



Byron Shire Council



Agenda

Ordinary Meeting

Thursday, 15 December 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 17 November 2016

6.2 Ordinary Meeting held on 17 November 2016

7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS

8. MAYORAL MINUTE

9. NOTICES OF MOTION

9.1 CZMP Report and Community Committee6

9.2 Coastal Management Committee9

9.3 Proposed NBN Fixed Wireless Tower - 308 Coorabell Road 11

9.4 Community Representatives - Regulatory Working Group 13

10. PETITIONS

11. SUBMISSIONS AND GRANTS

11.1 Submissions and Grants 15

12. DELEGATES' REPORTS

12.1 Griffith University Sustainable Economy Conference 17

13. STAFF REPORTS

Corporate and Community Services

13.1 Meeting and Strategic Planning Workshop Schedule 201722

13.2 Proposed Special Rate Variation - Update on Community Consultation and presentation of Amended Integrated Planning and Reporting documents for exhibition27

13.3 Arakwal Area at Byron Bay Cemetery35

13.4 Council Investments 27 October to 23 November 2016.....39

13.5 Review of Policies - Rates and Charges Pensioner Concessions and Financial Hardship Assistance45

BYRON SHIRE COUNCIL

ORDINARY MEETING

Sustainable Environment and Economy

| | | |
|-------|--|-----|
| 13.6 | PLANNING - DA 10.2016.486.1 Storage premises, including use of three farm buildings (18 units) and addition of 12 self-storage units relocated from Road Transport Terminal, 31 Pinegroves Road, Myocum..... | 50 |
| 13.7 | PLANNING - Development Application 10.2016.55.1 - Demolition of existing buildings and erection of two (2) residential flat buildings, containing a total of 17 x 3 bedroom dwellings, including basement parking, swimming pool, landscape works and Strata Subdivision at 17,19 & 21 Shirley Street, Byron Bay | 72 |
| 13.8 | Bangalow Village Plan Project Plan..... | 98 |
| 13.9 | Compliance Priorities Program - 2017 | 103 |
| 13.10 | Report update on resolution 16-545 Short Term Rental Accommodation | 116 |
| 13.11 | Expressions of Interest for membership of Our Mullumbimby Masterplan Guidance Group..... | 123 |
| 13.12 | Expressions of Interest for membership of Leadership Team - Byron Bay Town Centre Masterplan..... | 126 |
| 13.13 | Report of the Planning Review Committee Meeting held on 10 November 2016 | 128 |
| 13.14 | 26.2016.2.1 Submissions Report - Planning Proposal for reclassification of part of the Suffolk Park Beachfront Holiday Park..... | 130 |
| 13.15 | PLANNING - Road Airspace Policy review - Audit of Road Act Approvals December update | 135 |
| 13.16 | Report update on Council resolution 16-465 - The Farm | 142 |
| 13.17 | PLANNING - 10.2015.70.2 S96 Application to Amend Hours of Operation for Cafe at 100 Redgate Road South Golden Beach..... | 147 |
| 13.18 | PLANNING - 10.2016.716.1 Three storey dwelling house with basement garage at 27 Marine Parade Byron Bay | 167 |

Infrastructure Services

| | | |
|-------|---|-----|
| 13.19 | Project 24.2016.57.1 Land acquisition for Construction of Concrete Roundabout and Road Reconstruction at the intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay | 169 |
|-------|---|-----|

14. REPORTS OF COMMITTEES

Corporate and Community Services

| | | |
|------|---|-----|
| 14.1 | Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 25 May 2016..... | 175 |
| 14.2 | Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 24 August 2016 | 178 |

Infrastructure Services

| | | |
|------|--|-----|
| 14.3 | Report of the Local Traffic Committee Meeting held on 9 November 2016..... | 181 |
| 6.1 | Signage - Installation of No Stopping zones at The Farm and Byron Central Hospital - Ewingsdale Road, Ewingsdale | 181 |
| 6.2 | Event - Falls Festival 2016/17..... | 181 |
| 6.3 | Speed Review Request - Brunswick Valley Way and Shara Boulevard Intersection, Billinudgel..... | 182 |
| 6.4 | 24.2015.19.1 - Marine Parade, Byron Bay - Request for shared zone approval by RMS..... | 183 |
| 7.1 | Signage - Installation of No Stopping zones at Shearwater, The Mullumbimby Steiner School - Left Bank Road, Mullumbimby..... | 183 |

BYRON SHIRE COUNCIL

ORDINARY MEETING

| | | |
|-----|--|-----|
| 7.2 | Signage - Relocation of Bus Zone on Bayshore Drive, Byron Bay including Installation of No Stopping and 30-minute Parking zones..... | 183 |
| 7.3 | Request for Heavy Vehicle Restrictions - Granuaille Road & Lismore Road, Bangalow..... | 184 |
| 7.4 | Event - Byron Bay Triathlon 2017..... | 184 |
| 7.5 | Event - Bangalow Christmas Eve Carnival 2016..... | 184 |
| 8.1 | 10.2016.692.1 - Outdoor Music Event 2017 - Red Devil Park, Byron Bay..... | 185 |
| 8.2 | 10.2016.399.1 - Byron Central Health & Wellness HUB - 15 McGettigans Lane, Ewingsdale..... | 185 |

15. QUESTIONS WITH NOTICE

Nil

16. CONFIDENTIAL REPORTS

Corporate and Community Services

| | | |
|------|---|-----|
| 16.1 | CONFIDENTIAL - Tender - Provision of Water Meter Reading Services Contract Number 2016-0017 | 187 |
|------|---|-----|

Infrastructure Services

| | | |
|------|--|-----|
| 16.2 | CONFIDENTIAL - Contract 2016-0001 Paid Parking and Beach Locker Cash Collection | 189 |
| 16.3 | CONFIDENTIAL - Tender 2016-0028 Air Conditioning Service and Repair Evaluation Recommendation..... | 190 |
| 16.4 | CONFIDENTIAL - Tender 2016-0026 Cleaning of Council Buildings Evaluation Recommendation..... | 192 |
| 16.5 | CONFIDENTIAL - 2016-0030 Brunswick Heads Sewage Treatment Plant Demolition and Excavation..... | 194 |

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.

NOTICES OF MOTION

Notice of Motion No. 9.1 CZMP Report and Community Committee
File No: I2016/1278

5

I move that, in view of the return to Council of the Coastal Zone Management Plan (Byron Bay Embayment), that:

1. Council writes to Minister Stokes requesting that he provide Byron Council with copies of all reports and advices provided to him by the NSW Coastal Panel, Office of Environment and Heritage and other Government departments regarding the draft Byron Bay Embayment Coastal Zone Management Plan, so as to better enable Council to identify and rectify problems with the draft.
2. That Council staff provide a report:
 - a) That provides advice on Council's obligations under the new Coastal Management Act 2016 and draft Coastal Management State Environmental Planning Policy;
 - b) That identifies the requirements and process for revising the Coastal Zone Management Plan (Byron Bay Embayment);
 - c) That contains a needs and gaps analysis of the Coastal Zone Management Plan (Byron Bay Embayment) with reference to the Coastal Management Act 2016, the draft Coastal Management State Environmental Planning Policy and to any advice provided by the agencies mentioned in response to (1) and submissions by the community and agencies on the draft;
 - d) That advises of appropriate objectives and composition of a community panel to participate in completing the work of the CZMP (BBE) and the coastal management program for the remainder of Byron Shire;
 - e) That examines how the Coastal Management Act 2016 will affect requirements for the West Byron land release area, particularly in relation to coastal wetlands and buffers.

10

Signed: Cr Cate Coorey

Councillor's supporting information:

15 From: *Guidelines for Preparing Coastal Zone Management Plans*. Office of Environment and Heritage. NSW 2013.

" 2.2.2 Consultation

20 *Community participation during the preparation of the CZMP should exceed the minimum requirements in the Coastal Protection Act 1979 and should include consultation with local Aboriginal communities. Approaches which should be considered include:*

- 25 • *establishing a community advisory committee or reference panel to provide ongoing feedback during the preparation of the CZMP. Where such a committee or panel is established, it is important that key stakeholders including public authorities are involved, the terms of*

reference are clearly defined and council has responsibility for managing the planning process and the contents of the CZMP.

- *Running community focus groups or workshops, or providing community discussion papers or carrying out surveys on particular issues or at particular stages of the planning process (e.g. when risks are being identified or when potential management options are being considered).*
- *Providing regular updates to the community on the preparation of the CZMP (e.g. through updates on the council's website)."*

Staff comments by Shannon Burt, Director Sustainable Environment and Economy:

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

The recommendation includes 2 separate parts which are addressed below:

Part 1:

The Draft Coastal Zone Management Plan, Byron Bay Embayment (The Plan), was sent on 30 June 2016 to the Minister for Planning Rob Stokes for review and certification. Subsequent to this, Council made several requests for a meeting with the Minister to discuss the Plan.

Finally, an informal meeting about the Plan occurred with the Minister, the Mayor, Councillor Hackett, and staff on the 11 November 2016 at the NSW Coastal Conference in Coffs Harbour. At this meeting the Minister advised that he had received advice from the NSW Coastal Panel and Office of Environment and Heritage about the Plan and that these agencies had not recommended certification of the Plan in its current form; and that formal advice would be prepared by his Office and sent to Council to confirm this.

Subsequent to this meeting the Mayor wrote to the Minister again asking him to expedite his advice to Council.

At the time of writing this report a formal response from the Minister on the Plan has still not been received.

Part 1 asks that Council again write to the Minister this time to formally request copies of all reports and advices provided to him by the NSW Coastal Panel, Office of Environment and Heritage and other Government departments regarding the Plan, so as to better enable Council to identify and rectify problems with the Plan. Such a request can be made by staff in the context of a letter that again seeks his formal advice on the Plan.

Part 2:

This report should be prepared following receipt of the formal advice from the Minister about the Plan, as this advice will have a significant impact on responses given to (a-d) above in relation to which legislation, and what other requirements may or may not apply to the Plan finalisation as stipulated by the Minister in his formal advice.

This report can also provide advice on (e) above.

The new Coastal Management Act 2016 (The Act) provides a strategic vision for managing the future of coastal communities, including setting the objectives for the four different mapped coastal management areas (coastal vulnerability, coastal use, coastal environment and coastal wetlands and littoral rainforests area). The Act requires all coastal councils to develop Coastal Management Programs in consultation with their communities to set the long term strategy for coordinating management of coastal land. A Coastal State Environmental Planning Policy (SEPP) and Coastal

Management Manual have been prepared but not finalised to support the Act. The SEPP is currently on public exhibition. The SEPP includes specific development controls for the four coastal management areas which will apply to any future development at West Byron where that coastal management area applies.

- 5 The Act has not yet commenced it is dependent on the SEPP being finalised. This is expected in early 2017.

Financial/Resource/Legal Implications:

- 10 Nil

Is the proposal consistent with any Delivery Program tasks?

- 15 Yes. Task 44 Implement coastal, estuary and waterway management strategies.

Notice of Motion No. 9.2 Coastal Management Committee
File No: I2016/1279

I move that:

- 1. Council create a permanent Coastal Management Committee;**
- 2. The Coastal Management Committee comprises XX (number) staff and XX community members; and**
- 3. The Committee oversee the preparation of one or more coastal management programs covering all coasts and estuaries.**

5

Signed: Cr Cate Coorey

10

Councillor's supporting information:

Staff comments by Shannon Burt, Director Sustainable Environment and Economy:

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

15

Council considered a report at the 29 September 2016 Ordinary Meeting on a recommended structure for Advisory Committee and Panels and Council representation on these. One of these Panels formed was the Coastal Estuary Catchment Panel. The nominated Councillors on this Committee are: Councillors Coorey, Lyon and Hackett.

20

The Coastal Estuary Catchment Panel's purpose is to advise Council on priorities and integration of the various plans and strategies impacting on coastal and estuary catchments. This will include preparation of Coastal Programs under the new Coastal Management Act 2016.

25

Over time, coastal management programs will replace current coastal zone management plans. Note: that coastal zone management plans currently apply separately to the coast and estuaries under current legislation.

30

Coastal management programs will give effect to the management objectives for the four coastal management areas defined under the Act. These areas are:

- Coastal Management Area 1: Coastal Wetlands and Littoral Rainforests Area
This is an area where coastal wetlands and littoral rainforests have been identified.

35

- Coastal Management Area 2: Coastal Vulnerability Area
This area covers land exposed to coastal hazards such as beach erosion, tidal inundation and cliff instability.

40

- Coastal Management Area 3: Coastal Environment Area
This area includes key features of the coast such as estuaries, lagoons and coastal lakes and critical areas of land adjacent to these features.

45

- Coastal Management Area 4: Coastal Use Area
This area contains land with important coastal values.

Under the new Act each of the above areas while defined separately is considered from a coastal management perspective to be part of a whole coastal area that requires an integrated and holistic approach to strategy, planning and development.

- 5 The recommendation above is seeking to create a separate Coastal Management Committee to that of the newly formed Coastal and Estuary Catchment Panel. It is unclear however from the information provided how a separate Coastal Management Committee would differ in purpose or outputs to that of the Coastal and Estuary Catchment Panel. In the circumstances and if required a specific project reference group and or working group of Panel members could otherwise be
- 10 formed to look specifically at any coastal policy or plan under preparation as part of the requirements of a coastal program. This can be done without the need for promulgating another Council committee.

Financial/Resource/Legal Implications:

- 15 Each Committee and or Panel operates under an adopted Constitution and Code of Meeting Practice.

Is the proposal consistent with any Delivery Program tasks?

- 20 Yes - Facilitate and support Council and Council committees.

Notice of Motion No. 9.3 Proposed NBN Fixed Wireless Tower - 308 Coorabell Road
File No: I2016/1280

I move that Council write to NBN Co., Visionstream, and the Federal Minister for Communications, Mitch Fifield, formally requesting that no site preparation or construction on the proposed tower at Coorabell Road commence until:

- a) **It is proven with certainty that NBN has fully complied with all applicable provisions of INDUSTRY CODE C564: 2011 MOBILE PHONE BASE STATION DEPLOYMENT.**
- b) **Council also write requesting a review of the process that determined wireless over the more efficient option of fibre optic cable that provides a far superior service, will not outdate quickly and does not present any potential health risks.**

Signed: Cr Sarah Ndiaye

Councillor's supporting information:

Background:

In making this motion, I refer to the following statement currently on the ACMA website brought to my attention by residents living in the vicinity of the proposed tower who firmly object to the tower being built on this location.

"Telephone / internet service providers and NBN Co are participants in the telecommunications industry and required to comply with relevant industry codes and standards."

For example, residents near the proposed site for the tower have raised concerns regarding possible deficiencies in NBN's compliance with the following Sections of the code

"4.1.3 For new sites, once the preferred option has been selected, the Carrier must make available to the public on request the Summary of the sites considered and the reasons for the selection of the preferred option."

Note: NBN has not provided such a Summary or credible reasons for their preferred option at Coorabell Road. In addition to this, it is doubtful that nearby homes to arise from the recent Community Title approvals in close proximity were factored in by NBN in making their site selection.

"6.2.2 The Carrier must develop a draft Consultation Plan for the site. This must be in writing and set out the consultation that the carrier proposes to carry out in relation to a site."

Note: A number of residents near the preferred site have reported that they were not duly advised of the development or included in NBN's "Community Consultation" process. This points to inadequacies in the Consultation Plan or implementation thereof.

Numerous wireless and phone towers are planned for construction throughout our Shire. Community objections to the tower at 308 Coorabell Road have highlighted a possible lack of understanding relating to the legal obligations of those parties involved.

I believe it is reasonable that these obligations be firmly established and committed to prior to any further action, and that a system of best practice be thereby enshrined so as not to require the same matters to be revisited by Council and affected residents on each future occasion.

5 Staff comments by Wayne Bertram, Manager Sustainable Development, Sustainable Environment and Economy:

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

10 Council was originally informed on the 18 August, 2016 regarding a proposal to install a telecommunication facility at Lot 1 DP 1134147 at 308 Coorabell Road, Coorabell with the proposed development involving:

- 15 • Installation of 3 panel antennas
- 1 radio communications dish antenna onto a proposed 49.5m lattice tower
- Associated equipment housing established adjacent to the tower

20 Council has subsequently been advised that a Complying Development Certificate under the *State Environmental Planning Policy (Infrastructure) 2007* was issued on the 27 October 2016 to permit the construction of the telecommunications facilities.

25 The Complying Development Application was made to an Accredited Certifier – Mr Troy Myers, who has made the final decision that the development complies with the prescribed requirements of the *State Environmental Planning Policy (Infrastructure) 2007* and issued the Complying Development Certificate.

30 Council staff are able to write to NBN Co., Visionstream, and the Federal Minister for Communications, Mitch Fifield, formally requesting that no site preparation or construction on the proposed tower at Coorabell Road commence until the requested information in the Notice of Motion has been provided.

Financial/Resource/Legal Implications:

35 Writing to NBN Co., Visionstream, and the Federal Minister for Communications, Mitch Fifield can be accommodated within the existing resource allocations.

Is the proposal consistent with any Delivery Program tasks?

N/A

Notice of Motion No. 9.4 Community Representatives - Regulatory Working Group
File No: I2016/1283

I move that Council nominate an additional community representative to the Northern Parklands Regulatory Working Group and recommend that _____ be the third community representative.

5

Signed: Cr Basil Cameron

10

Councillor's supporting information:

The Regulatory Working Group (RWG) was established as part of the conditions of consent on the five year trial for North Byron Parklands (NBP) by the Planning and Assessment Commission (PAC).

15

Condition C2 sets out the constitution and role of the RWG and that Council shall nominate 'at least two representatives of the local community' for a two year appointment on the RWG.

20

The main function of the RWG is to 'oversee the environmental performance of events during the trial period' that includes the following (C2)

- Habitat Restoration Program
- Marshall's Ridge wildlife corridor
- 25 • Impacts on threatened species and endangered ecological communities, monitoring protocols for pre-construction, ecological surveying
- Illegal camping
- Litter
- Provision of security services
- 30 • Noise
- Event traffic and car parking
- Flooding
- Bushfires
- Evacuation procedures

35

Previous community representatives have played a critical role in RWG monitoring and resolving a range of issues specified by the conditions of the consent. Having the confidence of the communities most affected by the development has been an important part of the successes of the RWG and the community representatives. It is vital that community representatives are not perceived to have conflicts of interest as this undermines their effectiveness and the ability of the RWG to make meaningful improvements.

40

Definition of the project/task:

45

Advise North Byron Parklands of any additional Community Representative nomination.

Source of Funds (if applicable):

No new funding source required.

50

Staff comments by Ralph James, Legal Services Coordinator, Corporate and Community Services:

5 The Notice of Motion raises the question as to whether it is open to appoint additional people to those already appointed by resolution 16-595.

10 The New South Wales Planning Assessment Commission approved in April 2012 a five year trial of the North Byron Parklands festival site at Yelgun. This approval included a consent condition that requires the proponent to form the North Byron Parklands Regulatory Working Group.

The purpose of the RWG being to oversee the environmental performance of events, during the trial period. The related condition is reproduced below:-

15 *“C2 Regulatory Working Group – constitution and role
The proponent must establish a Regulatory Working Group (RWG) to oversee the environmental performance of events during the trial period. The RWG must:
(b) **comprise at least two (2) representatives of the local community nominated by the Council.** Community representatives are appointed on a rotational basis with a representative not exceeding two (2) years;(emphasis added).*

20 The word "must", or a similar term, used in relation to a function indicates that the function is required to be exercised. As such, clause C2 (b), properly interpreted, requires that the RWG comprise at least 2 representatives of the local community and that those local representatives are nominated by Council.

25 In the present context the word “nominated” means “appointed”. Its signification is in the same sense as “I nominate A B, executor of this my last will”.

30 The proponent, pursuant to the clause has no role to play in respect of the appointment of the community representatives. The clause does not allow the proponent the right to confirm or veto the appointment. Neither does it allow the proponent to set the number of community representatives appointed by Council. The only proviso is that there must be at least two.

35 Accordingly it is open to Council to resolve to nominate an additional person/s to the RWG.

Financial/Resource/Legal Implications:

No significant financial implications and legal implications are as above detailed in staff comments.

40 Is the proposal consistent with any Delivery Program tasks?

NA

SUBMISSIONS AND GRANTS

Report No. 11.1

Submissions and Grants

Directorate:

Sustainable Environment and Economy

Report Author:

Claire McGarry, Events Liaison and Grants Support Officer

File No:

I2016/1202

Theme:

Corporate Management
Governance Services

Summary:

This report provides an update to Councillors on grant submissions since the previous Council meeting.

RECOMMENDATION:

That Councillors note the report.

Report

This report provides an update to Councillors on grant submissions since the previous Council meeting.

5

Funding Applications Submitted

No funding applications were submitted during the period 17 November – 23 November 2016.

Funding opportunities identified for consideration by staff

10 No additional funding opportunities were identified during this period.

Funding submissions awaiting notification

- 15
- ClubGrants NSW Round 3
 - Tourism Demand-Driver Infrastructure Funding
 - Community Passenger Transport Infrastructure Grants
 - NSW RMS Active Transport Funding
 - NSW Environmental Trust Restoration and Rehabilitation Program
 - Department of Environment and Energy Green Army Funding

20 It should also be noted that staff are actively working to prepare major project submission for the following funding rounds as soon as they are announced:

- 25
- Bridges for Renewal funding
 - Building Better Regions funding
 - Regional Tourism Infrastructure fund
 - 'Poles and Wires' funding (NSW Government)

Financial Implications

N/A

30

Statutory and Policy Compliance Implications

N/A

DELEGATES' REPORTS

Delegate's Report No. 12.1 Griffith University Sustainable Economy Conference
 File No: I2016/1287

5

Delegates Notes - November 28-29, Griffith University, Brisbane

Especially insightful were John Hewson's presentation on Divestment, the Climate Finance Panel and Climate Change Innovation Community in Australia presentation.

This was a wonderful and insightful conference at which Byron was showcased and hugely supported.



Pathways to a sustainable economy

Bridging the gap between Paris Agreement commitments and 2030 targets

The Paris Climate Change Goals

Professor Brendan Mackey, Griffith University

- How Urgent? Existential threat:
 - We risk 'planetary hyperprexia.' The average surface temperature of planet is 14 degrees, so 2 degrees is 15%; if this rise occurred in a human body-it would cause hyperprexia and would be a medical emergency.
 - To meet Paris target, global emission must reach zero by 2050
 - National goals must meet global needs as unless everyone wins, everyone loses.
 - 'Trumpism'/'Hansonism' has shown we need to speak to people, rather than just political parties and more importantly we need to listen.

Dr Luke Kemp, Australian National University

- Impossible to discuss Marrakech without talking about Trump
- Wicked problems place an emphasis on dialogue and diplomacy-in dealing with this matter rather than an idea of 'all talk, no action' talk is action.
- Finally, countries are seeing mitigation action as a net economic benefit, rather than penance or a punishment.
- Internal and External differences. Inside Australia, we need 'carrots'-to speak of benefits of what change could look like. Outside Australia and between countries, we need to be strengthening 'sticks'

Erwin Jackson, Depute CEO, The Climate Institute

- Clean energy momentum is unstoppable
- Investors are having an impact- Black Rock (5 times OZ economy), Norway Oil Fund etc
- Republican Senator Chuck Grassley campaigned on bringing wind jobs to Iowa-he won.

Politics and the Impact of Divestment

Professor John Hewson, Australian National University

- Incredible investment and economic opportunities from climate change response.
- Disturbed to see the reaction against renewables for the SA blackout-completely opportunistic
- Hopefully China will pick up slack and take leadership role s Trump reality kicks in
- The biggest response to climate change will come through investment sector-currently 50% of all funds are in climate risk exposed funds
- Bloomberg report will shortly enforce disclosure to risk-leading to mandatory disclosure- THIS IS A MASSIVE GAME CHANGER-AS MUCH AS PARIS WAS FOR NATION STATES. Linking climate risk to investment risk is huge.
- Total 'Telsa Solution'-roof, house and car energy and storage is happening and will continue.
- Extreme weather events, govt response and technology all combined will lead to stock market revolution-or collapse and rebuild. Far eclipsing the Sub Prime crisis in the US.
- Intergenerational theft that Abbott talks about concerning debt is the same for climate change response
- Turnbull's history of climate change policy generally historically only for a point of difference to other leaders and aspirants.
- Fossil Fuel Companies are quite duplicitous- on one hand talking up renewable, yet still buying up old coal. Little honesty-AGL a key protagonist in stymying renewable targets.
- Gillard should have educated the community as to why she changed her mind. Policy is key, but so too s the message and education task-leaders are not prepared to take on task to educate.
- Divestment plays a role. 80-90% drop in coal prices whilst tesla shares go from a few dollars each to over \$200 shows it doesn't take much, it isn't rocket science to move investment away from fossil fuel and coal.
- The Adani mine will never be built, unless heavily financed by the Indian government-, which is unlikely. It is already a stranded asset. Even the Qld is supporting it knowing it will never be built.
- Financial markets do not understand risk and don't price it appropriately or accurately. The Sub Prime crisis an example-a punt on prices always going up, so loaned to those usually not financially responsible or solvent. Energy and climate change risks ignorance is following going the same path.
- Therefore, global political targets would avoid this as it would set stable perimeters.
- Peer pressure between financial bodies lead to change-when one pension fund moves away from climate change risk investments and still get AAA rating, others ask 'what are they doing, and why don't we?'

Climate Finance: Aligning Australia to the Global Imperatives

Tony Cole, Economic Advisor and Investment Expert

- We need people to lose money and significant amount to make Trustees see the importance of avoidance of risk from climate change. That changes the Trustees view from risk aversion from taking it seriously to risk aversion from not taking it seriously.

Mark Joiner, former CFO NAB

- Class actions will force change- Courts will be told-97% of scientists said this, why did my company still buy these shares?

Emma Herd, CEO, Investor Group on Climate Change

- The need for corporate reporting change is huge and it is on the doorstep. Companies will soon have to disclose risk, have to show forward planning and transitional planning etc. This is why the Bloomberg work will be so influential.

Phillip Vernon, CEO, Australian Ethical Super

- Democracy invented 300 years and now the dominant force for organisation- driven by self interest. The pure profit performance system needs fixing-it needs to accept stewardship function and responsibility. The system must change.
- Ethical investment doesn't need to risk a businesses investment- ethical investments are regularly top percentile performers.
- Out of Paris came the understanding that \$1 trillion a year needs to move into climate change investment-currently it sits at a few hundred million.

Climate Change Innovation Community in Australia

Mary Ritter, CEO, European Union Climate Knowledge Innovation Community- KIC

- Incredibly exciting and opportune entity for Byron to leverage support-especially in the field of sustainable tourism. Possible funding could lead to engagement and collaboration from byron to the KIC Aust.

Planning and Policy Sessions

Planning for climate change: How the NSW planning system can better tackle greenhouse gas emissions

Nari Sahukar, Environmental Defenders Office New South Wales

EDO Report-Planning for Climate Change: How the NSW Planning System Can Better Tackle Greenhouse Gas Emissions

- Identifies barriers
- Assesses 6 stages of the system
 1. Setting the framework: recommends new Climate Change Act and new EP and A Act objectives
 2. Strategic Land Use Planning: recommends Planning Act (part 3) regional planning to address GHG's
 3. Environmental Impact Assessment: recommends Climate Impact Statement submitted with EIS, standard assessment guidelines and independent accredited assessors for EIA
 4. Development Decisions: recommends new duties in EP and A Act to assess emissions and impose conditions and update and expand BASIX standards to other building types
 5. Other Related Approvals: recommends EPA and Pollution Laws and Licences limit emissions and Mining laws to consider emissions upfront before titles issued.
 6. Compliance and Enforcement: recommends a new greenhouse monitoring and

auditing register

A sea change undergoing within the department-thus, they were quite open to the ideas within the report.

Climate change in tourism policy and planning: a discourse analysis from 2004-2014

Dr. Brent Moyle, Griffith University

How do current current policies and plans address climate change?

- 21% mentioned climate change
- Beach and Coastal Tourism
- sea level rising
- degraded beaches reduce desirability of destinations
- beach erosion can reduce prices operators can charge

Climate Change: Leadership and Change

Professor Christopher Wright, University of Sydney

Professor Jem Bendell, University of Cumbria

- CC forces us to look in the mirror and confront our own death and end. It has reacting like we do with other personal tragedies. However, it is also an incredible spiritual awakening.

Do we need top convince skeptics that climate change is real? *Paul Bain*

- Better to use the terms convinced and unconvinced rather than believer and sceptic
- rather than try and make people think it is important, we should link it to things people already believe are important. This is co-benefit.
- When surveying 'unconvinced' about the importance of improving the development of society, the results were the same for convinced.
- Therefore, challenges before us-

1. Communicating Co-Benefits to Community:

- reading statements about the improvement of society (benevolence) and the development (new industries etc) polled better than the risks in climate change-for both convinced and unconvinced.
- However, when sharing on Facebook, the risks were more shared than development and benevolence

2. How to embed Co-Benefits into Community

- having groups compete, bringing family friendly tasks into mainstream, sharing the feel good factor of working together-building a better community

3. Convincing the Climate Change community this is worthwhile

- Scientists often think it is being intellectually dishonest to promote action without adding to the knowledge about the science-it is manipulative and sneaky.

Mitigation in the Sectors

Professor Susanne Becken, Griffith University (Peak Oil and Aviation)

- Aviation fuel will increase significantly-this will have huge impacts on Tourism- consider Byron.
- Global Tourism Fund? \$1 per international visitor.

Professor Brendan Mackey, Griffith University (Forests and Carbon)

- 1990's-only 5% of emissions reduction could be used by land offset mitigation
- Land carbon is larger than known oil and coal
- Avoiding emissions through forest conservation is essential
- Land Carbon mitigation does not offset fossil fuel emissions, as it results in 'avoided emissions' or restoration of previously depleted stocks
- Australia should set separate mitigation reduction targets for land and fossil fuel carbon

Showcasing Innovation, PechaKucha Session
Dee Garnsworthy, COO, ENOVA Energy
David Hood, Beyond Zero Emissions
Simon Richardson, Mayor, Byron Shire Council
David Baggs, Global Green Tag
Natalie Isaacs, 1 Million Women

Discussion

Post Script:

The presentation on Zero Emissions Byron and the complimentary nature of the ENOVA presentation caused quite a positive stir! After the event, we were invited to be the keynote presentation and focus of a community forum showcasing Zero Byron and any other relevant local council sustainable initiatives. Griffith University is looking to Byron to share what we are doing with the City of Brisbane and other Qld Councils.

Signed: Cr Simon Richardson

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.1 Meeting and Strategic Planning Workshop Schedule 2017

Directorate: Corporate and Community Services

Report Author: David Royston-Jennings, Corporate Governance and Strategic Planning Officer

Mila Jones, Corporate Governance Coordinator

File No: I2016/1137

Theme: Corporate Management

Governance Services

Summary:

Council resolved at its Extraordinary meeting on 29 September 2016 that a report be brought to Council containing a schedule of Ordinary Meetings and Strategic Planning Workshops for 2017, with 12 Ordinary Meetings and 12 Strategic Planning Workshops, with two Ordinary Meetings in February and two Ordinary Meetings in August with recesses to be incorporated in January and July (refer Resolution **16-487**).

Council further resolved at its Extraordinary meeting on 29 September 2016 that a report be brought to Council which addressed the implications of evening meetings and include feedback from the community as to their attitude to such a proposal (refer Resolution **16-488**).

This report is prepared in response to Council Resolution 16-487 and 16-488 in order that Council can determine the schedule of Ordinary Meetings and Strategic Planning Workshops for the 2017 calendar year.

Council further resolved at its Extraordinary meeting on 29 September 2016 to adopt dates for its Advisory Committee and Panel meetings for 2017. Following Council resolution 16-487, these dates are required to be amended. Recommendation 2 addresses this requirement by presenting new dates for Council's adoption, replacing those adopted in Council resolution **16-489**.

The proposed schedule of dates, times and places for the Ordinary Meetings, Strategic Planning Workshops, Advisory Committees and Panels in 2017 is recommended for adoption.

RECOMMENDATION:

- That Council adopts the following schedule of Ordinary Meetings and Strategic Planning Workshops (SPW) for 2017:**

| Date (2017) | Meeting/Workshop |
|-----------------|------------------|
| 24 January | SPW |
| 2 February | Ordinary |
| 9 February | SPW |
| 23 February | Ordinary |
| 9 March | SPW |
| 23 March | Ordinary |
| 6 April | SPW |
| 20 April | Ordinary |
| 11 May | SPW |
| 25 May | Ordinary |
| 8 June | SPW |
| 22 June | Ordinary |
| Mid-year recess | |
| 3 August | Ordinary |
| 10 August | SPW |

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.1

| | |
|--------------|----------|
| 24 August | Ordinary |
| 7 September | SPW |
| 21 September | Ordinary |
| 5 October | SPW |
| 19 October | Ordinary |
| 9 November | SPW |
| 23 November | Ordinary |
| 7 December | SPW |
| 21 December | Ordinary |

2. That the following revised dates and times be adopted for Council's Advisory Committee and Panel meetings for 2017:

| Meeting | Date (2017) |
|--|--|
| Advisory Committees | |
| Arakwal Memorandum of Understanding (Thursday 9.00am) | 2 March 1 June 14 September 14 December |
| Finance (Thursday 2.00pm) | 16 February 18 May 17 August 16 November |
| Internal Audit (Thursday 11.30am) <i>* Extraordinary</i> | 16 February 18 May 17 August *12 October 16 November |
| Transport and Infrastructure (Thursday 9.00am) | 16 February 18 May 17 August 16 November |
| Water, Waste and Sewer (Thursday 11.30am) | 2 March 1 June 14 September 14 December |
| Panels | |
| Biodiversity and Sustainability (Thursday 11.30am) | 30 March 29 June 31 August |
| Coastal Estuary Catchment (Thursday 2.00pm) | 16 March 4 May 28 September 30 November |
| Communications (Thursday 9.00am) | 30 March 29 June 31 August |
| Heritage (Thursday 2.00pm) | 30 March 29 June 31 August |
| Public Art (Thursday 9.00am) | 16 March 4 May 28 September 30 November |
| Sustainable Economy (Thursday 11.30am) | 16 March 4 May 28 September 30 November |

3. **That the Ordinary Meetings be held in the Council Chambers, Mullumbimby with a start and finish time to be determined by Council.**
4. **That the Code of Meeting Practise be amended (if necessary) to reflect the adopted meeting schedule and times.**

Attachments:

- | | |
|-----|--|
| 1 | Amended Council Meeting Matrix 2017 PDF, E2016/104649 |
| 5 2 | When should Council meetings be held? Survey Results, E2016/103079 |

Report

Council resolved at its Extraordinary meeting on 29 September 2016 that a report be brought to Council containing a schedule of Ordinary Meetings and Strategic Planning Workshops for 2017, with 12 Ordinary Meetings and 12 Strategic Planning Workshops, with two Ordinary Meetings in February and two Ordinary Meetings in August with recesses to be incorporated in January and July.

Council Resolution **16-487** reads as follows:

"That a report be brought to Council containing a schedule of Ordinary Meetings and Strategic Planning Workshops for 2017, with 12 Ordinary Meetings and 12 Strategic Planning Workshops, with two Ordinary Meetings in February and two Ordinary Meetings in August with recesses to be incorporated in January and July."

The schedule below has been prepared in accordance with Council Resolution 16-487. The schedule has been prepared with consideration to events, such as public holidays and conferences. Listed below is the proposed 2017 Meeting Schedule:

| Date (2017) | Meeting/Workshop |
|-----------------|------------------|
| 24 January | SPW |
| 2 February | Ordinary |
| 9 February | SPW |
| 23 February | Ordinary |
| 16 March | Ordinary |
| 23 March | SPW |
| 6 April | Ordinary |
| 13 April | SPW |
| 27 April | Ordinary |
| 18 May | Ordinary |
| 25 May | SPW |
| 8 June | Ordinary |
| 15 June | SPW |
| 29 June | Ordinary |
| mid-year recess | |
| 3 August | Ordinary |
| 10 August | SPW |
| 24 August | Ordinary |
| 14 September | Ordinary |
| 21 September | SPW |
| 5 October | Ordinary |
| 12 October | SPW |
| 26 October | Ordinary |
| 16 November | Ordinary |
| 7 December | SPW |
| 14 December | Ordinary |

- The 2017 National General Assembly of Local Government will not affect the meeting dates as it is scheduled to be held from 18-21 June 2017 in Canberra.
- The date for the LGNSW Annual Conference 2017 has not yet been determined however based on previous Conference dates, it will most likely be held between the Ordinary meetings scheduled on 5 and 26 October and will therefore not affect the meeting dates.
- Easter public holidays will not affect the meeting dates as they fall during the dates 14-17 April 2017.

As the proposed schedule includes two February meetings, a Strategic Planning Workshop is required during the January recess period.

Submission Feedback

- 5 Council resolved at its Extraordinary meeting on 29 September 2016 that a report be brought to Council regarding the implications of evening meetings, including feedback from the community as to their attitude to such a proposal.
- 10 Council Resolution **16-488** reads as follows:
- “That a report be brought to Council regarding the implications of evening meetings and that the report include feedback from the community as to their attitude to such a proposal.”*
- 15 Council created, and advertised over a four week period, a survey to obtain feedback from the community on their preference for when Council meetings should be held. This survey was advertised on Councils website, Facebook and in the Byron Shire News, and closed on Thursday 24 November 2016.
- 20 Council received 52 responses to this survey. Question 4 of the survey specifically asked how likely the person would be to attend Council meetings if they were held after hours (ie after 4.00pm Monday – Friday). The responses from 1 (not at all likely) to 5 (very likely) were:
- 17.31% - 1 (Not at all likely)
- 25 15.38% - 2
25.00% - 3
15.38% - 4
26.92% - 5 (very likely)
- 30 Full feedback from this survey is included in this report as Attachment 2.

