



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 10 December 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.

A handwritten signature in black ink, appearing to read "Ken Gainger", enclosed in a white rectangular box.

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

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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)
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Infrastructure Services

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15. QUESTIONS WITH NOTICE

Nil

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 Coastal Hazard Management Study Byron Bay
Embayment (Resolution 15-593)
5 File No: I2015/1469

We move that Council rescind Resolution Nos. 15-593 from its Ordinary meeting held on 19 November 2015 which reads as follows:

15-593 Resolved:

1. *That Council notes:*

- a) *version 5 "Coastal Hazard Management Study Byron Bay Embayment" submitted in November 2015 by Council's consultants at the Water Research Laboratory of the University of NSW and the incompleteness of Stage 3 investigations for Sand Nourishment.*
- b) *Office of Environment and Heritage comments in its letter of 18/8/15 (E2015/53385; page 458 of today's Agenda) including the need for further investigations if an "adaptive management approach" is adopted, especially the need to investigate the Dedication of an appropriate long-term sand nourishment source.*
- c) *Office of Environment and Heritage comments in its letter of 28/10/15 (E2015/72885; page 463 of today's Agenda) on the Cost Benefit Analysis where OEH found after correcting errors and assumptions that the ranking of options changed and that Planned Retreat has become the top performing option.*
- d) *DPI Crown Lands comments of 16/10/15 (E2015/72888; page 468 of today's Agenda).*
- e) *Rob Stokes Minister of Planning letter of 19/10/15 on the Draft Coastal Zone Management Plan (S2015/13004; page 476 of today's Agenda) including that Council cannot expend state grant funds for this CZMP after December 2015.*

2. *That Council also notes that as a result of Office of Environment and Heritage comments on 28/10/15 about the Cost Benefit Analysis (CBA; Appendix N of WRL's "Coastal Hazard Management Study Byron Bay Embayment") a workshop will be convened with the objective of reviewing and revising the CBA in a collaborative fashion and that a further Council report will detail the outcome of that workshop, which will include the WRL consultants and their sub-consultants Griffith Centre for Coastal Management plus OEH, Council staff and Councillors. (Cameron/Richardson)*

If successful we intend to move:

- 10 1. That Council notes the Coastal Hazard Management Study Byron Bay Embayment November 2015, as prepared by the consultants at the Water Research Laboratory, University of NSW.
- 15 2. That Council notes that as a result of the Office of Environment and Heritage (OEH) comments on the Cost Benefit Analysis (CBA) at Appendix N of the Coastal Hazard Management Study Byron Bay Embayment, November 2015, a workshop will be convened with the consultants, Water Research Laboratory and Griffith Centre for Coastal

BYRON SHIRE COUNCIL

NOTICES OF MOTION AND RESCISSION

9.1

Management (sub consultant), OEH and Council staff, with the objective of reviewing and revising the CBA, where necessary, in a collaborative fashion, and that a further Council report will detail the outcome of this workshop.

5

10 **Signed: Cr Diane Woods**
Cr Sol Ibrahim
Cr Alan Hunter

Notice of Rescission Motion No. 9.2

Coastal Hazard Management Study Byron Bay
Embayment (Resolution 15-595)

File No:

I2015/1470

5

We move that Council rescind Resolution Nos. 15-595 from its Ordinary meeting held on 19 November 2015 which reads as follows:

15-595 Resolved:

1. ***That Council commission an independent report from a qualified practitioner with experience in coastal morphology that provides a review and explanation of Planned Retreat methodology and options that may be considered in a Coastal Zone Management Plan (CZMP) specifically written to assist community understanding of Planned Retreat options and methodology prior to and during consultation for and consideration of a CZMP and associated documents.***
2. ***That Council undertake appropriate analysis of sand transfer/nourishment methodology, including source of sand, frequency of transfer and costs prior to exhibition of the draft CZMP.***
3. ***That funding for points 1 and 2 above be drawn from the Risk Management Reserve (5013.209) up to \$40,000. (Cameron/Richardson)***

10 Signed: Cr Diane Woods
Cr Sol Ibrahim
Cr Alan Hunter

Notice of Motion No. 9.3 **Byron Central Hospital Staffing and Services**
File No: I2015/1478

I move:

1. **That Council Lobby both the Hon. Jillian Skinner, NSW Health Minister and Hon. Walt Secord, NSW Shadow Minister for Health to express Council's concerns regarding a number of key issues surrounding the opening of the Byron Central Hospital in 2016.**

2. **That Council's concerns include:**
 - a) **The proposed reduction in local health jobs with the opening of the Byron Central Hospital.**

 - b) **The potential loss of local health services including:**
 - **Surgical services**
 - **Allied Health Services**
 - **Speech and Occupational Therapies**
 - **Rehabilitation Services**

 - c) **Express concern over the lack of planning to provide:**
 - **Transportation services to and from the hospital**
 - **Support for local community organisations to deal with an increased number of people living with mental health issues in our community.**

5

Attachments:

- 1 BCH Consultation Paper Final, E2015/77041

10

Councillor's Background Notes:

15

Guarantees provided by the NSW State Government and NSW Health that the opening of the Byron Central Hospital would deliver the same level of health services or better are now known to be false.

Hospital staff being told they would not have to reapply for existing positions is, also, now known to be false.

20

Potential job losses include:

25

- 3 administration staff
- 1 maintenance staff
- 8 nursing staff
- 1 Allied Health Assistant

30

Loosing these positions means that long term residents of our Shire (some with over 25 years at the hospital) will be forced to leave the area to find employment elsewhere. It is not only the hospital jobs we loose it is the families that go with these positions e.g. a local school teacher, a paramedic, community volunteers and school children.

While frontline services will be cut there will be an increase in middle management positions due to the size of the facility (e.g. a new Finance Management position).

The information provided by NSW Health at a recent community forum regarding the facilities to be offered at the Byron Central Hospital included:

- 5
- 14 Emergency Department spaces;
 - 43 overnight inpatient beds;
 - 2 Maternity beds and 1 birthing suite; and
 - 20 bed non-acute inpatient mental health unit

10 It now appears from the recently distributed workforce plan (Attachment: BCH Consultation Paper) that the hospital will open with only enough staff to cover 21 overnight inpatient beds. The total number of beds offered through both Byron Bay and Mullumbimby Hospitals is 32.

15 It is worth noting that the Byron Central Hospital will be the only Level 3 hospital in NSW that does not have a functioning operating theatre.

Recommended priority relative to other Delivery Plan tasks:

20 SC1: Support communities to achieve equitable access to an appropriate range and level of whole of life services such as healthcare, education and housing.

Definition of the project/task:

25 Lobby both the Hon. Jillian Skinner, NSW Health Minister and Hon. Walt Secord, NSW Shadow Minister for Health to express concerns regarding a number of key issues surrounding the opening of the Byron Central Hospital in 2016.

Signed: Cr Paul Spooner

30 **Management Comments by Mark Arnold, Director Corporate and Community Services:**
(Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:

35 The Notice of Motion authorises the lobbying by Council of the NSW Health Minister and the NSW Shadow Minister for Health, by means of verbal or written submissions on the concerns listed in Part 2 (a), 2 (b) and 2 (c) of the Notice of Motion. The concerns relate to a number of issues that could impact on the delivery of health services to the Byron Shire Community following the opening of the Byron Central Hospital in 2016.

40

Director responsible for task implementation:

The Notice of Motion is authorising Council or its delegated representatives, to lobby the NSW Health Minister and the NSW Shadow Minister for Health, in relation to the listed concerns.

45

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

There would be minimal impact on other adopted projects or tasks.

50 Financial and Resource Implications:

The action authorised would be undertaken within existing allocated budgets.

Legal and Policy Implications:

The delegated representatives would include, unless otherwise determined, the Mayor and the General Manager.

5

The adopted Resolution would both authorise the making of verbal or written submissions to the NSW Health Minister and the NSW Shadow Minister for Health, by or on behalf of Council, and would list the concerns of the Council to be included in those submissions.

DELEGATES' REPORTS

Delegate's Report No. 12.1 NSW Coastal Conference (Forster 11-13 November 2015)
File No: I2015/1479

5

It's a great honour to be sent to such a great cauldron of learning by Council and therefore my community. I thank you.

The Conference offers such great learning because the presenters (academics, consultants and Council staffers) truly share what they know and what they don't know. Even the private company people aren't standing up to say come buy my wares. It's a wonderful gathering.

Three streams operated for much of the Conference. One page synopses appear in the *Program & Abstract Book*, that I'm sure would appear on the conference website.

The following reports are on the talks I attended, under the name of the lead author only (see the actual Abstracts for details, also printed in order of lead author). My notes augment the Abstracts by the presenter:

Session 1 – plenary

1. Glenn Handford, GM Great Lakes Council:
 - Water quality Objectives are written into the LEP.
 - Council has a program to buy and restore coastal wetlands.
 - The sequence is planning then on-ground action and followed up by monitoring.
2. Tim Foresman, QUT:
 - Oceans are finite - he showed the volume of the earth's H₂O as a sphere against the size of the planet itself. The ratio was a marble to a soccer ball.
 - Atmosphere is likewise finite, maybe an apricot to a soccer ball.
 - Pivotal Principles include open data.
3. Mike Daniels, The Behavioural Architects:
 - Behavioural Economics. Don't ask people about their behaviour, just observe it.
 - Example of effective advertising for compliance "9 out 10 pay their bill on time".

Session 2

4. Verity Rollason of BMTWBM on beach fluctuations:
 - A wall was built at Merewether Beach after the 1974 event. The beach then accreted but the wall has recently been exposed, with no large events just persistent east and south weather.
 - She challenges the widely accepted rule-of-thumb for 225m³/m sand loss in events.
 - Examples include Kingscliff; and Tathra where the river entrance was washed out and then replaced with 265m³/m from along the same beach.
 - Official Hazard Lines should recognise all erosive processes, not just sea swell.
5. Peter Horton of Royal Haskoning DHV on setbacks based on acceptable risk:

- Design life 60 years adopted. (*Duncan: this is way too short*)
 - Probabilistic hazard lines instead of deterministic.
 - Use the Australian Geomechanics Society procedures for landslip risk management.
 - Examine the consequences for properties: e.g. “minor” damage = up to 10% repair cost. Buildings on pile foundations for example then suffer less damage.
 - Because DAs never lapse, access to the buildings also has to be maintained.
 - This approach overcomes the scenario where a conservative CZMP is then rejected by a pro-development Council. (*Duncan: sound familiar?*)
 - Does NSW need to time-limit DA approvals on the coast?
6. Chris Sharples of Uni of Tasmania on whether SLR is causing stuff already:
- There is variability in responses to erosive forces.
 - Roches Beach was stable 1946 to 1974 then eroded until 2011, without major events.
 - In contrast, North Roches Beach has not eroded.
 - The variability may be due to other factors, like on-going recovery from sand mining.
 - There are also one-way erodible shores, e.g. soft rock such as the Twelve Apostles.
 - Roches Beach is inside a bay that may have net sand loss in the long term.
 - Other factors of climate change may be at work, e.g. increased wind speed (and wind waves).
7. James Carley of WRL (UNSW) on probabilistic hazard lines:
- “Legacy sites” like Belongil versus Greenfield sites, where development may gain approval.
 - A climate scenario isn't a prediction with a likelihood, it is just has feasibility.
 - A Monte Carlo analysis estimates 26m inland movement in 100 years at Avoca Beach. Similarly 24m for Cabarita Beach.
 - The NSW Flood Manual derives annual average damage, on the basis of a full rebuild. Coastal management needs to consider triggers that lead to retreat instead. (*Duncan: I fully agree*)

Session 3

8. Alexandra Macvean of Great Lakes Council on Coastal Risk maps in their LEP:
- Introducing an Integrated Coastal Management (ICM) program.
 - The info should be on the LEP.
9. Gary Blumberg of Royal Haskoning DHV on Woolli Beach:
- Recession measures 0.3 to 0.5m per year, and 0.4m/year in the village.
 - There are 44 houses now threatened. This will rise to 159 at 2100.
10. Michael Kinsela of OEH on complex geomorphology:
- Sediment sharing systems (sources, sinks and pathways).
 - Managing systems, not just beaches.

- The Bruun Rule doesn't consider SLR.

11. Jane Lofthouse of Tweed Council on Kingscliff:

- A seawall was completed in August 2010 and exposed in October 2010.
- May relate to El Nino and La Nina cycles.
- Their sand source is the Tweed River. Cost is \$10/m³ placed.
- The area has 3 precincts, central one with protection but no investment allowed.

12. Symon Walpole of Lake Macquarie Council on the Lake's CZMP:

- CZMP has four parts: A coastline, B estuary, C channel, and then D = 4-year Action Plan.
- 10,000 houses in the inundation hazard area (estuary and channel).

Session 4

13. Amy Dougherty of Uni of Wollongong on beach morphodynamics:

- Understanding beach morphodynamics by examining paleo-beachfaces.
- Ground penetrating radar (GPR) to map the old beach faces – shape due to storm-cut.
- Optically Stimulated Luminescence (OSL) to date beach sediments.
- Extends knowledge in beach behaviour back into times of higher and lower sea levels.
- The Moruya study shows that beach filling since 7,000 years ago, at 0.28m/year.

14. Luke Jeffrey of Southern Cross Uni on acid and CO₂ inputs from groundwater into Cudgen Lake:

- At low flows, acidity is located in the creek of the floodplain.
- Clothiers Creek floodplain is remediated, Reserve Creek is not.

15. Daniel Glove of Greater Taree Council on acid sulphate rehabilitation of Big Swamp:

- The swamp had Pipeclay Creek as inflow and Cattai Creek as outflow then they were joined by Pipeclay Canal in 1905. By 1912 the water was crystal clear but undrinkable.

16. Alexa Troedson of Geological Survey on their new products:

- Coastal Quaternary maps cost \$19.80 each.
- The Seamless Geological data package (our area is in zone 56).

17. Elaine Pearce of Old Bar Beach Sand Replenishment Group on the group's history.

Session 5

18. Emma Johnston of Uni of NSW on Bio-invasion:

- Contaminants reduce biodiversity. Other drivers include loss of habitat.
- Copper as antifouling (TBT also used briefly) and shipping are wiping out native species and introducing replacement species.
- There are great arguments for cleaning up legacy contamination, such as in boat harbours.
- The sediment-water interface is important for nitrogen recycling. DNA testing at \$5/sample can give a current "fingerprint" for an estuary.

19. Panel discussion on the Forster/Tuncurry Embayment:

19.1 Bruce Thom:

- Peter Rays classified estuaries in the 1980s. Then added off-shore sediments.
- The Embayment became a sink for sediment and none travels north of it.

19.2 Peter Cowell:

- The biggest uncertainty is how the seabed will respond to SLR.
- Forster/Tuncurry has preserved its answers for past SLR. The model was able to post-dict that most of its deposition is off the sea floor.
- Sea level has been stable for 6,000 years but the coast is still busy responding to sea level changes of the preceding 20,000 years.
- In some places the seabed will be source and in other sink for sand. Current models are too simplistic in applying one rate for all beaches.

19.3 Michael Kinsela:

- Active shore-face will respond quickly to SLR but off-shore profile needs longer.
- Response speed decreases with water depth so change in coastal seabed shape will take way longer than the century or two of SLR.

19.4 Marc Daley:

- Forster/Tuncurry barrier may continue to pro-grade in on-going response to former sea level changes.
- The continental shelf gets wider towards north of NSW.
- Other locations may change from pro-grade to static or from static to degrade.

Session 6

20. David Rissik of NCCARF on developing a web-based Tool for coastal management.

21. Jane Smith of Community Environment Network on citizen science:

- Monitoring by locals, e.g. Waterwatch, Bugwatch, etc.
- Funding and coordination through Local Land Services.

22. Andrew Staniland of Great Lakes Council on Jimmys Beach at Hawkes Nest:

- The bay faces south-east and headlands focus wave energy on Jimmys.
- 48 houses on beachfront separated by The Boulevard.
- First sand source was sand captured as beach inside the eastern headland. Sand was carried along the beach by scrapers but the source ran out. Second source was an abandoned sand mine with transport by truck; 389 truckloads in one 4-day event; also ran out. Now looking at a new source to the west at the river mouth. This will need sand pumping.
- Big problems are no source identified; definition of "event"; ongoing monitoring; funding.

23. Mark Kulmar of NSW Public Works on Wave Toolbox:

- The toolbox will give wave climate at 100m spacing along the coast at 10m water depth and at 1km spacing for 30m depth.

24. Patrick Lawless of Royal Haskoning DHV on Old Bar sand tracing study:

- 3 houses destroyed in 2008, STP and other assets at risk.
- Reefs offshore affect sand transfer and wave deflection.
- The tracer has SG 2.65 like sand, and similar grain size 125-500µm.

25. Angus Gordon of Coastal Zone Management and Planning on beach scraping:

- Nature Assisted Beach Scraping (NABE) won't stop long term recession. Slows it down.
- Dunes are nature's seawalls.
- NABE-ing from the swash zone accelerates on-shore drift and supports earlier vegetation.
- Machine size and type depends on conditions, e.g. excavator in swash zone, dozer from there.
- It ruins the machine so contractors will want large areas at once.
- Needs to be out of beach season and out of nesting seasons.
- \$140 to \$250 per metre along beach.

Session 7

26. Field trip to Boomerang and Blueys Beaches.

Session 8

27. Rob Stokes Minister for Planning on 2016 coastal legislation:

- NSW coast has 755 beaches.
- Legacy issues around past mistakes at beaches. Avoid them in the future.
- The coast is ambulatory. Enshrining free access to beach.
- There will be a Bill not an Act. The draft is online now via <haveyoursay.nsw.gov.au> until 29 February. There will be consultation and participation.
- Coastal zone will be mapped as four areas: coastal wetlands and rainforests; vulnerable areas; environmental areas; coastal use areas.
- New SEPP replacing SEPP14 coastal wetlands; SEPP26 littoral rainforests; SEPP71 coastal protection; the Infrastructure SEPP where it relates to coast; and the SEPP on canal estates.
- New Coastal Management Manual with Part A mandatory, Part b guidance, Part C toolkit.
- Includes a schedule of coastal compartments - Councils will consult each other.
- Councils will develop Coastal Management Programs, in lieu of CZMPs.
- Councils currently engaged in preparing a CZMP should continue. (*Duncan: this applies to us*)
- By 2021 all CZMPs will cease and CMPs must be in place to replace them.
- Coastal Management will be locked into Integrated Reporting.
- The state will establish a new Coastal Council, external to Government.

- Councils now preparing a CZMP should not stop, they are not expected to start again.

28. Panel and Q&A:

- Clause 5.5 of “standard instrument” is also going across.
- The new system will identify values and aspirations of local community.

Session 9

29. Mingzhu Wang of Macquarie Uni on seawater inundation:

- A powerful GIS tool showing assets and damage due to SLR and storms.
- Mapping layers for 0.5m and 1m inundation, not by “bathtub” approach. It uses knowledge gained from tidal gauge network.
- The tool shows infrastructure and quantifies exposure to risks.

30. William Glamore of WRL (UNSW) on the Hunter River estuary:

- Settled from 1801 then dredging, filling, levees, Kooragang Island 1990, RAMSAR wetlands.
- Good governance and data storage so that each project doesn't have to start from scratch.

31. Michelle Fletcher of BMTWBM on Estuary Management Plan reviews:

- To date most expenditure has been on end of pipe hardware, especially for metro Councils.
- GPTs can do more harm than good if they are not maintained.
- Changes to planning controls are more challenging.

32. J Dela-Cruz but presented by Tim Pritchard of OEH on effect based assessment (EBA):

- Waterway health rather than just reducing inputs to waterways, i.e. determine the impacts.
- Risk analysis per ISO3100 examines likelihood and then consequences on health.

Signed: Cr Duncan Dey

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Section 355 Management Committee - Appointment

Directorate: Corporate and Community Services

5 **Report Author:** Gayle McCallum, Governance Officer

File No: I2015/1385

Theme: Corporate Management
Governance Services

10

Summary:

15 Council has received a request for new membership to the Byron Library Exhibition Space (managing the Lone Goat Gallery) Section 355 Management Committee. An Expression of Interest for Membership has been received.

This report aims to appoint a new member to the Committee.

RECOMMENDATION:

20 **That Council appoint Maureen Lightfoot to the Byron Library Exhibition Space (managing the Lone Goat Gallery) Section 355 Management Committee for this term of Council ending September 2016.**

Attachments:

- 1 Confidential - Expression of Interest from Maureen Lightfoot to Byron Library Exhibition Space
25 (managing the Lone Goat Gallery) Section 355 Management Committee, E2015/73335

Report**Byron Library Exhibition Space (managing the Lone Goat Gallery) Section 355 Management Committee**

5 Council has received a request from the Byron Library Exhibition Space (managing the Lone Goat Gallery) for further members to be appointed to the committee to assist with specific duties such as a public relations officer and assistant Treasurer. Advertisements were placed seeking a Public Relations Officer and the Committee also had a stall at a Byron Community Centre Volunteer Open Day recently held.

10 Current members on this Committee are:

15 Cr Alan Hunter
Margaret White (Chairperson)
Jay Pearse (Vice Chairperson)
Helene Sheean (Curator)
Turiya Bruce (Curator)
20 Prue Regan (Secretary)
Howard Sedgmen (Treasurer)

25 Through the Volunteer open day, the committee invited Maureen Lightfoot to observe meetings of the Committee to ascertain her interests. She has since lodged an Expression of Interest with Council for formal membership to assist the Treasurer on the Committee.

Management Recommendation: The Committee is very conscientious with exhibitions booked solidly throughout 2016. The Committee meets monthly and are presently working on a Strategic Plan for the gallery. It has been recommended that Maureen Lightfoot be appointed to the Committee.

30 Financial Implications

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

Statutory and Policy Compliance Implications

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

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.

45 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. 13.2 **Report of the Public Art Assessment Panel meeting 5 November 2015**
Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Policy Officer
File No: I2015/1390
5 **Theme:** Society and Culture
 Community Development

Summary:

10 A Public Art Assessment Panel meeting was held on 5 November 2015. This report provides the minutes of the meeting. A number of public art items were discussed and the recommendations presented in this report are supported by staff. Some of the items require additional information to be provided to Councillors as part of this report.
15

RECOMMENDATION:

1. **That Council amend the DCP Chapter D8 ‘Public Art’ to include under ‘Prescriptive Measures’ point 2 “*In lieu of providing Public Art, the applicant could enter into a Voluntary Planning Agreement with Council to provide an equivalent financial contribution for the installation of Public Art in a suitable location.*”**
2. **That Council to commission public artwork as per the ‘Briefs’ provided on the following water and sewer infrastructure in the Byron Shire, to be funded from water and sewer budgets:**
 - a) **Brief 1: Water Infrastructure**
 - **Paterson’s Hill Water Tank**
 - **Wategos Water Tank**
 - b) **Brief 2: Sewer Infrastructure**
 - **Several sewerage pump stations (selected locations listed in the report, limited by budget allocation for the 2015/16 financial year)**
3. **That Council accept the temporary loan of ‘The Beast Within’ by Allan Horstmanhoff and allow the sculpture to remain in situ following the Brunswick Nature Sculpture Walk event in October 2015 for up to twelve months.**
4. **That Council accept the temporary loan of ‘Beautiful Nature’ by Jules Hunt and allow the sculpture to remain in situ following the Brunswick Nature Sculpture Walk event in October 2015 for up to twelve months.**
5. **A. That the Public Art Assessment Panel note the presentation provided by ‘Creative Road’ and recommend to Council to support the concept of the beautification proposal for Lawson Lane as one of the initial projects arising from the Byron Bay Town Centre Masterplan for reasons listed below:**
 - a) **It meets many of the objectives of the Public Art Policy and will have excellent outcomes to further public art in the Shire**
 - b) **Is has the potential to be the ‘lighthouse’ project that will provide a benchmark for future public art projects**
 - c) **There are opportunities to provide mentorship for young local artists****B. The Public Art Assessment Panel recommend that Council be a key stakeholder in**

the development and implementation of this proposal.

- 6. That Council support the Brunswick Heads Ten Seat Project by making a donation of \$2,000 to the Tweed Street Taskforce being \$1,000 for the 'Youth Seat' and \$1,000 for the 'Fishing Seat' pending full and final concept designs for both seats.**

Attachments:

- 1 Minutes of Public Art Assessment Panel meeting held 5 November 2015, E2015/72538
5 2 byron_shire_development_control_plan_dcp_2014-part_d_chapter_d8_-_public_art, E2015/73892
3 Brief - call for Expressions of interest from Arakwal artists for indigenous artwork on Byron Shire Water Infrastructure, E2015/70665
4 Call for Expressions of Interest for artistic treatment of Byron Shire Water Infrastructure (Sewer Pump Stations), E2015/70712
10

Report

A Public Art Assessment Panel meeting was held on 5 November 2015. The minutes of the meeting are provided in attachment one.

5 A number of public art items were discussed and the recommendations presented in this report are supported by staff. Some of the items require additional information to be provided to Councillors, as follows:

10 Public Art in new development
The Panel have been involved in discussions with a new developer regarding the public art contribution of the new development according to the DCP 2014 Chapter D8 "Public Art". The Panel have made the following recommendation to Council. The DCP 2014 Chapter for Public Art is included at attachment two for Councillors information.

15 **RECOMMENDATION 5.1:**

20 **That the Public Art Assessment Panel recommend to Council to amend the DCP Chapter D8 'Public Art' to include under 'Prescriptive Measures' point 2 "or make an equivalent contribution to Councils public art budget."**

25 Staff advice is that the wording of such a change would need to include the developer entering into a Voluntary Planning Agreement with Council, which would legally be clearer and satisfy the objectives of D8.2.1 which states "to facilitate the provision of public art through the development process".

Therefore the staff recommendation is:

30 "In lieu of providing Public Art, the applicant could enter into a Voluntary Planning Agreement with Council to provide an equivalent financial contribution for the installation of Public Art in a suitable location."

Public Art on Byron Shire Water Infrastructure

35 The Panel discussed the 'briefs' to be used to advertise for Expressions of Interest in this project and the 'briefs' are included in attachments 3 and 4. The Panel made the following recommendation to Council.

RECOMMENDATION 6.1:

40 **That the Public Art Assessment Panel recommend to Council to commission public artwork as per the 'Briefs' provided on the following water infrastructure in the Byron Shire, to be funded from water and sewer budgets:**

Brief 1: Water Infrastructure

- 45
- **Paterson's Hill Water Tank**
 - **Wategos Water Tank**

Brief 2: Sewer Infrastructure

- 50
- **Several sewerage pump stations (selected locations listed in the report, limited by budget allocation for the 2015/16 financial year)**

Financial Implications

Most recommendations are loans to Council, with the exception of recommendation 6.1 for public art to be installed on Council water and sewer infrastructure. Funds have been identified within

5

Paterson Street Reservoir	\$75,000
Wategos Reservoir	\$25,000
Warrumbool Rd Reservoir	\$25,000
10 Pump Stations	\$20,000

Statutory and Policy Compliance Implications

Public Art Policy

15

Public Art Guidelines and Criteria

Report No. 13.3 **Meeting Dates for Finance Advisory Committee for 2016**
Directorate: Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2015/1397
5 **Theme:** Corporate Management
 Financial Services

Summary:

10 The purpose of this report is to schedule meeting dates for the Finance Advisory Committee for 2016 and to determine the preferred time to commence the meetings.

RECOMMENDATION:

That the following dates be adopted for the Finance Advisory Committee's meetings for 2016 and that the meetings commence at 2.00pm.

- **Thursday, 18 February 2016**
- **Thursday, 12 May 2016**
- **Thursday, 18 August 2016**
- **Thursday, 10 November 2016**

15

Report

Proposed Meeting Schedule and Meeting Time

5 The Constitution for the Finance Advisory Committee's states that the Committee will meet as required.

The Constitution under Section 2 – Objectives states the purpose of the Committee as being to:

- 10 a) assist in the development of draft budgets
b) assist in the format of the annual report, and
c) consider other financial information and matters as they arise”

15 In relation to part c) Council has determined that the Finance Advisory Committee should receive progress reports on the implementation of the Financial Sustainability Project Plan (refer Resolution **13-148**) and the Committee has also requested that the Quarterly Budget Review, be presented to the Committee for its consideration, prior to it being presented to Council.

20 To facilitate the presentation of both these reports to the Committee on a quarterly basis, and to allow for the scheduling of other reports, it is recommended that the Council determine the dates for the required quarterly meetings.

25 Other meetings may need to be scheduled, from time to time, during the year to consider the other matters, such as the development of budgets, along with the development of other plans and policies, required by the Integrated Planning and Reporting Framework.

The following dates have been proposed, based on the Finance Advisory Committee meetings, being one week prior to the Ordinary Meetings, at which Council's quarterly budget review will be reported.

- 30
- Thursday, 18 February 2016
 - Thursday, 12 May 2016
 - 35 • Thursday, 18 August 2016
 - Thursday, 10 November 2016

40 The recommendation also provides for a preferred time to commence the meetings. The recommended time of 2.00pm has been proposed on the basis that all of the proposed dates are the same, as dates proposed for the Internal Audit Committee which commences at 11.00am.

Financial Implications

45 Nil.

Statutory and Policy Compliance Implications

50 The Finance Advisory Committee's Constitution states:

- at section 11 that "Meetings [are] to be held as required."

Report No. 13.4 **Financial Sustainability Plan 2015/16**
Directorate: Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2015/1398
5 **Theme:** Corporate Management
 Financial Services

Summary:

10 Council at its Ordinary meeting held on 9 May 2013 adopted a Financial Sustainability Plan (“FSP”) for the 2013/2014 financial period (refer Resolution **13-238**).

15 This was the initial FSP developed and adopted by Council, and was prepared in accordance with part 3 of Council Resolution **13-148**, to provide a strategic approach to the management of the Financial Sustainability of Council.

20 Resolution **13-148**, adopted by the Strategic Planning Committee, at its meeting held on 28 March 2013, provided the framework for the development the FSP.

25 The FSP provides a means for Council to communicate on the actions and strategies proposed to manage the financial sustainability of the organisation in the short, medium and long term.

30 This report has been prepared to allow Council to consider the third version of the Financial Sustainability Plan for the 2015/2016 financial period.

RECOMMENDATION:

That Council adopt the Draft Financial Sustainability Plan 2015/2016 (#E2015/71097).

Attachments:

30 1 Draft 2015-2016 Financial Sustainability Plan, E2015/71097

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Report

This report has been prepared to allow Council to consider the draft “*Financial Sustainability Plan 2015/2016*” (FSP 2015/2016).

5

The FSP 2015/16 is the third version of the FSP prepared for consideration by Council.

The first version of the FSP, FSP 2013/2014 was adopted by Council on 9 May 2013 via Resolution **13-238**.

10

The second version of the FSP, FSP 2014/15 was adopted by Council on 7 August 2014 via Resolution **14-326**.

15 During the course of the 2014/15 financial year, work on the implementation of the actions detailed in the individual chapters of the 2014/15 FSP was undertaken, with the outcomes progressively reported to the Finance Advisory Committee on a quarterly basis on 22 August 2013, 13 November 2014, 19 February 2015 and 14 May 2015 with the final report for the 2014/15 financial year submitted to the FAC meeting scheduled for 20 August 2015.

20 The FSP 2015/2016 has been developed using a similar format to that of FSP 2014/2015 but has been amended to reflect the actions undertaken and the impact of the outcomes from these actions on the future strategic management of Council’s financial sustainability.

25 The relevant chapters in the FSP 2015/2016 have been prepared to detail what is proposed for the 2015/16 financial year.

The Action Plan is a summary of the actions detailed in the FSPP for the following chapter areas:

- Expenditure Review
- 30 • Revenue Review
- Land Review and Property Development
- Strategic Procurement
- Policy and Decision Making
- Potential Commercial Opportunities
- 35 • Volunteerism
- Collaborations and Partnerships
- Asset Management
- Long Term Financial Planning

40 The Action Plan will be completed and included in the 2015/16 FSP when adopted by Council and will be developed from the Actions included in each Chapter. The Action Plan will then be reported to the FAC each quarter starting with the December quarter.

45 A copy of the draft “*Financial Sustainability Plan 2015/2016*” has been included at Attachment 1 to this report.

Financial Implications

50 The draft “*Financial Sustainability Plan 2015/2016*” forms part of the strategic approach adopted by Council in managing the short, medium long term sustainability of Council. The Plan needs to be considered in context with the adopted annual Operational Plan, the Quarterly Budget Reviews and the Long Term Financial Plan when Council is considering the financial impacts of specific activities, projects and Services. The FSP also includes and considers the strategies set out in the Council’s adopted Council Improvement Plan (“CIP”) submitted in June 2015 to the Office of Local Government.

55

5 Part 2 of Resolution **13-148** requires the General Manager to prepare reports on specific elements of sustainability reform package detailed in the FSP, including any rationalisation of Council's property portfolio and the associated establishment of an Infrastructure Renewal Fund. The Infrastructure Renewal Fund was established by Council by Resolution **13-170** and the terms of operation for this Reserve were adopted by Council on 9 May 2013 via Resolution **13-239**.

10 In accordance with Part 4 of Resolution **13-148** the General Manager will continue to prepare and submit progress reports on the implementation of the draft "*Financial Sustainability Plan 2015/2016*" to the Council's Finance Committee on a quarterly basis.

Statutory and Policy Compliance Implications

15 The FSP has been developed as a tool to assist Council in its ongoing obligations as defined in Section 9 (The Council's charter), Section 8 of the Local Government Act 1993.

Section 8 of the Local Government 1993 provides (in part) that Council as part of its Charter consider the following principles:

- 20
- to exercise community leadership
 - to have regard to the long term and cumulative effects of its decisions
 - to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible
 - to engage in long-term strategic planning on behalf of the local community.

Report No. 13.5 **Report of the Safe Summer in the Bay PRG meeting 12 November 2015**

Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Policy Officer
File No: I2015/1399
Theme: Society and Culture
 Community Development

5

10 **Summary:**

A Safe Summer in the Bay PRG meeting was held on 12 November 2015 and this report provides the minutes of that meeting.

15

RECOMMENDATION:

That Council note the Safe Summer in the Bay PRG minutes from 12 November 2015 meeting.

Attachments:

1 Minutes of the Safe Summer in the Bay PRG 12 November 2015, E2015/74280

20

Report

A Safe Summer in the Bay PRG meeting was held on 12 November 2015. The minutes of the meeting are provided in Attachment 1.

5

Progress against the objectives of the Plan for New Year in Byron Bay 2015 was discussed.

The committee made no recommendations to Council.

10 **Financial Implications**

Council has allocated a budget of \$112,100 for New Year's Eve 2015/16.

15

Statutory and Policy Compliance Implications

Plan for New Year in Byron Bay 2015

Report No. 13.6 **Appointment to the Code of Conduct panel of Conduct Reviewers**
Directorate: Corporate and Community Services
Report Author: Ralph James, Legal Services Coordinator
File No: I2015/1402
5 **Theme:** Corporate Management
 Governance Services

Summary:

10 Since the adoption of the Code of Conduct in 2013, there has been a move away from a mediation emphasis to more of an investigation approach. Many, if not most, of Council's present Conduct Review Panel appointments have strengths in the area of mediation but less so in respect of the area of investigation and assessment and evaluation of evidence.

15 The General Manager and the Code of Conduct Coordinator must consider the nature of alleged breach when selecting a Conduct Reviewer. If the alleged breach involves issues of law or issues of fact these will be factors which will go to the selection of the appropriate Conduct Reviewer.

20 Council currently has only one local panel member, and only one with legal qualifications who is Sydney based. Geographical considerations must also be taken into account not just because of convenience, but also because of cost. If the nature of the alleged breach is likely to involve face-to-face interviews with the complainant and/or Councillor or Council Official, who is the subject of the complaint or any other relevant person geography will be key to selecting the Conduct Reviewer.

25 This report recommends the appointment of an additional panel member, who is both local and who holds the relevant legal qualifications and experience.

RECOMMENDATION:

That Nicolas Harrison be appointed to the Code of Conduct panel of Conduct Reviewers.

30 **Attachments:**

1 Confidential - Curriculum Vitae from Nicolas Antony Preston Harrison, E2015/75344

35

Report

In February 2013, Council adopted via Resolution **13-16**, the Model Code of Conduct and Model Code of Procedures in accordance with Sections 440 and 440AA of the Local Government Act. These came into effect on the 1 March 2013.

“13-16 Resolved that Council:

- 2. *Adopt Policy “Code of Conduct” (#E2013/4326) to commence 1 March 2013, in compliance with s440 of the Local Government Act 1993.*
- 3. *Adopt policy “Procedures for Administration of the Code of Conduct” (E2013/4582) to commence 1 March 2013, in compliance with s440AA of the Local Government 1993 as amended.”*

Appointment Procedure

Council’s Procedures for the Administration of the Council’s Code of Conduct sets out the following process for the appointment of a panel of conduct reviewers:

“The establishment of a panel of conduct reviewers

- 3.1 *The council must by resolution establish a panel of conduct reviewers.*
- 3.2 *The council may by resolution enter into an arrangement with one or more other councils to share a panel of conduct reviewers.*
- 3.3 *The panel of conduct reviewers is to be established following a public expression of interest process.*
- 3.4 *An expression of interest for members of the council’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.*
- 3.5 *To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:*
 - a) *an understanding of local government, and*
 - b) *knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994, and*
 - c) *knowledge and experience of one or more of the following:*
 - i) *investigations, or*
 - ii) *law, or*
 - iii) *public administration, or*
 - iv) *public sector ethics, or*
 - v) *alternative dispute resolution, and*
 - d) *meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.*
- 3.6 *A person is not eligible to be a member of the panel of conduct reviewers if they are:*
 - a) *a councillor, or*
 - b) *a nominee for election as a councillor, or*
 - c) *an administrator, or*
 - d) *an employee of a council, or*

- e) *a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or*
- f) *a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or*
- 5 g) *a person who has a conviction for an indictable offence that is not an expired conviction.*

3.7 *A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.*

3.8 *A panel of conduct reviewers established under this Part is to have a term of up to four years.*

3.9 *The council may terminate the panel of conduct reviewers at any time by resolution.*

3.10 *When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.*

3.11 *A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council."*

Expression of Interest

The Expression of Interest process was coordinated through NOROC and followed the requirements established within the Procedure with Byron, Richmond Valley, Rous and Tweed Councils participating.

Council adopted the NOROC recommended Code of Conduct Panel. The term of appointment of the Panel was 4 years commencing 30 August 2013.

13-417 resolved that Council enter into an arrangement with other NOROC member councils to share a Code of Conduct Review Panel consisting of following Reviewers:

Nominee	Nominee Organisation (if applicable)	Location
Michael L Enders		Woolgoolga
Peter Brown		Baulkham Hills
Bruce Clarke	Allygroup Consulting	Sydney
Emma Broomfield	Locale Consulting	Woolgoolga
Sharon Lee	Complete Community Consulting P/L	Toombul Qld
Mitchell Morley	In Consult	Sydney
Shane White	Pinnacle Integrity	Copacabana
Belinda Nolan	Pinnacle Integrity	Copacabana
Alison Cripps	Cripps Consulting	Lane Cove
Brent James Stephens	Consult HR	Mooloolaba Qld
Kathy Thane	Train Reaction P/L	Balmain
Peter Mulhall	Investigation Associations Aust	Liverpool
Gary Faulks		Ballina
Lloyd Graham		French's Forest
Peta Tumpey	Tress Cox Lawyers	Sydney
Kath Roach	SINC Solutions	Glebe
Joanne Browne		Wavell Heights
Greg Wright	Wright Associates	Picton

Joanne Browne has since resigned from the NOROC panel.

It should be noted that Mr Harrison responded to the NOROC invitation. However Council resolved to only appoint those on the NOROC panel.

Council's approach differed from that of Lismore City Council (LCC) which resolved to include Mr Harrison in addition to resolving to appoint the NOROC panel.

- 5 LCC were guided by their past experience with Mr Harrison in performance of the services of conduct reviewer and by the fact that he was local.

In a public Report LCC stated that Mr Harrison's *"performance has been of a high standard."*

Since 14 April 2009 Mr Harrison has conducted five investigations for Lismore CC. Three related to staff members, one related to a staff member at Executive Level, and one related to a Councillor.

10

The latter matter took over 12 months, involving some 25 complaints.

Mr Harrison possesses investigation skills and experience of the highest order.

- 15 His understanding of local government has been enlarged by his work with community based organisations such as sporting clubs, and has been sharpened by his Code of Conduct work with LCC since May 2009 and by his legal work on instructions from Byron Shire Council since January 2011.

- 20 His forty plus years of experience as a lawyer working with and against the Public Prosecutions Office has given him a sound knowledge of investigative processes, particularly his work with the Police Internal Security Unit investigating crime and corruption within the Police service.

- 25 His knowledge of procedural fairness would have been heightened in his work as a RAAF Legal Officer (2008-12) in the Administrative Law area, and subsequently with LCC on matters involving Public Interest Disclosures.

He has been a member of the Institutes of Public Administration (1976-1984) and Judicial Administration (1982-2004).

- 30 In practical terms, since the adoption of the Code of Conduct in 2013 there has been a move away from a mediation emphasis to more of an investigation approach. Many, if not most, of Council's present appointments have strengths in the area of mediation but less so in respect of the area of investigation.

- 35 The *Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015* commenced on 13 November 2015, introducing a host of changes to the *Local Government Act 1993*.

- 40 The definition of *'misconduct'* of a Councillor in s440F of the Act has been expanded to include *'an act or omission of the Councillor intended by the Councillor to prevent the proper or effective functioning of the council or a committee of the council'*.

Following amendments to s440H, the Chief Executive can now dispense with the requirement to undertake an investigation as a prerequisite to taking disciplinary action against a Councillor for engaging in misconduct if:

- 45
- the matter has been referred by the Council and the Chief Executive is of the opinion that a departmental report may be based on the findings of an investigation carried out by or on behalf of the council, or

- the Chief Executive is of the opinion that the alleged misconduct, if proven, would be minor in nature and any disciplinary action would be comprised only of counseling or reprimanding, or
- the Chief Executive otherwise considers it appropriate to do so.

5 The investigation by or on behalf of a Council will be crucial to a determination made by the Chief Executive.

The quality of that investigation and of the investigation report assumes greater importance in the light of the recent amendments.

10 Whilst investigations can be undertaken as a single conduct reviewer or a panel of three members it is prudent to have a panel of persons who meet the eligibility criteria thus giving Council the ability to choose members from a cross section and to make that choice on a case-by-case basis fitting the members skills to the issues presented.

The General Manager and the Code of Conduct Coordinator must consider the nature of alleged breach when selecting a Conduct Reviewer.

15 If the alleged breach involves legal issues of law or issues of fact these will be factors which will go to the selection of the appropriate Conduct Reviewer.

