



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 6 October 2016

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

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

Ken Gainger
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;

(b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

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

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

Disclosure and participation in meetings

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

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

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

BYRON SHIRE COUNCIL

ORDINARY MEETING

BUSINESS OF ORDINARY MEETING

1. PUBLIC ACCESS

2. APOLOGIES

3. REQUESTS FOR LEAVE OF ABSENCE

4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

5. TABLING OF PECUNIARY INTEREST RETURNS (S450A LOCAL GOVERNMENT ACT 1993)

6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 6.1 Byron Shire Reserve Trust Committee held on 25 August 2016
- 6.2 Ordinary Meeting held on 25 August 2016
- 6.3 Extraordinary Meeting held on 29 September 2016

7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

8. MAYORAL MINUTE

- 8.1 Withdrawal of Draft Coastal Zone Management Plan 20165

9. NOTICES OF MOTION

- 9.1 Byron Shire Housing Summit7
- 9.2 Review of Policy 15/005 and Procedures for Advertising of Proposed Developments and Approvals 12

10. PETITIONS

- 10.1 Traffic - Broken Head Road 536 - Speed Review - Petition - 50km/hr Zone at Midgen Flat Road and Blackbutt Lane..... 15

11. SUBMISSIONS AND GRANTS

12. DELEGATES' REPORTS

13. STAFF REPORTS

Corporate and Community Services

- 13.1 Report of the Public Art Assessment Panel meeting 18 August 2016..... 18
- 13.2 Change of company shareholders under sub-licence agreement Surfing Byron Bay Pty Ltd trading as Let's Go Surfing20
- 13.3 Alter Meeting Schedule - December 201624
- 13.4 Council Investments August 201626
- 13.5 Proposed Special Rate Variation - Community Consultation32
- 13.6 Amendment to 2016/17 Fees and Charges37

Sustainable Environment and Economy

- 13.7 Report of the Planning Review Committee Meeting held on 18 August 201639

BYRON SHIRE COUNCIL

ORDINARY MEETING

- 13.8 PLANNING - State Environmental Planning Policy No. 1 - Variations to development standards - 1 April 2016 to 30 June 201643
- 13.9 PLANNING - 10.2015.214.2 S96 to Delete Condition 15 Requiring the Imposition of a Section 88E Instrument to be Placed on the Title of the Land in Relation to Coastal Erosion at Bayshore Drive Byron Bay45
- 13.10 PLANNING - 10.2015.214.3 S96 to Enable the Railway Infrastructure to be carried out in Two (2) Stages, Stage 1: Bayshore Drive Railway Infrastructure, Stage 2: Byron Town Centre Infrastructure at Bayshore Drive Byron Bay58

Infrastructure Services

- 13.11 Council Part Road Reserve Closure and subsequent sale at end of Durrumbul Road adjoining Lot A DP 389649.....66
- 13.12 Council Part Road Reserve Closure and potential sale adjoining PN 94840 Lot 21 DP 596124, 365 Booyong Road Nashua.....74
- 13.13 Closure of Part Road Reserve Ajoining Lot 22 DP 1070522 at the end of Blackwood Crescent80

14. REPORTS OF COMMITTEES

Corporate and Community Services

- 14.1 Report of the Finance Advisory Committee Meeting held on 18 August 201685
- 14.2 Report of the Internal Audit Advisory Committee Meeting held on 18 August 201688

Infrastructure Services

- 14.3 Report of the Transport Advisory Committee Meeting held on 16 August 201692

15. QUESTIONS WITH NOTICE

Nil

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

MAYORAL MINUTE

Mayoral Minute No. 8.1 Withdrawal of Draft Coastal Zone Management Plan 2016
File No: I2016/1014

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I move that Council write to the NSW Minister for Planning, Rob Stokes to request the withdrawal of the Draft Coastal Zone Management Plan , Byron Bay Embayment (CZMP BBE) 2016, which Council sent on 30 June to the Minister for review and certification, and:

- 1. Provide reasons for the withdrawal including those outlined in the Background Notes below and noting OEH concerns dated 27 April and prior comments**
- 2. Seek the Minister's advice and support for reviewing the DCZMP BBE, (including the Minister's advice on preparing a Coastal Management Plan (CMP) under new coastal legislation), as a matter of urgency in order to deliver a revised draft CZMP BBE for public exhibition and resubmit to the Minister for certification by March 2017**
- 3. Seek to receive the assessment and recommendations already completed concerning the submitted CZMP BBE**
- 4. Advise the Minister that the review would consider: comments from OEH regarding the Cost Benefit Analysis and other issues, comments and advice from the Department of Industry (Lands) and community submissions**
- 5. Seek advice from the Minister of the possibilities for OEH to assist in undertaking the additional work identified by OEH in the letter and attachments dated 27 April 2016**
- 6. Seek an urgent meeting with the Minister to discuss the points above and to develop processes to ensure an expedient completion of the CZMP BBE**

Background Notes:

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Laudably, Council undertook to ensure the completion of the CZMP within specified time frames. However, with the pursuit of expediency, came flawed and decision making that eroded the trust within the community and failed to provide the robust scientific and strategic planning underpinnings.

15

This motion is not intended to delay the CZMP unnecessarily, simply to ensure that what is submitted to the Minister reflects the community's values and values the social, environmental and economic aspects of coastal management. We should be proud of what we submit, it should be best practice and lay the foundations for resilient future planning.

20

A plan is only as good as the process used to develop it and the hurried and undeveloped processes that overtook the process ensured its weaknesses. The weaknesses within the DCZMP BBE process were both in investigative emphases and in its shallow community consultation.

25

The coastal management problems besetting the CZMP as submitted were clearly articulated by the OEH, in it's letter of 27 April, 2016, which in part read, " OEH considers that the furnished draft CZMP is still somewhat preliminary and requires more work", continuing, " OEH considers that the draft CZMP does not currently meet a standard which would be considered necessary to meet the requirements for certification", and finally, "the Plan is also silent on any Council commitment to proactively ameliorate any adverse off site impacts resulting from the implementation of the protection works."

30

The inadequacy of the cost benefit analysis, a concern shared by OEH also highlighted the rushed and unsatisfactory investigative nature of the process.

5 This is a completely logical and acceptable position and is shared by the author of the Mayoral Minute and the overwhelming majority of the community who are committed to best practice strategic decision making.

10 Also, the community consultation undertaken was inadequate and deeply curtailed genuine engagement. Consultation was generally within unworkable timeframes during the entire process, exacerbated and restrictive as the DCZMP neared submission. It must be made clear that this was not the result of any failings by staff, but rather the inherently inadequate time frames given for this important task by Councillor resolution. For example, the Public Reference Group auspiced to chaperone the process to provide feedback and community value was rendered impotent- a direct result of Council Resolution 16-233. It's objectives were thus:

- 15 a) Review draft CZMP BBE and provide feedback to staff prior to the tabling of the draft CZMP BBE at a Council meeting, and prior to the draft CZMP BBE being 'adopted for public exhibition'.
- 20 b) Provide feedback, input and support to draft CZMP BBE exhibition consultation and communication activities.
- c) Overview submissions provided on the adopted draft CZMP BBE, review and provide feedback to staff on draft CZMP BBE 'exhibition submissions report' prior to tabling at Council meeting, and prior to amended draft CZMP BBE being adopted for 'submission to the Minister'.

25 None of these objectives were met, in fact, objective c) was stymied to such a degree, that PRG members were provided copies of the copious and lengthy public submissions on Friday, June 17, and were expected to provide feedback, via email, by close of business on Monday, June 20 - one working day.

30 **Signed: Cr Simon Richardson**

NOTICES OF MOTION

Notice of Motion No. 9.1 Byron Shire Housing Summit
File No: I2016/999

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I move:

- 1. That Council convene a Byron Shire Housing Summit within the next 3 months and prior to the adoption of the Byron Shire Residential Strategy**
- 2. The summit to include presentations from Council, a community housing provider, a housing industry representative, Housing NSW, a local community organisation and a housing policy specialist.**
- 3. The summit to be open to the general public and invited stakeholders including state and federal political representatives.**
- 4. The summit to consider the following:**
 - a) current council policies, strategies and resolutions to promote affordable housing;**
 - b) current council policies, strategies and resolutions that inhibit the provision of affordable housing**
 - c) Proposals that could be trialled and implemented to support affordable housing in the Byron Shire.**

Councillor's Background Notes:

10 Affordable housing is one of the major issues in our shire – especially, if you are young.

Over the last twenty years we have seen the decline in affordability within the shire and across many regional and metropolitan areas of Australia.

15 Where once a house in the Byron Shire cost around 3 times the average annual salary you now need up to 9 times that amount.

How unaffordable is the Byron Shire?

20 For a young couple wanting to buy a house in Byron Shire the yearly earnings required is \$147,200. The average earnings difference is -\$75,522. To buy a unit the yearly earnings required is \$114,857. The average earnings difference is -\$43,179. For a single person the average earnings difference is -\$111,361 to buy a house and -\$79,018 to buy a unit. This is clearly unaffordable for most young people.

25 A 2016 Rental Affordability Snapshot released by Anglicare Australia highlighted the fact that there were no affordable and appropriate properties available in Byron Bay.

30 This means that in Byron Bay appropriate accommodation is inaccessible to those on income support and scantily available to those on the minimum wage.

Access to affordable housing in Australia is a significant problem that disproportionately affects low-income earners and disadvantaged people.

Community housing providers and private developers can viably develop affordable housing, however they need to have the right supports in place, and be capable of managing the inherit risks.

In recent years the number of people in need of subsidised housing has continued to increase, while the supply of affordable and social housing has remained stagnant or declined.

My aim in putting forward this motion is to ensure council engages productively with the issue of affordable housing. It was a significant issue of discussion in the recent local government elections.

Council is currently developing the Byron Shire Residential Strategy. The issue of affordable housing was identified and highlighted by the previous council as a key issue in the development of this strategy. **Resolution 16-292** stated:

That Council, in the development of the Byron Shire Residential Strategy, give consideration to how different planning instruments and policies may be used to encourage the construction and/or provision of affordable housing within the Byron Shire.

a) This consideration to be undertaken for the following reasons:

- i) To enable council to adopt relevant policies that will encourage the construction and provision of affordable housing in the shire;*
- ii) To acknowledge that council is in the best position to influence the construction and provision of affordable housing from a planning perspective rather than as a housing provider;*
- iii) To acknowledge that the promotion of affordable housing in Byron Shire should not solely rely on the use of the Affordable Housing SEPP.*
- iv) To identify measures that could promote affordable housing in the Byron Shire Residential Strategy.*
- v) To recognise that any measures highlighted in the Byron Shire Residential Strategy aimed at promoting affordable housing could inform and lead to future amendments being made to the Byron Shire LEP.*

b) Consideration of specific planning instruments and policy actions to encourage affordable housing to include:

- i) Establishing an affordable housing target to provide the incentive to implement, measure and monitor the provision of affordable housing within the Byron Shire.*
- ii) Measures that encourage the promotion of the efficient supply of well-located diverse housing;*
- iii) Incentives that promote the provision of affordable housing enabled through the LEP and other planning policies;*
- iv) Requirements for the development of affordable housing in appropriate locations with the use of mandatory provisions;*
- v) A review of Section 94 concessions to identify and consider support for affordable housing developments such as:*

- *an agreed rental to achieve an affordability concession; e.g. 80% market value*
 - *identified affordable housing to have an appointed community housing manager to monitor any agreed upon affordability provisions;*
 - *the development of a council maintained affordability register to provide data on affordability developments and to measure if any agreed upon targets for affordability in the Shire are being achieved.*
- 5 *vi) A review of the timing of Section 64 and Section 94 charges to encourage affordable housing initiatives (e.g. payment of charges delayed until an occupation certificate is granted).*
- 10 *vii) A review of the potential for allowing manufactured housing in infill development to encourage affordability purchases. e.g. enabling purchase of a house while leasing the land on which it stands.*
- viii) That a review of land suitable for housing stock be investigated and reported to Council.*

15 Under the current situation the provision of affordable housing in Byron Shire relies solely on the use of the Affordable Housing SEPP. This is clearly inadequate.

20 The convening of a Byron Shire Housing Summit will provide a great opportunity to ensure key representatives have input into tangible and concrete proposals to address this critical issue in our Shire.

Recommended priority relative to other Delivery Plan tasks:

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

30 EN2:
Sustainable towns, villages and rural settlements that:
a) respect our natural environment;
b) create an inclusive social environment, and
c) integrate harmoniously with the character of local areas

35 Definition of the project/task:

Council convene a Byron Shire Housing Summit within the next 3 months and prior to the adoption of the Byron Shire Residential Strategy.

40 Source of Funds (if applicable):

Signed: Cr Paul Spooner

45 **Management Comments by Shannon Burt, Director Sustainable Environment and Economy:**
(Management Comments must not include formatted recommendations – resolution 11-979)

Clarification of project/task:

50 Staff to convene a Housing Summit incorporating World Cafe for Byron Shire.

This task will involve the following key milestones:

- Summit Plan developed, key speakers identified and secured for the day;

- Independent facilitator selected & venue selected;
- Summit advertised;
- Mailing list developed and invitations distributed;
- Full day summit conducted

The Summit would include representation from community, non Government, business groups and development industry, State and Federal Agencies and Council.

Director responsible for task implementation:

Director Sustainable Environment and Economy (in consultation with Director Corporate and Community and Director Infrastructure Services)

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

The 6 week exhibition of Stage 1 of the Residential Strategy commenced on 29 September 2016.
<http://www.byron.nsw.gov.au/residential-strategy>

The exhibition will include a range of consultation and engagement activities including a community workshop on Tuesday 18 October. The focus of this workshop is to explain:

- purpose of the strategy
- the greenfield locations and infill sites (as this is the key focus of the preliminary document that has been endorse by Council for exhibition
- provide some of the background information from the Byron Housing Needs Report

The findings of the Summit would be used to inform preparation of the final draft Residential Strategy document; and the 18 October workshop described above could be used to help identify interested parties and subject material for the Summit agenda.

The 3 month time frame for the Summit proposed however needs to be adjusted to February/March 2017 to allow for this initial consultation/engagement on the Residential Strategy to occur and feedback collated, and also allow adequate lead time to convene a Summit, and be outside the December/January holiday period.

Financial and Resource Implications:

A budget allocation of approximately \$10,000 plus staff time needs to be allocated to support the Summit facilitation & reporting, venue & catering, agenda, presenters & world café activities and table moderators and general helpers. This costing is based on recent costs associated with masterplan facilitation days. The cost of the Summit could be apportioned over the 3 Directorates of Council, and an allocation of funds could made through the December budget review.

Notwithstanding the above, Council may be able to partner with the Northern Rivers Social Development Council for example, to leverage off one of their Northern River Housing regular forums /one day conferences on housing matters that a range of stakeholders attend.
<http://www.northernrivershousingforum.org/about/>

In the circumstances is it recommended that staff contact the Northern Rivers Development Council in the first instance to enquire if Council could partner with them for a 2017 Workshop with a focus on Byron Housing Needs. This could also assist in managing overall costs for the Summit.

Legal and Policy Implications:

The Summit would provide a specific engagement activity to inform Council Policy direction which involves key stakeholders of interest.

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The benefits of the Summit approach include:

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- A significant amount of information to be communicated between participants from a wide variety of local government, government, community, and private sector, over a relatively short period.
- Local and technical knowledge to be canvassed.
- Competing demands between different representative groups to be identified and negotiated.
- A high degree of active participation and debate.
- Achievement of core deliverables through exploration of areas in a sequential and cyclical manner.
- Achievement of broad support and ownership of the key priorities and actions.

15

Clarification of project/task:

Staff to review policies, procedures and legislation in respect of notification and advertising requirements for development applications and local approvals.

- 5 Subsequent to the review hold a councillor workshop to consider the review and develop recommendations for amendments to Council policies and procedures, particularly in relation to contentious development applications and approvals.

10 Director responsible for task implementation:

Director Sustainable Environment and Economy

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

- 15 A specific review of policies, procedures and legislation in respect of notification and advertising requirements for development applications and local approvals will require an allocation of staff time above current work programs adopted by Council in the Operational Plan (OP) 2016/17 and Budget.

- 20 Action 65 of the OP 2016/17 includes - *Review Byron DCP 2014 to a performance outcome focused plan (Resolutions 14-315 & 15-604)*. This review may be able to be accommodated as part of that work once scoped out and project planned.

- 25 A review of Council policies and procedures will otherwise occur during the first 12 months of the new Council.

Financial and Resource Implications:

- 30 Not applicable.

Legal and Policy Implications:

- 35 Part A14 of Development Control Plan 2014 provides the requirements for public notification and exhibition of development applications in accordance with the requirements of the Environmental Planning and Assessment Act and Regulation.

- 40 The DCP currently provides for different forms of public exhibition and notification depending on development type with regard to the statutory time frames for the determination of development applications that are otherwise stipulated under the Act and Regulation.

- 45 The DCP also includes the ability for Council to increase the level of public notification and exhibition time of development applications having regard to level of interest / objection; location / landform and size and extent of development.

- Any changes proposed to the DCP subsequent to the review will require a formal amendment to the DCP and will need to accord with any relevant requirements under the Act and Regulation. Similarly any changes to a Council policy (15/005) will also require a formal amendment to that policy.

- 50 Further, it should be noted that Planning Minister Rob Stokes is considering a suite of reforms to the current Planning Act that aim to make the planning system easier to use, more focused on "good design" and less open to conflicts of interest.

- 5 Details about the proposal are yet to be released but are imminent. It is understood that the new Planning Bill will provide for amongst other things improved community engagement and introducing pre-development application consultation between neighbours. The changes proposed may or may not address the current concerns pertaining to contentious development applications and approvals.

<http://www.planning.nsw.gov.au/News/2016/Legislative-changes-to-simplify-the-planning-system/>

PETITIONS

Petition No. 10.1 **Traffic - Broken Head Road 536 - Speed Review - Petition - 50km/hr Zone at Midgen Flat Road and Blackbutt Lane**

5 **Directorate:** Infrastructure Services
 Report Author: Dominic Cavanough , Contract Engineer
 File No: I2016/867
 Theme: Community Infrastructure
 Local Roads and Drainage

10 At Council's Ordinary meeting held on 04 August 2016 the Mayor tabled a petition containing 160 signatures which states:

15 *"We support the proposal to improve safety and reduce the risk of accidents near Broken Head hall by lowering the speed limit on Broken Head Road to 50 kph along the section of road in front of the hall."*

Comments from Director Infrastructure Services:



Background

- On the 1 June 2016 a representative of the Broken Head Hall Committee has raised 160 signatures on a petition to carry out a speed review on 500m of Broken Head Road from St Oswalds Church to 50m south of Blackbutt Rd including the 50m approaches to Midgen Flat Rd and Blackbutt Lane intersections. The letter has suggested a 50km/hr zone to cater for pedestrian and school buses.

- The petition has requested signage for "Village of Broken Head". This is not an LTC matter and will be dealt with separately by Council and advice provided to the Hall committee.