Financial Implications

- 35 Should Council resolve to hold evening Council meetings, extra financial implications for meetings would include payment of overtime for staff below the level of senior management should they be required to answer questions during the meeting, as well as for minute taking staff (one minute taker per evening meeting).

Statutory and Policy Compliance Implications

- 40 The proposed 2017 Meeting Schedule will require an amendment to Council’s adopted Code of Meeting Practice 14/004.

- 45 Council’s adopted Code of Meeting Practice Policy No. 14/004 currently 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.

- 50 4.2 The Council will by resolution, set the time, date and place of Ordinary meetings of the Council.

- 55 4.3 The scheduling of Ordinary meetings of Council may be changed by resolution of Council.

Report No. 13.2 Proposed Special Rate Variation - Update on Community Consultation and presentation of Amended Integrated Planning and Reporting documents for exhibition

Directorate: Corporate and Community Services
Report Author: Mark Arnold, Director Corporate and Community Services
File No: I2016/1196
Theme: Corporate Management
 Financial Services

Summary:

This Report provides Councillors with the results from the community consultation and feedback received during Phase 3 of the proposed Special Rate Variation (SRV) process, and which was endorsed by Council on 6 October 2016, as part of the SRV engagement program. Council consulted with the community during the period from 26 October to 28 November on the proposed SRV through an array of different platforms including a telephone survey, online survey, a telephone hotline, receiving written and verbal submissions, reply paid cards that was sent out in the mail to every ratepayer and over 54 hours spent on Community Information Stands and Market Stalls between 31 October and 19 November. Overall, Council received feedback (via these various mechanisms) from over 2,500 community members demonstrating a significant level of awareness about the proposed SRV.

The Guidelines for the Preparation of an Application for a special variation to general income for 2016/2017 specify the Council's Integrated Planning and Reporting (IP&R) documents as a key requirement to support any application to the Independent Regulatory and Pricing Tribunal (IPART) for a SRV. Specifically the Council's IP&R documents need to demonstrate that any rate variation applied for is consistent with the priorities and objectives of the Council's Community Strategic Plan, and corresponding strategic documents, and provide a rationale for its application. The relevant documents have been amended and are summarised in this Report and attached in full for your reference.

Should Council proceed with Phase 4 of the SRV engagement program (exhibition of the amended IP&R documents) for an application for an SRV, it is required to lodge a Notice of Intent to apply for a rate variation with the IPART before the end of the year. A copy of the Notice of Intent to Apply has been prepared and attached to this report.

RECOMMENDATION:

1. That Council receive and note the feedback from the community during Phase 3 of the Special Rate Variation Engagement process, conducted over the period from 26 October to 28 November 2016 (Attachment 1 #E2016/105355).
2. That Council adopt the amended Integrated Planning and Reporting documents included as Attachment 2 (#E2016/103981), 3 (#E2016/100839) and 4 (#E2016/103686) to this Report (incorporating the Special Rate Variation rationale and amendments) and place these documents on public exhibition for 28 days (excluding public holidays) for community consultation.
3. That Council lodge a Notice of Intent to Apply for a Special Rate Variation to the Independent Pricing and Regulatory Tribunal, as the next step in the process, with the Notice to be submitted to IPART on 16 December 2016.

Attachments:

- 1 Community Consultation and Engagement Feedback, E2016/105355
- 2 Revised Draft Delivery Program 2014-2018 (Dec 2016), E2016/103981
- 5 3 Draft Strategic Asset Management Plan, E2016/100839
- 4 Byron Shire Council Draft Long Term Financial Plan 2016-2026, E2016/103686
- 5 IPART Notice of Intent to apply for SRV, E2016/104739

10

Report

Preliminary

- 5 The Office of Local Government announced on 29 November 2016, for the 2017/18 Financial Year, rate peg limit of 1.5%. Council based on advice from IPART had estimated a figure for the 2017/18 Financial Year rate peg limit of 2.5%. Although the last years rate peg limit was 1.8%, being considered low, the previous 5 year average to 2014/15, was an average of 2.9% per annum.
- 10 This recent announcement is relevant to the content of this report however as stated, the options for a proposed rate variation that Council has recently consulted the community on are not subject to change as the estimated rate peg was built into the options for increase. It is worth noting the acknowledgements in the media release made by LGNSW President Keith Rhoades, that the rate peg, calculated by IPART on the basis of the Local Government Cost Index, failed to allow councils
- 15 to address the infrastructure renewal backlog.

Overview of Process

- 20 The image below provides a visual summary of the steps Council has taken so far to get to this point in preparing to apply for a rate variation and what are considered as the next steps toward the lodging of an application in February 2017.



25 Council Improvement Program & 'Fit for the Future'

- 30 In March 2013 State Government Treasury Corporation (**TCorp**) released its 'Financial Assessment, Sustainability and Benchmarking Report' on Byron Shire Council and it described Council's financial outlook as "weak and deteriorating".

Following this, in 2014 State Government released its local government 'Fit for the Future' program. In 2015, Council was required to develop a Council Improvement Program (**CIP**) demonstrating what actions would be required to improve Council's financial sustainability.

Council's CIP, adopted in June 2015 contained 5 Key Strategies. The 5 Key Strategies were complimentary to each other and designed to be implemented together as a package to build Council's financial sustainability. None of the 5 Key Strategies were new to Council's planning and reporting framework, including a forecasted Special Rate Variation, being already part of Council's Financial Sustainability strategies, Delivery and Operational Plans.

A summary of the 5 key strategies in Council's adopted CIP are:

1. Implementation of Paid Parking in Byron Bay – Already actioned.
2. Asset Realisation (Sale and Development of Land) – Largely already actioned.
3. Increase in rates up to 10% (including any rate peg increase and the streamlined 3% rate increase referred to in Key Strategy 5).
4. Efficiencies and Strategic Procurement Savings – Already being actioned and achieved – ongoing.
5. Accessing the streamlined 3% above rate peg rate increase – Cannot now occur.

In addition to the key Improvement Strategies in the CIP, the remaining strategies in the Financial Sustainability Project Plan and other improvement initiatives also continue to be achieved. These other improvements are not so big that they individually affect Council's performance against the FFF benchmarks, but collectively they continue to make a positive contribution to Council's long term financial sustainability and also to the services that Council delivers to its community.

Some examples of other improvement or revenue initiatives currently underway include:

- Review of revenue generating commercial opportunities across a range of Council assets.
- Review of maintenance activities on Crown Lands and equitable recoupment of costs to Council.
- Visitor revenue opportunities other than paid parking, for example continuing to lobby for an accommodation levy.
- Continuing to lobby for a review of the Financial Assistance Grants Formula.
- Continuing to identify and act on improvement opportunities across all service areas.

Phase 3: Complete – 'Funding our Future' Community Consultation and Engagement on proposed SRV

At its Ordinary meeting on 6 October 2016, Council resolved to endorse and proceed to the Community Consultation and Awareness process for the proposed special rate variation.

The key objective of Phase 3 was to consult with the community and generate awareness concerning the proposed special rate variation options, and identify the preferred scenario to raise the additional revenue required to fund the Council's infrastructure and asset renewal and maintenance programs, developed in response to the Council's Infrastructure Backlog, with the preferred scenario to be applied or implemented over a four year period.

Applying the information that was collected during 'Phase 2: Asset Survey and Review', Council conducted detailed financial modelling to propose three funding options for a rate variation to be considered by the community. The options presented to the community are summarised as *Option 1: Deteriorate – 7.5%. Option 2: Maintain – 10%. Option 3: Improve – 12.5%.*

Council undertook a number of different methods to increase community awareness about the proposed SRV options being considered, and sought feedback on each of the specific options

outlined above. The main sources of information provided to the community included a booklet titled 'Funding our Future' which was distributed to all ratepayers on 26 October 2016 with a reply paid card for the purpose of providing feedback to Council on and the Funding our Future project. Refer to Councils website <http://www.byron.nsw.gov.au/funding-our-future>.

The Community Consultation and Engagement Report (**Attachment 1**) details each of the methods used by Council to engage and consult with the community, and highlights the overall results obtained from community feedback.

Phase 4: We are here – Community Consultation on amended IP&R Documents.

At its Ordinary Meeting on 6 October 2016, Council received background information on what Phase 4 of the SRV process would entail. The table below was included in that report and is a high level representation of where we are now at in the process.

| Action | Timeframe |
|---|---------------------------------------|
| Finalisation of Integrated Planning and Reporting framework documents. | November 2016. |
| Finalisation of outcomes from SRV survey and community consultation. | November – December 2016. |
| Decision to Council as to whether to adopt and place draft IP & R documents, including SRV information on Public Exhibition. | December 2016 Council meeting. |
| Public Exhibition of draft IP & 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. |
| Decision to Council as to whether to make an application to IPART for a Special Rate Variation. | February 2017 Council meeting. |

The Amendment of IP&R documents to include appropriate references to a special rate variation and placing these documents on public exhibition is a key step in the process towards making an application to IPART for a special rate variation.

IPART requires Council to amend the Delivery Program, Long Term Financial Plan and Strategic Asset Management Plan to ensure that each of these documents outline the rationale for an SRV, its impact on ratepayers and the benefits of what may be achieved by an SRV. In addition to the IP&R documents listed here, Council must also be able to demonstrate that any rate variation applied for is consistent with the priorities and objectives of the Councils Community Strategic Plan. All documents that are amended for this purpose require a 28 day public exhibition period.

This section of the Report provides a summary on each of the documents required to be submitted and reviewed by IPART in assessing any proposed SRV application.

- **Community Strategic Plan (CSP)**

Councils CSP has been reviewed for the purpose of identifying the existing references to the proposed special rate variation process. Given that the existing CSP includes the following items listed below which go towards and demonstrate support of making an application for an SRV and amending the relevant IP&R documents accordingly, it was decided that the CSP would not need to be amended for the purpose of applying for an SRV.

| Relevant CSP Community Strategy | |
|---------------------------------|---|
| CI 1.1 | Provide a network of accessible cycleways and walkways that link with public transport. |

| | |
|--------|---|
| CI 1.4 | Plan for future traffic demands. |
| CI 2.3 | Provide roads and drainage infrastructure within the Shire. |
| CI 2.5 | Pursue strategic regional resource sharing initiatives. |
| CI 3.1 | Maintain roads and drainage in a safe and operational condition. |
| CI 3.4 | Ensure all public parks and open spaces are accessible, maintained and managed to meet the recreational needs of current and future residents. |
| CI 3.6 | Maintain safe and legislative compliant community buildings and swimming pools. |
| CI 4.2 | Incorporate proposed new infrastructure works in the long term financial plans of Council. |
| CM 1.2 | Ensure Council decision making supports fair allocation of resources, services and facilities. Pursue strategic regional resource sharing initiatives. |
| CM 1.3 | Improve organisational sustainability (economic, social, environmental and governance). |

• **Revised Delivery Program (DP Dec 2016)**

Councils Revised Delivery Program 2013 – 2017 has been reviewed and amended for the specific purpose of incorporating the proposed special rate variation scenarios into a chapter titled “Funding our Future”.

As a result of these amendments, the revised DP Dec 2016 includes minor amendments for the purpose of context and cohesion with corresponding IP&R documents. The revised DP Dec 2016 is attached to this report as **Attachment 2**.

• **Revised Strategic Asset Management Program (SAMP)**

The SAMP takes the organisational outcomes in our Community Strategic Plan, and develops the asset management objectives, principles, framework and strategies required to achieve our organisational outcomes. The SAMP summarises activities and expenditure projections to achieve the overall asset management objectives. The SAMP reflects recent commitments made in Council’s Fit for the Future Improvement Plan and the Financial Sustainability Plan. It sets out how Council can achieve a sustainable capacity for timely asset renewal and a structured set of Strategic Actions aimed at enabling Council to improve its asset management practices and service delivery needs.

The revised SAMP is attached to this report as **Attachment 3**.

• **Revised Long Term Financial Plan (LTFP)**

Councils LTFP has been revised for the period 2016 – 2026 and covers all operations of Council including the Councils General, Water and Sewerage Funds. This revised version of Councils LTFP also includes modelling on Councils General Fund in relation to the three proposed SRV scenarios. The LTFP uses the adopted 2016/2017 original budget estimates as the starting point and demonstrates the disclosure of the base case scenario for the General Fund and modelling as to the potential impacts of the identified three SRV options on the General Fund.

The revised LTFP is attached to this report as **Attachment 4**.

Rates & Charges Pensioner Concessions Policy and Rates and Charges Hardship Assistance Policy

A review of Council’s current Rates and Charges Pensioner Concessions and the Rates and Charges Financial Hardship Assistance policies has been undertaken and presented to Council for adoption, pursuant to a 28 day exhibition period (refer to separate Report to this meeting titled

'Review of Policies – Rates and Charges Pensioners Concessions and Financial Hardship Assistance').

The draft 2016 policies includes a change to the current relief offered under section 601, clearly outlines how Council will determine eligibility and also defines the range of financial assistance available to a ratepayer who is experiencing genuine and severe financial hardship.

It is timely to introduce revised pensioner concessions and hardship assistance policies of Council in order to address any financial hardship that the proposed rate variation may impose on ratepayers in the Byron Shire community.

Next Steps

The ultimate decision as to whether Council makes an application to IPART for a special rate variation for 2017/18, which is not required to be made until Councils Ordinary Meeting in February 2017, is directly impacted by the recommendations subject of this Report. As such, the next steps in the process can be outlined as follows:

1. Where Council decides to place all of the required IP&R documents on exhibition, the community will have a further 28 days (excluding public holidays) to review the documents and provide further feedback on the documents and on the SRV options proposed. If Council decides to do this, it is required to lodge a Notice of Intent to Apply to IPART. Therefore, the decision to place the IP&R documents on exhibition and lodge a Notice of Intent, is a critical step in the process towards an SRV, but is not the final decision to apply. The Notice of Intent to Apply is due to be submitted to IPART on or about 16/12/2016 and a draft is attached to this report at **Attachment 5**.
2. If Council chooses the above option, the IP&R documents will be placed on public exhibition for 28 days, a Notice of Intent will be lodged with IPART and Council will be receiving community feedback on the IP&R documents accordingly. At its Ordinary Meeting on 2 February 2017, Council will be presented with a final report compiling the feedback from Phase 4 consultation and engagement on the IP&R documents and will include a recommendation to Council on the making of an application to IPART for a specific percentage rate variation.
3. Where Council may decide not to place the IP&R documents on exhibition, this means that Council has decided to not apply for an SRV commencing 2017/2018.

Financial Implications

Council has consulted with and surveyed the community on three options for a proposed special rate variation to be attributed to the renewal and maintenance of the Councils assets and infrastructure, and the long term financial sustainability of the organisation.

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 reductions in services, maintenance and facilities programs, along with how to address increases to the annually reported infrastructure backlog, without the additional asset renewal and maintenance programs which would be funded from a special rate variation.

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 also challenge the sustainability of Council.

5 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 options proposed by Council would require an application 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. 13.3 **Arakwal Area at Byron Bay Cemetery**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2016/1249
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report outlines the scoping and investigation stage of the Arakwal identified area of the Byron Bay Cemetery. This project is highly sensitive and important to the cultural integrity of the Bundjalung of Byron Bay, Arakwal People and has been given priority due to the frail condition of
15 Arakwal Elders and Community Leaders.

RECOMMENDATION:

That Council allocate an initial budget of \$2,200 to undertake scoping and investigation for the establishment of an Arakwal Area in the Byron Bay Cemetery and that the funding source is identified in the December 2016 Quarterly Budget Review.

Background

At the December 2015 meeting Council resolved *that the Arakwal MoU Committee seek information from Council staff on the processes required and the scope of works for the Bundjalung of Byron Bay, Arakwal People to have an identified area in the Byron Bay Cemetery for further consideration* (15-630). The Arakwal MoU states:

2. Participation in Governance

Council to involve representatives of the Bundjalung of Byron Bay Arakwal People in Council decision making process on matters concerning Arakwal Country, People and business.

Arakwal woman, Delta Kay, provided the following information on the cultural significance of the designated area at the Byron Bay cemetery for Arakwal people.

"The Byron Bay cemetery is where our grandparents – Jimmy and Linda Kay are buried. Burial places hold a special significance for Aboriginal people. Being laid to rest in your own "belonging place" or "Country" ensures the deceased person's spirit is returned back to their "belonging place". It is culturally significant to practice our religious beliefs and customs when an Arakwal member passes away. Due to dispossession, segregation, assimilation, past government policies..... We only ask for an area to bury or lay to rest the cremated remains of our future people on our "belonging place".

On 14 June 2016 Council's Technical Officer, Open Spaces and Reserves, Andy Erskine met with Delta Kay and Gavin Brown from the Arakwal for a site inspection at the Byron Bay Cemetery. At this meeting a site was proposed for future use for the Arakwal (Figure1). The following process was discussed for the development of the Arakwal Area in the Byron Bay Cemetery:

1. Engagement of a surveyor to map out options (as per Fig. 2) including curved rows to which the topography of the site lends itself.
2. Undertake exploratory test holes to determine geology of site.
3. Arakwal to take these layouts and cemetery furniture protocols to the Arakwal Board for discussion.
4. Research a modern and practical design, particularly for the Columbarium wall.
5. Clarify the process on who can access burial in the Arakwal area of the cemetery.
6. Revise Council's cemeteries policy to include the process for the Arakwal area of the cemetery.



Figure 1: -----Proposed site for Arakwal area in the Byron Bay Cemetery.

The Arakwal MoU Committee at its meeting held on 24 August 2016, following consideration of a staff report on this matter made the following recommendation to Council, which is the subject of a separate Committee Report to this meeting.

- 5 *"That the Arakwal Memorandum of Understanding Advisory Committee note the progress of the investigations into the establishment of an identified area for Arakwal People in the Byron Bay Cemetery and request investigation for potential funding in a report to Council at the meeting on 6 October 2016."*
- 10 On 16 November the project team for the Arakwal Area in the Byron Bay Cemetery met to discuss the progress of this project. The project was split into two stages, scoping/ investigations and construction. This report is concerned with the scoping/ investigations stage only.
- 15 The project is highly sensitive and important to the cultural integrity of the Bundjalung of Byron Bay, Arakwal People and has some urgency due to the frail condition of Arakwal Elders and Community Leaders.



20 Figure 2: Benches for the Arakwal Area in the Byron Bay Cemetery

Figure 2 shows a concept that depicts benches constructed as curves to take advantage of the terrain. The first bench to be installed would be the northern most bench as depicted and would be approximately 22m long x 1.5m wide allowing 28 headstones.

- 25 Stage Two of the Arakwal Area in the Byron Bay Cemetery project is the construction stage will require further development to include:

1. Additional consultation with the Bundjalung of Byron Bay in relation to capacity, design, cultural principles and administrative policies,
2. Further scoping of construction costs based on the outcome of consultation
3. Further design work for the area and the columbarium wall
- 5 4. Development of associated policies for the implementation of the project
5. Actual layout/ construction on site.



Figure 3. Example of modern columbarium design

Financial Implications

Stage 1 scoping/investigation:

The estimated cost for the scoping and investigation of the site will be approximately \$1,000. This work would involve a number exploratory test holes to be dug and the soils analysed. Surveyor costs would be an additional \$1,200.

Stage one total: \$2,200

This scoping work is required to determine that this area is feasible and to allow for the further consultation indicated as required in Stage Two.

Stage 2 Construction:

Construction of the first bench and additional site works are yet to be fully costed, however based on recent similar works, it is anticipated that these works will be in the vicinity of \$8,000. A contemporary Columbarium design will need to be designed and costed in addition to the construction costs.

It is recommended that the funding source for Stage 1 of \$2,200 be identified in the December 2016 Quarterly Budget Review.

Statutory and Policy Compliance Implications

Native Title Act 1993
Local Government Act 1993
Land Rights Act 1984
Arakwal MoU 2013

Report No. 13.4 Council Investments 27 October to 23 November 2016

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

File No: I2016/1259

5 **Theme:** Corporate Management
Financial Services

Summary:

10 This report includes a list of investments and identifies Council's overall cash position for the period of 27 October to 23 November 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 23 November 2016 be noted.

20

Report

In relation to the investment portfolio for the period 27 October to 23 November 2016, Council has continued to maintain a diversified portfolio of investments. At the time of writing this report, the average 90 day bank bill rate (BBSW) for the month of November was unknown, but based on previous months average 90 day BBSW rates and commentary during the month it is estimated to be 1.75%. Council's performance to 23 November is 2.69%. Councils' performance will again be higher than the benchmark. This is largely due to the active ongoing management of the investment portfolio, maximising investment returns through secure term deposits

The table below identifies the investments held by Council as at 23 November 2016:

Schedule of Investments held as at 23 November 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 | 2.89% | 1,000,080.00 |
| 28/10/16 | 650,000 | TEACHERS MUTUAL BANK | P | BBB+ | 28/10/19 | FRN | 3.23% | 650,000.00 |
| 07/10/16 | 2,000,000 | NAB | P | AA- | 06/01/17 | TD | 2.71% | 2,000,000.00 |
| 04/10/16 | 2,000,000 | NAB | N | AA- | 03/02/17 | TD | 2.68% | 2,000,000.00 |
| 04/11/16 | 2,000,000 | NAB | N | AA- | 03/03/17 | TD | 2.73% | 2,000,000.00 |
| 05/09/16 | 2,000,000 | BANKWEST | P | A1+ | 05/12/16 | TD | 2.50% | 2,000,000.00 |
| 12/09/16 | 2,000,000 | NAB | N | AA- | 12/01/17 | TD | 2.64% | 2,000,000.00 |
| 23/11/16 | 2,000,000 | NAB | N | AA- | 22/02/16 | TD | 2.72% | 2,000,000.00 |
| 30/9/16 | 2,000,000 | NAB | N | AA- | 29/12/16 | TD | 2.67% | 2,000,000.00 |
| 02/09/16 | 2,000,000 | NAB | N | AA- | 02/12/16 | TD | 2.62% | 2,000,000.00 |
| 04/10/16 | 1,000,000 | NAB | N | AA- | 04/01/17 | TD | 2.67% | 1,000,000.00 |
| 07/11/16 | 1,000,000 | NAB | N | AA- | 06/03/17 | TD | 2.74% | 1,000,000.00 |
| 05/09/16 | 2,000,000 | NAB | N | AA- | 05/12/16 | TD | 2.62% | 2,000,000.00 |
| 04/10/16 | 3,000,000 | ME BANK | P | BBB | 04/01/17 | TD | 2.65% | 3,000,000.00 |
| 05/09/16 | 2,000,000 | NAB | N | AA- | 05/12/16 | TD | 2.62% | 2,000,000.00 |
| 17/11/16 | 2,000,000 | NAB | N | AA- | 29/03/17 | TD | 2.74% | 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 |
| 01/09/16 | 2,000,000 | NAB | N | AA- | 01/12/16 | TD | 2.63% | 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 |
| 06/09/16 | 2,000,000 | ME BANK | N | BBB | 05/12/16 | TD | 2.65% | 2,000,000.00 |
| 01/09/16 | 2,000,000 | BEYOND BANK | P | A2 | 01/12/16 | TD | 2.70% | 2,000,000.00 |
| 03/11/16 | 2,000,000 | BEYOND BANK | N | A2 | 01/02/17 | TD | 2.65% | 2,000,000.00 |
| 07/09/16 | 2,000,000 | ME BANK | N | BBB | 07/12/16 | TD | 2.65% | 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 |
|--------------|-------------------|---------------------------|-----|--------|---------------|------------|-------------------------|----------------------|
| 08/08/16 | 2,000,000 | ME BANK | N | BBB | 08/12/16 | TD | 2.65% | 2,000,000.00 |
| 09/11/16 | 2,000,000 | ME BANK | N | BBB | 09/02/17 | TD | 2.65% | 2,000,000.00 |
| 14/11/16 | 2,000,000 | ME BANK | N | BBB | 22/03/17 | TD | 2.65% | 2,000,000.00 |
| 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 | 1,000,000 | BANANACOST CU | P | NR | 04/01/17 | TD | 2.95% | 1,000,000.00 |
| 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 |
| 01/09/16 | 1,000,000 | AMP BANK | N | A | 30/11/16 | TD | 2.75% | 1,000,000.00 |
| 02/09/16 | 2,000,000 | NAB | N | AA- | 02/12/16 | TD | 2.62% | 2,000,000.00 |
| 29/09/16 | 2,000,000 | ME BANK | N | BBB | 27/01/17 | TD | 2.65% | 2,000,000.00 |
| 04/10/16 | 1,000,000 | BANK OF QUEENSLAND | N | A2 | 04/04/17 | TD | 2.65% | 1,000,000.00 |
| 04/10/16 | 2,000,000 | BEYOND BANK | N | A2 | 04/01/17 | TD | 2.65% | 2,000,000.00 |
| 04/10/16 | 1,000,000 | BANANACOST CU | N | NR | 03/02/17 | TD | 2.75% | 1,000,000.00 |
| 04/11/16 | 1,500,000 | AUSWIDE BANK LTD | P | A2 | 16/12/16 | TD | 2.15% | 1,500,000.00 |
| 04/11/16 | 2,000,000 | NAB | N | AA- | 21/12/16 | TD | 2.17% | 2,000,000.00 |
| 09/11/16 | 1,000,000 | AUSWIDE BANK LTD | N | A2 | 12/12/16 | TD | 2.10% | 1,000,000.00 |
| 17/11/16 | 1,500,000 | ME BANK | N | BBB | 22/03/17 | TD | 2.75% | 1,500,000.00 |
| N/A | 1,737,414 | CBA BUSINESS ONLINE SAVER | N | A | N/A | CALL | 1.40% | 1,737,413.72 |
| Total | 81,887,414 | | | | | AVG | 2.69% | 81,907,493.72 |

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 period 27 October to 23 November 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 October 2016, but overall is still demonstrating a cumulative unrealised gain of \$20,080.

Dissection of Council Investment Portfolio as at 23 November 2016

| Principal Value (\$) | Investment Linked to:- | Current Market Value (\$) | Cumulative Unrealised Gain/(Loss) (\$) |
|-----------------------------|----------------------------------|----------------------------------|---|
| 78,000,000.00 | Term Deposits | 78,000,000.00 | 0.00 |
| 1,650,000.00 | Floating Rate Note | 1,650,080.00 | 80.00 |
| 1,737,413.72 | Business On-Line Saver (At Call) | 1,737,413.72 | 0.00 |
| 500,000.00 | Bonds | 520,000.00 | 20,000.00 |
| 81,887,413.72 | | 81,907,493.72 | 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 27 October 2016 to 23 November 2016 on a current market value basis.

Movement in Investment Portfolio – 27 October 2016 to 23 November 2016

| Item | Current Market Value (at end of month) \$ |
|--|--|
| Opening Balance at 27 October 2016 | 80,505,091.26 |
| Add: New Investments Purchased | 17,650,000.00 |
| Add: Call Account Additions | 500,000.00 |
| Add: Interest from Call Account | 2,402.46 |
| Less: Investments Matured | 16,000,000.00 |
| Less: Call Account Redemption | 750,000.00 |
| Less: Fair Value Movement for period | 0.00 |
| Closing Balance at 23 November 2016 | 81,907,493.72 |

15 **Investments Maturities and Returns – 27 October 2016 to 23 November 2016**

| Principal Value (\$) | Description | Type | Maturity Date | Number of Days Invested | Interest Rate Per Annum | Interest Paid on Maturity \$ |
|-----------------------------|---------------------------------|-------------|----------------------|--------------------------------|--------------------------------|-------------------------------------|
| 2,000,000.00 | Queensland Country Credit Union | TD | 03/11/16 | 120 | 2.95% | 19,397.26 |
| 2,000,000.00 | Beyond Bank | TD | 03/11/16 | 92 | 2.80% | 14,115.07 |
| 2,000,000.00 | NAB | TD | 04/11/16 | 92 | 2.80% | 14,115.07 |
| 1,000,000.00 | NAB | TD | 07/11/16 | 91 | 2.79% | 6,955.89 |
| 1,000,000.00 | Newcastle Permanent | TD | 07/11/16 | 91 | 2.80% | 6,980.82 |
| 2,000,000.00 | ME Bank | TD | 09/11/16 | 90 | 2.65% | 13,068.49 |
| 2,000,000.00 | ME Bank | TD | 14/11/16 | 90 | 2.65% | 13,068.49 |
| 2,000,000.00 | NAB | TD | 17/11/16 | 90 | 2.65% | 13,068.49 |

| Principal Value (\$) | Description | Type | Maturity Date | Number of Days Invested | Interest Rate Per Annum | Interest Paid on Maturity \$ |
|----------------------|-------------|------|---------------|-------------------------|-------------------------|------------------------------|
| 2,000,000 | NAB | TD | 23/11/16 | 184 | 2.98% | 30,044.93 |
| 16,000,000 | | | | | | 130,814.51 |

Update on Environmental and Socially Responsible Investments

In accordance with Council resolution **15-515**, Council during this reporting period secured the following investment:

- Teachers Mutual Bank \$650,000 Floating Rate Note that matures on 28 October 2019. Council made application to secure \$1,000,000 of this investment but was able to only secure \$650,000 as the investment was oversubscribed. This investment opportunity by Teachers Mutual Bank has been certified by the Responsible Investment Association of Australasia on the basis that Teachers Mutual Bank policy is 'the exclusion of lending to, or investing in, large scale greenhouse gas pollution from fossil fuel exploration, extraction, production and use'.

In February 2016, Council received a visit from NSW Treasury Corporation. As part of that visit Council was able to make enquiries as to what options that they able to provide or were considering to provide to Councils in regard to Environmental and Socially Responsible Investments. Council on 24 November 2016 received advice from NSW Treasury Corporation that it is looking to establish an Environmental, Social and Governance (ESG) Fund in the future. In the interim, the NSW Treasury Corp Board has adopted an Investments Stewardship Policy that integrates ESG principles. Specifically the Policy provides amongst other statements:

"Academic and industry evidence indicate that climate change is expected to have an impact on investment portfolios over the long-term. As part of its approach to ESG integration, TCorp expects its investment managers to assess climate change-related risks and opportunities in its investments and to manage them accordingly. This may include, but is not limited to:

- Reviewing the carbon footprint of investment strategies;*
- Understanding the climate change and carbon reduction strategies of any carbon intensive companies in the portfolio, and their potential to reduce emissions;*
- Analysing the resiliency of any real assets given the anticipated physical impacts of climate change including acute or severe weather incidence;*
- Considering the energy, water and waste efficiency of assets in the portfolio; and*
- Assessing the viability and valuation of fossil fuel reserves, given the shift to a low carbon energy mix (e.g. stranded assets risk)."*

Further advice to Council will be provided when NSW Treasury Corp implements the proposed ESG Fund in addition to the ESG integration into its Investment Management. Currently NSW TCorp has \$70billion in third party funds under management.

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 period 27 October to 23 November 2016 the table below identifies the overall cash position of Council as follows:

Dissection of Council Cash Position as at 23 November 2016

| Item | Principal Value (\$) | Current Market Value (\$) | Cumulative Unrealised Gain/(Loss) (\$) |
|-----------------------------------|-----------------------------|----------------------------------|---|
| Investments Portfolio | | | |
| Term Deposits | 78,000,000.00 | 78,000,000.00 | 0.00 |
| Floating Rate Note | 1,650,000.00 | 1,650,080.00 | 80.00 |
| Business On-Line Saver (At Call) | 1,737,413.72 | 1,737,413.72 | 0.00 |
| Bonds | 500,000.00 | 520,000.00 | 20,000.00 |
| Total Investment Portfolio | 81,887,413.72 | 81,907,493.72 | 20,080.00 |
| | | | |
| Cash at Bank | | | |
| Consolidated Fund | 1,747,370.58 | 1,747,370.58 | 0.00 |
| Total Cash at Bank | 1,747,370.58 | 1,747,370.58 | 0.00 |
| | | | |
| Total Cash Position | 83,634,784.30 | 83,654,864.30 | 20,080.00 |

Financial Implications

5

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

Statutory and Policy Compliance Implications

10

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.

15

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.

20

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.

25

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

30

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 Review of Policies - Rates and Charges Pensioner Concessions and Financial Hardship Assistance**Directorate:** Corporate and Community Services**Report Author:** Stephen Ansoul , Revenue Coordinator**File No:** I2016/1273**Theme:** Corporate Management

Financial Services

Summary:

A review of Council's current Rates and Charges Pensioner Concessions and the Rates and Charges Financial Hardship Assistance policies has been undertaken. The last review of these policies was conducted in 2009.

The purpose of this report is to summarise the proposed changes to both policies and to seek adoption by Council for public exhibition. It is also recommended should Council approve both policies for public exhibition, they also be subsequently adopted if no submissions are received during the public exhibition period.

RECOMMENDATION:

That Council place the draft Rates and Charges Pensioner Concession policy and draft Rates and Charges Financial Hardship Assistance policy on public exhibition for a period of 28 days; and

- a) should no submissions are received, that both these policies be adopted.**
- b) should any submissions be received that the submissions be reported to Council.**

Attachments:

- 1 Draft Policy: Rates and Charges Pensioner Concessions, E2016/102052
- 2 Draft Policy: Rates and Charges Financial Hardship Assistance, E2016/102054
- 3 Draft Management Procedure: Rates and Charges Administrative Guidelines, E2016/102051

Report

A review of the Rates and Charges Pensioner Concessions and the Rates and Charges Financial Hardship Assistance has been undertaken. The last review of these policies was conducted in 2009. Council policies support legislation in cases where the legislation for specific issues is silent or open for interpretation.

In order to ensure that the draft policy statements are implemented in a transparent, consistent and equitable manner, a newly created draft "Rates and Charges Administrative Guidelines Management Procedures" document has been developed. The draft guidelines have been attached to this report for information purposes only. These draft guidelines are intended to be adopted by the Executive Team as a management tool and will also include non-policy rating procedures. It is intended that this document will be added to over time to assist in the implementation of policies associated with rating.

The proposed changes to each policy have been outlined in the following paragraphs:

Draft Rates and Charges Pensioner Concessions policy - Summary of proposed changes

The current 2009 policy included one clause that limited retrospective pensioner concession claims to the current and previous rating years only, as retrospective concessions are silent within the Local Government Act 1993 (LGA).

The draft 2016 policy retains the above retrospective claim limitations and also includes the following items that are silent or open for interpretation within the LGA. These types of changes are supported in some form by the Office of Local Government (OLG) and many Councils.

- Continuing to honour a pensioner concession if the ratepayer is temporarily residing in a medical facility. The LGA requires a pensioner to reside at their property to be eligible for a concession however, this proposed clause is offered as a goodwill and equitable approach. The extension of the concession will cease if the ratepayer is absent for more than six months or immediately if the property is privately rented.
- Continuing to honour a pensioner concession if the ratepayer is temporarily holidaying overseas and still an eligible Centrelink eligible pensioner. The extension of the concession will cease if the property is privately rented.
- Formalising Council's long term procedure to verify all current pensioners are still eligible to receive a concession with Centrelink at least annually. This is usually performed in June each year just prior to levying new year rates and charges
- Extending a part pensioner concession for a property to a maximum concession in cases where a part owner/occupier resides with an eligible pensioner but is not a pensioner concession card holder. The ineligible ratepayer must be assessed as being in financial hardship before qualifying. The maximum annual pensioner concession is \$425 per property. If Council make an order under this clause the State Government will still fund 55% of the total concession, as they do for all mandatory pensioner concessions granted.
- Confirming that properties receiving a pensioner concession are not exempt from interest charges or debt recovery action for any overdue rates and charges. This clause creates equity across all shire ratepayers.
- Any ratepayer in severe financial hardship may also qualify for assistance pursuant to the proposed Rates and Charges Financial Hardship Policy (see following section of this report).

Draft Rates and Charges Financial Hardship Assistance policy - Summary of proposed changes

5 The current 2009 policy largely repeated the hardship sections within the LGA without disclosing how Council would apply the voluntary provisions. The primary hardship sections of the LGA include S564 (payment agreements), S567 (writing off interest charges) and S601 (relief for large rate fluctuations when new land values are applied every three years).

10 The 2009 policy also outlines ratepayer eligibility criteria such as completing a prescribed form, residing at the property, the property being categorised as residential for rating purposes and that the resultant payment agreement is to be acceptable to Council.

15 The 2009 policy does specify how Council will process applications under section 601. Hardship relief is only granted if the property's rates exceed 5% of household income and Council will reduce the rates payable according to the difference between the previous and current year rates up to a maximum of \$250 for successful applications.

20 The draft 2016 policy includes a change to the current relief offered under section 601, clearly outlines how Council will determine eligibility and also defines the range of financial assistance available to a ratepayer who is experiencing genuine and severe financial hardship.

The following provides a summary of the range of changes and voluntary provisions that are proposed to be offered.