20 Thus the nature of the alleged breach raises a series of considerations when determining the suitability of a particular Conduct Reviewer.

25 Geographical considerations must also be taken into account not just because of convenience, but also because of cost. If the nature of the alleged breach is likely to involve face-to-face interviews with the complainant and/or Councillor or Council Official, who is the subject of the complaint or any other relevant person geography will be key to selecting the Conduct Reviewer.

At present there is only one local Conduct Reviewer on the panel. If Mr Harrison was appointed to the panel it would double the local representation.

30 **Financial Implications**

As previously stated cost/geographical considerations are relevant in selecting a Conduct Reviewer. The availability of greater access to local Conduct Reviewers will have positive financial impacts.

35 **Statutory and Policy Compliance Implications**

40 In March 2013 Ballina Shire Council advised that it had received written advice from the OLG that it could renew the appointment of its existing panel members as it had previously been through a formal advertising and selection process.

45 Taking that advice further, there would be no impediment to appointing Mr Harrison to Byron Shire Council's panel given that he responded to the same advertised expression of interest process as did those who were ultimately appointed. It would be different if Council was considering the appointment of a person who was not part of the original advertised process.

Report No. 13.7 Crown Lands White Paper - Summary of Issues and Government Response

Directorate: Corporate and Community Services
Report Author: Trish Kirkland, Manager Governance Services
File No: I2015/1468
Theme: Community Infrastructure
Asset Management

5

10 **Summary:**

In October 2015, the NSW Department of Industry, Skills and Regional Development published the NSW Government's summary of issues and their responses to submission received on the Crown Lands Legislation White Paper. This report provides a summary of their responses and recommends that Council note the report.

15

RECOMMENDATION:

That Council note this report.

20

Report

As part of the NSW Government's red tape reduction initiative and updating legislation to improve outcomes, a comprehensive review into the management of Crown land began in June 2012.

- 5 *'The review had the aim of ensuring the best use is made of the State's Crown land assets by improving community outcomes, engaging with the private sector, and revitalising the regions.*

The review examined the overall management of Crown land including legislation, financial management, governance, and business structures.'

- 10 The Crown Lands Management Review was published by NSW Trades and Investment in 2013 and can be found at:

http://www.lpma.nsw.gov.au/_data/assets/pdf_file/0008/196433/Crown_lands_Management_Review_accessible.pdf

In March 2014, NSW Trade and Investment published the Crown Lands Legislation White Paper which called for submission and set out recommendations to:

- 15
- *'create simpler legislation to support Crown land management in the 21st century*
 - *help grow the NSW economy through the more effective management of Crown land*
 - *continue the key objective of managing Crown land for the benefit for the people of NSW*
 - *reduce red tape for the community and stakeholders*
 - *streamline and speed up administration*

20

 - *cement the role of local communities in the management of Crown land.'*

A copy of the Crown Lands Legislation White Paper can be found at:

http://www.lpma.nsw.gov.au/_data/assets/pdf_file/0009/196434/Crown_Lands_White_paper_accessible.pdf

- 25 In October 2015, the NSW Department of Industry, Skills and Regional Development published the NSW Government's summary of issues and their response to submissions received on the Crown Lands Legislation White Paper, refer:

30 http://www.lpma.nsw.gov.au/_data/assets/pdf_file/0004/206680/response-to-crown-lands-legislation-white-paper.pdf

A summary of the NSW Government's response is set out below.

A. New Legislation

- 35 Commons Trusts

Commons Land will become Crown Reserves.

School of Arts

- 40 School of Arts (managed under the School of Arts Enabling Act) will become Crown Reserves.

Values based assessments of Crown Land

The new legislation will explicitly recognise the need to integrate the environmental, social, cultural heritage, and economic considerations for decision making about Crown Land.

- 45 State significant land

State significant land – identified via the State Land Stocktake currently underway – will be retained by the State for the people of NSW.

Draft criteria for establishing State significant land will be applied and tested via the State Land Stocktake process as part of this Review.

5 Where land has State significance, the Minister will retain a degree of oversight and the land will retain its reserve purpose and council's will need to manage it, under the new legislation, having regards to that purpose.

B. Improved management arrangements

10 Cutting red tape

Where ever possible the new legislation will remove red tape.

Local value Crown Land can be transferred to councils

15 Councils may take control of some land that has local significance, rather than State significance, where councils feel this may benefit their communities.

20 Land of primarily local value can be made available to councils as 'community land' under the Local Government Act. This means councils are restricted in how they deal with it under the Local Government Act requirements around 'community land'. Crown reserves managed under the local government legislation will retain their reserve purpose unless the use of those reserves changes through processes under the local government legislation.

25 Where councils can demonstrate land is used for operational or local utility purposes, such as reserves used for depots or waste sites, can be transferred to councils as 'operational land.'

Transfer of land to a council will not be compulsory, but done in consultation and with agreement of councils.

30 The Paper notes that the NSW Government is driving a program to improve the sustainability, capacity and integrity of local government. This will increase the ability of councils to manage crown land transferred to councils, and communities will be in a position to influence decisions about how this land is managed through the processes under the Local Government Act (refer Legislative and Policy Compliance section of this report for information about proposed changes to Local Government Act in relation to public land management).

35 Proposed new management structure

40 The proposal to replace the three-tier management structure consisting of Crown reserves, reserve trusts, and reserve trust managers with one-tier system - one Corporate Land Manager - is being progressed.

Existing community trusts will become new Corporate Land Managers, and the community trust board members will continue to be board members. It is not proposed to transfer these reserves away from community based management to councils.

45 Where land has State significance, and therefore retained by the State, Crown Lands will continue to work with communities and it is anticipated that community managed Crown Land will continue.

C. Improved governance standards

50 Funding

It is proposed to retain the provisions of the Public Reserves Management Fund (PRMF) to provide funding to State significant Crown reserves.

Approval requirements

Local councils will not be required to seek the Crown Land Minister's approval for dealings on reserves transferred to councils because they will be subject to the requirements for managing land contained in the Local Government Act. It is noted in the Paper that this will require the approval of the Minister for Local Government in certain circumstances – as set out in the Local Government Act.

There will be two approval categories for Corporate Land Managers:

1. Councils and Crown Land Managers, and
2. Everyone else as Corporate Land Managers.

Each category will have different approval requirements that are yet to be detailed.

Reporting requirements

In order not to duplicate requirements under the Local Government Act, the only reporting obligations in the Crown Lands legislation for councils managing Crown Reserves will be to provide the information when requested by the Minister Crown Lands. Council's will still be required to comply with their reporting requirements under the Local Government Act.

All other Corporate Land Managers are required to review their operations annually and submit a report to Crown Lands, which will be made publically available.

Plans of Management

Plans of Management may not always be appropriate for small reserves and it may be better to develop other plans, such as strategic plans.

Otherwise Plans of Management will be required for many reserves – particularly those reserves that provide *a number of facilities and are used by different community sectors*.

Reserves used for specific purposes

The role of peak bodies in managing Crown Land – e.g. caravan parks and racing NSW remain under consideration.

Where councils manage showgrounds, caravan parks, and racecourses, this will continue. In other cases, Crown lands will continue to work with Corporate Land Managers in much the same way as it does with current reserve trusts.

D. Other streamlining measures

Land assessment

The existing land assessment provisions are not practical or aligned with planning processes and will not be retained. To ensure the land use considerations are aligned with a strategic process and to encourage a "whole of government" approach to Crown Land, it is proposed that land use is governed by a *combination of the planning framework and the reserve purpose*.

Landowner's consent

It is proposed to develop a "low impact" provision (based on the list of activities received in submissions) that will provide for councils managing Crown land to make development applications without seeking Ministerial consent.

All non-"low impact" activities requiring development consent will require landowner's consent from the Minister Crown Lands.

Notification requirements

The current notification provisions are inadequate, and a new community engagement strategy for dealing with Crown lands will form part of the Review process. The strategy will be a requirement of the new legislation and will include both traditional and contemporary methods for consulting.

5

E. Other streamlining measuresMarket rent with rebates and waivers

It is proposed that rebates, waivers and concessions will continue to be available for community groups and not-for-profit organisations. Crown Lands will develop a publically available policy to ensure that there is transparency and consistency in the application of rebates, waivers and concessions across the State. Under these provisions, councils will not be charge for the rent for reserves they manage.

10

15 Consistent provisions for tenures

It is proposed that the new legislation will not require Ministerial consent for minor changes to tenancy agreements. Minor changes are not defined.

20 Sale of Crown Land to Lessees

Only lessees who currently have rights to purchase the freehold of their leases without going through a public tender process will continue to have those rights.

20

F. Stronger enforcement provisions

25 The Paper acknowledges the submissions received and generally discusses the content but does not provide a response.

G. Travelling stock reserves

30 The Paper provides responses but they are not included in this summary.

H. Western Land Leases

35 The Paper provides responses but they are not included in this summary.

I. New business model for Department of Primary Industry – Lands

40 The proposal to transition the Department into a Public Trading Enterprise (PTE) is being progressed with a focus on transparency and accountability for the Government and people of NSW.

J. General submission commentsState and local land

45 Where Crown land does not have State or local values it may make sense to dispose of it – the new legislation will allow the current Review processes to continue but will not force disposal of land or councils to take land established not to be of local value.

50 The criteria for establishing local and State significant land are still under development and drafts are being tested and refined through the Land Pilot program.

55 It is proposed that the criteria be used as a decisions-making tool to guide councils in determining the benefits to local community from councils owning (local value) or managing the land (State significant).

Determining the best manager for the (State significant) land will be site specific and on a case by case basis.

5 Aboriginal interest will be consulted prior to the implementation of the criteria, and Crown Lands will be working in partnership with Aboriginal interests and councils in the implementing the criteria.

Financial implications for councils

10 There maybe an additional expense resulting from the legislation requirements under the LG Act for Plans of Management over community land.

The Government is investigating options, including phase in periods for Plans of Management to address this.

15 There will be no forced transfer of reserves to councils. Councils will be able to properly consider resourcing issues before accepting local land and will not be required to take on land with significant liabilities.

Crown Roads

20 Consideration of transferring Crown roads to local councils and reducing the backlog of road closure applications will continue.

It is proposed that councils will be given the power to close roads for which they are the roads authority, to enable Crown lands to focus on reducing the backlog of closure applications.

25 **K. What next**

Legislation

The new Crown lands legislation is being developed for implementation in stages once complete.

30 Local land pilot program

NSW Government has given in-principal support the transfer of ownership or management of land identified as having primary local significance to the relevant council.

35 The principal of 'primary local significant' land has been tested as part of a pilot program with:

- Tweed Shire Council
- Tamworth Regional Council
- Corowa Shire Council
- Warringah Council.

40 The Pilot was conducted to help define and test the state and local land criteria and to develop an implementation plan for the transfer of local land where feasible and appropriate. The pilot was completed and a report provided to the NSW government in June 2015.

45 State land stocktake

A stocktake of the Crown land estate is underway. The aim is to refine State significant criteria and to identify State significant land. This will identify land for State retention and management options for that land.

50 Reserves governance project

Policy development work is underway in 2015-16 with implementation to follow thereafter. The project is to identify ways to improve governance and oversight of reserve managers and to ensure the right Corporate Land Manager is in place.

Financial Implications

There are no financial implications relating to this report.

5 Statutory and Policy Compliance Implications

The Local Government Act Taskforce made the following recommendations about land management legislative changes for the new Local Government Act (3.3.14):

- 10 1) councils be required to strategically manage council-owned public land as assets through the Asset Management Plan as part of the Integrated Planning and Reporting framework
- 2) balancing reasonable protections for public land use and disposal by retaining the classification regime of public land as either community or operational land and
- 15 3) require a council resolution at the time of acquiring or purchasing land to specify the classification, category and proposed use or uses
- 4) a proposed change in the use or disposal of community land be addressed through the council's Asset Management Planning and Delivery Program
- 20 5) a public hearing be held by an independent person where it is proposed to change the existing dominant use or to dispose of community land, with the results of the public hearing to be reported to and considered by the council before a decision is made
- 6) any use of a public hearing or other consultation process under the Local Government Act be specified in the council's Community Engagement Strategy
- 25 7) recognising the LEP zoning processes and restrictions applying to council owned public land
- 8) simplifying and reducing the categories and sub-categories of use to which community land may be applied through the Asset Management Planning process so as to identify and accommodate other ancillary or compatible uses appropriate to the current and future needs of the community
- 30 9) ceasing the need for separate plans of management for community land to be prepared and maintained, and in lieu, utilise the Asset Management Planning and Delivery Program of the Integrated Planning and Reporting process
- 10) ceasing the need for a separate report to be obtained from the Department of Planning and the need for ministerial approval where council proposes to grant a
- 35 lease, licence or other estate over community land in excess of the current 5 years, where an objection has been received by the council
- 11) proposed leases and licences be addressed as part of the council's Asset Management Plan and adopted Community Engagement Strategy with the 30 year
- 40 maximum term to remain unchanged.

The NSW Government's response to the Local Government Acts Taskforce recommendations for management of land under the new Local Government Act has been general:

- 45 "there is an opportunity to streamline the Act and therefore the effectiveness of councils through ... streamlining public land management.....".

Report No. 13.8 **Council Investments November 2015**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2015/1474
5 **Theme:** Corporate Management
 Financial Services

Summary:

10

This report includes a list of investments and identifies Council's overall cash position for the month of November 2015 for Council's information. Given the timeframes for preparation of the Agenda for the 10 December 2015 Ordinary Council Meeting, the report has been compiled to 24 November 2015.

15

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

RECOMMENDATION:

20

That the report listing Council's investments and overall cash position as at 24 November 2015 be noted.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

Report

In relation to the investment portfolio for November 2015, Council has continued to maintain a diversified portfolio of investments. As this report was completed prior to 30 November 2015, the average 90 day bank bill rate (BBSW) for the month had not been received. It is estimated this will remain approximately 2.10%. Council's performance for the month of November is estimated to be approximately 2.86%. Councils' estimated 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

5

The table below identifies the investments held by Council as at 24 November 2015:

Schedule of Investments held as at 24 November 2015

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
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
06/10/15	1,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	P	BBB	04/01/16	TD	2.75%	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
08/10/15	2,000,000	BANKWEST	P	A1+	08/01/16	TD	2.85%	2,000,000.00
04/11/15	1,000,000	BANKWEST	N	A1+	02/02/16	TD	2.90%	1,000,000.00
12/11/15	2,000,000	NAB	N	AA-	12/02/16	TD	2.86%	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
02/10/15	2,000,000	BANKWEST	N	A1+	31/12/15	TD	2.85%	2,000,000.00
06/10/15	2,000,000	AUSWIDE BANK LTD (Previously Wide Bay)	N	BBB	04/01/16	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
02/10/15	2,000,000	NAB	N	AA-	02/02/16	TD	2.98%	2,000,000.00
02/11/15	2,000,000	NAB	N	AA-	01/02/16	TD	2.85%	2,000,000.00
16/10/15	1,000,000	NAB	N	AA-	14/01/16	TD	2.95%	1,000,000.00
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
09/11/15	1,000,000	NAB	N	AA-	08/02/16	TD	2.85%	1,000,000.00
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
02/11/15	2,000,000	ME BANK	N	BBB	01/02/16	TD	2.85%	2,000,000.00
02/11/15	2,000,000	ME BANK	N	BBB	01/02/16	TD	2.85%	2,000,000.00
09/11/15	2,000,000	NAB	N	AA-	08/02/16	TD	2.85%	2,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
04/11/15	3,000,000	ME BANK	N	BBB	02/02/16	TD	2.85%	3,000,000.00
05/11/15	2,000,000	NAB	N	AA-	05/02/16	TD	2.85%	2,000,000.00
14/08/15	2,000,000	ME BANK	N	BBB	14/12/15	TD	2.80%	2,000,000.00
20/11/15	2,000,000	NAB	N	AA-	19/02/16	TD	2.88%	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
08/10/15	2,000,000	BANK OF QUEENSLAND	P	A2	07/04/16	TD	3.00%	2,000,000.00
29/10/15	2,000,000	ME BANK	N	BBB	27/01/16	TD	2.85%	2,000,000.00
09/11/15	2,000,000	ME BANK	N	BBB	08/02/16	TD	2.85%	2,000,000.00
10/11/15	2,000,000	ING BANK (Australia)	N	A2	10/05/16	TD	2.90%	2,000,000.00
10/11/15	2,000,000	BANK OF QUEENSLAND	N	A2	10/05/16	TD	2.90%	2,000,000.00
12/11/15	2,000,000	ING BANK (Australia)	N	A2	12/05/16	TD	2.90%	2,000,000.00
N/A	2,736,883	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	1.80%	2,736,883.79
Total	80,436,883					AVG	2.86%	80,473,133.79

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	
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. 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.

For the month of November 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 remained the same as October 2015, demonstrating a cumulative unrealised gain of \$36,250.00.

Dissection of Council Investment Portfolio as at 24 November 2015

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
77,200,000.00	Term Deposits	77,200,000.00	0.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.8

2,736,883.79	Business On-Line Saver (At Call)	2,736,883.79	0.00
500,000.00	Bonds	536,250.00	36,250.00
80,436,883.79		80,473,133.79	36,250.00

5 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 October 2015 to 24 November 2015 on a current market value basis.

10 Movement in Investment Portfolio – 31 October 2015 to 24 November 2015

Item	Current Market Value (at end of month) \$
Closing Balance at 31 October 2015	76,473,133.79
Add: New Investments Purchased	29,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	0.00
Less: Investments Matured	25,000,000.00
Less: Call Account Redemption	0.00
Add: Fair Value Movement for period	0.00
Closing Balance at 24 November 2015	80,473,133.79

Investments Maturities and Returns – 31 October 2015 to 24 November 2015

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	ME Bank	TD	02/11/15	61	2.55%	8,523.29
2,000,000.00	ME Bank	TD	02/11/15	60	2.55%	8,383.56
2,000,000.00	NAB	TD	02/11/15	90	2.92%	14,400.00
1,000,000.00	Bankwest	TD	04/11/15	120	2.80%	9,205.48
3,000,000.00	Me Bank	TD	04/11/15	124	2.95%	30,065.75
2,000,000.00	NAB	TD	05/11/15	92	2.92%	14,720.00
2,000,000.00	NAB	TD	06/11/15	92	2.92%	14,720.00
1,000,000.00	NAB	TD	09/11/15	90	2.91%	7,175.34
2,000,000.00	NAB	TD	09/11/15	153	2.95%	24,731.51
2,000,000.00	AMP Bank	TD	12/11/15	92	2.75%	13,863.01
2,000,000.00	NAB	TD	12/11/15	90	2.91%	14,350.68
2,000,000.00	NAB	TD	20/11/15	92	2.90%	14,619.18
2,000,000.00	NAB	TD	23/11/15	182	2.97%	29,618.63
25,000,000.00						204,376.43

15

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

5

Dissection of Council Cash Position as at 24 November 2015

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	77,200,000.00	77,200,000.00	0.00
Business On-Line Saver (At Call)	2,736,883.79	2,736,883.79	0.00
Bonds	500,000.00	536,250.00	36,250.00
Total Investment Portfolio	80,436,883.79	80,473,133.79	36,250.00
Cash at Bank			
Consolidated Fund	1,545,634.46	1,545,634.46	0.00
Total Cash at Bank	1,545,634.46	1,545,634.46	0.00
Total Cash Position	81,982,518.25	82,018,768.25	36,250.00

Financial Implications

10

Council uses a diversified mix of investments to achieve short, medium and long-term results.

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 insert a new objective into its adopted Investment Policy, which gives a third tier consideration by Council to Environmental and Socially Responsible Investments, when making investment decisions.

Specifically, resolution **15-515** required the following new objective to be inserted in Council's Investment Policy:

"1.3 Environmentally and Socially Responsible Investments

5

Council gives preference to finance institutions that invest in or finance Environmentally and Socially Responsible Investments (SRI) where:

- 10
- i) The investment is compliant with legislation and investment policy objectives and parameters; and*
 - ii) The rate of return is favourable relative to comparable investments on offer to Council at the time of investment*

15 *SRI status may be in respect of the individual investment, the issuer of the investment, or both and should be endorsed by an accredited environmentally and socially responsible industry body or institution.*

20 *Environmentally and Socially Responsible Investments will be assessed on the same basis as other investment opportunities and the Council will select the investment that best meets its overall investment selection criteria.*

The Council's criteria relating to an SRI are those which:

- 25
- direct investment towards the socially and environmentally productive activities listed below*
 - avoid investment in the socially and environmentally harmful activities listed below.*

The criteria for SRI are all desirable and not mandatory requirements.

30 *Environmentally productive activities are considered to be:*

- 35
- resource efficiency-especially water and energy*
 - renewable energy*
 - production of environmentally friendly products*
 - recycling, and waste and emissions reduction*

Socially productive activities are considered to be:

- 40
- fair trade and provision of a living wage*
 - human health and aged care*
 - equal opportunity employers, and those that support the values of communities, indigenous peoples and minorities*
 - provision of housing, especially affordable housing*

45 *Environmentally harmful activities are considered to be:*

- 50
- production of pollutants, toxins and greenhouse gases*
 - habitat destruction, especially destruction of forests and marine eco-systems.*
 - nuclear power*
 - uranium mining*
 - coal seam gas mining*
 - production or supply of armaments*

55 *Socially harmful activities are considered to be:*

- *abuse of Human Rights and Labour Rights*
- *involvement in bribery/corruption*
- *production or supply of armaments*
- *manufacture of alcohol, tobacco or gambling products”*

5

A review of Council's current investment portfolio has been undertaken to assess, in the absence of an Industry register of authorised deposit taking institutions that are committed to Environmentally and Socially Responsible lending and investing, the current extent that Council's Investment Portfolio meets the objectives, as amended by resolution 15-515, noting that the number of the investments held were made prior to 8 October 2015. Staff have assessed that the investment funds held as at 24 November 2015, complied with Part 1 of Resolution 15-515 and the amended Policy Objectives, at the time the investment was made.

10

Part 1 of Resolution 15-515 being that

15

“That Council give preference to finance institutions that invest in or finance Environmentally and Socially Responsible Investments where:

20

i) The investment is compliant with legislation and investment policy objectives and parameters; and

ii) The rate of return is favourable relative to comparable investments on offer to Council at the time of investment.”

25

Staff have undertaken also undertaken further Research via the Responsible Investment Association Australasia (RIAA). The RIAA have released the Responsible Investment Benchmark Report 2015 Australia and in that report at Appendix A and Appendix B have outlined responsible investment funds, asset owners, super funds impact investors and community finance organisations considered responsible investment opportunities.

30

As indicated in Appendix A, there are twenty nine organisations offering different fund products that range across the SRI criteria indicated in resolution **15-515**. Unfortunately the Ministerial Investment Order that Council must comply with prohibits investment in any of these organisations/institutions or funds.

35

Contained in Appendix B are Asset Owners and Super Funds along with Impact Investors and Community Finance Organisations benchmarked in the RIAA report. The National Australia Bank is reported as an Impact investor and community finance organisation, which is defined in the report as *‘includes targeted investments aimed at solving social or environmental problems whilst also delivering financial returns. Impact investing includes community investing, where capital is specifically directed to traditionally underserved individuals or communities, or financing that is provided to businesses with a clear social purpose’*. At 24 November 2015, Council has \$32 million invested with National Australia Bank. This is a significant amount with one institution but it is also a major bank and has been offering better financial returns relative to other financial institutions.

45

Council is not able to invest directly into Superannuation funds, however the superannuation fund were the majority of Council staff have their superannuation and Council's contributes its employer contribution to staff superannuation is Local Government Superannuation. Local Government Superannuation has \$4.8billion allocated to core responsible investment that includes sustainability themed investing and impact/community investing. With this type of investing it is the largest superannuation fund doing so in Australia.

50

The extent of the Environmentally and Socially Responsible Investment disclosure for Council may vary from month to month pending new investment opportunities and changes in legislation regarding Council investments or financial institutions with which Council can invest.

- 5 For the information of Councillors, Council does not utilise investment advisors and could do so to determine Environmental and Socially Responsible Investments but currently has not allocated any budget for the fees such and advisory service may charge.

Report No. 13.9 **Byron Bay Paid Parking Scheme - Fee for Swipe Card**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2015/1483
5 **Theme:** Corporate Management
 Financial Services

Summary:

10 This report is submitted to allow Council to consider and approve a fee (subject to public exhibition and consideration of submissions, if any), to be incorporated into Council's 2015/2016 Revenue Policy for the provision of a swipe card for users of the Byron Bay Paid Parking Scheme.

RECOMMENDATION:

1. **That Council advertise the fee for the provision and or replacement of a swipe card at \$27.50 (GST inclusive) per card for use with the Byron Bay Paid Parking Scheme for a period of twenty eight days allowing for public submissions.**

2. **That should there be no public submissions received by the close of the public exhibition period then Council adopt the proposed fee subject of this report.**

Report

5 This report is submitted to allow Council to consider and approve a fee (subject to public exhibition and consideration of submissions, if any), to be incorporated into Council's 2015/2016 Revenue Policy for the provision of a swipe card for users of the Byron Bay Paid Parking Scheme.

10 The swipe card will enable users of the Byron Bay Paid Parking Scheme to interact in a more convenient manner with the parking meter. Using the swipe card will alert the meter to the user of the card and allow the meter to automatically recognise the associated vehicle registration of the card holder. This will reduce the number of steps to complete the transaction at the parking meter.

The use of a swipe card is not a compulsory requirement but is available as an option for users should they choose.

15 It is proposed that a fee of \$27.50 inclusive of Goods and Services Tax (GST) per swipe card be endorsed by Council for the provision of the swipe card. This would also be the fee payable per card should a card need to be replaced due to loss or damage. The fee is not an annual fee for the card but a one off fee to obtain or replace a card.

20 **Financial Implications**

25 There are no financial implications associated with this report as the report is following the legislative steps required to adopt proposed fees and charges allowing for a public exhibition period of twenty eight days. It is expected the advertising cost of the proposed fees and charges will be met from existing budgets.

Statutory and Policy Compliance Implications

30 Section 610F of the Local Government Act 1993 stipulates the requirements of Council in regard to the adoption of new or amended fees and charges as follows:

610F Public notice of fees

35 (1) *A council must not determine the amount of a fee until it has given public notice of the fee in accordance with this section and has considered any submissions duly made to it during the period of public notice.*

(2) *Public notice of the amount of a proposed fee must be given (in accordance with section 405) in the draft operational plan for the year in which the fee is to be made.*

40 (3) *However, if, after the date on which the operational plan commences:*

(a) *a new service is provided, or the nature or extent of an existing service is changed, or*
(b) *the regulations in accordance with which the fee is determined are amended,*
the council must give public notice (in accordance with section 705) for at least 28 days of the fee proposed for the new or changed service or the fee determined in accordance with the amended regulations.

45 (4) *This section does not apply to a fee determined by a council for an application made in a filming proposal, if that fee is consistent with a scale or structure of fees set out in an applicable filming protocol.*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.10 **PLANNING - Outcome of meeting (res 15-110) - 10.2014.417.1 - Demolition of existing residential flat building & construction of a new residential flat building and associated works at 43 Lawson Street Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Joe Davidson, Planning Team Leader

File No: I2015/267

Theme: Ecology
Development and Approvals

Summary:

This report relates to a Development Application that was previously reported to the Council meeting of the 19 March 2015. The original report recommended that the application be determined by refusal due to non-compliances with Byron Local Environmental Plan 1988 and Development Control Plan 2010. After considering the proposal, Council did not make a determination of the Development Application and instead resolved:

1. *That consideration of DA 10.2014.417.1 be deferred to enable discussions between the Developer and Director of Sustainable Environment and Economy to address areas of non compliance through redesign.*
2. *That a report be provided to Council on these discussions at the next available meeting to enable determination of the DA. (Wanchap/Woods)*

After an initial meeting with the applicant for the development, a new Planning Consultant was appointed by the property owners and subsequent additional meeting was held with the new Planning Consultant. As a result of this meeting, changes were made to the design of the development which was primarily to the height of the building and setbacks of the development to the side boundaries. Additional information was also submitted to support the amended proposal, including a Phase 1 Contamination Assessment which concludes that the site is suitable for the proposed residential redevelopment.

An assessment of the amended plans has been carried out having regards to the reasons for refusal that were originally reported to Council. This assessment concludes that the proposal still includes non-compliances with Council's development controls. However, if conditions of consent are applied to slightly alter the design of the building, an acceptable planning solution for the site can be achieved. Based on the revised assessment, it is now recommended that the Development Application be granted consent, subject to conditions contained in Attachment 3.

NOTE TO COUNCILLORS:

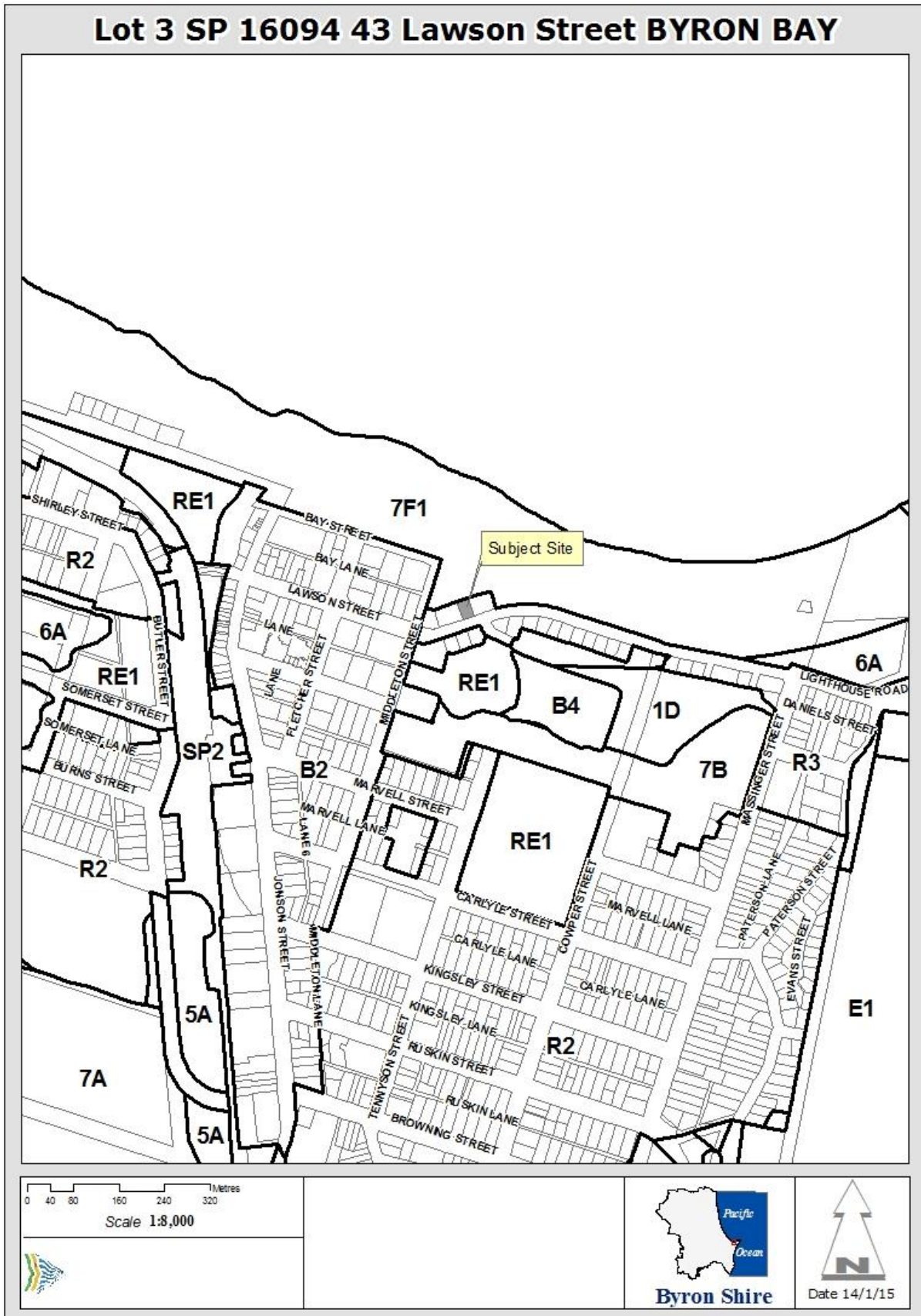
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes 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. 10.2012.474.1 for the demolition of an existing building and construction of a residential flat building, be granted consent subject to the conditions contained in Attachment 3 (E2015/76157).

Attachments:

- 1 Original Assessment Report, A2014/19344
- 5 2 Plans of proposed development received 17/11/2015, E2015/75183
- 3 Draft Conditions of Consent - 43 Lawson Street, Byron Bay, E2015/76157



Assessment

Development Application No. 10.2014.417.1 was considered by Council at its Ordinary Meeting on 19 March 2015. The staff report recommended that the Development Application be refused for a number of reasons relating to non-compliances with Council's development control requirements.

5 These included:

- Breaches of the maximum 9.0 metre height limit under Clause 40 of Byron Local Environmental Plan 1988.
- Multiple encroachments into the maximum building height plane as prescribed within Chapter 1 Part C2.5 of Development Control Plan 2010.
- 10 • Excessive density resulting from insufficient site area as set out within Chapter 1 Part C7.1 of Development Control Plan 2010.
- Inadequate provision of landscaping as set out within Chapter 1 Part C7.5 of Development Control Plan 2010.
- 15 • Likely impacts on the built environment and likely impacts on amenity resulting from the proposed development.
- The site being assessed as unsuitable for the development proposed.
- Lack of information to demonstrate that the development has sufficient design quality having regards to the principles and code requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.
- 20 • Lack of information in relation to State Environmental Planning Policy No. 55 – Remediation of Land.

Following consideration of the staff report, Council resolved:

15-110 - Resolved:

1. *That consideration of DA 10.2014.417.1 be deferred to enable discussions between the Developer and Director of Sustainable Environment and Economy to address areas of non compliance through redesign.*
2. *That a report be provided to Council on these discussions at the next available meeting to enable determination of the DA. (Wanchap/Woods)*

25 Council's Director of Sustainable Environment and Economy and Manager Sustainable Development met with the applicant on 24 March 2015 to discuss the areas of non compliance. Subsequently, the Applicant submitted amended plans on 14 April 2015. A summary of the changes within the amended plans are listed below:

- a) A 150mm increase in the setback of the building from the eastern boundary of the property from 1500mm to 1650mm as measured to the external wall.
- 30 b) Removal of a step within the roof design and provision of a flat roof that has a height at RL15050, which is 50mm higher than the plans assessed as part of the Development Application previously reported to Council.
- c) Slight alterations to the gross floor area of the 7 residential units, the most significant of which reduces the gross floor are of the penthouse unit by 3.6 square metres.

35 The applicant was provided with feedback that the amended plans did not satisfy the reasons for refusal nominated within the original Council report. A new planning consultant was appointed to the project and Council staff advised in writing the remaining issues of non-compliance. The new planning consultant met with Council staff on 23 June 2015 to discuss the outstanding issues.

On 22 August 2015, a revised plan set was received, accompanied by additional information to address State Environmental Planning Policy No. 55 (Remediation of Land), Byron Local Environmental Plans and Development Control Plans. A summary of the changes within the amended plans (as compared to the plans reported to Council on 19 March 2015) are listed below:

- 5 a) Increasing the setback of the building on the side boundaries from 1500mm to 1600mm on the western boundary and from 1500mm to 1650mm on the eastern boundary (this has been achieved by reducing the width of the building by 250mm).
- b) Lowering the height and removing the step within the main roof such that it is no greater than 9.05 metres above existing ground level (but retaining the lift overrun that extends an additional 1.0 metre above the roof height).

The amended proposal was again assessed as being unsatisfactory by Council staff. As a result, a further meeting with the planning consultant was held on 5 November 2015 to discuss the issues of non-compliance. Amended plans and additional information was submitted on 17 November 2015, incorporating the following changes:

- 15 a) A reduction in the overall height of the development to meet the 9.0 metre maximum (with the exception of the lift overrun).
- b) Increasing the setbacks of the building on the two upper floors to 2.6m to the western boundary and 2.65m to the eastern boundary.
- 20 c) The removal of one of the residential units from the first floor of the building and redesigning the remaining two residential units on that floor with the provision additional balcony areas on the northern elevation. The total number of residential units proposed is now 6.
- d) Reducing the gross floor area of the uppermost floor by 29.8 square metres.
- 25 e) Reducing the size of the basement car parking area to provide 14 spaces plus plant and garbage store rooms.
- f) Increasing the land available within the site for deep soil landscape plantings.

An assessment is provided below of the amended plans and additional information provided having regards to the reasons of refusal listed in the original Council report:

- 30 **1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposal fails to meet the development standard for maximum height of buildings as set out within Clause 40 of Byron Local Environmental Plan 1988. An objection under State Environmental Planning Policy No. 1 to vary this development standard is not supported.**

35 Clause 40 of Byron Local Environmental Plan 1988 has two development standards, a maximum 9.0 metre overall height limit, and a maximum 4.5 metre uppermost floor level. An assessment of the original proposal conceded that the 4.5 metre uppermost floor level was a standard that could be varied in the circumstances of the case. The amended plans submitted in November 2015 now achieve almost complete compliance with the 9.0 metre overall height limit, the lift overrun being the exception. This is discussed below.

40 The amended proposal now includes only a small departure to the 9.0 metre height control, namely a 1.0 metre encroachment for a small (7 square metre) lift overrun. The lift overrun is located near the centre of the roof and will largely be obscured from view from Lawson Street and the adjacent public reserve to the north. A variation under State Environmental Planning Policy No. 1 is supported for this aspect of the proposal. Similarly, an objection under State Environmental Planning Policy No. 1 is supported for the 4.5 metre upper most floor level standard given that no such standard applies under the Local Environmental Plan 2014.

- 45 **2. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposal breaches a number of requirements within Development Control Plan 2010 including the maximum building height plane, maximum density provisions,**

minimum landscaping requirements, provision of clothes drying areas, maximum cut and fill and maximum fence heights.

The amended plans provide significant changes to the building height plane encroachments compared to those originally proposed. The amended plans provide increased side boundary setbacks on both the first and second floors of the development. A setback of 2.6 metres is proposed to the upper two floors from the western boundary, and a setback of 2.65 metres is proposed to these floors from the eastern boundary.

Shadow diagrams have been submitted which still show significant overshadowing on the adjoining property to the west. However, this overshadowing can be reduced with a slight change to the roof design of the development. A condition is recommended that requires the roof over the western pool deck area to be reduced to no more than a 600mm eave. This will result in an acceptable proposal having regards to overshadowing. However, to reduce privacy impacts on the adjoining properties, it is recommended that landscaping bays be extended for the full lengths of the upper floor decks on both the eastern and western sides of the building.

Details have also been submitted to justify the proposed density of the development on the site and the landscaping provided. The amended proposal includes a total of 6 residential units. This is consistent with the number of units within the existing building on the site (that is to be demolished). It is a reasonable planning outcome that the existing 6 units be replaced with the same number of units, albeit in a contemporary design.

It is noted that the site currently has approximately 175 square metres of landscaped area (landscaped area means area of ground available for planting and/or management of vegetation). The proposed development will reduce this area to 124 square metres, which is well below the 520 square metres that the Development Control Plan requires for the proposed number and size of residential units on the site. Given that the site is 711 square metres in area and already contains 6 residential units, it is assessed as unreasonable to require compliance with the prescriptive measures in this instance. The proposal includes landscaping bays within the deck areas of each floor, as well as ground floor patio areas. The site is also located adjacent to a public reserve which has a positive contribution to the site. It is satisfied that with a condition requiring additional planting bays on the uppermost deck areas, the proposed landscaped area for the site is acceptable.

The additional information received provides justification for the proposed extent of earthworks associated with the development (refer to attachments to this report). The size of the proposed basement has been reduced to accommodate 14 car parking spaces, which is the minimum required for the 6 unit development. This reduced basement also provides an increase in deep soil landscaped area on the site. A basement arrangement is logical for this site and is consistent with surrounding development. A variation to the maximum 1.0 metre earthworks requirement is supported.

The amended design includes a landscape bay along the street frontage with fencing setback 800mm from the front boundary. This reduces visual impacts associated with high fencing in the front setback and is an acceptable planning outcome for the site.

3. Pursuant to Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979, the proposal is likely to have a significant impact on the surrounding built environment and the occupants of that environment.

The amended design has resolved the issues relating to this reason for refusal.

4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposal fails to demonstrate that the development has sufficient design quality having regards to the principles and code requirements of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

The attachments to this planning report include additional information submitted by the applicant to address State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

5. **Pursuant to Section 79C(1)(a)(ii) of the Environmental Planning & Assessment Act 1979, the proposal is inconsistent with the future planning direction for the site as set out within Clauses 4.1E, 4.3 and 4.4 Byron Local Environmental Plan 2014, which is an instrument that has been the subject of public consultation under the Environmental Planning and Assessment Act 1979.**

Clause 4.1E of Byron Local Environmental Plan 2014 relates to minimum allotment sizes for residential flat buildings. The 711 square metre site is below the 600 square metre minimum required under the clause. The amended information supplied to Council justifies this shortcoming on the basis that the site already contains an apartment building, it adjoins public open space and that the proposal comprises infill development. It is agreed that the existing 6 unit residential flat development on the site provides a pathway for redevelopment of a contemporary design. As the amended proposal has been reduced to 6 residential units, the proposal's non-compliance with Clause 4.1E has little consequence.

Clause 4.3 of Byron Local Environmental Plan 2014 relates to the maximum height of buildings. As discussed under item 1 above, the development has been redesigned to achieve compliance with the 9.0 metre overall height control with the exception of the lift overrun. This is acceptable for this proposal.

Clause 4.4 of Byron Local Environmental Plan 2014 relates to the maximum floor space ratio of development within the site. The amended proposal continues to exceed these maximum requirements. However, as discussed above, it is satisfied that the amended building adequately meets building height, setbacks and landscaping requirements, and the proposed number of units (6) is suitable given the existing 6 unit development.

6. **Pursuant to Section 79C(1)(e) of the Environmental Planning & Assessment Act 1979, the it is not in the public interest to support the proposal as it breaches a number of development control requirements and has an adverse impact on the surrounding built environment.**

Given that the amended proposal presents an acceptable planning outcome for the site having regard to Council's development controls, the proposal is now considered to be in the public interest.

7. **Pursuant to Section 79C(1)(c) of the Environmental Planning & Assessment Act 1979, the site is assessed as being unsuitable for the development proposed.**

The site contains a residential flat building comprising 6 units over three stories, with an attached vehicle garage at ground level. The existing development has generous building setbacks and is satisfactorily accommodated within the site in the context of the historic approval that it was constructed under. It is acknowledged that the proposed development introduces an increase in bulk and scale to the site, but the building setbacks, height and provision of landscaped area have been assessed as satisfactory. The amended proposal has significantly reduced the non-compliances arising from a large development on a relatively small site. In the context that the site already contains a 6 unit residential flat development, it is assessed as being suitable for the amended proposal.