Investigation

- On the 07 June 2016 a joint RMS/Council inspection was carried out in regards to the St Oswalds Anglican Church for a speed review. The inspection proposed that vegetation clearing to improve the line of site and improving the driveway access for the Church would improve the situation. On this basis the RMS is of the view that a speed reduction in this area was not warranted and the post 80km/hr speed limit is acceptable.

The road adjacent to 521 Broken Head Rd will be reconstructed in 2015/16 and 2016/17 and both of these issues will be incorporated into the project design.

- 5 Council staff will proceed with the clearing as recommended subject to relevant environmental clearances being in place.

Recommendation

- 10 RMS are the sole authority for authorising speed zone changes. So therefore a speed review should be undertaken by RMS and Council Staff on Broken Head Road to investigate the request by the Hall Committee in conjunction with the request by the Church.

RECOMMENDATION:

1. That the petition regarding Request for speed zone review along section of Broken Head Road be noted.
2. That the petition be referred to the Director Infrastructure Services.

Attachments:

- 15
- 1 Except of S2016 7897 Submission from Paul Johnstone Broken Head Hall Committee, E2016/74122
 - 2 Traffic - Broken Head Rd 536 - Speed Review - 50km/hr zone at Midgen Flat Rd and Blackbutt Ln, I2016/772

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 **Report of the Public Art Assessment Panel meeting 18 August 2016**
Directorate: Corporate and Community Services
Report Author: Joanne McMurtry, Community Project Officer
File No: I2016/931
Theme: Society and Culture
 Community Development

Summary:

A Public Art Assessment Panel meeting was held on 18 August 2016. 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.

RECOMMENDATION:

1. **That Council note the Minutes of the Public Art Assessment Panel held on 18 August 2016.**

2. **With regard to report 6.2 – public art proposal Brunswick Nature Sculpture Walk:**
 - a) **That the 15 proposed sites for permanent sculpture in Brunswick Heads be approved in principle pending final approval from the Public Art Assessment Panel for design and placement of final art works.**

 - b) **That the artwork by David Walsh ‘Oh My Cod’ be accepted as a donation and installed in the location identified by Brunswick Nature Sculpture Walk in South Beach Park Brunswick Heads.**

3. **With regard to the beach shower screens in Byron Bay, that Council dismantle the existing screens which are in poor condition and refer to Open Spaces staff team to provide more practical park furniture.**

4. **With regard to the public art proposal ‘Let’s Connect’ Bangalow, wait for the outcome of the Bangalow Place Activation Masterplan before assessing the request.**

Attachments:

- 1 Minutes of Public Art Assessment Panel meeting 18 August 2016, E2016/78915

Report

5 A Public Art Assessment Panel meeting was held on 18 August 2016. Updates were provided regarding projects already progressing, and the Panel considered several submissions and public art proposals.

The Panel made several recommendations to Council as provided on the first page of this report, and these recommendations are supported by staff.

10 With regard to item 5.1 – Artistic Treatment of Sewer Infrastructure, a brief written update was provided by the contractor and is attached to the minutes.

Financial Implications

15 Nil

Statutory and Policy Compliance Implications

20 Public Art Policy
Public Art Guidelines and Criteria

**Report No. 13.2 Change of company shareholders under sub-licence agreement
Surfing Byron Bay Pty Ltd trading as Let's Go Surfing**

Directorate: Corporate and Community Services
Report Author: Sarah Nagel, Leasing and Licensing Support Officer
File No: I2016/929
Theme: Corporate Management
Governance Services

Summary:

At its Ordinary Meeting on 28 June 2012, Council resolved [**12-535**] to grant a sub-licence for commercial surf school activities to Surfing Byron Bay Pty Ltd, trading as 'Let's Go Surfing'. The sub-licence is jointly held in the company name and in the name of a company director, Serena Adams.

In a letter to Council received 31 May 2016, Serena Adams advised that the company wishes to change the shareholding of Surfing Byron Bay Pty Ltd. Serena Adams and the restructured company wish to continue to jointly hold the sub-licence.

The provisions of the Request for Tender and Council's Policy 5.52 'Commercial Activities on Coastal and Riparian Crown Reserves' do not allow retention of a sub-licence in the event of a change in the shareholding of a company that holds a sub-licence.

Surfing Byron Bay Pty Ltd has advised Council that it seeks to retain its sub-licence (jointly with Serena Adams) and has requested for Council to depart from this part of Council's Policy.

At its Ordinary Meeting on 24 September 2013, Council resolved [**13-462**] to depart from Policy 5.52 and consent to a change in company shareholders to allow another sub-licence holder, Mojosurf Pty Ltd, to retain its sub-licence.

Internal legal advice was undertaken to determine Council's ability to provide its consent to the change in shareholding and whether it can allow the company to retain its sub-licence.

RECOMMENDATION:

That Council agrees to depart from Policy 5.52 'Commercial Activities on Coastal and Riparian Crown Reserves' and consent to the change in company shareholders of Surfing Byron Bay Pty Ltd to allow the company to retain its sub-licence under its current provisions for the remainder of its term expiring on 31 August 2017.

Attachments:

- 1 Confidential - Letter to Council_Response Letter_Surfing Byron Bay P/L t/as Lets Go Surfing_25 Aug 2016, E2016/80393
- 2 Confidential - Legal advice memo RE: Adams and Surfing Byron Bay Pty Ltd, E2016/85379
- 3 Confidential - Surfing Byron Bay P/L ta Let's Go Surfing_Submission_Part1_request to change shareholding_2016, E2016/78711
- 4 Confidential - Surfing Byron Bay P/L ta Let's Go Surfing_Submission_Part2_request to change shareholding_2016, E2016/78712

Report

Council has an adopted Policy 5.52 'Commercial Activities on Coastal and Riparian Crown Reserves' (adopted by Resolution [**11-1000**] on 8 December 2011). This policy sets limits on the

numbers of different types of sub-licences that can be granted by Council for commercial activities and the provisions for the operation of those sub-licences.

5 In accordance with this policy, Council called for tenders in April 2012, for a period of five (5) years for the following:

- Commercial Surf Schools – four (4) sub-licences
- Personalised Surf Schools – two (2) sub-licences
- Commercial Sea Kayaks – two (2) sub-licences

10 Following the receipt of tenders, the Reserve Trust Committee, at its meeting of 28 June 2012, considered a confidential report on the submitted tenders and resolved [12-531] to recommend that Council grant the sub-licences as offered in the Request for Tender.

15 At the Council Meeting of 28 June 2012, (reconvened following the Reserve Trust meeting), Council then adopted the Reserve Trust recommendation and resolved [12-535]:

20 *“1. That Council grant the sub-licences as offered in the Request for Tender for Commercial Activities on Coastal and Riparian Crown Reserves to the preferred proponents recommended by the Reserve Trust, on the terms and conditions contained in the Sub-licence agreement at Confidential Annexure 30 (#1213503) for a five year period commencing 1 September 2012; and*

Sub-Licence	Tenderer	Price (ex GST)
1. Commercial Surf School	Surfing Byron Bay Pty Ltd (Serena Adams)	\$7,000
2. Commercial Surf School	Black Dog Surfing Pty Ltd (Dean Johnston)	\$5,500
3. Commercial Surf School	Mojo Surf School (Nathan Folkes)	\$13,750
4. Commercial Surf School	Style Surfing School (Gary Morgan and Virginia Hardwick)	\$4,050
1. Personalised Surf School	Rusty Miller	\$1,000
2. Personalised Surf School	Soul Surf School (Sean Riley)	\$3,000
1. Commercial Sea Kayaks	Cape Byron Kayaks (Alice Livingston)	\$40,500
2. Commercial Sea Kayaks	Go Sea Kayak Byron Bay Pty Ltd (Kurt Tutt)	\$28,636

25 *2. That Council authorise the General Manager to affix the Council Seal to the Sub-licence agreements in accordance with Regulation 400 of the Local Government (General) Regulations 2005.”*

30 A Formal Instrument of Agreement incorporating each commercial surf school sub-licence was executed on 30 August 2012, commencing 1 September 2012, for a period of five (5) years.

The share structure of Surfing Byron Bay Pty Ltd at the time the contract was formed was as follows:-

35 Serena Adams 2 ORD shares
 Brenda Miley 1 ORD shares

Craig Wachholz 1 ORD shares

In a letter to Council dated 25 August 2016, Surfing Byron Bay P/L t/as Let's Go Surfing advised that Serena Adams intends to transfer her shares in Surfing Byron Bay Pty Ltd to Brenda Miley and Craig Wachholz, refer **Confidential Attachment 1**.

As a result of the transfer, the share structure of the Company would be as follows:-

Brenda Miley	2 ORD shares
Craig Wachholz	2 ORD shares

The sub-licence would then be held jointly in the names of the restructured Surfing Byron Bay Ltd and Serena Adams.

The provisions of the Request for Tender and Council's Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves do not allow the retention of the sub-licence in the event of a change in the shareholding of a company. An extract from the Policy is copied below:

8.4. Where the licence is issued to a company then the company can only retain the licence so long as there is no change in the shareholding of the company.

8.5. A company licensee must advise Council (as the Reserve Trust Manager) by giving at least twenty eight (28) days written notice:

- (a) Of any proposed changes in the shareholding of the company; and*
- (b) When those changes will take effect.*

8.6. Class 2 sub-licences are not transferable in any circumstances. This prohibition includes, but is not limited to:

- (a) The sale of the licensee's business; or*
- (b) Death of a sole licensee or the surviving licensee; or*
- (c) Any change in the shareholding of a licensee company; or*
- (d) A sub-licence.*

Council should note that Surfing Byron Bay Pty Ltd has complied with Policy item 8.5 by giving notice to Council before any change to company shareholders has taken place.

Council should further note that at its Ordinary Meeting on 24 September 2013, Council resolved [13-462] to depart from Policy 5.52 and consent to a change in company shareholders of another sub-licence holder, Mojosurf Pty Ltd, despite that company not complying with Policy item 8.5.

Internal legal advice was undertaken to determine Council's ability to provide its consent to the change in shareholding and whether it can allow the company to retain its sub-licence. This Legal advice is attached at **Confidential Attachment 2**.

A submission was requested from the company in order to make an assessment of the company to ensure the company with its 'new shareholders' is able to meet its obligations under the sub-licence.

The response from Surfing Byron Bay Pty Ltd is attached at **Confidential Attachments 3 and 4** and answers the following questions:-

- Will the operational capacity of the Company change due to the appointment of the 'new shareholders'?

- Will the company be able to satisfy each of the assessment criteria to the same level as provided in the original tender submission? (This is in accordance with the Policy at “7 - *Matters to be considered in issuing sub-licences*”.)
- Will the company be able to fulfil its sub-licence obligations to the same level?

5 Management is satisfied that the proposed change to company shareholders will not impact on the daily operations of the company in Byron Shire and that the company has demonstrated it has the ability to continue to meets its obligations.

10 Council may also take into consideration the fact that the operational capacity of the company will not change as the daily operations will stay the same as prior to the proposed change in shareholders. There will be no change to the operations in Byron Bay as the ‘new shareholders’ have been active, substantial members of the operation since the sub-licence was initially granted.

15 **Financial Implications**

The income generated from the commercial surf school sub-licence is \$7,000.00 per annum ex gst.

20 Accounts receivable confirm that Surfing Byron Bay Pty Ltd is up to date with payment of its invoices relating to the sub-licence fee.

Statutory and Policy Compliance Implications

25 Policy 5.52 ‘Commercial Activities on Coastal and Riparian Crown Reserves’.

Report No. 13.3

Alter Meeting Schedule - December 2016

Directorate:

Corporate and Community Services

Report Author:

Mila Jones, Corporate Governance Coordinator

File No:

I2016/983

5

Theme:

Corporate Management
Governance Services

Summary:

10

The Council and Strategic Planning Workshop schedule for 2016 was adopted in November 2015.

In order to present information to Councillors prior to the December 2016 Council Meeting, it is proposed that the dates for the Strategic Planning Workshop on 15 December and the Ordinary Meeting on 8 December be swapped.

15

RECOMMENDATION:

That the Ordinary Meeting in December is moved to 15 December 2016 and the Strategic Planning Workshop in December is moved to 8 December 2016.

20

Report

Council's adopted Code of Meeting Practice Policy No. 14/004 states with relation to "Frequency of Ordinary Meetings of Council" as follows:

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

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

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

It is a preference that Strategic Planning Workshops are held prior to Ordinary Meetings to allow for presentations and discussion on items that are being reported to the next Ordinary Meeting. Therefore, as allowed in clause 4.3, it is proposed that the Ordinary Meeting that was to be held on 8 December 2016 now be held on 15 December and move the Strategic Planning Workshop from 15 December to 8 December.

Financial Implications

Nil

Statutory and Policy Compliance Implications

As noted in clause 4 of the Code of Meeting Practice Policy.

Report No. 13.4 **Council Investments August 2016**
Directorate: Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2016/981
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 August 2016 for Council's information.

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

RECOMMENDATION:

That the report listing Council's investments and overall cash position as at 31 August 2016 be noted.

Report

In relation to the investment portfolio for August 2016, Council has continued to maintain a diversified portfolio of investments. At 31 August 2016, the average 90 day bank bill rate (BBSW) for the month of August was 1.76%. Council's performance to 31 August is approximately 2.84%. Councils' 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

- 10 The table below identifies the investments held by Council as at 31 August 2016:

Schedule of Investments held as at 31 August 2016

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%	520,000.00
03/06/16	1,000,000	WESTPAC CLIMATE BOND	N	AA-	03/06/21	FRN	3.16%	1,000,080.00
08/07/16	2,000,000	NAB	P	AA-	07/10/16	TD	2.92%	2,000,000.00
06/06/16	2,000,000	NAB	N	AA-	04/10/16	TD	2.96%	2,000,000.00
04/08/16	2,000,000	NAB	N	AA-	04/11/16	TD	2.80%	2,000,000.00
06/07/16	2,000,000	BANKWEST	P	A1+	05/09/16	TD	2.80%	2,000,000.00
12/05/16	2,000,000	NAB	N	AA-	12/09/16	TD	2.99%	2,000,000.00
23/05/16	2,000,000	NAB	N	AA-	23/11/16	TD	2.98%	2,000,000.00
03/08/16	2,000,000	SUNCORP	P	A+	04/10/16	TD	2.30%	2,000,000.00
02/06/16	2,000,000	NAB	N	AA-	30/09/16	TD	2.96%	2,000,000.00
02/05/16	2,000,000	NAB	N	AA-	02/09/16	TD	3.08%	2,000,000.00
14/07/16	1,000,000	NAB	N	AA-	12/10/16	TD	2.91%	1,000,000.00
06/06/16	1,000,000	NAB	N	AA-	04/10/16	TD	2.96%	1,000,000.00
08/08/16	1,000,000	NAB	N	AA-	07/11/16	TD	2.79%	1,000,000.00
06/06/16	2,000,000	NAB	N	AA-	05/09/16	TD	2.93%	2,000,000.00
04/07/16	3,000,000	ME BANK	P	BBB	04/10/16	TD	2.88%	3,000,000.00
05/05/16	2,000,000	NAB	N	AA-	05/09/16	TD	3.01%	2,000,000.00
19/08/16	2,000,000	NAB	N	AA-	17/11/16	TD	2.65%	2,000,000.00
25/08/16	2,000,000	NAB	N	AA-	24/11/16	TD	2.63%	2,000,000.00
29/08/16	2,000,000	AMP BANK	P	A	28/11/16	TD	2.75%	2,000,000.00
02/06/16	2,000,000	NAB	N	AA-	01/09/16	TD	2.94%	2,000,000.00
04/07/16	2,000,000	NAB	N	AA-	03/01/17	TD	2.97%	2,000,000.00
07/07/16	2,000,000	BANK OF QUEENSLAND	P	A2	05/01/17	TD	2.95%	2,000,000.00
01/08/16	2,000,000	POLICE CREDIT UNION	P	NR	01/02/17	TD	2.85%	2,000,000.00
06/06/16	2,000,000	ME BANK	N	BBB	06/09/16	TD	2.95%	2,000,000.00
08/08/16	1,000,000	NEWCASTLE PERMANENT	P	BBB+	07/11/16	TD	2.80%	1,000,000.00
01/06/16	2,000,000	BEYOND BANK	P	A2	01/09/16	TD	3.00%	2,000,000.00
01/06/16	2,000,000	SUNCORP	N	A1	29/09/16	TD	2.85%	2,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.4

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Type	Interest Rate Per Annum	Current Value
03/08/16	2,000,000	BEYOND BANK	N	A2	03/11/16	TD	2.80%	2,000,000.00
10/05/16	2,000,000	ME BANK	N	BBB	07/09/16	TD	2.95%	2,000,000.00
08/08/16	2,000,000	ME BANK	N	BBB	08/12/16	TD	2.65%	2,000,000.00
11/08/16	2,000,000	ME BANK	N	BBB	09/11/16	TD	2.65%	2,000,000.00
16/08/16	2,000,000	ME BANK	N	BBB	14/11/16	TD	2.65%	2,000,000.00
23/05/16	1,000,000	POLICE CREDIT UNION	N	NR	23/09/16	TD	2.95%	1,000,000.00
31/08/16	2,000,000	BEYOND BANK	N	A2	29/11/16	TD	2.70%	2,000,000.00
04/07/16	3,000,000	BANK OF QUEENSLAND	N	A2	04/01/17	TD	2.95%	3,000,000.00
04/07/16	2,000,000	COMMUNITY ALLIANCE CU	P	NR	04/10/16	TD	3.10%	2,000,000.00
04/07/16	1,000,000	BANANACOAST CU	P	NR	04/01/17	TD	2.95%	1,000,000.00
06/07/16	2,000,000	QUEENSLAND COUNTRY CU	P	NR	03/11/16	TD	2.95%	2,000,000.00
10/08/16	2,000,000	NAB	N	AA-	08/12/16	TD	2.79%	2,000,000.00
18/08/16	2,000,000	AMP BANK	N	A	16/03/17	TD	2.95%	2,000,000.00
31/08/16	2,000,000	NAB	N	AA-	31/10/16	TD	2.31%	2,000,000.00
N/A	2,632,214	CBA BUSINESS ONLINE SAVER	N	A	N/A	CALL	1.40%	2,632,214.46
Total	80,132,214					AVG	2.84%	80,152,294.46

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	
FRN	Floating Rate Note	Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
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 August 2016, as indicated in the table below, there is a dissection of the investment portfolio by investment type. It illustrates the current fair value of investments has remained the same as July 2016, but overall is still demonstrating a cumulative unrealised gain of \$20,080.

Dissection of Council Investment Portfolio as at 31 August 2016

Principal Value (\$)	Investment Linked to:-	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
76,000,000.00	Term Deposits	76,000,000.00	0.00
1,000,000.00	Floating Rate Note	1,000,080.00	80.00
2,632,214.46	Business On-Line Saver (At Call)	2,632,214.46	0.00
500,000.00	Bonds	520,000.00	20,000.00
80,132,214.46		80,152,294.46	20,080.00

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.