- 25 • Eligibility criteria is clearly defined and the ratepayer must complete a prescribed application form. Council will utilise eligibility criteria to assess the application similar to that used by Centrelink.
- 30 • Most hardship applications will result in the negotiation of a strict suitable regular payment agreement with the ratepayer. The agreement will be designed to repay overdue rates as soon as possible (within 12 months if possible) considering the ratepayer's current and estimated future financial capacity to pay.
- 35 • Council will write off interest charges (every 6 months) if the ratepayer substantially complies with the regular payment agreement. "Substantially" is defined as honouring 90% of the agreed terms and conditions, unless the ratepayer takes the initiative and contacts Council to renegotiate an alternative mutually acceptable payment agreement if they are unable to meet the original terms and conditions.
- 40 • For relief under S601 (increased rates due to a land valuation increase), instead of offering a \$250 credit as is the case currently, the draft 2016 policy provides that the whole increase of the ordinary rate in a new valuation year be deferred and split to be payable over the four quarterly instalments of the following year.
- 45 • The draft 2016 policy offers aged pensioners and self-funded retirees the option of deferring rates and charges (including interest charges) against their estate. Eligibility criteria is clearly defined within the policy and Council will still encourage the ratepayer to make regular payments even if a rates and charges deferral against the estate is approved.

50 The lastt clause is designed to protect the pensioner that has resided in their home for many years from having to move. The ratepayer may have experienced significant increases to their ordinary land rates as a result of the increased value of their asset. This clause has specific terms to ensure the overdue rates do not exceed 20 years as legislation dictates that Council is unable to recover rates that exceed an age of 20 years (Section 712 of the LGA).

55

Financial Implications

The extent of any financial implications associated with the revision of these two policies is unknown but would depend upon the extent of application and meeting policy criteria.

Whilst the two proposed policies supplement current provision of the Local Government Act 1993 in regard of Financial Hardship and Pensioner Concessions, they also mirror the current extent to which Council's budget can provide financial assistance and pensioner concessions. Should Council consider additional measures in relation to financial hardship and pensioner concessions, these may have an impact on Council's budget as Council would be required to fully fund any additional measures.

Statutory and Policy Compliance Implications

Sections of the Local Government Act 1993 as outlined in this report.

"564 Agreement as to periodical payment of rates and charges

- (1) *A council may accept payment of rates and charges due and payable by a person in accordance with an agreement made with the person.*
- (2) *The council may write off or reduce interest accrued on rates or charges if the person complies with the agreement."*

"567 Writing off of accrued interest

The council may write off accrued interest on rates or charges payable by a person if, in its opinion:

- (a) *the person was unable to pay the rates or charges when they became due and payable for reasons beyond the person's control, or*
- (b) *the person is unable to pay the accrued interest for reasons beyond the person's control, or*
- (c) *payment of the accrued interest would cause the person hardship."*

"601 Hardship resulting from certain valuation changes

- (1) *A ratepayer who, as a consequence of the making and levying of a rate on a valuation having a later base date than any valuation previously used by a council for the making and levying of a rate, suffers substantial hardship, may apply to the council for relief under this section.*
- (2) *The council has a discretion to waive, reduce or defer the payment of the whole or any part of the increase in the amount of the rate payable by the ratepayer in such circumstances, for such period and subject to such conditions as it thinks fit.*
- (3) *An applicant who is dissatisfied with a council's decision under this section may request the council to review its decision and the council, at its discretion, may do so."*

"712 Special provisions with respect to the recovery of unpaid rates and charges

- (1) *Proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.*

- (2) *All rates and charges payable by the same person, whether in respect of the same or of different land, may be recovered in a single action.*
- 5 (3) *In any proceedings for the recovery of a rate or charge, a court may decide any matter that is called into question and that is relevant to the determination of the proceedings, even though the matter would otherwise be beyond the court's jurisdiction.*
- 10 (4) *A court's decision on any matter that would, but for this section, be beyond its jurisdiction is relevant only to the determination of the proceedings in which it is called into question and is of no effect in relation to any other proceedings.*
- 15 (5) *No matter in respect of which a right of appeal is given under section 574 may be called into question in any proceedings for the recovery of a rate or charge so as to prevent its recovery if the time within which the right of appeal may be exercised has expired.*
- 20 (6) *Service of a rates and charges notice or notice of a charge may not be called into question more than 10 years after the date of alleged service of the notice.*
- (7) *Proceedings for the recovery of any rate or charge by the enforcement of the charge it comprises on the land are not to be taken in any court, except proceedings for the purposes of Division 5."*

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.6 **PLANNING - DA 10.2016.486.1 Storage premises, including use of three farm buildings (18 units) and addition of 12 self-storage units relocated from Road Transport Terminal, 31 Pinegroves Road, Myocum**

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Consultant Planner

File No: I2016/1155

Theme: Ecology
Development and Approvals

Proposal:

DA No: 10.2016.486.1

Proposal: Storage Premises, including Use of Three (3) Farm Buildings and Addition of Twelve (12) Self Storage Units, Relocated from Road Transport Terminal

Property description: LOT: 15 DP: 1030574
31 Pinegroves Road MYOCUM

Parcel No/s: 237962

Applicant: Mr R E Darney

Owner: Mr W A & Mrs J P Hunter

Zoning: PART RU1 Primary Production / PART RU2 Rural Landscape / PART Zone No. R5 Large Lot Residential / PART DM Deferred Matter (Part 1(a) General Rural / Part 1(c1) Small Holdings c1).

Date received: 26 July 2016

Integrated Development: No

Public notification or exhibition:

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 4/08/16 to 17/08/16
- Submissions: For 0 Against 5

Other approvals (S68/138): Not applicable

Planning Review Committee: N/A

Delegation to determination: Council

Issues:

- Additional traffic
- Objections
- Previous unauthorised land use

Summary:

The application seeks consent to dismantle and relocate 12 existing storage units, approved in 2014 as a 'road transport terminal'. The units are proposed to be added to existing sheds located toward the southern end of the property, resulting in 30 individual units, combined in three sheds, to be used as a commercial self-storage business. The individual sheds are shipping containers, roofed and bolted together.

The application proposes that the self-storage facility would operate between 7:00am and 6:00pm Monday to Friday, with no operations on weekends or public holidays.

The land is zoned part R5 Large Lot Residential; part RU1 Primary Production; part RU2 Rural Landscape; and part DM Deferred Matter. The existing 'road transport terminal' is located within the R5 Large Lot Residential Zone. The existing sheds in the southern part of the site are on land zoned RU2 Rural Landscape. Development for the purposes of storage premises is permissible

with consent in the RU2 zone. The development as proposed is considered to be consistent with the zone objectives. Relocation of all units to the southern part of the site, where they are not readily visible from public road or adjoining land, means that the development does not detract from the rural character of the area.

A number of objections have been made to the proposal, with additional traffic being the primary issue of concern. Based on accepted standards for self-storage facilities, the proposed development, involving 30 units, is likely to generate a maximum of 8 vehicle trips per day. This is less than the 9 vehicle trips per day that are generated by a new dwelling (*RTA Guide to Traffic Generating Development*). With 8 lots that gain access from Pinegroves Road (including the subject land), the existing traffic on the road is likely to be in the order of 72 vehicle trips per day (8 dwellings @ 9 trips per day). The proposed development will result in a total of 80 vehicles trips per day on Pinegroves Road, well within its design capacity.

There is a section of Pinegroves Road, immediately to the north of the property, where it exists as a single-lane carriageway on a steep incline (in excess of 20% for a length of approx. 250m). All traffic using the storage facility will need to use this section of road, which is close to an existing residence on adjoining land. The low traffic volumes however will not result in significant amenity or safety issues in this section.

The development is consistent with the requirements of Byron Local Environmental Plan 2014 and relevant provisions of Byron Development Control Plan 2014. The application is recommended for approval, subject to conditions of consent.

Council's Procedure No: 63. "Development Applications – Conflict Of Interests" requires that development applications submitted by a Councillor of Byron Shire Council would be assessed by an independent consultant and be determined by Council. This procedure is in response to guidelines provided by the Independent Commission Against Corruption which are intended to assist councils to minimise the potential for conflicts of interest to arise in the assessment of development applications.

This report has been completed by Rob van Iersel, being an independent consultant.

NOTE TO COUNCILLORS:

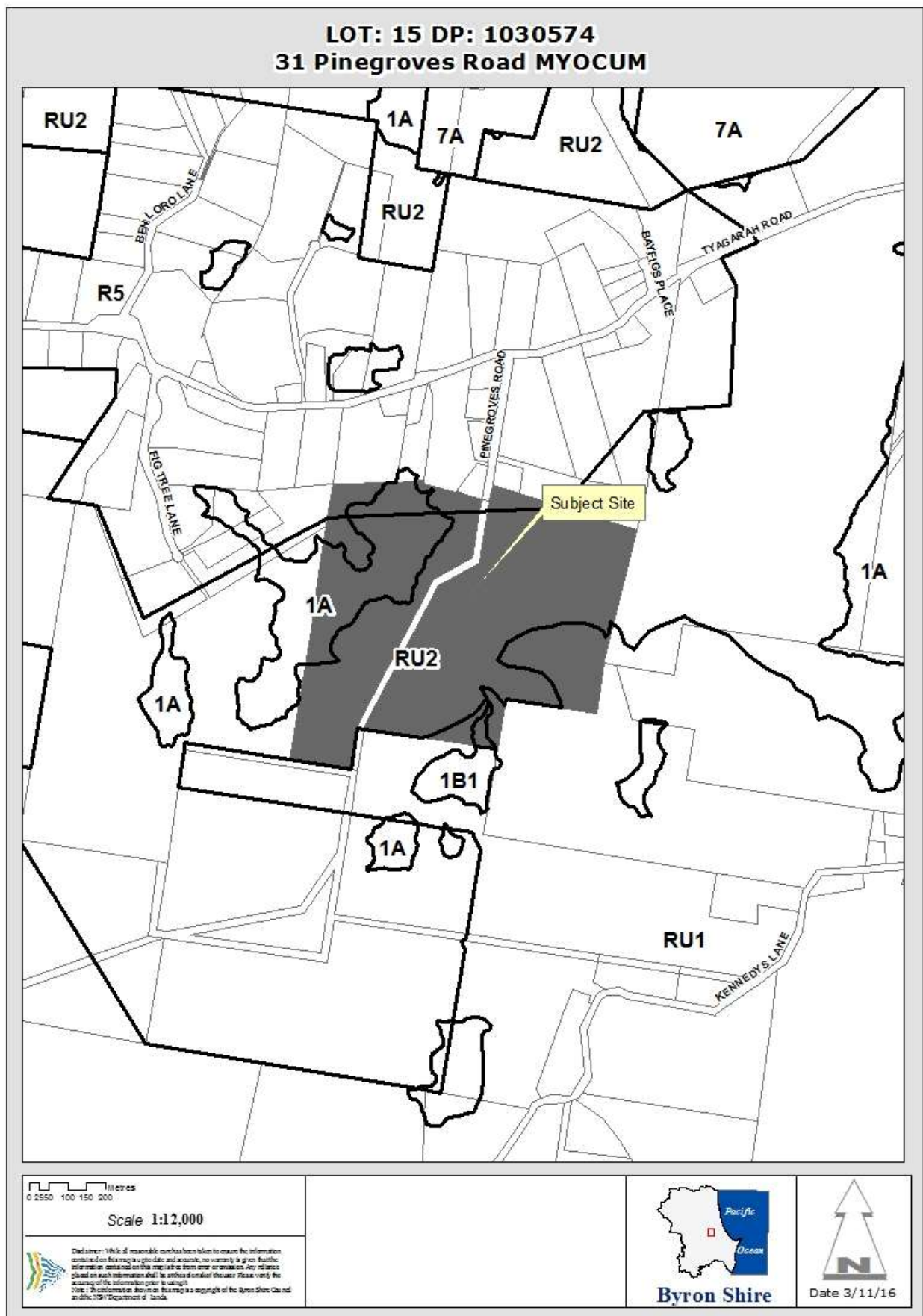
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2016.486.1 for Storage Premises, including use of three (3) farm buildings and addition of twelve (12) self storage units, relocated from Road Transport Terminal, be granted consent subject to the conditions listed in Attachment 2 #E2016/98558.

Attachments:

- 1 Proposed Plans - 10.2016.486.1 - 31 Pinegroves Rd Myocum, E2016/98577
- 2 Conditions of consent 10.2016.486.1- 31 Pinegroves Rd Myocum, E2016/98558
- 3 Confidential - Submissions 10.2016.486.1 - 31 Pinegroves Rd Myocum, E2016/104013



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

Lot 15 was created by a two-lot subdivision approved by Council in November 2000 (DA 10.200.383.1). Since creation of the lot, there are a number of applications relating to this property:

- **10.2001.555.1** Machinery Shed/ Temporary Residence Approved 10/12/01.
The application proposed a combined residence and shed, for the (previous) owners to use "from time to time" prior to a future application for a dwelling.
The building approved is the current residence on the land.
- **10.2004.510.1** Farm Shed Approved 05/10/04.
The shed, approved for the current land owner, is located to the south-west of the existing dwelling. It remains in place.
- **10.2005.367.1** Single storey dwelling house and double carport Approved 30/11/05.
The proposal included change of use for the existing dwelling to machinery shed.
A Construction Certificate was issued by an accredited certifier on 15/11/2010. It is not clear whether construction commenced. The dwelling does not currently occupy the site, however a small concrete slab is located in the location approved for the dwelling.
- **10.2009.427.1** Farm storage shed and retaining wall. Approved 11/12/09.
The application proposed two sheds to be located on a levelled pad close to the northern boundary, proposed to be used for a range of agricultural purposes.
Council's assessment determined that only one of the sheds should be approved, to reduce potential amenity impacts for neighbouring properties.
The approved shed was shown as 34m long by 9m wide, constructed of metal cladding, with nine roller doors on the southern elevation.
The approval included a condition specifying that it was to be used only for purposes ancillary to agriculture. The condition further specified that it was not to be used for purposes such as rural industry, bulk storage or plant nursery.
A Construction Certificate was issued by an accredited certifier on 01/03/2011.
Construction of the development commenced, however, it was not in accordance with the approved plans, as it comprised a structure made of 12 shipping containers joined under a roof; in a location further east than approved; and the earthworks extended further than approved.
The land owner was successfully prosecuted in the Local Court in relation to these works. Associated with these proceedings, the land owner provided written undertakings to Council that *"the farm sheds would be used for farm related purposes only and not for any purposes related to removals and storage"*.
- **10.2009.427.2** Modification of approval – change to 'storage shed' made up of 20 shipping containers; extension of earthworks. Refused 24/02/2012.
Council refused the proposed modification on the basis that it was not substantially the same development as that approved. The assessment report also suggested that the 'storage shed' was being used for commercial purposes.
The land owner appealed the refusal, and Consent orders were issued by NSW Land and Environment Court in August 2012 to approve the modification in relation to the extent of earthworks. The Consent Orders did not amend the design of the shed as originally approved.

The Consent Orders also noted that the applicant had given Council a written undertaking “to remove ALL shipping containers/structures currently erected on that part of the property known as No. 31 Pinegroves Road, Myocum that relates to the modification application the subject of the proceedings (“the development site” within 6 months of the date of these orders and not to use any of the shipping containers erected on the development site during that period for any purpose other than for the purpose of storing equipment or goods ancillary to the conduct of agricultural activities on the land”.

- **10.2009.472.3** Review of the refusal of 10.2009.427.2, lodged under section 96AB of the *Environmental Planning and Assessment Act 1979*.

This review was lodged prior to the finalisation of the Land and Environment Court appeal. The review was refused on 03/07/12.

- **10.2013.559.1** Change of use for farm building to road transport terminal. Approved 01/03/2014.

This approval was conditioned to cease 2 years after the commencement of operations. A Final Occupation Certificate was issued on 24 August 2015, provided the date for the formal commencement of operations. The approval will therefore lapse on 24 August 2017.

A further condition restricted the frequency of truck movements to a maximum of 10 non-articulated vehicle movements per week, with a maximum unladen weight of 4 tonnes.

Hours of operation were also conditioned to 7.00am to 6.00pm Monday to Friday only, with no operations permitted on weekends or public holidays.

- **10.2013.559.2** Modification of approval - by amending Condition 13, which placed limitations on truck movements associated with the development. Approved 20/11/2004.

As approved, Condition 13 prohibited large trucks (over 4 tonnes unladen weight). The applicant sought to amend the condition to allow the frequency of truck movements, for trucks larger than 4.0 tonnes unladen weight, to be limited to ten (10) in any one day.

Council amended the conditions to read:

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

- **10.2013.559.3** Section 96 Modification to permit access for light vehicles on Saturdays, Sundays and Public Holidays between the hours of 7.00am to 6.00pm for the trial period of 2 years. Refused 1/12/2015.

- **10.2015.721.1** Change of use of three farm sheds to storage facility. Withdrawn 19/07/2016.

Related to structures that exist on site, made up of joined shipping containers. Applicant advised that the three farm buildings were constructed under the SEPP (Exempt and Complying Development Codes) which allows for farm buildings less than 200 square metres as exempt development. “The sheds are currently used as part of the farm including storage of chick peas and some personal family uses”.

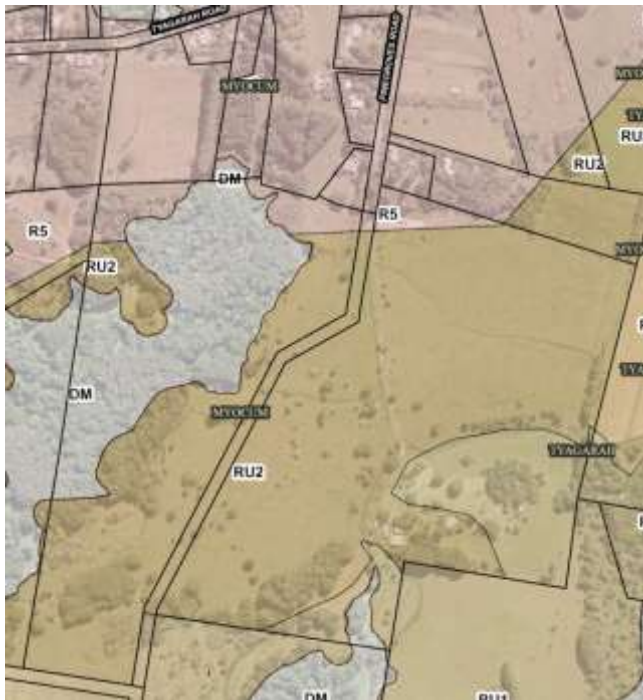
1.2 Description of the site

Land is legally described as: LOT: 15 DP: 1030574

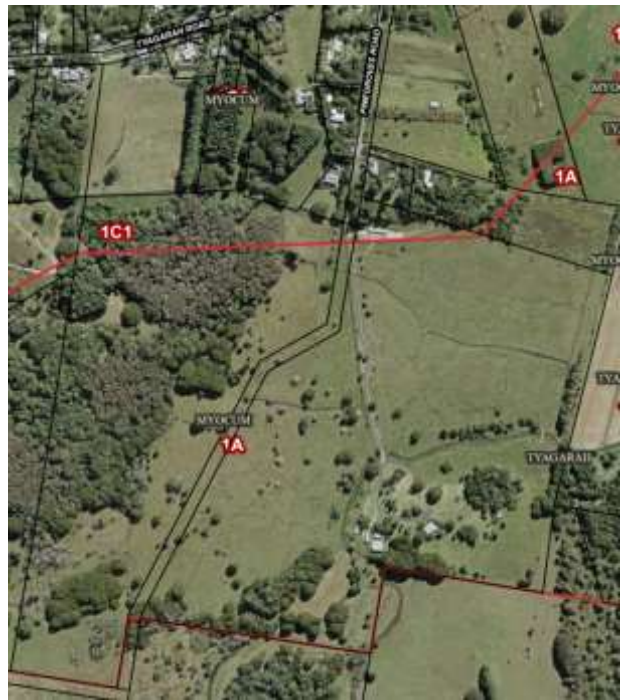
Property address is: 31 Pinegroves Road MYOCUM

Land is zoned: Part RU1 Primary Production / Part RU2 Rural Landscape / Part Zone No. R5 Large Lot Residential / Part DM Deferred Matter (Part 1(a) General Rural / Part 1(c1) Small Holdings c1).

BLEP 2014 Zoning:



BLEP 1988 Zoning:



Council's constraints mapping shows that the property is affected by:

Acid sulfate soils (class 3) over low lying parts of the site (proposed shed location included in mapped area)

Bush fire prone land (Vegetation Category 1 & Buffer) – proposed shed location is within buffer area

Flooding – mapped over low lying parts of the site (proposed shed location included in mapped area)

High Environmental Value Vegetation on western part of site (distant from proposed shed location):

- Coastal Floodplain Wetlands
- North Coast Wet Sclerophyll Forests

Eco Wetland – mapped over the watercourse that traverses the site (proposed shed location included in mapped area)

Key Fish Habitat – mapped over the watercourse that traverses the site (proposed shed location included in mapped area)

Threatened Fauna Habitat – mapped over the HEV vegetation in the west of the site

Regionally Significant Farmland – mapped over the entire site, with the exception of the northern area zoned R5.

The site has an area of 48.9 hectares. It is situated on Pinegroves Road, approximately 300m south of the intersection of Pinegroves Road with Tyagarah Road.

- 5 Pinegroves Road has a 2 car wide sealed formation for some 250m, culminating in a turning circle approximately 100m north of the property. The road reserve continues to the south to traverse the subject site. The road reserve falls steeply from the turning circle and contains a narrow sealed surface for this steep section. A developed rural residential lot is located on the west of this section and is accessed from it.

Pinegroves Road – looking south from Tyagarah Road intersection



Site Entrance – within road reserve at Pinegroves Rd cul de sac



- 5 Within the property, a sealed road diverges from the road reserve and continues to the south, to
provide internal access to the dwelling-house and shed, which are located in the south-eastern part
of the site. The internal road is in good condition, comprises a bitumen hot mix seal and provides
for all weather access. The site falls steeply from a contour of approx. 20m AHD at the northern
10 access to the low lying flood prone majority of the site. The land rises in the south-eastern part of
the site to a small ridgeline situated above the 20m AHD contour. A watercourse traverses the
south-eastern part of the site.

Steep section of access road – immediately south of cul de sac



The site currently contains:

- 5 • the approved road transport terminal, constructed from twelve shipping containers roofed and bolted together, located adjacent to the northern boundary of the property, off the eastern side of the internal road – approved under DA 10.2013.559.1;
- the existing dwelling, located toward the southern boundary of the site – approved under DA 10.2001.555.1;
- 10 • a farm shed located to the south-west of the dwelling – approved under DA 10.2004.510.1. The land owner has an office within this farm shed, that is used to manage the farm;
- three farm sheds, each constructed from six shipping containers roofed and bolted together, located adjacent to the farm shed referred to above – the applicant advises that these shed were erected as “Exempt Development”, under the provisions of State Environmental Planning
- 15 Policy (Exempt and Complying Codes) 2008;
- a dwelling, located to the east of the main dwelling – Council’s records show no approval for that dwelling or any on-site wastewater management associated with it; and
- a small concrete slab located between the two dwellings.
- 20 Adjacent land to the north is located in the R5 Zone. Three developed rural residential lots abut the northern boundary of the site. Three further developed rural residential lots abut the western side of Pinegroves road. A larger lot that contains a netted orchard abuts the eastern side of Pinegroves Road.

Approved Road Transport Terminal, located in north of property



One of three sheds in the south of the property





Land on east side of Pinegroves Road

5

1.3 Description of the proposed development

10 The development application proposes to remove the shipping containers currently approved for use as a road transport terminal from the north of the site and add them to the three farm sheds currently located toward the southern boundary. Each of the sheds would then comprise ten individual units, proposed to be used as 'self-storage'.

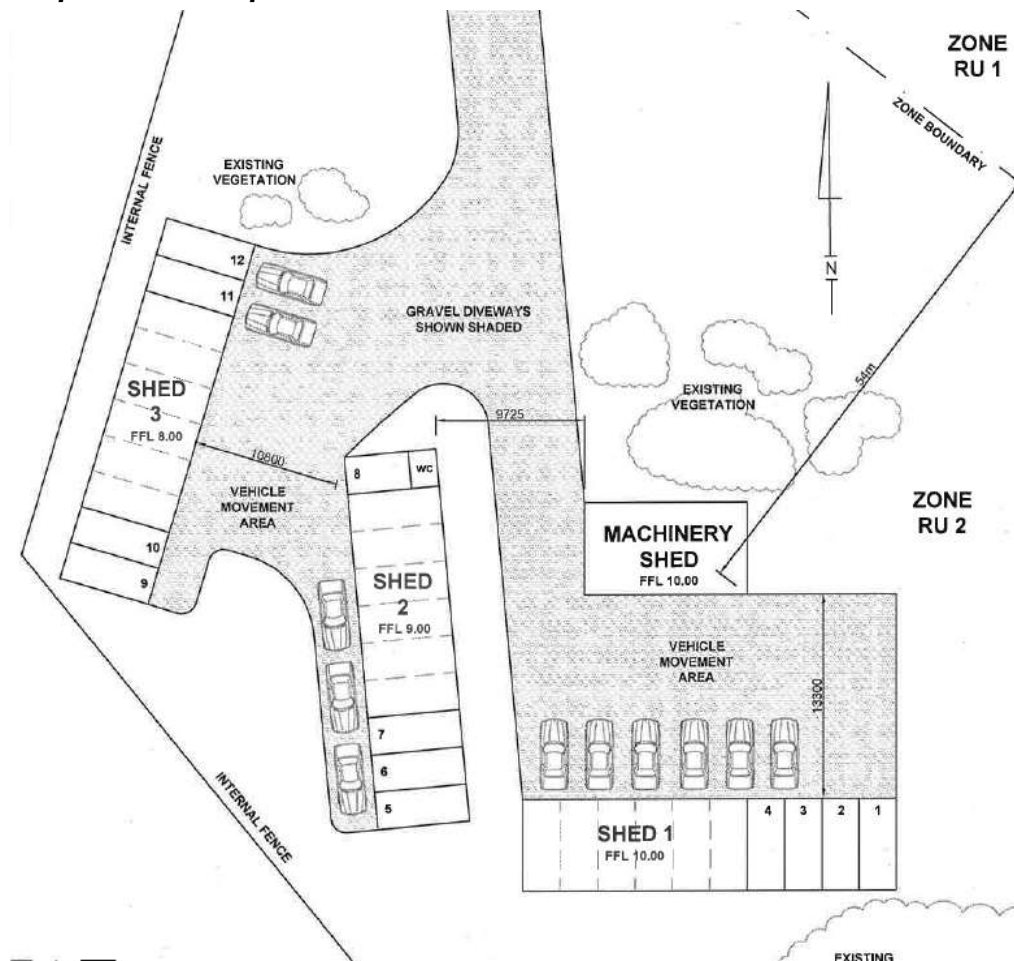
15 Each of the existing three sheds has an area of 87.6m². When the road transport terminal is dismantled, and four storage units are added to each shed, they will each have an area of 150m². The total area proposed for self-storage units is therefore 450m².

The application proposes the use of the existing office in the farm shed to manage the storage premises.

20 The individual units (i.e. shipping containers) measure 6.0 by 2.4m, with the combined structure having a finished height of 2.5m. One of the units will be fitted with a toilet facility, with the existing composting toilet at the road transport terminal to be relocated.

25 Hours of operation are proposed as 7.00 am to 6.00 pm Monday to Friday, with no weekend operations. No access to the site will be allowed after 6.00 pm.

Proposed Development:



- 5 Parking will be provided for twelve vehicles.

One Lilli Pilli is proposed to be removed from the western-most shed, to allow for the addition of the two units. An adjacent Bronze Currajong is proposed to have one branch lopped. At the northern end of the middle shed, one bottle brush will be removed. All of this vegetation was planted by the land owner.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

There were no external referrals required for this application.

2.1. SECTION 79BA – Bush Fire

Under S79BA of the Act, Council must be satisfied that prior to making a determination for development on bushfire prone land, that the development complies with the document *Planning for Bushfire Protection 2006* (PBP). The site of the existing and proposed storage sheds is within the 100m bushfire buffer from a category 1 vegetation hazard, located on the site, to the south-west on the opposite side of the watercourse.

The development is considered to be a Special Fire Protection Purpose and a Bush Fire Safety Authority under section 100B of the *Rural Fires Act 1997* is not required.

In relation to non-residential buildings, such as storage sheds, *Planning for Bushfire Protection 2006* indicates that the BCA does not provide for any bush fire specific performance requirements and as such AS 3959 does not apply as a 'deemed to satisfy' provisions.

- 5 The construction of the sheds from shipping containers reduces the risk of damage from bush fire. Adequate water supply and access is available, and the development is not considered to pose any significant bush fire risks.

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

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

State/Regional Planning Policies and instruments - Issues

- 15 **3.1. STATE/REGIONAL PLANNING POLICIES AND INSTRUMENTS**

State Environmental Planning Policy No 44 – Koala Habitat Protection

- 20 Council must determine whether the site contains potential or actual koala habitat and determine whether the proposed development will result in any impacts on that habitat.

There are koalas known in the wider Myocum area, but the subject site does not contain koala food trees in the vicinity of the proposed development.

- 25 **State Environmental Planning Policy No 55 - Remediation of Land**

Council must:

- a) consider whether the land is contaminated; and
 b) if the land is contaminated, if the land is suitable in its contaminated state or after remediation; and
 30 c) be satisfied that the land will be remediated before the land is used.

The potential for contamination has been assessed as part of previous applications on the land, and Council has accepted that contamination risk is not an issue.

- 35 **State Environmental Policy (Rural lands) 2008**

The SEPP sets out a range of Rural Planning Principles, which are applicable to the making of Local Environmental Plans. The principles, therefore, are not a consideration for this application.

- 40 It also sets out matters to be considered when assessing Development Applications for rural subdivision and rural dwellings. These matters are also not a relevant consideration for the subject application.

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

- 45 **Zone:** Part R5 Large Lot Residential; part RU1 Primary Production; part RU2 Rural Landscape; and part DM Deferred Matter

The existing 'road transport terminal' is located within the R5 Large Lot residential Zone. The existing farm sheds in the southern part of the site are on land zoned RU2 Rural Landscape.

- 50 **Definition:** Self-storage units

Self-storage units means premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials). Self-storage units are a type of **storage premises**.

5 **Storage premises** means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.

10

Permissibility: Storage premises are permissible with consent in the RU2 zone.

Zone Objectives: The proposed storage sheds are located within the part of the land zoned RU2 Rural Landscape. The objectives of the RU2 zone are:

- 15 • *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Comment: The property is used for cattle grazing, but the applicant advises that this land use is not financially viable on its own. The self-storage units are proposed as means to provide supplementary income for the land owner.

20 The sheds are existing on-site and their augmentation by the additional of the 'road transport terminal' sheds will not significantly impact on the land that remains available for primary industry.

- *To maintain the rural landscape character of the land.*

25 *Comment:* The existing sheds are located in a cluster close to the existing dwelling, with some mature trees around the sheds. This location is somewhat remote from nearby public roads, and, as shown in the photo below, the buildings are not visible from the cul de sac of Pinegroves Road or from adjoining land to the north.

30 The dismantling and relocation of the shipping containers currently approved as a road transport terminal will have a beneficial outcome in relation to the existing landscape character. It is also recommended that additional landscape planting be undertaken to offset the tree clearing proposed, and this will assist in strengthening the existing visual screening for the development. In the wider context of the site and surrounding land, the proposed development will not have a detrimental impact on the rural character of the area.

35

- *To provide for a range of compatible land uses, including extensive agriculture.*

Comment: The zoning table for the RU2 zone outlines a range of land uses that are permissible with consent, which could therefore be considered to be compatible in this zone. Storage premises are such a use.

40

The NSW Land & Environment Court has considered the issue of *land use compatibility* in a wide range of cases. For example, the Court established a planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, where the Senior Commissioner said:

45 *Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked:*

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

50

- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*



Looking into the site (to the south) from bottom of steep section in road reserve, adjacent to adjoining property

5

In terms of physical impacts, the proposed self-storage sheds, located toward the southern end of the site, present no constraints to the adjoining lots. The only physical impact that is likely comes from the operation of the activity, notably associated with additional traffic generated by the use of the sheds as self-storage. This issue is addressed in detail below, concluding that additional traffic impacts are minor.

10

The appearance of the development, in this case, has little impact on the local character as it cannot be seen from the public road or adjoining residences.

15

The compatibility of a land use such as storage premises is also a function of scale, and the extent to which such a use might reduce the potential for agricultural uses of the land.

In this case, the compact nature of the proposal, clustered in the southern part of the land, means that the majority of the site remains available for agriculture.

20

In terms of scale, the question of compatibility relates to whether the activity associated with the use is likely to be markedly different to that ordinarily expected with agricultural uses.

In this case, the proposal would result in 30 individual storage units. The activity generated by the units relates primarily to traffic, with the renters of individual units visiting the site. A traffic report has been submitted with the application and is discussed in further detail below.

Overall, it is considered that, with the dismantling and relocation of the existing road transport terminal, the proposed development is compatible with the surrounding area.

- *To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.*

Comment: Not applicable.

- 5 • *To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.*

Comment: The development will have minimal impact on scenic landscape, particularly given a recommendation for additional screen planting.

10 **Relevant clauses:**

4.3 Height of buildings:

The Height of Buildings Map specifies a height limit of 9m in this area. The sheds have a height of 2.5m above ground level.

15 *5.9 Preservation of trees or vegetation*

One Lilli Pilli is proposed to be removed from the western-most shed, to allow for the addition of the two units. An adjacent Bronze Currajong is proposed to have one branch lopped. At the northern end of the middle shed, one bottle brush will be removed.

20 All of this vegetation was planted by the land owner.

The tree removal is considered to be acceptable, subject to a condition requiring additional planting in the vicinity of the sheds, primarily on the banks of the watercourse, including at least 10 for 1 planting for those removed.

25 *6.1 Acid sulfate soils*
Council's mapping indicates that the low lying parts of the site are classified as Class 3 acid sulfate soils. The site of the sheds is elevated above the low lying area and is unlikely to be affected by acid sulfate soils. There are only minor excavations required, to provide footings for the units
30 relocated from the north of the site. Such excavation is unlikely to be deep enough to disturb any potential acid sulfate soils.

6.2 Earthworks

As described above, only minor earthworks are required.

35 *6.3 Flood planning*
A flood study was submitted with the application, based on local flood information from the site and the turf farm downstream. The report uses survey information from the flood event of June 2016, which was estimated to be a 1 in 80 year flood event.

40 Based on this information, the report establishes a 1 in 100 year flood level for the catchment of 4.65m AHD. The report therefore adopts a Projected 2050 Flood Planning Level of 5.15m AHD (i.e. 1 in 100 year level + 0.5m).

45 The lowest shed has a proposed floor level of 5.3m AHD.

Floods will cut the internal access road to the site, preventing vehicle access to the sheds during times of high rainfall. The applicant advises that this access issue will be stated on the contracts, so that users are aware that there may be times when the sheds are unavailable.

50 *6.6 Essential services*

The proposed development will include a single toilet facility for the use of patrons. Water supply is available from a 13000 litre tank. An existing approved composting toilet will be relocated from

the road transport terminal to the new development. Separate approval for the installation of this system will be required as a condition of approval.

Stormwater from the sheds can be managed on-site.

5

Adequate access is available, with further detail discussed below.

Byron Local Environmental Plan 1988- Issues

- 10 The development has no impacts on the parts of the site subject to BLEP 1988. There are therefore no relevant provisions of this Plan.

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

15

None applicable.

3.3 DEVELOPMENT CONTROL PLANS

Development Control Plan 2014

| DCP Clause | Requirement/ Comment | Complies? |
|---|---|------------|
| Part B Controls Applying Generally to Development Applications | | |
| B2 Preservation of trees & other vegetation | <p>One Lilli Pilli is proposed to be removed from the western-most shed, to allow for the addition of the two units. An adjacent Bronze Currajong is proposed to have one branch lopped. At the northern end of the middle shed, one bottle brush will be removed.</p> <p>All of this vegetation was planted by the land owner.</p> <p>The tree removal is considered to be acceptable, subject to a condition requiring additional planting in the vicinity of the sheds, primarily on the banks of the watercourse, including at least 10 for 1 planting for those removed.</p> | Yes |
| B3 Services | Adequate service provision, stormwater management, sedimentation and erosion control (subject to conditions). | Yes |
| B4 Traffic Planning, Vehicle Parking, Circulation and Access | Traffic issues are discussed below. | Yes |
| B6 Buffers & Land Use Conflict | No land use conflicts identified requiring additional buffering. | N/A |
| B8 Waste Minimisation & Management | Details have not been provided strictly in accordance with Section B8, however, given the low-risk nature of the proposal a condition requiring the submission of a SWMP prior to the issue of a Construction Certificate is considered acceptable in this particular instance. | *Condition |
| B9 Landscaping | A condition is recommended requiring a landscape | Yes |

| | | |
|--|--|-----|
| | plan to be prepared and submitted with the application for Construction Certificate. The primary intent of the landscaping will be to provide additional tree planting on the bank of the watercourse adjacent to the buildings, to offset the loss of the trees to be removed and to provide additional screening of the development from the north. | |
| B13 Access & Mobility | The proposed development includes accessible ablutions. | Yes |
| B14 Excavation & Fill | Only very minor excavation is proposed for the footings of the relocated shed units. | Yes |
| <i>Part C Further Controls, Specific Constraints & Environmental Characteristics</i> | | |
| C1 Non-Indigenous Heritage | There are no known heritage items or areas in this locality. | Yes |
| C2 Areas Affected by Flood | <p>Council's GIS indicates that significant parts of the site are below the 1% AEP flood level. Table C2.1 of BDCP 2014 provides the following requirements for non-habitable buildings in flood prone areas:</p> <ul style="list-style-type: none"> • <u>Minimum Floor Levels:</u> 10 year flood level plus 0.3m. • <u>Building Components:</u> Buildings to have flood compatible material below the relevant FPL. • <u>Structural Soundness:</u> Must still comply with BCA. <p>A flood study was submitted with the application, based on local flood information from the site and the turf farm downstream. The report uses survey information from the flood event of June 2016, which was estimated to be a 1 in 80 year flood event.</p> <p>Based on this information, the report establishes a 1 in 100 year flood level for the catchment of 4.65m AHD. The report therefore adopts a Projected 2050 Flood Planning Level of 5.15m AHD (i.e. 1 in 100 year level + 0.5m).</p> <p>The lowest shed has a proposed floor level of 5.3m AHD. It therefore complies with the DCP requirements.</p> <p>Floods will cut the internal access road to the site, preventing vehicle access to the sheds during times of high rainfall. The applicant advises that this access issue will be stated on the contracts, so that users are aware that there may be times when the sheds are unavailable.</p> | Yes |

Development Control Plan 2014 - Issues

Traffic:

5 Existing Conditions:

Pinegroves Road has a 4m seal and 6-7m formation. The first two thirds the road is generally in good condition, with localised deterioration (longitudinal cracking and pot holing) occurring towards

the end on Pinegroves Rd. Grass grows along the verge and right up to the road seal. The shoulders are not showing any evidence of wear indicating that the current width is adequate for the existing traffic.