8. **Pursuant to Section 79C(1)(d) of the Environmental Planning & Assessment Act 1979, consideration of public submissions received with respect of the proposal raise valid planning reasons to refuse the Development Application.**

Two public submissions were received with respect to the proposed development, one of which was prepared by a planning consultant on behalf of a local resident. The submissions raised valid planning reasons to refuse the original development application. It is considered that the amended proposal has achieved a level of compliance that is acceptable for the development to proceed.

9. **Pursuant to Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposal fails to demonstrate that the site is suitable for use having regards to the assessment requirements of State Environmental Planning Policy No. 55 – Remediation of Land.**

Additional information submitted to Council on 26 August 2015 includes a Phase 1 Contamination Assessment which concludes that the potential for contamination of the subsurface of the site is very low, and that the site is suitable for the proposed residential redevelopment. Subsequently, this reason of refusal is no longer required.

5 Conclusion

The amended Development Application provides an acceptable design for the site. The reduction of the proposed development from 7 units to 6 units and the additional side boundary setbacks on the upper two floors provides a more compliant development with Council's development controls. The height of the building largely complies with the 9.0 metre overall height limit, and encroachments into the building height plane have been significantly reduced.

The proposed development is recommended for approval subject to conditions of consent as specified in attachment 3 of this report.

Report No. 13.11 **Compliance Priorities Program - 2016**
Directorate: Sustainable Environment and Economy
Report Author: Wayne Bertram, Manager Sustainable Development
File No: I2015/1225
5 **Theme:** Ecology
 Development and Approvals

Summary:

10 This report details compliance with the adopted 2015 Compliance Priorities Program, and seeks adoption of a Compliance Priorities Program for 2016.

15 It is recommended that Council continues to focus on those priorities listed as Very High and High and as resources allow, on priorities listed as Medium, with the aim that all matters will ultimately be addressed in a timely manner.

RECOMMENDATION:

1. That Council note the report.
2. That Council adopt the proposed Compliance Priorities Program for 2016 as provided in attachment 1 (E2015/76485).

Attachments:

- 1 2016 Compliance Priorities Program , E2015/76485
- 2 Compliance Guidelines - Private Functions in Rural Zones, E2015/48122

Report

5 The Compliance, Ranger/Parking Officer and Environmental Health Teams have been transferred to the Sustainable Environment and Economy Directorate into a Regulatory Service Team as part of implementation of the Organisational Structure adopted by Council. This report covers the operations of this team for the 2015 reporting period.

2015 COMPLIANCE PRIORITIES PROGRAM

10 Compliance activities and statistics addressing the 2015 Compliance Priorities Program and the Byron Shire Council Management Plan (Compliance, Public Order and Safety) have been addressed in the half yearly and annual report.

15 For the half year (ending June 2015), all Compliance performance indicators were met. The second half year performance is on track for a similar outcome.

In 2014/2015 the Compliance Team received 2,560 Customer Request Management (CRM's) which are tabulated as follows:

	Received 2014/2015	Completed 2014/2015
Illegal Works (Building; Land Clearing; Places of short term accommodation; Land Use)	508	452
Animals (Nuisance; Barking; Attack; Restricted; Livestock; Poultry)	865	843
Fire Hazard	3	3
Vehicle (Abandoned, Street Camping; For Sale; Parking)	928	878
Noise disturbances, public nuisance from premises, non compliance with AFZ	166	159
Overgrown properties	90	79
TOTAL	2560	2414

20 Note: *Some CRMs have been carried over from the previous financial year but completed in the 2014/15 financial period. There were also 137 CRM's carried over into the next financial year. These included CRM's under investigation, being dealt with or those that were in the system and being followed up in the next 30 day period.

25 The following information is provided on the implementation and actions taken in relation to the adopted 2015 Compliance Priorities Program.

Very High Priorities:

30 **1.1 Developments, actions, works, activities or uses that places people's lives at immediate risk or that cause or are likely to cause a significant risk of environmental harm or pollution;**

35 In the calendar year to 1 October 2015, Compliance has received 508 CRMs relating to unauthorised development and has concluded 452 (see notes in Table above). Not all of those CRMs fell into this priority although the percentage concluded is accurate for this priority.

1.2 Significant environmental, health and public health incidents.

On 19 February 2015 Council officers attended a building site in Orana Road in relation to a complaint that three loads of crusher dust had been dumped at the front of the property. The builder had been advised previously in relation to his responsibilities in relation to sediment control.

The builder and PCA were both contacted and advised that the crusher dust had to be removed and the silt fence which was in disrepair had to be rectified. At the time the Northern Rivers was on alert for a severe weather warning associated with an East Coast Low

The site was inspected the following morning and although some of the crusher dust had been moved no repairs had been made to the sediment fence and it had been breached at a number of locations. Large amounts of sediment laden water had left the site and entered local waterways via Council's drainage system.

Council staff attended the site and sand bagged the area to contain the runoff. Infringements were issued for "Pollute waters" and "Development not in Accordance with Development Consent." The defendant was also invoiced for the cost of the sand bagging.

On 30 April 2015 Council staff again received a complaint in relation to the site. Staff attended and found that the sediment fence had again failed in many areas and that the sand bags Council had installed previously were still in place but had been run over and was split and ineffectual. Again large quantities of sediment laden water were entering Council's drainage system.

Council prosecuted the defendant, who pleaded guilty to two counts of pollute waters in breach of the *Protection of the Environment Operations Act 1997*. The defendant was fined a combined total of \$9,000 for the two offences and also agreed to pay Council's costs in the sum of \$3,500.

Most matters falling within this priority have been dealt with by way of Penalty Notices and Formal Warning Notices to Prevent Environmental Harm (POEO), Improvement Notices (Food Act) and Orders (LG and EP&A Acts).

In a recent incident a Jonson St business owner washed a large amount of tile adhesive/cement residue into Council's storm water system without sediment control. This work was undertaken on a Saturday evening. The sediment / residue was also sprayed onto Council street furniture, adjacent businesses and vehicles parked in the street. The owner was not present when compliance staff attended and sediment control and clean up was completed by Council. A \$4,000 infringement for pollute waters and a cost recovery order were issued.

1.3 Dangerous and/or menacing dogs.

On 24 July 2015, NSW Police referred a serious dog attack to Council. The victim a 30 year old woman was employed by the dog's owner at the Roadhouse Café in Bangalow Rd Byron Bay.

The dog was a male Cane Corso weighing about 50kg and had previously been declared "Menacing" by Council for an attack on another dog.

The victim felt uncomfortable with the dog as she had met it previously at the owners home where it had growled at her. As she was leaving work she observed the dog on the back of the owner's utility. The owner called her over to meet the dog.

She extended her arm and was rubbing the dog on its neck and shoulder. The dog then swung around and grabbed the victim on the face. As a result of the attack the victim's nose was torn off and only held on by a small area of skin above her top lip. She also sustained puncture wounds under her chin. The injuries amounted to grievous bodily harm due to their seriousness.

At the time of the attack the dog was not muzzled and evidence suggests it was not wearing a dangerous dog collar as per its control requirements.

The dog was subsequently euthanized.

5

Council investigated the matter and a number of court attendance notices were issued.

The owner pleaded guilty to a number of offences in the Local Byron Court and was sentenced to 6 months imprisonment. This is the first instance in NSW where a person has been imprisoned in relation to a dog attack.

10

Customer Request Management Received	1/1/15 – 1/10/15
Dogs Attacks	28
Dogs Barking	118
Dogs Found	176
Dogs Nuisance	225
Dogs Restricted	6
TOTAL	553

- There are presently 18 dogs in the Shire under a Nuisance Dog order.
- There is presently 1 dog in the Shire declared dangerous.
- There are presently 10 dogs in the Shire declared menacing.
- There are presently 7 restricted breed dogs in the Shire.

15

1.4 Traffic, parking and unapproved camping activity enforcement.

Parking enforcement saw 6955 Penalty Notices issued from 1 January to 1 October 2015. The gross face value of the Penalty Notices was \$958,000. In the period 1 January 2015 to 1 October 2015 Council Rangers issued 477 camping related infringements.

20

The State Debt Recovery Office has provided the following benchmarking statistics for Byron Shire Council and its neighbours for 2014-2015.

25

COUNCIL	ISSUED	FACE VALUE	RECOVERED
Byron Shire	10862	\$1,526,071	70%
Coffs Harbour City	3168	\$468,198	74%
Lismore City	937	\$184,183	59%
Ballina Shire	1520	\$304,390	64%
Clarence Valley	606	\$110,771	51%

In respect of those Penalty Notices court elected Council incurred no adverse costs orders and was successful and obtained costs orders in all which proceeded to a hearing.

30

On going operations including Council Compliance Officers/ Rangers and Police have been conducting operations to safely remove illegal campers and rubbish from the Cavanbah Reserve and from Main Beach to Belongil and Main Beach to Clarkes Beach. Compliance staff issued infringements for camping and littering where appropriate. Additionally "Move on directions" have been given by Police.

35

These operations are ongoing and staff have been liaising with staff at the community centre to help educate the local homeless of the environmental damage that is occurring. All related

agencies have reported that the number of homeless is increasing and they are having difficulties providing accommodation due to funding cuts.

5 Media releases were provided for illegal camping issues and delegated staff have also been involved in media interviews.

1.5 Asbestos containing material (ACM) being illegally dumped on public land.

10 Compliance staff recently investigated an incident at Myocum landfill where a local builder dumped a quantity of asbestos mixed within a load of other waste. The builder was identified and admitted the asbestos was from his private residence. He was issued a penalty infringement noticed for \$8,000 and a costs order for \$594.00. Landfill staff dealt with the disposal of the asbestos in an appropriate manner

15 Media releases were provided for the correct handling and disposal of asbestos and delegated staff have also been involved in media interviews.

High Priorities:

20 **2.1(a) Short-term holiday accommodation**

Penalty Notices were issued to four premises in relation to the use of the premises for short-term holiday accommodation in a manner that caused substantial negative impacts on neighbourhood amenity in a residential zone.

25 The Police were called to both premises due to noise and disturbance.

The investigation of each brought staff to the conclusion that the use of the subject premises over the identified period and the resulting impacts on neighbourhood amenity were sufficiently significant so as to warrant enforcement action.

30 Staff issued each land owner with a \$750 penalty infringement notice for development without consent.

35 **2.1(b) Swimming Pool Safety including legislative requirements**

A swimming pool register was established in November 2011 and now has 2,208 pools registered. Of this number 665 premises were added in 2015.

40 A total of 469 swimming pools have been inspected. Of these at least 90% did not meet the required standard and required rectification. There have been 433 reinspections conducted.

45 The major non-compliant issues were pool gates that will not self close, footholds provided on the pool barrier and vegetation growing close to the barriers providing access to the pool areas. Letters are being sent to all pool owners with the results of the inspection. Non-compliant items are required to be repaired by set dates and follow up inspections occur where major repair works are required.

50 Penalty Notices have been issued to seven pool owners for non-compliance. This is an ongoing program of pool barrier inspections which will eventually see all pools within the Shire entered onto the register. A media release has been issued: "Is your pool registered and ready to be inspected? 95% are not passing"

2.1(d) Onsite Sewage Management Systems

5 Council adopted the Community Engagement and Risk Communication (CERC) Program for
 Onsite sewage management systems (OSMS) in March 2013. The primary role of the CERC
 program is to empower current and prospective owners and operators of OSMS via reviewing
 10 existing and developing new communication media to ensure that it is positive, engaging,
 transparent, easy to understand and pre-emptive. The CERC also supports Councils regulatory
 obligations under the relevant acts. The OSMS inspection program is implemented via complaints,
 enquiries and Council adopted OSMS risk categories i.e. OSMS that have a higher potential for
 negative impacts on human health and the environment are inspected as the higher priority.

15 Stage one of CERC was completed in July 2014 when 1563 requests to submit an application to
 operate (ATO) an OSMS were mailed to OSMS owners that did not have approval or whose
 approval had lapsed. The request includes redesigned material (including cover letters and
 application forms) designed to engage and educate.

The number of complaints pertaining to OSMS continues at very low levels, most compliance
 issues are discovered via development control compliance inspections.

20 Information about the CERC program is being regularly reported to Council’s Water, Waste and
 Sewer Advisory Committee.

2.1(e) Food safety

25 Council reported to the NSW Food Authority in the annual report (2014/15) that high-risk and
 medium-risk retail food businesses within Byron Shire had been inspected as required by the NSW
 Food enforcement agency. The report favourably compared Byron Shire Councils’ results with all
 other local government authority food activities.

30 Byron Shire is somewhat unique in that the number of fixed food premises may vary around the
 total number of 320, but there is a growing and significant number of temporary retail food
 businesses (markets, farmers markets, shows, events and festival food businesses) of similar
 proportion that need to be effectively inspected and regulated to ensure community health and
 35 safety standards are being maintained. A total of 631 primary food premise inspections (including
 re-inspections) were conducted during 2013/14.

40 As part of the educational support for retail food businesses, two information ‘mail-outs’ were
 provided in January and July 2014 to inform food business operators about changes in regulations,
 food safety content and staff access information on the specific topic of food safety.

45 The number of complaints and food-borne illness reports continues at very low levels. Considering
 the small number of staff hours allocated to this function, Byron Shire is achieving an improving
 standard of food safety under growing demands from food businesses in Byron Shire. The
 following table summarises the activities performed by staff as regulators of the NSW Food Act
 2003.

Table 1: Food business inspection program – comparison between 2013/14 and 2014/15

	2013/14	2014/15
Fixed premises categorised as ‘high’ risk inspected	293	316
Fixed premises categorised as ‘medium’ risk inspected	27	51
Fixed premises categorised as ‘low’ risk inspected	31	37
Temporary food businesses operating in Byron Shire inspected	355	351
Mobile food businesses operating in Byron Shire inspected	5	11
Number of food-related complaints received / investigated	11	27

	2013/14	2014/15
Number of warning letters issued to address minor defects	191	256
Number of Improvement Notices issued to address food safety defects	38	29
Number of penalty notices issued	7	6
Number of prosecutions / successful result	0	0
Number of seizure notices issued	1	0
Number of Prohibition Orders issued	0	1
Full time equivalent staff resources dedicated in maintaining food safety program	1.5	1.0
Total number of inspections conducted – Primary	698	762
Reinspections	195	256

2.1(f) Public health premises

5 Council noted the gradual introduction of a number of statutory requirements under the Public Health Act 2010 and Public Health Regulation 2012. As the NSW Ministry of Health are the primary regulator of public health standards across NSW under this legislation, Council has limited activity in regulating public health premises.

2.1(g) Companion Animals

10 Rangers again attended community events at Federal Park and the Brunswick Heads Primary School, providing information on pet welfare, restraints and requirements for companion animals.

15 Council's Rangers have provided continued support to NPWS and community conservation groups and carried out patrols in the bird breeding area at Belongil Spit to enforce restriction on dogs being under effective control.

A letterbox drop has been undertaken to owners/occupiers in cat and dog free estates.

20 In addition, the Acting Team Leader Compliance commented on companion animal issues on numerous occasions on local radio and newspaper.

2.2 Noise disturbance, public nuisance from premises, maintenance of alcohol free zones;

25 Matters falling within this priority have been dealt with by way of advice both to the complainant and the occupant of the noise source and in extreme cases Noise Abatement Orders have been issued.

30 Alcohol prohibition zones were heavily patrolled on New Years Eve which removed considerable amounts of alcohol from the streets and reserves.

2.3 Unauthorised events, including unapproved dwellings, wedding receptions, parties. 'doof' and 'rave' parties.

35 Action in the NSW Land and Environment Court was taken against the previous owner of the premises in relation to the unauthorised use of the premises for weddings and other functions.

40 A proposed unapproved rave party proposed in the Byron hinterland was investigated with the NSW Police and the event was subsequently cancelled before the event was held.

Medium Priorities:**3.1 Development or activities without consent, or non-compliance with consent, permit or licence conditions where these appear to pose no immediate threat to life, property, public health or the environment.**

In the calendar year to 1 October 2015, Compliance has received 508 CRMs relating to unauthorised development and has concluded 452. Not all those CRMs fell into very high priority and a percentage of these where deal with as medium level priorities as time permitted.

3.2 Livestock on public roads.

The table produced earlier detailed that 805 CRMs had been received in respect of Animals (Nuisance; Barking; Attack; Restricted; Livestock; Poultry).

Of those 133 related to livestock on roads. All matters were generally assessed and dealt with within hours of receipt of notification.

3.3 Non-compliant signage (07-550, 06-204).

2015 saw an influx of electronic signage. It was dealt with by way of advice and warnings.

Rangers have been out actively impounding unapproved signage throughout the Shire and have noted that there has been a significant drop in unapproved signage numbers in most areas.

Discussions with Council's Economic Development and Tourism Officer has resulted in Compliance staff reviewing resolution 626/2012 and investigating placing poles at the entrances to each town so that markets and community events can be advertised in a more visually friendly matter. This is still ongoing with the business community and the Economic Development Team

3.4 Uncontrolled dogs and/or cats including those kept on land where Policy or Development consent prohibits it.

A letterbox drop has been undertaken to owners/occupiers in cat and dog free estates to inform the residents of their obligations when residing in these areas.

Legal advice and formal notice provisions have been prepared for the enforcement of the dog and/or cat free areas. A press release has been issued advising that cat and dog free areas are to be enforced and a program is being developed to ensure that the Council can complete the review and enforcement of the requirements.

Routine Priorities:**4.1 All other matters.**

In the calendar year to 1 October 2015, Compliance has received 508 CRMs relating to unauthorised development and has concluded 452. Not all those CRMs fell into very high priority and a percentage of these where deal with as time permitted. Additionally the Environmental Services Team responded to community enquiries and where the customer wants a council response the requests are recorded into the Authority database. The following is a comparison of customer request activity for 2014/15.

Table 2 – Environmental Services summary of customer action requests

Category	2014/15
Noise complaints	97
Pollution of land	17
Air pollution	15
Water pollution	36
Odour pollution	11
Stormwater impacts	12
Asbestos	11
TOTAL	199

2016 COMPLIANCE PRIORITIES PROGRAM

5

Very High Priorities:

- 1.1 Developments, actions, works, activities or uses that places people’s lives at immediate risk or that cause or are likely to cause a significant risk of environmental harm or pollution;
- 1.2 Significant environmental and public health incidents;
- 1.3 Dangerous and/or menacing dogs;
- 1.4 Traffic, parking and unapproved camping activity. Camping enforcement with an emphasis on environmentally sensitive areas.
- 1.5 Asbestos containing material (ACM) being illegally dumped on public land

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2. High Priorities

- 2.1 Provide education or workshops and undertake compliance enforcement programs for;
 - (a) Places of shared accommodation (commercial and non commercial)
 - (b) Swimming pool safety including legislative requirements
 - (c) Improving compliance standards for unapproved dwellings
 - (d) Onsite sewage management systems (including CERC project)
 - (e) Food Safety Inspections
 - (f) Awareness of current public health requirements
 - (g) Companion Animals with a high emphasis on high visibility enforcement and public education. (15-465)
 - (h) Safe procedures for handling and disposal of Asbestos Containing Materials
 - (i) Seasonal public health issues and community preparedness including issuing a minimum of two media releases.
- 2.2 Responses to complaints about recurring noise disturbance, public nuisance from premises, maintenance of alcohol free zones;
- 2.3 Unauthorised events, including unapproved dwellings, wedding receptions, parties, 'doof and 'rave' parties;

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35

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3. Medium Priorities

- 3.1 Development or activities without consent, or non-compliance with consent, permit or licence conditions where these appear to pose no immediate threat to life, property, public health or the environment;
- 3.2 Livestock on public roads;
- 3.3 Non-compliant signage (07-550, 06-204).
- 3.4 Uncontrolled dogs and/or cats including those kept on land where Policy or Development consent prohibits it. (14-544)

4. Routine Priorities

- 1.1 All other matters.

A final version of the proposed 2016 Compliance Priorities Program has been provided in Attachment 1.

In addition to the 2015 Compliance Priorities Program Council also resolved 14-655(3)

That Council develops compliance guidelines for the conduct of large private parties in rural settings and advertises the guidelines to the community.

Such compliance guidelines have been developed and have been used for providing advice regarding large private parties and events in rural areas. A copy of the guidelines that were developed has been provided in Attachment 2.

Financial Implications

The 2016 Compliance Priorities Program will be addressed within existing budget allocations.

Statutory and Policy Compliance Implications

There a number of Acts which give local government regulatory powers. They include the:

- Companion Animals Act 1998
- Environmental Planning and Assessment Act 1979
- Food Act 2003
- Impounding Act 1993
- Local Government Act 1993
- Protection of the Environment Operations Act 1997
- Public Health Act 2010
- Roads Act 1993
- Swimming Pools Act 1992

Compliance action is considered and managed through Council's adopted Enforcement Policy (DM 1103173). Enforcement Guidelines (E2013/21238) have been formulated to supplement the Enforcement Policy. They give guidance in putting the Enforcement Policy into practice.

As per the Internal Auditors report and recommendations into the Regulatory Services functions of Council, a review of the Enforcement Policy and the Enforcement Guidelines is currently underway in association with Council's Legal Services Team.

BYRON SHIRE COUNCIL

Report No. 13.12 **PLANNING - S96 10.2013.559.3 - To permit access for light vehicles on Saturdays, Sundays and Public Holidays between the hours of 7.00am to 6.00pm**

Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2015/1312
Theme: Ecology
 Development Certification

Proposal:

S.96 No:	10.2013.559.3
Proposed modification:	Section 96 Modification to permit access for light vehicles on Saturdays, Sundays and Public Holidays between the hours of 7.00am to 6.00pm.
Original Development:	Change of use from Farm Building to Road Transport Terminal
Type of S.96 sought:	S96(2) Other Modification
Property description:	LOT: 15 DP: 1030574 31 Pinegroves Road MYOCUM
Parcel No/s:	237962
Applicant:	Mr A Hunter & Mrs J P Hunter
Owner:	Mr W A & Mrs J P Hunter
Zoning:	Zone No. R5 Large Lot Residential / PART RU1 Primary Production / PART DM Deferred Matter / PART RU2 Rural Landscape
S96 date received:	14 August 2015
Original DA determination date:	1 May 2014
Integrated Development:	No
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 11/9/15 to 24/9/15 - Submissions: For 0 Against 9 (including 4 after the close of the submission period)
Planning Review Committee:	Yes 1/10/15
Delegation to determination:	Council
Issues:	Validity of the consent condition. Impacts on surrounding rural residents in terms of amenity. Opportunity to gauge the impact of the development as approved.

Summary:

A S96 application has been received to modify a development consent that was previously modified by Council at the Ordinary Meeting held 20 November, 2014.

The current S96 application lodged seeks to modify condition 16 of the development consent by altering the consent condition that relates to operating hours to permit light vehicles to access the site on all days of the week (including public holidays) from 7am to 6pm.

5 In the interests of probity, Council has a procedure that development applications lodged by councillors are to be independently assessed by an external planner to ensure that the applicant and the assessor remain at arms length. This application has been assessed by an external planner.

The assessment and recommendation of the Independent Consultant is contained in this report.

10 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

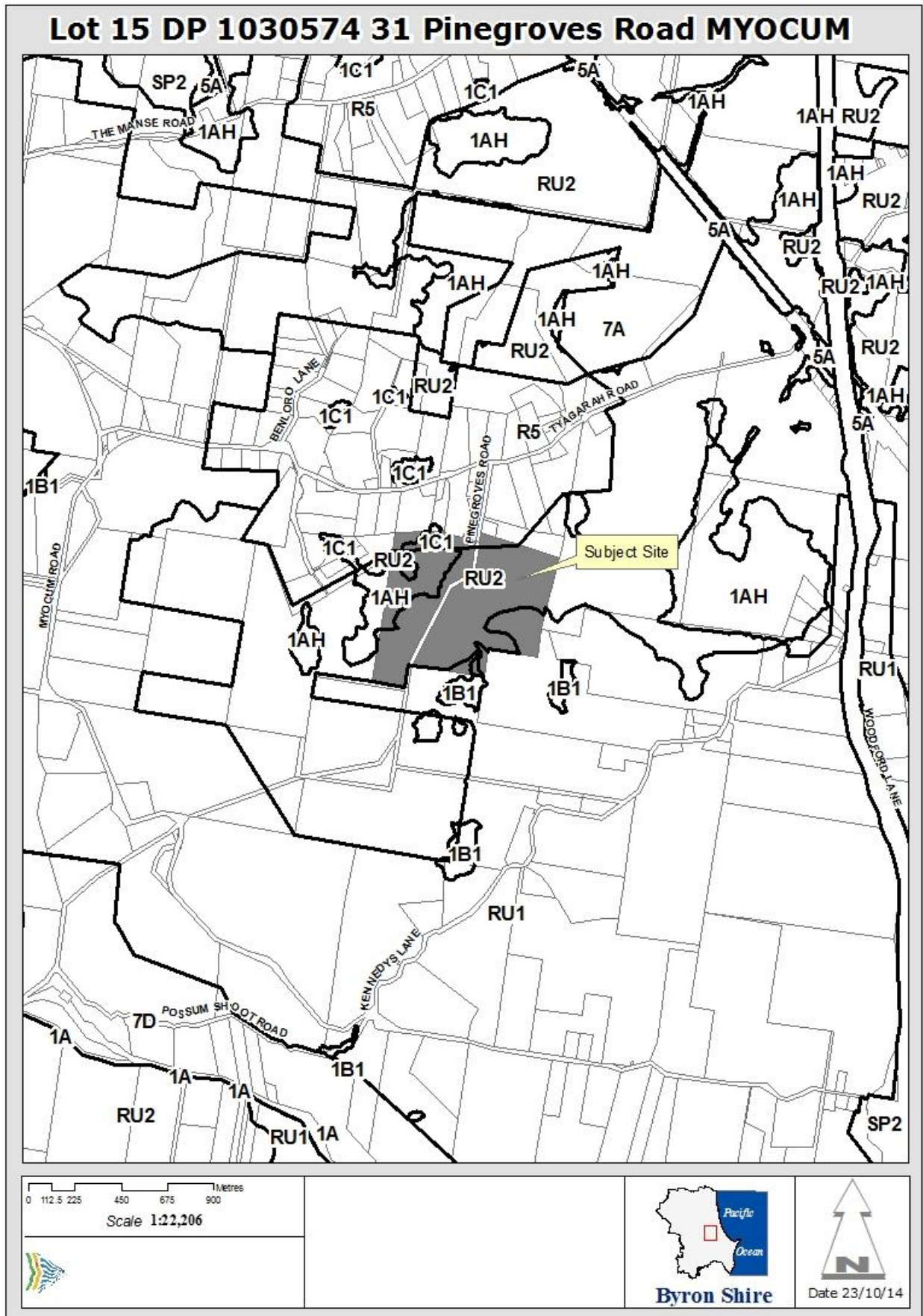
That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, development application 10.2013.559.3 to amend condition 16 to alter the operating hours, be refused for the following reasons:

- 1. The existing condition is a valid condition that has been imposed for a planning purpose, relates to the development and is reasonable.**
- 2. Amending the condition as requested may exacerbate impacts to the amenity of the residents of Pinegroves Road.**
- 3. There is a public interest benefit in maintaining this condition for the remainder of the two year time limited approval so that its effectiveness can be evaluated.**

Attachments:

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- 1 Confidential - Submissions - 10.2013.559.3, E2015/76345
- 2 Confidential - Log of Vehicles Accessing the Transport Terminal , E2015/76329



Assessment:**1. INTRODUCTION****5 1.1 Details of approved development and any subsequent modifications**

DA 10.2013.559.1 was determined by Council Resolution at the Ordinary Meeting held on 1 May 2014.

10 14-194 Resolved that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2013.559.1 for Change of use for a farm building to road transport terminal, be granted consent subject to appropriate mitigation measures and standard conditions listed in Annexure 4(b) #E2014/23019 with the following changes:

- 15 a) Date Consent Ceases - this consent ceases two (2) years after the commencement of operations and
- b) Replace condition 13 with "a maximum number of 10 non -articulated vehicle movements per week with a maximum unladen weight of 4 tonnes"
- c) Vary condition 16 – Hours of operation to 7:00am to 6:00pm Monday to Friday only.

20 (Woods/Cubis)

DA 10.2013.559.1 was amended by a S96 application in November 2014. Council agreed to amend condition 13 and to replace it with an improved version as follows:

25 13) Frequency of Truck Movements

A maximum number of 10 truck movements per week associated with this development. Trucks shall be limited to non-articulated trucks with a maximum 4 Heavy Rigid Vehicle (HRV) movements with the balance of the truck movements limited up to a Medium Rigid Vehicle (MRV).

30

NB: Medium Rigid Truck (MRV) represents the common service truck having a load capacity of 8 tonne typically having a single rear axle with dual tyres.

Heavy Rigid Vehicle (HRV) represents the maximum dimensions of a single unit truck typically has a load capacity of 12 tonne. This class also includes 4-axle twin steer vehicles with a typical load capacity of 16 tonne.

35

1.2 Section 96 modifications sought

40 An application has now been received to modify the development consent for DA 10.2013.559.1 by altering the consent condition that relates to operating hours to permit light vehicles to access the site on all days of the week (including public holidays) from 7am to 6pm (Condition 16).

45 Existing Condition

16) Hours of Operation

Hours of operation are from 7.00am to 6.00pm Monday to Friday only. No operations to take place on Saturdays, Sundays or Public Holidays.

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Proposed Condition

16) Hours of Operation

Hours of operation are from 7.00am to 6.00pm Monday to Friday. Only light vehicles are permitted to access the site on Saturdays, Sundays or Public Holidays from 7.00am to 6.00pm.

55

In completing the S.96 application form the applicant described the modification as both a S96(1) modification involving a minor error, misdescription or miscalculation and a S96 (1A) modification involving minimal environmental impact.

5 There are number of different types of modifications allowed under Section 96 of the Act. Section 96 (1) – Modifications involving minor errors, misdescription, or miscalculation. There would be no change to the form of the development approved, and notification would not be required. For example:

- Wrong plan numbers

10 Section 96 (1A) – Modifications involving minimal environmental impact. These are used for minor amendments. There is no impact on privacy, height, overshadowing, etc, and notification is generally not required. These might be:

- Internal design changes
- 15 • Amended landscape plans
- Drainage design amendment

Section 96 (2) – Other modifications. These are all other modifications where environmental impact is possible. They generally require notification. Typical changes include:

- Windows
- Floor levels
- Heights
- Car parking generation
- 25 • Roof design
- Operating hours

In my opinion the application is a S96 (2) modification and it will be assessed accordingly.

30 **1.3 Is the modification substantially the same as the development granted**

Yes. The only modification is for the hours of operation. This will not result is a substantially different development to that granted pursuant to DA 10.2013.559.1.

35 **2. SUMMARY OF REFERRALS**

	Summary of Issues
Development Engineer	No issues raised.
Environmental Health Officer	N/A
Water & Waste Services	N/A
Building Surveyor	N/A
Fire Control Officer	N/A
Tree Preservation Officer	N/A
Government Authorities	N/A

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

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

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

45 N/A

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

Byron Local Environmental Plan 2014- Issues

5 N/A. The approval that is the subject of this S96 application was determined by Council on 1 May 2014 pursuant to Byron LEP 1988. Byron LEP 2014 was gazetted on 30 May 2014 to commence on 21 July 2014.

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

10 N/A. None of the draft EPI's that have been placed on public exhibition are relevant to this S96 application.

3.3 DEVELOPMENT CONTROL PLANS

15

Development Control Plan 2014 - Issues

N/A. This S96 application was assessed under Byron DCP 2010.

Other Development Control Plan/s - Issues

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N/A.

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

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30 The approval for a road transport terminal was issued subject to a schedule of conditions. One of these conditions was that hours of operation be limited to Monday to Friday (7am to 6pm) with no operation on Saturdays, Sundays or Public Holidays. The original application was that vehicles should be able to access the site 7 days per week during daylight hours.

35 Council carefully considered this application and agreed to allow it to proceed for a period of two years. It also limited the hours of operation in response to concerns from neighbouring landowners. The site access (Pinegroves Road) is a narrow rural road in a small rural residential neighbourhood. Pinegroves Road is currently zoned R5 Large Lot Residential. The land on which the road transport terminal was approved is also partly in the R5 zone.

40 Limiting the hours or days of operation of a development is one way to limit the impact of that development on surrounding land and neighbours. Development that generates traffic will impact on most heavily on those closest to it and on roads with an existing low traffic volume. In this case that is the residents of Pinegroves Road.

45 The applicant has suggested in supporting information that vehicle access over the weekend and public holidays would be limited to light vehicles only and is required in order that clients can attend to their belongings without the need for assistance in loading or unloading. No other reasons are given. No information about the projected traffic volume is provided. No information is provided as to how the condition has impacted on the road transport terminal since May 2014.

50 The condition to limit trading hours will assist in retaining the rural residential amenity of the Pinegroves Road locality. In a Victorian court case the observation was that "Amenity is an elusive concept. It has its usual meaning of pleasantness, but also has a wider ambit. It has a physical (or tangible) component, which could include character and appearance of building and works, proximity to shopping facilities, quality infrastructure and absence of noise, unsightliness or offensive odours. It has been said to embrace all the features, benefits and advantages inherent in the environment in question. It also has a psychological or social component." The Macquarie

55

Dictionary states that *amenity* means “the agreeable features and circumstances of the locality”. The submissions received indicate that a quiet cul de sac that is used largely by local traffic (less than 10 dwellings) is important to local residents and is a positive feature or circumstance of their locality. They place a high value on retaining that amenity.

5 This condition is aimed at limiting the impacts on the amenity of neighbouring landowners to 11 hours per day on the normal days of business (Monday to Friday) with the weekends returning to local traffic generated by the residents. This is not an onerous restriction for a road transport terminal in this location.

10 There is no new information that has been provided to substantiate a change in the hours of operation. The concerns of neighbouring landowners about impacts on their rural residential lifestyle and the amenity of their neighbourhood remain. It is a reasonable condition and should not be altered for the life of this consent.

15 **Additional Information**

Additional information was submitted by the applicant on 16 November 2015 (post the drafting of this report), and forwarded to the external planner for review and comment.

20 The external planner has advised: “*I have looked at the information supplied by the applicant. My report and recommendation remain the same.*”

25 **3.5 Engineering referral**

Council’s Consultant Engineer has provided the following comments: “*The estimated design capacity of Pinegrove Road is in the order of 150 VPD. The estimated traffic on Pinegroves Road, using the traffic estimated from this development in the DA and traffic from the existing development along Pinegroves Road is 80 VPD. Increasing the number of days that vehicles can access the development will reduce the traffic load on other days of the week. The road has the capacity to cater for the traffic generated by the development. The timing of the vehicles using the road is not an engineering issue. The development application is supported from engineering grounds.*”

35 It is important to note that the condition to limit the operating hours was not imposed as result of engineering related concerns. It is acknowledged that Pinegroves Road has the capacity to deal with the number of vehicles generated by the development. In assessing this S96 application it is not appropriate to revisit the original approval or other conditions.

40 **3.6 Submissions made in accordance with this Act or the Regulations**

45 A number of submissions to this S96 application raised issues that refer to previous approvals and other matters that don’t relate to the limitations on hours of operation. These will not be addressed in detail as they do not relate to the decision as to whether the hours of operation condition should be amended.

Issue	Comment
Traffic speeds are increased which endangers wildlife	Traffic speeds are controlled by signage (reflecting legal speed limits), driver behaviour and enforcement. Operating hours are unlikely to be linked to traffic speed.
Compliance history of the site	Notwithstanding the compliance history of the site the applicant is entitled to request a variation to their consent. Council must consider any such request.
Due process is not being followed	Council has received a S96 application. It has advertised it and assessed it in accordance with “Council’s Procedure No: 63.

Issue	Comment
	“Development Applications – Conflict Of Interests”. This requires that development applications submitted by a Councillor of Byron Shire Council will be assessed by an independent consultant and be determined by Council. That is how this application is being dealt with and this is a valid and transparent process.
Business reasons only are motivating this change of conditions	The applicant provides only limited reasons for the change in condition. Increased client accessibility is the reason provided by the applicant. Council has to deal with the information is it is given.
What is the definition of light vehicle?	RMS defines a light vehicle as “any vehicle with a Gross Vehicle Mass that does not exceed 4.5 tonnes.”
Amenity of the neighbourhood will be adversely affected	The purpose of this condition was to limit the impacts on the amenity of the rural residential neighbourhood that the access road passes through to get to the subject land. Permitting road transport terminal related traffic along Pinegroves Road on weekends and public holidays may detrimentally affect the peaceful enjoyment of this rural neighbourhood. This concern is valid.
The land is being used illegally.	This has been referred to Councils compliance section.
Safety on Pinegroves Road and Tyagarah Road for car users.	Council’s Consultant Development Engineer has not raised any issues about the safety of users of these roads as a result of this condition being amended. If there are safety issues that can be specifically identified (the objector is not specific) then these would be useful to know should a fresh application be received once the current application has expired.
Precedent of allowing businesses on farm land	This application is to amend a condition on an existing approval. It is not valid to revisit the precedent effects of the approval in May 2014 for a road transport terminal.
Repeated S96 applications are unfair.	The EPA Act, 1979 does not limit the number of times a consent can be amended. Each application is to be assessed on its merits.
Who is monitoring the trial consent that applies to this property and how will it be considered?	Council has records of complaints made in relation to the subject land. This issue will be relevant if a further application is made under Byron LEP 2014.
Line marking needed in Pinegroves Road.	Pinegroves Road has a 4 metre wide pavement which the consultant engineer has indicated is sufficient for the level of traffic that use it. No line marking is anticipated.
Development is now a self storage business and Council should take compliance action	This has been referred to Council’s compliance section.
Site has a steep driveway and is not suitable for 7 day access to storage. Safety issues for exiting vehicles and children on bikes.	The steep driveway was known to Council when the consent was issued in May 2014. Council is conscious of the rural residential neighbourhood with children playing in the street more likely on a weekend. This safety issue has not been raised by Council’s Consultant Development Engineer.

3.7 Public interest

- 5 The public interest is generally associated with furthering the welfare and wellbeing of the public. The proposed consent modification may benefit the clients of the road transport terminal, but will have little impact on the wider community. It may have an impact on the immediate rural residential community in the vicinity of Pinegroves Road and this has already been considered.

In terms of process and transparency, there is some public interest value in maintaining the conditions that were imposed on the development for the two year life of the consent. Continuity in conditions may assist evaluating the effectiveness of those conditions.

5

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

N/A

10

4.2 Section 94 Contributions

N/A

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5. CONCLUSION

The NSW Land and Environment Court has used the following three principles to assist in determining if a condition of consent is valid:

20

1. *It must be imposed for a planning purpose* – in this case the limitation of operating hours does relate to planning concerns about impacts on the locality and the amenity of the residents.
2. *It must fairly and reasonably relate to the development for which permission is given* – it does relate to the consent granted to this development for a road transport terminal.
3. *It must be reasonable* – in the circumstances it is a reasonable condition. The applicant has not been able to demonstrate that it is unreasonable or onerous.

25

The applicant provides minimal information to justify the proposed change of operating hours. They have not shown that the condition is unreasonable or unfair.

30

The concerns of neighbouring landowners about impacts on their rural residential lifestyle and amenity remain. This condition is aimed at limiting the impacts on neighbouring landowners to 11 hours per day on the normal days of business. It is a reasonable condition and should not be altered for the remaining life of this consent.

Report No. 13.13 **Freedom Camping Trial - Byron Bay**
Directorate: Sustainable Environment and Economy
Report Author: Sarah Workman, Tourism Officer
File No: I2015/1389
5 **Theme:** Economy
 Economic Development

Summary:

10 This report responds to Council Resolution 14-579, which aims to reduce the associated impacts and antisocial behaviour associated with freedom camping in Byron Shire's streets and reserves.

15 Following stakeholder engagement, research and assessment of the Shire's challenges with van packers and the global Freedom Camping phenomenon, the Economic Development and Tourism team provided a presentation as the basis of a workshop for Councillors on 28 May 2015.

20 The 28 May Councillor workshop explored the current situational analysis of freedom camping in the Shire, the Byron Bay town centre hotspots for illegal camping and the behavioural change challenges embedded in any initiative undertaken. A strategy framework was proposed, however due to time constraints the details of a 12-month trial were not finalised.

25 A second Councillor workshop was held on 24 September 2015 to discuss and reach consensus on the intricacies of a 12 month Freedom Camping project trial. At this workshop Councillors proposed that staff explore two potential sites for investigation of a 12 month Freedom Camping project, one in town (Main Beach Carpark) and the second on the outskirts of town (The Cavanbah Centre). This report provides a review of suitability, viability and a cost analysis of each site and provides a recommended path forward.

RECOMMENDATION:

1. **That Council do not proceed with the Freedom Camping Site Trials at Main Beach Carpark and the Cavanbah Centre, due to prohibitive infrastructure costs, legal constraints and incompatibility with the current land use guidelines at each site.**
2. **That Council undertake the following actions:**
 - a) **Invest \$30,000 (to be considered as part of the 31 December quarterly budget review) to undertake a stakeholder engagement program and marketing campaign to educate and work with intermediaries, influencers and end consumers to change behaviour and encourage Freedom Campers to stay in low-cost, approved camping sites/accommodation in Byron Bay.**
 - b) **Authorise staff to continue discussions with the private sector to progress proposals and expressions of interest from operators to explore capacity for the Freedom Camping market on appropriate sites.**
 - c) **Continue to work with the North Coast Destination Network Freedom Camping Taskforce on a regional solution.**
 - d) **Staff provide a report advising the outcomes and effectiveness of the stakeholder engagement program and marketing campaign.**
 - e) **Staff prepare a report, separate to Freedom Camping, that investigates potential sites for the RV market, which is considered as a separate issue to the anti-social behaviour associated with Freedom Camping in Byron Bay's streets.**

30

Attachments:

- 1 Freedom Camping Trial Site Selection Matrix - Presented at the Strategic Planning Workshop on 28 May 2015, E2015/33175
 - 5 2 Budget for the Freedom Camping Trial at The Cavanbah Centre, E2015/75128
 - 3 Freedom Camping Trial - Freedom Camping Trial Presentation to the Strategic Planning Workshop on 28 May 2015, E2015/78859
- 10

Report

Freedom Camping, by definition, is spending the night in the wilderness, not on a site you have to pay for: you have the freedom to stop wherever you want and it's free.