10 The table below provides a reconciliation of investment purchases and maturities for the 1 August 2016 to 31 August 2016 on a current market value basis.

Movement in Investment Portfolio – 1 August 2016 to 31 August 2016

Item	Current Market Value (at end of month) \$
Closing Balance at 31 July 2016	74,148,844.66
Add: New Investments Purchased	30,000,000.00
Add: Call Account Additions	0.00
Add: Interest from Call Account	3,449.80
Less: Investments Matured	24,000,000.00
Less: Call Account Redemption	0.00
Less: Fair Value Movement for period	0.00)
Closing Balance at 31 August 2016	80,152,294.46

15 **Investments Maturities and Returns – 1 August 2016 to 31 August 2016**

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	Suncorp	TD	01/08/16	182	3.10%	30,915.07
2,000,000.00	SUNCORP	TD	03/08/16	120	3.05%	20,054.79
2,000,000.00	Beyond Bank	TD	03/08/16	90	3.10%	15,287.67
2,000,000.00	NAB	TD	04/08/16	122	3.10%	20,724.59
1,000,000.00	Newcastle Permanent	TD	08/08/16	91	2.85%	7,105.48
2,000,000.00	NAB	TD	08/08/16	91	2.98%	7,430.83
2,000,000.00	ME Bank	TD	08/08/16	90	2.95%	14,547.95
2,000,000.00	ME Bank	TD	11/08/16	90	2.90%	14,301.37
2,000,000.00	ME Bank	TD	16/08/16	90	2.90%	14,301.37

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.4

Principal Value (\$)	Description	Type	Maturity Date	Number of Days Invested	Interest Rate Per Annum	Interest Paid on Maturity \$
2,000,000.00	NAB	TD	19/08/16	92	2.95%	14,872.44
2,000,000.00	NAB	TD	25/08/16	91	2.93%	14,609.87
1,000,000.00	AMP Bank	TD	29/08/16	182	3.00%	29,917.81
2,000,000.00	Beyond Bank	TD	31/08/16	90	2.90%	14,301.37
24,000,000.00						218,370.61

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 August 2016 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 31 August 2016

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	76,000,000.00	76,000,000.00	0.00
Floating Rate Note	1,000,000.00	1,000,080.00	80.00
Business On-Line Saver (At Call)	2,632,214.46	2,632,214.46	0.00
Bonds	500,000.00	520,000.00	20,000.00
Total Investment Portfolio	80,132,214.46	80,152,294.46	20,080.00
Cash at Bank			
Consolidated Fund	3,783,652.27	3,783,652.27	0.00
Total Cash at Bank	3,783,652.27	3,783,652.27	0.00
Total Cash Position	83,915,866.73	83,935,946.73	20,080.00

Financial Implications

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

Statutory and Policy Compliance Implications

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.

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.

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.

5

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

- 10 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.

Report No. 13.5 **Proposed Special Rate Variation - Community Consultation**
Directorate: Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2016/994
5 **Theme:** Corporate Management
 Financial Services

Summary:

The *Fit for the Future* program originated as part of NSW Government response to the work completed by the NSW Independent Local Government Review Panel announced in 2014.

A key component of the *Fit for the Future* program was the requirement for each Council to prepare and submit a Council Improvement Plan (**CIP**).

Byron Shire Council (**Council**) endorsed its CIP on 25 June 2015 (Res No. **15-302**), and which was submitted by 30 June 2015 to the Independent Pricing and Regulatory Tribunal (**IPART**). Byron Shire Council in its adopted CIP detailed the following six key improvement strategies:

- Pursuing new, recurrent revenues such as pay parking
- Asset realisation (sale and development of land)
- **Increasing rates beyond the rate peg in future years**
- Efficiency savings through strategic procurement initiatives
- Continuation of savings generated through operating efficiencies
- Significant increase in expenditure on infrastructure such as roads

Following the assessment process undertaken on behalf of the NSW Government by IPART, Council was declared *Fit for the Future*. Part of the basis for this successful declaration was the commitment of Council to deliver on the above improvement strategies, including the strategy to increase rates beyond the rate peg. Council during 2016 has considered and taken preliminary steps towards community consultation and engagement on a proposed Special Rate Variation.

This Report is to provide Councillors with background information on a proposed Special Rate Variation process, Engagement Strategy and to seek endorsement to continue with the next steps in community consultation and public awareness campaign in the Byron Shire community.

RECOMMENDATION:

That Council endorse and proceed to implement Phase 3 of the Community Consultation and Awareness Process, for the Proposed Special Rate Variation detailed in the Council Improvement Plan (CIP) adopted by Council on 25 June 2015.

Report

Background to the proposed SRV

5 In developing and resolving to adopt Byron Shire Council's Delivery Program 2012 – 2016, the Council at the time adopted by resolution (Res No. **12-542**) to determine community support for additional funding under the subject of incorporating proposed new infrastructure works in the long term financial plans of Council. The required action to deliver an outcome was to engage the community during the consultation process for the 2016/17 Operational Plan to determine if
10 additional financial support is available and what to level. This exhibition and consultation was to also include an amendment to the Delivery Program.

In pursuing the decision in the Delivery Program to determine if there is community support and what to level, Council has been working on a number of strategies, including the preparation and the submission of an application to the IPART for a Special Rate Variation, in order to improve its
15 overall financial sustainability.

In complying with the requirements of the relevant legislation, and the Integrated Planning and Reporting Guidelines for local government in NSW, Council has developed the following suite of documents:
20

- Community Strategic Plan;
- Resourcing Strategy that includes a Long Term Financial Plan, a Workforce Plan and an Asset Management Plan;
- Delivery Program; and
- 25 • Operational Plan, including a statement of revenue policy and a detailed annual budget.

Why is it necessary?

30 Council to meet the benchmarks set out in the CIP and maintain it's *Fit for the Future* status has been implementing the six key improvement strategies detailed in the adopted CIP.

One of the benefits of being deemed as Fit for the Future was supposed to be access to a streamlined IPART process for setting rates. It was contemplated that a rate revenue increase from streamlined rate variation of 3% per annum over the rate peg from 2016/2017 would be available
35 to all Councils that were declared Fit for the Future. State Government is yet to establish a mechanism to support this and therefore Council is unable to access revenue from this source.

As part of the *Fit for the Future* process, Council reviewed the condition of its assets and the previous detailed long term financial modelling. The information gathered identified a significant
40 funding shortfall and the need to increase Council's investment in the renewal and maintenance of aging infrastructure to ensure they meet the needs of the community.

Council's Long Term Financial Plan 2012 – 2022 predicted a continuing deterioration of the Council's medium to long term financial position, borrowing capacity and the reality that the funding
45 shortfall for asset renewals needed to be addressed.

The proposed Special Rate Variation is an important step to help maintain and renew Council's current assets to ensure that Council is able to deliver services in line with community expectation and remain financially sustainable into the future.
50

Council has been taking several steps over the past four years to work towards improvement of traditional assets in the Shire such as roads, drainage, footpaths, public amenities, parks, playgrounds, sporting fields, community buildings and waste.

By way of a summary caption of the strategic efforts that have been made in the past four years to maintain Council assets and infrastructure, the results of the Financial Sustainability Plan initiatives show that Council has:

- invested an additional \$2million in 2015 and \$10million in 2016 in roads and infrastructure;
- generated \$500,000 in 2015 to start a Bridge Replacement Fund – a further \$1 million in 2016;
- increased the total capital works budget from \$4 million to \$27 million in 2016;
- established the Infrastructure Renewal Fund.

Despite focused efforts and planning, the initiatives listed above are not enough to ensure that Council's assets are maintained or renewed. Importantly, these initiatives do not go so far as to ensure that the number of assets in poor condition in the Shire does not continue to grow.

Community Consultation and Engagement Strategy

Community Satisfaction Surveys conducted in 2013 and 2016 showed that residents of the Byron Shire thought Road Maintenance was within the top three priority issues for the Shire.

In August 2016 Council sought additional community feedback on the current condition of key infrastructure assets and funding priorities. The research was based on a random and representative sample of residents. Research participants were asked how supportive they were of the proposal to invest more money into various asset types. The residents told us:

- 83% supported increased investment in transport assets (roads, footpaths, cycleways, bridges and road drainage)
- 73% supported increased investment in urban stormwater drainage
- 73% supported increased investment in rural drainage
- 88% supported increased investment in buildings and public amenities
- 71% supported increased investment in park facilities

Council also asked which assets should be a priority. The residents told us:

- 92% said sealed urban roads
- 79% said sealed rural roads
- 80% said community buildings
- 75% said public toilets

94% of the research participants agreed it was important or very important for Council to implement plans and strategies that will maintain and renew our infrastructure and facilities for the Shire.

Byron Shire Council is committed to social justice principles of access, equity participation and rights. It has used these as a guiding principle in the development of the 'Funding our Future' Community Engagement Plan.

Phase 1 and Phase 2 of the Engagement Plan has already been carried out. This involved the following components:

- Community Satisfaction Survey – developed, conducted and completed – July to August 2016. A random telephone survey of 400 residents.
- Asset Survey – 'Funding our Future' – developed, conducted and completed – August to September 2016. A random telephone survey of 400 residents. Participants were recruited via telephone, sent an asset information booklet and then recontacted and surveyed.

Phase 3 – Special Rate Variation Community consultation and awareness

The table below sets out the proposed key actions and timeframe for delivery for each aspect of Stage 3.

Action	Timeframe
Community Handout Booklet prepared and distributed to ratepayers via the October rates notice Council distributes.	To be sent during the week of 24 October.
Random Survey to be conducted by Micromex. This is a Special Rate Variation telephone survey of a representative sample of 400 local residents. At the same time, submissions and online surveys will be sought from all residents and ratepayers.	October – November 2016. The results will be collated and reported to Councillors at the December Council meeting.
Council to conduct community consultation and public awareness campaign on the proposed Special Rate Variation through a variety of activities including community information stands at markets, advertising (radio, newspaper and Facebook), e-news, displays and presentations to the Business and Community Roundtable.	October – November 2016. The results will be collated and reported to Councillors at the December Council meeting.

5

Phase 4 – Integrated Planning and Reporting (I P & R) Framework consultation and awareness

10 The table below sets out the proposed key actions and timeframe for delivery for each aspect of Stage 4, being the final stage of the Special Rate Variation process required by IPART. Please note that Stage 4 is not the subject for decision in this Report, rather this information is included for reference to demonstrate what is involved in the process over the coming months to lead towards an application for Special Rate Variation. A decision as to whether to proceed to Stage 4 will be required by Council in December, as per the timeframes below.

Action	Timeframe
Finalisation of Integrated Planning and Reporting framework documents.	November 2016.
Finalisation of outcomes from SRV survey and community consultation.	November – December 2016.
<i>Decision to Council as to whether to place draft IP & R documents, including SRV information on Public Exhibition.</i>	<i>December 2016 Council meeting.</i>
Public Exhibition of draft I P & R documents. Supported by an engagement campaign aimed at public awareness and include a summary of the Integrated Planning and Reporting. Plus media releases, advertising (radio, newspaper and Facebook), online forum and community information stands.	Mid December 2016 – mid January 2017.
Finalisation of outcomes and information collected from public exhibition process.	January 2017.
<i>Decision to Council as to whether to make an application to IPART for a Special Rate Variation.</i>	<i>February 2017 Council meeting.</i>

15

Financial Implications

20 Council has considered three potential scenarios (resulting from the information collected during community consultation so far) that Council proposes to survey the community on. Each option has a varying impact on the assets and service quality that Council is able to deliver. This report briefly outlines the three options; with option 1 reflecting the rate peg.

Note that Option 2 and Option 3 also include \$6 million in loan funds.

- 25
- **OPTION 1:** No special rate variation. Rates would increase by the annual rate peg amount of an estimated 2.5% per year. This option is classed as “Deteriorate”.

- **OPTION 2:** Special rate variation of 7.5% each year for four years. This includes the estimated 2.5% rate peg. This option is classed as “Maintain”.
Potential result: a proposed rate increase of 7.5% will see a potential approximate \$10,585,000 raised over a 4 year period.

- **OPTION 3:** Special rate variation of 12.5% each year for four years. This includes the estimated 2.5% rate peg. This option is classed as “Improve”.
Potential result: a proposed rate increase of 12.5% will see a potential approximate \$22,254,000 raised over a 4 year period.

If a decision is made to not introduce a special rate variation, meaning that no application would be made to IPART, Council will have some difficult decisions to make concerning a reduction in services, maintenance and facilities.

A significant potential repercussion of not introducing a special rate variation is that Council would likely be considered NOT *Fit for the Future* under the NSW Local Government reforms and could be considered as a possible amalgamation target.

Where no special rate variation is introduced, the continuing deterioration of assets will adversely affect services to the community. The lack of investment in asset maintenance and renewal will challenge the sustainability of Council.

Statutory and Policy Compliance Implications

Council can apply to IPART for a Special Variation to the rate peg which will be considered against the guidelines set by the NSW Office of Local Government. The Guidelines for 2017-2018 applications are yet to be released. It is well recognised that Council requests for Special Variations are made in order to develop or maintain essential community services or regional projects.

IPART requires councils to actively engage residents in discussions about the proposed increase above the rate peg. Councils can do this with public hearings and other community engagement tools that suit their population. IPART will consider how effective each council's community inclusion has been before determining its application to increase charges above the set rate.

The *Local Government Act 1993* (NSW) provides for two types of special variations:

- a single year percentage increase, under section 508 (2), and
- successive annual percentage increases over a period of between two and seven years, under section 508A.

The legislative requirements for I P & R are contained within NSW Integrated Planning and Reporting Manual and Guidelines March 2013, NSW Local Government Act 1993 and NSW Local Government (General) Regulation 2005.

The Special Rate Variation Application process is closely linked to the Integrated Planning and Reporting (IP&R) framework. This state-wide framework recognises that most communities share similar aspirations: a safe, healthy and pleasant place to live, a sustainable environment, opportunities for social interaction, opportunities for education and employment, and reliable infrastructure.

The difference lies in how each community responds to these needs. It also recognises that council plans and policies should not exist in isolation - that they are inter-connected. This framework allows NSW councils to draw their various plans together, understand how they interact and get the maximum leverage from their efforts by planning holistically and sustainably for the future.

Report No. 13.6 **Amendment to 2016/17 Fees and Charges**
Directorate: Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2016/998
Theme: Corporate Management
 Financial Services

Summary:

A review of the Council's adopted 2016/17 fees for Filming has highlighted that Council has determined fees for these activities that are in excess of the maximum fee prescribed by the Local Government Filming Protocol – 2009. This Protocol was issued by the Department of Local Government and under *Section 119D – Applicable filming protocol* and has force unless Council has adopted a filming protocol approved by the Department Chief Executive. Council has not adopted a separate filming protocol.

This report has been prepared to allow Council to adopt a schedule of fees for 2016/17 that is consistent with the Local Government Filming Protocol – 2009.

Section 610F Public notice of fees does not require the public notice of "a fee determined by 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 protocol."

Therefore on the basis that the recommended fees are consistent with, the scale and structure of fees set out in the Local Government Filming Protocol – 2009, these fees will be effective from the date adopted by Council.

RECOMMENDATION:

That Council amend the 2016/17 Filming fees, by the adoption of the "*Proposed Fee*" shown in the following table, and that these Fees be incorporated into Council's adopted Fees and Charges for 2016/17.

Fee	Current Fee	Proposed Fee
Ultra low (fewer than 10 crew)	100.00	0
Low impact (10-25 crew, no more than 4 trucks/vans)	160.00	150.00
Medium impact (26-50 crew, no more than 10 trucks)	310.00	300.00
High impact (>50 crew, >10 trucks)	520.00	500.00
Stop/Go traffic control on local roads	110.00	100.00
Assessment of Traffic Management Plans – medium impact	310.00	300.00
Assessment of Traffic Management Plans – high impact	520.00	500.00

Report

A review of the Council's adopted 2016/17 fees for Filming has highlighted that Council has determined fees for these activities that are in excess of the maximum fee prescribed by the Local Government Filming Protocol – 2009. This Protocol was issued by the Department of Local Government and under *Section 119D – Applicable filming protocol* and has force unless Council has adopted a filming protocol approved by the Department Chief Executive. Council has not adopted a separate filming protocol.

This report has been prepared to allow Council to adopt a schedule of fees for 2016/17 that is consistent with the Local Government Filming Protocol – 2009.

Section 610F Public notice of fees does not require the public notice of “a fee determined by 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 protocol.”

Therefore on the basis that the recommended fees are consistent with, the scale and structure of fees set out in the Local Government Filming Protocol – 2009, these fees will be effective from the date adopted by Council.

The following table shows the Current fee (as listed in 2016/17 Fees and Charges) and the recommended Fee which is consistent with the scale and structure of the fees set out in the Local Government Filming Protocol – 2009 .

Fee	Current Fee	Proposed Fee
Ultra low (fewer than 10 crew)	100.00	0
Low impact (10-25 crew, no more than 4 trucks/vans)	160.00	150.00
Medium impact (26-50 crew, no more than 10 trucks)	310.00	300.00
High impact (>50 crew, >10 trucks)	520.00	500.00
Stop/Go traffic control on local roads	110.00	100.00
Assessment of Traffic Management Plans – medium impact	310.00	300.00
Assessment of Traffic Management Plans – high impact	520.00	500.00

It is recommended that Council amend its 2016/17 Fees and Charges to reflect the amounts shown in the Proposed Fee column in the table above.

Financial Implications

The recommended Filming fees for the 2016/17 Financial year will reduce the amount of potential revenue that Council is able to raise from applications received for filming proposals. The impact of this is estimated to be relatively minor and that Council will still, based on current activity, meet its estimated revenue budgets.

Statutory and Policy Compliance Implications

As noted above, the *Local Government Act 1993* section 610F(4) provides that fees determined in line with the applicable filming protocol do not need to be publicly notified. The fees in this report fall within the exception provided by section 610F(4).

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.7 **Report of the Planning Review Committee Meeting held on 18 August 2016**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Major Projects Planner

File No: I2016/923

Theme: Ecology

Development and Approvals

Summary:

This report provides the outcome of the Planning Review Committee Meeting held on 18 August 2016.

RECOMMENDATION:

That the report be noted.

Report:

The meeting commenced at 1.05pm and concluded at 2.05pm.