- 5 Pinegroves Road connects onto Tyagarah Road part way through a curve. The advisory speed sign for the curve is 55 KPH. Sight distance along Tyagarah Road at this intersection is approximately 60m to the west and 130 m to the east. Vegetation along the road reserve in front of a property on the western side of Pinegroves Road effects the sight distance to the west.
- 10 Internal access to the sheds is proposed via a private driveway, which has a longitudinal grade of the within the first section from Pinegrove Road in excess of 20% for approximately 250 m. This could cause some difficulties for older, fully loaded vehicles. The internal driveway continues across a flood plain, with a low level bridge across a creek. The applicant advises that, in the last 12 years, the maximum period that the driveway has been inundated by flood waters and
- 15 impassable to vehicles is approximately 12 hours. The flood report provided with the application suggests that a 1 in 100 year flood would result in a depth of water of approximately 0.5 m over the road at its lowest point. Given that the use is storage and that the proposed facility is not available 24/7, any short term road closure due to flooding is considered acceptable.
- 20 *Traffic Generation:*
There are eight lots gaining access off Pinegrove Road (including the subject property). In accordance with the RTA *Guide to Traffic Generating Developments*, Table 3.7, the existing lots on Pinegrove Road would produce 8 x 9 vehicle trips per day (vpd) = 72 vpd. The *Guide to Traffic Generating Developments* does not contain a standard applicable to self-storage units.
- 25 The applicant has submitted information from a survey conducted over a 14 day period (1 Nov – 15 Nov 2015) that shows eight vehicles used the existing storage facility over that time; i.e. additional trips of 16 (8 coming; 8 going) over a 14 day period = 1.2 additional vpd used Pinegrove Road as a result of the existing storage facility over the survey period.
- 30 Assuming that these trips were all associated with the approved Road Transport Terminal, which has a floor area of 64.8m², the additional trips equated to 0.018 trips per m² per day. Using these figures, and the increased area of the facility, the total traffic generated by the proposed development would be in the order of 450(new GFA) x 0.018 = 8 trips per day.
- 35 The Self Storage Association of Australia commissioned a parking study in 2009. This study identified that the average traffic generation rate for storage sheds was 45 vehicle trips per day per week day and 41 per day on weekends for facilities with up to 3,000m² total floor area of storage. This equates to a maximum of 0.015 trips per m² per day.
- 40 This figure has previously been accepted by Council as guidance relating to the traffic generation associated with a proposal for 73 storage units in Bangalow, in approving DA 10.2015.733.1. In this application, the total area is 450m² and using the above figure, the development will generate an average of 450(GFA) x 0.015 = 6.75 say 7 trips per day.
- 45 Based on these assessments, the use of the sheds for self-storage would generate a maximum of 8 additional vehicle movements per day. As indicated above, the RTA *Guide to Traffic Generating Developments* specifies that a dwelling will generate 9 vehicle trips per day, so the development as proposed will generate less traffic than a second dwelling on the property.
- 50 The traffic on Pinegroves Road, including this development, is therefore estimated at 72 + 8 (higher of the generation figures above) = 80 VPD. The estimated 80 trips per day (including truck movements) are significantly less than the design capacity of Pinegroves Road, which is 150 vehicles per day.
- 55

The additional 7-8 vehicle trips per day will travel on the narrow steep section of road off the southern end of the cul de sac. This section of road is single lane in width and relatively close to the neighbouring dwelling on the western side of the road. There will, therefore, be some additional traffic noise experienced at this dwelling, associated with traffic moving up and down the steep hill.

As outlined above, however, traffic numbers will be less than that associated with an additional dwelling on the land. The nature of traffic, however, may differ, with cars with trailers more likely to visit the site. It is also likely that smaller trucks and removal vans will access the land from time to time. While these vehicles would be somewhat noisier than cars normally associated with a residences, the low traffic numbers overall and the restriction of operating hours are such that traffic noise issues are not considered to be significant.

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

| Impact on: | Likely significant impact/s? |
|----------------------------|---|
| Natural environment | No significant impacts on the natural environment will occur. The tree clearing proposed is minimal and can be easily offset by a requirement for additional planting. |
| Built environment | No. The development is minor alterations and additions to existing sheds. |
| Social Environment | No. The development has minimal social impact. The dismantling of the existing road transport facility, located close to neighbours, will have beneficial impacts for these neighbours. The additional traffic generated by the proposal is considered to be minimal. |
| Economic impact | No. The development is unlikely to cause any significant economic impacts. |

3.5 The suitability of the site for the development

Council has previously approved a road transport facility at the site, consisting of 12 individual storage units. The proposed development will increase the number of storage units to 30, but all units will be located further away from adjoining owners.

The potential for disturbance to neighbours is therefore reduced, with additional traffic being the main activity that has potential to disturb them.

As outlined above, the additional traffic generation is assessed to be in the order of 8 vehicular trips per day. This is not considered to be excessive.

Overall, therefore, it is considered that the site is suitable for the development as proposed.

3.6 Submissions made in accordance with this Act or the regulations

There were 5 submissions made on the development application, all objecting to the proposal.

| Issue | Comment |
|---|--|
| <i>Insufficient time was allowed for public notification. Given controversial nature of previous applications, wider advertisement should have been undertaken.</i> | The application was notified in accordance with the provisions of Council's DCP, as Level 1. |
| <i>Over that two year period previously approved</i> | There has been compliance action relating to |

| Issue | Comment |
|--|---|
| <i>for the road transport facility there have been numerous, documented breaches of the approved conditions (late night and week end accessing of the facility).</i> | the site over a number of years. Dismantling the containers previously approved as 'Road Transport Terminal', and moving those containers well away from the neighbouring properties, is likely to ease the situation. |
| <i>The fact is that he has used his so called Farm Sheds to the south of his property for his Rd. Transport Terminal storage facility unlawfully since 2012. I am saying unlawfully because those shipping containers were to be removed from his property following a Land and Environment court order issued to him on the 11th September 2012. In January 2016 he still did not have a DA approval for these containers (so called farm sheds) and he was operating his storage business with the use of those containers to the south as well as the 12 self-storage containers to the north of his property, which he now wants to move to the south of his property.</i> | <p>The land owner did provide a written undertaking to remove these sheds.</p> <p>Currently, the applicant expresses the view that the sheds were erected as 'Exempt Development', under the provisions of <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</p> <p>Farm buildings are listed as exempt development, subject to a range of nominated standards. The existing sheds comply with these standards, except that they are located within 50m of the existing water body.</p> |
| <i>I oppose the Development because it proposes another 6 storage units, additional to the 24 already sited on this rural property, making 30 units in total. The number of traffic movements to and from this commercial enterprise is stated in the DA as being one per day. This is grossly understated. From direct experience of staying on Pinegroves Road recently, and counting, I know this to be a misrepresentation: e.g. in one day, the same car visited the same unit three times - making six traffic movements in total for one day for one car. The owner himself drove in and out of his property twice in one hour</i> | See traffic assessment above. The use of 30 sheds for self-storage is likely to result in around 8 vehicles per day. |
| <i>koalas move throughout the wider habitat region, and need a buffer zone of forest trees, free of too much traffic and predation, just to survive the diseases and injuries from cars and dogs that assail them</i> | <p>The development will not directly impact koalas. Indirect impacts would be associated with additional traffic movement on the local road network.</p> <p>As indicated above, the traffic generated by the use of shed as self-storage will be less than that generated by a new dwelling in the area.</p> |
| <i>The development represents an effort by the Applicants to entrench an enormous and permanent increase in traffic volumes down Pinegroves Road</i> | See traffic assessment above. |
| <i>Notwithstanding that storage is permitted in the zoning, the development must also meet the zoning objectives. A self-storage business does not meet the stated objectives as it does not preserve the rural character of the lands. There are no other such businesses operating outside of the industrial zoned areas in the Shire.</i> | See assessment of zone objectives above, including a reference to planning principles referred to in the L&E Court case quoted. |

| Issue | Comment |
|--|--|
| <p><i>Reference to Land & Environment Court case Vigor Master Pty Ltd v Warringah Shire Council</i></p> <p><i>That the applicant is requesting approval to operate the business 5 days a week is irrelevant – the issue is that a self-storage business is compatible to an industrial locality where it does not impact on the amenity or the character of the area – not a rural area where there are households nearby.</i></p> | |
| When I have been home during the week there can be 6-7 cars and trucks to the containers (14 trips past our house). This means trucks driving in low gear less than 20m from our living area each day. | See traffic assessment above. The numbers quoted are generally consistent with the assessment. |
| The applicant argues that there will not be any traffic on the weekend, however, it is the weekend when people want to frequent a self storage business....we have observed many cars with trailers, vans etc. driving past down to the storage facility each weekend. | The application states that the storage facility will only open on weekdays. |
| The one way access road to the applicant's property which we share to access our property is on a very steep decline and is such that traffic travelling down Pinegroves Road cannot be seen until you reach the top of the access road where it flattens out and joins Pinegroves Road. | Sight distance is limited on the single-lane access road for the steep section immediately off the end of the cul-de-sac. The traffic generation is low and it is considered that the risks created are not significant. |

3.7 Public interest

The proposed development does not prejudice or compromise the public interest.

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

As there is no increase in the load on these services and therefore no contributions will be required for water and sewer services.

4.2 Section 94 Contributions

As there is no increase in the load on these services and therefore no contributions will be required.

5. CONCLUSION

The application seeks consent to dismantle and relocate 12 existing storage units, approved in 2014 as a 'road transport terminal'. The units are proposed to be added to existing sheds located toward the southern end of the property, resulting in 30 individual units, combined in three sheds, to be used as a commercial self-storage business. The development is permissible with consent in the RU2 zone under Byron LEP 2014, and satisfies the provisions under Byron DCP 2014. The relocation of the storage sheds away from neighbours properties in Pinegroves Road will also

remove any amenity impacts currently experienced by neighbours from the present operations. Further the resiting of the sheds to the south are not readily visible from public road or adjoining land, and are unlikely to detract from the rural character of the area.

- 5 A number of objections have been made to the proposal, with additional traffic being the primary issue of concern. The development will generate approximately 8 additional trips per day and is unlikely to have an adverse impact upon the road network or the traffic carrying capacity of Pinegroves Road or generate deleterious amenity or safety issues.
- 10 Having regards to the limited hours of operation between Monday to Friday, and the number of storage sheds, it is considered the proposal will not create a dangerous precedent or prejudice Council's planning controls. The development is recommended for approval subject to conditions of consent.

15 **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 |

Report No. 13.7 **PLANNING - Development Application 10.2016.55.1 - Demolition of existing buildings and erection of two (2) residential flat buildings, containing a total of 17 x 3 bedroom dwellings, including basement parking, swimming pool, landscape works and Strata Subdivision at 17,19 & 21 Shirley Street, Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Paul Mills, Senior Planner

File No: I2016/1170

Theme: Ecology

Development and Approvals

Proposal: Demolition of existing buildings and erection of two Residential Flat Buildings, containing a total of 17 x 3 bedroom dwellings, including basement parking, swimming pool, landscape works and Strata Subdivision

Property description: LOT: 3 SEC: 52 DP: 758207
17 Shirley Street BYRON BAY

Parcel No/s: 122220

Applicant: Mr M Scott

Owner: Wollongbar Property Pty Ltd

Zoning: R3 Medium Density Residential Zone

Date received: 4 February 2016

Integrated Development: Yes

Public notification or exhibition: – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
– Exhibition period: 25/2/16 to 9/3/16
Submissions: Nil.

Other approvals (S68/138): Not applicable

Planning Review Committee: Not applicable (cost of works outside of staff delegations)

Delegation to determination: Meeting of Council

Issues: • Height of Building
• Rail Corridor
• Remnant Vegetation
• SEPP 65 Design Quality of Residential Apartment Development.

Summary:

The application seeks development consent for the following:

1. The demolition of the existing Wollongbar Motel and adjoining dwelling, and tree removal;
2. The erection of 2 buildings comprising;
 - No. 1 (north) – a 4 storey building containing 9 residential flats in 3 levels and basement car parking for 21 cars
 - No. 2 (south) – a 3 storey building containing 8 residential flats in 2 levels and basement car parking for 18 cars and
 - Provision of ancillary communal facilities, landscaping and infrastructure and
3. Strata subdivision.

The property is Zoned R3 Medium Density under Byron LEP 2014 and has a total area of approximately 3930 m². The proposed Building exceeds the 9.0m height limit by 0.55 metres with a variation sought under Clause 4.6 of Byron LEP 2014. This is supported in this instance as the proposed non-compliance with the building height can be largely attributed the existing variation in

the level of the land. In addition from the Shirley Street frontage proposed Building No.1 will be substantially screened from view by proposed Building No.2 which is below the 9.0m height limit.

The subject site contains trees associated with Littoral Rainforest which is identified as an Endangered Ecological Community (EEC). The proposed development is not considered likely to have a significant impact on the Littoral Rainforest EEC subject to conditions requiring:

- provision of a 1.5m wide buffer distance between any tree protection zone and proposed Building No.1, and
- relocate the proposed decking/path passing through the EEC area to the western side of Building No.1.

The proposal is considered to satisfy the provisions of State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development. However, it is noted that the development does not provide for any one or two bedroom dwellings in terms of housing diversity or choice.

The proposed three bedroom dwellings are able to provide for family accommodation which is a desirable form of apartment size in the context of existing housing stock and recent approvals of smaller dwellings in this area.

Minor encroachments are observed in terms of the Building Height Plane (BHP) adjacent to both the western boundary for Building No.1 and adjacent to the eastern boundary for Building No.2. The proposal also involves a minor encroachment within the specified front setback to Shirley Street. These encroachments are considered acceptable for the reasons detailed in this report.

The subject site adjoins the north coast rail corridor to the north, which is likely to be used again for rail transport in the near future. Conditions have been included to address potential noise and vibration issues, and to protect the rail asset.

The application was notified in accordance with the Level 2 provisions of Council's DCP 2014. No submissions were received.

It is considered the proposed development satisfies the applicable planning controls including Byron LEP 2014 and Byron DCP 2014. The proposed development has sufficient planning merit to warrant approval subject to conditions of consent.

NOTE TO COUNCILLORS:

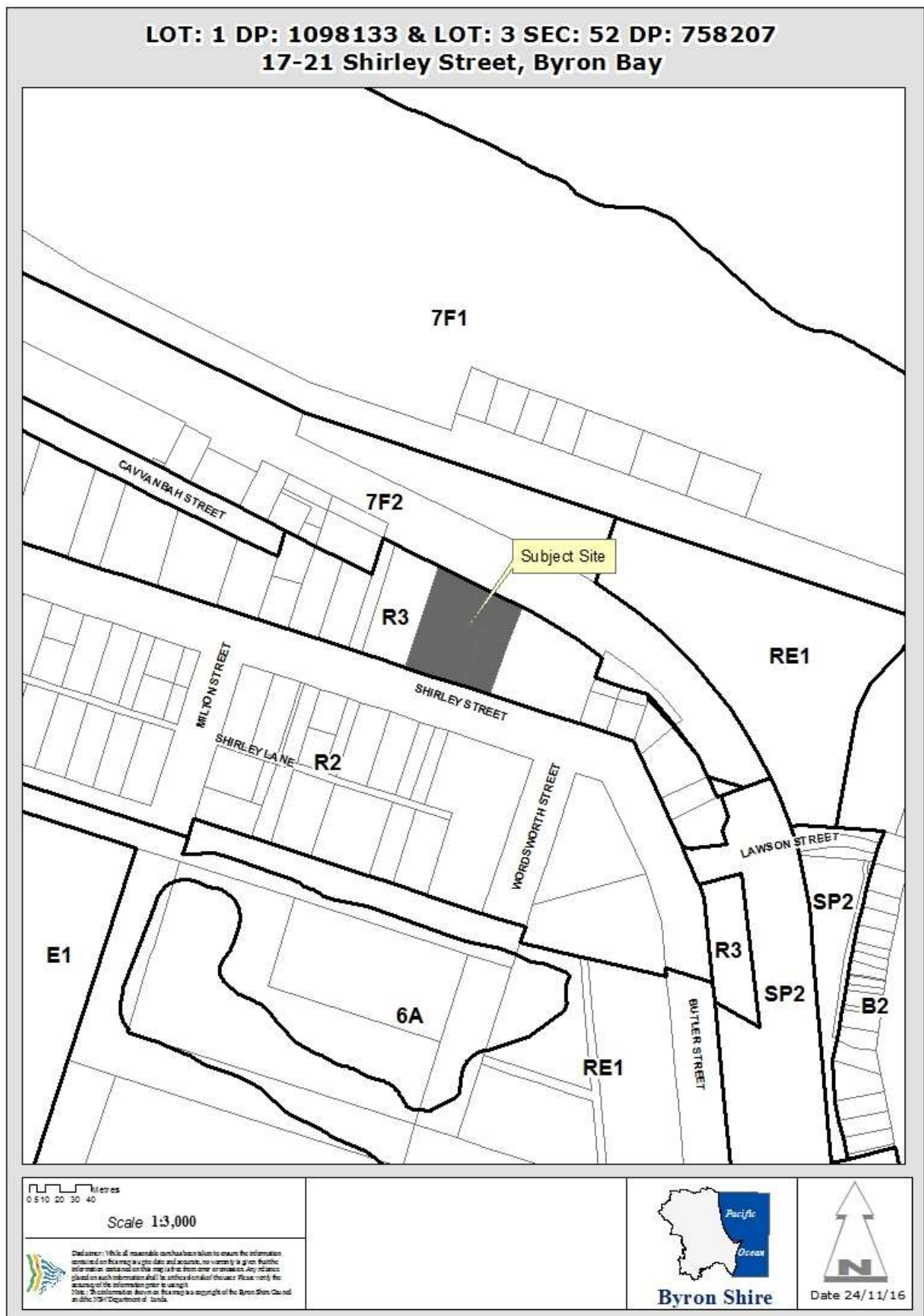
In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes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

RECOMMENDATION:

That pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application 10.2016.55.1 for demolition of existing buildings and erection of two residential flat buildings, containing a total of 17 x 3 bedroom dwellings, including basement parking, swimming pool, landscape works and Strata Subdivision, be granted consent subject to the conditions listed in Attachment 2 #E2016/99238.

Attachments:

- 1 Proposed plans 10.2016.55.1 17-21 Shirley Street Byron Bay, E2016/102546
- 2 Proposed conditions 10.2016.55.1 17,19 & 21 Shirley Street Byron Bay, E2016/99238



Assessment:

1. INTRODUCTION

1.1 History/Background

DA 5.1987.95.1 approved the construction of a motel and manager's residence. The approved plans indicated a total of 4 x 2 bedroom and 8 x 1 bedroom units. Bed numbers were not specified in the consent.

DA 5.1998.215.1 approved Motel Additions and limited the operation of the motel to a total of 40 persons, including the manager's residence

DA 10.2000.476.1 approved Motel additions (new office).

DA 10.2000.648.1, as modified, approved Motel additions - construction of a first floor addition for an additional 5 motel rooms (ie 10 single beds or 5 double beds) - to the rear of the existing motel, additional car parking and tree removal.

DA 10.2004.346.1 approved Change of use – existing motel to hostel (50 beds). Alterations that were within the scope of this consent – e.g. change of use of manager's residence to lower floor common eating area and upper floor communal area – have not been undertaken. Council's Authority data base records no Construction Certificate issued for DA 10.2004.346.1

DA 10.2006.689.1 approved an amended car parking arrangement to increase the on-site parking provision by 19 spaces. This application was initially refused and, following amendment, approved via a S82A Review. The new parking arrangement has not been constructed.

DA 10.2010.196.1 refused change of use motel to hostel of 73 rooms 208 beds in a 2 x 3 storey buildings with basement parking, bar kitchen dining area & pool.

1.2 Description of the site and surrounds

The subject site comprises two allotments being Lot 1 DP 1098133 (3,149.0m²), Lot 3 Section 52 DP 758207 17-21 Shirley St, Byron Bay NSW 2481 (781.7m²)



Figure 1 – Aerial photograph of the subject site in the context of the Byron Bay commercial centre.

The site is rectangular in shape and has an area of 3,930.7m². The site has a 61.1m wide frontage to Shirley Street. To the rear the site has a 61m frontage to the railway corridor and is in part affected by an easement for 'noise and vibration by AA322782' in regard use of the railway.

- 5 Existing development on Lot 1 is the Wollongbar Motel comprising: 23 rooms, 51 beds, reception and services area including laundry, 3 bedroom managers residence, swimming pool and entertainment / event area, landscaping and car parking for 26 vehicles.

- 10 Existing development on Lot 3 is a Dwelling erected approximately 1930-40's timber framed clad in fibre cement/asbestos sheeting with iron roof. The dwelling contains 3 bedrooms, kitchen, lounge/dining area and has a floor area of approximately 180m². A garage and 2 other outbuildings clad in fibre cement / asbestos sheeting are also on the land.

- 15 Surrounding development particularly along the northern side of Shirley Street is predominately 2 and 3 storey buildings used for residential and short term tourist accommodation.

The land is approximately 150m to the beach via the existing walking track and 340m from the Byron Bay central business district via Shirley Street.

20 **1.3 Description of the proposed development**

In summary the application seeks development consent for the following:

- 25 1. The demolition of the buildings and removal of vegetation on the land, other than remanent littoral rainforest;
- 30 2. The erection of 2 buildings comprising;
- No. 1 (north) – a 4 storey building containing 9 residential flats in 3 levels and basement car parking for 21 cars
 - No. 2 (south) – a 3 storey building containing 8 residential flats in 2 levels and basement car parking for 18 cars and
 - Provision of ancillary communal facilities, landscaping and infrastructure and
3. Strata subdivision.

Following is a detailed description of the proposed development.

Area summary of the proposed development by supplied by applicant:

Table 1 – Area summary

| Description | Area |
|----------------------|--|
| Site Area | 3930.7m ² |
| Building Foot Print | 1716.0 m ² |
| Deep Soil Planting | 771.0 m ² (20% of site area) |
| Landscaped Area | 2656m ² (34% of site area) |
| Hardscape & Driveway | 940 m ² |



Figure 2 – Subject site as viewed from Shirley Street



5 **Figure 3** – Proposed development as viewed from Shirley Street (photomontage supplied by applicant)



Figure 4 – Subject site as viewed from Shirley Street



Figure 5 – Proposed development as viewed from Shirley Street (photomontage supplied by applicant)

Trees and vegetation

- 5 The proposed development requires the removal of all palms and trees, apart from the remanent littoral rainforest in the north-east corner of the land.

10 Approximately 1,224m² (31%) of the land is proposed to be landscaped of which approx. 685m² (17% of the land and 56% of the landscaped area) will be soft surfaces / deep soil areas with a min. dimension of 6m.

Fencing

Fencing is proposed to comprise:

- retaining the existing security fence on the northern boundary,
- 15 • variable to 1.8m high rendered block fence along eastern and western boundaries, and
- no front fencing is proposed adjacent to Shirley Street.

Vehicular access and parking

20 New vehicular access is proposed to the land from Shirley St. The existing motel vehicular access gutter crossover and 2 associated with the dwelling will be closed.

On-site parking is provided for 41 cars in a basement of the proposed buildings.

25 The 'half' basement car parks are naturally ventilated, integrated into ground level landscaping and protected from periodic flooding events as the land and design of the driveway which provides a crest above the flood planning level.

2. SUMMARY OF GOVERNMENT/EXTERNAL REFERRALS

30 Comments have been received from Council's Development Engineer, Ecologist, Environmental Officer, ET Engineer, Section 94 Officer, Water & Waste Officer. Comment has also been received from NSW Government authorities including the Rural Fire Service and Sydney Trains (Transport NSW).

2.1 NSW Rural Fire Service – Section 100B of the Rural Fires Act 1997

40 The NSW Rural Fire Service has issued a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' subject to conditions. The conditions associated with the bush fire safety authority have been included in the recommendation of this report.

2.2 Section 5A Significant effect on threatened species, populations or ecological communities, or their habitats

The subject site contains trees associated with Littoral Rainforest which is an Endangered Ecological Community (EEC). Pursuant to Section 5A(1) the following matters must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

- (a) each of the factors listed in subsection (2),
- (b) any assessment guidelines.

The applicant has submitted an Ecological Assessment prepared by Peter Parker Environmental Consultants Pty Ltd. Council's Ecologist has recommended amended plans be provided to significantly enlarge tree protection zones around the littoral rainforest EEC. Decking and paths are to be removed from the EEC, the EEC should be conserved and excluded from the recreation area of residents.

The proposed development is not considered likely to have a significant impact on the Littoral Rainforest EEC subject to conditions requiring the submission of revised plans which:

- provide a 1.5m wide buffer between the existing EEC trees and the proposed buildings (to provide room for scaffolding during construction), and
- relocate the proposed decking/path passing through the EEC area to the western side of Building No.1.

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

| Policy / Requirement summary | Proposed | Complies |
|---|---|----------------------------------|
| State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development | *See a summary assessment of the proposal having regard to SEPP No.65 immediately following this table. | Yes* |
| State Environmental Planning Policy No 55 - Remediation of Land Where a change of use is proposed the Council must consider a report provided by the applicant specifying the findings of a preliminary investigation (and detailed investigation if necessary) of the land in accordance with the contaminated land planning guidelines. | It is recommended that waste soils be removed from the site and disposed at a licenced waste facility. A condition has been imposed. To ensure that any buried rubbish or contaminated materials uncovered following demolition are managed in accordance with statutory requirements, it is further recommended that the applicant provide to Council an Unexpected Findings Protocol (UFP) prepared by a suitably qualified professional. Conditions have been recommended to ensure that | Yes* (*subject to conditions) |

| Policy / Requirement summary | Proposed | Complies |
|---|---|---|
| | demolition, construction and building works are in accordance with the UFP. | |
| <p>State Environmental Planning Policy (Infrastructure) 2007 <u>Clause 85 Development immediately adjacent to rail corridors</u> (2) Before determining a development application for development to which this clause applies, the consent authority must: (a) within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and (b) take into consideration: (i) any response to the notice that is received within 21 days after the notice is given, and (ii) any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.</p> <p><u>101 Development with frontage to classified road</u> (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that: (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of: (i) the design of the vehicular access to the land, or (ii) the emission of smoke or dust from the development, or (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</p> | <p>The application was referred to the relevant NSW rail authority. Issues raised relate to depth of excavation and proximity of the rail corridor, geotechnical details, noise and vibration. Conditions have been included to address these issues.</p> <p>Beach access across rail corridor shown requires separate approval from NSW Government.</p> <p>The proposed development has frontage to a classified road. The proposed development is considered acceptable having regard to the matters in Clause 101. The application for a construction certificate must include plans and specifications that demonstrate the inclusion of acoustic treatments recommended in Section 7 of report entitled <i>Wollongbar Property PTY 17-21 Shirley Street Byron Bay Acoustic Assessment for Development</i> prepared by GHD dated December 2015.</p> | <p align="center">Yes</p> <p align="center">Yes* (*subject to conditions)</p> |
| <p>State Environmental Planning Policy No. 71 - Coastal Protection Council must have regard for the matters of consideration under Parts 2 and 4 of SEPP No. 71 when assessing development within the</p> | <ul style="list-style-type: none"> • The proposal has no impact on public access to the coastal foreshore. • No effluent is proposed to be disposed other than to Council's | <p align="center">Yes</p> |

| Policy / Requirement summary | Proposed | Complies |
|---|--|-----------------|
| <p>coastal zone. These matters include:</p> <ul style="list-style-type: none"> – retention of existing public access to the coastal foreshore – impact of effluent disposal on water quality – development must not discharge untreated stormwater into a coastal water body <p>Clause 18 requires subdivision of land not within a sensitive coastal location of 25 or more lots to have prior adoption of a master plan or a waiver from the Minister.</p> | <p>sewerage system.</p> <ul style="list-style-type: none"> • Stormwater – A condition has been included to require separate approval of the stormwater management plan including details of the method of treating stormwater runoff. <p>The proposed strata subdivision involves does not involve the creation of 25 or more lots.</p> | |
| <p>State Environmental Planning Policy Building Sustainability Index 2004 (BASIX) Applies to new residential dwellings and alterations and additions with a value greater than \$50 000. Development is to accord with a completed BASIX Certificate.</p> | <p>The proposed development is consistent with the requirements as detailed on the submitted BASIX Certificate.</p> | Yes |
| <p>North Coast Design Guidelines Standards for building design on the North Coast of NSW.</p> | <p>The design is considered to be generally consistent with the guidelines. The height of the proposed building will be below the height of existing street trees on Shirley Street.</p> | Yes |
| <p>NSW Coastal Policy 1997 The subject site is located within 1km landward of the open coast high water mark and is subject to the provisions of the NSW Coastal Policy.</p> | <p>The proposed development is considered to be consistent with the Goals, Objectives and Strategic Actions of the NSW Coastal Policy 1997.</p> | Yes |
| <p>Building Code of Australia Ability for the proposed development to comply with the requirements of the BCA.</p> | <p>The proposal is considered to be able to satisfy the requirements of the Building Code of Australia.</p> | Satisfactory |
| <p>Disability Discrimination Act</p> | <p>The proposed development provides lift access to each dwelling.</p> | Satisfactory |

* Non-complying issues discussed below

State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development

5

Clause 28 Determination of Development Applications

10

(2) *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

(a) *the advice (if any) obtained from the design review panel, and*

Assessment: The Minister has not formed a Design Review Panel for the Byron Shire Local Government Area accordingly no advice has been received.

- 5 (b) the design quality of the development when evaluated in accordance with the design quality principles, and

10 Assessment: The applicant has submitted a Statement prepared by a Registered Architect specifically addressing each of the nine (9) design quality principles of Context and neighbourhood character, Built form and scale, Density, Sustainability, Landscape, Amenity, Safety, Housing diversity and social interaction and Aesthetics.

It is considered the proposed design has adequately addressed each of the design quality principles apart from *Principle 8: Housing Diversity and Social Interaction* which states:

15 ***Principle 8: Housing Diversity and Social Interaction***

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

20 *Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.*

25 All of the proposed 17 dwellings contain three bedrooms with relatively larger apartment floor areas ranging from 132.8m² to 149.9m². This proposal does not provide for any single or two bedroom dwellings and it may be considered that the proposal does not provide for housing diversity or housing choice.

30 Notwithstanding the above, the proposed development is considered to add to housing diversity and choice within the Byron Bay township for the following reasons:

- 35 • Council has approved in excess of 500 secondary dwellings over the past 5 years, consisting of one or two bedrooms. One hundred and twenty one of these dwellings are located in Byron Bay, and a further sixty nine in Suffolk Park.
- Generally, the proposed three bedroom apartments are a less common apartment type in Byron Bay with single and two bedroom apartments being more commonplace;
- 40 • The three bedroom apartments are able to provide for family accommodation (including families comprising two adults with two or more children), whilst the design also lends itself to home office/ working arrangements ;
- 45 • Currently under construction and in close proximity (at the corner of Kendall Street and Ewingsdale Road) is a multi dwelling housing development comprising 12 single bedroom dwellings.

It is considered the three bedroom dwellings are an appropriate response to the site and economic factors currently driving the residential market.

- 50 (c) the Apartment Design Guide.

55 Assessment: The applicant has submitted a statement prepared by a Registered Architect specifically addressing Part 3 Siting the Development and Part 4 Designing the Building. The proposed development is considered to be a satisfactory response to the Design Guide.

3.2. BYRON LOCAL ENVIRONMENTAL PLAN 2014

Zone: R3 Medium Density Residential Zone

Definition: Residential flat building

| LEP - Summary of Requirement | Proposed | Complies |
|--|---|---|
| <p>Satisfy objectives of the R3 Medium Density Residential zone Objectives of zone</p> <ul style="list-style-type: none"> To provide for the housing needs of the community within a medium density residential environment. To provide a variety of housing types within a medium density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. | <p>The proposed residential flat buildings are considered to meet the housing needs of the community in an area zoned for medium density residential housing.</p> | <p>Yes</p> |
| <p>Permissibility Residential flat buildings are permissible within the R3 Medium Density Residential Zone.</p> <p>residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.</p> <p>Clause 2.6 Subdivision - consent requirements (1) Land to which this Plan applies may be subdivided, but only with development consent.</p> | <p>The proposed 17 dwellings (in two buildings) are considered to fall within the category of residential flat buildings.</p> <p>The proposed strata subdivision is permissible pursuant to Clause 2.6 of Byron LEP 2014.</p> | <p>Yes</p> |
| <p>Clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings The minimum lot size for residential flat buildings within the R3 Medium Density Residential Zone is 1000m².</p> | <p>The subject allotment has a total area of 3930.7m².</p> | <p>Yes</p> |
| <p>Clause 4.3 - Height of buildings Maximum height limit as shown on the Height of Buildings Map is 9.0 metres.</p> | <p>The maximum height of the proposed building is approximately 9.55 metres (RL14.00 - RL 4.45)</p> | <p>No* (*see Section 3.2.1 of this report)</p> |
| <p>Clause 4.4 Floor space ratio Maximum floor space ratio for a building on the subject site is not to exceed 0.6:1 as shown on the <u>Floor Space Ratio Map</u>.</p> | <p>The total area of the subject allotment is 3930.7m². The proposed Gross Floor Area of the building is 2358.5m². Proposed FSR satisfies the FSR.</p> | <p>Yes (amended plans submitted 12 Oct 2016)</p> |
| <p>Clause 5.5 Development within the coastal zone (2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered: (a) existing public access to and along the coastal</p> | <p>The proposed development is considered to satisfy the relevant matters for consideration detailed in Clause 5.5.</p> | <p>Yes</p> |

| LEP - Summary of Requirement | Proposed | Complies |
|--|---|---------------------------|
| <p>foreshore for pedestrians</p> <p>(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:</p> <p>(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities),</p> <p>(c) the impact of the proposed development on the amenity of the coastal foreshore including:</p> <p>(i) any significant overshadowing of the coastal foreshore, and</p> <p>(ii) any loss of views from a public place to the coastal foreshore, and</p> <p>(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and</p> <p>(e) how biodiversity and ecosystems, including:</p> <p>(i) native coastal vegetation and existing wildlife corridors, and</p> <p>(ii) rock platforms, and</p> <p>(iii) water quality of coastal waterbodies, and</p> <p>(iv) native fauna and native flora, and their habitats, can be conserved, and</p> <p>(f) the cumulative impacts of the proposed development and other development on the coastal catchment.</p> <p>(3) the matters listed in this subsection.</p> | | |
| <p>Clause 5.10 Heritage Conservation</p> <p>(4) Effect of proposed development on heritage significance</p> <p>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p>(5) Heritage assessment</p> <p>The consent authority may, before granting consent to any development:</p> <p>(a) on land on which a heritage item is located, or</p> <p>(b) on land that is within a heritage conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p> | <p>The subject site is located directly opposite the Shirley Street Conservation Area. In accordance with Clause 5.10 the proposed development has been considered having regard to the setting of the conservation area.</p> <p>The Byron Shire Heritage Inventory sheet for the Conservation Area states, in part:</p> <p><i>A group of dwellings and public buildings, rear lanes, street trees, which taken together, illustrate a pattern of settlement in Byron Bay of distinctive character. The area contrasts strongly with the modern beachside developments on the eastern side of Shirley St although the two areas are</i></p> | <p align="center">Yes</p> |

| LEP - Summary of Requirement | Proposed | Complies |
|--|--|---------------------------|
| | <i>united by the striking avenue of mature Norfolk Island pine trees.</i> | |
| <p>Clause 6.1 Acid Sulfate Soils The site is identified as containing both Class 2 & 3 acid sulphate soils. Class 2 - Works below the natural ground surface. Works by which the watertable is likely to be lowered. Class 3 - Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.</p> | <p>Preliminary Acid Sulfate Soil Assessment No. 16117_SEPP 55.docx prepared by Greg Alderson & Associates dated 10th December 2015 indicates that potential acid soil is likely to be located at 0.0m AHD at approximately 4m below the natural ground level. Dewatering is likely to be required. The applicant is required to submit a Dewatering Management Plan and Groundwater Contingency Plan for approval prior to issue of a Construction Certificate.</p> | <p align="center">Yes</p> |
| <p>6.3 Flood planning (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: (a) is compatible with the flood hazard of the land, and (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and (c) incorporates appropriate measures to manage risk to life from flood, and (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. (4) In determining a development application for development at or below the future flood planning level, the consent authority must, in addition to the matters referred to in subclause (3), also consider the following matters: (a) the proximity of the development to the current flood planning area, (b) the intended design life and scale of the development, (c) the sensitivity of the development in relation to managing the risk to life from any flood,</p> | <p>Council's Development Engineer has advised the Flood Planning Level (FPL) for this site is RL 3.01m AHD for non-habitable buildings or rooms and 3.30m AHD for habitable buildings or rooms. The proposed ground floor levels are at 3.30m - 3.35m AHD.</p> | <p align="center">Yes</p> |

| LEP - Summary of Requirement | Proposed | Complies |
|--|-----------------|-----------------|
| (d) the potential to modify, relocate or remove the development. | | |

** Non-complying issues discussed below*

3.2.1 Byron Local Environmental Plan 2014 – Exceptions to development standards Clause 4.6 Assessment

1. Non-compliance with Clause 4.3 Height of buildings (Clause 4.6 assessment)

Clause 4.6(3) specifies:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Assessment: A written request has been submitted by the applicant seeking to justify a building height of RL 14.00 on the subject site. The maximum height of the proposed building is calculated to 9.55 metres. The proposed building is 0.55m higher than the 9.0m height control (a non-compliance of 6%).

