I right in recalling that the IBAS design was modified at some stage by removal of the apron?</p> | <p>The design is still in accordance with the approved REF from 19 December 2013.</p> |
| <p>13. Does the design still cover some area of Crown Land?</p> | <p>The design is still in accordance with the approved REF from 19 December 2013.</p> |
| <p>14. Is that the matter for which Minister for Land's consent was obtained?</p> | <p>Council received concurrence for the proposed IBAS works under s38 of the Coastal Protection Act 1979 from the Minister for the Environment on 25 November 2013.</p> |
| <p>15. When was delegation given for staff to sign on Council's behalf the Review of Environmental Factors for the IBAS?</p> | <p>The final signed REF was in accordance with Council resolution of 19 December 2013</p> |

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.1 CONFIDENTIAL - 2014-0028 Decommissioning and decontamination of Brunswick Heads STP - Environmental Assessments

Directorate: Infrastructure Services
Report Author: Nikki Bourke, Capital Projects Officer
File No: I2015/1275
Theme: Community Infrastructure
 Projects and Commercial Opportunities

Summary:

On 13 July 2015 the General Manager provided authorisation to prepare and advertise tenders for the Preliminary Site Investigation, Detailed Environmental Site Assessment, Remediation Action Plan and Site Validation Report for Stage 1 Works for the decontamination of Brunswick Heads STP (signed memorandum: E2015/45542).

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

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report 2014-0028 Decommissioning and decontamination of Brunswick Heads STP - Environmental Assessments.
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
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:

Commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.

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 Annexures to the report, 2014-0028 Decommissioning and decontamination of Brunswick Heads STP - Environmental Assessments 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.
2. That Council adopt the recommendation set out on the final page of the Report.

Report No. 16.2 CONFIDENTIAL - Environmental Works Lot 12 Bayshore Drive Byron Bay

Directorate: Infrastructure Services

Report Author: Phil Warner, Manager Assets and Major Projects

File No: I2015/1278

Theme: Community Infrastructure Projects and Commercial Opportunities

Summary:

Tenders were called for environmental works at Lot 12 Bayshore Drive, Byron Bay.

Council has a 2015/16 budget for these works and the overall restoration of this property.

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

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Environmental Works Lot 12 Bayshore Drive Byron Bay .
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
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:

Commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.

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 Annexures to the report, Environmental Works Lot 12 Bayshore Drive Byron Bay 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.
2. That Council adopt the recommendation set out on the final page of the Report.