- 5 Present: Crs Dey, Spooner, Hunter, Woods, Cameron
Staff: Chris Larkin (Major Projects Planner).
Apologies: Nil

Development Applications

- 10 The following development applications were reviewed with the outcome shown in the final column.
Only one development application is to be referred to Council for determination with the remainder to be determined by staff under Delegated Authority.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2016.159.1	Mr P & Mrs C Veith	40- Brownell Drive Byron Bay	Demolition of Existing Dwelling House and Construction of New Dwelling House Including Removal of Three (3) Trees	Level 1 14/4/16 to 27/4/16 4 submissions	Delegated Authority
10.2016.392.1	North Coast 1 Pty Ltd	12 Browning St Byron Bay	Multi Dwelling Housing comprising of Thirteen (13) Townhouses, Strata Subdivision and Demolition of Existing Dwelling	Level 2 14/7/16 to 27/7/16 2 submissions	Delegated Authority
10.2016.423.1	Planit Consulting (NSW) Pty Ltd	4 Roundhouse Place Ocean Shores	Multi Dwelling Housing - Eight (8) Townhouses	Level 2 28/7/16 to 10/8/16 10 submissions	Delegated Authority
10.2016.444.1	Joe Davidson Town Planning	5 Bulgoon Cres Ocean Shores	Subdivision of Two (2) Existing Lots into Five (5) Lots	Level 1 28/7/16 to 10/8/16 6 submissions	The perceived public significance of the application Council

Section 96 Applications

5 The following Section 96 applications to modify the development consent were referred to the Planning Review Committee as Council determined the original development applications. It was determined that all of the Section 96 applications can be determined under delegated authority as noted below.

DA No.	Applicant	Property Address	Proposal	Exhibition Submissions	Reason/s Outcome
10.2009.48.4	Mr B Schadel	Milton Street Byron Bay	S96 Enable Walk-Up Sales Ancillary to Brewery	Level 1 19/5/16 to 1/6/16 No submissions	Delegated Authority
10.2014.743.2	Planit Consulting (NSW) Pty Ltd	2 Kulgun Court Ocean Shores	S96 to Re- establish Boundary Line on Southern Boundary of Lot 893 and Boundary Adjustment between Lots 892 and 893	Level 0	Delegated Authority
10.2009.460.2	Mr W Parker	941 Main Arm Rd Main Arm	S96 to Delete Condition 3 (c) Relating to Upgrade of the Causeway on Main Arm Road	Level 1 9/6/16 to 22/6/16 no submissions received	Delegated Authority
10.2011.413.7	Geolink Consulting Pty Ltd	59 Lismore Rd Bangalow	S96 to Change Lot 42 into Two (2) Lots	Level 2 7/7/16 to 20/7/16 No submissions received	Delegated Authority
10.2014.593.2	Planit Consulting (NSW) Pty Ltd	51 Rajah Rd Ocean Shores	S96 to Modify Staging of Approval and amend plans in relation to floor construction, ridgeline heights and dwelling sizes	Level 2 28/7/16 to 10/8/16 3 submissions	Delegated Authority
10.2013.600.3	Planners North	951 Broken Head Rd Broken Head	S96 to Amend Staging and	Level 0	Delegated Authority

BYRON SHIRE COUNCIL**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY****13.7**

			to Amend Condition 14 in relation to Development Contributions		
10.2015.353.3	Planners North	Bayshore Drive Byron Bay	S96 to Modify Design of Approved Terrace Units	Level 2 4/8/16 to 17/8/16 Exhibition finished 17 August 2016. Staff need direction as to whether minor amendments to the internal floor plans need to be reported to Council. If it needs to go to PRC under the next Council this will likely delay determination until November 2016.	Delegated Authority

Report No. 13.8 **PLANNING - State Environmental Planning Policy No. 1 - Variations to development standards - 1 April 2016 to 30 June 2016**

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Major Projects Planner

File No: I2016/995

Theme: Ecology
Development and Approvals

Summary:

This report has been provided as a requirement of the NSW Department of Planning Circular PS-08-014, as amended by agreement to enable the quarterly reporting of all development applications, where SEPP 1 variations have been granted under delegated authority.

All development applications determined where SEPP 1 variations have been granted, for the period 1 April 2016 to 30 June 2016 are included in this report.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That the report be noted.

Report

5 In accordance with the NSW Department of Planning Circular PS-08-014, all development applications where SEPP 1 variations have been granted under delegated authority are to be reported to Council for information.

All development applications determined in the period 1 April 2016 to 30 June 2016 are outlined below:

DA No.	10.2016.206.1
Development	Alteration and Additions to Existing Real Estate Office
Property:	2/30A Mullumbimbi Street Brunswick Heads
Lot and DP:	LOT: 1 SP: 72767
Zoning:	B2 Local Centre
Development Standard being varied:	4.4: Floor space ratio
Justification	"The existing FSR is already well over the maximum permitted (0.75:1) and has been calculated at 1.11:1, consistent with almost all adjoining adjacent buildings that exceed the 0.75:1 ratio. Compliance with the standard is considered to be not relevant, and thus unnecessary, particularly when having regard to the existing prevailing bulk, scale, density and FSR of the development in the CBD."
Extent of variation	>10%
Concurrence	Council
Determined Date	23/06/2016
DA No.	10.2016.280.1
Development	Alterations and Additions to Dwelling House
Property:	1064 Main Arm Road Upper Main Arm
Lot and DP:	LOT: 1 DP: 804764
Zoning:	Zone No. RU2 Rural Landscape / PART DM Deferred Matter
Development Standard being varied:	Clause 27 setback to arterial road
Justification	Variation is of a minor nature and is unlikely to result in any significant impacts on the built or natural environment
Extent of variation	<10%
Concurrence	Council
Determined Date	27/07/2016

10 **NOTE:** There were no development applications where SEPP 1 variations were granted under delegated authority in the period 1 January 2016 to 31 March 2016 and as such there was no report provided for this period.

15 **Financial Implications**

Not applicable.

20 **Statutory and Policy Compliance Implications**

The report is provided as a requirement of NSW Department of Planning circular PS-08-014. This circular can be viewed at <http://www.planning.nsw.gov.au/planning-system-circulars>.

Report No. 13.9 **PLANNING - 10.2015.214.2 S96 to Delete Condition 15 Requiring the Imposition of a Section 88E Instrument to be Placed on the Title of the Land in Relation to Coastal Erosion at Bayshore Drive Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Consultant Planner
Chris Larkin, Major Projects Planner

File No: I2016/1001

Theme: Ecology
Development and Approvals

Proposal:

Proposed modification: S96 to Delete Condition 15 Requiring the Imposition of a Section 88E Instrument to be Placed on the Title of the Land in Relation to Coastal Erosion

Original Development: Railway Infrastructure including a rail shed, two railway platforms and tree removal

Type of S.96 sought: S96(1A) Modification involving minimum environmental impact

Property description: RD: RESERVE
Bayshore Drive BYRON BAY

Parcel No/s: 267405

Applicant: Planners North

Owner: Transport for NSW

Zoning: Majority: Zone No. DM (Part Zone 5(a) Special Uses & Part Zone 7(f2) Urban Coastal Lands under BLEP 1988)
Small portion adjacent to Shirley Street end: SP2 Infrastructure

S96 date received: 16 August 2016

Original DA determination date: 17 September 2015

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 1 September 2016 to 14 September 2016
- Submissions: For 93 Against 29

Planning Review Committee: N/A

Delegation to determination: Council

Issues: Precedent re: coastal erosion policy

Summary:

A Section 96 Application has been received to modify the development consent by deleting Condition 15, which requires the imposition of a S88E restriction on the title of the land, in relation to coastal erosion.

In the circumstances, it is considered that the condition can be removed, as:

- A separate condition (Condition 6) will remain in place, requiring the proponents to cease operation and remove buildings in the event that the coastal erosion escarpment comes within 50m of the platform;
- The subject land is part of the North Coast Rail Line, which is distinctly different to land in the precinct used for residential purposes. The need to provide notice to future potential

purchasers (which is what the S88E Instrument is intended to do) is diminished in this case;

- The proponent cannot control compliance with the condition, as they are not the land owner. The land owner, Transport for NSW, has advised that they are not prepared to burden the title of the North Coast Rail Line, as its future has not been formally resolved.

It is considered the removal of the condition will not create a precedent or diminish Councils planning controls in relation to planned retreat for residential development in areas under potential threat from coastal erosion events. Further, the railway land is unique in that it is State owned infrastructure used historically for public transport purposes as opposed to privately owned land used for residential housing. Given the circumstances, it is recommended that the Condition 15 be deleted from the consent as proposed and the Section 96 Application be approved.

NOTE TO COUNCILLORS:

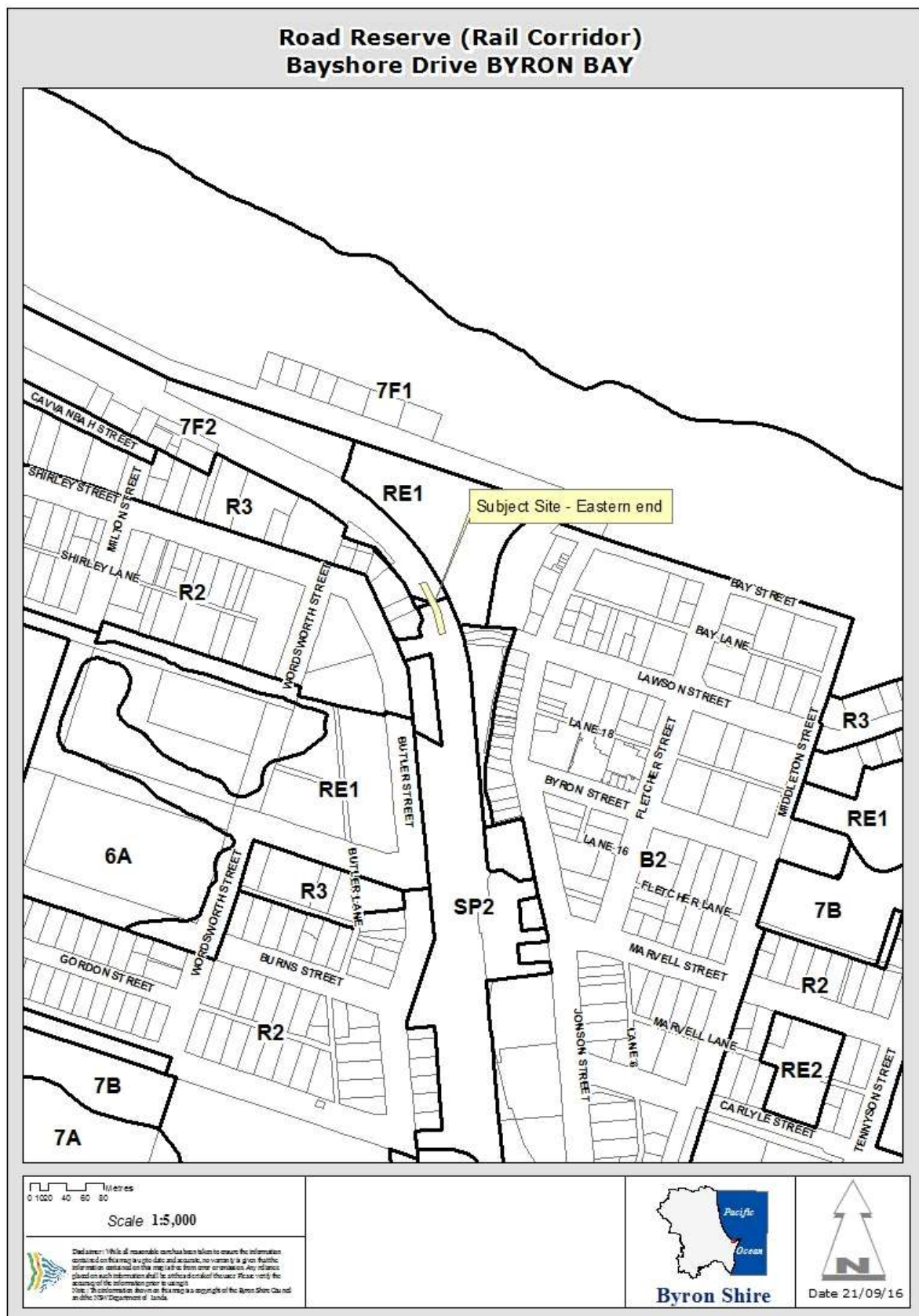
- 5 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

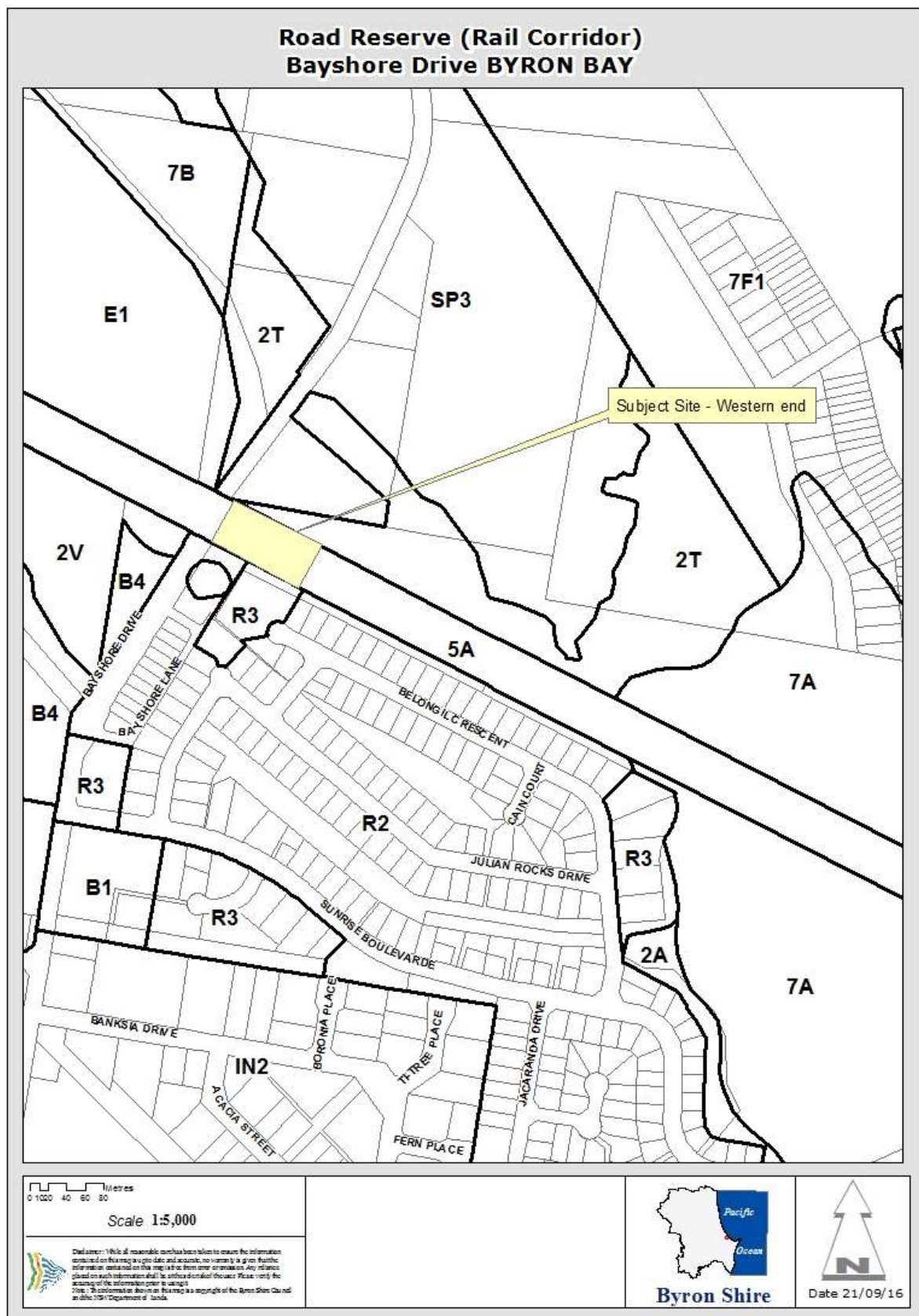
RECOMMENDATION:

- 10 That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that application. 10.2015.214.2 for S96 to Delete Condition 15 Requiring the Imposition of a Section 88E Instrument to be Placed on the Title of the Land in Relation to Coastal Erosion be approved.

Attachments:

- 15 1 Confidential - 10.2015.214.2 submissions received, E2016/86141
2 Confidential - Legal advice, E2016/84733





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

DA 10.2015.214.1 approved the construction of two train platforms and a train storage shed to support the operation of a train within the existing railway corridor. The western platform was approved adjacent to Bayshore Drive, with the eastern platform near the Shirley/ Lawson Street railway crossing into the centre of Byron Bay.

1.2 Section 96 modifications sought

The application proposes to delete Condition 15 of the consent, which states:

Documentary evidence is to be provided to the Principal Certifying Authority that a restriction-as-to-user, pursuant to the provisions of S.88E of the Conveyancing Act, 1919, has been placed on the title to the land, the subject of this consent, stating:-

The development granted via development consent number 10.2015.214 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished and removed immediately. Further the landowner must suitably revegetate the land.

In this restriction coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.

Please note: Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council's Fees & Charges.

The imposition of this condition is part of Council's long-standing policy regarding coastal erosion risk, as outlined in Byron DCP 2014 (Chapter E) and Part J of Byron DCP 2010. The intention of this condition is to ensure that future purchasers of affected land are aware of the requirement to remove development when the coast erosion escarpment comes within 50m of buildings.

The actual requirement to remove buildings / development is imposed by way of a separate condition. In the case of this consent that is Condition 6, which states:

The development must cease if at any time the coastal erosion escarpment comes within 50 metres of any building associated with this development. The buildings and works used in connection with the development must be removed immediately to an approved location by the owner of the land. The owner must return the landform of the subject land to the predevelopment state and suitably revegetate the land.

In this condition coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.

The current application seeks to modify the consent to delete Condition 15, on the basis that it is unreasonable to apply this requirement to infrastructure, such as the rail line. Written advice has been provided from the owner of the land – Transport for NSW – stating that the agency will not agree to the registration of a restriction on the rail corridor.

Transport for NSW advise that it is the State Government's policy that they will not accept any impediment or restriction to the operation of transport land and that, while the North Coast Rail Line is not currently operational, decisions have not finally been made regarding its future, and so the policy remains.

The applicants also point out that Condition 6 of the approval provides adequate protection in relation to coastal erosion, as it requires that the consent ceases if the erosion escarpment comes within 50m of any building associated with the development.

1.3 Is the modification substantially the same as the development granted

The proposed modification will not change any physical aspects of the approved development. Given the wording of Condition 6, the proposed modification will also not change the requirement for the approved development to cease if the erosion escarpment comes within 50 m of the development.

As such, it is considered that the development as modified will be substantially the same as that approved.

1.4 Site description of Eastern Platform

The eastern platform is located near the Shirley/ Lawson Street railway crossing into the Byron Bay town centre. It is located within the Railway corridor which is controlled and managed by the State government department Transport for NSW as shown on the map below.



Adjoining development to the north is the First Sun Caravan Park; while to the west is a Service Station and residential development.

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

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

2.1 STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS

State Environmental Planning Policy No 71 Coastal Protection:

The original application was assessed against the provisions of this SEPP and it was considered that the development as proposal was consistent with the SEPP requirements.

The deletion of Condition 15 does not alter any aspect of that consideration.