The applicant has provided matters to justify the proposed contravention, the relevant matters are assessed as follows:

- The proposed 0.55m height variation is considered minor in nature. The level of the site varies by approximately 0.65m across the proposed footprint of Building No.1. The proposed non-compliance with the building height can be largely attributed the existing variation in the level of the land.
- The height of the adjacent building at No.9 Shirley Street is 0.64 metres higher than the proposed height of Building No.1 (RL14.64). The proposed increase in height and bulk of the building is considered to be compatible with the existing streetscape.
- From the Shirley Street frontage Building No.1 will be substantially screened from view by proposed Building No.2 which is below the 9.0m height limit. The part of the building which exceeds 9.0m in height is located in the centre/north on the site and well separated from the public domain.

It is considered that the development standard (height of buildings) has been demonstrated to be unreasonable or unnecessary in the circumstances of this case.

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Assessment: It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause 3.

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Assessment: The objectives of Clause 4.3 (height of buildings) are as follows:

- (a) *to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*
 (b) *to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*
 (c) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*
 (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

It is considered the proposed height of the building satisfies the objectives of Clause 4.3. The proposed building height is not considered to be excessive in the immediate streetscape and should not detract from the character of the area.

The proposed portion of Building No.1 exceeding the height limit should not result in any unacceptable overshadowing of neighbouring properties. Subject to conditions relating to privacy screens the proposed development should not result in any unacceptable loss of privacy to any neighbouring property.

No written objection has been received relating to the loss of views. The proposal is not considered likely to result in any significant loss of views by neighbouring properties.

The proposed development is considered to be generally consistent with the objectives of the R3 Medium Density Residential Zone as these objectives do not refer to built form.

- (b) *the concurrence of the Director-General has been obtained.*

Assessment: Concurrence of the Director-General is able to be assumed for non-compliances with Clauses 4.6 (pursuant to NSW Planning System Circular 08-003).

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

Draft SEPP (Coastal Management) 2016

The Draft Coastal Management State Environmental Planning Policy (SEPP) proposes to establish a new, strategic land use planning framework for coastal management. It is intended to support the implementation of the management objectives set out in the *Coastal Management Act 2016*.

Once adopted, the Coastal Management SEPP will be the single land use planning policy for coastal development and will bring together and modernise provisions from SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The aim of the Draft SEPP is to promote an integrated and co-ordinated approach to planning in the 'Coastal Zone', identifying four coastal management areas:

- coastal wetlands and littoral rainforests area
- coastal environment area;

- coastal use area; and
- coastal vulnerability area.

5 The subject site is mapped within the 'coastal use area'. The draft provisions for consideration of development within this area generally reflect the existing matters for consideration currently outlined in SEPP 71.

10 The subject site is also falls within a 'coastal vulnerability area' as it is identified within the 'Coastal Erosion Hazard Area' on the Byron Bay Coastal Hazards Map (Byron DCP 2014). This matter has been assessed and a condition has been included to require a property title restriction which specifies, in part:

15 *"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."*

20 The proposal is considered to be acceptable having regard to the provisions of the Draft SEPP particularly Divisions No.2, 4 & 5. The proposed development is not in a wetland, littoral rainforest, or coastal environment area.

3.3 DEVELOPMENT CONTROL PLAN 2014

| Byron Development Control Plan 2014 | | |
|---|--|-------------------------------|
| Control | Assessment | Compliance |
| Section B8 Waste Minimisation and Management | | |
| B8.4.2 Multi Dwelling Housing A Site Waste Minimisation and Management Plan (SWMMP) is to be submitted with a Development Application and must show all matters specified within Section B8.4.2. | The applicant has submitted a preliminary SWMMP generally in accordance with B8.4.2 using Council's standard template form. | Yes (subject to condition) |
| Section B9 Landscaping | | |
| B9.2.2 Landscape Plans for Development Applications Landscape plans preferably should be prepared by a landscape architect or qualified landscape designer. Where a Landscape Plan is required for approval as part of a development application, the following documentation must be submitted: A site plan and a landscape concept plan. | The application was accompanied by a Site Plan and a Statement of Landscape Intent which are considered to satisfy Section B9.2.2 of DCP 2014. | Yes |
| B9.4.1 Residential flat buildings The following design requirements apply to multi dwelling housing, attached dwellings and residential flat buildings developments: <ul style="list-style-type: none"> - retention of suitable existing vegetation; - screen planting to street frontages and driveway areas, to provide privacy between dwelling houses and around the boundaries of the site; - provision of pleasant landscaped settings for the enjoyment of residents; - planting selection that relates to building scale and mass. Common Landscape Area requirements: Table B9.1 – Dwelling Size to Landscape Area | Common landscaped area requirement is 1530m ² (17 x 90m ²). The proposal is required to provide a total of 1550m ² of common landscaped area (excluding approved private open space balconies). Note: Common landscaped area is able to include the swimming pool, communal amenities area and walkways. The proposed development is considered to satisfy the landscape planting requirements of Clause B9.4.1 including adequate screen plantings. | Yes |

13.7

[illegible]

| Byron Development Control Plan 2014 | | | |
|--|---|---|--------------------------------|
| Control | | Assessment | Compliance |
| D1.2.4 Character & Visual Impact | | It is considered the proposed buildings are compatible with the character of the area. The proposed flat roof design whilst not a common characteristic of existing buildings on the northern side of Shirley Street is considered to be compatible. | Yes |
| D1.2.5 Fences | | No proposed front fencing has been included on the proposed plans. 'Minimum' 1.8 metres high timber fencing proposed on side boundaries. | Yes (subject to condition) |
| Front Fence | 1.2 metres. | | |
| Side Fence | 1.2 metres within the building line setback and 1.8 metres for the remainder. | | |
| Rear Fence | 1.8 metres. Where the rear fence is the primary frontage front fence height provisions may apply. | | |
| D1.2.7 Pedestrian and Cycle Access Development applications for residential accommodation of more than 3 dwellings must demonstrate that the pedestrian/cycleway network detailed in Council's adopted Byron Shire Bike Strategy and Action Plan will be incorporated into new development. Refer to Chapter B5 Providing for Cycling and Chapter B13 Access and Mobility. | | The subject site adjoins an existing footpath and therefore provides connectivity. | Satisfactory |
| Section D1.6 Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings | | | |
| D1.6.1 Private Open Space Courtyards Objective 1. <i>To ensure that residents have access to private, useable, landscaped open space.</i> The private open space area must not include any areas used for the management of on-site sewage effluent. | | Each of the proposed dwellings does not have direct ground floor access. | N/A |
| D1.6.2 Open Space Balcony 1. This provision is only activated when it is not possible to allocate private open space at ground level. 2. A private open space balcony must have a minimum area of 15m ² and a minimum length and width of 2.4 metres. A private open space balcony must be demonstrated to have appropriate orientation and adequate provision for winter sun and summer shade. | | Each of the proposed dwellings is situated above ground level. Private open space balconies have been provided for each dwelling each dwelling having a balcony significantly exceeding 15m ² in area and dimensions exceeding 2.4m x 2.4m. Each dwelling has a balcony with a northerly aspect. Balconies have been provided in addition to the common landscaped area requirements. | Yes |
| D1.6.3 Landscaping | | The applicant has submitted a landscape statement which is considered to satisfy the requirements of Section D1.6.3. | Yes |
| D1.6.4 On-Site Car Parking Refer to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access for detailed provisions regarding vehicle access, numbers, dimensions and layout of car parking spaces. | | Council's Development Engineer has assessed the proposed 39 parking spaces satisfy DCP 2014 requirements subject to conditions. | Yes (subject to conditions) |

| Byron Development Control Plan 2014 | | |
|---|---|---------------------------------------|
| Control | Assessment | Compliance |
| Large areas of car parking must be broken up by variation in layout, pavement treatment, landscaping, mounding and/or other means to Council's satisfaction. | | |
| D1.6.5 Sound Proofing Division walls between dwellings must be of sound-resisting construction to Council's satisfaction. The floors in single storey multi-dwelling housing, residential flat buildings and attached dwellings must be so constructed or treated as to minimise the conduct of sound between dwellings. | It is understood that the BCA construction requirements provide for adequate sound insulation between dwellings. | Yes |
| D1.6.6 Clothes Drying Facilities Prescriptive measures The minimum provision of clothes drying facilities must be at the rate of 7.5 metres of line per dwelling, located in suitably screened external drying areas. | A specific external clothes drying area has not been proposed for each dwelling however sufficient balcony space would allow for 7.5m of cloths line per dwelling. It is proposed to use electric dryers. | Yes |
| D1.6.7 Equity of Access and Mobility Provision for access and mobility must be made pursuant to Chapter B13 Access and Mobility. B13.2.2 Residential flat buildings Design and access to accord with AS1428.1. <u>Dwelling units:</u> a minimum of 10% units should be adaptable housing. Access to the upper level of townhouses can be by lift, stair lift, inclinor or platform lift in accordance with Australian Standards. <u>Access:</u> A continuous path of travel in accordance with AS1428 between main street entrance to residential complex. <u>Car Parking:</u> At least one accessible car parking space for the disabled must for each adaptable housing unit. | A condition has been included to require two of the dwellings as adaptable housing in accordance with AS1428.1. The proposed plans do not identify any access parking spaces. A minimum of two (2) accessible parking space are required. | Yes – Subject to Condition of consent |
| D1.6.8 Pipes and Vents All service pipes and vents must be concealed within the walls of residential flat buildings, multi-dwelling housing and attached dwellings . Provision of recessed service pipes in external walls may be acceptable where it is demonstrated that the proposal is consistent with the Objectives. Access to pipes and vents must be provided as required by relevant authorities. | The proposed plans do not indicate that pipes and vents will be external to the proposed building. | Yes |
| D1.6.9 TV Antennae Each development must be provided with a common television reception system designed to minimise adverse visual impacts whilst enabling high quality reception for each dwelling . | A condition has been included to require the development have a common television reception system, | Condition of consent |
| E5.4.1 Development and servicing of land affected by predicted coastal hazards 1.If the development consent does cease then the owner of the land will be responsible for the | Conditions has been included to address coastal erosion and to require a property title restriction which specifies in part: <i>"The development must cease if at any</i> | Yes (subject to conditions) |

| Byron Development Control Plan 2014 | | |
|---|---|------------|
| Control | Assessment | Compliance |
| <p>removal of all buildings.</p> <p>2.The option of demolition as the means of removal will be available to all buildings.</p> <p>3.Prior to the issue of a Construction Certificate a restriction as to user <i>must be placed on the title pursuant to the provisions of section 88E of the Conveyancing Act 1919</i>, stating:</p> <p><i>"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".</i></p> | <p><i>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."</i></p> | |

Development Control Plan 2014 - Issues

1. Building height plane encroachments

Section D1.2.1 Building Height Plane specifies, in part:

1. *The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development other than for shop top housing and ancillary dwellings in Zones IN1, IN2 and B7.*
2. *An exemption from the building height plane may be considered in relation to one or more boundaries in the following circumstances:*
 - *where the floor level is required to be above ground level to comply with Council's requirements for flood protection; or*
 - *for the zero lot line boundaries of semi-detached dwellings and attached dwellings; or*
 - *in circumstances referred to in Prescriptive Measure 2. of Section D1.2.2 (see following).*

2. Minimum Side and Rear Boundary Setbacks

- a) *Side and rear setbacks are to be a minimum 900mm, with all dwellings also complying with the requirements of the building height plane.*
- b) *In urban residential areas, Council may consent to the construction of one or more building walls set back less than 900mm from a side or rear boundary, such that the building/s cannot comply with the building height plane, where:*
 - i) *such wall or walls contain no openings; and*
 - ii) *it is demonstrated to Council's satisfaction that the development, if carried out, would improve the siting or orientation of the dwelling/s or the provision of private open space; and would not significantly:*
 - *increase the overshadowing of adjoining properties; or*
 - *reduce the level of privacy enjoyed by adjoining properties.*

Assessment: The proposed development encroaches the BHP adjacent to both the western and eastern side boundaries (see **Figures 5 & 6**). The proposed encroachments are considered acceptable in this instance as it would not significantly increase the level overshadowing of adjoining properties and would not reduce the level of privacy enjoyed by adjoining properties (subject to conditions relating to privacy screens on the western balconies of Building No.1).

The applicant has submitted shadow diagrams which identify the existing two-storey Outrigger Bay Resort development on the adjoining allotment to the east (No.9-13 Shirley Street). The shadow diagrams (see **Figures 7 & 8**) illustrate that the shadows cast from the proposed buildings result in limited overshadowing of the neighbouring property at the winter solstice. The proposal is considered acceptable having regards to the minimum setbacks of 6.370 to the side boundary and the performance criteria and objectives underpinning this design element in the DCP.



Figure 5 – South Elevation of Building No.1 (north building) showing western encroachment



Figure 6 – South Elevation of Building No.2 (south building) showing eastern encroachment



Figure 7 – Shadow diagrams winter solstice (22 June) 9:00am and 11:00am



Figure 8 – Shadow diagrams winter solstice (22 June) 1:00pm and 3:00pm

3. Front setback encroachment

Objectives

1. To achieve varied and interesting streets that complement and harmonise with existing and planned streetscapes and development in the locality.

2. *To achieve good orientation and spacing of residential developments that achieve high quality living environments relative to sunlight, shade, wind and weather protection, residential amenity and proximity of neighbouring development.*
3. *To achieve effective use of **allotments** to create useable and liveable private open space and courtyards.*
4. *To provide flexibility in siting and design of **dwelling house** development in urban residential areas.*

Performance Criteria (extracts only)

The setback from a street frontage for a building that is part of a residential development will be determined on its merits, having regard to:

- a) *the Objectives;*
- b) *any provisions of this DCP applying to the specific location;*
- c) *the position of any existing buildings in the locality;*
- d) *the size and shape of the allotment;*
- e) *the effect on vehicular safety and visibility, particularly on corner sites;*
- f) *the orientation of the allotment and the proposed dwelling with regard to the sun and prevailing winds;*
- g) *the proposed location of any private open space, courtyard or landscaped areas;*
- h) *the facade of the proposed building or buildings which will face the street and the proposed landscape treatment of that part of the allotment which is visible from the street;*
- i) *the location and treatment of any car parking areas or car parking structures on the site.*

When considering applications for variations to minimum setbacks nominated below in the Prescriptive Measures, Council will have regard to:

- a) *the Objectives;*
- b) *compliance with the Performance Criteria;*
- c) *the visual impact of the variation on the streetscape;*
- d) *the impact of the variation on the amenity, privacy, views and access of surrounding properties;*
- e) *the existing and future status of the road;*
- f) *potential traffic impacts and required sight lines as per AS2890; and*
- g) *compliance with the Building Code of Australia.*

Assessment: Section D1.2.2 Setbacks from Boundaries specifies a minimum setback of 9.0 metres from the primary front boundary to a classified road. Having regard to the Objectives and Performance Criteria of Section D1.2.2 it is considered that the proposed front setback is acceptable in view of the following matters:

- the main building line is setback 8.3m with a portion of the building being 7.3m (the proposed main building encroaches 1.7m and 2.7m forward of the minimum setback);
- the proposed variation to the front setback will not detract from the amenity, views or access of surrounding properties;
- existing buildings on adjoining allotments have a similar front setback (adjacent building at 9-13 Shirley Street (Outrigger Bay Resort) has a front setback of 5.81m, 23-25 Shirley Street has a front setback of 8.83m and 27 Shirley Street has a front setback of 6.07m);
- the proposed development is considered to be compatible with the streetscape,
- the proposed development is capable of compliance with the Building Code of Australia and sight lines as per AS2890.

Having regards to the performance criteria and objectives underpinning this design element a variation to the numerical standard is supported in this instance.

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

5 The proposed development is considered to be compatible with the built form of existing medium density development within the immediate area. The proposal is compatible with the natural environment and unlikely to result in any unacceptable impacts.

10 The proposal will provide for positive economic impacts during the construction phase in terms of employment and building suppliers and associated multiplier effects are expected through the local economy, whilst socially the development will deliver additional housing.

3.5 The suitability of the site for the development

15 Having regard to the site constraints of bush fire prone land, coastal erosion and acid sulphate soils, the site is considered to be suitable for the proposed development subject to the conditions included in the recommendation.

20 The subject site adjoins the north coast rail corridor to the north. Conditions have been included to address potential noise and vibration issues.

3.6 Submissions made in accordance with this Act or the regulations

25 The application was publically notified in accordance with the Level 2 procedure of Council DCP 2014. Council's records indicate that no submissions were received.

3.7 Public interest

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

4. DEVELOPER CONTRIBUTIONS

4.1 Water & Sewer Levies

35 The proposed development will generate the following load:

Table 1 - Calculation of Proposed Development Water & Sewer ETs

| Ref | Development Type | Standard Unit | Quantity | ET Rate (ET/unit) | | ET Load | |
|--------------|--------------------------------------|---------------|----------|-------------------|-------|-------------|-----------|
| | | | | Water | Sewer | Water | Sewer |
| 3.9 | Units - 3 or more bedrooms (or more) | Dwelling | 17 | 0.80 | 1.00 | 13.60 | 17.00 |
| TOTAL | | | | | | 13.6 | 17 |

Table 2 - Calculation of Additional Water & Sewer ET Load

| | Water | Bulk Water | Sewer |
|--|------------|------------|-------------|
| Existing ET Entitlements (Table 1) | 9.9 | 9.9 | 14.15 |
| Proposed Development ET loading (Table 2) | 13.6 | 13.6 | 17 |
| Additional ET loading | 3.7 | 3.7 | 2.85 |

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

- 5 Council requires Payment of Developer Servicing Charges (prior to issue of a construction certificate) of:
- **3.7 ET** for Water &
 - **3.7 ET** Bulk Water*; and
 - **2.85 ET** for Sewer.

4.2 Section 94 Contributions

This development will result in an increased demand for public facilities and it is appropriate to impose a condition of consent requiring the payment of contributions.

The credit for the site is calculated as follows:

| Development Type | Standard Unit | Quantity | ET Rate (ET/unit) 1993 & 2001 S94 Plans | |
|------------------------------------|----------------------|-----------------|--|------|
| Managers Residence (3 Bedrooms) | Dwelling | 1 | 1 | 1.00 |
| No. One Bedroom Motel rooms | Room | 19 | 0.25 | 4.75 |
| No. Two Bedroom Motel rooms | Room | 8 | 0.5 | 4 |
| Total | | | | 9.75 |

A condition has been included to require payment of additional Section 94 contributions.

5. CONCLUSION

The proposed residential flat building is located within an area of Byron Bay which is characterised by medium density development and tourist and visitor accommodation. Minor encroachments are observed in terms of height, the Building Height Plane (BHP) and setbacks which are considered acceptable for the reasons as outlined above in the report. The site also contains remnant littoral rainforest, however the property is not identified under SEPP 26. Notwithstanding this, the proposed development is sited away from the littoral rainforest species, and conditions of consent are recommended to ensure an adequate buffer is provided to the existing vegetation.

In terms of the adjoining rail corridor to the north, conditions have been included to address potential noise and vibration issues, and to protect the rail asset, noting that the rail line is likely to be in use in the near future. It is considered the proposed development satisfies the applicable state and local planning controls and is an appropriate response to the site having regards to the size of the land and its R3 Medium Density Zoning. The proposed development is recommended for approval subject to conditions of consent.

Report No. 13.8 **Bangalow Village Plan Project Plan**
Directorate: Sustainable Environment and Economy
Report Author: Fiona Sinclair, Planner
File No: I2016/1182
5 **Theme:** Ecology
 Planning Policy and Natural Environment

Summary:

10 This report seeks Council's endorsement of a 'Draft Project Plan' for preparation of a masterplan for the Bangalow village including its town centre. The last locality plan (masterplan) prepared for the Bangalow village was the Bangalow Settlement Strategy, 2003. This plan is now 13 years old and many of the visions and actions identified in the plan have come to fruition. An updated plan is
15 needed to guide future development of the village.

20 The Bangalow Village masterplanning process was initiated in late 2015 with a community survey, followed by a two day Place Creation Workshop held in March 2016. Thirty-one people participated in the workshop including invited representatives from Bangalow community groups, the Mayor, Councillors and Council staff. The workshop delivered a combination of training about placemaking and urban design as well as brainstorming sessions where participants identified key issues and ideas for their town.

25 Outcomes from this initial round of community consultation (see Attachments 3 and 4), have informed the project definition and scoping phase of the masterplanning project. A 'Draft Project Plan' for development of the masterplan has now been prepared and is submitted for Council's endorsement of the project (see Attachment 1).

30 The proposed 'Bangalow Village Plan' will be prepared in consultation with a community reference group called the "Guidance Group" (refer Attachment 2). The intent of the plan is to guide the future evolution of the village to ensure that the things people value about Bangalow – such as it's small town feel, heritage main street, rural setting and natural hinterland environment - are conserved in perpetuity whilst enabling sustainable development to service the community's
35 changing needs over time.

Key outcomes that Council and the community are seeking from the Bangalow Village Plan are:

- a shared vision for the future – to get everyone rowing in the same direction
- better integration, coordination, sequencing and timing of plans and activities including the delivery of infrastructure
- 40 • to establish new collaborative partnerships between Council and community groups to assist with implementing the actions identified in the plan
- to inspire and drive change by trialling some new ideas, temporary events and creative initiatives in the public domain.

45 The plan will be developed in three stages (Parts A to C) as described below with indicative costs shown in brackets:

- Part A – prepare vision statements, objectives and strategies (\$32,850 required in 2016/17)
- 50 • Part B – identify actions and projects to achieve the strategies; prioritise and prepare an implementation plan (\$25,000 required in 2017/18)
- Part C – identify opportunities for temporary trials, community events, creative placemaking and place activation initiatives (\$32,000 required in 2017/18).

55 This report proposes the adoption of the Draft Project Plan for preparation of the Bangalow Village Plan and the allocation of \$32,850 from the Land and Natural Environment reserve to commence preparation of the first stage (Part A) of the village plan this financial year.

RECOMMENDATION:

That Council:

- 1. Endorse the Draft Project Plan as presented in Attachment 1 (E2016/101129).**
- 2. Allocate \$32,850 from the Land and Natural Environment reserve for the development of the Bangalow Village Plan (Part A) in 2016/17.**
- 3. Consider allocation of funds for the continued development of the Bangalow Village Plan in 2017/18 budget of \$57,000 (\$25,000 for preparation of Part B and \$32,000 for preparation and implementation of Part C).**

Attachments:

5

- 1 Draft Project Plan for Bangalow Village Plan, E2016/101129
- 2 List of Guidance Group Members, E2016/101540
- 3 Survey Results, E2016/99173
- 4 Record of Place Creation Workshop, E2016/34559

10

Report

This report seeks Council's endorsement of a draft project plan for preparation of a masterplan for the village of Bangalow, in consultation with a community reference group. The proposed

5 'Bangalow Village Plan' will be prepared in three stages (Parts A to C) as follows:

- Part A – prepare vision statements, objectives and strategies
- Part B – identify actions and projects to achieve the strategies; prioritise and prepare an implementation plan
- 10 • Part C – identify opportunities for temporary trials, community events and creative placemaking and place activation initiatives to inspire and drive change.

Background

15 In early 2015 Council conducted a number of targeted stakeholder engagement meetings to inform the preparation of a Development Control Plan (DCP) for the Bangalow town centre. During these meetings the community raised a number of issues that were outside the scope of a DCP; issues that are generally considered in a masterplan.

20 A report to Council's Ordinary Meeting of 29 October 2015, recommended that Council prepare a 'Place Activation Plan' for the Bangalow town centre. The concept of 'Place Activation' being to influence people's perception of a place by trialling new ideas and activating the streets with "lighter, quicker, cheaper" temporary events and creative responses. At the meeting, Council resolved as follows:

25

15-555 Resolved (relevant part only):

4. That Council host a two day Place Creation Workshop to inform the preparation of a Place Activation Plan for Bangalow.
- 30 5. That existing Development Services budget (up to \$28,000), to be reported in the December quarterly review, be used for the Place Creation Workshop and development of the Place Activation Plan for Bangalow.

35 A two day Place Creation Workshop was subsequently held at the Bangalow Bowling Club on 15-16 March 2016, facilitated by placemaking consultant Andrew Hammond from Placefocus. Thirty-one people participated including invited representatives from Bangalow community groups, the Mayor, Councillors and Council staff. The workshop delivered a combination of training on placemaking and urban design as well as workshop sessions where participants identified key issues and ideas for their town. The workshop particularly focussed on generating ideas for

40 "lighter, quicker, cheaper" place activation initiatives in the Bangalow town centre. The record of the workshop outcomes is included as Attachment 4.

45 Prior to the workshop a public survey was conducted (by the community at minimal cost to Council, in January 2015 to February 2016) to get input from the broader community. The survey asked people to provide a written response to four questions:

1. What do you like about Bangalow?
2. What do you dislike about Bangalow?
3. What changes (if any) would you like to see in Bangalow?
4. What is your BIG IDEA or vision for Bangalow?

50

Results from the 350 responses were collated and graphed (see Attachment 3) then analysed along with the outcomes from the community workshop.

Findings from this initial round of community consultation have informed the project definition and scoping phase of the proposed masterplanning project. Council previously approved the preparation of a Place Activation Plan for Bangalow. This is now proposed as part of a broader “whole of village” planning process in response to the community’s feedback. A ‘Draft Project Plan’ for development of a village masterplan has now been prepared and is submitted for Council’s endorsement of the project (see Attachment 1).

The intent of the ‘Bangalow Village Plan’ is to guide the future evolution of the village to ensure that the things people value about Bangalow – such as it’s small town feel, heritage main street, rural setting and natural hinterland environment - are conserved in perpetuity whilst enabling sustainable development to service the community’s changing needs over time.

The last locality plan (masterplan) prepared for the Bangalow village was the Bangalow Settlement Strategy, 2003. This plan is now 13 years old and many of the visions and actions identified in the plan have come to fruition. An updated plan is needed to guide future development of the village.

Key outcomes that both Council and the community are seeking from a ‘whole of village plan’ include a more holistic and *integrated* approach to the long term strategic planning of the town as well as better coordination and sequencing of activities, so that place improvement projects are planned and implemented in a more logical, orderly and effective manner.

Council staff will prepare the masterplan in close consultation with a community reference group called the “Guidance Group” which has recently been formed. The group comprises community representatives, the Mayor, Councillors and Council staff (details at Attachment 2).

The ‘Draft Project Plan’ (Attachment 1) has been reviewed and approved by the Guidance Group however the project aims and objectives (on page 1 of Attachment 1) are marked as “Draft” as the group intend to refine these at future workshop/s. While the exact wording of the aims and objectives may change as a result of the workshop/s, the general intent and scope of the project will not change.

The Draft Project Plan (Attachment 1) is recommended for Council’s endorsement.

Financial Implications

The community survey was conducted and results collated by local groups (Bangalow Progress Association, Bangalow Chamber of Commerce and Bangalow Building Owners and Stakeholders Alliance) at minimal cost to Council.

In accordance with Council resolution (15-555), a budget of \$28,000 was allocated to the project in the 2015/16 financial year to conduct the community workshop. A surplus of \$2,150 remains in the current 2016/17 budget.

The table below indicates anticipated costs for preparation of the Bangalow Village Plan (Part A) in 2016/17 which can be funded from the Land and Natural Environment Reserve:

| Item – Part A | Approx. funds required |
|---|-------------------------------|
| Balance remaining in 2016/17 budget | \$2,150 credit |
| Community consultation - general administration costs | \$5,000 |
| Workshop #5 – Access & Movement Workshop with stakeholders - facilitation and assistance with preparation of masterplan by consultant/s | \$30,000 |
| TOTAL required in 2016/17 | \$32,850 |

The second stage of the Bangalow Village Plan (Part B Implementation Plan) will be prepared in 2017/18. Anticipated costs for preparation of this part of the plan are shown in the table below:

| Item – Part B | Approx. funds required |
|--|-------------------------------|
| Community consultation - general administration costs | \$5,000 |
| Workshops with stakeholders - facilitation and assistance with preparation of masterplan by consultant/s | \$20,000 |
| TOTAL required in 2016/17 | \$25,000 |

- 5 The third stage of the Bangalow Village Plan project (Part C Place Activation Plan) is likely to be prepared concurrently with Part B in 2017/18. Seed funding similar to the Byron Bay Placemaking Seed Fund will be required. Anticipated costs for preparation and implementation of Part C are shown below:

| Item – Part C | Approx. funds required |
|---|-------------------------------|
| Community consultation - general administration costs | \$2,000 |
| Place activation seed funding | \$30,000 |
| TOTAL required in 2016/17 | \$32,000 |

Statutory and Policy Compliance Implications

The Local Government (General) Regulation 2005 states:

211 Authorisation of expenditure

- (1) *A council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the council at the annual meeting held in accordance with subclause (2) or at a later ordinary meeting:*
 - (a) *has approved the expenditure, and*
 - (b) *has voted the money necessary to meet the expenditure.*
- (2) *A council must each year hold a meeting for the purpose of approving expenditure and voting money.*
- (3) *All such approvals and votes lapse at the end of a council's financial year. However, this subclause does not apply to approvals and votes relating to:*
 - (a) *work carried out or started, or contracted to be carried out, for the council, or*
 - (b) *any service provided, or contracted to be provided, for the council, or*
 - (c) *goods or materials provided, or contracted to be provided, for the council, or*
 - (d) *facilities provided or started, or contracted to be provided, for the council, before the end of the year concerned, or to the payment of remuneration to members of the council's staff.*

Report No. 13.9 **Compliance Priorities Program - 2017**
Directorate: Sustainable Environment and Economy
Report Author: Wayne Bertram, Manager Sustainable Development
File No: I2016/1184
5 **Theme:** Ecology
 Development and Approvals

Summary:

10 This report details compliance with the adopted 2016 Compliance Priorities Program and seeks adoption of a Compliance Priorities Program for 2017.

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

RECOMMENDATION:

That Council:

1. **Note the report.**
2. **Adopt the proposed Compliance Priorities Program for 2017 as provided in attachment 1 (E2016/102525).**

Attachments:

- 1 2017 Compliance Priorities Program, E2016/102525

Report

2016 COMPLIANCE PRIORITIES PROGRAM

- 5 Compliance activities and statistics addressing the 2016 Compliance Priorities Program and the Byron Shire Council Operational Plan have been addressed in the half yearly and annual report.

For the half year (ending June 2016), all Compliance performance indicators were met for the 2016 Compliance Priorities Program. The second half of the year is also on track for a similar outcome.

- 10 In 2015/2016 the Public and Environmental Services Team received 2,735 Customer Request Management (CRM's) which are tabulated as follows:

| | Received 2014/2015 | Received 2015/2016 | Completed 2014/2015 | Completed 2015/2016 |
|--|-------------------------------|-------------------------------|--------------------------------|--------------------------------|
| Illegal Works (Building; Land Clearing; Places of short term rental accommodation; Land Use) | 508 | 572 | 452 | 526 |
| Animals (Nuisance; Barking; Attack; Restricted; Livestock; Poultry) | 865 | 818 | 843 | 771 |
| Fire Hazard | 3 | 2 | 3 | 3 |
| Vehicle (Abandoned, Street Camping; For Sale; Parking) | 928 | 1154 | 878 | 988 |
| Noise disturbances, public nuisance from premises, non compliance with AFZ | 166 | 104 | 159 | 113 |
| Overgrown properties | 90 | 85 | 79 | 80 |
| TOTAL | 2560 | 2735 | 2414 | 2481 |

- 15 Note: *Some CRMs have been carried over from the previous financial year but completed in the 2015/16 financial period. There were also 254 CRM's carried over into the next financial year. These included CRM's under investigation, being dealt with or those that were in the system and being followed up in the next 30 day period.

- 20 The following information is provided on the implementation and actions taken in relation to the adopted 2016 Compliance Priorities Program.

Very High Priorities:

- 25 **1.1 Developments, actions, works, activities or uses that places people's lives at immediate risk or that cause or are likely to cause a significant risk of environmental harm or pollution;**

- 30 In the calendar year to 18 November 2016 Council received 542 CRMs relating to unauthorised development and has concluded 457. Not all of those CRMs fell into this priority although the percentage concluded is accurate for this priority. Developments, actions, works, activities or uses that places people's lives at immediate risk or that cause or are likely to cause a significant risk of environmental harm or pollution were generally actioned within 24 hours.

1.2 Significant environmental, health and public health incidents.

Parrot Tree Place, Bangalow

- 5 On Wednesday 23 March 2016 Council received two complaints from residents at Parrot Tree Place Bangalow. The complaints were in regards to the transportation of a house through Parrot Tree Place and it is alleged that pieces of fibro cement (asbestos) had fallen from the house onto the road on 22 March 2016.
- 10 At about 10:30am on Wednesday 23 March 2016 a Council community enforcement officer (CEO) inspected Parrot Tree Place and spoke with the complainants. During the course of that inspection the Council CEO collected some fibro cement samples from the road and the front lawn of a dwelling at Parrot Tree Place.
- 15 The Council CEO identified and inspected the offending building. The CEO observed fibro cement sheeting in what appeared to be either a laundry or bathroom. The fibro cement sheeting contained a large crack, which appeared to have been chipping-off during the course of transportation. The Council CEO was able to match this fibro cement with the material found on Parrot Tree Place.
- 20 The fibro cement sheeting present on the building was stamped with the product name Tilux. Further investigation revealed that the product Tilux contains Amosite (brown asbestos), Chrysotile (white asbestos) and Crocidolite (blue asbestos). Amosite and Crocidolite are known to be hazardous to human health.
- 25 The asbestos samples were sent to the Parsons Brinckerhoff lab in Brisbane tested. The results determined that the fibro cement contained asbestos.

As a result of the above, Council served a Protection of the Environment Operations Act 1997 prevention notice on the company that transported the building making the following directions (italics).

- 30 *Immediately cease the activity of transporting and the relocation of buildings within the boundaries of Byron Shire until such time as you can comply with the following requirements.*
- 35 *Prior to transporting any building to, through or within Byron Shire Abel House Removers Pty Ltd must provide Byron Shire Council with a certificate from a suitably qualified Occupational Hygienist declaring that the building has been cleared of asbestos. This certificate must be provided to Council two business days prior to transportation.*
- 40 *Prior to relocating any building within Byron Shire Abel House Removers Pty Ltd must provide Byron Shire Council with a certificate from a suitably qualified Occupational Hygienist declaring that the building has been cleared of asbestos prior to any relocation activities. This certificate must be provided to Council two business days prior to transportation.*
- 45 *Two business days means Monday to Friday (excluding public holidays) between the hours of 8:30am to 4:30pm.*

In addition to the above directive Council issued two penalty infringement notices to the value of \$1900 and a costs order to the value of \$154.

At about 6:15am on Friday 21 October 2016 a Council CEO observed the same company transporting a house through Byron Shire. A check of Council records indicate that Council was not in possession of a certificate from a suitably qualified Occupational Hygienist as required by the prevention notice. The matter is currently under investigation.

St Helena Road, Mcleods Shoot

Council is currently taking enforcement action against Short Term Rental Accommodation premises on St Helena Road, McLeods Shoot. Under the Byron Local Environmental Plan 1988 the premises are currently zoned 7(d) (Scenic/Escarpment Zone) and tourist facilities are prohibited development within that zone.

On 25 September 2014, Council issued a Noise Abatement Direction on the owner of the premises as a result of offensive noise in the form of amplified music emanating from the premises on 19, 20 and 21 September 2014.

On 12 November 2014, Council issued a \$3000 penalty infringement notice on the owner of the premises as a result of a wedding reception held at the premises on 8th and 9th November 2014.

On 13 November 2014, Council served a Noise Abatement Direction on the owner of the premises in regards to the events of the 8th and 9th November 2014.