5 This report responds to Council Resolution 14-579, which aims to reduce the associated impacts and antisocial behaviour associated with Freedom camping in Byron Shire's streets and reserves. The Council Resolution states (14-579):

- 10 1. *Commence work on establishing the viability and regulations required to conduct a 12 month trial of a Freedom Camping site or sites within the Shire with an initial Councillor workshop.*
- 15 2. *Identifies an appropriate partner or partners to undertake such a trial through an Expression of Interest process.*
- 20 3. *Include in the proposed trial (after the initial workshop) the following elements:*
 - a. *Statistical collection and analysis of demand and usage;*
 - b. *Monitoring and evaluation of the trial;*
 - 20 c. *Identification of the positive benefits and / or challenges in operating a Freedom Camping site; and*
 - d. *Recommendations regarding the continuation or future operation of Freedom Camping sites within the Shire.*

25 **Councillor Workshops**

On May 28 2015, the Economic Development and Tourism team provided a presentation to Councillors outlining the current situational analysis of Freedom Camping in Byron Shire, the Byron Bay town centre hotpots for illegal camping and the behavioural change challenges embedded in any initiative undertaken. A strategy framework was proposed, however due to time constraints the details of a 12-month trial were not finalised. Annexure 1 outlines the presentation that was provided at the 28 May workshop (and the 24 September 2015 workshop). The presentation covered the following information:

- 35 1. Review the current situational analysis of illegal camping and vanpacker challenges in Byron Bay
2. Understand the broader Freedom Camping phenomenon and Destination Network approach
- 40 3. Define the target audience, intermediaries and partners
4. Review additional site options and barriers/constraints
5. Review the trial framework – sites, marketing, evaluation and stakeholder management
6. Agree on the 12 month trial sites, pricing model and any specific council site works/partnering assistance
- 45 7. Develop a 12 month trial project budget options/proposal

A second Councillor workshop was held on 24 September 2015, to discuss and reach consensus on the intricacies of a 12 month Freedom Camping project trial. The following points guided discussion at the workshop:

- 50 1. What is the challenge we are trying to address? Does everyone agree?
2. Who are the people this project is targeting?
3. What are the current mechanisms or strategies in place to meet the challenge?
4. What else do you think Council could / or should be doing to meet the challenge?
5. What does a 12 month Freedom Camping trial look like to you?
- 55 6. What is Council prepared to invest to meet the challenge?

At this workshop Councillors proposed that staff explore two potential sites for a 12 month Freedom Camping Trial, one in town (Main Beach Carpark) and the second on the outskirts of town (The Cavanbah Centre). Councillors have asked staff to provide a review of suitability, viability and a cost analysis of each site.

Proposed site 1 - Main Beach Carpark

Staff in Council's Governance team have advised that Council cannot legally use part of the Main Beach car park (or Clarkes Beach car park) for camping as both car parks are part of Crown Reserve 82000. The reserve is gazetted for public recreation. It is arguable a camping area is not consistent with the use of the reserve for public recreation. This is because existing Crown camping areas have a different gazetted purpose compared with public recreation areas. It is well established that where land has been reserved for a particular purpose, the use of the land for some other purpose is not authorised.

It is noted that, within the overall context of the above principle, there are two options under the *Crown Lands Act* for using a reserve for a purpose that is not consistent with its gazetted use. However, neither of these options can be pursued by Council in the absence of Ministerial consent.

The first is for the Minister to approve a reserve Plan of Management that includes additional uses beyond the reserved purpose. However, there is currently no Plan of Management for Crown Reserve 82000.

The second option is for the Crown to issue a section 34A licence 'relevant interest' to the reserve trust that would allow camping to take place at Main Beach. However, the staff view is that it is highly unlikely such an interest would be granted by the Minister. This is chiefly because of the potential implications for the financial viability of established Crown camping areas if de facto camping areas were permitted.

Proposed site 2 - The Cavanbah Centre

This Council owned and managed site has a car park capacity in excess of 200 spaces. However, the current Plan of Management does not allow for camping of this nature, zoning is for public recreation purposes only. Similarly, the site is zoned RE1 (for Public recreation) in the Byron Local Environment Plan 2014. Therefore, utilising The Cavanbah Centre for a Freedom Camping trial is inconsistent with the current Plan of Management and is incompatible with the Cavanbah Centre's primary use of sport and recreation.

In the future it may be possible to explore opportunities for onsite camping related to sports tourism (as an ancillary use to the recreation use) and explore potential to provide a service for the low impact self contained traveller/RV market (Grey Nomads).

Staff have also prepared a budget (see annexure 3), which outlines the cost of infrastructure and support mechanisms required to conduct a best-practice Freedom Camping Trial at the Cavanbah Centre. Revenue is estimated at \$54,600, while the total estimated cost for 12 months is \$278,677, which includes waiving an additional \$293,400 in Section 64 fees for Water and Sewer contributions. This demonstrates a shortfall of \$224,077, which needs to be sourced from operating or reserve funds. Based on a cost-benefit analysis of the site it is not recommended that Council proceed with a 12 month trial.

Section 64 and Section 94 contributions

Section 64 Contributions are considered under Council's Water and Sewer equivalent tenement policy 13-005, which advises that for a Camping Site (temporary) in a caravan park - 0.50 of an equivalent tenement (ET) for Water and 0.63 of an ET for Sewer should be charged for each Camping Site.

The Local Government (*Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings*) Regulation 2005 advised there can be up to 12 persons per campsite. Depending on the camp site arrangements (parking areas) this would change the calculation. Four vans per "camp site" is recommended. Therefore, the cost would be \$6387.5 per Water ET (including Rous Bulk Water) and \$8282.61 per Sewer ET being a total of \$14670.11 per site. If this was a 12 month trial and 4 vans per camp site was considered the true cost per space per night would be \$10.05 per van. These section 64 fees could be waived for the trial period, however, Council would have to discuss the waiving of bulk water charges with Rous Water as these are not Council fees.

The Byron Shire Developer Contributions Plan 2012 (amendment 3) is split into two parts, Part A being the Byron Section 94 plan that applies to all residential development and Part B being the Byron Section 94A plan that applies to all non residential development. Freedom camping would be considered under the Section 94A where the proposed cost of carrying out the development is greater than \$100,000. Which is unlikely in this case, so there would be no S94 charges for this development.

Based on the above, it is recommend that sport and recreation remain the focus of the Centre and that staff continue investigating ways to grow its recreational use, including sports tourism and recreational/community programs.

Stakeholder engagement and marketing campaign

In conjunction with the marketing and educations campaign, staff propose the delivery of a series of key stakeholder and intermediary workshops, which will work with low-cost accommodation providers to pool together and provide marketing collateral outlining budget camping/ accommodation options in Byron Bay. The engagement process would also work through some of the barriers for Freedom Campers, for example accessing sites late at night, price points and generating awareness of these sites prior to arrival in Byron Bay.

This consultation would also include engagement with collaborators (for example, tourism bodies, industry, private/commercial operators, community) and intermediaries (for example, van hire companies, on-line networks, forums, Facebook, camping guides, visitor centres, hostels, media). Consultation would encourage local, regional and coastal partnerships and the formation of a local task force aimed at working together to encourage freedom campers into low-cost accommodation options. The engagement process will also include working with private enterprise and commercial operators to invite proposals to explore capacity and capability to cater for the Freedom Camping market.

A marketing and education campaign will run in conjunction with consultation. The campaign will provide up-to-date and accurate information on low-cost accommodation options in Byron Bay. Education will be predominately through digital mediums, social media sites and key forums that van packers review or engage with prior to arrival. Sites such as, wiki camps and free camps Australia will be targeted and Council will work with a social media expert to interact with visitors in a fun and engaging way. This will enable and encourage behavioural change over time and raise awareness of affordable camping and accommodation providers in Byron Bay.

The campaign will also include digital marketing, print advertising, radio, editorial and features in key camping guides. Direct marketing material will also be developed for van packers, holiday parks, hostels and visitor centres. We will also look for ambassadors to spread the word amongst their social media channels and on key forums and websites.

North Coast Destination Network Freedom Camping Taskforce

5 In 2014, North Coast Destination Network formed the North Coast Destination Network (NCDN) Freedom Camping Taskforce to collaborate regionally and work through the issues associated with Freedom Camping. To date, work has not commenced on this project due to resourcing and budget constraints. However, if budget becomes available from NCDN it is proposed that Council participate to address the issues within Byron Bay and work on a regional solution.

Financial Implications

10 If Council wishes to progress the recommendation to invest \$30,000 to enable the stakeholder engagement and marketing campaign program, funding could be considered as part of the 31 December quarterly budget review.

Statutory and Policy Compliance Implications

15 Local Government Act
Byron Shire Council Local Environment Plan 2014
The Cavanbah Centre Plan of Management
Byron Shire 2008 – 2018 Tourism Management Plan
Crown Lands Act

20

Report No. 13.14 Report of the Planning Review Committee Meeting held on 12 November, 2015

Directorate: Sustainable Environment and Economy

Report Author: Wayne Bertram, Manager Sustainable Development

5 **File No:** I2015/1393

Theme: Ecology
Development and Approvals

10 **Summary:**

This report provides the outcome of the Planning Review Committee Meeting held on 12 November, 2015.

15

RECOMMENDATION:

That the report be noted.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

Report:

The meeting commenced at 1.00pm and concluded at 1.40pm.

Present: Crs Woods, Wanchap, Cameron, Spooner

5 Apologies: Cr Richardson

As Council has determined the original development applications, the Section 96 applications to modify the following development consents have been referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.

10

The following Section 96 applications were reviewed with the outcome shown in the final column.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2013.549.4	Bayview Land Development Pty Ltd	Tuckeroo Ave Mullumbimby	S96 to alter concept plan	Level 1 18/8/15 to 31/8/15 No submission received	Delegated Authority
10.2013.600.2	Planners North	951 Broken Head Rd Broken Head	S96 for the reconfiguration of a private education facility	Level 0	Delegated Authority
10.2011.524.2	Mr PJ Defina	384 Coopers Shoot Rd Coopers Shoot	S96 to amend conditions 20(d) and 30	Level 0	Delegated Authority
10.2011.413.5	Geolink Consulting Pty Ltd	59 Lismore Rd Bangalow	S96 variation of lot sizes and one (1) additional lot	Level 2 15/10/15 to 28/10/15 1 submission	Delegated Authority
10.2012.407.3	Planners North	45-47 Lawson St Byron Bay	S96 to modify design of building	Level 2 24/9/15 to 7/10/15 1 submission	Delegated Authority
10.2012.173.3	Ardill Payne	17 Ballina Road Bangalow	S96 to modify conditions to change staging of lot releases. No change to subdivision plans.	Level 0	Delegated Authority
10.2015.208.2	Mr DW Beattie	60B Kingsvale Rd Myocum	S96 to recalculate S94 contributions	Level 0	Delegated Authority

Report No. 13.15 PLANNING - Rural Land Use Strategy – Site Suitability Criteria & Mapping Methodology and related mapping**Directorate:** Sustainable Environment and Economy**Report Author:** Alex Caras, Senior Planner5 **File No:** I2015/1400**Theme:** Ecology
Planning Policy and Natural Environment10 **Summary:**

15 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 revised Stage 2 – ‘Site Suitability Criteria and Mapping Methodology’ and related mapping for Council’s adoption. Once adopted, this will become a key companion document together with Stage 3 – ‘Policy Directions Paper’ to inform preparation of the draft Rural Land Use Strategy.

20 This report notes that both the ‘HCV’ and ‘Extreme Bushfire’ mapping are currently under review and are awaiting completion of the updated shire wide vegetation mapping. In the meantime the report recommends that Council adopt the Stage 2 material in Attachment 1 on the understanding that the updated ‘HCV’ and ‘Extreme Bushfire’ mapping will be presented in conjunction with the draft Strategy to Council in February 2016. This will ensure the RLUS milestone deadlines remain on track for a final draft strategy to be considered by Council by the 31 July 2016.

25 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

1. **That Council adopt the Site Suitability Criteria and Mapping Methodology (as revised) and corresponding mapping contained in Attachment 1 to this report, as a key document to inform preparation of the draft Rural Land Use Strategy.**
2. **That Council note that updated ‘HCV’ and ‘Extreme Bushfire’ mapping will be presented in conjunction with the draft Strategy to Council in February 2016 for adoption.**

35

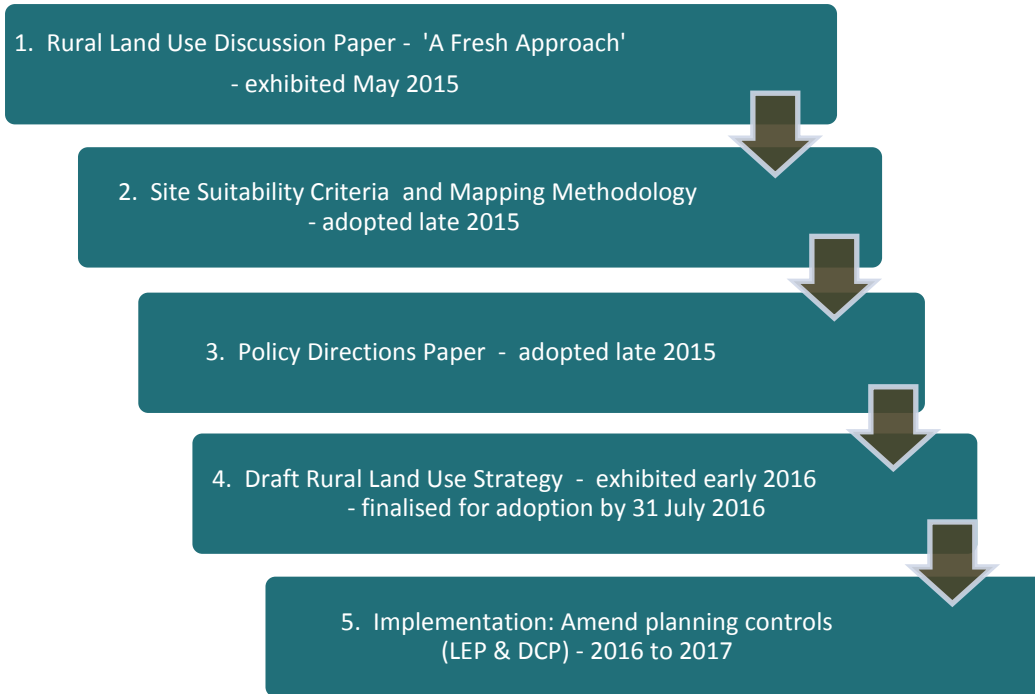
Attachments:

- 1 Draft Rural Land Use Strategy - Site Suitability Criteria and Mapping Methodology (as revised), including related maps, E2015/70996
- 40 2 Form of Special Disclosure of Pecuniary Interest, E2012/2815

Background

Council resolved to commit to having a new Rural Land Use Strategy adopted by 31 July 2016. Preparation of a new Rural Land Use Strategy is being undertaken in the following stages:

5



To ensure a 31 July 2016 adoption date is achieved, Council at its 29 October 2015 Ordinary Meeting resolved to commit to the following milestone deadlines:

10

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 related 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

Council at its 29 October 2015 Ordinary Meeting also endorsed the Stage 2 – ‘Site Suitability Criteria and Mapping Methodology’, followed by adoption of Stage 3 – ‘Policy Directions Paper’ at the 19 November 2015 Ordinary Meeting. Together these documents will inform preparation of the draft Rural Land Use Strategy.

5 This report presents the revised Stage 2 – ‘Site Suitability Criteria and Mapping Methodology’ and related mapping for Council’s adoption, as contained in Attachment ‘1’.

Report

10 The Site Suitability Criteria and Mapping Methodology (SSCMM) provides 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 the need to consider future rural development priorities within the context of service catchment and road infrastructure criteria.

15 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:

- 20 • other relevant state, regional and/or local planning documents and best practice planning principles;
- government agency feedback;
- feedback arising from Council’s Strategic Planning Committee (SPC) workshops; and
- consequential changes resulting from Council resolution 15-569 (29/10/15) in relation to the draft Policy Directions Paper.

25 In relation to the last bullet point, consequential changes made within the SSCMM document (Attachment 1) have been highlighted in **yellow** for ease of reference.

30 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 has been used to map the following categories of land:

35 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.

40 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 landscape features.

50 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 considers 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 generally will be given to 'assessable' and 'unconstrained' land within:

For all unconstrained and assessable land, whether within or outside a service catchment area, the following also must be considered:

- capacity / condition of relevant road network; and
- costs to wider community of proceeding with potential rural lifestyle living precincts.

More detailed evaluation of these and other matters will occur at the draft Rural Land Use Strategy stage. A rural land release program also will be developed as part of the Rural Land Use Strategy that identifies areas to be released in the short, medium and long term, when / what services are required, process for rezoning, etc.

Mapping highlights

Some points to note from the SSCMM mapping (contained in Attachment '1') are as follows:

- The area of *unconstrained* and *assessable* land totals approximately 4,400 hectares (see **Map 19** in Attachment 1)
- There is a considerable amount of *unconstrained* land (340 hectares) and *assessable* land (1,635 hectares) within the 2km/5km service catchments (see **Map 19A** in Attachment 1);
- Much of this occurs within the 5km service catchments of Mullumbimby and Byron Bay, followed by the 2km Village catchments of Main Arm and The Pocket;
- Some of the existing rural residential zoned land within the 5km town service catchments may have further subdivision potential;
- The assessable land criteria (in Table 2) are not comprehensive and there may be other matters which need to be taken into consideration to determine a site's development potential (eg. capacity/condition of relevant road network); and
- It will be necessary to investigate the suitability of *unconstrained* and *assessable* land for future urban purposes (short and long term) during the draft Strategy stage.

High Conservation Value Vegetation (HCV) and 'Extreme Bushfire' mapping

Both the 'HCV' and 'Extreme Bushfire' mapping are currently under review and are awaiting completion of the updated shire wide vegetation mapping, which is expected prior to Council's consideration of the draft Strategy in February 2016. At that time a more up to date version of these maps will be presented along with the draft Strategy to be adopted for public exhibition.

In order for the RLUS to remain on track to meet the milestone deadlines adopted on 29 October 2015, it is requested that Council adopt the SSCMM and related mapping (as contained in Attachment '1'). This is on the understanding that the updated 'HCV' and 'Extreme Bushfire' maps will be presented to Council in February 2016 in conjunction with the draft Strategy.

Conclusion

5 It is recommended that Council adopt the Site Suitability Criteria & Mapping Methodology (as revised) and corresponding mapping contained in Attachment '1' as a key document to inform preparation of the draft Rural Land Use Strategy. Updated 'HCV' and 'Extreme Bushfire' mapping will be presented to Council in February 2016 in conjunction with the draft Strategy. There may be subsequent refinements to the SSCMM language and format to improve legibility prior to being exhibited. Such changes would not affect the criteria and mapping methodology adopted by Council.

10 **Financial Implications**

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

15 **Statutory and Policy Compliance Implications**

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. 13.16 **Bay Lane - Temporary Closure**
Directorate: Sustainable Environment and Economy
Report Author: Sarah Workman, Tourism Officer
File No: I2015/1401
5 **Theme:** Economy
 Economic Development

Summary:

10 Following the report to Council on 11 December 2014 regarding the outcomes of the Bay Lane Activation event, Council have requested that staff prepare a report to consider the temporary closure of Bay Lane and the cost of infrastructure to improve pedestrian safety and enable future laneway activations (14-652).

15 This report considers the infrastructure options available, suitable timing for implementation and synergies with the outcomes of the Byron Bay Town Centre Masterplan.

RECOMMENDATION:

1. **That Council place the temporary closure of Bay Lane on hold until construction of the Main Beach Backpackers is complete late 2016, due to restricted access at the Fletcher Street end of Bay Lane.**
2. **That Council recommend that investigation commence to transform Bay Lane into a shared zone to align with the preliminary recommendations of the Byron Bay Town Centre Masterplan.**
3. **That Council allocate a budget up to \$20,000 from Section 94A funds (Civic Improvements in Byron Bay town centre) to prepare a pavement treatment to the laneway, which increases pedestrian safety and beautifies the space.**
4. **That Council investigate the feasibility and stakeholder support to increase the footpath widths in Bay Lane to allow for Footpath Dining and increase pedestrian safety.**

Report

In October 2014, the Bay Lane Activation event provided a diverse cross art-form program that drew more than 3000 people into the laneway. The event engaged a multi-generational audience and confirmed strong community sentiment for activation of public spaces. Stakeholders and the general public were overwhelmingly positive and reinforced a strong desire for more site specific events that engage with public space and community, with particular reference to Bay Lane and the potential for enabling a shared zone laneway.

At its meeting on 11 December 2014, Council resolved (14-652):

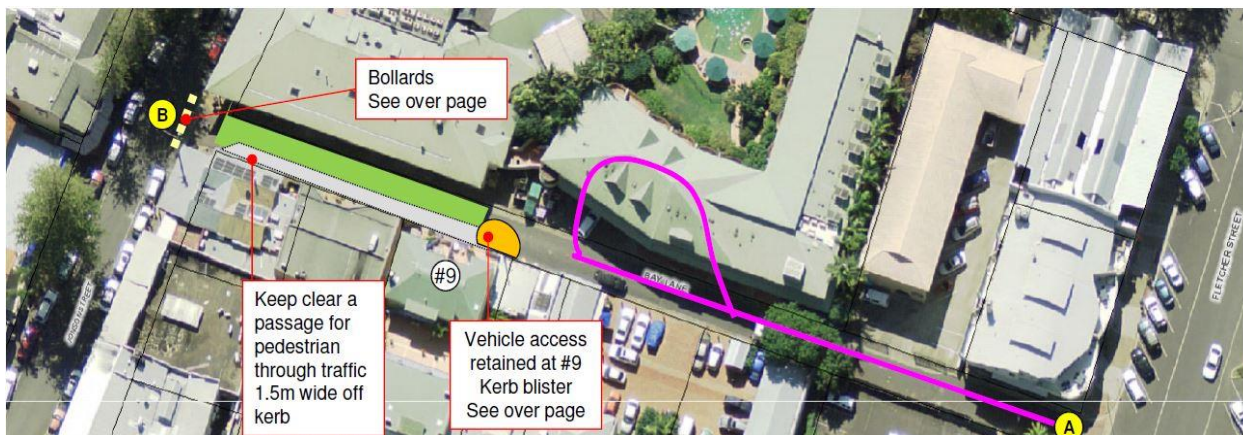
1. That Council note the overview of Bay Lane Activation and feedback from stakeholders presented in this report.
2. That Councillors receive an update clarifying the costs, revenues and budget outcomes of the project.
3. That Council receive a report that:
 - a) explores the cost of basic infrastructure that would contribute to pedestrian safety and enable future laneway activations, e.g. removable bollards.
 - b) explores the development of an Event Management Package that could be presented to third parties to produce future laneway activations.

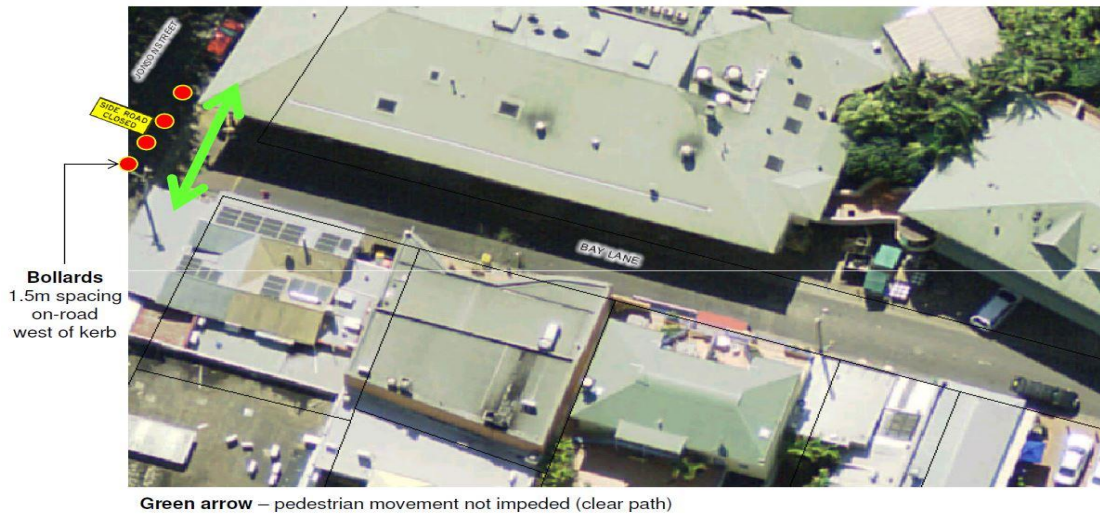
This report responds to part 3.a) of the resolution, as parts 2 and 3b) were reported to Council at its Ordinary Meeting on 19 March 2015.

Bay Lane is a well known eat-street destination with seven cafes and restaurants accessible from the laneway. On Friday and Saturday evenings this is a particularly busy area for pedestrians as they move around the town centre. The pedestrian safety issues arise predominantly from the Jonson street end as large trucks and deliveries are constantly arriving in bay Lane. In addition, cars move through the laneway at high speed causing concern for pedestrian safety.

Staff have explored the investment of a temporary removable bollard system to be installed at the Jonson Street end of Bay Lane and to the driveway at the Bay Lane Apartments to allow for resident and visitor vehicle access. The proposed closure would be in place on Friday and Saturday nights from 4pm to 6am. A temporary bollard system proves functional, aesthetically pleasing and is a relatively cost-effective solution. The total cost of a bollard system including installation is \$7,758.

Staff met with stakeholders on 21 October 2015 to discuss the proposed closure and infrastructure requirements, which includes a vehicle turning circle and 2-way vehicle access from the Bay Lane Apartments Bay to the Fletcher Street entrance of Bay Lane (please see the diagrams below).





5 Stakeholders that attended were very positive and supported activations within the laneway, increased pedestrian safety initiatives and improvements in the attractiveness of the site. However, issues such as delivery provisions, the ability to create a functional turning circle and issues associated with general access to the laneway requires further investigation by staff. There was a greater level of support for a shared zone. Stakeholders present also favoured increasing the footpath space to accommodate additional footpath dining and increase safety for pedestrians. It was also proposed that additional revenue generated from footpath dining could be reinvested in beautification and activation projects for the laneway.

10 Due to construction works at Main Beach Backpackers, the Fletcher Street end of the laneway is reduced to single lane access until December 2016. Staff recommend that Council place the temporary activation of Bay Lane on hold until December 2016, when construction is anticipated to finish.

15 As an alternative, and possibly a more effective solution, staff propose investigating the steps and engagement required to transform Bay Lane into a shared zone, to increase pedestrian safety and slow vehicle speeds. These actions align with the preliminary outcomes of the Byron Bay Town Centre Masterplan and provide the opportunity for beautification through pavement treatments and additional signage, which create interest and increased pedestrian safety. Below is an example of a shared zone in Bunda Street, Canberra and Central Street, Sydney, which demonstrates pedestrian prioritised areas.



5 In addition to transforming Bay Lane into a Shared Zone, staff will begin consultation and investigation into the steps required to increase the width of the footpath to allow for footpath dining in the laneway. This will create a revenue stream for Bay Lane, which could be reinvested into beautification and activation initiatives. This also allows restaurants and cafes to invest in furniture and infrastructure required to attract additional patronage and ensure they receive a return on investment.

10 Whilst the above work is being undertaken, Bay Lane will be included as part of the Byron Bay Town Centre Placemaking Seed Fund, where separate activations and beautification initiatives are proposed to showcase the use of public space. The Byron Bay Town Centre Placemaking Seed Fund report is also being considered as part of the Council meeting agenda for 10 December 2015.

15 **Financial Implications**

A budget allocation of up to \$30,000 from Section 94A funds (Civic Improvements in Byron Bay town centre) is required to prepare a pavement treatment to the laneway, which would increase pedestrian safety and beautify the space.

20 **Statutory and Policy Compliance Implications**

Byron Shire 2008 – 2018 Tourism Management Plan
Draft Byron Bay Town Centre Masterplan (stage 3 and stage 4 reports)
Local Government Act

Report No. 13.17 **Byron Bay Town Centre Placemaking Seed Fund (PSF)**
Directorate: Sustainable Environment and Economy
Report Author: Sarah Workman, Tourism Officer
File No: I2015/1405
5 **Theme:** Economy
 Economic Development

Summary:

10

The Byron Bay Town Centre Placemaking Seed Fund is proposed as a collaborative platform to initiate the revitalisation, beautification and activation of the Town Centre. The fund seeks to attract the creative talents of the Shire who have the capacity to transform underutilised spaces, public places and laneways to showcase the unique and innovative nature of this much loved and iconic town and achieve an authentic sense of place.

15

The program of consultation and development of the Byron Bay Town Centre Masterplan has focused on placemaking as a key driver of outcomes and strategies. The intent of establishing this fund is to be ready for implementation of the plan, specifically related to actions for revitalisation, beautification and activation.

20

The creation of the Placemaking Seed Fund allows Council to leverage dollars through community collaboration, grants and sponsorships to receive a high return on investment, strengthen community relationships and harness the creative capability within the Shire, while maximising the impact of the Masterplan's implementation.

25

This report details the objectives, timing and outcomes of the proposed Byron Bay Town Centre Placemaking Seed Fund with the intent to run the first project alongside the Byron Bay Town Centre Masterplan Exhibition period in February/March 2016.

RECOMMENDATION:

1. **That Council endorse the creation of the Byron Bay Town Centre Placemaking Seed Fund as a collaborative platform to initiate the revitalisation, beautification and activation of the Town Centre as a component of the Byron Bay Town Centre Masterplan exhibition and implementation program.**

2. **That Council allocate a budget for the Byron Bay Town Centre Placemaking Seed Fund being:**
 - a) **\$30,000 from the Footpath Dining Reserve.**
 - b) **\$30,000 from the Civic Improvements in the Byron Bay Town Centre / Public Art (Section 94A funds).**

3. **That Council resolve that the final decision regarding successful applicants be made by the General Manager under delegated authority.**

30

Report

Byron Shire Council has embarked on a significant and groundbreaking project over the past 12 months in the development of the Byron Bay Town Centre Masterplan. Extensive consultation has been undertaken to appreciate the current and future needs of the community, including the understanding of what's working, what's not and what are the unique qualities of the town centre and determining how each one of these can shape the future of the town, its livability and economy.

The Byron Bay Town Centre (BBTC) Placemaking Seed Fund is a launchpad initiative to quickly progress key strategies of the Masterplan relating to revitalisation, beautification and activation that will result in a higher level of connectedness for locals, opportunities for homegrown enterprise and inspiring visitor product.

The creation of a Placemaking Seed Fund (PSF) allows Council to leverage dollars through community collaboration, grants and sponsorships in order to receive a high return on investment, strengthen community relationships and harness the creative capability within our Shire, all while maximising the impact of the Masterplan's implementation.

What is a Placemaking Strategy?

The term placemaking has been used in many discussions about the Byron Bay Town Centre in recent times. Placemaking is the process through which we collectively activate and beautify our public spaces to maximise shared value. With the community being at the heart of placemaking, community participation is critical with placemaking involving the planning, design, management and programming of public spaces. More than just creating better design of public spaces, placemaking facilitates creative patterns of activities and connections (cultural, economic, social, ecological) that define a place and support its ongoing evolution.

Objectives of the Byron Bay Town Centre Placemaking Seed Fund (PSF)

Community participation and engagement forms part of the thinking behind developing the BBTC Placemaking Seed Fund. This fund will encourage event organisers, entrepreneurs and creatives to pitch their ideas for an activated, beautified and rejuvenated Byron Bay Town Centre. These ideas will provide the opportunity to deliver the outcomes of the Masterplan and showcase Byron's identity to the wider community and visitor economy. The Key objectives of the BBTC Placemaking Seed Fund are as follows:

1. Inspire the use of underutilised and inactive spaces, such as laneways, shared zones, streets, parks and reserves.
2. Beautify the town centre, which could include; public art installations, laneway beautification, pavement treatments, plantings, street furniture etc.
3. Provide inspiring activation in the town centre, which could include; pop-up bars and restaurants, shipping containers for business incubation, festivals, events, markets etc.
4. Activate town places with creative influences that cater for young and co-generational activations and spaces
5. Show connectivity for the community between spaces.
6. Create usable, inviting, productive and safe spaces.
7. Provide a platform for creatives to share and contribute their expertise and innovative ideas
8. Provide a platform to showcase the Byron identity
9. Foster investment and collaboration within the business and wider community of the Shire.
10. Leverage seed funds through grant, sponsorship or in-kind funds
11. Strengthen community relationships through engagement and partnering opportunities
12. Harness the creative capability within the Shire and ensure local artists, event organisers, musicians, etc. are provided with the opportunity to get involved in these projects, and provide mentoring opportunities to youth where possible

Placemaking Seed Fund Mechanics

5 The Placemaking Seed Fund will provide \$60,000 towards activation and beautification projects in the Byron Bay Town Centre. Applicants can apply for funding through one of the following categories:

- 1. Activation
- 2. Beautification

10 It is anticipated that up to five projects will be funded, with a mix of activation and beautification projects. These projects will also be a mix of temporary interventions and permanent beautification, which will start to reshape and redefine the town centre.

Activation

15 An activation includes creative concepts that inspire the use of underutilised and inactive spaces, such as laneways, shared zones, streets, parks and reserves. We are seeking innovative proposals for events, temporary interventions and artistic interventions. These proposals must create animation, vitality, and a real ‘buzz’ within the town centre.

20 Examples of an activation may include:

- 1. **Events** such as: Bay Lane Activation held in 2014, local product showcases, parades and celebrations, eat streets, music etc.
- 2. **A temporary intervention** such as: pop-up shops, shipping containers, edible gardens, community library etc.
- 25 3. **Artistic intervention** such as: sculpture, a mobile art gallery, etc.

The images below showcase successful activations within Australia and overseas that could be applied to the Byron Bay town centre. These include small and large scale examples.



30 A temporary pop-up restaurant in Montreal, Canada and shipping container at Brisbane's Eat Street.



35 A temporary intervention – community library and community garden.



Mobile art gallery and St Jerome's laneway music event.



5

Events at Eat Street Brisbane

Beautification

10 Beautification includes creative concepts and ideas that engage the community and inspire the public domain. Beautification will create vibrancy within the town centre and provide the opportunity to improve the aesthetic of the town centre. All beautification projects must be permanent, so a new legacy can be created for the town centre.

Examples of beautification may include:

- 15 1. public art installations
- 2. lighting installations
- 3. laneway beautification
- 4. pavement treatments
- 5. plantings
- 20 6. street furniture and improved public domain

The images below showcase successful beautification projects within Australia and overseas that could be applied to the Byron Bay town centre.



25

Transforming and beautifying underutilised spaces. An example of Lawson Lane, artwork inspired by Maya Hayuk, Aakash Nihalani, Brooke Andrew, Jim Bachor, Sabina Lang and Daniel Baumann.



Small scale beautification treatments



5

Landscaping and lighting installations



Outcomes

- 10 The BBTC Placemaking Seed Fund will provide the following outcomes for the town centre, Council and the wider community:
1. Provide a minimum of two innovative activation projects which will incubate local business, reflect the culture of the community and create a buzz in the town centre.
 - 15 2. Provide a minimum of two beautification projects that inspire the use of underutilised and inactive spaces.
 3. Increase project capability by leveraging Council's seed funding through grants, sponsorship and in-kind support.
 4. Attract new visitor markets through innovative and interesting activations and improved town amenity.
 - 20 5. Successfully implement short-term deliverables and strategies within the BBTC.

Partnerships and Collaboration

5 Council’s Economic Development and Tourism team has taken a lead role in facilitating partnerships and collaboration for community outcomes across a number of initiatives. The BBTC Placemaking Seed Fund provides another opportunity for Council to facilitate community, environment and economic opportunities and take a role in ensuring activities are undertaken with a best practice principles approach.

10 To enable placemaking activities and be effective partners in this initiative, ED&T staff will work closely with successful projects to address any regulatory requirements, event enablers such as licencing for crown lands/public reserves and laneway/road closures etc.

Application Process

15 Council will prepare a call for expressions of interest which will include detailed information on the criteria and requirements of successful proposals.

20 In addition to meeting the objectives and outcomes outlined above, applicants must detail their capability regarding insurance, occupational health and safety, risk management, sustainability and financial competency.

Each applicant must also demonstrate a proven track record and show the ability to secure additional funding and collaborate and engage with the community.

25 A project plan must accompany the expression of interest submission and detail consultation/engagement, requirements for licenses, road closures or regulatory requirements.

30 Council will also hold two information sessions for potential applicants, which provides an opportunity for questions and answers and to explore the Expression of Interest document in more detail and provide additional background information on the Byron Bay Town Centre Masterplan.

The fund will be promoted through local media channels and on the Byron Shire Council website.

Assessment process

35 An assessment panel made up of selected members of the Byron Bay Town Centre Internal Working Group and Council’s Public Art Committee will be established.

40 An evaluation model reflecting the PSF criteria/outcomes will be provided to panel members to undertake an assessment of all submissions.

45 Submissions will be recorded as received, with all submissions provided to the assessment panel members for evaluation. The Panel will be convened to verify the evaluation scoring and recommendations for successful funding. This will be provided in a report to the General Manager for PSF approval.

All applicants will then be notified of their success or otherwise and any feedback provided.

Timing

50
14 Dec 15 Expressions of Interest open
Dec 15/Jan 16 Information sessions held for potential applicants
12 Feb 16 Expressions of interest close
24 Feb 16 Successful applicants notified
55 March 16 First activation/beautification project commences

Byron Bay Town Centre Masterplan Exhibition showcase initiative

It is expected that the Masterplan will go on exhibition for 6 weeks in February/March 2016. To provide the community with an insight into the placemaking aspects of the plan and create an exciting and innovative engagement platform it is proposed that the first activation and/or beautification project be launched in conjunction with the Public Exhibition phase of the BBTM.

Links with the Tourism Management Plan and Vibrant Byron Strategy

The Placemaking Seed Fund outcomes provides the opportunity to attract new visitor markets that align with Council’s destination brand and ethos to attract high-yield, low-impact visitor markets from Sydney and Melbourne. The Placemaking Seed Fund aligns with the following objectives and broader strategies of the Tourism Management Plan:

1. Strategy 8.1 – Investigate the development and promotion of additional tourism product and visitor experiences to complement the brand and image of the Shire.
2. Strategy 10.2 – Investigate ways to attract high yield/low-impact visitor markets to the Shire’s destinations.
3. Strategy 10.4 – Ensure that visitor experiences offered in Byron Shire are world’s best practice.

The BBTC Placemaking Seed Fund also has strong links and synergies with the Vibrant Byron Project Reference Group (PRG). This Vibrant Byron PRG’s objective is to promote a vibrant and safe nightlife atmosphere and economy in Byron Bay for both residents and visitors. The PRG is also in the process of developing a draft strategy and many of the strategy themes have been included in the BBTM. These themes will also be delivered as part of the BBTC Placemaking Seed Fund and include:

1. *Activities and products that embrace our strengths*
 - Embrace our natural environment, creative people, innovative ideas
2. *People, partnerships and collaboration*
 - Work together to achieve consensus and buy-in from all stakeholders
3. *Safety enablers*
 - Reduce congestion in key places, improve/increase lighting, safer laneways (traffic and lighting), combat anti-social behaviour
4. *Vibrancy enablers*
 - Strategically place creative lighting, music, seating, event infrastructure (power, busker pads), energise with activities and people, encourage co-generational activity/places (whilst maintaining a sense of freedom)
5. *Young people*
 - Recognise young people are attracted to key places, create spaces that cater to young people for example, climbing, wifi, music, table tennis tables, events, group seating, meeting places, Friday and Saturday night focus.
6. *Significant places/Bookends – Railway Park and Apex Park*
 - Address safety issues/perceptions at Railway Park. Do more with both sites
7. *Pedestrian thoroughfares*
 - Broaden pedestrian spaces, consider shared use zones, close streets, create movement through town

8. *Amenities*

- Improve toilets, beautify common areas, encourage participation, for example garden beds.

9. *Business/commercial*

- 5
- Acknowledge that the town centre is differentiated positively by an eclectic retail mix of predominately small boutique businesses, encourage national chains / landlords / smaller boutique night-time business to be participants in improving the town

10. *Promote*

- 10
- Showcase our strengths and talk about the creative people, eclectic mix of businesses and vibrant nightlife. Promote our love of the town and expectations of residents and visitors to respect our identity and town assets.

Financial Implications

15

The following budget allocation is required for the creation of the Byron Bay Town Centre Placemaking Seed Fund:

- 20
1. \$30,000 from the Footpath Dining Reserve.
 2. \$30,000 from the Civic Improvements in Byron Bay Town Centre / Public Art (Section 94A funds).

Statutory and Policy Compliance Implications

- 25
- Draft Byron Bay Town Centre Masterplan (stage 3 and stage 4 reports)
Local Government Act 1993
Byron Shire Council Procurement Guidelines and Toolbox
2008 – 2018 Byron Shire Council Tourism Management Plan

Report No. 13.18 **Update on s68 applications for Approval to Operate - Brunswick Heads Holiday Parks**

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

5 File No: I2015/1406

Theme: Ecology
Development Certification

10 **Summary:**

At the Ordinary meeting of 26 November 2015, Council resolved:

15 **15-591 Resolved** that Council receive a report at the 10 December 2015 meeting on the S68 licences for Brunswick Heads Caravan Parks. (Dey/Richardson)

20 Council currently has three applications for 'Approval to Operate' under section 68 (Part F2) of the Local Government Act 1993 for Holiday Parks at The Terrace Reserve, Massey Green and Ferry Reserve, Brunswick Heads.

25 The purpose of this report is to provide an update on the status of these applications as per resolution 15-591.

RECOMMENDATION:

That Council:

1. **Note the report.**
2. **Continue to progress the development of a draft Memorandum of Understanding with NSW Crown Holiday Parks Trust to guide and improve the future interaction and relationship between the parties, to allow both the Trust and Council to perform their respective roles in regard to the care, control and management of the Crown Reserves in Brunswick Heads.**
3. **Advise the applicant for the Crown Reserve Holiday Parks Trust that an approval for the renewal of the 'Approvals to Operate' for The Terrace Reserve, Massey Greene and Ferry Reserve Holiday Parks cannot be approved, as requested because:**
 - a) **The applications have significant variances found during the independent assessments, which would require changing the terms of the original approval to operate.**
 - b) **That the three months period, as specified in Section 107 of the Local Government Act 1993, to allow Council to approve the applications has lapsed.**

Attachments:

- 30 1 Draft MoU between NSW Crown Holiday Parks Trust and Byron Shire Council, E2015/78088

Report**Section 68 Applications – Approval to operate a caravan park**

5 Council considered a report on separate applications to renew caravan park ‘Approvals to Operate’ for The Terrace Reserve and Massey Green Holiday Parks at the Ordinary Meeting 16 July 2015. To assist Council in the determination of these applications an independent assessment of the applications for renewal was undertaken. The independent assessment advised that the renewal applications and the existing operation of both Crown Reserve Holiday Parks would require
 10 changes to the terms of the original approvals to operate. This would prevent Council from approving the applications lodged seeking to renew the existing ‘Approvals to Operate’.