2.2 BYRON LOCAL ENVIRONMENTAL PLAN 2014

The majority of the rail corridor that is subject to this approval is a Deferred Matter under LEP 2014. This area is addressed below in relation to the relevant provisions of BLEP 1988. A small part of the southern end of the corridor, including part of the Byron Town Platform, is zoned SP2 Infrastructure, under BLEP 2014 (see below). The deletion of Condition 15 raises no issues in regard to BLEP 2014.

2.3 BYRON LOCAL ENVIRONMENTAL PLAN 1988

Clause 9 – Zone Objectives

The area occupied by the western platform at Bayshore Drive is within land zoned 5(a) Special Uses. It is located landward of any defined coastal erosion areas and is not the subject of the Section 96 Application. The eastern platform however is situated on land zoned 7(f2) Urban Coastal Lands and is identified under Part J of Byron DCP 2010 as falling within Precincts 2 and 3. The objectives of the zone require the following:

- (a) *to identify urban land likely to be influenced by coastal processes,*
- (b) *to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,*
- (c) *to permit urban development within the zone subject to the council having due consideration to:*
 - (i) *the need to relocate buildings in the long term,*
 - (ii) *the need for development consent to be limited to a particular period,*
 - (iii) *the form, bulk, intensity and nature of the development, and*
 - (iv) *continued safe public access to the site, and*
- (d) *to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.*

The consent currently includes two conditions addressing the objectives – Condition 6, which specifies that the development must cease if the erosion escarpment comes within 50m of the development (and building or works removed); and Condition 15, which requires the restriction on title of the land stating the same thing. Condition 15 is intended to ensure that potential future purchasers are aware of that requirement.

As the rail corridor is not private property that can be readily sold or bought like residential property, the imposition of the Section 88E instrument is not required. It is considered the deletion of Condition 15 does not offend or compromise the objectives of the 7(f2) zone in this instance.

Clause 32 development with Zone No.7(f2) Urban Coastal Lands

The clause requires Council to consider:

- the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes;
- the need to relocate buildings in the long term; and

- the need for the development consent to be limited to a particular period. In approving the original application.

Council imposed Condition 6 to address these requirements. That condition ensures that the approved development will cease if the erosion escarpment comes within 50m of the approved development, with the requirement that buildings and structures need to be removed by the proponent. This condition ensures that the approved development will not be adversely affected by coastal processes and implements the need to relocate buildings in the long term.

There is no requirement under the clause to impose a condition requiring the imposition of the S88E Instrument.

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

N/A

2.4 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014

Part of the eastern platform is within land zoned SP2 Infrastructure under BLEP 2014. As such, the provisions of Byron DCP 2014 are applicable, and in this case the relevant provisions are in Section 5.4 of Chapter E – Certain Locations in Byron Bay and Ewingsdale.

In particular, the following **prescriptive measures** are applicable:

- Development within the 'Coastal Erosion Hazard Area' on the Byron Bay Coastal Hazards Map (E5.1) will be considered on the understanding that any consent granted will be subject to the proviso that should the erosion escarpment come within 50 metres of any building then the development consent will cease.*
- Prior to the issue of a Construction Certificate a restriction as to user must be placed on the title pursuant to the provisions of section 88E of the Conveyancing Act 1919, stating: "The subject land and any improvements erected thereon must not be used for the purpose of (land use) in the event that the erosion escarpment as defined by the Works and Services Director of the Council of the Shire of Byron from time to time comes to within 50 metres of any buildings or any part thereof at any time erected on the said land".*

This is a direct continuation of the policy contained in Part J of the previous DCP (see below), involving two components – one condition to require the removal of approved development and the other to provide a mechanism to advise future purchasers of affected land. As discussed above the imposition of the Section 88E condition on the title of the land is not warranted in this instance, having regards to Condition 6 remaining on the consent.

Development Control Plan 2010

The remainder of the rail corridor that is subject to the consent is subject to BLEP 1988, and therefore the provisions of DCP 2010.

Part J of that DCP is relevant, with the eastern section of the corridor located within Precincts 2 and 3 as defined in the DCP. Part J contains a range of provisions primarily for residential in Precincts 1, 2 and 3, with a requirement that development is to cease and be removed in the event the coastal erosion escarpment comes within 50 metres of the development. The Element Objectives and performance criteria for Precinct 2 state:

Element Objective

To ensure the impact of coastal processes on potential development is minimised by ensuring any development is readily relocated as the erosion escarpment nears the development.

5 **Performance Criteria**

Development in Precinct 2 must be designed to be relocate or demolished, or to cease operation, should the erosion escarpment come within 50 metres.

The Precinct 2 provisions also state the following:

10

Conditions of consent likely to apply to dwellings on land within Precinct 2 are as follows:

- a) *(Prior to issue of a Construction Certificate) A certificate is to be provided from a practising structural engineer as to the adequacy of this building to be easily dismantled and readily removed from the site by road vehicle.*
- 15 b) *(Prior to issue of a Construction Certificate) A restriction as to user must be placed on the title pursuant to the provisions of section 88E of the Conveyancing Act 1919, stating:*
"The subject land and any improvements erected thereon must not be used for the purpose of (land use) in the event that the erosion escarpment, as defined by the Works and Services Director of the Council of the Shire of Byron from time to time, comes to within 50 metres of any buildings or any part thereof at any time erected on the said land."
- 20 c) *Subsequent to any approval being given for a relocatable dwelling, no works must be carried out on the property which might hinder the ready relocation of the building. Such works might include the construction of walls, fences, screens, enclosures, brick veneering, landscaping or the fixing of joints or structural members by welding or other means.*
- 25 d) *This development consent must cease if at any time the erosion escarpment, as defined by the Works and Services Director of the Council of the Shire of Byron, comes to within 50 metres of any building associated with this development. The owner of the land must then remove that building.*
- 30

It is arguable that the Condition for the S88E Instrument is orientated towards residential development.

35

The Precinct 3 provisions are not as clear as to the type of development they should apply to, however the following controls apply:

Element Objective

40

To ensure the impact of coastal processes on potential development is minimised by ensuring any development ceases as the erosion escarpment nears the development.

Performance Criteria

45

Development in Precinct 3 must be designed to be relocate or demolished, or to cease operation, should the erosion escarpment come within 50 metres.

Prescriptive measures

50

Development within this precinct will be considered on the understanding that any consent granted will be subject to the proviso that should the erosion escarpment come within 50 metres of any building then the development consent will cease.

If the development consent does cease then the owner of the land will be responsible for the removal of all buildings.

55

The option of demolition as the means of removal will be available to all buildings

including Class 1 residential buildings.

Prior to the issue of a Construction Certificate a restriction as to user must be placed on the title pursuant to the provisions of section 88E of the Conveyancing Act 1919, stating:

"The subject land and any improvements erected thereon must not be used for the purpose of (land use) in the event that the erosion escarpment as defined by the Works and Services Director of the Council of the Shire of Byron from time to time comes to within 50 metres of any buildings or any part thereof at any time erected on the said land".

Having regards to the above provisions, it is considered that the retention of Condition 6 provides an adequate safeguard for Council and the community in the event that the eastern platform ever comes under threat from a Coastal Erosion event. As the site is in the control and management of a State Government Department and is not an area of land that can be readily bought and sold like other private property it is recommended that the deletion of Condition 15 does not compromise the provisions contained within Part J. In conclusion the element objectives and performance criteria for precincts 2 and 3 are adequately satisfied with the retention of Condition 6.

Coastal Zone Management Plan

The Coastal Zone Management Plan Byron Bay embayment has been adopted by Council but not certified by the relevant minister under Clause 55H of the Coastal Protection Act 1979. As such the plan has not been made for the purposes of assessment under Section 79C of the EPA Act 1979.

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

The deletion of Condition 15 raises no practical implications regarding environmental impacts of the approved development.

2.6 The suitability of the site for the development

Approval of the development indicates that the site is suitable for the proposed use. That suitability is, in part, dependant on the removal of associated infrastructure if and when the coastal erosion escarpment comes within 50m of the approved development as indicated in the map extract below.



This requirement is imposed by Condition 6 of the consent, which will remain in force. Deletion of Condition 15 will not alter the requirements of that condition, so will have no implications regarding the suitability of the site.

- 5 Having regards to the sites location landward of the First Sun Caravan Park near the Lawson Street Railway Crossing, it is noted that should the erosion escarpment ever come within 50 metres of the subject platform, then an event(s) would have occurred affecting the Caravan Park, and potentially other areas of the railway line closer to the ocean. Unless substantial engineering works were undertaken to protect this area, theoretically the railway line would no longer be operational based on such a scenario. The platform would be of little use to Transport for NSW or any other operators of the train line, and its removal would occur in accordance with Condition No.6 of the consent.

2.7 Submissions made in accordance with this Act or the regulations

- 15 Council has received ninety three (93) submissions in support for the proposed amendment with twenty nine (29) submissions against the amendment. The following issues were raised.

Issue	Comment
Support:	
<i>Want to see the train running; frustrated with delays</i>	Noted
<i>Operators have committed to ceasing the service if the coastal erosion escarpment comes within 50m</i>	Refers to existing Condition No. 6.
<i>State Government owned rail corridor is different to other land in the vicinity – S88E Instrument is not necessary</i>	See comments elsewhere in this report. Purpose of the S88E Instrument is to ensure that future purchasers of land are aware of the condition specifying that development will cease and requiring removal of structures if coastal erosion escarpment comes within 50m of approved development. Given the nature of the land – public infrastructure rather than private residential lot – the need for that instrument is not considered necessary.
Objection:	
<i>Deleting the condition is inconsistent with the Coastal Erosion policy</i>	As outlined above, the policy, as set out in the DCP, has two main components: <ul style="list-style-type: none"> a requirement that the consent will cease if the coastal erosion escarpment comes within 50m of the approved development, together with a requirement to remove the approved structures; and a requirement that a S88E Instrument be placed on the title of the land advising of the requirements above, for the purpose of advising future potential purchasers of land about the condition of approval. In this case, as outlined further in this report, the railway land is sufficiently distinct from other land in the precinct to minimise the need to 'warn' future purchasers.
<i>The Coastal Erosion policy should apply to all development in the precinct</i>	The key part of the policy, the requirement that the approval will cease and structures are to be removed, will remain in place.
<i>It would be unequitable if this applicant is allowed to delete this</i>	As outlined in this report, the railway land is significantly different to all other privately-owned residential land in the

Issue	Comment
<i>condition and that all other residents within the zone must comply</i>	precinct.
<i>S88E restriction is required for future protection – if current operators are not in place when erosion escarpment comes within 50m, who would be responsible</i>	The development consent, and its terms and conditions, remain with the land. If the current operators were to be replaced in the future, the new operators would need to abide by the conditions of approval, including Condition 6 requiring removal of the structures.
<i>Opposition to train proposal overall</i>	Not a relevant consideration for the current proposal, as it remains substantially the same development as that approved by Council.
<i>Support for removal of the condition – on the basis of facilitating the development</i>	Noted.

2.8 Public interest

5 In the subject circumstances, the public interest is protected by the imposition of conditions that implement Council's requirements for development to be removed in the event they are threatened by coastal processes.

10 In particular, Condition 6 requires the removal of structures in the event that the erosion escarpment comes within 50m of approved development. The proposed amendments will not change this requirement.

15 The intention of requiring a S88E instrument on title of the land is to ensure that potential future purchasers of land are fully aware that approval will cease if the primary condition is triggered. In this case, the proposed platform is not comparable with a residential development in the coastal erosion precincts, primarily because of the differences between the subject land and compared with private property in the area. The railway land is unique in that it is State owned land used historically for public transport. It is not privately owned land used for residential housing. This means the land is less likely to be subject to future purchasers needing notice about any development restrictions and as such any work a restriction on title can perform is also limited

20 The applicant in this case is also the licensee of the subject land, rather than the owner (and thus has no ability to agree to a restriction on title on land it does not own). This circumstance is distinguishable from development applicants that are also landowners and who have already agreed *by consent* to have a restriction on title placed on their *own land*.

25 It is considered with the retention of Condition 6 that the public interest will remain served and that Condition 15 can be deleted.

3. DEVELOPER CONTRIBUTIONS

30 Deletion of Condition 15 has no implications in relation to the contributions imposed on the approval.

4. CONCLUSION

35 The application proposes to delete Condition 15, which requires that a S88E restriction be placed on the title of the land in relation to Council's planning controls under Byron DCP 2010 and 2014 for development affected by coastal erosion. The intent of these provisions is to ensure that

prospective purchasers of land are aware of the requirement to remove approved development where the coastal erosion escarpment comes within 50m. Because the subject land is the rail corridor, owned by the State Government, as opposed to a conventional privately owned lot, it is considered that the need to ensure that future purchasers are aware of the requirement is greatly limited.

Further, a difficulty arises in relation to the imposition of a section 88E restriction in this case, in that the section of rail corridor affected by the requirement does not have 'title' in the conventional sense. It is part of the much larger North Coast Rail Line, which is owned by the State Government, through Transport for NSW.

In this instance, Condition 6 would remain on the consent. This is the more important component of the coastal erosion policy, requiring that the approval is to cease and the approved development is to be removed if triggered by the erosion escarpment coming within 50m of approved buildings.

While the rail line is not currently operating, it is understood that it is not yet formally 'closed'. As such, the owners of the corridor, Transport for NSW, advise that the rail line, or at least the section to which the S88E instrument would apply, would need to be formally closed, with a land title allocated, in order for the Instrument to be actually placed on the that title. Enforcement of the condition requiring imposition of the S88E instrument would therefore require formal closure of the rail line, which would have long term consequences for any potential for wider future use.

Transport for NSW, the owners of the land; have advised that they do not accept imposition of the S88E instrument on their land. The development consent imposes conditions on the proponent of the development, who, in this case, is not the owner. The condition cannot seek to bind the owner if that owner is not agreeable.

It is considered that removal of the Condition neither offends or compromises Council's Planning controls for development in areas subject to Coastal Erosion, nor does it create a precedent. It is recommended the Section 96 Application be approved in this instance.

5. RECOMMENDATION

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, that application no. 10.2015.214.2 for S96 to Delete Condition 15 Requiring the Imposition of a Section 88E Instrument to be Placed on the Title of the Land in Relation to Coastal Erosion, be approved.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

Report No. 13.10 **PLANNING - 10.2015.214.3 S96 to Enable the Railway Infrastructure to be carried out in Two (2) Stages, Stage 1: Bayshore Drive Railway Infrastructure, Stage 2: Byron Town Centre Infrastructure at Bayshore Drive Byron Bay**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Rob Van Iersel, Consultant Planner
Chris Larkin, Major Projects Planner
File No: I2016/1005
Theme: Ecology
10 Development and Approvals

Proposal:

Proposed modification: S96 to Enable the Railway Infrastructure to be carried out in Two (2) Stages, Stage 1: Bayshore Drive Railway Infrastructure, Stage 2: Byron Town Centre Infrastructure

Original Development: Railway Infrastructure including a rail shed, two railway platforms and tree removal

Type of S.96 sought: S96(1A) Modification involving minimum environmental impact

Property description: RD: RESERVE

Bayshore Drive BYRON BAY

Parcel No/s: 267405

Applicant: Planners North

Owner: Transport for NSW

Zoning: Majority: Zone No. DM (Part Zone 5(a) Special Uses & Part Zone 7(f2) Urban Coastal Lands under BLEP 1988)

Small portion adjacent to Shirley Street end: SP2 Infrastructure

S96 date received: 16 August 2016

Original DA determination date: 17 September 2015

Integrated Development: No

Public notification or exhibition: Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

Planning Review Committee: N/A

Delegation to determination: Council

Summary:

15 An application has been received to modify the development consent by amending the conditions to provide for the development to be undertaken in two stages, with Stage 1 including the
20 Bayshore Drive rail infrastructure and Stage 2 being the Byron Town Centre infrastructure. The proposed staging raises no issues and the Section 96 Application is recommended for approval.

NOTE TO COUNCILLORS:

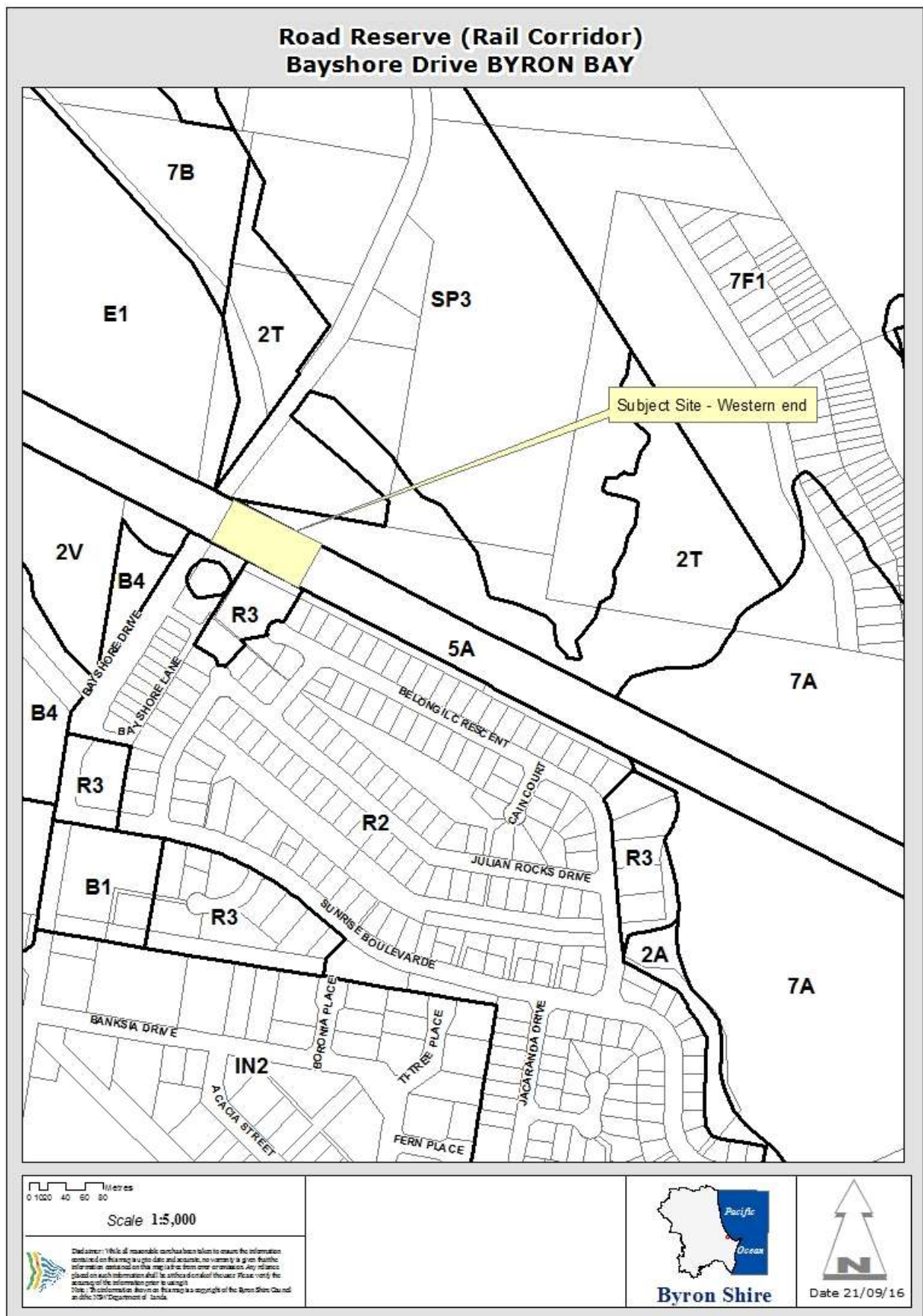
25 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