On 3 December 2015, Council served a noise abatement direction on the owner of the premises as a result of offensive noise emanating from the premises between 4pm on 27 November 2015 and 4am on 28 November 2015. It was alleged that the noise consisted of amplified music and partying.

On 4 February 2016, Council served a Noise Abatement Direction on the owner of the premises as a result of offensive noise emanating from the premises.

On 25 February 2016, Council served a \$6000 penalty infringement notice upon the land owner in relation to the events of the 4 February 2016.

On 25 August 2016, Council served a Noise Abatement Direction on the owner of the premises as a result of offensive noise emanating from the premises in the form of amplified music.

On 5 October 2016, Council served an Environmental Planning and Assessment Act Notice of Proposed Order 1 to cease using the premises as a tourist facility.

Additional Unauthorised Activity

On 7 June 2016, Council issued a \$6000 penalty infringement notice in relation to an unauthorised function that occurred in the Byron Bay Industrial Estate on 14 May 2016.

On 9 August 2016, Council issued a \$3000 penalty infringement notice in relation to noise and disturbance from a Short Term Rental Accommodation premises in Byron Bay that occurred on 22 July 2016.

On 22 September 2016 Council issued three \$3000 penalty infringement notices to each land owner of an unauthorised wedding reception venue at Coopers Shoot. One of the land owners admitted responsibility for the offence and therefore two of the fines were withdrawn.

1.3 Dangerous and/or menacing dogs.

From the 1 January 2016 to the 18 November 2016 there were approximately 600 customer request made in relation to dogs. These include:

| Customer Request Management Received | 1/1/16-18/11/16 |
|---|------------------------|
| Dogs Attacks | 23 |
| Dogs Barking | 171 |

| Customer Request Management Received | 1/1/16-18/11/16 |
|--------------------------------------|-----------------|
| Dogs Found | 178 |
| Dogs Nuisance | 219 |
| Dogs Restricted | 8 |
| TOTAL | 599 |

Currently in the Shire there are:

- 4 dogs under a Nuisance Dog order,
- 3 dog declared dangerous,
- 13 dogs declared menacing, and
- 7 restricted breed dogs.

In May 2016, a member of the public reported being attacked by a dog in the Sunrise Estate Byron Bay. The person had been riding their pushbike in the Sunrise Estate when attacked and bitten on the leg by a dog. Enquiries by a Council's Animal Enforcement Officer revealed that the offending dog was a declared dangerous dog. The dog is a Rhodesian Ridgeback X.

The dog was declared dangerous in February 2016 as a result of a number of incidents involving the dog rushing at persons. The dog also was also involved in a previous incident where it attacked another dog. The dog's owner was issued with a court attendance notice "own a dangerous dog that attacks a person". This matter was heard in the Byron Bay Local Court where the Magistrate imposed a \$5000 fine and ordered the destruction of the dog.

The owner appealed this decision and had the original decision annulled. The matter was reheard at the Byron Local Court on 30th June 2016 and the Magistrate imposed a \$400 fine and a good behaviour bond. The dog owner then appealed this decision and the matter was heard in the Lismore District Court in August 2016.

The judge reduced the penalty on the dog owner to a \$50 fine and a good behaviour bond. The judge ordered that the destruction order be upheld. The dog owner then indicated that she would appeal the destruction order decision to the NSW Court of Appeals. As a result the dog was held in custody at the Byron Bay Council pound facility.

On 6 September 2016, the dog which was the subject of the destruction order, was stolen from the pound. The pound fence had been cut and locks removed from a door to gain entry. The other animals at the pound at the time remain secure in there respective pens. The Byron Bay Police were informed and are investigating the matter.

The declared Dangerous dog has not been located.

1.4 Traffic, parking and unapproved camping activity enforcement.

In the period 1 January 2016 to 18 November 2016 Council issued 6,889 Penalty Notices for parking offences and 1,365 Penalty Notices camping related infringements.

Ongoing operations include Council's CEO's and Police conducting operations to safely remove illegal campers and rubbish from the Cavanbah Reserve and from Main Beach to Belongil and Main Beach to Clarkes Beach continue. Infringements for camping and littering have been issued where appropriate in consideration of Council's "Homelessness Policy". Additionally "Move on directions" have been given by Police.

CEO's have also been participating in round table discussions with community groups and service provides in relation to issues surrounding persons experiencing homelessness. Council has continued to help educate the local homeless of the environmental damage that is occurring. All

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

5 Camping within streets and Council reserves is a continuing issue with the following Camping Offences being determined in the Byron Local Court:

10 In March 2016, Council received complaints from residents about a long term camper occupying a Toyota Station wagon at Wategos. At 6:10am on 27 March 2016 Council issued a \$110 penalty infringement notice to that person. At 5:40am on 4 May 2016 the same person was again found camping at Wategos and as a result he was issued a court attendance notice. At the Byron Bay Local Court on 26 May 2016 the defendant was convicted and fined \$300.

15 Camper 2 was identified as having camped overnight in the Border Street carpark 27 April 2016. He was abusive, made threats against the Council Officer threatened Council Officers. As the person had previously been issued a formal caution in relation to illegal camping and had also been identified on other occasions but had driven off after refusing to speak to a Council Officers, as subsequently issued with a Court Attendance Notice. At the Byron Bay Local Court on 26 May 2016 the defendant was convicted and fined \$400.

20 Camper 3 was identified camped illegally in Banksia Drive Byron bay Wednesday 27 April 2016. He had previously been fined for camping illegally in Brunswick Heads earlier in April and was abusive and threaten to Council Officers. The person also refused to give their details or identification but was identified through a previous infringement notice and was issued with a Court Attendance Notice. At the Byron Bay Local Court on 26 May 2016 the defendant was convicted and fined \$400.

30 Camper 4 was identified camped in the company of another individual in the fenced off dune revegetation area at main beach 23 June 2016. There were multiple tents erected and a substantial volume of litter as well as damage to the vegetation caused by the clearing of a 'campsite'. The camper admitted to having been camped in that location despite having been cautioned previously for camping in the dunes in front of 'The Wreck' and was issued a Court Attendance Notice. At the Byron Bay Local Court on 26 May 2016 the defendant was convicted and fined \$100.

35 Camper 5 was identified camping illegally in main beach carpark 10 October. The person had previously been issued Penalty Infringement Notices for camping illegally in Mullumbimby 20 June 2016 and Main beach carpark 15 August 2016. She had also previously been identified camping illegally at Border Street carpark and was issued with a Court Attendance Notice 11 October 2016. This person continued to remain camped at Main beach carpark for a period of approximately two weeks. At the Byron Bay Local Court on 10 November 2016 the defendant was convicted in her absence and fined \$110.

45 Camper 6 was identified as having camped illegally at the Ocean Shores Lookout 9 July 2016 and was issued a Penalty Infringement Notice in the amount of \$110. The person elected to appeal the PIN before Byron Local Court. He appeared before Byron Local Court 15 September, was convicted and was fined \$110.

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

50 Council received funding from the Environmental Protection Authority, to assist in the reporting, identification and investigation of illegal dumping on public lands. An illegal dumping response procedure, to include investigation by Council's CEO's if asbestos is reported, witness, identified or evidence discovered to identify the dumper is currently being prepared. Media releases have been issued for the correct handling and disposal of asbestos.

55

High Priorities:

2.1(a) Short-term holiday accommodation

- 5 Penalty Notices have been issued in relation to the use of 2 premises for short-term holiday accommodation where substantial negative impacts on neighbourhood amenity in a residential area were caused. The Police were called to both premises where Penalty Notices had been issued due to noise and disturbance to the neighbourhood.
- 10 The investigation of each brought staff to the conclusion that the use of the subject premises over the identified period and the resulting impacts on neighbourhood amenity were sufficiently significant so as to warrant enforcement action.

2.1(b) Swimming Pool Safety including legislative requirements

- 15 A swimming pool register was established in November 2011 and now has 2,269 pools registered within Byron Shire. In 2016, 48 new premises with swimming pools were added to the pools registered. Council has an adopted ongoing program of pool barrier inspections which will eventually see all pools within the Shire entered onto the register.
- 20 The majority of swimming pools within residential areas of the Shire have been inspected. Of these at least 90% did not meet the required standard and required rectification.
- 25 The major non-compliant issues were pool gates that will not self close, footholds provided on the pool barrier and vegetation growing close to the barriers providing access to the pool areas. Letters are being sent to all pool owners with the results of the inspection. Non-compliant items are required to be repaired by set dates and follow up inspections occur where major repair works are required.
- 30 In 2015, the NSW Government commissioned an independent review by Mr Michael Lambert of the effectiveness of the swimming pool barrier regulatory framework. The NSW Government has just released the Final Report of the Lambert review along with its response. Staff will now consider this and any need to change to Council's legislative and regulatory responsibilities accordingly.
- 35

2.1(c) Improving compliance standards for unapproved dwellings

- 40 In the calendar year to 18 November 2016, Council received, 542 Customer Requests (CRMs) relating to unauthorised development and has concluded 457. The number of unapproved building and development reported to Council during this period was 292.
- 45 Where identified, Council staff work with the property owners to ensure that the occupiers have adequate fire safety protection measures including the installation of smoke alarms and egress from the dwelling and that there is no environmental harm occurring as result of authorised development.
- 50 Where appropriate property owners are encouraged to obtain development approval for the use and / or upgrading of authorised dwellings. The introduction of the Byron Local Environmental Plan 2014 and the subsequent amendment to allow detached rural dwellings has increased the opportunity for property owners to seek development approval for authorised dwellings.

2.1(d) Onsite Sewage Management Systems

- 55 Council adopted the Community Engagement and Risk Communication (CERC) Program for Onsite sewage management systems (OSMS) in March 2013. The primary role of the CERC

program is to empower current and prospective owners and operators of OSMS via reviewing existing and developing new communication media to ensure that it is positive, engaging, transparent, easy to understand and pre-emptive. The CERC also supports Councils regulatory obligations under the relevant acts. Information about the CERC program has been reported to Council's Water, Waste and Sewer Advisory Committee.

The OSMS inspection program is implemented via complaints, enquiries and Council adopted OSMS risk categories i.e. OSMS that have a higher potential for negative impacts on human health and the environment are inspected as the higher priority. The number of complaints pertaining to OSMS continues at low levels, most compliance issues are discovered via development control compliance inspections.

Council has also been successful in attracting funds from Rous Water to undertake a high risk compliance inspection program for Onsite sewage management systems in their drinking water catchment with Byron Shire.

2.1(e) Food safety

Council reported to the NSW Food Authority in the annual report (2015/16) that 93.2% of high-risk and medium-risk retail food businesses within Byron Shire had been inspected as required by the NSW Food enforcement agency.

The following table summarises the activities performed by staff as regulators of the NSW Food Act 2003. Note: In 2015/16 the definition of 'high' risk and 'medium' risk premises was amended as is reflected in the table below.

Table 1: Food business inspection program – comparison between 2014/15 and 2015/16

| | 2014/15 | 2015/16 |
|---|----------------|----------------|
| Fixed premises categorised as 'high' risk inspected | 316 | 20 |
| Fixed premises categorised as 'medium' risk inspected | 51 | 304 |
| Fixed premises categorised as 'low' risk inspected | 37 | 26 |
| Temporary food businesses operating in Byron Shire inspected | 351 | 402 |
| Mobile food businesses operating in Byron Shire inspected | 11 | 8 |
| Number of food-related complaints received / investigated | 27 | 37 |
| Number of warning letters issued to address minor defects | 256 | 286 |
| Number of Improvement Notices issued to address food safety defects | 29 | 22 |
| Number of penalty notices issued | 6 | 5 |
| Number of prosecutions / successful result | 0 | 1 |
| Number of seizure notices issued | 0 | 0 |
| Number of Prohibition Orders issued | 1 | 0 |
| Full time equivalent staff resources dedicated in maintaining food safety program | 1.0 | 1.5 |
| Total number of inspections conducted – Primary | 762 | 599 |
| Reinspections | 256 | 99 |

Byron Shire has a large number of fixed food premises totalling 350, with a growing number of 402 temporary retail food businesses (markets, farmers markets, shows, events and festival food businesses and mobile food vans) in operation that require regular inspections. These inspections are to ensure community health and safety standards are being maintained. A total of 698 food premise inspections (including re-inspections) were conducted during 2015/16.

As part of the educational support for retail food businesses, a newsletter was provided in September 2016 to inform food business operators about changes to the food administration fee and relevant food safety content.

The number of complaints and food-borne illness reports continues at low levels with Byron Shire is achieving an improving standard of food safety under growing demands from food businesses in Byron Shire.

2.1(f) Public health premises

Council noted the gradual introduction of a number of statutory requirements under the Public Health Act 2010 and Public Health Regulation 2012. NSW Ministry of Health are the primary regulator of public health standards across NSW however Council has continued to work with the NSW Ministry of Health in regulating public health premises.

2.1(g) Companion Animals

In 2015 Council applied for a Local Government Grant to fund a companion animal desexing program aimed at assisting residents in the shire that suffer financial hardship. The program was a collaboration of a local Animal Welfare Group, Companion Animals Welfare Incorporated (CAWI) Byron Shire Council and the Local Government Responsible Pet Ownership Program. Each entity provided the sum of \$5000 dollars.

The program was advertised via local media releases, radio, posters, schools and the local veterinary hospitals. Council was able to obtain the services of veterinary practices at the southern and northern ends of the shire to get involved and perform desexing at a discounted rate.

Each participant was charged the low fee of \$50 to have their respective dog or cat (no matter what size) desexed at this rate. Each resident had to meet certain criteria to be eligible for the program. The program commenced late March 2016 and was completed in early October 2016. As a result of this program 69 dogs and 42 cats were desexed across the shire with 111 very happy local residents taking advantage of this initiative.

This program was aimed at over pet population, behavioural and health risks associated with not desexing your dog/cat and the cost to the community with unwanted animals ending up in council pounds and welfare organisations.

2.1(h) Safe procedures for handling and disposal of Asbestos Containing Materials.

Safe procedures for handling and disposal of Asbestos Containing Materials have been developed by Workcover and publications are provided for people that may be in contact with Asbestos Containing Materials. Council also provides free Asbestos testing kits so that Asbestos Containing Materials can be identified.

2.1(i) Seasonal public health issues and community preparedness including issuing a minimum of two media releases.

More than two media releases for seasonal public health issues and community preparedness were issued in 2016.

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

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

All existing alcohol free zones have been maintained and signage replaced where necessary.

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

There have been an increased number of unauthorised wedding function centres operating in the Shire, with Council compiling a list of over 25 operators. Correspondence has been sent to the operators on the wedding function centres advising of their requirements to seek approvals.

To assist in voluntary compliance for wedding function centres a fact sheet 'Function centres in rural areas' has also been developed and is also available on Council's website.

An illegal doof party was held at Tallows Creek, in the Arakwal National Park on 6 November 2016, with police reporting up to 200 people. NSW Police attended with the assistance of National Parks & Wildlife Officers and a Council CEO.

Medium Priorities:

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

In the calendar year to 18 November 2016, Council 542 Customer Requests (CRMs) relating to unauthorised development and has concluded 457. Not all those CRMs fell into very high priority and a percentage of these were dealt with as medium and low level priorities as time permitted.

3.2 Livestock on public roads.

The table produced earlier detailed that 843 CRMs had been received in respect of Animals (Nuisance; Barking; Attack; Restricted; Livestock; Poultry).

Of those 49 related to livestock on roads. All matters were generally assessed and dealt with within hours of receipt of notification.

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

CEOs impounded signage installed on reserves and public spaces across the Shire. Majority of the signage promoted private events, political parties and properties for sale by estate agents. A mail out was sent to Real estate agents advising the signage guidelines and requirements in accordance with Council's DCP 2014.

A review of market signage is continuing, as per Council's previous resolution 626/2012, which has including the investigation of fixed information signs at the entrances to each town so that markets and community events can be advertised in a more visually friendly matter.

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

Active patrolling by Council's Animal Enforcement Officer and CEOs has been occurring with the education of companion animal owners also being undertaken. Replacement signage has occurred a number of Companion Animals exercise areas to ensure that those using this areas are aware of any restrictions and their responsibilities.

At the commencement of 2016 a letterbox drop and subsequent investigation as to the number of dogs and / or cats in cat and dog free estates. Council's Animal Enforcement Officer has informed the residents of their obligations when residing in these areas. There has been limited success in voluntary compliance with the number of dogs and / or cats in cat and dog free estates since the

last review in 2014. Legal advice and formal notice provisions have been prepared for the enforcement of the dog and / or cat free areas. A Councillor workshop is proposed to occur in early 2017 to enable discussion on the most appropriate way forward regarding the keeping of dogs and / or cats on land where Policy or Development consent prohibits it.

Routine Priorities:

4.1 All other matters.

Customer requests that did not fall into the very high priority were dealt with through routine advisory correspondence or as time permitted.

Additionally the Environmental Services Team responded to community enquiries and where the customer wants a council response the requests are recorded into the Authority database. The following is the customer request activity for 2015/16.

Table 2 – Environmental Services summary of customer action requests

| Category | 2015/16 |
|--------------------|----------------|
| Noise complaints | 104 |
| Pollution of land | 7 |
| Air pollution | 43 |
| Water pollution | 22 |
| Odour pollution | 10 |
| Stormwater impacts | 11 |
| Asbestos | 1 |
| TOTAL | 198 |

Additionally in 2016, as per the Internal Auditors report and recommendations into the Regulatory Services functions of Council, a review of the Enforcement Policy and the Enforcement Guidelines has been undertaken and the Enforcement Policy 2016 was adopted.

The 2017 Compliance Priorities Program is proposed to continue identical to the 2016 Compliance Priorities Program with the final version of the proposed 2017 Compliance Priorities Program provided below and in Attachment E2016/102525

2017 COMPLIANCE PRIORITIES PROGRAM

Very High Priorities:

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

2. High Priorities

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

3. Medium Priorities

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

4. Routine Priorities

- 1.1 All other matters.

Financial Implications

The 2017 Compliance Priorities Program will be addressed within existing budget allocations.

Statutory and Policy Compliance Implications

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

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

- Roads Act 1993
- Swimming Pools Act 1992

5 Compliance action is considered and managed through Council's adopted Enforcement Policy 2016 (E2016/14523). Enforcement Guidelines have also been formulated to supplement the Enforcement Policy and give practice guidance for the implementation of the Enforcement Policy.

Report No. 13.10 Report update on resolution 16-545 Short Term Rental Accommodation

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Major Projects Planner
Shannon Burt, Director Sustainable Environment and Economy

File No: I2016/1185

Theme: Ecology
Planning Policy and Natural Environment

Summary:

Council considered a report 13.7 PLANNING - 26.2015.5.1 Planning Proposal for Short Term Rental Accommodation - Update on LEP Amendment at the Ordinary Meeting on 27 October 2016 and resolved as follows:

16-545 Resolved that Council:

1. *Note the amendments to the draft planning provisions by Parliamentary Counsel;*
2. *Amend the planning proposal to remove exempt provisions noting Council's intention to review the applicability of exempt provisions within 12 months;*
3. *Include appropriate provisions within the draft DCP for short term rental accommodation concerning dealing with substantiated complaints similar to other provisions contained in other Local government planning controls relating to more than two substantiated complaints;*
4. *Not take enforcement action against existing land owners for 6 months following the LEP amendment being made for using a dwelling for short term rental accommodation not in accordance with Byron LEP 2014, provided that use does not generate substantiated complaints relating to noise, amenity or public and occupant health and safety issues;*
5. *Receive a report, before years end, on the legal and planning avenues to ensure 'granny flats/secondary dwellings' built without paying Council fees and or contributions are not being used and will not be used for short term rental accommodation purposes; and*
6. *Receive a report, before years end, on the restrictions on Council to set fees on DA applications for short term rental accommodation or registrations of short term rental accommodation.*

This report presents to Council a response to Parts 5 and Part 6 of the resolution. Parts 1 - 4 are under separate action by staff.

RECOMMENDATION:

That Council note the report.

5

Report

10 Council considered a report 13.7 PLANNING - 26.2015.5.1 Planning Proposal for Short Term Rental Accommodation - Update on LEP Amendment at the Ordinary Meeting on 27 October 2016 and resolved to receive a further report before years end on a number of legal and planning matters in relation to secondary dwellings/granny flats. These matters are discussed below.

15 **What if any legal and planning avenues exist to ensure ‘granny flats/secondary dwellings’ built without paying Council fees and or contributions are not being used and will not be used for short term rental accommodation purposes.**

Council’s Legal Services Coordinator has provided the following commentary with respect to this part of the resolution.

20 General

Beyond Council’s general ability to restrain planning law breaches (discussed below), it arguably cannot ensure that secondary dwellings not subject to development contributions will not be used for short term rental accommodation purposes.

25

This is because Council cannot use the *prospect* of imposing development contributions on a secondary dwelling as a means of ensuring the dwelling is not used for short term rental accommodation.

30 This limitation occurs whether or not Council imposes a consent condition regarding the payment of development contributions at the time it determines a secondary dwelling development application.

Limits where no consent condition regarding contributions is imposed

35

In the normal course of events, if a secondary dwelling has been assessed as being exempt from section 94 contributions under Council’s development contributions plan, then the development consent will not contain a condition regarding development contributions. However, it will contain a consent condition prohibiting the dwelling from being used for short term rental accommodation (as this is required under the plan if the development is going to be exempt from contributions).

40

If, having obtained consent, the land owner begins to use the secondary dwelling for short term rental accommodation contrary to the consent, then Council is limited to its range of enforcement actions (as are discussed below).

45

What Council cannot do is retrospectively require that development contributions become payable because of the change of use. This is because once Council has exercised its power to determine a development application – either by approving it unconditionally or subject to consent, or refusing the application – this power is then spent. Council cannot revisit its power to determine development applications at a later date, in an effort to impose further conditions.

50

Limits where consent condition regarding contributions is imposed

Council would also encounter problems if it tried to impose a consent condition about development contributions at the time it determined an application, even if the contributions are only payable upon the secondary dwelling being used for short term rental accommodation.

55

This is chiefly because Council has limited power to impose section 94 contributions. Council can only impose a consent condition requiring the payment of development contributions if:

- 5 1) Council is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area; and
- 2) The condition is of a kind allowed by, and is determined in accordance with, a contributions plan.

10

Both these requirements are problematic in the current context.

First limb – provision or increase in demand for public amenities

15

The chief problem presented by this limb is that it establishes a link between the development *being determined* and any condition about contributions. Council's 'satisfaction' about the need for further public amenities (which then allows a lawful consent condition requiring a contribution to those amenities) must be related to the 'development for which development consent is sought'. This has two consequences.

20

First, Council's ability to impose a condition requiring contributions is tied to assessing the development application in front of it. That a land owner might go on to use the land in a different way from what their consent allows does not provide lawful grounds for an imposition of contributions.

25

If an applicant is *not* seeking consent to construct a secondary dwelling for the purpose of short term rental accommodation, then this is not the 'development for which development consent is sought'. As a result, Council has no legal basis to impose a requirement that contributions be paid regarding a use not sought by the development application (irrelevant of whether the land owner goes on to engage in that other use, despite not having consent).

30

Second, Council needs to be 'satisfied' about the likely increase in demand for public facilities. This satisfaction doesn't exist in the abstract, but can only come after the development is assessed.

35

Council arguably could never be 'satisfied' at law about the increased demand for public services from a development where there is no development application for that use. It is not immediately obvious how a secondary dwelling used for short term rental accommodation has a materially different impact on the demand for public amenities than a long term tenancy; it is even less obvious how Council satisfies itself about the impact of short terms accommodation on amenity demand in the absence of a development application for that use.

40

Second limb – need for plan to allow consent condition

45

The second limb also arguably prevents the recovery of contributions against current land owners who were not required to pay development contributions, but are now using their secondary dwelling for short term accommodation purposes. This is because the current plan does not provide for contributions to be paid where premises *become* unlawfully used for short term accommodation.

50

Council's development contributions plan underpins Council's legal power to impose a consent condition requiring development contributions. Unless the plan provides for the contribution sought, there is no power to levy a contribution via a condition.

The relevant clause in the current contributions plan regarding second dwellings states:

55

2.14 Secondary Dwellings

Development for the purposes of a secondary dwelling as defined in State Environmental Planning Policy will be exempted from the obligation to pay a contribution under this Contributions Plan where the secondary dwelling is integral and subordinate to the primary dwelling [and] where the secondary dwelling is subject to the following requirements:

- a. That the maximum size of the secondary dwelling does not exceed 60m².*
- b. That the floor space ratio for the whole development of the site does not extend beyond 0.5:1 and that 25% of the site must be covered by absorbent surfaces such as lawn or landscaping.*
- c. That the secondary dwelling does not increase the overall number of bedrooms on the site to greater than 5.*
- d. That the applicant has an approval for a secondary dwelling subject to a condition of consent that the development is not to be used for tourism purposes.*

Note: There are strict criteria for secondary dwellings to distinguish them from dual occupancies.

The primary reasons for these exemptions include:

- Maintaining the flexibility for local residents to extend their homes to accommodate their existing family without undue financial hardship; and*
- Supporting the potential for the provision of small-scale local affordable housing for elderly relatives and older children in the form of secondary dwellings.*

The clause above (and any consent condition based on it) arguably does not provide for the recovery of contributions where there is an unlawful change of use to short term rental accommodation.

This is because clause 2.14 merely provides an exemption from contributions, provided the relevant development is, among other things, subject to a consent condition that the premises not be used for 'tourism purposes'. The clause *does not* state that contributions become payable if the premises are used contrary to that condition. As it stands, the clause does not provide grounds for

Council to recover development contributions from a land owner who breaches their consent by engaging in an unlawful use.

Amending the plan would likely not advance the matter. Even if the plan notionally made provision for charges to be recovered in the above context, changing the plan would not address the issues explained above regarding the first limb of the test.

Enforcement Actions

The following comments are made in respect of those "granny flats/secondary dwellings" whose development consent contains a condition/s along the following lines (absence of such condition/s would render the enforcement action discussed below to be unavailable):

Development Contributions

Council resolved not to charge Section 94 contributions for secondary dwellings under SEPP (Affordable Rental Housing Policy) 2009 subject to the following requirements:

That the applicant has applied for a secondary dwelling or granny flat and specifically advised that the development is not to be used for tourism purposes and accepts a condition of consent to the same effect.

Section 94 Contributions have not been charged on this application based on the above criteria. Should any of the above conditions change your development may be referred to Council's Compliance Department for further action.

The following conditions are to be complied with at all times
Use of Secondary Dwelling

The secondary dwelling is not approved for holiday letting and/or for the use as a tourist facility, or for tourist and visitor accommodation.

Secondary dwellings

5 Approval of your Secondary Dwelling will be included in a register to provide accountability of the uptake of this affordable housing approach and to assist in any compliance action that may need to be taken in the circumstance that the dwellings are being used for tourism purposes rather than meeting the need for affordable housing (*Council Resolution No. 11-268*).

Environmental Planning and Assessment Act

10 Section 76A of The Act provides that if an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless:

- 15 (a) such a consent has been obtained and is in force, and
(b) the development is carried out in accordance with the consent and the instrument.

20 The statutory maximum penalty for the offence of development not in accordance with development consent is \$1.1 M. If proceedings were taken in the Local Court the maximum in that jurisdiction is \$110,000. If Penalty Notices were issued the penalty amount is \$6000 for a company and \$3000 for an individual.

Sentences imposed by courts are done so pursuant to the provisions of the *Crimes (Sentencing Procedure) Act 1999*. Section 3A of the act sets out the purposes for which a court can impose a sentence. They include:

- 25 (a) to ensure that the offender is adequately punished for the offence,
(b) to prevent crime by deterring the offender and other persons from committing similar offences.

30 It is the deterrent effect of a sentence which will serve to achieve the aim that the offender does not continue to offend in that way (development without development consent) and that others are deterred from acting likewise.

In this way that enforcement action serves the aim that granny flats/secondary dwellings' built without paying Council fees and or contributions are not, in the future, being used and will not be used for short term rental accommodation purposes.

35 Section 121B provides that Council may give an Order to refrain from doing a thing specified in the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

Column 1

Column 2

Column 3

To do what?

In what circumstances?

To whom?

| | | | |
|---|--|---|---|
| 1 | To cease using premises for a purpose specified in the order | Premises are being used in contravention of the conditions of a development consent | Owner of premises, or person by whom premises are being used for the purpose specified in the order |
|---|--|---|---|

The nature and state of the evidence required

40 Part 4.14 of Council's Enforcement Policy deals with "Taking Enforcement Action". Part 4.15 deals with "The Nature and Seriousness of the Unauthorised Activity." Those Parts encapsulate the principle that the decision to take enforcement action must be based on sound grounds and must

include consideration of whether the available evidence establishes an initial ('prima facie') case for action.

- 5 Sufficiency of evidence is crucial. Council should not proceed if there is no reasonable prospect of securing a successful result.

That determination involves considering whether or not the admissible evidence available is capable of establishing each element of the offence.

- 10 This requires an exercise of judgment which will depend in part upon an evaluation of the weight of the available evidence and the persuasive strength of Council's case. The probative value of the evidence must be considered and assessed. Probative value is defined as the extent to which the evidence could rationally affect the assessment of the probability of the existence of a fact in issue.

- 15 The key to the definition is the word rationally. Probative value is about the weight that the tribunal of fact, if acting rationally, could give to the evidence.

- 20 An assessment of probative value however takes into account both the credibility of the source of an item of evidence and the inferential force that evidence would have if the source was found to be credible.

- 25 Council does not have a register or data base to account for every granny flat/secondary dwelling built without paying Council fees and or contributions and being used and will not be used for short term rental accommodation purposes.

Internet advertising may not produce accurate or reliable evidence. Internet advertising is circumstantial evidence and is not, of itself, capable of rising to the standard of evidence necessary to institute enforcement proceedings.

- 30 **What if any restrictions apply to Council to set fees on Development applications for 'short term rental accommodation' or registrations of short term rental accommodation.**

Development Application fees

- 35 Certain fees for development and related functions are set under the Environmental Planning and Assessment Regulation 2000.

Development application fees are set on a sliding scale based on cost of development.

- 40 Generally a change of use, as would be the type of DA for 'short term rental accommodation' use costs \$285 plus advertising and notification fee relevant. While this is not sufficient to cover the cost of the assessment process involved, there is no mechanism currently to change or increase this fee other than the annual CPI index applied in the Council's Fees and Charges review.

- 45 Other Fees

- 50 By virtue of section 608(1) of the Act, council may charge and recover an "approved fee" (see definition in the Dictionary at the end of the Act) for any service it provides, other than a service provided or proposed to be provided, on an annual basis for which it is authorised or required to make an annual charge under section 496, 501 or 502 for actual use.

- 55 The services for which an approved fee may be charged include those set out in section 608(2) and (3), irrespective of whether the service in question is provided under the Local Government Act or under another Act.

Under section 608 of the Local Government Act councils are empowered to charge and recover fees for any service that they provide (except for a service proposed or provided on an annual basis). Services for which a council may charge a fee include those in connection with the exercise of its regulatory functions such as applications for approval, inspections and certificates. Councils must not charge a fee for “free of charge” documents as detailed under section 12.

Section 610D of the Local Government Act 1993 describes how Council determines the amount of a fee for a service not related to a business activity. Any other fee Council may consider in relation to establishing a fee for a service must consider the following factors:

- a. the cost to the council of providing the service
- b. the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department,
- c. the importance of the service to the community,
- d. any factors specified in the regulations.

Section 610(D)(2) provides that the cost to the Council of providing the service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.

A council must not determine the amount of a fee until it has given public notice of the fee in accordance with this section and has considered any submissions duly made to it during the period of public notice (section 610F).

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

However, if, after the date on which the operational plan commences, a new service is provided, or the nature or extent of an existing service is changed, or the regulations in accordance with which the fee is determined are amended, the council must give public notice (in accordance with section 705) for at least 28 days of the fee proposed for the new or changed service.

Financial Implications

As discussed in the report.

Statutory and Policy Compliance Implications

As discussed in the report.

Report No. 13.11 Expressions of Interest for membership of Our Mullumbimby Masterplan Guidance Group**Directorate:** Sustainable Environment and Economy**Report Author:** Tara McGready, Senior Planner**File No:** I2016/1186**Theme:** Ecology
Planning Policy and Natural Environment**Summary:**

At 4 August 2016 Council meeting, Council endorsed the Our Mullumbimby Masterplan Project Plan (Resolution 16-421). In accordance with the Project Plan, Expressions of Interest (EOI) were invited from community members to be a part of the Our Mullumbimby Masterplan Guidance Group to guide the preparation of the Masterplan. Nineteen (19) EOIs were received.

This report presents the Expressions of Interest received from the community and requests Council select the community members to be appointed to the Guidance Group.

RECOMMENDATION:

- 1. That Council select a maximum of 10-15 community members to the Our Mullumbimby Masterplan Guidance Group selected from Confidential Attachment 1 (E2016/97302).**
- 2. That interested Councillors nominate themselves to be members of the Our Mullumbimby Masterplan Guidance Group.**

Attachments:

- 1 Confidential - Expressions of Interest for Mullumbimby Masterplan Guidance Group, E2016/97302
- 2 List of Expression of Interest respondents for Our Mullumbimby Masterplan Guidance Group, E2016/101612

Report

At 4 August 2016 Council meeting, Council resolved to endorse the Mullumbimby Masterplan Project Plan and allocate funds for it's development (Resolution 16-421). One of the first actions of the Project Plan is to form a project governance 'Guardian Group' (now called Guidance Group) to guide the preparation of the Masterplan.

A project governance group including community representatives, Council staff and Councillors will take responsibility for guiding the preparation of the Masterplan. The group should be limited to a maximum of 30 people for the sake of effectiveness and efficiency. At key points throughout the three parts of the masterplan process, the group will be engaged through workshops and provide input into and guide the content of the plan. Final decisions regarding adoption of the plan will be made by Council, however, these decisions will be guided by recommendations reported to Council by the group.

The community representatives on the group will be appointed through an EOI process.

The purpose of this 'Guidance Group' is to help formulate strategies and actions, test ideas and provide community comment to complement the broader level of community engagement activities being undertaken as part of the Masterplanning work for Mullumbimby and its town centre. At key points throughout the masterplan process, the group will be engaged through workshops and online communication and provide input into and guide the content of the plan. Final decisions regarding adoption of the plan will be made by Council, however, these decisions will be guided by recommendations reported to Council by the group.

The key role of the Guidance Group includes:

- To work closely with the project coordinators from the beginning to the end to assist with achieving the best overall outcomes for Mullumbimby and its town centre.
- To advocate on behalf of community/stakeholder groups and facilitate communications between Council and these groups.
- To test out ideas as a sample group
- To facilitate the project coordinators gaining greater insight into the town and community
- To provide insights into identified issues and areas for improvement within the town and placemaking imperatives
- To assist in ensuring Our Mullumbimby Masterplan is achievable
- To transition into an ongoing Mullumbimby community reference group

Ideally the community members of the Guidance Group would be representative of a broad cross section of community interest groups and community sectors.

A call for Expressions of Interest (EOI) was advertised on 5 October 2016 seeking community representatives interested in being a member of the 'Our Mullumbimby Masterplan Guidance Group', with a deadline of 2 November 2016 for responses. Emails were also sent to various community groups and networks, including the previous members of the Mullumbimby Masterplan Scoping Project Reference Group, who prepared the Project Plan for the masterplan.

Nineteen (19) community members lodged EOIs to be a part of the Guidance Group. Their details and responses to the selection criteria are at Confidential Attachment 1. A list of the respondents and their business/organisation/community group affiliation is provided at Attachment 2.

The maximum number of members suggested for the governance group is 30, however, this is inclusive of Councillors and a range of relevant staff from the different directorates within Council. For the sake of effectiveness, efficiency and manageability of the group it is recommended that Council appoint a maximum of 10-15 community representatives to join this group.

Councillors are also invited to join the Guidance Group for the Our Mullumbimby Masterplan. It is anticipated there will be 5-10 workshops/meetings plus online communication between February/March 2017 – August 2018.

- 5 The group's first meeting will be held in February / March 2017 where the terms of reference of the group will be confirmed.

Financial Implications

- 10 The administrative functions associated with the group will be undertaken using existing staff resources in the Environmental and Economic Planning section. Potential costs associated with the group will include workshop and meeting expenses related to workshop facilitation, catering and meeting room hire. These costs will be met through the Mullumbimby Masterplan (2605.112) account.

15

Statutory and Policy Compliance Implications

Nil.

Report No. 13.12 Expressions of Interest for membership of Leadership Team - Byron Bay Town Centre Masterplan**Directorate:** Sustainable Environment and Economy**Report Author:** Shannon Burt, Director Sustainable Environment and Economy**File No:** I2016/1187**Theme:** Ecology
Planning Policy and Natural Environment**Summary:**

Expressions of Interest (EOI) were invited from community members to be a part of the Byron Bay Town Centre Masterplan (BBTCMP) Leadership Team to:

- provide advice and direction on the delivery of the BBTCMP actions;
- identify and actively facilitate, where appropriate, opportunities for partnerships and community collaboration;
- provide oversight on the timely delivery of actions that are responsive to community needs, acknowledging that the actions of the BBTCMP are flexible and adaptable.

Thirty four (34) EOIs were received and six (6) BBTCMP Bounce Group members indicated an interest in membership of the Leadership Team.