At this meeting Council resolved the following:-

15 *15-323 Resolved:*

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

30 Link to full report [13.9 Renewal of Caravan Park Approvals to Operate for the Terrace Reserve Holiday](#)

35 A teleconference/meeting with representatives from NSW Crown Holiday Parks Trust and North Coast Holiday Parks occurred on 7 August 2015, to discuss the above resolution with regard to The Terrace and Massey Greene Holiday Parks. Council concerns about the applications made in the report were reiterated including park boundary alignments and the plans of management, as was the invitation to submit new applications for the Crown Reserve Holiday Parks consistent with the terms of the original approvals.

40 In relation to the Ferry Reserve Holiday Park, a new application for ‘Approval to Operate’ was lodged with Council on 1 June 2015. An independent assessment of this application is current but subject to a request for further information made to the NSW Crown Holiday Parks Trust on 9 October 2015. No formal response to this request has been received to date.

45 *Circumstances in which approval is taken to have been refused*

As Council has not determined the Section 68 Applications within the period specified in section 105 of the *Local Government Act 1993*, Council is taken to have refused the applications and the applicant may refer the applications to the Minister for determination.

50 *Extending or renewing approvals*

Section 107 of the *Local Government Act 1993*, advises that Council may extend or renew an approval, without changing its terms, if it is satisfied there is good cause for doing so. The renewal of an approval operates as if it were an approval granted on the date of the renewal. The extension

or renewal may be granted before the approval lapses, or at any time within three months of the approval lapsing.

Having regard to the above, the current status of the Section 68 applications with Council are:

- 5
- Council has resolved that the applications for renewal of the 'Approval to Operate' applications under section 68 (Part F2) of the *Local Government Act 1993* of The Terrace and Massey Green Holiday Parks cannot be approved due to variances that would require changing the terms to the original approval and that new applications are required to be submitted for assessment. Since this resolution the timeframe to determine the renewal of the 'Approval to Operate' applications has also extended beyond a three month period as specified in Section 107 of the *Local Government Act 1993*, to allow Council to approve the applications.
- 10
- Council has not determined the application for the Ferry Reserve Holiday Park within the statutory time frame, as such Council is taken to have refused the application, and the applicant may refer the application to the Minister for determination.
- 15

Current discussions – Memorandum of Understanding

20 On Thursday, 8 October 2015, Council Representatives met with Representatives of the NSW Crown Holiday Parks Trust to discuss both the concerns of the community and Council in relation to works on the Brunswick Heads Foreshore Reserves and the applications submitted for the renewal of the S68 Approvals to Operate the Crown Holiday Parks in Brunswick Heads.

25 The meeting was held on a "without prejudice" basis and as such the meeting and the Minutes are regarded as confidential, due to the "*commercial in confidence*" nature of the matters being discussed.

30 A further meeting was held on Thursday, 26 November 2015, with representatives of the NSW Crown Holiday Parks Trust to discuss the development of a Memorandum of Understanding between the Trust and Council. The purpose of the Memorandum of Understanding being to guide and improve the future interaction and relationship between the parties, to allow both the Trust and Council perform their respective roles in regard to the care, control and management of the Crown Reserves in Brunswick Heads.

35 A copy of the draft Memorandum of Understanding was forwarded to Council on 27 November 2015, and has been referred to the Legal Services Team for review and comment. This advice is currently being prepared. A copy of the draft Memorandum of Understanding has been included as Attachment 1 to this Report.

40 In the covering email the NSW Crown Holiday Parks Trust stated that it "*..is keen to progress negotiations with Council in relation to the holiday park boundaries and public access through the reserves, however it is imperative that interim approvals are in place.*"

45 The Trust further stated that:-

"Any amendments to the Plans of Management to facilitate transition to a negotiated outcome are likely to take 18 months to 2 years. The Trust suggests a similar term for the interim approvals would be appropriate."

50 Finally the Trust requested that draft Memorandum of Understanding and the Trusts request for Council to renew the S68 Approval to Operate for the Ferry Reserve, Massey Greene and The

Terrace Reserve Holiday Parks for a period of 2 years be reported to this meeting of Council, as part of the update sought by Council in Resolution 15-591.

5 The renewal of the S68 Approvals to Operate would be on the same terms and conditions as the most recent Approval for each of the Holiday Parks, and would enable the Trust to work through the statutory process to amend the Plans of Management for each of the Reserves listed in the draft Memorandum of Understanding, and for the Parties to reach agreement on the objectives listed in the draft Memorandum of Understanding in section 1.2 – Objectives. This includes
10 agreement between the parties on the operational boundaries of the Holiday Parks.

This would also allow the Trust to submit, within the requested renewal period, new applications for Approvals to Operate for each of the Brunswick Heads Crown Holiday Parks, based on the amended Plans of Management.

15 A further update with regards to the MOU will be provided to Council in the New Year.

Financial Implications

20 N/A

Statutory and Policy Compliance Implications

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

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

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

40

Report No. 13.19 **PLANNING - Tyagarah Airstrip Planning Proposal**
Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Senior Planner
File No: I2015/1435
5 **Theme:** Ecology
 Planning Policy and Natural Environment

Summary:

10 The attached planning proposal seeks to amend Byron Local Environmental Plan (LEP) 2014 to enable a range of aviation related land uses to occur with development consent at the Tyagarah Airstrip. It is intended an enabling clause be inserted into Schedule 1 of the LEP which would enable subdivision, commercial, tourist, recreational, industrial and residential related aviation uses to be approved by Council through a development assessment process.
15

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

20 **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.
25

RECOMMENDATION:

1. **That Council proceed with the planning proposal in Attachment 1 and send 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.**

30 **Attachments:**

- 1 Tyagarah Airstrip Planning Proposal, E2015/76550

35

Report

Council resolved on the 11 December 2014 the following:

5 14-657 Resolved:

1. *That Council reaffirm its commitment to the continued operation of Tyagarah Airfield.*
2. *That Council consider funding additional costs, to the value of \$105,000, required to complete the identified assessments and investigations as part of the 31 December 2014 quarter budget review.*
3. *That on completion of the required assessments and investigations, The Airport Group provide Council with a final report containing the preferred strategic future option and management model with a cost/benefit analysis or business case supporting the recommendations for Tyagarah Airfield.*
4. *That funding allocation for the capital works identified to date be considered in the 2015/16 financial year budget.*
5. *That Council consent, as the land owner, to the lodgement of the subdivision development application at Tyagarah Airfield."*

Part 3 of that resolution has led to Council investigating opportunities for the site, resulting in the attached planning proposal being prepared for the subject lands at and immediately surrounding the Tyagarah Airstrip. The planning proposal seeks to facilitate the development of the site further for aviation related land uses. Activities at the site are predominantly tourist and recreational orientated including joy flights, parachuting, and gliding. A pistol and clay shooting club also exists to the north of the Airstrip and the Byron bay Lapidary Club also leases land at the Airstrip as detailed below.

The site as defined is located on the eastern side of the Pacific Highway, north of Grays Lane at Tyagarah, and is accessed from Yarun Road which runs parallel with the Pacific Highway. The site contains the following properties.

Council Land

Lot 2 DP 749851	1,460m2	Leased to Callinan Holdings Pty Ltd. Contains an existing industrial shed/ hangar operated by Sky Limit Sports Aviation.
Lot 1 DP 713023	1.525ha	Subdivided for lease purposes under DP 805678 – see below:
Lot 4 DP 805678	5,136m2	Created for lease purposes. Leased to private individual. Contains the base and business premise of Skydive Byron Bay.
Lot 5 DP 805678	1.011ha	Created for lease purposes. Currently vacant.
Lot 6 DP 836887	867.9m2	Leased to private individual. Contains two existing hangars used by

Council Land

Lot 8 DP 856832	385.7m2	<i>Tiger Moth Joy Flights.</i> Leased to Byron Lapidary Society. Contains an existing building owned by the Lapidary Society.
Lot 9 DP 856832	747.8m2	Leased to Tiger Moth Aerial Services. Contains an existing building servicing as administration for <i>Tiger Moth Joy Flights</i> .
Lot 49 DP 881232	13.21ha	Residual of the Council-owned land. Contains the western end of runway and, in the north-eastern sector, the Tyagarah Public Hall and associated amenities building. The land leased and used by the Tyagarah Clay Shooting Club is partially on this land, and partially on the adjoining Crown Land (Lot 181). Part of the land is also leased to the Tyagarah Recreation and Flying Club as the site for their hanger.

Crown Land

Lot 181 DP 755692	36.7ha	Contains the eastern section of the runway. Also contains areas leased by Byron Power Gliding, Tyagarah Clay Target Club and Cape Byron Pistol Club
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5 To achieve the intended outcomes, the Planning Proposal will amend Schedule 1 of Byron LEP 2014 to include a range of aviation-related uses as additional permitted uses for the property. It will also override the Lot Size Map in terms of subdivision which presently requires a 40 ha minimum for subdivision.

The amendment proposed for Schedule 1 of the LEP, is to add the following words:

10 **6. Use of certain lands at Yarun Road, Tyagarah**
This clause applies to land at Yarun Road, Tyagarah, being Lot 2 DP 749851, Lot 1 DP 713023, Lot 6 DP 836887, Lots 8 & 9 DP 856832, Lot 49 DP 881232 and Lot 181 DP 75569.

15 *Development for the purposes of subdivision, commercial, tourist, residential, industrial, and recreational land uses including a heliport that are related to the use of the Tyagarah Airstrip is permitted with consent.*

20 The permitted land uses generally reflect the existing aviation-related industrial, tourism and recreational uses being carried out at the site. This will enable those uses to develop without needing to rely upon complicated existing use right provisions and where appropriate the airstrip to be developed with development consent. Allowing residential use will permit accommodation such as a manager's residence or the like. Given the flood constraints at the site, any accommodation will need to be elevated and likely to be at a first floor or mezzanine level.

Development listed in Schedule 1 are nominated as additional permitted uses for particular land under Clause 2.5 of the LEP. They are not governed by the land use table or other contrary clauses in the LEP.



5

Further detail on the Planning Proposal including justification and compliance with the Section 117 Directions and State Environmental Planning Policies are attached at Appendix 1.

10 **Conclusion**

15 It is considered the amendments proposed within Planning Proposal (Attachment 1) are relatively minor and will assist with formalising existing and proposed activities at the airfield with development consent. It is recommended that Council submit the Planning Proposal to the NSW Department of Planning and Environment for a Gateway Determination.

Financial Implications

20 The costs for proceeding with the planning proposal as it affects Council owned and managed land will be borne by Council.

Statutory and Policy Compliance Implications

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

Report No. 13.20 **PLANNING - Development Application 10.2015.505.1 - Alteration and additions to existing backpackers accommodation, including demolition of an existing dwelling and construction of a new three level building with basement carpark to increase capacity to 200 beds**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Paul Mills, Senior Assessment Officer - Planning
File No: I2015/1440
Theme: Ecology
10 Development and Approvals

Proposal:
DA No: 10.2015.505.1
Proposal: Alteration and additions to existing backpackers accommodation, including demolition of an existing dwelling and construction of a new three level building with basement carpark to increase capacity to 200 beds.
Property description: LOT: 1 DP: 1208452
 7 Carlyle Street BYRON BAY
Parcel No/s: 267757
Applicant: YHA Ltd
Owner: YHA Ltd
Zoning: B2 Local Centre
Date received: 21 August 2015
Integrated Development: No
Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
 – Exhibition period: 10/9/15 to 23/9/15
 – Submissions: One (1)
Other approvals (S68/138): Not applicable
Planning Review Committee: Not applicable
Delegation to determination: Meeting of full Council (Estimated cost of works \$5.72 million specified on the application form)
Issues: • Height, bulk and scale of the proposed development and its compatibility with the existing streetscape.
 • Noise, disturbance and waste management.
 • Basement car park proposed on flood liable land.

15 **Summary:**
 Council is in receipt of an application seeking development consent for alterations and substantial additions to the existing hostel to increase the maximum capacity to a total of 200 guests. The development specifically involves:
 20 • Demolition of the existing timber and fibro house located at No.3 Carlyle Street;
 • Construction of an underground carpark with vehicular access via a ramp from Marvel Lane.
 • Construction of a three level building above the basement carpark which will contain 36 new bedrooms with provision for 103 additional beds.

Subject to conditions the proposal is considered to be able to satisfy relevant environmental planning instruments including Byron Local Environmental Plan 2014 (LEP 2014). The proposal is also considered to satisfy the provisions of Development Control Plan 2014 (DCP 2014) subject to conditions.

5

The height of the proposed building significantly exceeds that of existing two-storey buildings in close proximity of the site, however the proposal is below the 11.5m height limit and maximum Floor Space Ratio of 1.3:1 prescribed by LEP 2014. LEP 2014 establishes the maximum height and desired future character for development in the locality.

10

Council's Development Engineer has raised no objection to the proposed basement parking level being situated below the Flood Planning Level for the subject site. It is proposed to use a flood gate/barrier to achieve the 2050 FPL1 of 3.44m AHD. A condition has also been included to require a vehicle turn around area be provided within the basement car park and two (2) accessible parking spaces be provided on the subject site.

15

The development application was publicly notified in accordance with the Level 2 provisions of Council's DCP 2014, with one (1) submission being received. The concerns raised in the submission relate to noise and disturbance for neighbouring residents, waste management and litter. The matters raised have been addressed in this report in part by including conditions aimed at reducing noise, disturbance and litter.

20

Overall the application is considered to have sufficient planning merit to warrant approval subject to conditions.

25

NOTE TO COUNCILLORS:

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

30

RECOMMENDATION:

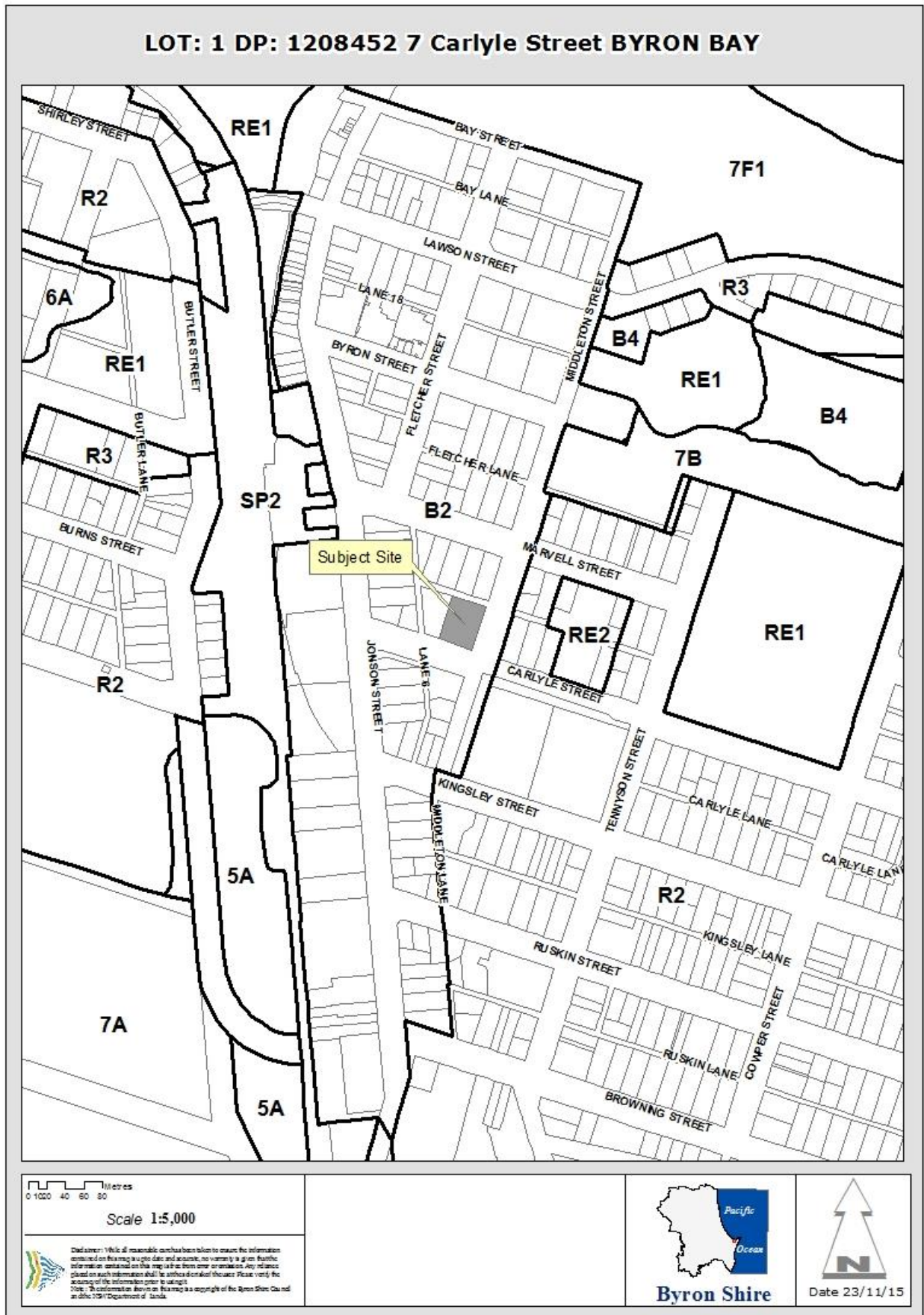
That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2015.505.1 for Alteration and additions to existing backpackers accommodation including demolition of an existing dwelling and construction of a new three level building with basement carpark to increase accommodation to 200 beds, be granted consent subject to the conditions contained in Attachment 1 (E2015/75911).

35

Attachments:

- 1 Conditions of consent 10.2015.505.1, E2015/75911
- 2 Proposed development plans 10.2015.505.1, E2015/75901
- 3 Confidential - Submission 10.2015.505.1, E2015/78059

40



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

The subject allotment Lot 1 DP 1208452 was created/registered on 25 June 2015 following a consolidation of Lot 1 DP 849230, 5-7 Carlyle Street and Lot 3 DP 936898, 3 Carlyle Street. The following are past major development applications over the historical allotments are noted:

10

Historical Lot 1 DP 849230, 5-7 Carlyle Street

15 **5.1995.5.1** Development Application for a two storey building containing a backpackers hostel, granted approval on 11 May 1995. The development included 25 bedrooms for backpacker travellers, 1 manager's flat and office, male and female amenities, common recreation areas, kitchen, barbecue and outdoor dining areas, landscaping and thirteen on-site car parking spaces. Development Consent No. 5.1995.5.1 specifically limited the number of beds within the 25 bedroom hostel to a maximum of 60.

20

10.2005.747.1 Development Application for alterations and additions to an existing hostel to increase the number of guest beds from 60 to 107. Consent granted 23 August 2006.

25 A number of other smaller scale Development and Building Applications are recorded within Council's computer records system for this historical allotment.

Historical Lot 3 DP 936898, 3 Carlyle Street

30 **10.2010.402.1** Development application for a Change of use and relevant building works to create educational facility. Development consent granted 7 October 2010. Assessment report notes "To accommodate the development additional car parking and bike parking is to be provided on the adjoining property at 3 Carlyle Street, Byron Bay. A dwelling house exists on this property and the applicant has advised that it will continue being used as a dwelling and accommodate four students associated with the school."

35

1.2 Description of the site

40 The subject site is legally described as Lot 1 DP 120845 street address 3-7 Carlyle Street, Byron Bay. The subject allotment was formed by the consolidation of two former allotments at No.3 Carlyle Street (640.7m²) and No.5-7 Carlyle Street (1388.3m²). The site is located within the Byron Bay commercial centre and has frontages to Carlisle Street (south), Middleton Street (east) and Marvel Lane (north). The only adjoining neighbour is to the west at No.1 Carlisle Street, this adjoining site contains an existing English Language School.

45

The site has a total area of 2029m² and contains a two-storey YHA backpackers hostel (5-7 Carlisle Street) and a freestanding single-storey timber and fibro dwelling (3 Carlisle Street). The existing hostel site has two courtyard areas one containing an in-ground swimming pool.

50

The land is generally flat with the level ranging around 2.7m to 2.8m AHD. The lowest point on the site is 2.51m AHD in the north-east corner and the highest point is 2.85m AHD along the western boundary. The ground floor of the existing hostel is approximately 3.2m AHD.

The existing hostel is predominantly landscaped with palms, the site of the old house is has only grass yard area.

1.3 Description of the proposed development

5

The applicant has described the proposed development as follows:

“Alterations and additions to the existing Hostel to cater for a total of 200 guests. The consent sought in relation to the new structure at 3 Carlisle Street comprises the following:

10

Demolition of the existing timber and fibro house.

Construction of an underground carpark for 12 cars with vehicular access via a ramp from Marvel Lane. Two stairwells are proposed; one adjacent to car space 1 and the other adjacent to car space 8.

15

Construction of a three level building above the basement carpark which will contain 36 new bedrooms with provision for 103 additional beds.

This new building will contain a new reception area facing onto Carlyle Street, adjacent to the English Language School.

Ground floor:

25

- A. The existing Multifunction Space is to be refurbished;*
- B. The existing reception is to be converted into a 6 person shared dormitory;*
- C. Room 5 is to be demolished to provide additional open space (loss of 4 beds);*
- D. Room 6 is to be reduced in size to accommodate a new walkway (loss of 2 beds);*
- E. The existing recreation room in the south west corner will become an office, staffroom and store;*
- F. The BBQ shelter/ accessible kitchen in the southern courtyard will be demolished to provide additional open space;*
- G. A timber screen will be erected to screen the garbage area from Middleton Street; and*
- H. Alterations will be made to accommodate the two new stairwells that will allow access to the new basement carpark.*

35

First floor:

- I. The guest kitchen is to be expanded by removing approved rooms 20 and 21. This will result in the loss of 10 beds.*
- J. Dining room located in the rear of the building will be extended by removal of an existing staff bedroom,*

40

The alterations will result in the reduction of beds in the existing Hostel from 107 to 97 beds.”

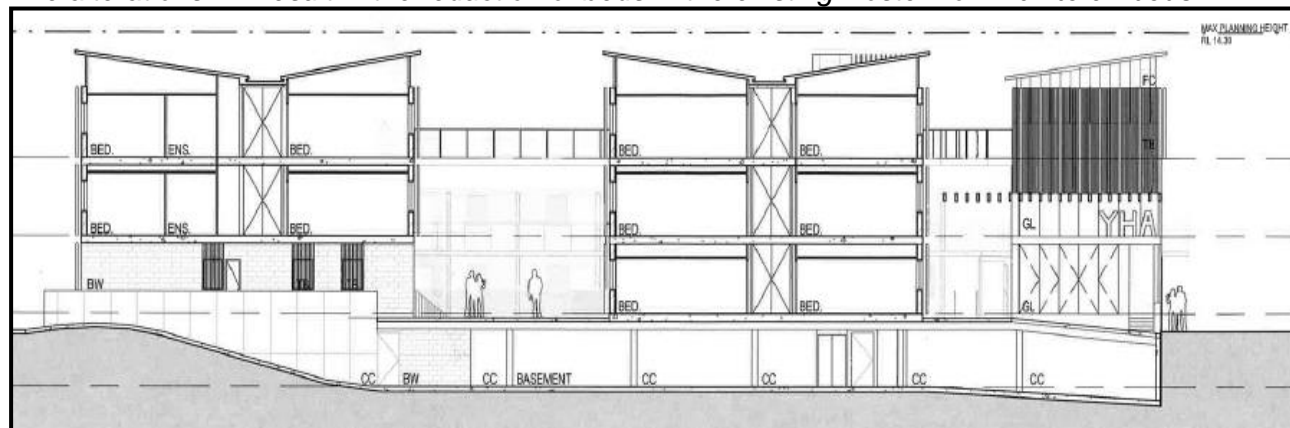


Figure 1 – Section drawing of proposed development (showing basement car park and three storeys above)



Figure 2 – Perspective drawing of the development (as viewed from Carlisle Street)

5 Following are extracts from the Architects Design Statement:

“Design approach” – “the predictable design response of the linear block on the linear available site, which could functionally house the accommodation required of the Brief but could be seen as a poor built form outcome”

10 “A pavilion solution” – “Housing the accommodation within two pavilions we achieve much more open and private views to north and south, creation a central shared landscaped court that can be experienced as an extension to the existing court, and deeper penetration of sunlight to the core of this site. We also retain privacy of view to an from the windows of the language school adjacent.”

15 “Buildings set within landscape” – “shared communal experience for guests as a guiding aspiration of the YHA organisation has resulted in the burying of all new parking below ground, thus leaving the ground plane almost totally available for guest use.”

20 “A new entrance” – “We have designed the facility to be managed from a new entrance at the Carlisle Street western corner, moving the entry and associated noise away from the residential properties around Middleton Street.

25 “A tactile and subtle material palette” – “We proposed a colour palette of light brown/sandy colours, intended to reflect naturally occurring that are associated with this area of New South Wales and that would under strong sunlight, a softer wall colouring that as a base canvas to the greener landscape elements”

30 “Secure and safe” – “The location of the main entrance and reception is selected to have direct line of sight to both Carlisle Street, the front area of the adjacent language school and also to within the hostel looking directly at the main circulation corridor and the principle vertical circulation route, both the stairs and the lift.”

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

	Summary of Issues
Development Engineer	Car parking (including accessible parking spaces), flood liable

	land, access, and stormwater management. No objection to the proposal subject to conditions. See Doc No. A2015/25326.
Environmental Officer	Acid sulfate soils, contaminated land assessment (SEPP No.55), noise impacts during construction and operation phases of the development, waste management and dewatering. No objection to the proposal subject to conditions See Doc No. A2015/25325.
ET Engineer	Bulk water and sewerage services available subject to payment of applicable fees and charges. No objection to the proposal subject to conditions. See Doc No. A2015/28792.
NSW Office of Water	<p>Comments were received from the NSW Office of Water (NOW) in a letter dated 19 October 2015. See Doc No. E2015/13216. The comments received from NOW include the following:</p> <p><i>“The Statement of Environmental Effects indicates the likely need for dewatering. Any take of water as a result of minor temporary dewatering activities that is estimated to be less than 3 megalitres per year (3ML/yr) will generally not require a licence or approval from DPI Water.</i></p> <p><i>It is the applicant's responsibility to assess and monitor water take and impacts, and to advise DPI Water if they exceed these conditions, at which time a licence must be obtained. The applicant must also meet all requirements of other agencies and consent authorities as per usual.</i></p> <p><i>If it is the applicant's estimation that water take will exceed 3ML/yr then they must apply for a licence under Part 5 of the Water Act 1912 prior to commencing the activity.”</i></p> <p>The above information is recommended to be included as a note on the development consent.</p>
	No other referrals.

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

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

3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

Requirement	Proposed	Complies
<p>State Environmental Planning Policy No. 71 - Coastal Protection</p> <p>Matters for consideration for development within the coastal zone include:</p> <ul style="list-style-type: none"> – retention of existing public access to the coastal foreshore – impact of effluent disposal on water quality – development must not discharge untreated stormwater into a coastal water body. 	<p>The proposal is consistent with the provisions of SEPP 71 and does not seek consent for subdivision.</p> <p>Stormwater and effluent disposal will be directed to existing infrastructure. Access to the foreshore will not be impeded.</p>	Yes

BYRON SHIRE COUNCIL

Requirement	Proposed	Complies
<p>– A master plan is to be in place prior to subdivision of a sensitive coastal location (or for the creation of 25 or more lots)</p>		
<p>State Environmental Planning Policy No. 64 - Advertising and Signage Clause 8 Granting of consent to signage A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied: (a) that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.</p>	<p>The proposed YHA signage is considered to be compatible with the character of the area and satisfies the matters identified within Schedule 1 of SEPP No.64.</p>	Yes
<p>State Environmental Planning Policy No 55 - Remediation of Land (SEPP No.55) Clause 7 of SEPP No.55 sets out Council's obligations in the assessment of land contamination and remediation. Clause 7(1)(a) specifies: <i>"(1) A consent authority must not consent to the carrying out of any development on land unless: (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."</i></p>	<p>Council's Environmental Officer has advised that a Contaminated Land Assessment prepared by Environmental Analysis Laboratory dated October 2008 confirms that contaminant levels in surface soils are below health based investigation levels. Notwithstanding the above, given the development includes excavations for a basement car park a consent condition has been imposed requiring an Unexpected Findings Protocol (UFP) must be prepared and submitted to Council for approval prior to the issue of Construction Certificate.</p>	Yes
<p>State Environmental Planning Policy Building Sustainability Index 2004 (BASIX) Applies to new residential dwellings and alterations and additions with a value greater than \$50 000. Development is to accord with a completed BASIX Certificate.</p>	<p>The proposed development does not include a dwelling (separate domicile) and is not considered to be a BASIX Affected building.</p>	Yes
<p>North Coast Design Guidelines Standards for building design on the North Coast of NSW.</p>	<p>The height of the proposed building significantly exceeds the height of existing two-storey buildings in close proximity of the site, however the proposal is below the 11.5m height limit for the site specified within BLEP</p>	Yes

Requirement	Proposed	Complies
	2014. The design is considered to be generally consistent with the guidelines and reflects the desired future outcome for building heights in this area.	
Building Code of Australia	The proposed development is considered to be capable of satisfying the Building Code of Australia.	Satisfactory
Demolition	Conditions have been included to require compliance with the relevant Australian Standard for demolition.	Yes
Disability Access (DDA) Access for persons with disabilities and integration into surrounding streetscapes without creating barriers. (Council Res.10-1118)	The proposal seeks to provide a lift stationed at ground level of Carlisle Street to provide accessibility. The proposed elevator would provide internal accessibility to the basement carpark.	Satisfactory

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 1988

Zone: B2 Local Centre

5 **Definition:** Backpackers accommodation

LEP Summary of Requirement	Proposed	Complies
Zone B2 Local Centre 1 Objectives of zone <ul style="list-style-type: none"> • To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. • To encourage employment opportunities in accessible locations. • To maximise public transport patronage and encourage walking and cycling. • To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises. 	The proposed development is considered to be generally consistent with the objectives of the B2 Local Centre Zone.	Yes
Permissibility <i>backpackers' accommodation</i> means a building or place that: <ul style="list-style-type: none"> (a) provides temporary or short-term accommodation on a commercial basis, and (b) has shared facilities, such as a communal bathroom, kitchen or laundry, and (c) provides accommodation on a bed or dormitory- 	The proposed development seeks to provide short term accommodation, has shared facilities and provides predominantly bed or dormitory-style basis (rather than by room).	Yes

LEP Summary of Requirement	Proposed	Complies
<p>style basis (rather than by room). Note. Backpackers' accommodation is a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.</p>	<p>The proposed additional backpackers' accommodation is permissible with the consent of Council within the B2 Local Centre Zone.</p>	
<p>2.7 Demolition requires development consent The demolition of a building or work may be carried out only with development consent.</p>	<p>This application seeks consent for the demolition of the existing dwelling house at No.3 Carlisle Street.</p>	<p align="center">Yes</p>
<p>4.3 Height of buildings (1) The objectives of this clause are as follows: (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet, (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located, (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development. (2) The height of a building on any land is not to exceed the maximum height shown for the land on the <u>Height of Buildings Map</u>. The Height of Buildings Map provides the maximum height limit of 9.0 metres for the subject site.</p>	<p>Maximum roof height (excluding lift tower) 13.58 AHD lowest level below 2.70m AHD. Maximum height calculated to be 10.88m.</p>	<p align="center">Yes</p>
<p>4.4 Floor space ratio (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the <u>Floor Space Ratio Map</u>. The FSR Map identifies the site to have a maximum FSR of 1.3:1.</p>	<p>Gross floor area calculations by level (excluding basement area): Ground level 792m² First Floor 938m² Second Floor 330m² Total GFA 2166m² Site area 2029m²/ GFA 2166m². Proposed FSR is 1.068:1</p>	<p align="center">Yes</p>
<p>5.5 Development within the coastal zone Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the matters within Clause 5.5 and is satisfied with regard to the matters in Clause 5.5.</p>	<p>The proposed development is considered to be acceptable with regard to the matters for consideration within the coastal zone.</p>	<p align="center">Yes</p>
<p>5.9 Preservation of trees and other vegetation Development consent required for the removal of certain trees.</p>	<p>The proposal seeks consent for the removal palms located on the northern side of the swimming pool to facilitate the construction of new stairs.</p>	<p align="center">Yes</p>

LEP Summary of Requirement	Proposed	Complies				
<p>6.1 Acid sulfate soils (1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. (2) Development consent is required for the carrying out of works described in the table to this subclause on land shown on the <u>Acid Sulfate Soils Map</u> as being of the class specified for those works.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 20%;">Class of land</td> <td>Works</td> </tr> <tr> <td style="text-align: center;">3</td> <td>Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.</td> </tr> </table> <p>(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.</p> <p>(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if: (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.</p> <p>.....</p> <p>(6) Despite subclause (2), development consent is not required under this clause to carry out any works if: (a) the works involve the disturbance of less than 1 tonne of soil, and (b) the works are not likely to lower the watertable.</p>	Class of land	Works	3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.	<p>The subject site is identified as containing Class 3 acid sulphate soils by Council's LEP 2014 mapping. The proposal involves excavation for a basement level.</p> <p>The application was accompanied by an Acid Sulfate Soils Contingency Plan prepared by Ardil Payne & Partners dated October 2015.</p> <p>The applicant has submitted a preliminary investigation indicating the proposed works should not encounter acid sulfate soils. An Acid Sulphate Soil Contingency Plan has been submitted and included as a condition of consent. As such consent is able to be granted under Clause 6.1.</p>	<p align="center">Yes* (*subject to conditions)</p>
Class of land	Works					
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.					
<p>6.2 Earthworks (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. (2) Development consent is required for earthworks unless the earthworks are exempt development under this Plan or another applicable environmental planning instrument.</p>	<p>A large amount of excavation is associated with the construction of the proposed basement. The proposed maximum depth of excavation is approximately 2.5 metres below existing ground level.</p> <p>The environmental impacts of the proposed excavation</p>	<p align="center">Yes</p>				

LEP Summary of Requirement	Proposed	Complies
<p>(3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>have been assessed in the submitted acid sulphate soils investigation, contaminated land report and soil and water management plan.</p> <p>Conditions have also been included with regard to managing groundwater and dewatering.</p>	
<p>6.3 Flood planning</p> <p>(1) The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land’s flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p> <p>(2) This clause applies to land at or below the flood planning level.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p> <p>(4) In determining a development application for development at or below the future flood planning</p>	<p>The proposed development is capable of complying with the flood planning controls in Clause 6.3.</p> <p>Council’s Development Engineer has advised the driveway ramp crest is to be constructed at 2.95m AHD. The 1% AEP Flood level is 2.95m AHD. It is proposed to use a flood gate/barrier board to raise this level by 500mm to achieve the 2050 FPL 1 of 3.44m AHD.</p>	<p align="center">Yes</p>

LEP Summary of Requirement	Proposed	Complies
<p>level, the consent authority must, in addition to the matters referred to in subclause (3), also consider the following matters:</p> <p>(a) the proximity of the development to the current flood planning area,</p> <p>(b) the intended design life and scale of the development,</p> <p>(c) the sensitivity of the development in relation to managing the risk to life from any flood,</p> <p>(d) the potential to modify, relocate or remove the development.</p> <p>(5) A word or expression used in this clause has the same meaning as it has in the <i>Floodplain Development Manual</i> (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.</p>		
<p>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:</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation,</p> <p>(e) suitable vehicular access.</p>	The essential services identified in Clause 6.2 are available for the subject site.	Yes

* Non-complying issues discussed below

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

5

No relevant draft Environmental Planning Instrument/s have been identified for this proposal.

3.3 DEVELOPMENT CONTROL PLANS

Byron Development Control Plan 2014		
Control	Assessment	Compliance
Chapter B11 Planning for Crime Prevention		
<p>B11.2.1 Development that Requires a Formal Crime Risk Assessment</p> <p>1. Council will expect a formal Crime Risk Assessment for the following types of development:</p> <p>other developments that, in the Council's opinion, are likely to create a risk of crime.</p> <p>2. Development Applications for the proposals listed in 1. above must be accompanied by a formal Crime Risk Assessment prepared by or on behalf of the applicant in accordance with</p>	<p>The design of the proposed basement car park with long sight lines and lighting should not provide an increased crime risk area. The applicant has submitted a statement addressing Planning for Crime Prevention criteria within the Social Impact Statement.</p> <p>Surveillance Ground and first floor windows and artificial lighting have been proposed to provide natural surveillance.</p> <p>Access Control The proposed new main entrance has long sight lines. All other entry points will have</p>	Yes

Byron Development Control Plan 2014		
Control	Assessment	Compliance
<p>NSW Police Force guidelines. The Crime Risk Assessment shall:</p> <ul style="list-style-type: none"> a) assess the crime risk characteristics of the area; b) make provision in the design process to minimise crime risk; and c) address the CPTED principles as they apply to the proposed development. 	<p>gates with security key/card access.</p> <p>Territorial re-enforcement The internal courtyard design provides clear territorial delineation for the hostel grounds.</p> <p>Space/Activity Management The proposed design is intended to discourage the use of Middleton Street as an area of activity.</p>	
Chapter B12 Social Impact Assessment		
<p>B12.1.3 Application of this Chapter A Social Impact Assessment (SIA) is required for tourist and visitor accommodation for 50 or more persons. A Social Impact Assessment must be conducted and certified by a suitably qualified person and in manner prescribed in Chapter B12.</p>	<p>A Social Impact Assessment (SIA) prepared by Planning Resolutions was submitted with the application. Detrimental impacts identified for the proposed development in the SIA were:</p> <ul style="list-style-type: none"> - The proposed development will increase the activity and noise in the laneway in terms of traffic and garbage disposal; and - The proposed development increases the number of guests coming and going from the facility. This increases the chance of some of those guest disturbing neighbours. <p>The SIA recommended that the owners of the development adopt the following response to support the overall positive impact of the proposal,</p> <ol style="list-style-type: none"> 1) That the design retains the relocation of the reception to Carlyle Street adjacent to the English Language School as a key part of the redevelopment, 2) That the Byron YHA Management continues to implement and adjust the following new management measures: <ul style="list-style-type: none"> • No glass recycling to be emptied between 8pm and 8am any day; • An external walk around to be performed by night staff every hour between 9pm and 4am to reduce noise; • 9pm, kitchen cleaner to close all louvers in both male bathrooms to control noise; • Night staff to try and encourage staggered departures by enforcing no alcohol from 10pm and quiet time from 11pm in outdoor common areas; and • Morning cleaner to do a walk around building after sweeping and collect rubbish from gardens and across the road on the Council reserve, 3) The Byron YHA Management continues to have regular discussions with the immediate neighbours to monitor any adverse impacts that the operation of the Hostel is having on them. 	<p align="center">Yes* (*Condition of consent)</p>

Byron Development Control Plan 2014		
Control	Assessment	Compliance
Chapter D3 – Tourist Accommodation		
<p>D3.2.1 Location and Siting The siting, design and operation of tourist accommodation and associated development must not adversely affect important conservation values, ecological systems or characteristics of the site or the Shire. Development must respect and contribute to the natural environmental systems and values of its location and surrounds.</p>	<p>The proposed design of the development involves two levels of basement parking. It has been demonstrated that the proposed development will not adversely affect conservation values and respect the natural environment.</p>	Yes
<p>Development applications for proposals located in or near ecologically sensitive areas, areas of high conservation values and/ or important natural features or sites must include a full description of those ecological, conservation and natural values and systems, together with a comprehensive, professional assessment of the impact of the proposed development thereon. The impact assessment must include an evaluation of the effectiveness and sustainability of any proposed amelioration and management measures.</p>	<p>The site is located in an ecologically sensitive area in terms of acid sulphate soils and groundwater. Appropriate technical reports have been submitted subject to conditions</p>	Yes* (Subject to conditions)
<p>D3.2.4 Character and Design in Business and Mixed Use Zones Tourist accommodation in Zones B1, B2 and B4 must be compatible in character and amenity with development in the locality. The provisions of the following Sections in Chapter D4 Commercial and Retail Development apply to all tourist accommodation development in Zones B1, B2 and B4 in the same way they apply to commercial and retail development in Business and Mixed Use zones: Section D4.2.1 – Design Character of Retail and Business Areas. Section D4.2.2 – Design Detail and Appearance.</p>	<p>Noted.</p>	Yes
<p>D3.3.1 Backpackers' Accommodation Objectives</p> <ol style="list-style-type: none"> <i>To ensure that backpackers' accommodation development is compatible with the character and amenity of development in the locality.</i> <i>To ensure that establishment and operation of backpackers' accommodation development does not adversely affect the social and economic robustness, diversity and vitality of retail, business and community areas.</i> <p>Performance Criteria</p> <ol style="list-style-type: none"> The design and operation of backpackers' accommodation must be compatible with the streetscape and character of development in the locality. Development applications must demonstrate that the proposed development will be consistent with the requirements of Chapter 	<p>The proposed height and bulk of the proposed building is less than the relevant requirements for Height and FSR permissible within BLEP 2014. The proposed development is considered to be compatible with the desired future streetscape on the western side of Middleton Street.</p> <p>The applicant has adequately demonstrated compliance with Chapters B11 Planning for crime prevention.</p> <p>The applicant has submitted as Social Impact Assessment and generally satisfied the requirements for Social Impact Assessment detailed in Chapter B12.</p> <p>Internal access is provided for two outdoor sitting areas including a swimming pool area</p>	Yes

Byron Development Control Plan 2014		
Control	Assessment	Compliance
<p>B11 Planning for Crime Prevention.</p> <p>3. Development applications may need to be accompanied by a Social Impact Assessment prepared pursuant to Chapter B12 Social Impact Assessment, where applicable. The Social Impact Assessment must identify and take into account cumulative impacts of the proposed development, having regard to the scale, location and operation of other development, including other backpackers' accommodation.</p> <p>4. Accommodation areas must have access to an outdoor sitting area adequate for the proposed number of occupants, which must be adjacent to the general living or kitchen area and which must provide adequate access to winter sun and summer shade. The outdoor area may comprise part of a common access balcony.</p>	(Courtyards).	
<p>D4.2.2 Design Detail and Appearance The design of new buildings must reflect and enhance the existing character of the precinct. The design, scale, bulk, design and operation of business, commercial and retail development must be compatible with the streetscape and with the aesthetics, function and amenity of development in the locality.</p> <p>Building design, roof profile, detailing, colours, materials and the like that are visible from the street and from adjoining properties must be compatible with any dominant design themes in the surrounding locality.</p> <p>The pattern of windows in retail areas must provide visual interest and variation and must relate to those of adjacent buildings. Building materials must relate to the context of buildings within the area to achieve continuity and harmony. Contrasting materials may be used to provide diversity, however materials and colour must not be used so that they dominate the streetscape.</p>	<p>The design, bulk and scale of the development is considered to be compatible with the desired future character for the western side of Middleton Street. The site forms part of the Byron Bay commercial centre, in an area where the height limit is increased to 11.5m and the maximum floor space ratio is 1.3:1.</p>	Yes
Chapter D8 - Public Art		
<p>D8.2.1 Provision of Public Art</p> <p>1. Development to which this Section applies must include the provision of public art to the value of at least 2% of the total development cost (calculated in accordance with the <i>Environmental Planning & Assessment Regulation</i>) up to a maximum of \$25,000, as an integral part of the development.</p> <p>2. The public art must be permanent and durable, and must be provided in a location on the development site that is freely accessible to members of the public or clearly visible from the public domain.</p>	<p>The proposed development triggers the need to provide public art in accordance with Chapter D8.</p> <p>A condition has been imposed to require public art be provided in accordance with Chapter D8. Public art work is required to be provided to the value of \$25,000.</p> <p>Public art was not considered in the applicant's submitted documentation.</p>	Yes* (*subject to condition)

Byron Development Control Plan 2014		
Control	Assessment	Compliance
<p>3.Details of the proposed public art must be submitted as part of the Development Application documentation. The documentation must include details of the nature and form of the proposed public art; and must define and illustrate its intended location and approximate size.</p> <p>4.The documentation must also demonstrate how the proposed public art meets the following Design Selection Criteria:</p> <ul style="list-style-type: none"> a) relevance and appropriateness of the work in relation to its site; b) relevance and appropriateness of the work to Byron Shire, including the Shire’s Aboriginal heritage, its particular natural environment and its diverse culture; c) consistency with the Byron Shire Cultural Plan and Public Art Policy; d) consideration of public safety, including public use of and access to the public art and associated space; e) consideration of maintenance and durability, including potential for vandalism; f) evidence of funding sources and satisfactory budget, including provision for ongoing maintenance; and g) evidence of Public Liability Insurance to cover construction and installation of the work. 		
Section B8 Waste Minimisation and Management		
<p>A Site Waste Minimisation and Management Plan (SWMMP) is to be submitted with a Development Application and must show all matters specified within Section B8.4.</p>	<p>The applicant has submitted a <u>Draft</u> SWMMP generally in accordance with Section B8.4.3. A condition has been included to require the proposed development accord with the submitted SWMMP.</p>	<p>Yes* (subject to condition)</p>
Chapter B4 Traffic Planning, vehicle parking, circulation and access		
<p>B4.2.5 Car Parking Requirements</p> <p>1. Unless otherwise specified elsewhere in this DCP, car parking is to be provided in accordance with the schedule contained in Table B4.1</p> <p>Food and drink premises require one (1) parking space required per 20m² of GFA in Business Zone.</p>	<p>The proposed number of parking spaces and the access arrangements have been assessed as satisfactory by Council’s Consultant Development Engineer subject to condition included in the recommendation of this report.</p>	<p>Yes</p>
Chapter B9 Landscaping		
<p>B9.6.1 Landscaping of Tourist and Visitor Accommodation (excluding bed and breakfast and farmstay accommodation)</p> <p>Prescriptive Measures</p> <p>1. A minimum 10% of the site area must be dedicated to landscaping of tourist and visitor accommodation developments (excluding farmstay and bed and breakfast). Landscaped</p>	<p>The applicant has submitted Planning Diagrams (Drawing No.1000) which depict the total landscape area for the subject exceeds 10% of the overall site area (267m²).</p> <p>All existing and proposed parking on the subject site is undercover.</p>	<p>Yes</p>

Byron Development Control Plan 2014		
Control	Assessment	Compliance
areas can be used for pedestrian access provided porous paving is utilised. 2. Screen and shade planting to car parking and driveway areas as required under B9.8.1 Screening is also required to visually obtrusive facades of the building. For effective landscaping a minimum garden bed width of 2 metres may be required for the front boundary (this will not be appropriate for all design layouts).		
Chapter B10 - Signage		
B10.3.3 Signage in Business and Industrial Zones and on Commercial or Industrial Development in other Zones	The proposed wall sign (business identification signage) is considered to satisfy the provisions Section B10.3.3 and the other relevant requirements of Chapter B10.	Yes

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

- 5 The height of the proposed building significantly exceeds the height of existing two-storey buildings in close proximity of the site, however the proposal is below the 11.5m height limit for the site specified within LEP 2014. The proposal is also below the maximum floor space requirements of LEP 2014. In the context of LEP 2014 provisions the proposal is considered to be consistent with the desired future character for the site.
- 10 The proposed development is considered to be acceptable in the context of the built form of existing development within the immediate area. The proposal is compatible with the natural environment and unlikely to result in any unacceptable impacts.
- 15 The proposal is likely to have a net social benefit and contribute to positive economic impacts in the locality. The applicant has submitted a Social Impact Assessment prepared by Chris Pratt (Planning Resolutions) which has recommended that the owners of the development adopt the following measures to support an overall positive impact of the proposal:
- 20 1) That the design retains the relocation of the reception to Carlyle Street adjacent to the English Language School as a key part of the redevelopment,
- 2) That the Byron YHA Management continues to implement and adjust the following new management measures:
- No glass recycling to be emptied between 8pm and 8am any day;
 - An external walk around to be performed by night staff every hour between 9pm and 4am to stay on top of any noise;
 - 9pm, kitchen cleaner to close all louvers in both male bathrooms to control noise;
 - Night staff to try and encourage staggered departures by enforcing no alcohol from 10pm and quiet time from 11pm in outdoor common areas; and
 - Morning cleaner to do a walk around building after sweeping and collect rubbish from gardens and across the road on the Council reserve,
- 30 3) The Byron YHA Management continues to have regular discussions with the immediate neighbours to monitor any adverse impacts that the operation of the Hostel is having on them.