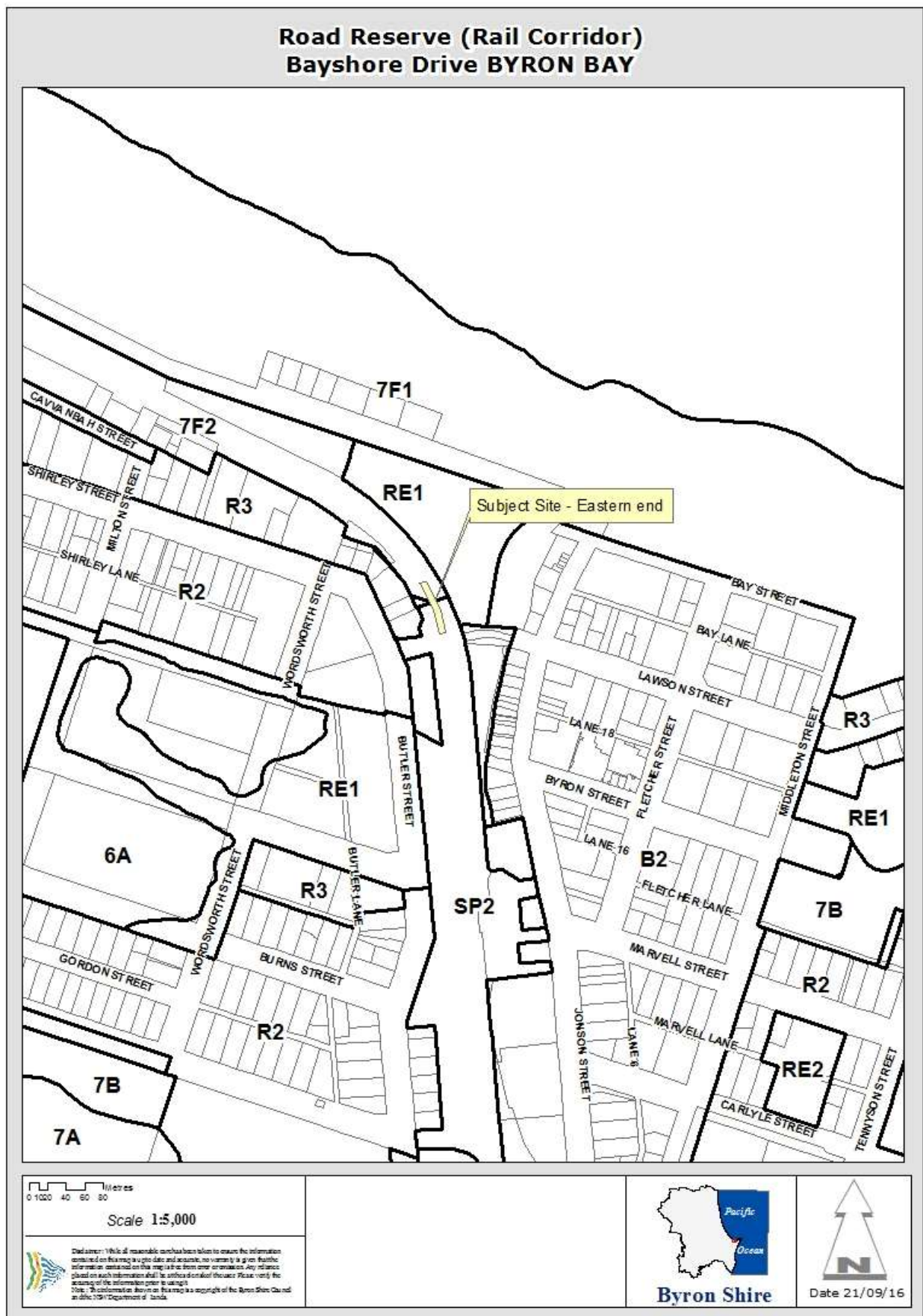
RECOMMENDATION:

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, application 10.2015.214.3 for S96 to Enable the Railway Infrastructure to be carried out in Two (2) Stages, Stage 1: Bayshore Drive Railway Infrastructure, Stage 2: Byron Town Centre Infrastructure, be approved by modifying development consent 10.2015.214.1 as outlined in Attachment 1 #E2016/85850.

Attachments:

- 1 10.2015.214.3 S96 conditions for amendment , E2016/85850





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

DA 10.2015.214.1 approved the construction of two train platforms and a train storage shed to support the operation of a train within the existing railway corridor. The western platform was approved adjacent to Bayshore Drive, with the eastern platform adjacent to Shirley Street.

1.2 Section 96 modifications sought

The application proposes to amend the structure of the consent to enable the development to be undertaken in two stages:

Stage 1 – Bayshore Drive rail infrastructure

Stage 2 – Byron Town Centre rail infrastructure

1.3 Is the modification substantially the same as the development granted

The proposed amendments only alter the timing of construction of the development. It is therefore considered that the development as modified will be substantially the same as that approved.

2. SUMMARY OF REFERRALS

	Summary of Issues
S94 Planner	S94A Levy can be staged.
Water & Waste Services	The platform located near Bayshore Drive will include a public toilet. Appropriate contributions will therefore be required with Stage 1 of the development.

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

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

3.1 STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS***State Environmental Planning Policy No 71 Coastal Protection:***

The original application was assessed against the provisions of this SEPP and it was considered that the development as proposal was consistent with the SEPP requirements.

The staging of the development does not alter any aspect of that consideration.

3.2 BYRON LOCAL ENVIRONMENTAL PLAN 2014

The majority of the rail corridor that is subject to this approval is a Deferred Matter under LEP 2014. This area is addressed below in relation to the relevant provisions of BLEP 1988.

A small part of the southern end of the corridor, including part of the Byron Town Platform, is zoned SP2 Infrastructure, under BLEP 2014 (see below).

The staging of the development raises no issues in regard to BLEP 2014.

3.3 BYRON LOCAL ENVIRONMENTAL PLAN 1988

The area occupied by the western end of the development is within land zoned 5(a) Special Uses. The remainder of the corridor is within land zoned 7(f2) Urban Coastal Land.

The staging of the development raises no issues in regard to BLEP 1988.

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

N/A

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014

Part of the eastern platform is within land zoned SP2 Infrastructure under BLEP 2014. As such, the provisions of Byron DCP 2014 are applicable, and in this case the relevant provisions are in Section 5.4 of Chapter E – Certain Locations in Byron Bay and Ewingsdale.

The staging of the development raises no issues in regard to DCP 2014.

Development Control Plan 2010

The remainder of the rail corridor that is subject to the consent is subject to BLEP 1988, and therefore the provisions of DCP 2010.

The staging of the development raises no issues in regard to DCP 2010.

3.4 Coastal Zone Management Plan

The Coastal Zone Management Plan Byron Bay embayment has been adopted by Council but not certified by the relevant minister under Clause 55H of the Coastal Protection Act 1979. As such the plan has not been made for the purposes of assessment under Section 79C of the EPA Act 1979.

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

The assessment of the original development application (10.2015.214.1) considered a range of noise, neighbourhood amenity, social and ecological issues. It was concluded that, subject to conditions, the development would not result in significant impacts on the locality.

The staging of the development does not alter the assessment nor the conclusion.

3.6 The suitability of the site for the development

In approving development application 10.2015.2214.1 Council determined that the site was suitable for the development.

Staging of the development does not alter that conclusion.

3.7 Submissions made in accordance with this Act or the regulations

No submissions have been made.

3.6 Public interest

The assessment undertaken for the original approval concluded that the principle of placing rail infrastructure within the rail corridor is deemed to be in the public interest.

The staging of the development does not alter that conclusion.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

This DA proposes to construct two train station platforms to allow travellers to be transported between Byron Bay and the Industrial estate.

The Byron Bay train station will be located near Lawson Street and will not have any water or sewer facilities and as such does not incur developer contributions for water or sewer.

The Industrial Estate train station is located near Bayshore Drive and will have a public toilet, which generates an additional load onto Council's water, bulk water and sewer systems. Payment of Developer Servicing Charges of 0.4 ET for water and bulk water and 0.63 ET for sewer will therefore be required prior to the issue of a construction certificate for Stage 1.

4.2 Section 94 Contributions

On the original DA, the total value of the works is \$248,000. The S94A levy would be 1% or \$2,480. Breaking the payment into 2 stages would result in both payments being under \$200,000, at which point the levy drops to 0.5%. Whilst this doesn't appear to be intentional, it is not how the S94A levy is intended to work.

The total cost of the development is used to calculate the levy. The works conducted in the individual stages can impact on the payment amount if payment is taken on a per stage basis. The condition requiring payment of the contributions should be moved up into the parameters and made prior to a construction certificate for any stage.

5. CONCLUSION

The staging of the approved development as proposed raises no practical issues of environmental significance, nor does it alter the assessment undertaken for the original approval.

The structure of the consent will be modified to provide for the construction in two stages.

In amending the conditions, the requirement for a S.88E Restriction regarding coastal erosion will be deleted from the requirements for Stage 1, as the location of those works are outside of the coastal erosion precinct.

A separate S96 application has been submitted (10.2015.214.3) seeking to delete Condition 15, which is the condition that requires the S88E instrument. The assessment of that application is reported separately. The recommendation below provides two options; one for modification of the conditions where application 10.2015.214.3 is approved (i.e. Condition 15 deleted) and the second where that application is not supported.

6. RECOMMENDATION

That pursuant to Section 96 of the Environmental Planning & Assessment Act 1979, application 10.2015.214.3 for S96 to Enable the Railway Infrastructure to be carried out in

Two (2) Stages, Stage 1: Bayshore Drive Railway Infrastructure, Stage 2: Byron Town Centre Infrastructure, be approved by modifying development consent 10.2015.214.1 as listed in Attachment 1 #E2016/85850.

5

7. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.11 Council Part Road Reserve Closure and subsequent sale at end of Durrumbul Road adjoining Lot A DP 389649

Directorate: Infrastructure Services
Report Author: Deanna Savage, Administration Officer Infrastructure Services
File No: I2016/687
Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

To endorse Council Part Road Reserve Closure at end of Durrumbul Road and sale to adjoining land owner Lot A DP 389649 722 Main Arm Road Mullumbimby

RECOMMENDATION:

1. That Council endorse the Part Road Reserve Closure at end of Durrumbul Road and sale to adjoining land owner Lot A DP 389649 722 Main Arm Road Mullumbimby as per Figure 1.
2. That Council ascertain market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for sale, once the closure of the road reserve is complete, for a value no less than the highest value placed on said land by the independent Valuer.
3. That without limiting the delegation to the General Manager to negotiate a contract suitable to the Council, terms and conditions of the contract will include requirements for:
 - i. the applicant to pay all costs associated with the part road closure and subsequent sale, including but not limited to:
 - a) Council application fees
 - b) Council's surveyor's fees and survey, valuation and legal costs
 - c) All registration fees
 - d) Legal costs
4. That the new lot created by the part road closure be consolidated into corresponding Property parcel number PN117430 (Lot A DP 389649 722 Main Arm Road Mullumbimby).

Attachments:

- 1 Letter to Mr DO Thompson and Ms ML Plowman Re: Interest in Potential road reserve closure and purchase Durrumbul Road which runs through their property Lot A DP 389649, E2015/82707
- 2 Submission from Stephen Phelps against the proposed sale and closure of Lot A DP389649 Durrumbul Road Main Arm, S2016/4923
- 3 Submission from Mark Standford and Stephen Phelps against the proposed sale and closure of Lot A DP389649 Durrumbul Road Main Arm, S2016/4924
- 4 Submission from M. Phelps against the proposed sale and closure of Lot A DP389649 Durrumbul Road Main Arm, S2016/4925
- 5 Submission from Sally Wagg regarding the Closure of Road Reserve Lot A DP 389649 (cc P. Holloway), S2016/5003

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.11

- 6 Submission against the proposed road closure to 722 Main Arm Road from Jarrod and Samara Zillwood, S2016/5232
- 7 Submission against the proposed road closure to 722 Main Arm Road from John Singh, S2016/5233
- 5 8 Submission from NSW Rural Fire Service regarding the sale and road closure of Lot A DP 389649 Durrumbul Road, S2016/5949
- 9 PDF of Submission from Marc Beckman Mills against the proposed sale and closure of Lot A DP389649 Durrumbul Road Main Arm, E2016/85207
- 10 PDF of Email from John Lindsay - An objection to the proposed northern Durrumbul Rd (Wagg property) exit closure., E2016/85213
- 10 11 PDF of Submission from Stewart Dodd against the proposed sale and closure of Lot A DP389649 Durrumbul Road Main Arm, E2016/85210
- 12 PDF of Email Submission Official from David Cook Team Manager Far North Coast NSW Rural Fire Service to DSavage No Objection to Part Road Closure Council road reserve adjoining LotA DP 389649 Durrumbul Road, E2016/85222
- 15 13 PDF of Email from John Lindsay withdrawing submission RE: 802 Main Arm Rd of the 3/06/2016, E2016/85223
- 14 PDF of Email Debra Gruszka Hungerford Lehmann Solicitor dated 2 June 2016 re Negotiations and Submissions Road Closure 20160113 Sally Anne Wagg adjoining property Lot A DP 389649 722 Main Arm Road .. Claiming AD Medium Filum Aquae, E2016/85219
- 20

Report

Due to compliance issues concerning Lot 6 DP 775447 (Figure 2) council decided to commence a part road closure at the end of Durrumbul road which is located within Lot A DP 389649. A letter was sent to the owners of Lot A DP 389649, Mr DO Thompson & Ms ML Plowman (Attachment 1), for the closure and subsequent purchase of part road reserve which goes through their property 722 Main Arm Road, Mullumbimby, at the end of Durrumbul Road, (indicated in red) as per Figure 1 below.



Figure 1

The Closure was advertised in The Byron Shire News on the 31 March 2016 with a 28 day submission period. All adjoining landowners that could be affected by the closure were informed and all Authorities (which are listed on the Crown Lands website under the new Road Closure Procedures for Council) were also informed.

Submissions sent in are summarised in the table below. There were no submissions of objection from any Authorities contacted and the official submission from the Rural Fire Service can be read at Attachment 12.

Summary of submissions made:

Document #	Name & Address	Submission Summary	Response
S2016/4925	M Phelps – Lot 4 DP 578269 Durrumbul Road Main Arm	Objection – that the road is used by local residents	
S2016/4923	Stephen Phelps – Lot 4 DP 578269 Durrumbul Road Main Arm	Objection – he claims that it is the only useable access to lot 6 DP 775447	Lot 6 DP 775447 has a legal access at 802 Main Arm Road. Can be seen on Figure 2.

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.11

S2016/4924	Stephen Phelps – Dept.Captain Former Training Officer Instructor and Mark Standford – Main Arm Fire Station	Objection – they state that this access road needs to be kept open as it is a vital point to the 100 acres paddock (Lot 6 DP 775447) as safe area in the event of a bush fire coming from the west. That the main entrance of this lot at Main Arm Road is not suitable for large or small trucks	Claims were made under role as RFS however not endorsed by RFS – A call was made to the rural fire service who stated that this submission was made without the direct authority of the RFS. Please view E2016/85222 for formal RFS submission
S2016/5949	Stephen Phelps – Dept.Captain Former Training Officer Instructor and Mark Standford – Main Arm Fire Station	Objection – they state that this access road needs to be kept open as it is a vital point to the 100 acres paddock (Lot 6 DP 775447) as safe area in the event of a bush fire coming from the west. That the main entrance of this lot at Main Arm Road is not suitable for large or small trucks	This submission is exactly the same as the one above S2016/4924 and was cut and paste onto RFS Letter Head however was not endorsed by the RFS. Please view E2016/85222 for formal RFS submission
S2016/5232	Jarrold and Samara Zillwood – Lot 6 DP 775447 802 Main Arm Road Main Arm	Objection – they are currently living on the property. The have a number of reasons why this closure should not go ahead. Please review the attachment	
S2016/5003	Sally Wagg – Lot 6 DP 775447 802 Main Arm Road Main Arm	Objection – was under the impression that she owned this section of road. Her address has been Lot 6 Durrumbul Road and not Main Arm Road up until January 2016 and the road has always been used as a main access. Sally claims her main arm access has no formal driveway and not accessible in wet weather. The access is used by the people that agist cattle on her property. Was concerned she could not get hold of Council and asked for an extension on	The Road Reserve in question has always been a Council Road Reserve. During the last heavy rain the Causeway was flooded and inaccessible from Durrumbul Road and her Main Arm access had to be used. A change of address was issued in January 2016 to address compliance issues and show legal/main access. Sally Wagg was granted an extension on submissions and was given an extra 3 weeks.

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.11

E2016/85219	Debra Gruszka Hungerford Lehmann Solicitor	submissions. Refer to attachment for full submission from Debra Gruszka Hungerford Lehmann Solicitor on behalf of Sally Wagg	
E2016/85207	Marc Beckman Mills – Lot 1 DP 569851 96 Durrumbul Road Main Arm	Objection – expresses his horror in that the closure will split the community on that side of the river. Concerned about emergency services and access for stock trucks and feed trucks.	
E2016/85210	Stewart Dodd – Lot 1 DP 569851 96 Durrumbul Road Main Arm	Objection – Closure will divide the community, put added stress onto Main Arm Road from the agisted Cattle, alternate access for emergency services, Durrumbul Road will no longer be slashed and maintained	
E2016/85222	Superintendent David Cook – Team Manager Far North Coast NSW Rural Fire Service PO Box 816 Murwillumbah NSW	Acceptance – Has no objection to the proposed closure of the road as long as access can be gained via Main Arm Road.	This is the formal standing of the Rural Fire Service.
S2016/5233	John Singh – PO Box 450 Bangalow	Objection – John has agistment of cattle on Lot 6 DP 775447 and states this road is the only road accessible for stock trucks to enter the property and that leaving open is imperative to the business.	
S2016/4386 S2016/5966 & S2016/7437	David and Meredith Thompson – Lot A DP 389649 722 Main Arm Road Main Arm	Acceptance – There are a number of reasons the Thompson's use for the closure of this road reserve to go ahead please review the attachments.	Council did initiate the road closure application with the Thompson's and are recommending the closure and potential sale to go ahead.
E2016/85213	John Lindsay	Objection – Stating that it's vital to keep this access open for RFS in case of fire.	