This report presents the expressions of interest received and requests Council to appoint up to 15 community representatives to the BBTCMP Leadership Team.

RECOMMENDATION:

1. **That Council select up to 15 community members to the Byron Bay Town Centre Masterplan Leadership Team selected from the respondents at Confidential Attachment 1 (E2016/103435).**
2. **That up to three interested Councillors nominate themselves to be members of the Byron Bay Town Centre Masterplan Leadership Team.**

Attachments:

- 1 Confidential - Expressions of Interest - BBTCMP Byron Bay Town Centre Masterplan Leadership Team, E2016/103435

Report

At 27 October 2016 Council meeting, Council resolved:

5 16-555 Resolved:

1. *That Council establish a Leadership Team in the form of a Project Reference Group for a period of 12 months:*
 - *To provide advice and direction on the delivery of the BBTCMP actions;*
 - *To identify and actively facilitate, where appropriate, opportunities for partnerships and community collaboration;*
 - *To provide oversight on the timely delivery of actions that are responsive to community needs, acknowledging that the actions of the BBTCMP are flexible and adaptable.*
2. *Endorse the 'Terms of Reference' for the Leadership Team as provided for in the report.*
3. *That the Leadership Team be comprised of the Mayor, up to 3 Councillors, General Manager or delegate and up to 15 community members to be selected by a direct appointment and or EOI process.*
4. *Staff progress the Leadership Team membership selection process as per 3 above, and report back the outcome to Council on this at the December Ordinary meeting.*

A call for Expressions of Interest (EOI) was advertised on 9 and 10 November 2016 in the Byron Shire News and Echo newspapers, seeking community representatives interested in being on the Leadership Team, with a deadline of 25 November 2016 for responses. Emails were also sent to the previous BBTCMP Bounce Group members inviting their interest in membership of the BBTCMP Leadership Team to be selected by direct appointment i.e. not necessary to submit a formal EOI.

Thirty four (34) community members lodged EOIs to be a part of the BBTCMP Leadership Team. Their details and responses to the selection criteria are at Confidential Attachment 1. Six (6) BBTCMP Bounce Group members indicated their interest in applying for membership directly. They are included as respondents numbered 35 to 40 in Confidential Attachment 1.

Up to three Councillors are also invited to join the BBTCMP Leadership Team. As indicated in the EOI process, an initial meeting of the BBTCMP Leadership Team is anticipated to be scheduled for the week of the 23 December 2016 where the terms of reference and meeting schedule will be confirmed.

Financial Implications

The administrative functions associated with the group will be undertaken using existing staff resources. Potential costs associated with the group will include meeting expenses related to meeting facilitation, catering and meeting room hire. These costs will be met through the Sundry expenses account 2701.5.

Statutory and Policy Compliance Implications

Nil.

Report No. 13.13 Report of the Planning Review Committee Meeting held on 10 November 2016

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Major Projects Planner

File No: I2016/1188

Theme: Ecology
Development and Approvals

Summary:

This report provides the outcome of the Planning Review Committee Meeting held on 10 November, 2016.

RECOMMENDATION:

That the report be noted.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.13

Report:

The meeting commenced at 1.00pm and concluded at 1.50pm.

- 5 Present: Crs Hunter, Cameron, Martin
Staff: Chris Larkin (Major Projects Planner).
Apologies: Cr Richardson, Cr Hackett,

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

10

| DA No. | Applicant | Property Address | Proposal | Exhibition Submissions | Reason/s Outcome |
|---------------|------------------------|---------------------------------|--|---|---|
| 10.2016.625.1 | Chris Lonergan & Assoc | 35-37 Burringbar St Mullumbimby | Alterations and Additions to Existing Commercial Building to Create a Cafe and Day Spa | Level 2 6/10/16-19/10/16 3 submission | Defer to the next PRC on 1/12/16 exceptional circumstances regarding heritage |
| 10.2016.663.1 | Mr M Franck | Granuaille Cres Bangalow | Dual Occupancy (Detached), Swimming Pool, Strata Subdivision (Two (2) Lots) and Tree Removal (Eleven (11) Trees) | Level 1 20/10/16 – 2/11/16 13 submissions | The number of public submissions Council |

Council determined the following original development applications. The Section 96 application to modify these development consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.

15

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

| DA No. | Applicant | Property Address | Proposal | Exhibition Submissions | Reason/s Outcome |
|---------------|----------------------------------|-----------------------------|---|------------------------|---------------------------|
| 10.2015.686.2 | Bayview Land Development Pty Ltd | Tuckeroo Ave Mullumbimby | S96 to Correct Minor Errors in Conditions of Consent | Level 0 | Under Delegated Authority |
| 10.2011.474.4 | Geolink Consulting Pty Ltd | Ballina Rd Bangalow | S96 to Delete Condition 34(k) and to Modify Conditions Regarding Section 64 Contributions | Level 0 | Under Delegated Authority |
| 10.2011.40.4 | Planners North Pty Ltd | 61 Bayshore Drive Byron Bay | S96 to Delete Condition 8 Regarding Security Personnel | Level 0 | Under Delegated Authority |

Report No. 13.14 26.2016.2.1 Submissions Report - Planning Proposal for reclassification of part of the Suffolk Park Beachfront Holiday Park

Directorate: Sustainable Environment and Economy

Report Author: Fiona Sinclair, Planner

File No: I2016/1195

Theme: Ecology
Planning Policy and Natural Environment

Summary:

This report presents the outcomes of the public exhibition and public hearing held in regards to a Council initiated planning proposal to amend *Byron Local Environmental Plan (LEP) 2014* to reclassify part of Lot 100 DP 1023737 Alcorn Street, Suffolk Park from “community” land to “operational” land status under the *Local Government Act (LG Act) 1993*, with interests discharged.

The subject land contains the Suffolk Beachfront Holiday Park and the Suffolk Park Community Hall. The whole of the land is currently classified as ‘community land’ under the *LG Act*.

The Planning Proposal (included as Attachment 1) was initiated by Council for the purpose of formalising leasing arrangements with long-term residents of the caravan park. The proposal will reclassify three small parts of the caravan park, being the land that is occupied by the long-term residents. There is no intention by Council to sell this land.

Council is seeking to reclassify this part of the land to operational in response to legal advice that, under the *LG Act*, it is not permissible to have long-term residents located on land classified as ‘community land’. In order for Council to meet its obligations under the *LG Act*, the position has been reached to have the part of the park that is occupied by permanent residents reclassified to operational, with the bulk of the park remaining as community land.

Council resolved (14-51) at its Ordinary Meeting of 27 February 2014 to commence the proceedings to reclassify the land. A planning proposal was prepared and submitted to the Department of Planning and Environment for a gateway determination, which was subsequently issued on 9 August 2016.

The planning proposal was placed on public exhibition for a period of 28 days from 8 September until 6 October 2016 and a public hearing into the proposed reclassification was held on 20 October 2016. A report on the public hearing is included as Attachment 2.

Results of the consultation are that no written submissions were received during the public exhibition period and only one verbal submission was received at the public hearing. The single submission was in support of the proposed reclassification. NSW Rural Fire Service were consulted and advised that they had no objection to the planning proposal.

This report recommends that Council proceed with the planning proposal (as contained in Attachment 1) with one amendment, to clarify the details of the LEP mapping required, as follows:

Amend Part 4 Mapping to read:

The planning proposal will require the inclusion of a new map sheet 003_CD Reclassification of Land (Part Lot) Map into *Byron Local Environmental Plan 2014* to accurately show the parts of Lot 100 DP 1023737 to be classified as operational land.

RECOMMENDATION:

That Council:

- 1. Make the following amendments to the planning proposal (Attachment 1 E2016/100703)):**
 - a) Amend Part 4 Mapping to read:**

The planning proposal will require the inclusion of a new map sheet 003_CD Reclassification of Land (Part Lot) Map into Byron Local Environmental Plan 2014 to accurately show the parts of Lot 100 DP 1023737 to be classified as operational land.
- 2. Forward the planning proposal (as amended) to the NSW Department of Planning and Environment requesting that the Department draft and finalise the LEP.**

Attachments:

- 5**
 - 1 Planning Proposal for reclassification of part Lot 100 DP1023737 Suffolk Beachfront Holiday Park, E2016/100703**
 - 2 Public Hearing Report prepared by MikeSvikisPlanning, E2016/100700**

Report

This report presents the outcomes of the public exhibition and public hearing held in regards to a Council initiated planning proposal to amend *Byron Local Environmental Plan (LEP) 2014* to reclassify part of Lot 100 DP 1023737 Alcorn Street, Suffolk Park from “community” land to “operational” land status under the *Local Government Act (LG Act) 1993*, with interests discharged.

The subject land contains the Suffolk Beachfront Holiday Park and the Suffolk Park Community Hall. The whole of the land is currently classified as ‘community land’ under the *LG Act*. The location of the land is shown in Figure 1.



Figure 1: Site Identification Map

The Planning Proposal (included as Attachment 1) was initiated by Council for the purpose of formalising leasing arrangements with long-term residents of the caravan park. The proposal will reclassify three small parts of the caravan park, being the land that is occupied by the 19 long-term caravan sites, as shown in Figure 2. There is no intention by Council to sell this land.



Figure 2: Part of lot proposed for reclassification from community to operational

5 Council is seeking to reclassify this part of the land to operational in response to legal advice that, under the *LG Act*, it is not permissible to have long-term residents located on land classified as 'community land'. This is because community land is generally intended for public access and use. Use of the land for private residential purposes restricts its use by the general community. In addition there are restrictions on the leasing of community land. By comparison, there are no special restrictions on 'operational land' other than those that may apply to any piece of land.

10 The Suffolk Park community has in the past indicated its support for retaining the permanent residents in the park, and the park residents have indicated that they would like to stay. In order for Council to meet its obligations under the *LG Act*, the position has been reached to have the part of the park that is occupied by permanent residents reclassified to operational, with the bulk of the park remaining as community land.

15 Council resolved (14-51) at its Ordinary Meeting of 27 February 2014 to commence the proceedings to reclassify the land. A planning proposal was prepared and submitted to the Department of Planning and Environment for a gateway determination, which was subsequently issued on 9 August 2016.

20 Prior to the public exhibition of the planning proposal, information sessions were held with the Suffolk Park Progress Association and the managers and residents of the caravan park to explain to these stakeholders Council's intentions and the expected outcomes of the planning proposal.

25 The planning proposal was placed on public exhibition for a period of 28 days from 8 September until 6 October 2016 and a public hearing into the proposed reclassification was held on 20

October 2016 at the Suffolk Park Community Hall. In accordance with s47G of the *Local Government Act 1993* Council engaged an independent chairperson, Mike Svikis (Principal Planner of MikeSvikisPlanning), to conduct the public hearing and to prepare a report on the outcomes. This report is included as Attachment 2.

5

Results of the consultation are that no written submissions were received during the public exhibition period and only one verbal submission was received at the public hearing. The single submission was in support of the proposed reclassification. NSW Rural Fire Service were consulted and advised that they had no objection to the planning proposal.

10

This report recommends that Council proceed with the planning proposal (as contained in Attachment 1) with one amendment, to clarify the details of the LEP mapping required, as follows:

Amend Part 4 Mapping (page 11) to read:

15

The planning proposal will require the inclusion of a new map sheet 003_CD Reclassification of Land (Part Lot) Map into *Byron Local Environmental Plan 2014* to accurately show the parts of Lot 100 DP 1023737 to be classified as operational land.

20 **Financial Implications**

As a Council initiated planning proposal the costs for staff time in preparing and processing the planning proposal will be met by Council.

25 **Statutory and Policy Compliance Implications**

Council has complied with the Department of Planning and Environment's LEP Practice Note PN 16-001 and followed the statutory process to amend Byron LEP 2014 through this planning proposal. Council should now decide whether to proceed to finalise the planning proposal (either with or without amendments).

30

Report No. 13.15 PLANNING - Road Airspace Policy review - Audit of Road Act Approvals December update

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

File No: I2016/1204

Theme: Ecology
Development and Approvals

Summary:

Council considered a report refer link [13.6 Planning- Road Airspace - Audit of Roads Act Approvals](#) at the Ordinary Meeting 9 June 2016.

This report provided information about Council's current policy position, previous audits and findings regarding 15 properties with structures occupying road airspace. A summary table of these properties, detailed information and history from the audits and further details in the form of diagrams and plans were attached and included in this report for consideration by Council. Refer link [13.6 Report Attachments](#)

This report recommended a change in methodology to advance revenue generation as part of the Financial Sustainability Project Plan initiatives from road airspace use within the Shire.

Council resolved at this meeting to:

16-310 Resolved that this report be deferred until further information be received on how this matter is dealt with by other Local Councils and that a workshop be held to further inform Councillors on process for implementation.

This report presents to Council an updated report on road airspace use taking into consideration how the matter is dealt with by other councils and the workshop held with Councillors 24 November 2016.

Staff recommend that amendments to the Airspace Policy and Fees and Charges be progressed to change Council's methodology from a lease to a Roads Act approval process for commercial use of road airspace in the Shire.

It is normal Council policy to enter into a lease and licence for the use of Road Airspace. These aspects of regulation are provided for in the legislation. Adoption of this policy position by Council will make it simpler and clearer to developers/landowners that they need to consider up front the implications for, and cost of, buildings and or structures proposed as part of development (new or existing) that encroach upon public land for commercial use/gain.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

- 1. That amendments to the Airspace Policy and Fees and Charges be progressed to**

accord with the Roads Act approval process for road airspace use for ‘commercial use’.

- 2. That initiatives, including consultation with stakeholders and the issuing of Orders, be progressed to regulate road airspace use and levy appropriate commercial rental for that purpose.**

Attachments:

- 1 Confidential - Airspace Audit, E2016/101410**

5

Report

Current Council position

The current Airspace Policy, refer link www.byron.nsw.gov.au/publications/airspace-policy was developed to promote revenue generation in 2012, refer Attachment 3 - Council Report titled "7.1 Identification cost saving/revenue within Environment and Planning & Natural Resources Division" considered by the Strategic Planning Committee at its Meeting held 26 May 2011.

This current Airspace Policy relies on a complex and expensive option of granting a lease under section 149 of the Road Act to generate revenue for commercial road airspace occupancy in the Shire. Section 149 of the Roads Act requires the approval of the Director of Planning for any lease.

The Real Property Act requires any lease in excess of 3 years to be registered on the land title – which requires affixing of the Council Seal. Affixing the Council seal cannot be delegated by Council, as set out in clause 400 of Local Government (General) Regulations.

The Conveyancing Act 1919 requires any lease for more than 5 years, including any options for renewal, to be defined as a lot in a current registered plan – creation of a lot in a strata plan for the purposes of a lease. Strata subdivision of a Road Reserve is provided for by section 259 of the Roads Act. The direct cost of establishing a lease in excess of 5-years is approximately \$5,000 to \$6,000 (including valuations, survey, survey linen plans, registration, and lease production).

The granting of a lease under section 149 of the Roads Act, however, does not provide the occupant of the road airspace or the owner of the building lawful right for the structure to occupy the road airspace. Only Roads Act approvals under sections 138 or 126 have this effect. Council's ability to legally enforce the terms and conditions of a section 149 road airspace lease, where there is no Roads Act approval for the structure, is problematic when ownership and/or tenancy change, or where lessees fail to pay lease fees and uncollectable bad debts accumulate.

As such the preference is for Council to use the legislative powers, available under the Roads Act, to approve a road airspace structure, and apply any conditions necessary under sections 139A, 126, and 127. This includes conditions to levy and collect rent, require the applicant to maintain the structure, or remove the structure in certain circumstances (and on expiry of the Roads Act approval).

The term of the Roads Act approval, under certain conditions, cannot exceed 7 years; however, there is nothing in the Roads Act preventing subsequent approvals. This is a similar, and in some circumstances identical, to the process currently used by Council for footpath dining and goods and chattels approvals and rental (and their associated structures).

There is no requirement, under the Roads Act approval process, to refer the approval, rent or other approval conditions to any external agency for concurrent approval/consent and is a function that can be delegated by Council to the General Manager.

Other Council's policy position

It is normal Council policy to enter into a lease and licence for the use of Road Airspace. These aspects of regulation are provided for in the legislation.

A review of what other Council's including (NOROC, other regional and metro Council's) practice is with regard to road airspace use has revealed that it varies depending on the council and the circumstance. Some councils discourage the use of road airspace as not in the public interest; others enter into a lease for the use of road airspace proposed with a community benefit,

particularly where is it a significant structure or building e.g. walkway or tunnel as a lease; others manage use of road airspace through Roads Act approvals only.

- 5 Generally the terms of the lease and licence include a rental based on a commercial rate for the land/airspace as determined by valuation of land/airspace as included in the Fees and Charges.

Audit of use of road airspace

- 10 In the previous report to Council as of June 2016, 15 properties were identified as likely having structures in the road airspace, of these up to 9 below in **bold** have been identified with a 'commercial' use.

- 15 A review of these, and other properties and structures the result of new development proposing use of the road airspace will otherwise now occur annually to ensure that the required approvals etc. are in place.

| Premises Name | | Findings |
|---------------|--|--|
| 1. | The Balcony Restaurant, BYRON BAY | <ul style="list-style-type: none"> • 5A Lawson Street Byron Bay (PN 186200) • No history of Roads Act approvals or lease agreement being entered into. • Searches concluded that no fees have been received by Council from the premises at 5A Lawson Street for the use of the 'balcony' (airspace) area for dining. • Floor plan (5.1998.365.1) dated 1993 indicates balcony area is approximately 81m². |
| 2. | Byron Pier, BYRON BAY | <ul style="list-style-type: none"> • 7 Lawson Street Byron Bay (PN 222780) • No history of approvals under the Roads Act 1993 or lease agreements being entered into with Council. • Searches concluded that no fees have been received by Council from the premises at 7 Lawson Street for the use of the airspace area for dining. • Approximate balcony area is 15m². |
| 3. | The Sticky Wicket Bar, BYRON BAY | <ul style="list-style-type: none"> • 32 Jonson Street Byron Bay (PN 35100) • No history of Roads Act approvals • 27/07/2004 – Lease agreement entered into between Byron Shire Council and Neil Harold Pearson and Audrey Pearson (owners) for a period of 3 years. • 02/08/2004 – Consent granted for Hoarding Plan – outlining conditions. • Floor plan dated 2003 indicates balcony area is 10m². |
| 4. | Hogs Breath Café, BYRON BAY | <ul style="list-style-type: none"> • 4 Jonson Street Byron Bay (PN 211410) • No history of Roads Act approvals • There is a lease agreement in place for the use of the balcony area of Hog's Breath Café. The original term has expired, and they are currently holding over on a month-by-month basis. • Floor Plan from 1995 indicates balcony area is 90m². |
| 5. | The Middle Pub, MULLUMBIMBY | <ul style="list-style-type: none"> • 46-50 Burringbar Street Mullumbimby (PN 242094) • No history of Roads Act approval • Airspace Lease Agreement existed between previous owners (Graham and Lorraine Evans) in 1997. • Council attempted to enter into an Airspace Lease Agreement with new owners (Mr Evans) to which the owner did not sign. • Mr Evans Solicitor's letter confirming 'client feels proposed lease is unacceptable', indicating they would explore their right to an easement. • Approximate balcony area is 90m². |

- | | |
|--|---|
| <p>6. 28 Jonson Street Byron Bay, BYRON BAY</p> | <ul style="list-style-type: none"> • 28 Jonson Street Byron Bay (PN 35120) above Witchery. • No history of Roads Act approval or lease agreement • Floor plan dated 1997 indicates balcony area is 4.5m². |
| <p>7. The Great Northern Hotel, BYRON BAY</p> | <ul style="list-style-type: none"> • 35-43 Jonson Street Byron Bay (PN 116100) • No history of Roads Act approval or lease agreement • 10.2008.742.1 As amended Development Application indicates balcony area is at least 54m². • Balcony has not been built yet. |
| <p>8. 15-17 Byron Street, BANGALOW</p> | <ul style="list-style-type: none"> • 15-17 Byron Street Bangalow (PN 178590) • No history of Roads Act approval or lease agreement. • Approximate balcony area is 28m² for residential use. |
| <p>9. 23-29 Byron Street, BANGALOW</p> | <ul style="list-style-type: none"> • 23-29 Byron Street Bangalow (PN 239128) • No history of Roads Act approval • Airspace Licence Agreement signed between The Owners Corporation SP72220 and Byron Shire Council in 2004 – for the airspace over footpath at 23-25 Byron Street. Licence Fee was \$457.60 and the Agreement from 18 May 2004 to 17 May 2007 (DM461834). • Approximate balcony area is 37.5m² combined for residential use. |
| <p>10. Country Women's Association, BANGALOW</p> | <ul style="list-style-type: none"> • 31 Byron Street Bangalow (PN 64320) • No evidence of Roads Act approval or lease agreement. • Approximate balcony area is 16.2m² for non- commercial use. |
| <p>11. 33 Byron Street, BANGALOW</p> | <ul style="list-style-type: none"> • 33 Byron Street Bangalow (PN 239797) • No evidence of Roads Act approval or lease agreement. • Approximate balcony area is 13.5m². |
| <p>12. Bangalow Real Estate / Italian Diner, BANGALOW</p> | <ul style="list-style-type: none"> • 39 Byron Street Bangalow (PN 64200) • 51.2016.1016.1 approval for footpath dining. • No history of Roads Act approval or lease for airspace • Approximate balcony area is 28.5m². • The upstairs is occupied by Bangalow Real Estate which formally was located on the street level in the adjacent building No 37 Byron Street. |
| <p>13. 37 Byron Street, BANGALOW</p> | <ul style="list-style-type: none"> • 37 Byron Street Bangalow (PN 64210) • No evidence of Roads Act approval or lease agreement. • Approximate balcony area is 22.5m² + 18m² = 40.5m². |
| <p>14. Summerland Credit Union, BANGALOW</p> | <ul style="list-style-type: none"> • 42 Byron Street Bangalow (PN 67350) • Most recent development consent 10.2015.413.1. • No evidence of Roads Act approval or lease agreement. • Approximate balcony area is 58.5m². |
| <p>15. Mercato Shopping Centre, BYRON BAY</p> | <ul style="list-style-type: none"> • 98-106 Jonson Street, Byron Bay (PN: 34840, 116180, 116190 , 177890) • No history of Roads Act approval or lease agreement. • Approximate balcony area is 150m². • Balcony has not been built yet. |

Current revenue generation from road airspace use

There is currently very little revenue generation for the commercial use of road airspace.

5

There are no current Roads Act approvals conditioned to charge rental for the commercial occupation of the road airspace.

Council has one commercial road airspace lease for the use of the balcony area of Hog's Breath Café. There is currently no Roads Act approval for the lawful occupation of the road airspace and, therefore, no lawful mechanism to enforce the lease agreement. The original lease term has expired, and they are currently holding over on a month-by-month pending the change in method recommended in this report.

In order to progress revenue generation for commercial use of road airspace using the most efficient and cost effective process requires a change of method and process to the Road Act approval discussed above.

Below is a summary outline of the possible next steps for the implementation process to occur:

1. Review and amend the Airspace Policy.
2. Consultation with property owners, including:
 - advertise the revised airspace policy for public comment for 28 days,
 - identify and promote a contact representative including phone number and email address,
 - developing key messages, content and FAQs to be published on BSC website,
 - drafting and distributing letters to affected property owners, and
 - conducting one-to-one meetings with affected property owners if required.
3. Change Council's 2016/17 draft Fees and Charges for road airspace use (commercial use).
4. Require Roads Act approvals for structures with a 'commercial use' occupying the road airspace following consultation with property owners:
5. Notify those premise owners using a Section 107 Order, of the requirement to lodge Roads Act application for approval of the road airspace structure where necessary.
6. Appropriately condition the approvals
 - regular rental charges,
 - requirements for insurances,
 - maintenance, and repair of the structures.

Financial Implications

Council's adopted Financial Sustainability Project Plan seeks to explore revenue generation initiatives including if road airspace structures for commercial use are lawfully occupying road reserve airspace.

Using an estimated floor space for the identified properties, and the 2016/17 footpath dining adopted fees and charges per square metre rental rates, the Confidential Attachment - sets out the estimated rental for each property, and shows the possible potential total annual income for Council from those 9 properties being occupied for a commercial use of \$217,338.

Statutory and Policy Compliance Implications

Roads Act 1993 Section 107 deals with Obstructions and Encroachments and provides as follows:

- (1) A roads authority may direct:
 - (a) any person who causes an obstruction or encroachment on a public road, or
 - (b) the owner of any land that is used, or is able to be used, in connection with an obstruction or encroachment on a public road, to remove the obstruction or encroachment.
- (2) A direction under this section may specify the period within which the direction must be complied with.
- (3) In the case of an obstruction or encroachment that was created before the alignment of the road, or that is situated on a road that has not been aligned, the period specified in the direction must be at least 60 days.

(4) This section does not apply to an obstruction or encroachment on a public road if its presence on the road is authorised by or under this or any other Act.

(5) However, this section does apply to an obstruction or encroachment on a public road if its presence ceases to be authorised by or under this or any other Act.

- 5 The general principles that Council should follow in issuing orders is that they should ensure:
- That the orders are clear and certain as to what needs to be done and by when it needs to be done.
 - 10 • That the order should require only what is reasonable, proper and within the power of the order to require.
 - That the order should use plain English, consistent terminology and explain any technical terms. This includes using terminology compliant with the relevant Act.
 - 15 • The order should advise the recipient of the order that non-compliance with the order may lead to enforcement action being taken against them.
 - The order is to be signed by a person with delegated legal authority to issue the order.
 - The order is to be issued to the correct legal entity.

A template of the Order is as follows:

**ROADS ACT DIRECTION
Section 107 Roads Act 1993
Obstructions and Encroachments**

| | |
|---------------------|---------------------------|
| Property | [PROPERTY TITLE] |
| Description: | [PROPERTY ADDRESS] |
| Parcel No: | [PARCEL NUMBER] |

Premises

According to Council records [owner name] is the owner of [property title] also known as [property address npc]. This Section 107 Roads Act 1993 Direction is served upon the owner of the premises.

Circumstances

Direction

Within <<number of days>> days from the date of this Direction you are required to carry out the following works.

1. <<works>>
2. <<works>>

Under Section 238 of the Roads Act 1993 Council, as the roads authority may take such action as is necessary to give effect to a direction under the Act if the direction is not complied with in accordance with its terms. The costs incurred by Council in taking action under this section are recoverable from the person to whom the direction was given, as a debt, in a court of competent jurisdiction.

The maximum penalty for not complying with this direction is \$3,300.

You may make representations to Council as to why the Direction should not be given, or why the terms or period for compliance with the Direction should be altered. Representation should be made within 21 days from the date of this Direction, to the attention of the General Manager:

- By Email: council@byron.nsw.gov.au
- By Mail: Byron Shire Council, 70-90 Station Street MULLUMBIMBY 2482

Should you require further information on this matter, please contact Public & Environmental Services on (02) 6626 7164 or email council@byron.nsw.gov.au

Report No. 13.16 **Report update on Council resolution 16-465 - The Farm**
Directorate: Sustainable Environment and Economy
Report Author: Shannon Burt, Director Sustainable Environment and Economy
File No: I2016/1274
Theme: Ecology
 Development and Approvals

Summary:

Council considered [Report 13.17 PLANNING - 10.2015.634.1 Change of use of Cheese Factory to Kitchen, Administrative Facilities, Expansion of Restaurant Areas and Car Parking and New Dwelling House at 11 Ewingsdale Road Ewingsdale](#) at the Ordinary Meeting 25 August 2016 and resolved as follows:

16-465 Resolved:

1. That Council refuse DA 10.2015.634.1 for the following reasons:

a) Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment 1979, the proposal is inconsistent with objectives of the RU1 Primary Production Zone, in that it would result in an operation that:

- is not a small-scale rural tourism use consistent with the rural character of the locality, and
- increases the potential for conflict between land uses within this zone.

b) Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment 1979, the proposed development is inconsistent with clause 6.8 (3)(b) of Byron Local Environmental Plan 2014 in that the uses proposed will result in tourism development in a rural area that is not small scale and low impact.

c) Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment 1979, the proposed change of use of the existing dwelling for office/ administration use is considered to be of a scale that is not ancillary to the restaurant use, and therefore prohibited in the RU1 Primary Production Zone.

d) Pursuant to Section 79C (1)(a)(i) of the Environmental Planning and Assessment 1979, the proposed dwelling-house cannot be approved pursuant to clause 4.2A of the Byron Local Environmental Plan 2014 as there is an existing dwelling-house on the property.

e) Pursuant to Section 79C (c) of the Environmental Planning and Assessment 1979, the site is not considered to be suitable for the proposed uses, given the scale of the tourism operation in the RU1 Primary Production Zone.

2. That Council staff undertake a Compliance Audit of the existing operation, particularly in relation to compliance with conditions of approval for DA 10.2013.626.1, and, as a result of the audit, prepare a detailed Audit Action Plan.

3. That Council invites The Farm to lodge a joint Planning Proposal, Master Plan and Development Application, within 60 days of the date of this resolution, to regularise unauthorised activities and uses on the land.

4. That upon lodgement of a planning proposal, Council will suspend enforcement action in relation to matters within the proposal until such time as a determination is made. Council may however use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the

environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and Protection of the Environment Operations Act.

- 5 This report presents to Council a response to Parts 2, 3 and 4 of the resolution. Part 1 has been separately actioned by staff.

RECOMMENDATION:**That Council:**

1. **Note the report.**
2. **Continue to work collaboratively and as expeditiously as possible to regularise unauthorised activities and uses on the land.**
3. **Continue to suspend enforcement action in relation to matters within the report until such time as a determination is made. Council may however use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and Protection of the Environment Operations Act.**

Report

Council considered [Report 13.17 PLANNING - 10.2015.634.1 Change of use of Cheese Factory to Kitchen, Administrative Facilities, Expansion of Restaurant Areas and Car Parking and New Dwelling House at 11 Ewingsdale Road Ewingsdale](#) at the Ordinary Meeting 25 August 2016. This report presents to Council a response to Parts 2, 3 and 4 of the resolution. These matters are discussed below.

2. That Council staff undertake a Compliance Audit of the existing operation, particularly in relation to compliance with conditions of approval for DA 10.2013.626.1, and, as a result of the audit, prepare a detailed Audit Action Plan.

A site inspection with staff occurred on the 12 September 2016 where a detailed site audit of the current activities was completed. This audit has been used to inform the preparation of a planning proposal and development application/s schedule for The Farm. It has also informed an audit action plan with respect to the priority matters that need urgent attention on site to meet planning and environmental standards and requirements.

Council officers have previously identified a number of ongoing issues at the site, related to unapproved land uses and/or the current use of the land pursuant to the existing approvals (primarily Consent 10.2013.626.2, but also 10.2015.151.1). These include:

- Performance of the on-site wastewater system;
- Dust and erosion issues associated with gravel surface of the car park and internal roads (Condition 13 DA 10.2013.626 & Condition 5 DA 10.2015.151);
- Patron numbers (Condition 47 DA 10.2013.626 & Condition 31 DA 10.2015.151); and
- Operation of plant nursery/ roadside stall.

These issues remain a priority for the site audit plan.

A seat count on the site inspection day indicated a conservative 165 seats. The count did not include the large lawn areas, where staff observed patrons 'dining'. This issue has been raised with the Farm and the proprietors of the Blue Duck restaurant, who have agreed to put in place restrictions to the amount of physical seating available in the restaurant and on site to that approved at 90 patrons.

At the time of writing this report there were ongoing issues with regard to the on site management system (OSMS) failing to meet the effluent quality required by their approval (suspended solids, free chlorine, BOD and E Coli with some positive trends. The Farm remains committed to improved monitoring and system improvements and have several professionals engaged to assist them in meeting target effluent qualities.

Further, the car park is an ongoing source of complaints pertaining to air pollution (dust emissions) with Council having to repeatedly request that dust control measures e.g. via watering down, in lieu of the consent condition being met to seal the car park. This is discussed later in the report.

Council officers are also aware of the bakery use and the restaurant administration use that have commenced without approval. Officers have also been made aware of potential for future expansion of uses, particularly associated with events at the site.

Staff continue to work collaboratively with the Farm on these matters to ensure they are resolved as expeditiously as possible and with minimal environmental impact.

3. That Council invites The Farm to lodge a joint Planning Proposal, Master Plan and

Development Application, within 60 days of the date of this resolution, to regularise unauthorised activities and uses on the land.

A planning proposal, master plan and schedule of development applications and the first development application were submitted on the 24 October 2016 to comply with the Council resolution. The planning proposal and development application lodged are currently under an initial review by staff and have not been progressed to formal notification as yet.

It should be noted that staff met with the Farm representatives prior to lodgement of these documents to discuss the emerging issue of traffic and parking management on site as it relates to current review of Ewingsdale Road. This being further complicated by previous advice from the RMS that any future development or intensification of development on the Farm site would necessitate a change to the access to the site from the current access via Woodford Lane to the roundabout at the new Byron Hospital. Further comment on the traffic issues is provided by Council's Developer Contributions Officer below under the heading 'Traffic and Road Planning Issues for the Farm and Ewingsdale Road'.

4. That upon lodgement of a planning proposal, Council will suspend enforcement action in relation to matters within the proposal until such time as a determination is made. Council may however use its discretion to take enforcement action in circumstances where it is demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and Protection of the Environment Operations Act.

As stated above, Council has been working with the Farm in relation to the current activities that require approval by a planning proposal and or development application/s. The progression of which is currently dependant on advice from the RMS.

That being said the Farm is presently managing activities on site as best able in the circumstances to meet the requirements of current development consents. This includes hours of operation, numbers of patrons and staff at the café/restaurant.

Condition 13 of DA 10.2013.626.1 requires (in part) that internal driveways and all car parking areas are to be bitumen sealed.

Council issued an Order to comply with the development consent in June 2016.

An application was subsequently made under Section 96 of the Act to modify the consent to alter this requirement, but that request was refused due to ongoing concerns regarding dust and erosion / sedimentation issues associated with the car park and internal roads. This issue has been subject of ongoing complaints to Council.

Council officers have again discussed the issue with the applicants / land owner given the terms of the Order can now be enforced by Council.

The Farm has again requested the ability to undertake a trial period with an alternate method of dust control / surface management of the car park to that of sealing. They maintain that the appearance of a sealed car park is not consistent with the Farm ethos. This alternate product is known as 'Global Road Technology' and is a polymer sealing. To this aim the Farm has agreed to enter into a irrevocable undertaking to enable a 3 month trial of an alternate method of dust control / surface management to occur (inclusive of watering down the site when and if required), after which time Council would have the ability to enforce the existing Order to comply with the consent condition, or could accept a new section 96 modification of consent condition to vary the car park treatment if satisfied with the trial. This 3 month trial period will also enable time for the response

to be received from the RMS on traffic and road planning issues and a decision to be made by the Farm about any site and parking layout changes necessitated as a result.

Traffic and Road Planning Issues for the Farm and Ewingsdale Road

- 5 The western end of Ewingsdale Road is under significant pressure due to increased traffic volumes. In October and November 2016 Council has placed classifiers (traffic counters) 50m east of the Hospital roundabout on Ewingsdale Road, 50m and 150m north of the highway roundabout on Woodford Lane. The classifier on Ewingsdale Road showed a peak traffic volume of 22,586 vehicles and an average of 19,642 compared to the average weekday traffic volume of 16,835 in 2012. The classifiers on Woodford Lane shows that the Farm generates a peak of 1,893 vehicles and average of 1,397 vehicles per day. This shows that the Farm in its current operations (regardless of approvals) is a significant traffic generator.
- 10
- 15 The highway interchange roundabout is currently reaching saturation (ratio of demand flow rate to capacity of the intersection) in the AM peak with queues regularly forming. These queues are impacting on the function of the motorway. Verbal advice from the RMS indicates that this issue is known with the tunnel control centre and they are monitoring this queue and reducing the variable speed limit in response. It is probable that this intersection is at capacity and it is not appropriate to allow any additional development to access this intersection. If this access point is not viable for any further development then an alternative access will be required. There are two options to be explored with respect to alternative access points, these are an upgraded Hospital roundabout or the proposed Roundabout at McGettigans Lane.
- 20
- 25 As Council would now be aware the roundabout at the new Byron Hospital was not constructed to current acceptable standards. This intersection is starting to show signs of saturation with queues starting to form in both the AM and PM peaks. For this roundabout to support traffic into and out of the Hospital and the Farm a complete reconstruction, land acquisition and funding is required. None of which is currently available. This reconstruction would be required regardless of if the Farm utilises this as an access point. Further there is no clear understanding or agreement as to what level of 'development' on the Farm i.e. existing or new triggers the change to access from Woodford Lane. This has been communicated to the Farm. Discussions have also occurred with the RMS, and Council now waits formal advice from the RMS on this issue. Neither the planning proposal nor the development application/s can progress until this issue is resolved. Depending on the advice, the Farm may need to enter into a VPA for the roundabout, revise their site layout, revise their DA and planning proposal and or scale back current activities and operations until such time as the new roundabout is constructed.
- 30
- 35
- 40 Preliminary concept plans for the widening of this section of Ewingsdale Road indicate that there will need to be significant land acquisitions of the Farm's land to enable the required road widening. There will need to be extensive consultation between Council, RMS and the Farm to identify the works required and the responsibility for the upgrading each asset.

Financial Implications

- 45 As per comments in the report.

Statutory and Policy Compliance Implications

- 50 As per comments in the report.