35 The matters recommended in No.2 above form conditions of consent.

3.5 The suitability of the site for the development

5 Subject site is located within the Byron Bay commercial centre and the proposed additional tourist and visitor accommodation is a permissible on the subject site. The subject site is identified as flood liable land and conditions have been recommended by Council’s Consultant Development Engineer to provide flood mitigation measures.

Noise implications

10 The applicant submitted an Environmental Noise Impact Report (ENIR) prepared by CRG Acoustics dated 6 August 2015. The recommendations of the ENIR have been included as conditions of consent. A condition has also been included to require the implementation of the noise mitigation measures recommended in the Social Impact Assessment.

3.6 Submissions made in accordance with this Act or the regulations

15 The application was notified in accordance with the Level 2 notification provisions of DCP 2014. A total of one (1) submission was received in response to the development application. Following is a summary of the matters raised in the submissions.

20

Issue summary	Comment
There are already too many Hostel/ Backpacker beds in Byron Bay and that it is has resulted in a detrimental Demographic imbalance. This further imbalance only feeds the adverse outcome of the "Party image" of Byron Bay and the associated problems with alcohol.	The proposed alterations and additions to the existing backpackers accommodation are permissible with consent within the B2 Local Centre Zone. The applicant has submitted both a Social Impact Assessment and Environmental Noise Impact Report which make recommendations aimed at ensuring that noise from the proposed development is at acceptable level. These recommendations have been included as conditions of consent.
The existing issues with the YHA relate primarily to noise, disturbance and rubbish. This problem will increase with more beds opposite residential land. This issue also relates to the following matters: <ul style="list-style-type: none"> • Middleton Street is the interface of commercial zoning with residential zoning. • The YHA is on the western side of Middleton Street. Residential Homes are on the east side of Middleton Street. This has often been a source of noise disturbance, waking up a nearby resident. Especially in the warmer months, when loud, drunk backpackers return from a night out and congregate at the Reception/Entrance before going inside.	The applicant has submitted an “Environmental Noise Impact Report” (ENIR) prepared by CRG Acoustics. Council’s Environmental Officer has reviewed the Report and raised no objection to the proposed development in terms of noise subject to condition/s which require compliance with the acoustic treatments recommended in Section 6.0 of the ENIR.

Issue summary	Comment
<p>Please soundproof the upstairs bathrooms on the corner of Middleton Street and Marvel Lane.</p> <p>The bathroom has permanently open louvered windows. The noise is amplified by the echo of the hard tiled bathroom surfaces.</p> <p>Please relocate the bins from the residential Middleton Street as we are disturbed by the early morning noisy emptying of:</p> <ul style="list-style-type: none"> ▪ the dumpster. ▪ The now 10 yellow lidded Recycling Bins full of noisy glass, which will double with twice the bed numbers. <p>Also, it is noisy when the yellow bins are being filled, by the cleaners of the Hostel. Please ensure this occurs during day business hours not at night.</p>	<p>As recommended in the submitted Social Impact Assessment the following measures have been included as conditions of consent:</p> <ul style="list-style-type: none"> • No glass recycling to be emptied between 8pm and 8am any day; • An external walk around to be performed by night staff every hour between 9pm and 4am to stay on top of any noise, and • kitchen cleaner to close all louvers in both male bathrooms to control noise at 9:00pm each night of the week. <p>A condition has also been included to require signs to be placed in the existing ablution rooms reminding guests to not create excessive noise.</p>
<p>Suggestion that the Hostel be more involved and caring of its Environment and daily collect rubbish from their Immediate footpaths front and rear and beyond.</p>	<p>A condition has been included to require a final Site Waste Minimisation and Management Plan to accord with the requirements of Council's DCP 2014.</p> <p>In addition as recommended in the SIA the following measures have been included as conditions of consent:</p> <ul style="list-style-type: none"> • Morning cleaner to do a walk around building after sweeping and collect rubbish from gardens and across the road on the Council reserve.
<p>The Hostel has a "Quiet after 10pm" policy. Unfortunately, this means that at 10 pm they "Tip out" the noisy backpackers from the hostel onto Middleton Street, and subject the neighbourhood to their noisy 'guests'. Hopefully this will improve with Relocation of reception.</p>	<p>As recommended in the SIA the following measure has been included as a condition of consent:</p> <ul style="list-style-type: none"> • Night staff to encourage staggered departures by enforcing no alcohol from 10pm and quiet time from 11pm in outdoor common areas.

3.7 Public interest

Overall the proposed development is considered to be consistent with the public interest.

5

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

10 The application seeks development consent for increasing the number of beds to 200. The proposed development will generate the following load:

Table 2 - Calculation of Proposed Development Water & Sewer ETs

Ref	Development Type	Standard Unit	Quantity	ET Rate (ET/unit)		ET Load	
				Water	Sewer	Water	Sewer
6.5	Backpackers / Hostel	Bed	200	0.15	0.23	30	46
3.10	Managers Residence 1 bedroom unit	Dwelling	1	0.40	0.50	0.40	0.50
11.7	Swimming Pool – Outdoor (10m x 5m x 1.5m)	Using Swimming Pool calculator				0.81	0.51
TOTAL						31.21	47.01

Table 3 - Calculation of Additional Water & Sewer ET Load

	Water	Sewer
Existing ET Entitlements (Table 1)	17.25	25.62
Proposed Development ET loading (Table 2)	31.21	47.01
Additional ET loading	13.96	21.39

5 Therefore, this development generates an additional load onto Councils Water, Bulk Water and Sewer System.

Council requires Payment of Developer Servicing Charges (prior to issue of a construction certificate) of:

- 10
- **13.95 ET** for Water & Bulk Water; and
 - **21.39 ET** for Sewer.

4.2 Section 94 Contributions

15 Council's Section 94 Officer has advised the proposed development requires the payment of the Section 94A levy. The proposal comprises non-residential development with an estimated cost of works exceeding \$100,000.00 and as such the proposed development requires payment of the Section 94A levy.

5. CONCLUSION

25 Subject to conditions the proposal is considered to be able to satisfy relevant environmental planning instruments including Byron Local Environmental Plan 2014 (LEP 2014). The proposal is also considered to satisfy the provisions of Development Control Plan 2014 (DCP 2014) subject to the conditions proposed in Attachment 1.

Report No. 13.21 **PLANNING - Submissions Report - Planning Proposal for Secondary Dwellings in RU5 Village Zone**

Directorate: Sustainable Environment and Economy

Report Author: Julie Francombe, Strategic Planner

5 **File No:** I2015/1441

Theme: Ecology
 Planning Policy and Natural Environment

10 **Summary:**

This report presents the public exhibition outcomes on a planning proposal to amend Byron Local Environmental Plan (LEP) 2014 to permit secondary dwellings with Council consent in Zone RU5 Village.

15 The planning proposal (at Attachment 1) received a Gateway determination to proceed to public exhibition from the Department of Planning and Environment and was placed on public exhibition for a period of 28 days from 22 October 2015 until 20 November 2015. No public submissions have been received. The Gateway determination required Council to consult with NSW Rural Fire Service (RFS). The RFS have advised they have no objection to the planning proposal proceeding.

20 The Minister for Planning and Environment has issued an authorisation for Council to exercise delegation to make this LEP amendment should Council decide to proceed with it. This report recommends that Council proceed with the planning proposal without amendment.

25 **NOTE TO COUNCILLORS:**

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

30

RECOMMENDATION:

1. **That Council forward the planning proposal to amend Byron LEP 2014, as exhibited and included in Attachment 1 of this report, to NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.**
2. **That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.**
3. **That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning and Environment for notification on the NSW Government legislation website.**

Attachments:

- 35
- 1 Planning Proposal to permit secondary dwellings in the RU5 zone , E2015/13874
 - 2 Submission from NSW Rural Fire Service - Planning Proposal to permit secondary dwellings in RU5, S2015/14154
 - 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815
- 40

Report

Council at its meeting of 20 November 2014 resolved:

14-596 Resolved:

- 5 1. That Byron LEP 2014 be amended to permit secondary dwellings with Council consent as an additional use in the RU5 Village zone.
- 2. That Staff prepare a planning proposal to achieve this and forward it to the Department of Planning and Environment for Gateway Determination.

10 The planning proposal to amend Byron Local Environmental Plan 2014 to permit secondary dwellings with Council consent in the RU5 Village zone is at Attachment 1. The planning proposal affects land at Billinudgel, Federal and Main Arm villages zoned RU5 Village.

15 The planning proposal received a Gateway determination to proceed to public exhibition from the Department of Planning and Environment and was placed on public exhibition for a period of 28 days between 22 October 2015 and 20 November 2015. No public submissions have been received. A condition of the Gateway determination required Council to consult with NSW Rural Fire Service (RFS). Consultation feedback from the RFS has been received and is included at Attachment 2.

20 The Minister for Planning and Environment has issued an authorisation for Council to exercise delegation to make this LEP amendment should Council decide to proceed with it.

Comment from NSW Rural Fire Service

25 *The RFS has no objection to the planning proposal proceeding. RFS advise that if a secondary dwelling is proposed on bushfire prone land then an assessment is required under Section 79BA of the Environmental Planning and Assessment Act 1979.*

30 Comment: The advice is noted. Council will require this assessment to occur if the land on which development is proposed is bushfire prone. Otherwise this can be a reason for refusal if the matter has not been properly dealt with or may result in conditions of approval that relate to bushfire buffers and building construction.

Recommendation

35 It is recommended that Council proceed with this planning proposal without amendment.

Financial Implications

40 As a Council initiated planning proposal the administration cost has been met by Council.

Statutory and Policy Compliance Implications

45 Council has followed the statutory process to amend Byron LEP 2014 through this planning proposal. Council should now decide whether to proceed to finalise the planning proposal (either with or without amendments).

Report No. 13.22 PLANNING - Submissions Report - Planning Proposal to rezone land at Granuaille Crescent, Bangalow, to R2 Low Density Residential.

Directorate: Sustainable Environment and Economy

Report Author: Julie Francombe, Strategic Planner

5 **File No:** I2015/1471

Theme: Ecology
Planning Policy and Natural Environment

10 **Summary:**

15 This report presents the public exhibition outcomes on a planning proposal to amend Byron Local Environmental Plan (LEP) 2014 to rezone part of Lots 231, 232 and 233 DP 1194657 from RU1 Primary Production to R2 Low Density Residential, and apply a floor space ratio of 0.5:1 and a minimum lot size of 600 square metres.

20 The planning proposal (at Attachment 1) received a Gateway determination to proceed to public exhibition from the Department of Planning and Environment and was placed on public exhibition for a period of 14 days from 12 November 2015 until 26 November 2015. Four submissions have been received that oppose the proposed rezoning. Two submissions have been received that raise concerns.

25 The Minister for Planning and Environment has issued an authorisation for Council to exercise delegation to make this LEP amendment should Council decide to proceed with it. This report recommends that Council proceed with the planning proposal without amendment.

NOTE TO COUNCILLORS:

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

35

RECOMMENDATION:

1. **That Council forward the planning proposal to amend Byron LEP 2014, as exhibited and included in Attachment 1 of this report, to NSW Parliamentary Counsel's Office requesting that a draft LEP instrument be prepared.**
2. **That Council liaise with Parliamentary Counsel's Office (PCO) as necessary to finalise the content of the draft LEP and to enable PCO to issue an Opinion that the plan can be made.**
3. **That Council make the draft LEP under delegated authority and forward the plan to the NSW Department of Planning and Environment for notification on the NSW Government legislation website.**

Attachments:

- 40
- 1 Planning Proposal for rezoning land at Granuaille Crescent to R2 , E2015/73577
 - 2 Site ID Map for rezoning of Lots 233, 232, 231 DP 1194657, Granuaille Crescent, Bangalow to R2 , E2015/73229

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.22

- 3 Land Zoning Map for rezoning of Lots 233, 232, 231 DP 1194657, Granuaille Crescent, Bangalow to R2, E2015/73226
- 4 Floor Space Ratio Map for rezoning of Lots 233, 232, 231 DP 1194657, Granuaille Crescent, Bangalow to R2, E2015/73230
- 5 5 Lot Size Map for rezoning of Lots 233, 232, 231 DP 1194657, Granuaille Crescent, Bangalow to R2 , E2015/73232
- 6 Form of Special Disclosure of Pecuniary Interest, E2012/2815
- 7 Confidential - Confidential PDF for Submissions Planning Proposal for Granuaille Crescent Bangalow, E2015/77512
- 10

Report

Council at its Meeting of 27 August 2015 considered a planning proposal and resolved:

15- 389 Resolved

- 5 1. *That Council proceed with the planning proposal to rezone part of Lot 232 DP 1194657, Bangalow (as identified in Map 1 of this report), to R2; and apply FSR of 0.5;1 and MLS of 600 sq metres.*
2. *That Council amend the planning proposal to include the rezoning of part of Lot 231 and part of Lot 233 of DP 1194657, Bangalow, (as identified in Map 1 of this report), to R2; and apply FSR of 0.5;1 and MLS of 600 sq metres.*
- 10 3. *That Council ensure that the planning proposal is consistent with Gateway determination and/or Council requirements prior to public exhibition.*

15 The planning proposal was initially prepared by Planners North on behalf of Instant Steel Pty Ltd for land at Lot 232 DP 1194657, Granuaille Crescent, Bangalow. In accordance with the above Council resolution the planning proposal was amended to include additional land, this being part Lots 231 and 233 DP 1194657.

20 The revised planning proposal (at Attachment 1) is to amend Byron Local Environmental Plan 2014 to rezone part of Lots 231, 232 and 233 DP 1194657 from RU1 Primary Production to R2 Low Density Residential, and apply a floor space ratio of 0.5:1 and a minimum lot size of 600 square metres.

The planning proposal received a Gateway determination to proceed to public exhibition from the Department of Planning and Environment and was placed on public exhibition for a period of 14 days from 12 November 2015 until 26 November 2015

25 The Minister for Planning and Environment has issued an authorisation for Council to exercise delegation to make this LEP amendment should Council decide to proceed with it. This report recommends that Council proceed with the planning proposal without amendment

Summary of submissions

30 A total of six submissions have been received. Four submissions oppose the proposed rezoning while two submissions raise concerns regarding possible construction on the subject land. There were four key issues raised these being:

- the steepness of the land,
- visual amenity (including open space),
- 35 • the need for a future walking track to the water reservoir site, and
- consistency with the Bangalow Settlement Strategy.

Each submission is summarised as follows:

- 40 1. *The land is very steep and was considered unsuitable for building when Council drew up the Bangalow Settlement Strategy. Once the land is rezoned there will be a future application to build leading to the loss of a valuable green space. The Bangalow community values its rural setting and green space, please respect Bangalow's heritage and the community's wishes.*
- 45 2. *Rezoning will encourage dwellings which will create a visual eyesore on the ridgeline as viewed from the village. This area was earmarked 10 years ago to be set aside as free space. To clutter this area with small lots is unhealthy. The area is too steep for building on and should be left as open space.*
- 50 3. *The rezoning and creation of a dense residential area is not suitable and was not what we were led to believe when purchasing our property in area.*

4. *This land was not rezoned residential in the Bangalow Settlement Strategy to provide a vegetation buffer. This land was also to provide a walking path to the water reservoir and should be rezoned as open space. The Settlement Strategy excludes development on this land and the proposed rezoning is unnecessary and incorrect. This proposal should be deferred as a process to update the Settlement Strategy and Main Street Plan has just begun.*
5. *We would have a strong objection to a building being erected on lot 231 above our house. Construction on the slope above us raises concerns regarding stormwater runoff. Why has the ‘pathway’ to the water tank been included? It is important to maintain this access so the community can enjoy the view.*
6. *We would like to raise the issue of steepness of the land to be rezoned and the potential for development to exacerbate excessive stormwater flows towards our property. Any development resulting from the rezoning should be conditioned to require appropriate stormwater management such as stormwater cut-off and redirection drains. We consider this issue to be an appropriate consideration prior to the rezoning of this land.*

Staff Response to Key Issues

Steepness and visual amenity

A 5-lot residential subdivision of Lot 232 DP 1194657 has been approved. The subdivision includes dwelling envelopes for four additional dwellings located on the area of Lot 232 which is already zoned R2 Low Density Residential. A condition of the subdivision consent requires that the final plan of subdivision (plan shown at rear of Attachment 1) and accompanying Section 88B Instrument provide restrictions to limit the erection of dwellings to the nominated dwelling envelopes.

Parts of the subject land are steep being greater than 30% slopes. Much of the surrounding developed residential land is also steep. As mentioned above, the approved plan of subdivision of Lot 232 DP1194657 shows no dwelling envelopes on the area of that lot that is currently zoned RU1 and is subject to this rezoning proposal.

In accordance with the provisions of Byron LEP 2014 and the Environmental Planning and Assessment Act 1979 Council must assess any future development application for potential detrimental impacts on drainage patterns, soil stability and visual amenity. Where needed Council is able to apply conditions of consent to ensure appropriate stormwater management measures are implemented. Through this process Council is also able to ensure that potential adverse impacts on visual amenity are avoided or mitigated. The land steepness itself should not be a reason to maintain its rural zone given its urban location.

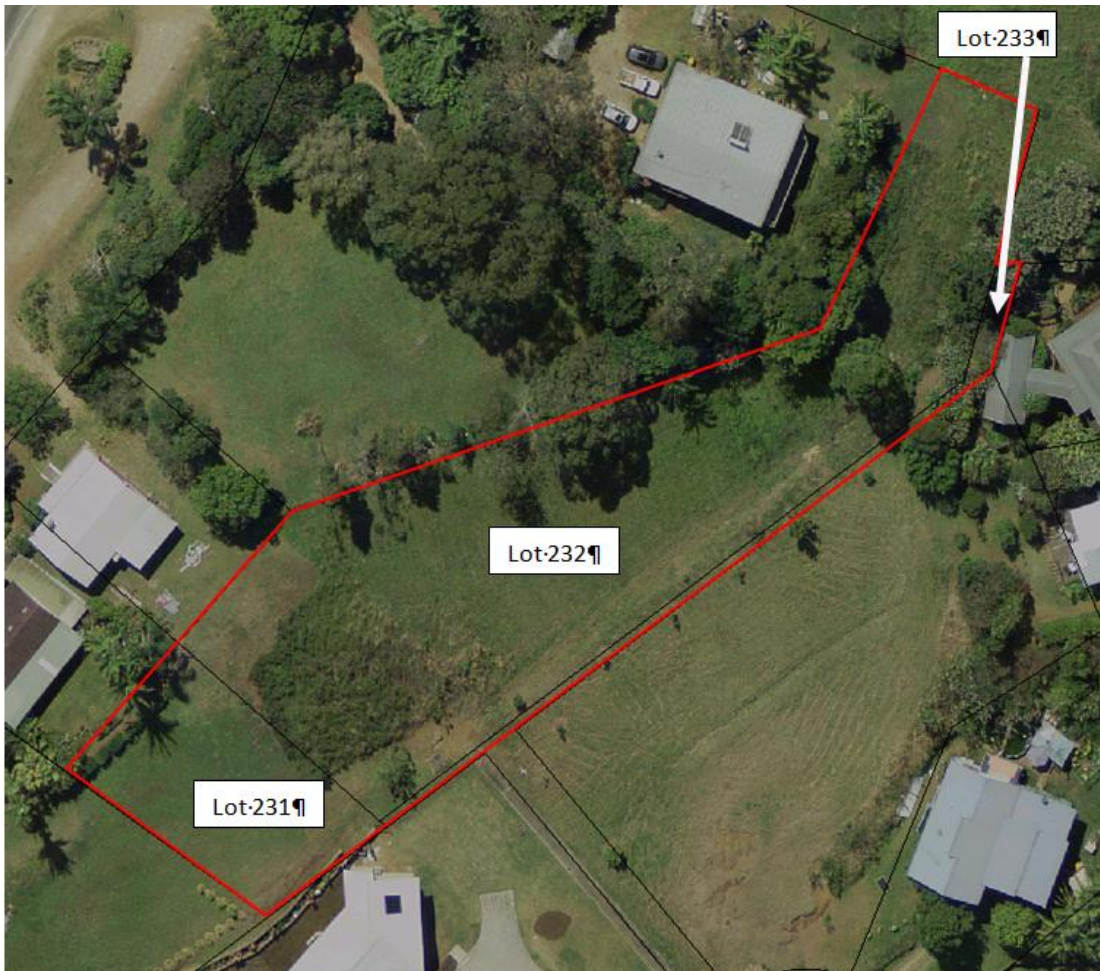
Need for a future walking track to the water reservoir site

The proposed rezoning of the narrow strip of Lot 233 to R2 will not prevent the future use of that land for the purposes of a public walkway. It is noted that the approved plan of subdivision (see at rear of Attachment 1) shows a 3 metre wide drainage easement over this narrow strip of Lot 233 and, given the lands’ steepness and proximity to adjoining properties, it is unlikely to be built upon. It is noted that the walking track from the end of Ferguson Court joining to the narrow strip of Lot 233 is already zoned R2.



Map 1 - Current LEP 2014 Zoning

5



Map 2 – Subject land outlined in red

Consistency with the Bangalow Settlement Strategy 2003

Although this strategy is outdated it remains the current residential strategy approved by Council for Bangalow. It does not identify the subject land as a future urban area.

- 5 The subject land is currently zoned RU1 Primary Production under LEP 2014. The RU1 zone is meant to identify rural land that is capable of sustainable primary industries. The zone permits a wide range of uses that would not be appropriate within close proximity to existing residential neighbourhoods including intensive livestock and plant agriculture and rural industries.
- 10 The subject land is surrounded on three sides by land zoned R2 Low Density Residential, which also includes the balance of Lots 232 and 231. The balance of Lot 233 (see Maps 1 and 2) is zoned RU1. The objectives and permitted uses of the R2 zone are appropriate for serviced land in a residential neighbourhood on the edge of Bangalow
- 15 The inconsistency is justified in this case because the subject land is surrounded by residential zoned land on three sides, is not used for agriculture due to its limited size, and has no significant environmental values. The zoning of this land for residential purposes is a minor zone boundary adjustment and is justifiably inconsistent with the Bangalow Settlement Strategy.

20

Recommendation

It is recommended that Council proceed with this planning proposal without amendment.

Financial Implications

- 25 As an applicant initiated planning proposal the administration cost has been met by the applicant.

Statutory and Policy Compliance Implications

- 30 Council has followed the statutory process to amend Byron LEP 2014 through this planning proposal. Council should now decide whether to proceed to finalise the planning proposal (either with or without amendments).

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.23 Infrastructure Works in the North of the Council Area

Directorate: Infrastructure Services

5 **Report Author:** James Flockton, Drainage Flood Engineer
Tony Nash, Manager Works
Phil Warner, Manager Assets and Major Projects
Michael Matthews, Manager Open Space and Resource Recovery
James Brickley, Manager Finance

10 **File No:** I2015/1117

Theme: Community Infrastructure
Local Roads and Drainage

15 **Summary:**

To advise Council of changed priorities for the South Golden Beach Drainage Works and the proposed infrastructure works in the north of the Council area utilising the funds generated by the sale of the Roundhouse Subdivision.

20

RECOMMENDATION:

1. That in relation to the proposed projects to be funded from proceeds of the Roundhouse Subdivision, Council:-
 - a) Refer the list of projects to a Councillor workshop to allow Councillors to fully review the proposed projects, with the view to determine a short list of 10 to 15 projects.
 - b) That the preferred short list of projects be consulted with the Community in early 2016 seeking feed back.
 - c) That following consultation, a further report is tabled, on preferred projects for approval.
2. That Council confirm the reconstruction of Kolora Way, Ocean Shores (from Shara Boulevard) to occur in the 2015/16 Financial Year, with the works being funded from the Roundhouse Sales Proceeds to the value of \$466,700.

Attachments:

- 25 1 South Golden Beach Street Drainage Works Program and road renewal / reconstruction 10 year program 24.2014.10.1, E2015/75835

Report

Sale of the Roundhouse Subdivision land

5 The sale of these properties has realised to Council a net income of \$3.8M.

Council should note that it has been able to otherwise fund the cost of the subdivision, repay all internal loans from reserves and provide for payment of the substantial developer contributions from the financial outcomes of the 2015/2016 financial year. Therefore, Council is now in the fortunate position to be able to allocate all net sale proceeds to infrastructure works without the need to fund costs associated with the subdivision and developer contributions from the sale proceeds. It otherwise would have had significantly less funds to allocate to works subject of this report and further consideration by Council if the recommendation of this report is adopted.

15 The Fit for the Future (FFF) submission indicated that \$3.0M of the proceeds of these sales would be used for infrastructure renewal projects in the north of the Council area.

This leaves an extra \$0.8M to be allocated by Council to works in the north of the Council area to either:

- 20 • infrastructure renewal projects; or
- enhancement projects; or
- new works.

South Golden Beach Drainage Works

25 Council have previously adopted a works program for resolution of drainage issues in South Golden Beach. It is proposed to slightly modify the program following various changes to legislation, resident comments and funding options.

30 19 October 2014 Council resolved (Res 14-497):

- 35 1. *That Council endorse the use of street drainage option A and driveway treatment option A, with driveway option B being used in locations where the grass swale becomes deeper, making option A too steep, as detailed in Annexure 6(a) (E2014/44543).*
- 40 2. *That Council implement the South Golden Beach Street Drainage 12 year plan as detailed in Annexure 6(b) (E2014/57386), subject to approval via Council's annual budget process.*
- 45 3. *That Council fund the South Golden Beach Street Drainage 12 year plan (subject to approval via the annual budget process) using a combination of Council revenue, Stormwater Levy funds and a charge to land owners of half the cost of driveway construction where a driveway to Council's standards has not already been provided by the property owner.*
- 50 4. *That Council's position regarding the rear easements in South Golden Beach, as shown by the plan at Annexure 6(c) (E2014/56911) is that:*
 - a) *all boundary fences are to be placed on the private property side of the easements, rather than the centre or within the easements*
 - b) *no small to medium size vegetation that may impede stormwater flows is to exist within the easements*
 - c) *no structures are allowed within the easements*
 - 55 d) *easements are to maintain a shape that supports conveyance of stormwater to the main open drains in South Golden Beach*

e) all easements are to be kept clear to allow easy and regular inspection by Council staff

5 5. *That Council completes a survey of the South Golden Beach levy and repair as necessary using funds from the North Byron Flood Study Project.*

6. *That on completion of each street's drainage solution, Council add repairing and resealing of the bitumen road surface to Council's reseal program. (Dey/Richardson)*

10 Staff have been working towards completing stage one and two of the 12 year plan and works were planned to start in September 2015, however, some Environmental Protection Agency (EPA) implications have been identified which have delayed the planned works. Additionally, comments from residents during the planning process raised concerns about the proposed program and Council's recent sale of the Round House site has changed the funding options available for the
15 project.

Environmental Protection Agency (EPA):

20 Staff recently received training regarding 2014 changes to the EPA regulations. This has made significant changes to the planned easement clearing works.

25 Staff had planned to store removed vegetation on site, mulch the material in one process and leave the mulch for residents to use. This option was relatively cheap, a good outcome for residents and environmentally conscious. However, staff are now aware that this option is not in accordance with the new EPA rules, orders and exemptions. Therefore, all the vegetation would now need to be removed from site and transported to Landfill. This would be more expensive due to haulage costs and a \$60/ton tipping fee. These changes add significant costs to a project budget that was already very tight and are not an ideal outcome for the project.

30 Staff are researching alternative options, which until resolved has delayed proceeding with the works.

Resident comments:

35 During the planning phase staff received a number of verbal and written comments from residents expressing a desire to have the street drainage resolved before the easements are cleared. Obviously some residents would prefer the opposite so Council cannot please all residents, however, the reasoning has been that residents deal with the street drainage issues on a daily basis and for this reason resolution of the street drainage first was their preference.
40

Additional funding:

45 Following the recent sale of the Roundhouse sub-division, Council now has \$3.8M available to fund infrastructure works in the north of the shire. Residents of South Golden Beach have been experienced very poor drainage for some time, but also roads in a very poor condition, which are beyond a re-seal and need to be renewed / reconstructed.

50 The proposed street drainage program was never designed to resolve the failing roads, however, it was always a desire to reconstruct the roads in tandem with the street drainage works, if funding became available. Funding for this work is now potentially available from the income created by the Roundhouse sub-division sale.

Conclusion

Staff had originally planned to complete the easement works up front because it was thought to be a smaller and simpler task that could be resolved quickly. Changes to EPA rules, comments from residents and the additional funding option from the roundhouse property sales have created a need to reassess the program.

Following this assessment a new program is now proposed.

The proposed revised program has been prepared with the aim to complete the same tasks in a different order with a better outcome for local residents.

Its is proposed that the street drainage works program, along with a road reconstruction works program occur first in tandem, followed by the easement clearing works. The proposed program is detailed at Annexure 1.

The additional timing also allows staff to find a solution to the disposal of green waste from the easement clearing works.

Council Resolution 15- 553

Council at its meeting on 29 October 2015, considered a Notice of Motion regarding the costs associated with road repairs on the East and West Sides of South Golden Beach and resolved as follows:

Res 15-553

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

The roads in South Golden Beach have been inspected and a concept estimate prepared for their renewal / reconstruction. It is noted that this is a high level estimate based on global unit rates and has not been prepared with any specific design, geotechnical or other information relevant to any one or all of these streets.

Table 1

Road	Section	Existing Pavement Total Estimated Cost	Proposed Pavement Total Estimated Cost	Priority for Renewal / Reconstruction
Pacific Esplanade	Full length	\$206,520	\$273,600	High
Beach Avenue	Full length	\$286,800	\$307,200	Very High
Royal Street	Full length	\$213,600	\$259,200	High
Helen Street east of canal	Full length	\$395,820	\$396,000	High
Peter Street east of canal	Full length	\$248,520	\$396,000	High
Robin Street east of canal	Full length	\$301,080	\$396,000	High
Gloria Street east of canal	Full length	\$249,960	\$396,000	High
Redgate Road	Full length	\$879,240	\$883,200	Medium
Elizabeth Avenue	Full length	\$250,920	\$262,800	High
Helen Street west of canal	Full length	\$360,600	\$388,800	Medium High

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Road	Section	Existing Pavement Total Estimated Cost	Proposed Pavement Total Estimated Cost	Priority for Renewal / Reconstruction
Phillip Street	Full length	\$154,920	\$187,200	High
Clifford Street	Full length	\$113,760	\$144,000	Medium High
Gloria Street west of canal	Full length	\$71,160	\$64,800	Medium High
Total Cost		\$3,732,900	\$4,354,800	

5 The existing pavement costs are based upon a like for like replacement of the same road width whilst the proposed pavement costs are based upon a wider road pavement to suit today's standards, e.g., existing road width in Peter Street East of the canal is 3.8 metres whilst the proposed road width is 6 metres.

Infrastructure Renewal Works

10 There has been a recent inspection of the more heavily trafficked roads in Oceans Shores, South Golden Beach and New Brighton to determine a list of works for infrastructure renewal funded from the proceeds of the roundhouse subdivision sales. These inspections have included:

Table 2

Road	Renewal Priority	Estimated Costs
Coomburra Cres, Ocean Shores	Very High	\$714,000
Yamble Dr, Ocean Shores	Medium High	\$92,400
Wahlooga Way, Ocean Shores	High	\$133,800
Orana Rd, Ocean Shores	Medium High	\$1,044,024
Balemo Dr, Ocean Shores	Medium	\$1,497,648
Warrambool Rd, Ocean Shores	Low	\$777,360
Rajah Rd, Ocean Shores	Medium	\$1,210,320
Kolora Way, Ocean Shores	Very High	\$900,000
Kallaroo Circuit, Ocean Shores	Low	\$638,400
Rangal Rd, Ocean Shores	Low	\$524,414
River St, New Brighton	Medium High	\$466,800
The Esplanade, New Brighton	Medium High	\$216,000
The Strand, New Brighton	Medium	\$298,440
Shara Boulevarde, Ocean Shores (Kolora Way to Kallaroo Circuit)	Medium Low	\$298,440
Total		\$8,812,046

15 There have been numerous letters from residents in Ocean Shores to have the roads reconstructed on the Coomburra Crescent, Yamble Drive and Wahlooga Way traffic route due to their poor condition.

20 There are also stormwater issues in the Ocean Shores area due to failing infrastructure due to soil conditions, poor initial construction and other factors that will necessitate detailed investigation before any of these roads are renewed / reconstructed.

Enhancement Projects or New Works

The enhancement projects or new works in the north of the Council area that could be funded from the proceeds from the roundhouse subdivision are listed in below in Table 3.

5 Tenders have closed for the Lot 5 Shara Boulevard Sports Field and associated infrastructure. If Council is unsuccessful in its Better Regions grant application, it is likely the available \$800,000 from the Roundhouse proceeds for new works will be required to complete the project.

10 If Council was to reduce elements in the scope and if the small contingency provision is not required, then it is possible there would be surplus funds available for an alternative project.

It is important to wait for the grant application outcome, complete the tender assessment and then Council will be better informed as to what are the options for the available funds.

15 Council as part of its forward budget had also adopted the construction of a pedestrian bridge in Kolora Way. The current budget is \$300,000 for the new Kolora Way pedestrian/ Cycle Bridge. Based on current investigation if this project were to proceed the budget will need to be increased to \$600,000 to fund the pathway approaches to the new bridge. This is due to the extent of work
20 required to construct approaches through the water course/wetland area.

Table 3

Project	Detail	Estimated Cost
Shara Boulevard Sports field	Potential shortfall in contract cost due to requested project enhancements	\$800,000
Waterlilly Park	Pond rejuvenation	\$300,000
Waterlilly Park	Master plan Development	\$100,000
Waterlilly park	Play space Development	\$300,000
New Brighton Sports field	Additional Funding required to provide improved amenities	\$200,000
Ocean Shores Lookout	Raised walkway and lookout enhancements	\$100,000
Kayak Ramp	Proposed between Brunswick Heads Scout hall and pedestrian bridge over	\$40,000
South Golden Beach Flood Levy Enhancements		\$100,000
Kolora Way Bridge	Construction of pedestrian bridge including approaches	\$600,000
Total		\$2,490,000

Proposed Infrastructure Works

25 Potential infrastructure renewal / reconstruction works to be funded from the sales of the Roundhouse subdivision are detailed in Table 4 below:

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Table 4

Road	Section	Renewal Priority	Total Estimated Costs	2015/16	2016/17
Beach Avenue	full length	Very High	\$310,000	\$30,000	\$280,000
Peter Street east of canal	full length	High + Drainage Works	\$410,000	\$40,000	\$370,000
Robin Street east of canal	full length	High + Drainage Works	\$410,000	\$40,000	\$370,000
Coomburra Cres, Ocean Shores	full length	Very High	\$720,000	\$70,000	\$650,000
Yamble Dr, Ocean Shores	full length	Medium High	\$100,000	\$10,000	\$90,000
Wahlooga Way, Ocean Shores	full length	High	\$150,000	\$15,000	\$135,000
Kolora Way, Ocean Shores	full length	Very High	\$900,000	\$900,000	\$0
TOTAL			\$3,000,000	\$1,105,000	\$1,895,000

5 Kolora Way road renewal / reconstruction has been proposed previously and part funding provided in 2014/15 & 2015/16, subject to the sales of the roundhouse proceeding. This project can be completed in 2015/16 as the planning, investigation and design has already been completed.

10 The proposal is to provide additional funding for the project to a combined total of \$900,000 to enable all the works in this street to be done in the one financial year. Works are scheduled to commence in mid February 2016 and only the extent will change dependent upon whether part or all of the works are funded.

All other proposed works are planned for construction in 2016/17 with some funding (approximately 10%) provided in 2015/16 for planning, investigation and design

15 The enhancement projects or new works in the north of the Council area that could be funded from the sales of the Roundhouse subdivision are detailed in Table 5 below:

Table 5

Project	Total Estimated Costs	2015/16	2016/17
Water Lily Park lake and park enhancements and plan of management review	\$400,000	\$30,000	\$370,000
Kayak ramp between Brunswick Heads Scout hall and pedestrian bridge over Simpsons Creek	\$40,000	Nil	\$40,000
South Golden Beach Flood Levy Enhancements	\$100,000	Nil	\$100,000
Shara Boulevard Sports Fields stage 2	\$260,000	Nil	\$260,000
TOTAL			\$800,000

Conclusion

5 Staff have prepared the list attached based on inspections, current projects and submissions received from the community.

10 The total value of projects listed is significantly greater than the available funds and it understood that there will be varying views on which projects should be given preference over others, therefore on this basis staff would recommend that the list be referred to a Councillor workshop to allow Councillors to full review the proposed projects in this report with the view to determine a short list of 10 to 15 projects that can be consulted with the Community in early 2016 seeking feed back.

15 In relation to the reconstruction of Kolora Way staff will require confirmation as to whether this project proceeds as it is currently approved with the 2015/16 program with the works scheduled to commence in March 2016. The approved budget is \$466,700 and the proposed works are to undertake reconstruction works commencing at the Shara Boulevard intersection.