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.11

2016/85223	John Lindsay	Retraction of above submission – stating that due to community consultation the RFS have better access from the Main Arm entrance only.	
S2016/5468	Ms P A Maloney – Lot 20 DP 1184853 1 Settlement Road Main Arm	Objection – Closure will divide the community, will add extra traffic pressure to Main Arm Road, limit stock movement, stop maintenance from work carried out by resident of Lot 6 DP 775447 802 Main Arm Road and limit access for school kids.	

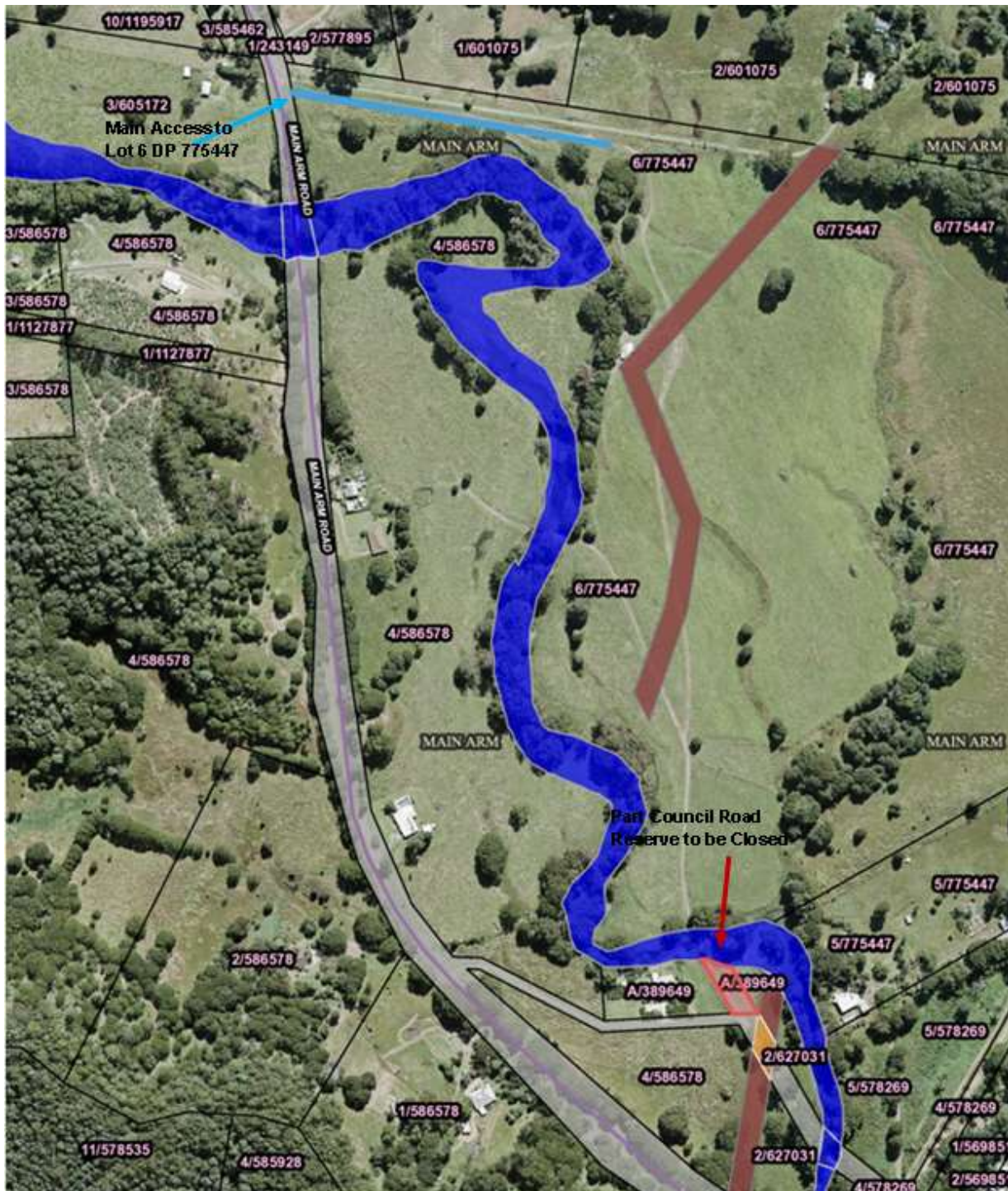


Figure 2.

Above is an Aerial Image:

- 5 • Blue – Main access to Lot 6 DP 775447 802 Main Arm Road
- Red – Part Council Road Reserve to be closed

Figure 2 indicates the main access for the owner of Lot 6 DP 775447. The owner of this property is not an adjoining land owner and has not been offered this part of road reserve under application. The waterway is a Crown waterway. Even assuming Ms Wagg is entitled to half the Crown creek, this only means that Ms Wagg's land adjoins that half of the creek owned by the Crown. It does not mean that her property adjoins the road itself. Her land cannot adjoin a road where her land and the road are separated by a body of water owned by the Crown.

To summarise we are looking for Council to endorse the Council Part Road Reserve Closure at end of Durrumbul Road and sale to adjoining land owner Lot A DP 389649 722 Main Arm Road Mullumbimby and to follow Crown Lands Procedure and submit the application to Department of Primary Industries – Lands.

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Financial Implications

All costs associated with the closure and potential sale of the road reserve will be borne by the applicant being David and Meredith Thompson.

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Statutory and Policy Compliance Implications

Relevant sections of the Roads Act are:

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ROADS ACT 1993 - SECT 34**Applications for closing of public road*****34 Applications for closing of public road***

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(1) An application for the closing of a public road (other than a freeway) may be made:

- (a) in the case of a Crown road, by any person, and
- (b) in the case of any other public road, by the roads authority for the road or by any other public authority.

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ROADS ACT 1993 - SECT 35**Publication of proposal to close public road*****35 Publication of proposal to close public road***

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(1) The Minister (or, in the case of the proposed closing of a freeway, RMS) must cause notice of the proposed closing of a public road to be published in a local newspaper.

(2) The notice:

35

- (a) must identify the road that is proposed to be closed, and
- (b) must state that any person is entitled to make submissions to the Minister (or, in the case of the proposed closing of a freeway, to RMS) with respect to the closing of the road, and
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

Report No. 13.12 Council Part Road Reserve Closure and potential sale adjoining PN 94840 Lot 21 DP 596124, 365 Booyong Road Nashua

Directorate: Infrastructure Services

Report Author: Deanna Savage, Administration Officer Infrastructure Services

File No: I2016/898

Theme: Community Infrastructure
Local Roads and Drainage

Summary:

A formal request was made on 16 September 2015 to close and purchase a portion of road reserve adjoining PN 94840 Lot 21 DP 596124, 365 Booyong Road, Nashua.

A report went to Council on the 19 May 2016 with **Res 16-263** as the outcome.

The following report provides details as to why it is recommended the original application be re-instated and endorsed by Council.

RECOMMENDATION:

1. **That Council re-instate and endorse the closure of road reserve adjoining PN 94840 Lot 21 DP 596124, 365 Booyong Road Nashua, as per figure 1 of this report, and move forward by submitting the application with Crown.**
2. **That Council ascertain market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for sale of the closed part of the road with the owner of adjoining Lot 21 DP 596124 for a value no less than the highest value placed on the part closed road by the independent Valuer.**
3. **Without limiting the delegation to the General Manager to negotiate a contract suitable to the Council, terms and conditions of the contract will include requirements for:**
 - i. **the applicant to pay all costs associated with the part road closure, including but not limited to:**
 - a) **Council / Crown application fees**
 - b) **Council's surveyor's fees and survey, valuation and legal costs**
 - c) **All registration fees**
 - d) **Legal costs**
 - ii **The allotment created by the part road closure to be consolidated into the existing Parcel No 94840 Lot 21 DP 596124**
4. **That Council authorise the affixing of the Council seal to and the signing of all documents necessary to affect the sale and transfer of the part closed road.**

Attachments:

- 1 Initial email from Alderson re Short and request to purchase part road reserve 365 Booyong Road Nashua, E2016/29262
- 2 Letter from Alderson re Short and request to purchase part road reserve 365 Booyong Road Nashua, E2016/29261

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.12

- 3 Letter to Mr K Emery acknowledging phone conversation with Deanna Savage on 1 August 2016 raising concerns about Council Road Reserve adjoining his property Lot 4 DP 777750 369 Booyong Road Nashua not wanting to purchase any part of it Council res 16-263, E2016/72159
- 4 Report 19/05/2016 Council Council Road Reserve Closure and potential sale adjoining PN94840 Lot 21 DP 596124, 365 Booyong Road Nashua, I2016/404
- 5

Report

A request was made by Greg Alderson Chartered Professional Engineers & Scientists on behalf of his client Greg Short, as per Attachment 1, E2016/29262, to acquire a section of road reserve adjoining PN 94840, Lot 21 DP 596124, 365 Booyong Road, Nashua as per Figure 1 below.

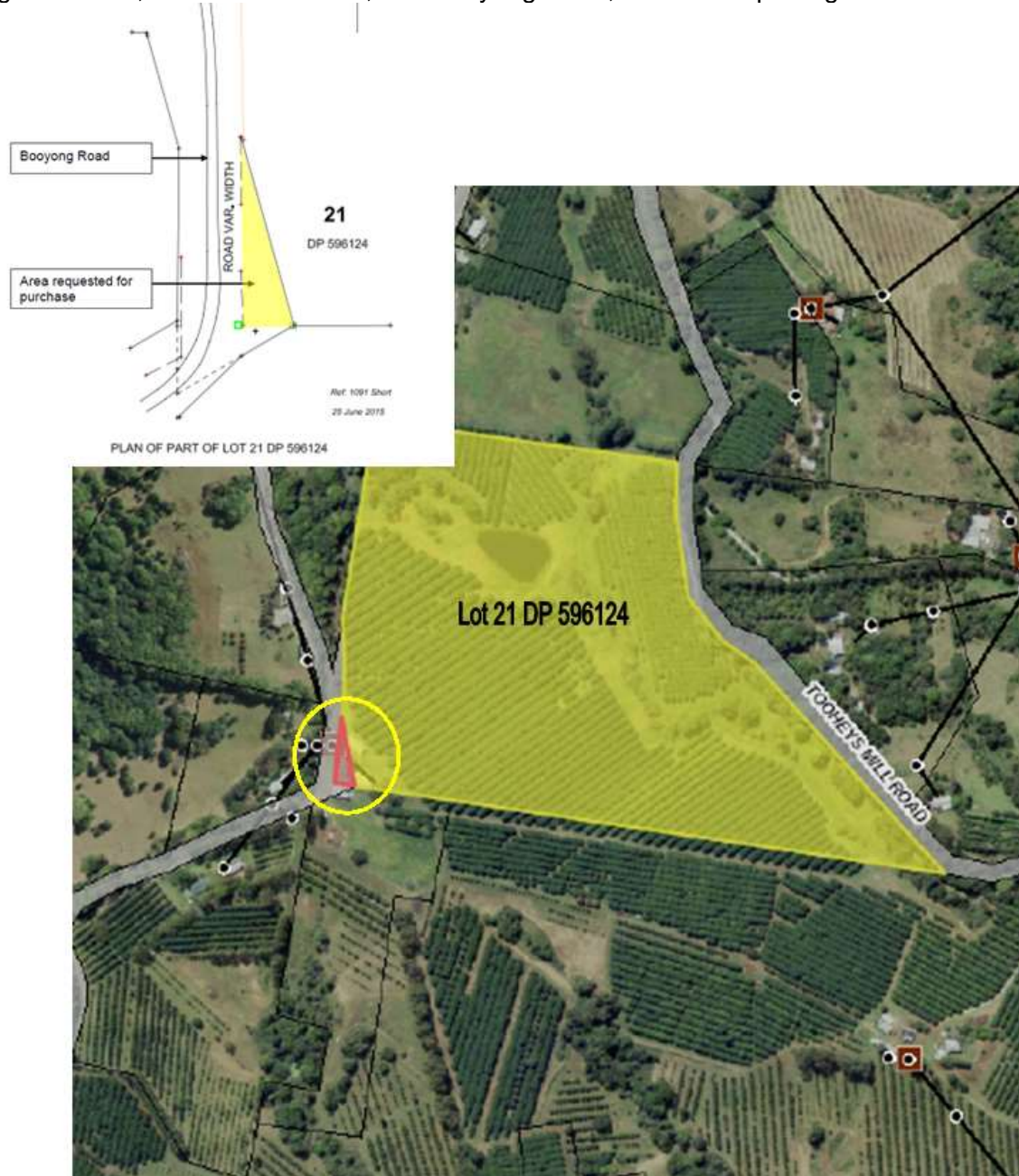


Figure 1

- 10 An inspection on the property was carried out and was determined that Part Road Reserve Closure was in the best interest of Council and once closed could be sold to the adjoining land holder. The Closure was advertised on 17 March 2016 calling for any submissions from adjoining land owners and from any Authorities with Assets in the area. No submissions were received;
- 15 If Council approves the closure in accordance with the recommendations of this report, no further action would be required – unless something arises that has not already been given consideration. The final step before the application can be lodged with Crown is for a Council resolution in favour of the closure and subsequent sale. An updated plan of survey needs to be completed to

accompany the application to Crown. Once the application has been lodged with Crown there should be a 90 day turn around (if all the paperwork is correct) to finalise the closure. A valuation is to be completed as per recommendation then contracts can then be drawn up for subsequent sale.

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The initial report, as per attachment 4, I2016/404, went to Council on the 19 May 2016 with the resolution below being the outcome.

Res 16-263

10 *Resolved that Council suspend the current road closure process with a view to extending the road closure to cover the road in front of Lot 21 DP 596124 and the neighbouring property to the south.*

15 In response to Res 16-263, Mr K Emery the neighbour in question Lot 4 DP 777750 was contacted, as per attachment 3 E2016/72159. He is not interested in closing and purchasing the additional section of road reserve adjoining his property, as per Figure 2 below indicated in red which was requested in Res 16-263. This report is therefore seeking to re-instate and endorse the original road closure as per Figure 1 indicated in red and to move forward with the application to crown as originally advertised.

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Figure 2

Financial Implications

The Applicant is liable for all of Council's costs arising from the road closure and if successful, subsequent sale of land.

Adopted fees and charges for 2016/2017 for the sale of land are set out below:

Sale Value = \$Market Valuation or Tender

POA:

Survey	\$Costs + 15%
Subdivision	\$Costs + 15%
Valuation	\$Costs + 15%
Legal/Transfer	\$Costs + 15%

It is difficult to estimate the costs associated with the actions required to sell the land until quotations are received for the services, however, our best estimates are between \$10,000 to \$15,000, plus the market valuation for the sale price. The applicant will also need to pre-pay all costs on request.

Statutory and Policy Compliance Implications

Relevant sections of the Roads Act are:

ROADS ACT 1993 - SECT 34

Applications for closing of public road

34 Applications for closing of public road

(1) An application for the closing of a public road (other than a freeway) may be made:

- (a) in the case of a Crown road, by any person, and
- (b) in the case of any other public road, by the roads authority for the road or by any other public authority.

ROADS ACT 1993 - SECT 35

Publication of proposal to close public road

35 Publication of proposal to close public road

(1) The Minister (or, in the case of the proposed closing of a freeway, RMS) must cause notice of the proposed closing of a public road to be published in a local newspaper.

(2) The notice:

- (a) must identify the road that is proposed to be closed, and
- (b) must state that any person is entitled to make submissions to the Minister (or, in the case of the proposed closing of a freeway, to RMS) with respect to the closing of the road, and
- (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

ROADS ACT 1993 - SECT 36

Public submissions

36 Public submissions

Any person may make submissions to the Minister (or, in the case of the proposed closing of a freeway, to RMS) with respect to the closing of the road.

ROADS ACT 1993 - SECT 37

Decision on proposal

5 37 Decision on proposal

(1) After considering any submissions that have been duly made with respect to the proposal, the Minister (or, in the case of the proposed closing of a freeway, RMS) may, by notice published in the Gazette, close the public road concerned.

10 (2) However, a public road may not be closed:

(a) in the case of a classified road-unless RMS consents to the closure of the road, or

(b) in the case of a road owned by a council-unless the council consents to the closure of the road, or

15 (c) in the case of a classified road that is owned by a council-unless both RMS and the council consent to the closure.

ROADS ACT 1993 - SECT 43

Disposal of land comprising former public road owned by council

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43 Disposal of land comprising former public road owned by council

(1) This section applies to land vested in a council and forming part of a former public road.

25 (2) Land to which this section applies is operational land for the purposes of the Local Government Act 1993 unless, before the land becomes vested in the council, the council resolves that it is to be community land, in which case the land is community land.

(3) If the land is disposed of by sale, the proceeds of sale (less the costs of the sale) are to be paid to the council.

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(4) Money received by a council from the proceeds of sale of the land is not to be used by the council except for acquiring land for public roads or for carrying out road work on public roads.

Report No. 13.13 **Closure of Part Road Reserve Adjoining Lot 22 DP 1070522 at the end of Blackwood Crescent**

Directorate: Infrastructure Services

Report Author: Deanna Savage, Administration Officer Infrastructure Services

File No: I2016/978

Theme: Community Infrastructure
Local Roads and Drainage

Summary:

This report addresses the request to close a portion of Council road reserve adjoining Lot 22 DP 1070522 at the end of Blackwood Crescent Bangalow and potentially sell to the owner of said adjoining land, Bangalow Property Investments Pty Ltd for the purposes of adding to the adjoining subdivision.

RECOMMENDATION:

1. That Council endorse the closure of Part Road Reserve adjoining Lot 22 DP 1070522 at the end of Blackwood Crescent as per Figure 1, indicated in blue.
2. That Council endorse, pursuant to S43 of the Roads Act 1993 that the land, once closed and vested in Council, be classified as “operational land” for the purposes of the Local Government Act 1993.
3. That any easements and works associated with the relocation of services be the responsibility of the applicant in accordance with Councils Building over Pipelines and Other Underground Structures Policy No 4.20 and Section 88B Conveyancing Act 1919.
4. That Council ascertain market value by retaining a suitably qualified Valuer and delegate to the General Manager the authority to enter into a contract for sale, once the closure of the road reserve is complete, for a value no less than the highest value placed on said land by the independent Valuer. Terms and conditions of the contract will include requirements for:
 - i. The applicant to pay all costs associated with the part road closure and subsequent sale, including but not limited to:
 - a. Council application fees
 - b. Council’s surveyor’s fees and survey, valuation and legal costs
 - c. All registration fees
 - d. Legal costs
5. That Council authorises the signing of all necessary documentation to facilitate the part Road Reserve Closure adjoining Lot 22 DP 1070522 at the end of Blackwood Crescent.