Financial Implications

20 Council previously adopted to *fund the South Golden Beach Street Drainage 12 year plan (subject to approval via the annual budget process) using a combination of Council revenue, Stormwater Levy funds and a charge to land owners of half the cost of driveway construction where a driveway to Council's standards has not already been provided by the property owner.* This funding option will remain unchanged and therefore has no implications.

25 Council has \$3.8M from the sale of the round house sub-division.

30 The proceeds of this sale have been previously recommended for expenditure on infrastructure works in the north of the shire. Reconstructing the roads in South Golden Beach at the same time as the on-street drainage works are undertaken fulfils this ideal and resolves a long standing problem of failed infrastructure in the area.

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.

Statutory and Policy Compliance Implications

40 Council does not have a statutory requirement to provide driveways to dwellings, however, it does have a responsibility to provide adequate street drainage. As noted before, it is not possible to provide adequate street drainage without upgrading of all the driveways in the areas affected in SGB. Therefore driveways will need to be included in the works program.

The Roads Act 1993 states:

142 Maintenance of works and structures

45 (1) *A person who has a right to the control, use or benefit of a structure or work in, on or over a public road:*

- 50 (a) *must maintain the structure or work in a satisfactory state of repair, and*
- (b) *in the case of a structure (such as a grating or inspection cover) located on the surface of the road, must ensure that the structure is kept flush with the surrounding road surface and that the structure and surrounding road surface are so maintained as to facilitate the smooth passage of traffic along the road,*
- 55 *and the person is, by this section, empowered to do so accordingly.*

Therefore, once the driveway has been constructed it will the responsibility of the land owner to maintain their driveway access.

Report No. 13.24 Extending Recycled Waste Water from West Byron STP to the Byron Foreshore

Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2015/1364
Theme: Community Infrastructure
 Waste and Recycling Services

5

10 **Summary:**

The Byron Bay Urban Recycled Water Scheme produces recycled water of sufficient quality and quantity to extend the pipeline system to supply water to both public infrastructure and businesses in the CBD and along the foreshore of Byron Bay. To proceed with the project, Council would need to submit a Section 60 application for the project to the DPI Water for approval. The supply of recycled water to the crown reserve from Main Beach to Clarkes Beach is an identified project in the adopted Byron Bay Effluent Management Strategy (BBEMS).

15

The total cost of the project excluding any public toilet upgrades, is estimated to be \$1,350,000. The project satisfies key objectives of the BBEMS of removing effluent discharge from the Belongil Creek and maximising the creation of useful products by supplanting drinking water from high volume toilet flushing and irrigation of the crown reserve park areas.

20

RECOMMENDATION:

That Council approve the Byron Bay Urban Recycled Water Scheme Expansion project with a budget of \$1,350,000 allocated equally from the water and sewer funds to commence in 2016 calendar year.

25

Attachments:

- 1 Technical Review Use of Byron Urban Reuse Scheme Recycled Water for Dual Reticulation, E2015/76122
- 2 Figure 1 Schematic Byron Bay Urban Recycled Water Proposed Extension, E2015/76121

30

Report

5 To supply recycled water to the Railway Park; Clarkes Beach and Apex Park toilets; irrigation services along the crown reserve; and installation of various water points for use by the Better Byron crew it will be necessary to design and construct a pipeline 2300 metres in length, with connections to the existing Byron Bay Urban Recycled Water Scheme at the recreation ground in Tennyson Street and Railway Park. Refer to Figure 1 Schematic for the proposed pipeline extension.

10 Initially, it is expected the scheme will use approximately 20 megalitres of recycled water per annum. This quantity can be increased incrementally in future to > 30 megalitres per annum if connections to First Sun Caravan Park; Swimming Pool toilets; Clarkes Beach Caravan Park and possibly the Beach Hotel toilets are undertaken.

15 The project cannot be justified on a commercial basis. The justification is based on the Byron Bay Effluent Management Strategy objectives, in particular:

- *Eliminate surface discharge to Belongil Creek from the West Byron STP* – this project will reduce effluent discharge to the Belongil Creek.
- *Maximise the creation of useful products from effluent reuse projects* – this project will supplant the use of potable water for toilet flushing and will contribute to the enhancement of the crown reserve through irrigation.

25 Also, the supply of recycled water to the crown reserve from Main beach to Clarkes Beach is an identified project in the adopted Byron Bay Effluent Management Plan. The project satisfies key objectives of the BBEMS of removing effluent discharge from the Belongil Creek and maximising the creation of useful products by supplanting drinking water from high volume toilet flushing and irrigation of the crown reserve park areas.

30 The cost of the project, excluding upgrades to toilet blocks, is estimated to be \$1,350,000. It is recommended this amount be funded equally from the water and sewer funds. Nominal funding of approximately \$60,000 from the Rous Water Business Blue Green programme may also be available.

35 Upgrades to the toilet blocks could be funded from the Special Rates Capital Works Programme. Currently there is \$154,700 in the 2015-16 capital programme that is unallocated to a project (account number 4195.011).

40 The Byron Bay Urban Recycled Water Scheme produces recycled water of sufficient quality and quantity to supply water to dual reticulation schemes such as public toilets in Byron Bay (refer attachment “Technical Review – Use of Byron Urban Reuse Scheme Recycled Water for Public Toilets). To proceed with the project, Council would need to submit a Section 60 application for the project to the DPI Water for approval.

Financial Implications

The funding for the pipeline construction will be via section 64 funds from the water and sewer funds.

Statutory and Policy Compliance Implications

55 It will be necessary to submit Local Government Act Section 60 application to the NSW Department of Primary Industries Water for project approval to expand the Byron Bay Urban Recycled Water Scheme.

Report No. 13.25 **Options for Extending Exeloo Toilets at Apex Park, Byron Bay**
Directorate: Infrastructure Services
Report Author: Michael Matthews, Manager Open Space and Resource Recovery
File No: I2015/1365
5 **Theme:** Community Infrastructure
 Open Space and Recreation

Summary:

10 Notice of Motion No. 9.3 15-554 part 4. Resolved that a presentation or report be provided outlining possibilities of providing other relocatable public toilets, including locally designed.

15 A review of options of additional relocatable public toilet facilities at Apex Park, Byron Bay has been undertaken.

20 Facility types reviewed broadly fall into four categories, namely, bespoke designed solutions, pre-fabricated products, pre-engineered non automated facilities and high end pre-engineered automated facilities such as the Exeloo and Moodie products.

25 The review has considered public toilet amenity regulated design requirements, relocation ability, customisation, operational functionality, costs, benefits of fully automated data collection, remote control functionality, location aesthetics and longer term need for a permanent facility to be sized to best meet forecasted demand.

30 It is clear from existing data captured by the current facilities at Apex Park that there is insufficient capacity to meet peak demands experienced at times, in particular during holiday periods coinciding with fine weather.

35 Based on the review undertaken (refer to report), it is believed that the installation of another interim Jupiter Triple Automated Exeloo or a Jupiter Automated Model 24AAAA is the best medium term (2-5 yrs.) option for Apex Park.

Benefits of a second block include, but not limited to, are

- 35 • An additional Exeloo block is fully relocatable and provides stand alone compliance with all regulatory and best practice design requirements
- 40 • A second block will provide valuable additional data to the existing 12 months of data captured providing for sound design input information of future permanent facilities
- 45 • All technical issues initially experienced with the facilities at Railway Park and Apex Park have been permanently resolved.
- 50 • Sound design of future facilities with captured usage data will greatly assist community engagement and consultation on future facility proposals and options.
- 55 • Exeloo products can be easily adapted to accept recycled water through dual plumbing.
- The management of these facilities will move across to the Utilities team within infrastructure services. The utilities team has strong mechanical, electrical and scada skills through management experience of STPs. It is believed that these skills will enable further improvement to the operational management of these facilities.
- Robustness of the facilities against vandalism as a majority of fixtures and fittings are concealed.
- Design is highly corrosion resistant, an important design feature at this location.
- Maintaining visual amenity of the area by providing style consistency
- Interim additional facilities, like existing, would be a fully relocatable stand alone amenities that meets all necessary standards including *Disability (Access to Premises — Buildings) Standards 2010* in any future adopted location. The remote monitoring will allow full control of opening and closing addressing and reducing anti social behaviour risk.

RECOMMENDATION:

1. That Council approve the purchase of a second Exeloo toilet block for Apex Park (Byron Bay), as a Reserve Trust Asset up to the value of \$300,000.
2. That the purchase be funded from the Crown Paid Parking Reserve.

5

Report

The current toilet provisions within Apex Park, at Main Beach Byron Bay is a Jupiter Triple Automated Exeloo (Model 23AAD) and a separate urinal room at the adjacent Surf Club.

5 There have been a number of minor modifications to the Exeloo under warranty due to intermittent faults that have occurred. It is believed all faults and technical issues have been resolved.

10 The existing Exeloo amenities comply with all Australian public amenity regulations and best practice requirements, including, Disability (Access to Premises — Buildings) Standards 2010, Building Code of Australia, AS1428.1(2009), Crime Prevention Through Environmental Design (CPTED and are highly vandalism proof, an important non- mandatory design aspect.

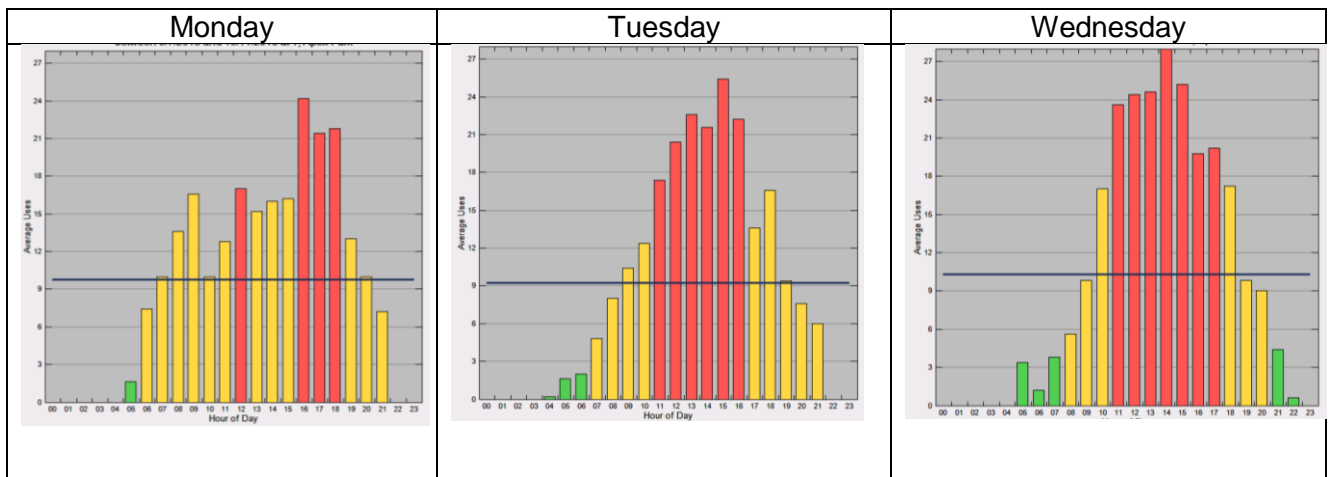
15 The below table provides usage data for the Apex Park Amenities

Data 1st April to 31st October	Total Occupancy	Average Occupancy Time (min)
Apex 1	46840	1.73
Apex 2	51033	1.9
Apex 3	50584	1.72
TOTAL (7 months)	148457	
Estimated number of customers that have had to wait in line for this period	24,627	

The units have estimated, for the above mentioned period, 24,627 customers have had to queue for these facilities. This represents 16.6% of customers (1 in 6 customers) have had to wait.

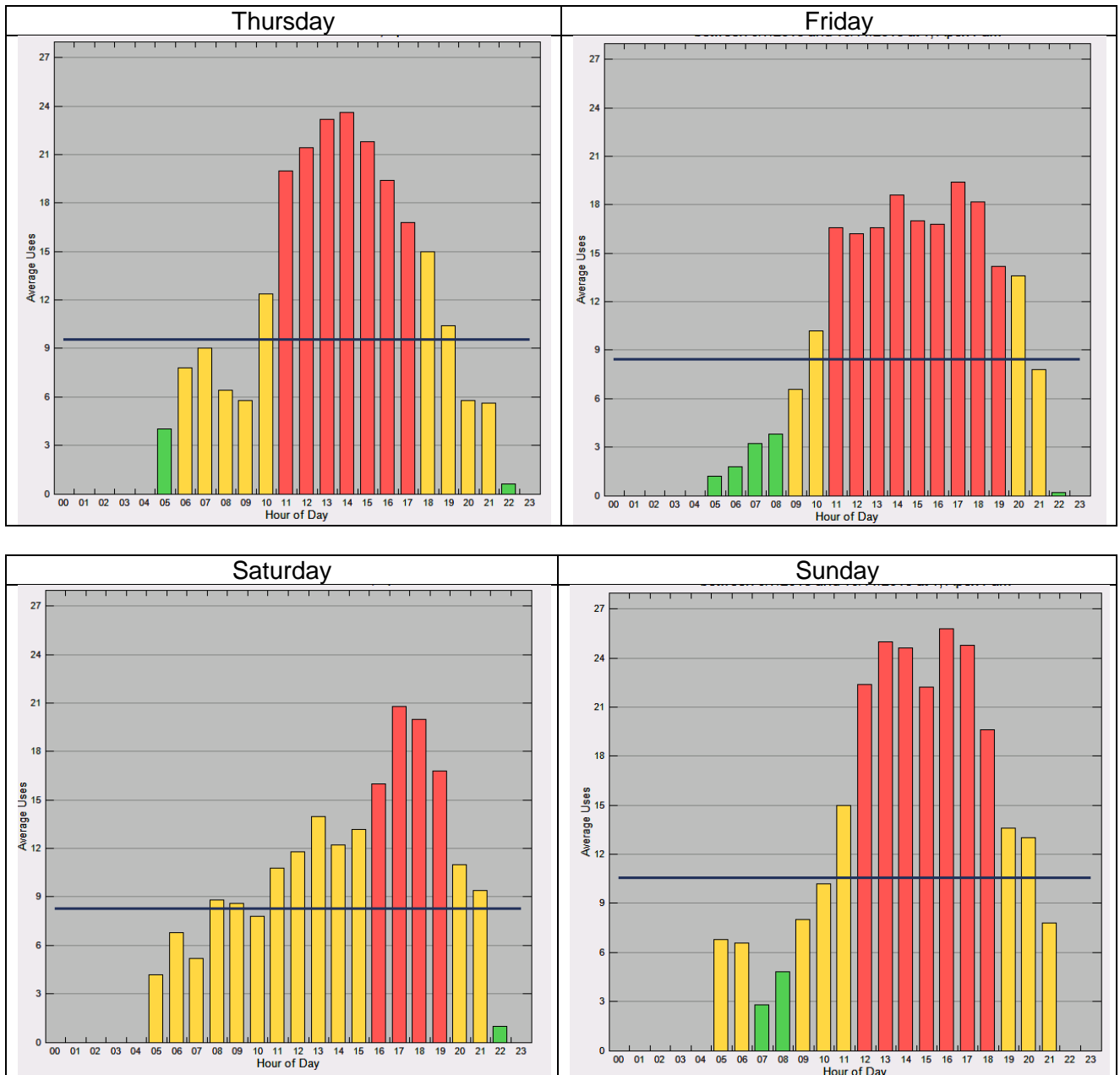
20 Data capture from the existing facility highlights that there is insufficient capacity to meet peak demands experienced at times, in particular during holiday periods coinciding with fine weather.

Below are typical usage profile summaries for the Apex amenities



25

30



5 A review of temporary toilet facilities has been undertaken. This review has looked at bespoke, pre-fabricated, pre-engineered and pre-engineered automated products.

Key considerations in the review include;

- 10 • Australian public amenity regulations and best practice requirements, including, Disability (Access to Premises — Buildings) Standards 2010, Building Code of Australia, AS1428.1(2009), Crime Prevention Through Environmental Design (CPTED)
- Data capture for future facility design
- Robustness in this location (corrosion resistance, vandalism resistance)
- Visual amenity

15

Bespoke Custom Ablution Blocks

Customised bespoke solutions are considered to be costly due to the need to meet the following but not limited requirements and the upfront design costs for ‘one off’ amenities:

- Disability (Access to Premises — Buildings) Standards 2010
- Building Code of Australia, AS1428.1(2009)
- Crime Prevention Through Environmental Design (CPTED)
- 5 • Vandalism proof functionality
- Maintenance and ease of cleaning design considerations

10 Anecdotally, for a two closet product, costs have been stated to typically exceed pre-engineered and automated solutions. This type of solution is generally not relocatable without adding considerable costs and will have considerable design certification and construction lead times. Consideration of bespoke solutions for these reasons should be adopted for permanent solutions only. Advantage of bespoke solution is the ability for local design and build.

Pre-fabricated Solutions

15 These are generally the cheapest of all solutions. Two pre-fabrication solutions reviewed include Modus and Landmark.

Supplier	Local Context	Indicative Costs	Procurement Options	Lead Time	Comment
Modus	AU construction & supply	Start at 30k basic design (M/F & accessible) Plus site establishment & infrastructure	Gov contract RFQ	6 to 8 weeks off the plan	Customisation of fixtures, fittings and cladding materials will greatly increase costs. The basic models are only suitable for short term use without customisation.
Landmark	AU construction & supply	Start at approx. 40K basic design	RFQ- RFT	6 to 8 weeks off the plan	As above

20 It is considered that a low construction build would be offset with significantly higher ongoing maintenance, cleaning and vandalism repair costs. Fixtures and fittings selected should be highly corrosion resistant, significantly adding to the build cost. In addition there is limited ability to capture usage data for future facility design. Aesthetically, additional architectural designed cladding is suggested if this style was to be considered, adding to the whole of life cost. These products are typically not easily relocatable.

25 Pre-engineered Solutions

These solutions are customisable. Two pre-engineered solutions reviewed from major suppliers in the market include Ausco and Atco.

Supplier	Local Context	Indicative Costs	Procurement Options	Lead Time	Comment
Ausco	AU construction & supply	Start at 30k basic design, plus site establishment and infrastructure	RFQ-RFT	8 to 12 weeks	The Pre- Engineered buildings can be customised to achieve vandal resistance and aesthetically pleasing designs however this will greatly increase costs.
Atco	AU	Start at 30k basic design	RFQ-RFT	8 to 12	

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	constructi on & supply			weeks	
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It is considered that a considerable amount of customisation would be required to achieve an acceptable temporary solution for Apex Park. This style of facility is generally not relocatable with relocatable designs would add considerably to the costs.

- 5 There is also limited ability to capture usage data for future facility design.

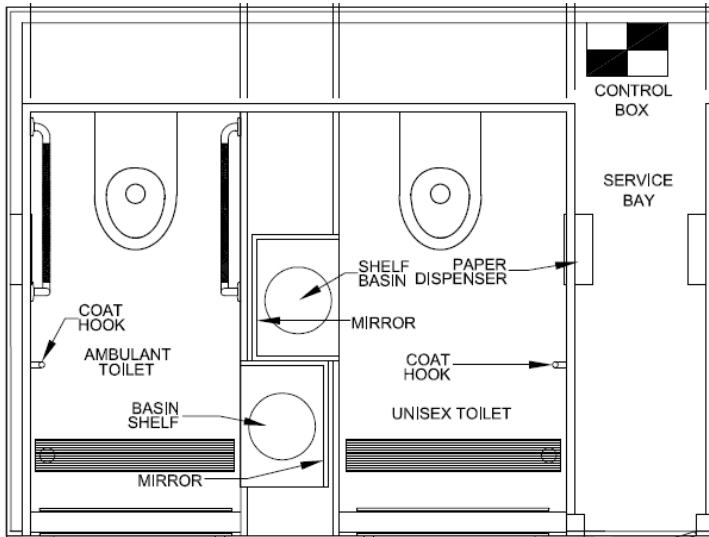
Pre-engineered and Automated

Supplier	Local Context	Indicative Costs	Procurement mechanism options	Lead Time	Comment
Exeloo	NZ	Refer below – for quoted models	Gov contract RFQ	12 weeks	Aesthetically consistent with existing Possible to decrease costs by deleting some of the automated features such as automatic toilet paper dispensers, self-cleaning and automated hand basin features.
Pureablue	AU	200k plus	RFQ- RFT	12 to 16 weeks	At time of writing report, budgets for 2 ,3 and 4 facilities had not been recieved
Moodie	AU	200k plus	Gov contract RFQ	12 to 16 weeks	Are similar in features and price to that of Exeloo. At time of writing this report, complete budget prices had not been received for cost and feature comparison.

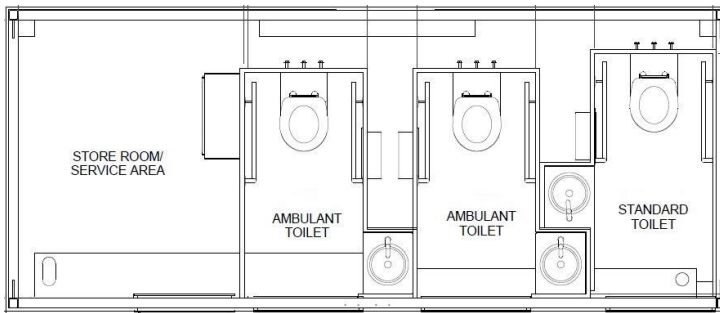
- 10 The Exeloo products are a pre-engineered fully customised facility that complies with all public amenity regulations and best practice requirements, including, Disability (Access to Premises — Buildings) Standards 2010, Building Code of Australia, AS1428.1(2009), Crime Prevention Through Environmental Design (CPTED) and are highly robust against vandalism as a majority of fixtures and fittings are concealed and are built for harsh coastal environments.

- 15 Below is quoted Exeloo prices for various arrangements. There are additional civil and electrical costs with installation which is dependant on final location.

Jupiter Automated Model 22AA (2 x Ambulant Cubicles) **\$186,440**

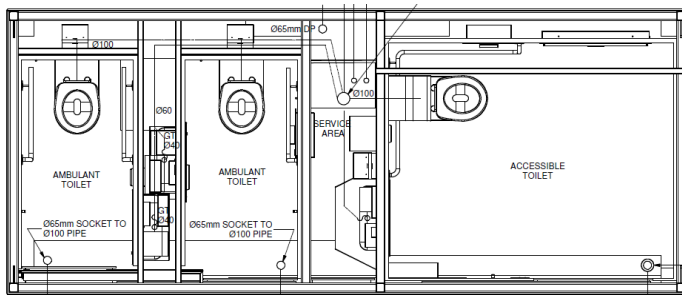


Jupiter Automated Model 23AAA (3 x Ambulant Cubicles with Storage Room) **\$244,000**



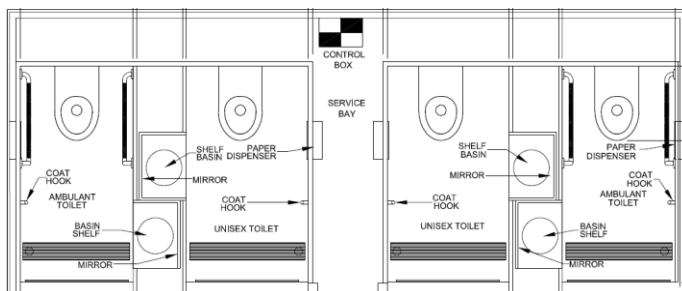
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Jupiter Automated Model 23AAD (2 x Ambulant 1 x Fully Accessible Cubicle) – (Exact Floor Plan as Apex & Railway Park) **\$249,500**



10

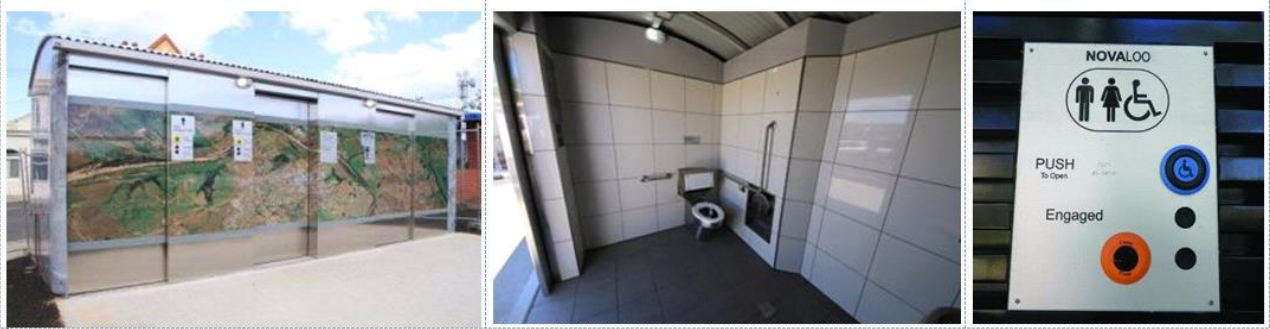
Jupiter Automated Model 24AAAA (4 x Ambulant Cubicles) **\$286,300**



15

The Moodie Novaloos automated toilets are of similar price to Exeloo with like functionality and features.

Under the LGP, Prices for the triple 5 star facility start from \$220,000. At the time of writing this report a full budget price list had not been received, however expected by December.



5

Locally designed options have been reviewed for bespoke, pre-fabricated, pre-engineered and automated pre-engineered facilities. At the time of writing this report, it is considered that locally, there are no re-locatable public amenity providers for pre-fabricated, pre-engineered or automated pre-engineered suppliers.

10

Options for local design and build are currently believed to be limited to

15

- Off grid facilities and;
- Bespoke toilet facilities.

Off grid facilities, such as batch style composting toilets are not recommended at this location due to the batching volumes requiring removal (estimated twice daily truck movements through town). Where onsite composting is considered, the risk of contamination of the natural compost process is expected to be high due to the high tourist use of this site.

20

For the reason discussed earlier with bespoke facilities, pricing would be subject to detailed specification and design. The final end product cost is likely to far exceed the price of an 'off the shelf' pre-engineered automated re-locatable option with equivalent features.

25

Financial Implications

Sufficient funds are available from paid parking in the Foreshore Crown Reserves to provide for the further needed public toilet facilities in Apex Park.

30

Statutory and Policy Compliance Implications

Toilet facilities are listed under the State Environmental Planning Policy (Infrastructure) 2007 as exempt development.

Report No. 13.26 Proposed Meeting Dates for Community Infrastructure Advisory Committee Meetings 2016

Directorate: Infrastructure Services
Report Author: Susan Sulcs, Administration Officer
File No: I2015/1372
Theme: Community Infrastructure
Local Roads and Drainage

5

10 **Summary:**

This report is prepared to allow Council to determine the schedule of meetings for the 2016 calendar year for the Community Infrastructure Advisory Committee.

15 The proposed schedule for 2016 is recommended for adoption.

RECOMMENDATION:

That the following dates be adopted for the Community Infrastructure Advisory Committee's meetings for 2016 and that the meetings commence at 2.00pm.

- **Thursday, 3 March 2016**
- **Thursday, 2 June 2016**
- **Thursday, 20 October 2016**
- **Thursday, 1 December 2016**

20

Report

This report is prepared to allow Council to determine the schedule of meetings for the 2016 calendar year for the Community Infrastructure Advisory Committee.

5

Staff will be confirming with members of the Committee their availability for the proposed dates prior to the tabling of this report to Council.

Financial Implications

10

Nil

Statutory and Policy Compliance Implications

15

The Community Infrastructure Advisory Committee's Constitution states:

- At section 8 that "Meetings will be held at least quarterly."

Report No. 13.27 **Proposed Meeting Dates for Water, Waste and Sewer Advisory Committee Meetings 2016**

Directorate: Infrastructure Services
Report Author: Susan Sulcs, Administration Officer
File No: I2015/1373
Theme: Community Infrastructure
 Waste and Recycling Services

5

10 **Summary:**

This report is prepared to allow Council to determine the schedule of meetings for the 2016 calendar year for the Water, Waste and Sewer Advisory Committee.

15 The proposed schedule for 2016 is recommended for adoption.

RECOMMENDATION:

That the following dates be adopted for the Water, Waste and Sewer Advisory Committee's meetings for 2016 and that the meetings commence at 9.00am.

- **Thursday, 3 March 2016**
- **Thursday, 2 June 2016**
- **Thursday, 20 October 2016**
- **Thursday, 1 December 2016**

20

Report

This report is prepared to allow Council to determine the schedule of meetings for the 2016 calendar year for the Water, Waste and Sewer Advisory Committee.

5

The proposed schedule for 2016 is recommended for adoption.

Staff will be confirming with members of the Committee their availability for the proposed dates prior to the tabling of this report to Council.

10

Financial Implications

Nil

15

Statutory and Policy Compliance Implications

The Water, Waste and Sewer Advisory Committee's Constitution states:

20

- At section 8 that "At least quarterly meetings will be held."

**Report No. 13.28 Proposed Meeting Dates for Transport Advisory Committee Meetings
2016**

Directorate: Infrastructure Services
Report Author: Susan Sulcs, Administration Officer
File No: I2015/1374
Theme: Community Infrastructure
Local Roads and Drainage

5

10 **Summary:**

This report is prepared to allow Council to determine the schedule of meetings for the 2016 calendar year for the Transport Advisory Committee.

15 The proposed schedule for 2016 is recommended for adoption.

RECOMMENDATION:

That the following dates be adopted for the Transport Advisory Committee's meetings for 2016 and that the meetings commence at 9.00am.

- **Thursday, 10 March 2016**
- **Tuesday, 14 June 2016**
- **Tuesday, 16 August 2016**
- **Thursday, 3 November 2016**

20

Report

This report is prepared to allow Council to determine the schedule of meetings for the 2016 calendar year for the Transport Advisory Committee.

5

The proposed schedule for 2016 is recommended for adoption.

Staff will be confirming with members of the Committee their availability for the proposed dates prior to the tabling of this report to Council.

10

Financial Implications

Nil

15

Statutory and Policy Compliance Implications

The Transport Advisory Committee's Constitution states:

20

- At section 10 that "At least quarterly meetings will be held."

Report No. 13.29 **Federal Drive, Goonengerry - Project Status Report**
Directorate: Infrastructure Services
Report Author: Rob Serventi, Graduate Works Engineer
File No: I2015/1391
5 **Theme:** Community Infrastructure
 Local Roads and Drainage

Summary:

10 The purpose of this report is to provide an update on the Federal Drive, Goonengerry road reconstruction project including the detailed design, ecological assessments, statutory environmental planning approvals, the funding and construction timing and to seek Council endorsement to proceed with property acquisition and/or boundary realignments.
15

RECOMMENDATION:

1. **That Council notes the status of the planning and preconstruction activities for the Federal Drive, Goonengerry Road reconstruction project.**
2. **That Council authorises:**
 - a) **The land acquisition and/or boundary adjustments through negotiation with adjoining property owners.**
 - b) **Affixing the Council seal by the General Manager to all necessary documents that affect the acquisitions and/or boundary adjustments.**
3. **That a status report on this project be presented to the Community Infrastructure Advisory Committee meeting proposed to be held on 3 March 2016.**

20

Report**Background**

5 The section of Federal Drive, Goonegerry to be reconstructed starts 250m south of the Mafeking / Federal Drive intersection, and extends southward along Federal Drive for 440m. The sections of Federal Drive north and south of this section have been reconstructed previously.

10 The deteriorated state of the road is due to land subsidence and lack of suitable surface and subsurface drainage. The existing road departs from an acceptable level of conformance with the minimum Austroads design standards in alignment, design speed and stopping sight distance.

15 The original design plans for the upgrade of this section of Federal Drive were completed in 1995/96, however, funding for this project had never been provided by Council as part of its annual capital works program.

20 The Roads and Asset Management Project Reference Group (PRG) first raised the Federal Drive, Goonengerry and Bangalow Road, Hayters Hill projects in 2012 with the aim to review the engineering design and construction standards for each section of road to achieve an upgrade of the road at a reduced cost but still with applicable and comparable road conditions and design standards. To achieve this objective Council engaged a local engineering consultant to undertake a review of both projects.

25 The reviews were completed and submitted to the Roads and Asset Management PRG in May 2012 with the advice that both projects could be redesigned without the need to undertake land acquisition and with reduced earthworks and scope of works for the overall reconstruction project.

30 Following this review, Council engaged the same consultant to undertake the detailed design for both projects. The draft final designs were completed in February 2015 and were reported to the Community Infrastructure Advisory Committee (CIAC) meeting on 7 May 2015.

The recommendations from the CIAC meeting on 7 May 2015 were:

35 *Report No. 5.2 Rural Road Designs at Federal Drive and Bangalow Road*
File No: I2015/348
Committee Recommendation:

- 40 *1. That the information provided about rural road designs at Federal Drive and Bangalow Road be noted.*
2. That Council now move ahead with investigating land acquisition options for the designs.
3. That the design elements be progressed for consideration of project approval by Council.

45 The CIAC recommendations were reported to Council at the meeting on 11 June 2015 and the resolution of Council was:

Res 15-270

50 *Resolved that Council adopt the following Committee Recommendation:*
Report No. 5.2 Rural Road Designs at Federal Drive and Bangalow Road File No: I2015/348

Committee Recommendation 5.2.1

- 55 *1. That the information provided about rural road designs at Federal Drive and Bangalow Road be noted.*

2. *That Council now move ahead with investigating land acquisition options for the designs.*
3. *That the design elements be progressed for consideration of project approval by Council.*

5 The Bangalow Road, Hayters Hill project has been able to be redesigned to avoid land acquisition as per the original advice in the review undertaken by the consultant. A further redesign of the cut and fill batters is being undertaken as a result of threatened species identified during ecological assessment and required by the initial review of environmental factors (REF). Discussions and site meetings have been occurring with the designer, ecologist and the property owner. It is anticipated that a favorable, compromise result and design plans will be achieved that will allow construction to proceed on this project.

15 The Federal Drive, Goonengerry project has not been able to be redesigned to avoid land acquisition as per the original advice in the review undertaken by the consultant. Land acquisition is required to undertake the road reconstruction, however, land no longer needed for road reserve can be provided back to the property owner with an anticipated nil land acquisition for the project. It is envisaged that adjustments to property boundaries will be required on all properties adjacent to this section of Federal Drive. Council will be required to undertake all the surveying, legal work and costs associated with the property boundary adjustments.

20 These property boundary adjustments can be achieved by negotiation with property owners and could be completed at best in about four (4) months. If the boundary adjustments have to be undertaken by compulsory acquisition the time frame is much longer and typically may take several years.

25 The draft design plans have been reviewed in detail and at a recent meeting with the consultant, they have been requested to investigate some options to reduce the extent of work on the cut and fill batters, minimise or remove the impact on the threatened species adjacent to the road, minimise the adjustments to property boundaries and reduce the overall scale, scope and cost of the overall project.

30 It is anticipated that this work will be completed early in 2016, hopefully in February, although this is yet to be confirmed by the consultant.

35 Discussions with property owners have commenced to advise them of the project, the adjustments required to the property boundaries and the desired no net loss of their property and no net land acquisition required by Council.

40 If all property boundary adjustments can be undertaken by negotiation and not compulsory acquisition, then the completion of the revised design plans and reduced extent of overall works could be completed by approximately June/July 2016 with construction to start soon after, subject to approval of funding by Council as part of the local roads capital works program.

Proposed Boundary Adjustments at Federal Drive

45 Chainages 0 to 410 constitute the length of road to be reconstructed.

Table 1

Lot & DP Address	Design Chainage	Effect on Property	Expected Time frame	Effect of Boundary Move	Comments / Justification
Lot 7 DP 629234 34 Bayview Drive	135-185	Boundary Adjustment	4 months Negotiated with owner	No net land loss	Realignment of road reserve and private title will align road reserve

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.29

Lot & DP Address	Design Chainage	Effect on Property	Expected Time frame	Effect of Boundary Move	Comments / Justification
					back to existing fence line
Lot 4 DP 608723 871 Federal Drive	130-190	Boundary Adjustment	4 months Negotiated with owner	No net land loss	Realignment of road reserve will align road reserve back to existing fence line.
Lot 6 DP 599812 931 Federal Dr	250-290	Boundary Adjustment	4 months Negotiated with owner	No net land loss	Truck stopping distances drive the resumption Energy dissipater can be accommodated in Council Land
Lot 5 DP 629234 953 Federal Dr	300-380	Boundary Adjustment	4 months Negotiated with owner	No net land loss	Adjusts road reserve to planned road alignment
Lot 6 DP 629234 30 Bayview Dr	250-290	Boundary Adjustment	4 months Negotiated with owner	No net land loss	Adjusts road reserve to planned road alignment
Lot 52 DP 867837 26 Bayview Dr	340-400	Boundary Adjustment	4 months Negotiated with owner	No net land loss	Adjusts road reserve to planned road alignment

Table 1 shows each property requiring boundary adjustment and the expected timeframe.

5 At the time of writing this report, initial discussions with the property owners are planned for late November 2015.

Future Actions & Timeline to implement the construction of works at Federal Drive.

10 **Table 2**

Task Name	Duration	Start	Finish
Design Phase	27 days	Thu 12/11/15	Mon 28/12/15
Draft REF	2 days	Thu 12/11/15	Fri 13/11/15
BSC Planning advice / Subdivision Process	2 days	Mon 16/11/15	Tue 17/11/15
CONSULTANT Design Review Meeting	0 days	Tue 17/11/15	Tue 17/11/15
CONSULTANT Design Issues Identification & review	6 days	Wed 18/11/15	Thu 26/11/15
CONSULTANT Price on revised Scope	5 days	Mon 30/11/15	Mon 7/12/15
CONSULTANT Cut Fill Retaining Options	2 days	Tue 8/12/15	Wed 9/12/15
CONSULTANT Revised Bill of Quantities	1 day	Tue 8/12/15	Tue 8/12/15
CONSULTANT Confirm Boundary realignment	2 days	Tue 8/12/15	Wed 9/12/15
Ecological Assessment / Review of Environmental Factors	2 wks	Thu 10/12/15	Mon 28/12/15
Land Acquisition / Final Design	30 days	Thu 10/12/15	Wed 3/02/16
Land Survey RFQ / Title Plan Preparation	30 days	Wed 6/01/16	Tue 1/03/16
Owner / Statutory Approvals	80 days	Thu 4/02/16	Wed 22/06/16
Obtain Owners Consent	3 months	Wed 2/03/16	Tue 14/06/16
Revised Estimate	1 day	Thu 4/02/16	Thu 4/02/16
Lands Dept. Consent Crown Road Dedication	3 months	Wed 2/03/16	Tue 14/06/16
Lodge Subdivision Application	0 days	Tue 14/06/16	Tue 14/06/16

Task Name	Duration	Start	Finish
Approval Subdivision Application	1 week	Wed 15/06/16	Wed 22/06/16
Report to Council	0 days	Wed 22/06/16	Wed 22/06/16
Prepare Job Package (Orders, Community Notification)	5 days	Thu 23/06/16	Thu 30/06/16
Start Construction		Mon 4/07/16	

Based on owner’s consent being obtained within 4 months, it is expected the works will be able to start construction in mid 2016, the proviso that budgets are provided for the project in 2016/17.

5 Financial Implications

There are sufficient funds in the 2015/2016 budget to arrange and finalise the necessary design development, survey, property boundary adjustments, revised ecological assessment, revised REF and all other required preconstruction activities.

10 The estimated construction costs for the project in will be available in January 2015 and will be able used to inform any necessary changes to the 2015/16 and 2016/17 budgets for the project.

Statutory and Policy Compliance Implications

15 Statutory
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, part 2 Division 1 Subdivision 38, provide that subdivision of the land, for the purpose only of any one or more of the following, is exempt development:

- 20
- (a) Widening of a public road
 - (b) Realignment of boundaries

Report No. 13.30 **Belongil Catchment Advisory Committee - Nominations for
Community Representatives**

Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2015/1420
Theme: Community Infrastructure
 Sewerage Services

5

10 **Summary:**

A Belongil Catchment Advisory Committee is being formed in accordance with Council Resolution 15-236 Item 6. This report provides the nominations received from the community for Council's consideration.

15

RECOMMENDATION:

1. **That Council appoint up to 6 community representatives to the Committee in accordance with the Belongil Advisory Committee constitution.**

2. **That Council nominate 3 Councillors to the Committee in accordance with the Belongil Advisory Committee constitution.**

Attachments:

- 20 1 Confidential - Committee Nomination A, E2015/75691
 2 Confidential - Committee Nomination B, E2015/75694
 3 Confidential - Committee Nomination C, E2015/75695
 4 Confidential - Committee Nomination D, E2015/75696
 5 Confidential - Committee Nomination E, E2015/75697
25 6 Confidential - Committee Nomination F, E2015/75698

Report

Council is creating the Belongil Catchment Advisory Committee in accordance with Council Resolution 15-236 Item 6 which states:

5 *That Council create a new Advisory Committee to advise on priorities and on integration of the various Plans & Strategies listed in today's Report 13.17 plus Agreements that may be reached as above, and on other catchment issues within Belongil catchment.*

10 Nominations for the committee were advertised in the Council Notices of 22 October 2015 and on Council's web site.

Applications were open for 3 weeks and closed on the 12 November 2015.

15 In addition Council wrote to the affected landowners and the Drainage Union inviting them to apply for representation on the Committee.

In total six (6) community applications were received.

20 Four (4) of these applications are from affected landowners and one (1) application is from a person affiliated with the Belongil Swamp Drainage Union.

The approved Belongil Catchment Advisory Committee constitution permits up to six (6) community representatives.

25 **Financial Implications**

There are no financial implications.

30 **Statutory and Policy Compliance Implications**

There are no statutory or policy implications.

Report No. 13.31 **10.2013.562.1 North Byron Beach Resort Central Facilities ET Assessment**

Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2015/1423
Theme: Community Infrastructure
 Sewerage Services

5

10 **Summary:**

DA 10.2013.562.1 for the North Byron Central Facilities buildings has been assessed for water and sewer equivalent tenements (ET) by Council. There is also an approved DA with Council for the guest cabins located adjacent to central facilities which has also been assessed for water and sewer ET's which have been accepted by the developer in accordance with Council's assessment. Council has assessed the ET loading for these developments in accordance with Council's current ET Policy 13/005. ET values listed in ET Policy 13/005 are based on the "Section 64 Determinations of Equivalent Tenements Guidelines" as developed by the NSW Water Directorate.

15

20

The developers are asking for a 75% reduction in the s64 fees calculated for the Facilities buildings. This equates to a reduction of \$300,390 for the developers. The basis of the request is the developer's estimate that the 65-70% of the people utilising the central facilities will be guests of the resort.

25

This is contrary to the calculation methodology of Council's Water and Sewer ET Assessment Policy 13/005 and has not been applied to similar developments around the Shire. If applied shire wide to developments of this nature in the future, it will reduce the recoverable ET pool which necessarily causes upward pressure on the calculated ET unit rate.

30

The \$300,390 reduction includes \$98,007 in Bulk Water ETs. As the ETs have been calculated by Council in accordance with Council's ET policy, there is a potential liability for Council to pay Rous this sum if not collected.

RECOMMENDATION:

35

That a s306 Water Management Act order be issued to the developers based on Council's current ET assessment.

Attachments:

- 1 Planners North Letter Requesting Referral to Council, E2015/75777
- 2 Planners North Letter Rationale for ET Reduction, E2015/75778
- 3 Planners North Letter Submission to Byron Shire Council regarding ETs 10 April 2014 - Redmapped, E2015/75779

40

Report

The approved Development is described as follows:

5 *“The establishment of the North Byron Beach Resort Central Facilities. The proposed buildings will be single storey and will consist of the resort’s reception, Lobby, porte cochere and administration, restaurant and bar, central kitchen and food service area, conference and function facilities, multi-purpose room, gymnasium, lagoon swimming pool, poolside café, day spa, kids play area and loading dock and waste management.”*

10 The development predominantly sits over the site of the administration buildings and restaurant that have served the tourist development in its various forms since the late 1980’s.

15 The developers and their representatives (Planners North) of the North Beach Byron Resort located at the end of Bayshore Drive Byron Bay (also known as the old Club Med site and now badged as Elements of Byron, <http://www.elementsofbyron.com.au>) have made several representations to staff regarding the Water & Sewer ET assessments for the abovementioned DA.

20 DA 10.2013.562.1 for the North Byron Central Facilities buildings has been assessed for water and sewer equivalent tenements (ET) by Council. There is also an approved DA with Council for the guest cabins located adjacent to central facilities which has also been assessed for water and sewer ET’s. The guest cabins were assessed as *Accommodation (Short Term)* under ET Policy 13/005 and have been accepted by the developer. ET values listed in ET Policy 13/005 are based on the “Section 64 Determinations of Equivalent Tenements Guidelines” as developed by the NSW Water Directorate.

25 Section 5.2.2 of the NSW Water Directorate guidelines (page 14) states the following for Accommodation (Short Term):

30 *This category includes accommodation dwellings or rooms that are occupied temporarily, and are generally developed on land zoned for commercial purposes. Subcategories include Caravan Park, Motel, Backpackers, B&B and Serviced Tourist Apartment. Irrigation and additional entertainment and sporting facilities such as restaurants, bars, swimming pools, gyms, and golf courses should be considered separately.*

35 *Permanent accommodation should also be considered separately.*

Timeline of events:

- 40 1. Development application received by Council on 21 November 2013.
2. Meeting held on 19 March 2014 to discuss calculation of ET’s and existing credits. Present were Council Staff from Planning and Infrastructure; Councillor Hunter; staff representing the owner, Ganra Pty.Ltd; and staff from Planners North also representing the owner.
3. Initial ET Assessment completed on 22 April 2014.
- 45 4. Council meeting 12 June 2014 considering the application. One of the resolutions for the DA included 14-290 "That Council hold a further meeting with the applicant of development application No 10.2013.562.1 to discuss their concerns regarding the calculation of Equivalent Tenement charges and that Councillors be advised of the meeting date and time
5. Meeting held on 27 June 2014 between Council, Ganra and Planners North.
- 50 6. Re-assessment of ETs based on more detailed information supplied by the developer completed 24 April 2015.
7. Meeting held on 09 July 2015 between Council, Ganra and Planners North.
8. Letter on 03 August from Planners North formally requesting that ET calculations be referred and considered by elected Council.

The basis for the applicant’s argument surrounds the conference centre. Planners North argue that as a large portion of the guests staying at the North Byron Beach Resort (NBBR) will be using the Central Facilities, they should not be required to pay water/sewer developer charges for the central facilities (i.e. gym, restaurant, function rooms, spa, etc) as they have already paid contributions for the cabin accommodation. The developers have provided a report which estimates that the 65-70% of the people utilising the central facilities will be guests of the NBBR. They therefore want a 65-70% reduction on their ET charges for the central facilities.

This is contrary to Council’s ET Policy 13/005 and the Water Directorate Guidelines. In addition, Council staff do not agree with Planners North proposed ET assessment based on the following:

- This external versus internal patron usage assessment is not in accordance with Council’s ET Policy 13/005;
- Assessing a development in this manner has not been previously performed and will create a precedent. The internal / external assessment is essentially arbitrary and cannot be confirmed;
- Facilities such as the gym and restaurant are more water intensive than commercial accommodation and attract higher water and sewer contributions (hence it states in the ET policy that each of these areas be assessed separately).

The argument that these facilities are ancillary to the tourist accommodation is flawed. These facilities are optional extras for those patrons staying within the accommodation. The development proposal also allows access to people who are not staying at the resort and it will be in the operator’s commercial interests to maximise external patronage of the facility.

A conference room in a holiday complex is not ancillary and will attract ET loading. It is an additional feature of the holiday complex which is essentially approved for short term accommodation.

A bathroom or toilet servicing a number of offices/retail stores in the same building can be considered as ancillary – the bathroom is subordinate to the office in that it is a requirement for people working in the office/retail store. The offices/retail stores attract the ET load already.

Council has been conciliatory in assessing the ET requirements for this development. The latest ET assessment was very detailed and based on additional details provided by the developer at the request of Council. The final ET assessment reduced the initial assessment by close to half a million dollars (approximately 40%).

North Byron Beach Resort is not unique to the Shire in terms of the accommodation and facilities provided. There are a number of these resorts including the Byron at Byron Resort, Belongil by the Sea (East on Byron), Lord Byron Resort and Ocean Shores Country Club. All of these premises have had the Policy 13/005 applied to them in recent years.

The developers, North Byron Beach Resort, have cited an example to support its case not to charge s64 contributions on the conference room/facilities:

“We refer specifically to the example of the Byron at Byron Resort which had a modification application 10.1999.898.8, approved by Council on 10 August 2006. This modification permitted the use of the restaurant facilities by the general public. It is evident from a review of that modification that the quantum of Section 27 levies applied did not treat the restaurant as a stand-alone independent use.”

The above information is incomplete. The Planning directorate of the day (2006) did not refer the s96 modification to Council’s Water directorate for assessment and gave approval without conditions that would have applied the s64 payment for water. Water was the only infrastructure

applicable at the time as the resort had its own sewer treatment plant. In December 2013 the Byron at Byron Resort did connect to Council's sewer infrastructure and it was assessed in September 2013, prior to connection, for 59.04 sewer ETs. This sewer ET assessment was in accordance with Council's Water and Sewer ET Assessment Policy 13/005.

5 What the North Byron Beach Resort developers are now seeking has no precedent in Byron Shire and is not in accordance with Council's current policy. It is akin to a restaurant in Byron Bay who claims to serve only locals to have no ET charges applied as they are already applied at the local residence. Acceding to this request would create a precedent that would impact on the quantum of
10 s64 funds available for future works. If applied globally to developments of this nature, it will most likely lead to an increase in the ET unit rate across the Shire.

The Developer Servicing Plan (Adopted 21 Nov 13 Res No. 13-595) has only one clause that allows for varying the s64 contributions:

15 *Byron Shire Council may waive developer contributions where the proponent demonstrates to Council's satisfaction that it is a non-profit and charitable organisation, which by virtue of carrying out such development, is considered to be making a significant and positive contribution to the community and is unable to recover the charge from the end user.*

20 North Beach Byron Resort does not fit into any of those categories and has opportunity to recover the cost through its commercial activities.

25 **Financial Implications**

The developers are asking for a 75% reduction in the s64 fees calculated in accordance with Council's Water and Sewer ET Assessment Policy 13/005. This equates to a reduction of \$300,390 for the developers. If applied shire wide to developments of this nature, it will reduce the recoverable ET pool which necessarily causes upward pressure on the calculated ET unit rate
30 across the Shire.

In addition, the ET assessment includes bulk water ETs payable to Rous Water. This amount is \$98,007 and is included in the \$300,390 requested reduction. As the final assessment is in accordance with Council's policy, any dilution of this amount may well become a liability for Council
35 to pay to Rous Water.

40 **Statutory and Policy Compliance Implications**

Section 306 Water Management Act 2000:

Authority may impose certain requirements before granting certificate of compliance
(1) *This section applies to such kinds of development as are prescribed by the regulations for the purposes of this section.*
45 (2) *As a precondition to granting a certificate of compliance for development, a water supply authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:*
(a) *to pay a specified amount to the water supply authority by way of contribution towards the cost of such water management works as are specified in the notice, being existing works or projected works, or both,*
50 (b) *to construct water management works to serve the development....*

Byron Shire Council - Water and Sewer Equivalent Tenements Policy 13/005 - Adopted by Res No. 13-632

55 Byron Shire Council - Developer Servicing Plan for Sewerage Services and Water Supply – Adopted by Res No. 13-595.

Report No. 13.32 **Tender 2015-0035 Station St Subdivision Works**
Directorate: Infrastructure Services
Report Author: Phil Warner, Manager Assets and Major Projects
File No: I2015/1475
5 **Theme:** Community Infrastructure
 Projects and Commercial Opportunities

Summary:

10 On 8 October 2015 the General Manager provided authorisation to prepare and advertise tenders for the residential subdivision construction works at 70 – 90 Station Street, Mullumbimby.

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

RECOMMENDATION:

1. **That Council decline to accept any of the tenders in accordance with the provisions of Local Government (General) Regulation 2005 - Reg 178 (1) (b)**
2. **That Council cancel the proposal for the contract in accordance with the provisions of Local Government (General) Regulation 2005 - Reg 178 (3) (a)**
3. **That Council notify tenderers and make public its decision in accordance with the provisions of Local Government (General) Regulation 2005 - Reg 179 (a) & (b).**

Attachments:

- 20 1 Confidential - Tender 2015-0035 signed Confidential Evaluation Panel Recommendation Report, E2015/76717

25

Report

On 8 October 2015 the General Manager provided authorisation to prepare and advertise tenders for the residential subdivision construction works at 70 – 90 Station Street, Mullumbimby.

5 Tenders were advertised on 27 October 2015 and closed on 12 November 2015.
27 of the tender documents were issued. 2 tenders were received. The tenderers are listed below.

- 10 1. Valley Earthworks Pty Ltd
2. Geiger Civil Pty Ltd

Financial Implications

15 The cost of the tenders is listed below in order.

- | | | |
|----|---------------------------|---------------|
| 1. | Valley Earthworks Pty Ltd | \$ 243,725.90 |
| 2. | Geiger Civil Pty Ltd | \$ 251,756.42 |

20 There is sufficient funding for the service in the 2015-16 budget.

Statutory and Policy Compliance Implications

25 The tendering process has been undertaken in accordance with Council's procurement policy, and the provisions of the Local Government (General) Regulation 2005.

The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 178 & 179

Acceptance of tenders

178 Acceptance of tenders

- 35 (1) *After considering the tenders submitted for a proposed contract, the council must either:*
- (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
 - (b) *decline to accept any of the tenders.*
- 40 (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*
- 45 (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
- (a) *postpone or cancel the proposal for the contract,*
 - (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
 - 50 (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
 - (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*

- (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
- (f) *carry out the requirements of the proposed contract itself.*

5 (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*

- (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
- (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

10

179 Notification of acceptance of successful tender

As soon as practicable after entering into a contract in accordance with clause 178 or deciding not to accept any of the tenders for a proposed contract, a council must:

15

- (a) *send to all tenderers whose tenders were not accepted notices to the effect that their tenders were unsuccessful or, as the case may be, that none of the tenders for the proposed contract was accepted, and*

20

- (b) *display in a conspicuous place that is accessible to members of the public a notice specifying the name of the tenderer whose tender was accepted and the amount of the successful tender or, if none of the tenders was accepted, a notice to that effect.*

Tender Evaluation

25

The tender evaluation panel comprised Byron Shire Council's Manager Assets and Major Projects (Phil Warner), Development Contributions Officer (Chris Soulsby) & Ardill Payne and Partners development consultant (Evan Elford). Tenders were assessed for conformity and both tenders received were considered to be non-conforming with the "Conditions of Tendering" as detailed in the Confidential Evaluation Panel Recommendation Report (signed copy – E2015/76717)

30

It is recommended that Council:

35

1. *Decline to accept any of the tenders in accordance with the provisions of Local Government (General) Regulation 2005 - Reg 178 (1) (b)*

2. *Cancel the proposal for the contract in accordance with the provisions of Local Government (General) Regulation 2005 - Reg 178 (3) (a)*

40

3. *Notify tenderers and make public its decision in accordance with the provisions of Local Government (General) Regulation 2005 - Reg 179 (a) & (b)*

Report No. 13.33 **Byron Bay Sewage Treatment Plant Capacity and the Belongil Fate of the Effluent**

Directorate: Infrastructure Services
Report Author: Peter Rees, Manager Utilities
File No: I2015/1477
Theme: Community Infrastructure
 Sewerage Services

5

10 **Summary:**

15 Council has been negotiating with adjoining landowners and implementing a data collection programme in accordance with Council resolution 15 - 236 since March 2015. Negotiations and the data collection programme have reached a point where it is necessary to implement a detailed study to identify and implement alternative and possibly complementary alternative flow paths for the STP effluent.

20 Council has completed a study that shows that the STP is currently operating at 72% capacity and is projected to reach design capacity (in terms of average dry weather flow) indicatively by 2025. A necessary precursor to considering sewage treatment capacity beyond 2025 will be the identification and implementation of alternative effluent flow paths both inside and outside the Belongil catchment that ensures the environmental aspects of the catchment as a whole continue to improve.

25

RECOMMENDATION:

1. **That Council approve the Belongil Fate of the Effluent Flow Path project.**
2. **That Council allocate three hundred and fifty thousand dollars from the Sewer Fund section 64 reserves to undertake the Belongil Fate of the Effluent Flow Path project.**

Attachments:

- 30 1 3 - Union Drain WL Assessment - Oct 2015, E2015/74808
 2 Byron STP Capacity Review - Final Report August 2015 - GHD, E2015/51427

Report

5 Council has been negotiating with adjoining landowners and implementing a data collection programme in accordance with Council resolution 15 - 236 since March 2015. The programme has been undertaken in agreement with the three (3) landowners and periodic reports have been distributed and discussed. There have been 3 meetings with the landowners this year regarding this issue.

10 Negotiations with the three adjoining Landowners are proving to be problematic given the divergent positions of the parties. The Landowners' position is the current effluent flow path is water logging their land and they require Council to implement an alternative flow path in a very short time frame.

15 Council has stated it is not averse to implementing an alternative flow path for the effluent however, has been consistent in saying any identified flow path will require significant environmental study; data collection and consultation with both the community and government departments.

20 The data collected to date is clear in proving the water is removed from the STP through the Belongil drainage system in an efficient manner. The groundwater bores located on the Landowners' and Council land shows ground water is highly variable and dependent on rainfall. The subject Landowners' area is reclaimed wetland and the natural ground water level in this area is high. The issue at the root of the dispute is the variability of the ground water level through the wet and dry seasons.

25 In approving the Byron Bay Sewage Augmentation project, Council created consent condition 44 which required

30 *"A suitably qualified and experienced consultant shall be engaged to provide advice on the inherent uncertainties associated with the results generated by the computer simulation model(s) used in the environmental assessment. Relevant information regarding this uncertainty shall be addressed in preparation of the Operational Environmental Management Plan (OEMP). The findings of the investigation shall be made publicly available".*

35 Council undertook this study in 2010. A key finding of the report was:-

40 *"Analysis revealed that operations at the BBIWMR are not having an impact on the water table throughout the BBIWMR and lower Belongil Catchment. Aquifer standing water level (SWL) recorded every ten minutes across the BBIWMR between 1999 and 2009 indicates that effluent application or increased effluent discharge from the WBSTP cannot be seen to be raising aquifer levels".*

45 It should also be noted, the Environmental Impact Statement (EIS) prepared for the Byron Bay Sewage Augmentation project states *"It can be seen that West Byron STP both in its current form and augmented form has a negligible effect on the total volume of floodwaters at a catchment level. This is due to the relatively large flood plain surface area of the Belongil catchment and the very small contribution of effluent from West Byron STP to flood waters"*

50 The current average dry weather flow received at the STP is approximately 5 megalitres per day. The measured average dry weather discharge from the site has been recorded as (of the order of) 3 megalitres per day with one megalitre reused in the urban reuse scheme and another megalitre taken up in the wetlands through evapotranspiration.

55 The landowners claim Council gave a binding agreement prior to the upgrade project that no more than 1 megalitre per day would be discharged as it would be expected the remainder would be reused elsewhere – most notably in a Tyagarah reuse scheme. This scheme was put on hold with

Council Resolution 06-13 due to there being no significant users of the recycled water in the Tyagarah corridor.

5 Both Council and the Landowners have discussed the water table issue with the EPA. The EPA has confirmed Council is managing the discharge and irrigation of effluent from the Sewage Treatment Plant in accordance with EPA requirements. The EPA has also discussed the issue with the NSW Office of Water (now DPI Water) who confirmed that provided the effluent flowing through the drainage network is unimpeded (i.e. not ponding) there should be little impact on the height of water below the properties.

10 The EPA has further advised that modifying the effluent discharge arrangements for the STP requires a significant investigation of options along with a comprehensive environmental assessment. This is consistent with Council's view.

15 It is also worth noting the Byron Bay Sewage Augmentation scheme commissioned in 2006 has delivered environmental benefits which have significantly contributed to the environmental enhancement of the Belongil catchment. These are:-

- Mitigation of acid runoff from the catchment
- 20 • The planting of over 500,000 trees in the catchment
- The establishment of a significant bird watching environment in the re engineered wetlands including the construction of a bird hide and a Community Interpretive centre. These facilities are freely available to the community for bird watching activities and are regularly used by schools for environmental and water cycle education
- 25 • The removal of the threat of peat fires in the catchment
- The establishment of protected areas for the wallum frog, froglet; and the jacana bird which are all threatened species.
- The potential significant carbon offset of the managed 24 hectare area in accordance with Council's Low Carbon Strategy 2014 (actions IDs 61 & 62).

30 These benefits have been reflected in both the national and international awards conveyed on the project. Any investigation of alternative flow paths will need to consider these benefits in its analysis.

35 The evidence to date is the current flow path is not causing damage to the broader Belongil catchment and it can be argued has enhanced the environmental aspects of the catchment. Since the commencement of the operation of the augmented STP, the frequency of the Belongil mouth opening has increased which indicates the increased water flow in the catchment is being removed through the drainage system.

40 The formation of the Belongil Catchment Advisory Committee is in part a response to bring the environmental implementation expertise developed in the management of the STP and associated wetlands; 24 hectare melaleuca plantation and environmental habitats to the broader Belongil Catchment. It is expected the Committee will bring a whole of Council approach to the management of the Belongil Catchment.

45 In discussions with the Landowners to date, several alternative flow paths have been identified. A formal project would need to be implemented to take the assessment of these alternatives further. Council's experience in delivering other projects in the Shire is an assessment of this nature could take up to one year and cost several hundred thousand dollars.

50 Related to this issue is the capacity of the Byron Bay STP. Council has recently completed a review of the capacity of the STP. The STP is currently operating at approximately 72% of the design average dry weather flow. Projections based on population projections indicate the plant will reach its design capacity in terms of dry weather flow in approximately 2025 including allowance for peak season

loading. An augmented STP therefore, would need to be brought on line in 10 years time by 2025 to cater for development beyond 2025.

- 5 Given the efficacy of the effluent flow path through the upper reaches of the catchment is disputed by the 3 landowners adjacent to Council's Integrated Water Management Reserve, it is recommended that prior to considering the Byron Bay STP capacity beyond 2025, Council initiate a project to finalise alternative effluent flow paths. This project could be commenced in the first quarter of 2016 with initial project duration of 12 months and a budget of \$350,000.
- 10 The project will undertake the detailed environmental and engineering studies to identify the most feasible alternative/s and allow a detailed project proposal to be taken back to Council for consideration.

Financial Implications

- 15 The project is to be funded from the sewer fund, section 64 contributions allocated from the funds identified for the STP capacity upgrade.

Statutory and Policy Compliance Implications

- 20 Council is currently fully compliant with its statutory compliance obligations under the Protection of the Environment Operations Act (POEO) Act 1997 and system licence 3404 for the operation of the Byron Bay Sewage Treatment System.
- 25 If the project does not proceed, it could impact on Council's compliance obligations under the POEO Act beyond 2025.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 **Report of the Internal Audit Advisory Committee Meeting held on 12 November 2015**

5 **Directorate:** Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2015/1396
Theme: Corporate Management
 Financial Services

10 **Summary:**

15 This report provides the minutes and recommendations of the Internal Audit Advisory Committee Meeting held on 12 November 2015 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Internal Audit Advisory Committee Meeting held on 12 November 2015.**

2. **That Council adopt the following Committee Recommendation:**

Report No. 5.1 Internal Audit Report November 2015
File No: I2015/1248

Committee Recommendation 5.1.1

That Council receive and note the Internal Audit Report – Audit Committee (November 2015) (#E2015/71201) prepared by the Internal Auditor, Grant Thornton.

3. **That Council adopt the following Committee Recommendation:**

Report No. 5.2 Meeting Dates for Internal Audit Committee for 2016
File No: I2015/1301

Committee Recommendation 5.2.1

That the following dates for the Internal Audit Committee meetings for 2016 be adopted, with all meetings commencing at 11.00am:

- **Thursday, 18 February 2016**
- **Thursday, 12 May 2016**
- **Thursday, 18 August 2016**
- **Thursday, 20 October 2016**
- **Thursday, 10 November 2016**

4. **That Council adopt the following Committee Recommendation:**

Report No. 5.3 Internal Audit Report - Inventory Control Review
File No: I2015/1356

Committee Recommendation 5.3.1

1. That Management review the comments for Actions 3 and 5 and prepare a further report for the next meeting of the Internal Audit Advisory Committee on these Actions from the Inventory Control Review.
2. That, subject to point 1 above, the Internal Audit Report – Inventory Control Review - September 2015, along with responses and actions detailed by Management be noted by Council.

Attachments:

5

- 1 Minutes of the Internal Audit Advisory Committee Meeting held on 12 November 2015, I2015/1371

Report

The attachment to this report provides the minutes of the Internal Audit Advisory Committee Meeting of 12 November 2015 for determination by Council.

5

A copy of the Agenda for the Internal Audit Committee meeting held on 12 November can be read at http://byron.infocouncil.biz/Open/2015/11/IAAC_12112015_AGN_400.PDF.

Management Comments

10

The Committee Recommendations are supported by Management, with the Committee Recommendations being amended to read as Council Resolutions.

Financial Implications

15

As per the Reports listed within the Internal Audit Advisory Committee Meeting of 12 November 2015.

Statutory and Policy Compliance Implications

20

As per the Reports listed within the Internal Audit Advisory Committee Meeting of 12 November 2015.

Report No. 14.2 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: I2015/1421
Theme: Society and Culture
Community Development

Summary:

The Arakwal MoU Committee met on 19 August 2015 to discuss the implementation plan for the Memorandum of Understanding for 2015/16, the Ti Tree Lake Plan of Management, establishing an Arakwal plot at the Byron Bay cemetery, NAIDOC Week 2015 and other business.

This report presents the minutes and recommendations from this meeting.

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

That the Arakwal MoU Advisory Committee 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. **That the Arakwal MoU Advisory Committee 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

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

That the committee 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.

5

Financial Implications

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

10

Statutory and Policy Compliance Implications

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

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 14.3 **Report of the North Byron Coastal Creeks Flood Risk Management Committee Meeting held on 28 October 2015**

5 **Directorate:** Infrastructure Services
Report Author: James Flockton, Drainage Flood Engineer
File No: I2015/1350
Theme: Community Infrastructure
10 Emergency Services and Floods

Summary:

15 The attachment to this report provides the minutes of the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 28 October 2015 for determination by Council.

15 The DRAFT North Byron Flood Study is also provided for public exhibition.

RECOMMENDATION:

- 20 1. **That Council note the minutes of the North Byron Coastal Creeks Flood Risk Management Committee Meeting held on 28 October 2015. (Attachment 1)**
2. **That Council adopt the following Committee and Management Recommendation(s):**

Report No. 5.1 **North Byron Coastal Creeks Flood Study - Calibration Report**
File No: I2015/1214

RECOMMENDATION:

1. **That the name of the Project be changed to North Byron Shire, and that this document be named North Byron Shire Flood Study.**
2. **That Council accept as satisfactory the calibration report provided by BMT WBM (Attachment 2) and ask BMT WBM to proceed with preparation of design flood event modelling.**
3. **That BMT WBM finalise the DRAFT North Byron Coastal Creeks Flood Study and staff present this to Council for review and placement on public exhibition as per Council policy.**
3. **That the DRAFT North Byron Flood Study as detailed at the website provided within this report (<http://it.bmtwbm.com.au/nbsfs/>) be placed on public exhibition for 42 days, in early 2016.**

Attachments:

- 25 1 Minutes 28/10/2015 North Byron Coastal Creeks Flood Risk Management Committee, I2015/1309
2 North Coastal Creeks Draft Flood Study - Calibration Report - Low Res, E2015/66564

Report

5 Attachment 1 to this report provides the minutes of the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 28 October 2015 for determination by Council.

Committee Recommendation 5.1.1

- 10 1. That the name of the Project be changed to North Byron Shire, and that this document be named North Byron Shire Flood Study.
- 15 2. That Council accept as satisfactory the calibration report provided by BMT WBM (Attachment 2) and ask BMT WBM to proceed with preparation of design flood event modelling.
3. That BMT WBM finalise the DRAFT North Byron Coastal Creeks Flood Study and staff present this to Council for review and placement on public exhibition as per Council policy.

Management Comments

20 In accordance with the Committee Recommendation, Management provide the following additional information:

25 BMT WBM has now completed further calibration work on the flood model. This work has further improved the calibration results. BMT WBM have advised that they cannot improve the calibration, any further without making inappropriate changes to the model to just make it fit, an approach that staff would never support.

30 Council and Office of Environment and Heritage (OEH) staff have met with BMT WBM and understand that they have now completed the best calibration possible using the data available whilst working with the data gaps that exist.

35 Whilst the flood model calibration process for this project has been long and difficult, staff believe a robust flood model is now available for development of design event modelling and finalisation of the DRAFT North Byron Flood Study document. Therefore acceptance of the calibration report is recommended.

40 To reduce further delays to this project staff requested BMT WBM finalise the design event modelling and the DRAFT North Byron Flood Study document following the recent committee recommendation.

45 The committee also requested the DRAFT North Byron Flood Study document allow readers to zoom into areas of interest, within the flood mapping, at high resolution. This has created two very high resolution documents, both of which have file sizes too large to be attached to this report. Therefore both volumes have been uploaded to a website to allow Council review.

The DRAFT North Byron Flood Study documents are available at <http://it.bmtwbm.com.au/nbsfs/>

50 With Councils support it is recommended that the DRAFT North Byron Flood Study be presented to the community for consultation and comment, prior to being considered for adoption. It is proposed that the document be exhibited for 42 days from the middle of January 2016.

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

Management Recommendation

That the DRAFT North Byron Flood Study as detailed at the website provided within this report (<http://it.bmtwbm.com.au/nbsfs/>) be placed on public exhibition for 42 days, in early 2016.

5

Financial Implications

As per the Reports listed within the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 28 October 2015.

10

Public exhibition of the DRAFT North Byron Flood Study does not carry any financial implications for Council.

Statutory and Policy Compliance Implications

15

As per the Reports listed within the North Byron Coastal Creeks Flood Risk Management Committee Meeting of 28 October 2015.

Floodplain Management Plans must be prepared in accordance with State Government Policy. The NSW Floodplain Development Manual 2005 is the current policy used by State Government for the preparation of such documents. Office of Environment and Heritage is the State Government Department responsible for ensuring all flood related documents are prepared in accordance with the manual.

20

The DRAFT North Byron Flood Study has been prepared in accordance with the NSW Floodplain Development Manual 2005 and fulfils part of the process towards a Floodplain Management Plan.

25

Report No. 14.4 **Report of the Local Traffic Committee Meeting held on 25 November 2015**

Directorate: Infrastructure Services
Report Author: Mary Kerr, Traffic and Transport Assistant
File No: I2015/1486
Theme: Community Infrastructure
 Roads and Maritime Services

5

Summary:

10

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 25 November 2015 for determination by Council.

RECOMMENDATION:

1. **That Council note the minutes of the Local Traffic Committee Meeting held on 25 November 2015.**
2. **That Council adopt the following Committee and Management Recommendation(s):**

15

Report No. 6.1 **Pay Parking and Resident Parking Permit Schemes, Byron Bay**
File No: I2015/1394

RECOMMENDATION:

1. **That Council note the Roads and Maritime Services (RMS) concurrence for both the Pay Parking and Resident Parking Permit Schemes, including the type of parking meter, type of scheme (being a Metered Registration Pay Parking Scheme) and its installation on roads parts of the classified regional road network.**
2. **That Council notes that the Local Traffic Committee endorses Council's 8 October 2015 Resolution 15-519 for the time limits to apply in both Pay Parking and the Resident Parking Permit Schemes.**
3. **That the sign-posting as proposed in this report (I2015/1394) be endorsed and implemented in accordance with relevant standards and requirements.**
4. **That the physical Resident Parking Permit and the Resident Visitor Permit must contain the details as stipulated in the RMS Permit Parking guidelines, however the matter of colour, design, cost and distribution is a matter for Council.**
5. **That the pay by plate Metered Registration pay parking scheme as adopted by Council will require the input of the vehicle licence plate each and every time a vehicle is parked and that:**
 - a) **those with an electronic permit (known as the pay parking exemption) will not be required to print and display a parking ticket; and**
 - b) **those without such exemption will each time they park be required to print and display a parking ticket.**
3. **That Council adopt the following Committee and Management (where Recommendation(s):**

Report No. 6.2 Request for changes to "No Stopping" Market Street, Bangalow
File No: I2015/576

RECOMMENDATION:

1. That Council endorses No Parking on the west side of Market Street, Bangalow between Byron Street and its northern end, and that it be effective all days between 8am and 6pm.
2. That in support of the Bangalow Public School and Showground Trust proposal Council endorses and sign the parking and traffic arrangements upon the Bangalow Showground as depicted in this report (I2015/576) which are as follows:
 - a) as per pink and blue lines, install "One Way – School Days Only" signage;
 - b) as per orange box, sign area as "School Staff Parking - School Days Only"; and
 - c) also along the blue line, sign as "No Parking – School Days Only" and that it be supplemented with "Kiss and Ride" signage.
3. That the use of the "Kiss and Ride" be subject to the:
 - a) confirmation of the School support for the initiative, which may include a brief communication strategy for promotion of efficient use (i.e. distribution of Roads and Maritime Services (RMS) educational material available from the Centre for Road Safety Website; Parent/carer letters; School Newsletter etc);
 - b) identification of volunteers and/or teachers approved by the School community, including demonstrated understanding of liability in respect to volunteers and students. Please note that the School must also develop policies and procedures to administer the initiative); and
 - c) details of proposed operation times and roster of volunteers and/or teachers.
4. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.3 Gilmore Crescent - Restricted Parking Area
File No: I2015/1407

RECOMMENDATION:

1. That the start and end of the 'Restricted Parking Area – Permits Excepted' be implemented respectively via installation of RMS signs R5-541 and R5-542 at the car park entry and egress at the frontage of the Sandhill's Child Care Centre, Gilmore Crescent, Byron Bay.
2. That adjacent to the signage erected according to Part 1, a supplementary sign indicating how permits are obtained be installed.
3. That Council note the Local Traffic Committee advice that the signage within Part 1 can be enforced under NSW Road Rule 168-1.

4. That the grassed turning-circle located north-east of the Child Care Centre be signed as “No Parking” and it extend south along the western kerb line and eastern edge of the road as depicted at Figure 1 of this report (file I2015/1407).
 5. That the use of bollards to reinforce the “No Parking” recommended is a matter for Council and their use does not need Local Traffic Committee endorsement.
5. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.4 Road Closures Byron Bay Triathlon

File No: I2015/1408

RECOMMENDATION:

1. That approval of the temporary road closures within Byron Bay for undertaking the 7 May 2016 Byron Bay Triathlon apply to the following, subject to each being implemented no earlier than 12 noon and removed no later than 4pm:
 - a) Bay Street, between Fletcher Street and Middleton Street
 - b) Middleton Street, between Bay Street and Marvell Street
 - c) Marvell Street, between Middleton Street and Tennyson Street
 - d) Tennyson Street, between Marvell Street and Browning Street
 - e) Bangalow Road, between Browning Street and Broken Head Road
 - f) Broken Head Road, from Bangalow Road to the Ballina LGA boundary
 - g) Lawson Street, between Middleton Street and Massinger Street
2. That the approval provided in Part 1 is subject to:
 - a) NSW Police approval being obtained;
 - b) Local Traffic Committee advice is sought for the event Traffic Management Plan (including Risk Management Plan and Traffic Control Plan/s) prior to implementation of traffic control devices including road closures, noting that:
 - i) conformance with approved Traffic Management Plan and associated Traffic Control Plans which shall be implemented and controlled by Roads & Maritime Services accredited persons;
 - ii) all signage erected for the event to not cause a hazard for motorists or pedestrians and be removed immediately following the completion of the event; and
 - iii) temporary Speed Zone Authorisation is obtained from the roads authority for any reduced speed limit/s required as part of the traffic control for the event; and that where local Council is the roads authority, notification of any reduced speed limit should be forwarded to Roads and Maritime Service and NSW Police.
 - iv) approval of Roads and Maritime Services is obtained by way of a Road Occupancy License where event is on a state road or where the event may impact the state road network.
 - c) That the event organiser:

- i) **advertise the impact of the event via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;**
 - ii) **providing copy of the advert for Council's web page**
 - iii) **informing community and business that are directly impacted (eg adjacent to the event) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised**
 - iv) **arranging for private property access and egress affected by the event**
 - v) **liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event**
 - vi) **consulting with emergency services and any identified issues be addressed**
 - vii) **holding \$20 million public liability insurance cover which is valid for the event**
 - viii) **payment of Council's Road Event application fee prior to the event**
- d) **That for any event involving on-road cycling, the event organiser must:**
- i) **obtain the endorsement of Bicycle NSW or the relevant peak-body that is representative of the approved activity ; and**
 - ii) **ensure it is conducted and sign-posted in accordance with the Roads & Maritime Services Guidelines for Bicycle Road Races**

6. That Council adopt the following Committee and Management Recommendations:

Report No. 6.5 Road Closures Byron Bay Blues Festival

File No: I2015/1409

RECOMMENDATION:

- 1. That the 2016 Blues Festival organisers submit a Traffic Impact Assessment and Traffic Control Plan prior to the February 2016 Local Traffic Committee meeting.**
- 2. That in regard to other proposed events at the Tyagarah Blues Festival site, the proponent undertakes a Traffic Impact Assessment report in regard to events with 1,000 people or more and provides it and the corresponding Traffic Management Plan(s) to the Local Traffic Committee for review.**
- 3. That event proposals are submitted to Council with supporting and relevant detail so as to provide sufficient time for assessment, amendments and meeting of approval conditions imposed, including those by and of other authorities,**

such as Roads and Maritime Services and Police.

7. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.6 Road Closures Falls Festival 2015/16 Traffic Management Plan
File No: I2015/1410

RECOMMENDATION:

That the temporary traffic management and regulatory changes within the series of Traffic Control Plans as related to the Falls Festival as to be held at the North Byron Parklands site Yelgun between 31 December 2015 and 2 January 2016 inclusive be accepted subject to:

- a) their design and implementation being undertaken as specified on each plan and by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover
- b) meeting of the advertising requirements of the Roads Act 1993
- c) event being notified on Council's website
- d) consideration of any submissions received
- e) the approved event size being sufficient (20,000 patrons) to trigger use of the south carpark as per the DA Condition for its use;
- f) the temporary "No Stopping" where applied, including on Brunswick Valley Way (between Shara Boulevard and Tweed Valley Way) and on Tweed Valley Way (between Brunswick Valley Way and Wooyong Road), is implemented prior to the event and in accordance with relevant state requirements and Australian Standards;
- g) a communications protocol developed and maintained by those involved in the implementation of traffic management including monitoring and ability to implement contingency plans as and when directed;
- h) monitoring of vehicle volumes that arrive and depart the festival site and on the local road network;
- i) inclusion in the brief for the 2015/16 event's Traffic Evaluation Report of consideration that the 2106/17 event will not have Sunday as its departure day, as was the case in 2015/16;
- j) the holding of an event debrief within the month following the festival which includes but not limited to Council, RMS and Police; and
- k) written approval of both the RMS and Police separate to Byron Shire Local Traffic Committee, including approval of Roads and Maritime Services is obtained including a Road Occupancy Licence where an event is on a state road or where the event may impact the state road network

8. That Council adopt the following Committee and Management Recommendation(s):

That Council does not adopt Committee Recommendation(s) 6.7 as shown in the Report No. 6.7 Road Closures New Years Eve Byron Bay
File No: I2015/1411

RECOMMENDATION:

1. That Council notes the Local Traffic Committee supports Council's temporary traffic management initiatives for Byron Bay New Year's Eve and endorses the road closure of Jonson Street, Byron Bay between Lawson Street through to the car park entry at Railway Park (north of Marvell Street) from 12 noon on 31 December 2015 and its removal by no later than 7am on the 1 January 2016.

2. That the above approval remain subject to Council endorsement of the event prior to implementation and is subject to the following requirements:
- a) traffic control plans are designed and implemented by those with the appropriate NSW (RMS) accreditation;
 - b) advertising is undertaken as required by the Roads Act plus the publication of a map and explanatory notes in a local newspaper and on Council's website;
 - c) the letterbox drop of properties adjacent and prior to the Jonson Street closure and Bay Street, Marvell Street and Byron Street parking changes; and
 - d) that all parties involved in Council's NYE events hold or least covered by, appropriate and relevant levels of insurance and public liability cover as required by Council.
9. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.8 Road Closures Bangalow Christmas Eve Carnival
File No: I2015/1412

RECOMMENDATION:

- 1. That the temporary traffic arrangements for the Bangalow Christmas Eve Carnival, scheduled for 24 December 2015 and includes the temporary closure of Byron Street between Granuaille Road and Market Street between the hours of 5.00pm and 10.00pm, be endorsed.
 - 2. That the organisers be responsible for implementing a Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation and be advised Council's fee for holding an on-road event will apply.
 - 3. That public liability insurance be in place for the sum of at least \$20 million.
 - 4. That the concurrence of the Police and RMS be sought by the organisers, independent of the Local Traffic Committee endorsement, including, approval of Roads and Maritime Services is obtained by way of a Road Occupancy License as event is on a state road or may impact the state road network.
 - 5. That the event be advertised in accordance with the NSW Roads Act and charged at cost to the organisers.
 - 6. That the event be notified on Council's website.
 - 7. That it be noted Council does not provide traffic control services for such events and that RMS accredited persons can only do so.
10. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.9 Request for Give Way, Dandaloo Way and Reka Way, Ocean Shores
File No: I2015/1414

RECOMMENDATION:

That a Give Way treatment be signed and marked on Reka Way, Ocean Shores at the intersection with Dandaloo Way.

11. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.10 Request for restrictive parking and exemptions, RFS Station, Alcorn St, Suffolk Park

File No: I2015/1415

RECOMMENDATION:

- 1. That 'No Parking – Byron Shire Council Authorised Vehicles Excepted' be signed on Alcorn Street, Suffolk Park commencing from 5 metres north of the RFS station driveway and continuing south to the speed hump.**
- 2. That recognising which vehicles are an exception to the rule is a matter for Council and RFS, noting a visual permit displayed on the vehicle dashboard will assist with enforcement and is recommended.**

12. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.11 Approval of two mobility permit spaces, Middleton Street car park, Byron Bay

File No: I2015/1416

RECOMMENDATION:

That Council endorses the installation and signage of two mobility permit parking spaces in the Middleton Street car park, Byron Bay at spaces as marked on Council's design plan 1641 numbered 15 and 30, subject to compliance with relevant standards.

13. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.12 Proposed No Parking and time limits to Loading Zones, Bay Lane, Byron Bay

File No: I2015/1417

RECOMMENDATION:

That subject to concurrence of adjacent shops, including the Beach Hotel opposite, Council endorses restricting 15m of the western end of the Loading Zone to being operational between 6am-10am only with 15-minute time limit to apply during such times and that No Parking applies at all other times within the same 15 metre length.

14. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.13 Request for speed humps, Seven Mile Beach Road, Byron Bay

File No: I2015/1418

RECOMMENDATION:

That Council notes that the Local Traffic Committee does not endorse the use of speed humps on the proposed sealed section of Seven Mile Beach Road, Broken Head

in a default rural speed limit area, and that a reduced speed limit is not appropriate.

15. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.14 Proposed Massinger Street and Lawson Street roundabout, Byron Bay

File No: I2015/1419

RECOMMENDATION:

That Council endorses the traffic and parking regulatory aspects of Council design plan no. 2211 for the construction of a roundabout at the intersection of Massinger Street, Lawson Street and Lighthouse Road, Byron Bay.

16. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.15 Proposed Restricted Parking Area, Byron Bay Library

File No: I2015/1424

RECOMMENDATION:

1. That the start and end of the 'Restricted Parking Area – Permits Excepted' be implemented respectively via installation of RMS signs R5-541 and R5-542 at the Byron Bay Library car park entry and egress located on Lawson Street, Byron Bay.
2. That adjacent to the signage erected according to Part 1, a supplementary sign indicating how permits are obtained be installed, ie 'Permits issued at Library'.
3. That Council note the Local Traffic Committee advice that the signage within Part 1 can be enforced under NSW Road Rule 168-1.

17. That Council adopt the following Committee and Management Recommendation(s):

Report No. 6.16 Request for No Stopping, Authorised Vehicles Excepted, rear of Australia Post, Deacon Street, Bangalow

File No: I2015/1431

RECOMMENDATION:

1. That Council endorses the installation of 'No Stopping – Council Authorised Vehicles Excepted', signage at the rear of the Australia Post property in Deacon Street, Bangalow and the same restriction continue westward to also cover Council land which provides pedestrian access through to the main street.
2. This exception applies to Australia Post delivery vehicles only.

5

Attachments:

- 1 Minutes 25/11/2015 Local Traffic Committee, I2015/1485

Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 25 November 2015 for determination by Council.

5

Committee Recommendation

The Committee recommendations, along with Committee and Management comments, are contained within the minutes.

10

Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 25 November 2015.

15 Items that cannot be funded from available budget will be reported back to Council for further consideration.

Statutory and Policy Compliance Implications

20 As per the Reports listed within the Local Traffic Committee Meeting of 25 November 2015.