Attachments:

- 1 Letter Trevor Emery Geolink to Tony Nash re: possible road reserve closure and land acquisition in Blackwood Crescent at the end of the Cul De Sac, E2016/11025

BYRON SHIRE COUNCIL

STAFF REPORTS - INFRASTRUCTURE SERVICES

13.13

- 2 Attachment to letter to Tony Nash 10 December 2015 from Trevor Emery Geolink layout plan showing
proposed road reserve closure and land acquisition Blackwood crescent bangalow, E2016/11030
- 3 In Principle Support given to Trevor Emery Geo Link on behalf of developers Bangalow Property
Investments for potential closure and purchase of road reserve adjoining lot 22 DP 1070522 and lot 4
- 5 DP 233810 end of Blackwood Cres, E2016/26916
- 4 Policy: Building Over Pipelines and Other Underground Structures (adopted 8/10/09 Res No. 09-798)
(Current_Policies), DM906135
- 5 PDF of Authority Roads and Maritime Services with no objection to Proposed Road Closure -
Blackwood Crescent, Bangalow Trevor Emery adjoining Lot 22 DP 1070522 and Lot 4 DP 233810
- 10 associated with DA 10.2011.474.1 Read NOTE in email .., E2016/85228
- 6 PDF of Authority Essential Energy with no objection to Proposed Road Closure - Blackwood Crescent,
Bangalow Trevor Emery adjoining Lot 22 DP 1070522 and Lot 4 DP 233810 associated with DA
- 10.2011.474.1, E2016/85225
- 7 PDF of Authority Transgrid Skye Shanahan with no objection to Proposed Road Closure - Blackwood
Crescent, Bangalow Trevor Emery adjoining Lot 22 DP 1070522 and Lot 4 DP 233810 associated with
- 15 DA 10.2011.474.1 #E2016/51737, E2016/85238
- 8 PDF of Authority David Cook NSW Rural Fire Service with no objection to Proposed Road Closure -
Blackwood Crescent, Bangalow Trevor Emery adjoining Lot 22 DP 1070522 and Lot 4 DP 233810
- 20 9 PDF of Email response from Trevor Emery Geo Link on behalf of developers Bangalow
PropertyInvestments addressingletter In-principle support re: potential closure and purchase of road
reserve adjoining lot 22 DP1070522 and lot 4 DP 233810 end of Blackwood, E2016/85242
- 25

Report

Council was approached by Trevor Emery Geo Link Environmental Management and Design on behalf of their clients, Bangalow Property Investments Pty Ltd owner of the adjacent subdivision (Attachment 1 – proposal to Council for closure and purchase of Council Road Reserve), for the potential closure of a portion of Road Reserve (as indicated in blue Figure 1) and purchase once closed.

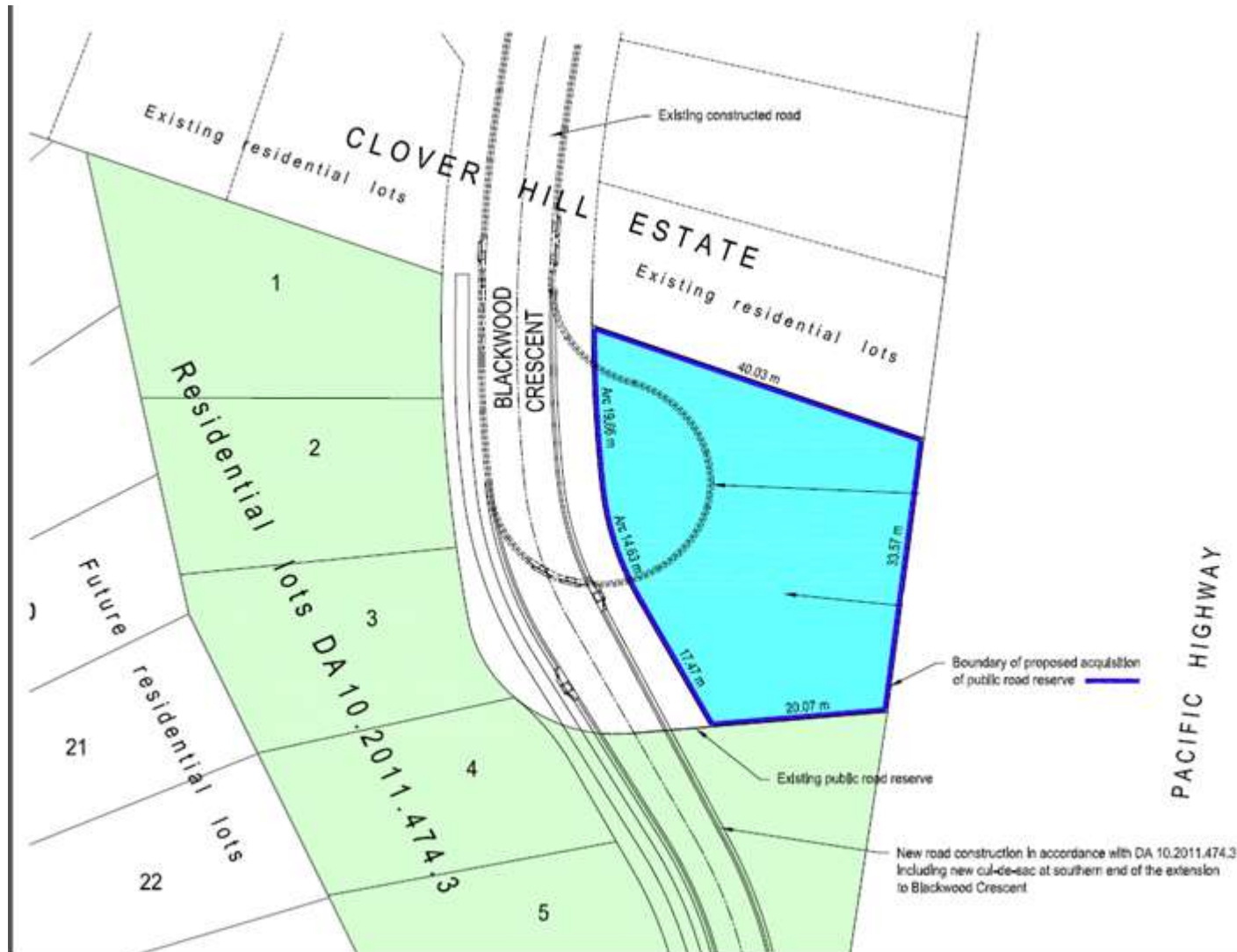


Figure 1

The area of the road reserve is approximately 1300m² and is zoned 2A Residential.

In Principle support was given for the proposal to move forward with some stipulations put forward (as per Attachment 3 with response Attachment 9).

Proposed Part Road Reserve Closure adjoining Lot 22 DP 1070522 end of Blackwood Crescent was advertised on 14 July 2016 in the Byron Shire News. Letters were sent out to adjoining land owners and authorities stipulated by NSW Trade and Investment (Crown Lands) – noting a 28 day

submission period. No submissions of objection were received with only a submission by the Roads and Maritime Services requesting one stipulation as per Attachment 5.

The wrong diagram was sent out with the initial letters so another letter went out with the correct diagram (as per Figure 1) not needing the 28 day submission enforced again as per instructions by Crown Land.

This report is now asking Council to allow the application for closure to go ahead and for an application to go to Department of Primary Industry - Lands for the Closure of Part Council Road Reserve adjoining Lot 22 DP 1070522 end of Blackwood Crescent Bangalow.

Financial Implications

All costs associated with the closure and potential sale of the road reserve will be borne by the applicant being Bangalow Property Investment Pty Ltd

Statutory and Policy Compliance Implications

LOCAL GOVERNMENT ACT 1993 - SECT 34

Public notice to be given of classification or reclassification by council resolution

34 Public notice to be given of classification or reclassification by council resolution

(1) A council must give public notice of a proposed resolution to classify or reclassify public land.

(2) The public notice must include the terms of the proposed resolution and a description of the public land concerned.

(3) The public notice must specify a period of not less than 28 days during which submissions may be made to the council.

Relevant sections of the Roads Act are:

ROADS ACT 1993 - SECT 34

Applications for closing of public road

34 Applications for closing of public road

(1) An application for the closing of a public road (other than a freeway) may be made:

(a) in the case of a Crown road, by any person, and

(b) in the case of any other public road, by the roads authority for the road or by any other public authority.

ROADS ACT 1993 - SECT 35

Publication of proposal to close public road

35 Publication of proposal to close public road

(1) The Minister (or, in the case of the proposed closing of a freeway, RMS) must cause notice of the proposed closing of a public road to be published in a local newspaper.

(2) The notice:

(a) must identify the road that is proposed to be closed, and

(b) must state that any person is entitled to make submissions to the Minister (or, in the case of the proposed closing of a freeway, to RMS) with respect to the closing of the road, and

(c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

Building over Pipelines and Other Underground Structures Policy No 4.20

5 (As per Attachment 4)

Section 88B Conveyancing Act 1919

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REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES**Report No. 14.1 Report of the Finance Advisory Committee Meeting held on 18 August 2016**

Directorate: Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2016/932
Theme: Corporate Management
Financial Services

Summary:

This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 18 August 2016 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Finance Advisory Committee Meeting held on 18 August 2016.

2. That Council adopt the following Committee Recommendation:

Report No. 5.1 2015/16 Financial Sustainability Plan - Update on the Action Implementation Plan as at 30 June 2016

File No: I2016/750

Committee Recommendation 5.1.1

That the update report to 30 June 2016 on the 2015/2016 Financial Sustainability Project Plan Action Implementation Plan (#E2016/52089) be received and noted.

3. That Council adopt the following Committee Recommendation:

Report No. 5.2 Carryovers for Inclusion in 2016/2017 Budget

File No: I2016/878

Committee Recommendation 5.2.1

That Council note the following recommendation was adopted by Council at its Ordinary meeting held on 25 August 2016 via Resolution 16-446:

That the works and services, and the respective funding shown in Attachment 1 (#E2016/74385), Attachment 2 (#E2016/74388) and Attachment 3 (#E2016/74387) be carried over from the 2015/2016 financial year and that the carryover budget allocations be adopted as budget allocation revotes for inclusion in the 2016/2017 Budget Estimates.

4. That Council adopt the following Committee Recommendation:

Report No. 5.3 Council Budget Review - 1 April 2016 to 30 June 2016

File No: I2016/886

Committee Recommendation 5.3.1

1. That Council note that the itemised budget variations as shown in Attachment 2 (#E2016/74510) which includes the following results in the 30 June 2016 Quarterly Review of the 2015/2016 Budget:

- a) General Fund - \$0 increase in accumulated surplus/working funds
- b) General Fund - \$9,096,400 increase in reserves
- c) Water Fund - \$1,959,600 increase in reserves.
- d) Sewerage Fund - \$643,300 increase in reserves

were authorised by Council at its Ordinary meeting held on 25 August 2016 via Resolution 16-444.

2. That Council note the revised estimated General Fund Accumulated Surplus/ (Working Funds) surplus of \$919,100 for the 2015/2016 financial year as at 30 June 2016 was authorised by Council at its Ordinary meeting held on 25 August 2016 via Resolution 16-444.
3. That Council note that the allocation of \$2,163,000 to internal reserve funds as indicated in this report under the heading 'Specific Cash Position' was authorised by Council at its Ordinary meeting held on 25 August 2016 via Resolution 16-444.
5. That Council adopt the following Committee Recommendation:

Report No. 6.1 Draft 2016-2026 Long Term Financial Plan
File No: I2016/901

Committee Recommendation 6.1.1

That the completion of 2016-2026 Long Term Financial Plan be based on the assumptions and scenarios outlined in this report.

5 Attachments:

- 1 Minutes of the Finance Advisory Committee Meeting held on 18 August 2016, I2016/905

Report

The attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 18 August 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2016/08/FAC_18082016_AGN_519_AT.PDF

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

Councillors were advised via Memorandum (#E2016/77869, dated 19 August 2016) of the Committee's Recommendation in relation to Report 5.2 – Carryovers for Inclusion in the 2016/17 Budget and Report 5.3 – Budget Review – 1 April 2016 to 30 June 2016. The Budget Review for the period from 1 April 2016 to 30 June 2016 was also the subject of Report 13.6 to the Ordinary meeting held on 25 August 2016. The Carryovers for Inclusion in the 2016/17 Budget was also the subject of Report 13.8 to the Ordinary meeting held on 25 August 2016.

At that meeting Council adopted the staff recommendation for *Report 13.6 – Budget Review – 1 April 2016 to 30 June 2016*, in accordance with the Recommendation from the Finance Advisory Committee (refer Resolution 16-444) and the staff recommendation for *Report 13.8 – Carryovers for Inclusion in the 2016/17 Budget*, in accordance with the Recommendation from the Finance Advisory Committee (refer Resolution 16.446).

The Committee Recommendations for *Report 5.2 – Carryovers for Inclusion in the 2016/17 Budget* and *Report 5.3 – Budget Review – 1 April 2016 to 30 June 2016* has been amended to have Council note the action that has already occurred.

Financial Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 18 August 2016.

Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 18 August 2016.

Report No. 14.2 Report of the Internal Audit Advisory Committee Meeting held on 18 August 2016**Directorate:** Corporate and Community Services**Report Author:** Mark Arnold, Director Corporate and Community Services**File No:** I2016/933**Theme:** Corporate Management
Governance Services**Summary:**

This report provides the minutes and recommendations of the Internal Audit Advisory Committee Meeting held on 18 August 2016 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Internal Audit Advisory Committee Meeting held on 18 August 2016.

2. That Council adopt the following Committee Recommendation:

Report No. 5.1 Review of Paid Parking

File No: I2016/518

Committee Recommendation 5.1.1

That recommendations contained in the factual findings report regarding Paid Parking and associated Management comments be noted by Council.

3. That Council adopt the following Committee Recommendation:

Report No. 5.2 Procurement Review

File No: I2016/716

Committee Recommendation 5.2.1

1. That the Internal Audit Report – Procurement Review - May 2016 at Attachment 1 (#E2016/74473) be noted by Council along with responses and actions detailed by Management.
 2. That Management implement the recommendations made in the report identified at Attachment 1 (#E2016/74434).
4. That Council adopt the following Committee Recommendation:
- Report No. 5.3 Interim Audit Management Letter 2016**
File No: I2016/779
- Committee Recommendation 5.3.1**
- That the comments provided by Management in response to matters raised in the 2016 Interim Audit Management Letter be noted by Council.
5. That Council adopt the following Committee Recommendation:

Report No. 5.4 Asset Preparedness Audit

File No: I2016/715

Committee Recommendation 5.4.1

That the Internal Audit Advisory Committee consider the report on the Asset Preparedness Audit in relation to Special Schedule 7 be considered and referred to Council to note the report.

6. That Council adopt the following Committee Recommendation:

Report No. 5.5 Internal Audit Progress Report August 2016

File No: I2016/791

Committee Recommendation 5.5.1

That Council receive and note the Internal Audit Report – Audit Committee (August 2016) (#E2016/74474) prepared by the Internal Auditor, Grant Thornton.

7. That Council adopt the following Committee Recommendation:

Report No. 5.6 Internal Audit Report - Developer Contributions Review

File No: I2016/868

Committee Recommendation 5.6.1

1. That the Internal Audit Report – Developer Contributions Review - July 2016 at Attachment 1 (#E2016/74707) be noted by Council along with responses and actions detailed by Management.
2. That Management implement the recommendations made in the report identified at Attachment 1.

8. That Council adopt the following Committee Recommendation:

Report No. 5.7 Update of Actions for Inventory Control Internal Audit

File No: I2016/735

Committee Recommendation 5.7.1

That the Council note the completion of the management actions for all the recommendations from the Internal Audit for Inventory Control.

9. That Council adopt the following Committee Recommendation:

Report No. 5.8 Investigation into serious misconduct by a former staff member relating to cash handling

File No: I2016/684

Committee Recommendation 5.8.1

That Council note the report and that management are implementing the recommendations contained within it.

Attachments:

- 1 Minutes of the Internal Audit Advisory Committee meeting held on 18 August 2016, I2016/909

Report

5 The attachment to this report provides the minutes of the Internal Audit Advisory Committee Meeting of 18 August 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2016/08/IAAC_18082016_AGN_515_AT.PDF

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

Financial Implications

15 As per the Reports listed within the Internal Audit Advisory Committee Meeting of 18 August 2016.

Statutory and Policy Compliance Implications

As per the Reports listed within the Internal Audit Advisory Committee Meeting of 18 August 2016.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**Report No. 14.3 Report of the Transport Advisory Committee Meeting held on 16 August 2016**

Directorate: Infrastructure Services
Report Author: Helen Waldron, EA Infrastructure Services
File No: I2016/975
Theme: Community Infrastructure
Local Roads and Drainage

Summary:

The attachment to this report provides the minutes of the Transport Advisory Committee Meeting of 16 August 2016 for determination by Council.

RECOMMENDATION:

1. That Council note the minutes of the Transport Advisory Committee Meeting held on 16 August 2016.
2. That Council adopt the following Committee Recommendation:

Report No. 5.1 Development of a Shire-wide Transport Strategy
File No: I2016/884

Committee Recommendation 5.1.1

1. That the Committee develop a Shire-wide Transport Strategy which includes:
 - a) **CONTEXT** to include consideration of:
 - congestion
 - high tourist numbers
 - lack of local public transport connectivity and regional integration
 - high carbon emissions
 - safety
 - high costs of running private vehicles
 - road condition and the cost of maintenance
 - demographics – (difficult for people who can't drive or don't have a licence)
 - access - mobility
 - lack of cycleway connectivity
 - lack of connectivity in general
 - poor location of services – making them more distant than they could otherwise be
 - high growth area – need to plan for future
 - transport costs to community from planning and commercial decisions
 - impact of future technological and social developments
 - b) **OBJECTIVES** to include consideration of:

- reduce the need for and/or dependency on private motor vehicle trips
- improve public transport
- support community transport
- increase the bike network and/or use
- improve pedestrian and residential amenity
- support advocacy, partnerships and/or community involvement
- improve road user safety
- improve integration and regional connectivity
- support climate change adaptation and mitigation
- further defining and obtaining of these objectives will be the role of the proposed transport strategy
- support of each objective can be sought via relevant Council instruction through available mechanisms regarding any proposed and/or existing activity, all of which will be explored via development of the proposed transport strategy that will be guided by Council's vision.

c) ACTIONS to include the consideration of:

- understanding user experience – feedback, surveys
 - develop priorities from user feedback, eg improve user experience by means of improved bus shelters, safer road crossings, shorter travel times, for example
 - develop measurement methods for baseline and future actions
 - integrated land use planning
2. That a draft strategy commence with a review of relevant local, state and federal programs, plans and strategies in efforts to identify funding and partnership opportunities.
 3. That Council note staff will apply by 9 September 2016 to meet the RMS Active Transport Funding deadline and it will include seeking 2017/18 funding for the revision of Council's bike plan and PAMP.

Attachments:

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- 1 Minutes Transport Advisory Committee Meeting 16/08/16, I2016/888

Report

5 The attachment to this report provides the minutes of the Transport Advisory Committee Meeting of 16 August 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

<http://www.byron.nsw.gov.au/meetings>

10 The committee recommendation is supported by management and is provided in the attachment to this report.

Financial Implications

15 As per the Reports listed within the Transport Advisory Committee Meeting of 16 August 2016.

Statutory and Policy Compliance Implications

As per the Reports listed within the Transport Advisory Committee Meeting of 16 August 2016.