Report No. 13.17 PLANNING - 10.2015.70.2 S96 Application to Amend Hours of Operation for Cafe at 100 Redgate Road South Golden Beach

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Consultant Planner

5 **File No:** I2016/1276

Theme: Ecology
Development and Approvals

10 **Proposal:**

Section 96 Application No: 10.2015.70.2

Proposed modification: S96 to Amend Condition 41 Relating to Hours of Operation and Seating Numbers

Original Development: Dual occupancy, cafe, shed & pool pavilion

Type of s96 sought:

Property description: LOT: 100 DP: 828174
100 Redgate Road SOUTH GOLDEN BEACH

Parcel No/s: 180130

Applicant: Mr J C Cannon

Owner: Mr J C Cannon

Zoning: RU2 Rural Landscape / PART DM Deferred Matter (1(d) Investigation Zone)

S96 Date received: 11 April 2016

Original DA determination date: 11/06/2015

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 26/05/16 to 08/06/16
- Submissions received: 11 letters of objection; plus petition with 10 signatures, also objecting

Planning Review Committee: Not applicable

Delegation to determination: Council

Issues:

- Amenity impacts – noise;
- Objections from residents
- Approved land uses

Summary:

15 DA 10.2015.70.1 was approved on 11 June 2015, providing consent for dual occupancy, café, shed, pool and associated pavilion. The café comprises a mobile food cart, located in the area between the two dual occupancy residences, with outdoor dining area of 38m², with tables providing for 16 seats.

20 The current application proposes to modify the consent to amend the terms of Condition 41, which relates to hours of operation for the cafe. The condition restricts the use of the café to between the hours to 7.00am to 6.00pm. The condition also requires that seating in the outdoor dining area be restricted to 16, as noted on the approved plan. The application proposes to extend the operating hours to a closing time of 11.00pm, seven days per week. It also proposes to delete the restriction
25 of 16 seats, relying instead on the floor area shown on the approved plan, which is 38m².

If approved, the café would be the only non-residential land use approved to operate later than 8pm at South Golden Beach. It is appropriate; therefore, that Council deals carefully with the issue of potential amenity impacts associated with noise. The submissions received from local residents object to the amenity impacts associated with night-time noise from the premises.

An acoustic assessment has been submitted to support the extension of operating hours. It examines the operation of the café against Project Specific Noise Criteria based on “acceptable amenity” criteria as outlined in the NSW Industrial Noise Policy. The report concludes that noise levels associated with evening and night-time amplified music at the café can be managed to be within both the evening and night Project Specific Noise Criteria by limiting sound pressure levels at the source of music and managing people coming and going from the venue.

Many of the submissions received have suggested that the premises are proposed to be used as a wedding venue. Advertising from the internet indicated that the property can be used as a wedding venue with a capacity for around 100 guests. The advertising also promotes the short term holiday use of the approved dual occupancy buildings. The advertising has since been removed from the internet.

While functions can be carried out within an approved restaurant / café, the parameters of the approval remain applicable. In this case, the approved plan for the café shows 16 seats. Nothing in the existing approvals authorises a function use of the scale advertised, nor does the approval authorise function use of the approved sheds or holiday letting of the dual occupancy. The applicant has advised that his current intent is solely to establish the café use.

Given that noise modelling demonstrates that the operation as proposed is not likely to result in unacceptable amenity impacts associated with noise from evening use of the approved café, it is recommended that the application to amend the approval be approved, but with all amplified music to cease by 10:00pm. It is recommended this later closing time operate as a trial for 12 months to enable Council to further reconsider closing times and impacts on neighbours. In terms of numbers of patrons these are to be limited to 38 people having regards to the size of the approved dining area, and to provide an ultimate cap on numbers.

The Section 96 Application is recommended for approval subject to amended conditions of consent.

NOTE TO COUNCILLORS:

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

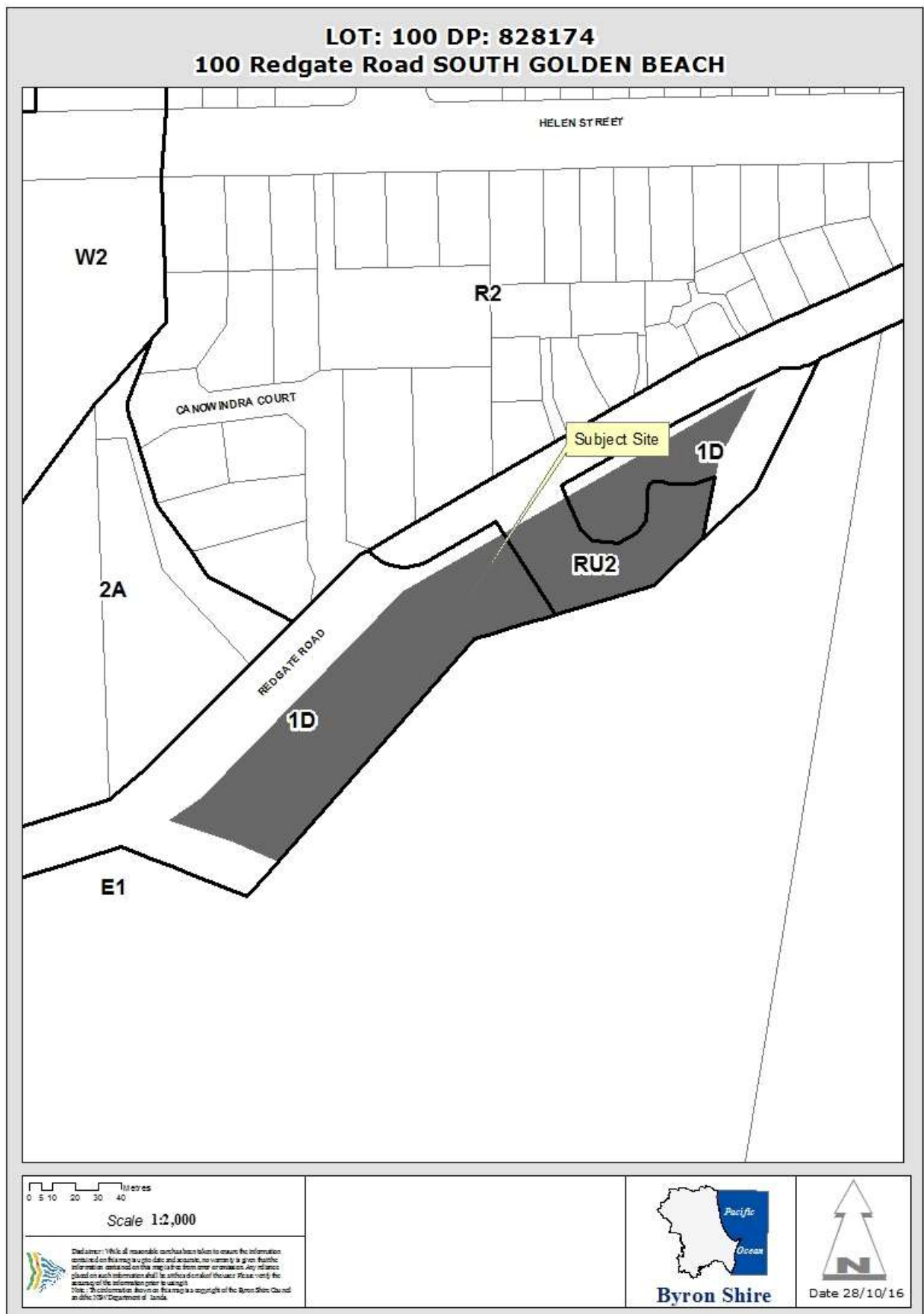
RECOMMENDATION:

That section 96 Application 10.2015.70.2, to amend Condition 41 of Consent 10.2016.70.1 to allow night-time use of the approved café, be approved by amending Development Consent 10.2015.70.1 as outlined in Attachment 5 (E2016/102287).

Attachments:

- 1 Copy of consent issued 10.2015.70.1 at 100 Redgate Road South Golden Beach, E2016/94598
- 2 Approved Plans 10.2015.70.1 at 100 Redgate Road South Golden Beach, E2016/94636
- 3 Confidential - submissions received 10.2015.70.2, E2016/94645

- 4 Advertising material, E2016/95589
- 5 Proposed Modification of Conditions, E2016/102287



Report**1. INTRODUCTION****1.1 History/Background**

Deferred Commencement Consent 10.2015.70.1 was issued on 11 June 2015. It approved a dual occupancy, café, shed and pool pavilion on land described as Lot 100 DP 828174, 100 Redgate Road, South Golden Beach.

The deferred development condition stated:

This consent does not operate until Council is satisfied of the following

- a) *A Building Certificate for the unapproved building works in the shed, approved under DA 86/168 and BA 86/339 as a shed/workshop, must be obtained pursuant to Sections 149A-D of the Environmental Planning and Assessment Act 1979.*

Evidence of compliance with the above, sufficient to satisfy the Council as to these matters, must be provided. If satisfactory evidence is produced in accordance with this requirement, the Council will give notice to the applicant of the date from which the consent operates.

Building Certificate 50.2016.4 was issued on 24 May 2016, and the applicant was notified that the development consent had therefore been activated as the deferred commencement consent had been complied with.

The original application proposed the use of an existing shed to be used as a dual occupancy dwelling. At the time, the shed contained unauthorised improvements, including two bedrooms a bathroom & kitchen with attached non-habitable storage & workroom. These unauthorised improvements were the subject of the deferred commencement condition and subsequent Building Certificate.

The proposed 'café' comprises a mobile coffee cart, which in itself represents exempt development under the SEPP Exempt and Complying Development Codes 2008. However, the application also proposed outdoor seating for 16 patrons and a disabled access toilet, thereby requiring consent. The proposed café is located between, and to the rear of the dwellings. Two sheds and a swimming pool shade structure were also proposed. One of the sheds was located within the road setback and required vegetation removal. For those reasons that shed was not supported (a subsequent approval was granted for the second shed, in a revised location DA 10.2015.477.1).

Advertising is being promoted for use of the property as a wedding venue with a capacity for around 100 guests. The advertising also promotes the short term holiday use of the approved dual occupancy buildings (see Attachment 4).

While approval is not required to hold functions within an approved restaurant / café, the parameters of the approval remain applicable. In this case, the approved plan for the café shows and outdoor dining area with a floor area of 38m², showing 16 seats. Nothing in the existing approvals authorises function use of the scale advertised, nor does the approval authorise function use of the approved sheds or short-term holiday use of the dual occupancy.

1.2 Description of the proposed development

This application seeks approval for a S96 to amend Condition 41 relating to hours of operation and seating numbers.

The existing conditions states:

41. Restriction on Café use & hours of operation

The Floor Areas comprising the Café are restricted to the following:

- *Mobile food cart as indicated on approved plan.*
- *Café Outdoor seating as indicated on approved plan.*

Café is not to operate between the hours of 6.00pm & 7.30am

The proposal seeks to modify the hours of operation from **7:30am to 11:00pm seven days per week.**

The applicant notes that Condition 46 will remain in place, containing provisions to ensure the protection of the amenity of the neighbourhood. Condition 46 states:

46. No Interference with Amenity of Neighbourhood

The cafe shall not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise. In particular:

- a) The noise level emanating from the use of the premises must comply with the New South Wales Industrial Noise Policy. Specifically no loud amplified music from 'café' or swimming pool areas*
- b) Only clean and unpolluted water is permitted to be discharged to Councils' stormwater drainage system or any waters.*
- c) All wastes shall be contained within appropriate containers fitted with a tight-fitting vermin-proof lid.*
- d) All trade waste pre-treatment devices and other waste storage facilities shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.*
- e) Goods deliveries and waste collection shall be restricted to daytime operating hours.*

The application also proposes to delete the restriction of 16 seats, relying instead on the floor area shown on the approved plan, which is 38m².

1.3 Description of the site

The relatively flat 1.18ha lot is located on the southern side of Redgate Road in South Golden Beach. The site is part Zone RU2 – Rural Landscape & Deferred Matter under BLEP2014. The areas that are Deferred Matter are within Zone 1D – Investigation Zone under BLEP1988.

Land to the north-west is located within Zone R2 – Low Density Residential and incorporates residential development. Adjoining land to the north-east, south-west and south-east forms part of the Marshalls Creek Nature Reserve.

The allotment is constrained by bush fire, flood and class 2 and 3 acid sulphate soils. The adjoining road reserve, within which sewer pipes are to be laid in order to connect to Council's infrastructure, is class 2 acid sulphate soils. The site is located within a sensitive coastal location pursuant to the provisions of SEPP 71 – Coastal Protection.

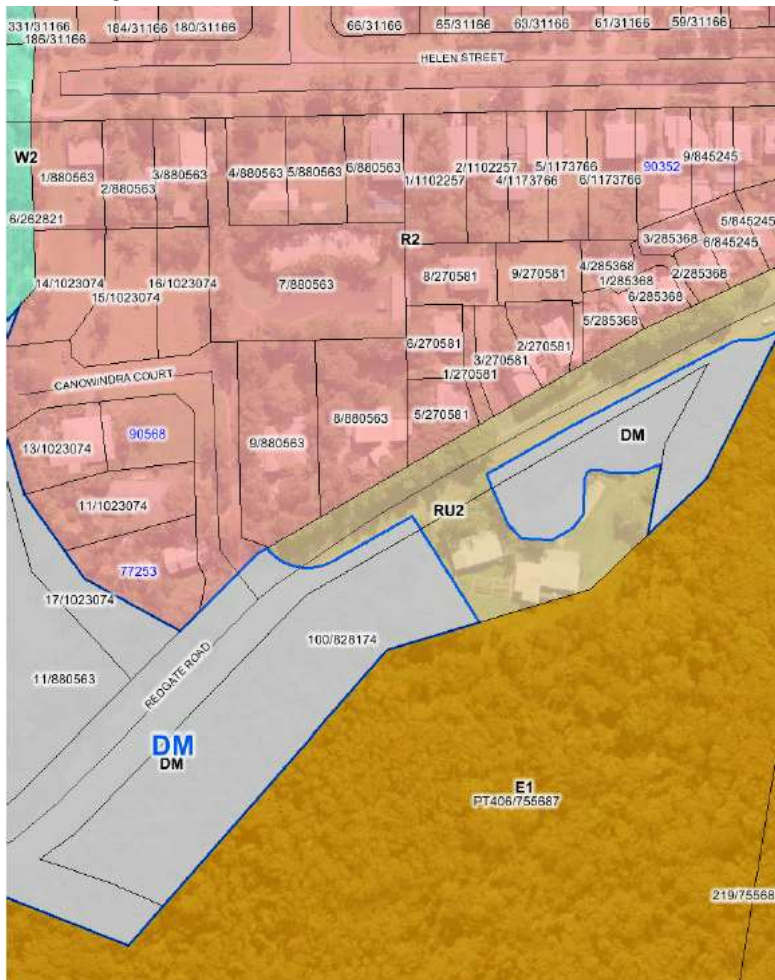
The majority of the lot is vegetated with swamp sclerophyll forest and woodland, an Endangered Ecological Community pursuant to schedule 1 of the Threatened Species Conservation Act 1995. The approved development and the bush fire asset protection zones are not located within the high conservation value vegetation.

Development on the site includes the detached dual occupancy, swimming-pool, driveways, a shed and landscaping.

The site



BLEP 2014



2. SECTION 96(1A)

Section 96(1A)

Comment: The environmental impacts associated with the proposed modification relate primarily to the potential for acoustic impacts associated with the proposed extended hours of operation. This is addressed further below. The establishment of a small café at the site was one component of the existing consent. The proposed modification does not alter any other aspects of the approved development, nor does it alter the physical aspects of the café. As such, it is considered that the development as modified is substantially the same development as that approved. The application has been notified in accordance with the DCP requirement. Submissions received are addressed below.

Section 96(3)

Comment: Section 79C(1) matters are considered below.

Section 96(4)

Comment: Noted.

Section 96(6)

Comment: Noted.

Section 96(8)

Comment: Noted.

Issues:

5 Acoustic Impacts

A Noise Impact Assessment Report was requested to consider noise impacts from the extension of café operating hours on sensitive receivers. It considered noise impacts from music (amplified and non-amplified), patron noise and traffic movements associated with the proposed additional hours of the café use.

- 10 The approved café consists of:
- a mobile food van (for preparation of and sale of food);
 - outdoor seating area with an area of 38m²;
 - potential for live music in the vicinity of both the outdoor seating area, and an alternative option
 - 15 for indoor live music in the dual occupancy residence; and
 - 6 café related on-site car parks.

The application is seeking approval to operate the cafe to 11:00pm, with the preparation of food and the use of live music to cease at 10:00pm.

20 The proposed café area is situated between the main dwelling and the approved dual occupancy residence, which would provide for some noise attenuation to the north and east.

25 The closest residential receivers are situated on the north-eastern side of Redgate Road, being typically 55m from the proposed café area. The topography in the general area of the site is relatively flat. It is noted that the Pacific Ocean is approximately 450m to the east, and therefore contributes to the background noise of the area.

30 The impact of development related noise emissions has been assessed at the first line of receivers neighbouring the subject site.

The Assessment Report originally established the relevant Project Specific Noise Criteria (PSNC) based in the "intrusiveness" criteria within the NSW Industrial Noise Policy - i.e. background + 5dB(A). In this case the PSNC were:

- 35
- Evening PSNC - 46.2 dBA; and

- Night PSNC – 45.1 dBA.

In response to concerns regarding potential amenity impacts, the Noise Assessment was updated, examining the operation of the café against reduced PSNC; being “acceptable amenity” levels as outlined in the Industrial Noise Policy rather than “intrusiveness” criteria.

The reduced PSNC adopted for the revised assessment are:

- Evening PSNC - 45 dBA; and
- Night PSNC – 40 dBA.

It is expected that the most intrusive noise emissions from the development would be associated with the live amplified music within the outdoor café area.

The assessment includes modelling to predict the likely noise emissions experienced at 15 neighbouring receivers (i.e. primarily homes along the opposite side of Redgate Road). The model considers typical vegetation and building locations, and ground and atmospheric absorption to predict noise attenuation.

Three scenarios have been modelled, being:

- Patron noise and live music in the outdoor café area;
- Patron noise and live music indoors; and
- On-site café related car park noise emissions.

Noise modelling suggests that noise levels associated with amplified music located outdoors at the café is likely to be

- below measured background levels at 11 of the 15 nearest residences;
- above background levels, but within the nominated PSNC for the evening period (i.e. 6:00pm to 10:00pm) at 4 of the 15 nearest residences; and
- above the night-time PSNC (i.e. after 10:00pm) at the same 4 residences.

The use of live / amplified music is proposed to finish at 10:00pm, hence the exceedance of the night PSNC will not occur.

As the proposed development is seeking approval to operate to 11pm, noise emissions associated with the on-site usage of café related car parks were assessed against the Night PSNC of 40 dB(A). The modelling indicates that predicted levels will be well within the criteria for all 15 residences. In fact, it demonstrates that these noise levels will be well below background levels.

To ensure compliance with the PSNC's a decibel limit for the live music has been recommended:

- For music in the outdoor café area, the noise source should be typically situated in the location modelled (immediately adjacent (west side) of the café seating) and be limited to a Sound Power Level of 93.7 dBA. This specified sound power level can be monitored by achieving a Sound Pressure Level of 73.2 dBA at 3m from the source.
- If the live music is to be situated indoors at the typical location modelled (within the dual occupancy residence), a Sound Power Level limit of 98.9 dBA is recommended to ensure compliance with the PSNC's. This can be monitored by achieving a Sound Pressure Level of 78.4 dBA at a distance of 3m from the noise source.

For the predicted music propagation for both indoor and outdoor music, the dual occupancy building is seen to play a role in attenuating noise emissions to the north, in the direction of the sensitive receivers. To assist this, during periods of live music, the report recommends that all

windows, doors and openings on north and east facing facades of the dual occupancy building be closed.

- 5 The report also recommends a range of best practice noise management measures to manage emissions from proposed function events at the subject site, including:
- speakers should be mounted in a 45⁰ downward direction, and facing away from sensitive receivers where practical,
 - low frequency dB(A) (bass levels) to be kept at a minimum,
 - high frequency dB(A) levels to be kept to a minimum, dB(C) to be no more than dB(A) + 10,
 - 10 • use of tonal or intermittent noise to be avoided,
 - limit the use of PA systems for patron speeches or commentaries during events,
 - For events using amplified music, it is recommended to perform a sound check prior to the event to ensure the dB limits are met.
- 15 The report further recommends that an operational plan of management is prepared to address the management of noise emissions from the subject site. This plan of management would incorporate measures such as those recommended above, to ensure compliance with the relevant noise criteria along with ensuring best practice noise management.
- 20 Having considered the above recommendations and source decibel limits, the Noise Impact Assessment report concludes that the relevant PSNC's can be achieved at all neighbouring receivers.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

25

| |
|---|
| Clause 115(1) |
| Comment: The application contains most of the matters required by this clause. The applicant has suggested (i.e. ticked the box on the application form) that the application is a "modification involving minor error, misdescription or miscalculation" (i.e. S96(1)). This is not accepted and the application is taken to be made under Section 96(1A). |
| Clause 115(2) |
| Comment: Noted. |
| Clause 115(5) |
| Comment: There is no relevant design review panel. |
| Clause 115(6) |
| Comment: BASIX is not relevant to the proposed modification. |
| Clause 115(7) |
| Comment: BASIX is not relevant to the proposed modification. |
| Clause 115(8) |
| Comment: N/A |
| Clause 115(10) |
| Comment: N/A |
| Clause 116 |
| Comment: N/A |
| Clause 117(1) |
| Comment: Noted. |
| Clause 117(2) |
| Comment: N/A |

| |
|--------------------------------------|
| Clause 117(3A) |
| Comment: N/A |
| Clause 117(4) |
| Comment: Noted. |
| Clause 120(1) |
| Comment: No concurrence authorities. |
| Clause 120(2) |
| Comment: N/A |

4. SUMMARY OF REFERRALS

| Referral | Issue |
|------------------------------|--|
| Environmental Health Officer | The comments regarding noise are included in the discussion of acoustic impacts above. The EHO has recommended that support for the application could be given, subject to conditions. |

5. SECTION 79BA – BUSH FIRE PRONE LAND

Under section 79BA of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2006.

The site is mapped as bush fire prone land. A Bushfire Assessment Report, prepared in accordance with *Planning for Bushfire Protection 2006 (PBP)*, was submitted in support of the original development application. That report was accepted, and appropriate conditions of approval were imposed on Consent 10.2015.70.1.

The proposed extension of operating hours for the café does not raise any issues relevant to bush fire risk.

EFFECT OF 10/50 RULE ON SIGNIFICANT VEGETATION

The proposed modification only relates to operating hours for the approved café. It therefore raises no issues with respect to the 10/50 rule.

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

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

6.1 State Environmental Planning Instruments

The proposed modification to operating hours for the café does not raise any relevant SEPP issues.

6.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 79C(1) of the EP&A Act because it applies to the subject land and the proposal. The approved café use is located wholly within the area zoned under BLEP.

The LEP 2014 clauses that are checked below are of relevance to the proposal:

| | |
|--------|--|
| Part 1 | <input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input checked="" type="checkbox"/> 1.9A |
| Part 2 | <input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input type="checkbox"/> 2.4 <input type="checkbox"/> 2.5 <input type="checkbox"/> 2.6 <input type="checkbox"/> 2.7 <input type="checkbox"/> 2.8 |
| Part 3 | <input type="checkbox"/> 3.1 <input type="checkbox"/> 3.2 <input type="checkbox"/> 3.3 |
| Part 4 | <input type="checkbox"/> 4.1 <input type="checkbox"/> 4.1A <input type="checkbox"/> 4.1AA <input type="checkbox"/> 4.1B <input type="checkbox"/> 4.1C <input type="checkbox"/> 4.1D <input type="checkbox"/> 4.1E <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.2A <input type="checkbox"/> 4.2B <input type="checkbox"/> 4.2C <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.3 <input type="checkbox"/> 4.4 <input type="checkbox"/> 4.5 <input type="checkbox"/> 4.6 |
| Part 5 | <input type="checkbox"/> 5.1 <input type="checkbox"/> 5.2 <input type="checkbox"/> 5.3 <input type="checkbox"/> 5.4 <input type="checkbox"/> 5.5 <input type="checkbox"/> 5.6 <input type="checkbox"/> 5.7 <input type="checkbox"/> 5.8 <input type="checkbox"/> 5.9 <input type="checkbox"/> 5.9AA <input type="checkbox"/> 5.10 <input type="checkbox"/> 5.11 <input type="checkbox"/> 5.12 <input type="checkbox"/> 5.13 |
| Part 6 | <input type="checkbox"/> 6.1 <input type="checkbox"/> 6.2 <input type="checkbox"/> 6.3 <input type="checkbox"/> 6.4 <input type="checkbox"/> 6.5 <input type="checkbox"/> 6.6 <input type="checkbox"/> 6.7 <input checked="" type="checkbox"/> 6.8 <input type="checkbox"/> 6.9 |

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- 5
- (a) The relevant component of the approved development is defined in the LEP 2014 Dictionary as restaurant / cafe;
 - (b) The land is within the RU2 Rural Landscape zone according to the Land Zoning Map;
 - (c) The proposal is permitted with consent; and
 - (d) Regard is had for the Zone Objectives as follows:

| Zone Objective | Consideration |
|---|---|
| <i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i> | Not relevant – the proposed change of use to operating hours raises no issues relevant to this objective. |
| <i>To maintain the rural landscape character of the land.</i> | The site is located at the edge of the South Golden Beach village, with land zoned R2 on the opposite side of Redgate Road and land zoned E1 National Parks and Nature Reserves adjoining to the east/south-east. It therefore does not currently have a rural landscape character. |
| <i>To provide for a range of compatible land uses, including extensive agriculture.</i> | Approval of the original application indicated that the café use was considered to be compatible with the surrounding area. Compatibility was based on the application as proposed, being of a very small scale, with an outdoor dining area of 38m ² . The condition limiting hours of operation was imposed to ensure that activities at the café did not result in adverse amenity impacts in the locality. |
| <i>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</i> | The café could be considered to be a tourism use. With a food van and an area of 38m ² , it is considered to be small-scale. While it has no rural links, the café use is not inconsistent with the character of the area. The modification to increase operating hours, however, raises potential issues relating to amenity impacts associated with noise during the evening and/ or night. |
| <i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the</i> | The proposed modification does not change the physical characteristics of the approved |

| | |
|---|-----------------------------------|
| <i>locality.</i> | development. |
| <i>To provide facilities or services to meet day to day needs of the community.</i> | Not relevant to this application. |

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 6.8, which is considered further as follows:

6.8 Rural and nature-based tourism development

This clause applies to land zoned RU2. Pursuant to Part 6, restaurants or cafes are defined as *tourism development* for the purposes of this clause.

3) *Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that:*

1) *the development is small scale and low impact,*

The application proposes to extend the operating hours for the café from 6pm to 11pm. It is clear from the application that amplified music will be part of the café use.

The extension of hours raises the issue of adverse amenity impacts associated with noise. This has been assessed in detail (see above) and the Noise Impact Assessment report submitted in support of the application concludes that the use of the café (including amplified music) could be managed in a way that complies with the Industrial Noise Policy (i.e. achieving 'acceptable' noise levels).

The site is located at the edge of a residential village that does not contain any other regular noise sources (outside of 'normal' residential use).

The assessment report indicates that evening noise will be within the applicable guidelines, notwithstanding that it would be audible from some nearby residences.

Approval of the proposed modification would allow amplified music to occur on a regular basis. Given the context of the site, it is considered that any approval should be conditioned such that there be no amplified music after 10:00 pm.

It is also suggested that the consent be conditioned to require noise monitoring be undertaken to demonstrate compliance with the specific recommendations within the Noise Impact Assessment Report, with monthly compliance reports provided to Council.

The approval for the extension of operating hours is recommended to be limited to a period of 12 months, noting that extension of this period would be considered subject to the monitoring reports demonstrating consistent compliance with noise management levels.

6.2B Byron Local Environmental Plan 1988 (LEP 1988)

LEP 1988 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 79C(1) of the EP&A Act, because it applies to parts of the subject land.

- 5 The approved café use, however, is wholly within the part of the land zoned under BLEP 2014, and the proposed modification does not relate to any aspects of the approved use outside of that area. LEP 1988 is therefore not directly relevant to the proposed modification.

6.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

Draft SEPP (Coastal Management) 2016

The draft SEPP proposes to replace SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforest) and SEPP 71 (Coastal Protection). It will redefine the current 'Coastal Zone', to be within four coastal management areas:

- coastal wetlands and littoral rainforests area
- coastal environment area;
- coastal use area; and
- coastal vulnerability area.

The subject site will be mapped within the coastal use area. The proposed development is not in a wetland, littoral rainforest, coastal environment area or coastal vulnerability area. The proposed amendments to the consent do not raise any specific issues that apply to the coastal use area provisions under the draft SEPP.

6.4A Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 79C(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposal:

| | |
|------------------|--|
| Part A | |
| Part B Chapters: | <input type="checkbox"/> B2 <input checked="" type="checkbox"/> B3 <input type="checkbox"/> B4 <input type="checkbox"/> B5 <input checked="" type="checkbox"/> B6 <input type="checkbox"/> B7 <input type="checkbox"/> B8 <input type="checkbox"/> B9 <input type="checkbox"/> B10 <input type="checkbox"/> B11 <input type="checkbox"/> B12 <input type="checkbox"/> B13 <input type="checkbox"/> B14 |
| Part C Chapters: | <input type="checkbox"/> C1 <input type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4 |
| Part D Chapters | <input type="checkbox"/> D1 <input type="checkbox"/> D2 <input type="checkbox"/> D3 <input checked="" type="checkbox"/> D4 <input type="checkbox"/> D5 <input type="checkbox"/> D6 <input type="checkbox"/> D7 <input type="checkbox"/> D8 |
| Part E Chapters | <input type="checkbox"/> E1 <input type="checkbox"/> E2 <input type="checkbox"/> E3 <input type="checkbox"/> E4 <input type="checkbox"/> E5 <input type="checkbox"/> E6 <input type="checkbox"/> E7 |

These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

| Provision | Comments |
|---|--|
| B6 – Buffers and Minimising Land Use Conflict | This chapter applies primarily to rural land uses, and contains provisions relevant to buffers. The objectives, however, are relevant to consideration of this application. |
| B6.1.2 Aims of this Chapter: 1) To ensure that potential land use | The potential for land use conflicts in this case are associated with noise from amplified music at the approved café. The proposal to extend operating hours to 11:00pm creates a |

| | |
|---|--|
| <p><i>conflicts are identified early in the development process.</i></p> <p>2) <i>To provide planning principles aimed at avoiding or minimising land use conflicts.</i></p> <p>3) <i>To ensure that development proposals are designed to minimise land use conflicts.</i></p> | <p>potential for evening and night-time noise conflicts with nearby residents.</p> <p>Based on the Noise Assessment Report, the café use can be conducted as proposed without resulting in unacceptable noise impacts, subject to all amplified music ceasing by 10:00pm.</p> |
| D4 Commercial and Retail Development | |
| D4.2.9 Restaurants/ Cafes in Rural areas | |
| <p>Objectives:</p> <p>1) <i>To enable restaurant or café development that preserves the rural amenity, character and environment of the locality;</i></p> <p>2) <i>To mitigate and manage any land use conflicts;</i></p> <p>3) <i>To limit the impacts of a restaurant or café on the broader environment</i></p> | <p>These objectives also suggest that the potential for noise impacts need to be carefully considered.</p> |
| D4.2.10 Restaurants, cafes.....in the Urban Areas of Byron Shire | |
| <p>Objectives:</p> <p>1) <i>To ensure restaurants or cafes, pubs, small bars, registered clubs, function centres and other licensed premises or venues (e.g. entertainment facility,) operating in the urban areas of Byron Shire do not adversely impact upon the amenity of the area.</i></p> <p>2) <i>To ensure venues operate in a manner that does not generate offensive noise or create anti social behaviour.</i></p> <p>3) <i>To prevent the proliferation of poorly managed late night premises.</i></p> | <p>The management of noise from the approved café should be addressed in the context of the existing environment of South Golden Beach Village.</p> <p>Based on the Noise Assessment Report, the café use can be conducted as proposed without resulting in unacceptable noise impacts, subject to all amplified music ceasing by 10:00pm.</p> |
| <p>Performance Criteria:</p> <p>1) <i>The hours of operation of restaurants or cafes, small bars, pubs, registered clubs and function centres and other licensed premises or venues are not to affect the amenity of the neighbourhood or surrounding properties.</i></p> <p>2) <i>Restaurants or cafes, small bars, pubs, registered clubs and function centres and other licensed premises or venues are to be suitably located in relation to</i></p> | <p>The South Golden Beach Village is primarily a residential area. It does not contain any other night-time land uses.</p> <p>The noise environment at night is therefore likely to be dominated by sounds of the sea and (occasional) traffic.</p> <p>Based on the Noise Assessment Report, the café use can be conducted as proposed without resulting in unacceptable noise impacts, subject to all amplified music ceasing by 10:00pm.</p> |

residential properties, shop top housing and other development that may be sensitive to offensive noise.

6.5 Any Planning Agreement or Draft Planning Agreement?

| | Yes | No |
|---|--------------------------|-------------------------------------|
| Is there any applicable planning agreement or draft planning agreement? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Consideration: | | |

5 6.6 Environmental Planning & Assessment Regulation 2000 Considerations

| Clause | <i>This control is applicable to the proposal:</i> | <i>I have considered this control as it relates to the proposal:</i> | <i>If this control is applicable, does the proposal comply?</i> |
|------------|--|--|---|
| 92 | No | N/A | N/A |
| 93 | No | N/A | N/A |
| 94 | No | N/A | N/A |
| 94A | No | N/A | N/A |

** Non-compliances and any other significant issues discussed below*

6.7 Any coastal zone management plan?

| | Satisfactory | Unsatisfactory | Not applicable |
|---|--------------------------|--------------------------|-------------------------------------|
| Is there any applicable coastal zone management plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Consideration: | | | |

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

| Impact on: | Likely significant impact/s? |
|----------------------------|---|
| Natural environment | No. The proposal will not have a significantly adverse impact on the natural environment of the locality. |
| Built environment | No. The proposal will not have a significantly adverse impact on the built environment of the locality. |
| Social Environment | No. The modification of the approval as proposed has the potential to result in a social impact on the locality, associated with evening and night-time noise impacts. The Noise Assessment undertaken, however, demonstrates that the proposed use can be adequately managed to avoid any such impacts. |
| Economic impact | No. The proposal will not have a significant economic impact on the locality. |

6.9 The suitability of the site for the development

Approval of the original application established that the site is suitable for café use. That was conditional, however, on a condition restricting the hours of operation for that use to a closing time of 6pm.

The proposed amendment seeks approval to operate until 11pm. It is considered that the site is not suitable for that closing time, given its close proximity to existing residences in a village that does not contain other non-residential night-time uses.

5

The Noise Assessment Report, however, demonstrates that amplified music and patron noise within the outdoor dining area will be within acceptable levels up to 10:00 pm.

10

Council has been made aware of advertising in place for the property, promoting the short term holiday use of the approved dual occupancy buildings and the use of the site as a wedding venue, utilising at least one of the approved sheds for functions. Nothing in the existing approvals relevant to the site authorises these uses. The suitability of the site for these uses has therefore not been established.

15

The applicant advises that he is only seeking to establish and operate the café, as approved, subject to later operating hours as proposed.

20

Commercial functions such as weddings can be held within an approved restaurant / café without the need for further approvals. Any such functions, however, must comply with the terms of the applicable restaurant / cafe approval. In this case, the approval is limited to the defined floor area for outdoor dining (38m²), in the location between the two dual occupancy buildings, within the specified hours of operation. In terms of patron numbers, the restaurant would need to contain all guests within the 38m² area, and would not be permitted to spill out into the garden areas. Under the Building Code of Australia it recommends 1 person/ m² for calculating services, exit arrangements and toilet facilities. (A bar or dance floor permits 1 person/ 0.5 m²).

25

30

Although the BCA is not generally applicable in a planning sense this does provide a guide as to the maximum number of patrons the restaurant could feasibly hold. It is also noted that in the absence of a maximum number of patrons as a condition of consent, the applicant and or then may construe this as having no limitations, with “knock on” effects on the amenity of the neighbourhood through the overdevelopment of the site, car movements, and guests then spilling outside of the approved dining area. In relation to a restaurant with dining facilities this number is recommended as the maximum number of patrons permitted.

35

The advertising material (see attached) from the internet suggests that functions are proposed outside of these parameters – i.e. for a greater number of people and outside of the approved café area. It also suggests associated short-term holiday usage of the site and the dual occupancy buildings. It is understood the website has been removed in recent weeks.

40

The current approvals do not authorise this use, and Council has not had an opportunity to assess the suitability of the site for the uses as advertised.

6.10 Submissions made in accordance with this Act or the regulations

45

The application was publicly exhibited. There were 11 objection letters received, together with a petition containing 10 signatures, also objecting to the proposal.

| <i>Issues</i> | <i>Comment</i> |
|---|--|
| <i>I believe the application to increase trading hours until 11.00 pm would be totally inappropriate in this quiet residential neighbourhood and would open the way to ongoing problems of noise and traffic.</i> | Acoustic issues are addressed above. In relation to traffic, the extension of operating hours, in itself, does not generate additional traffic numbers; - the café has been approved on the basis of a floor area of 38m ² ; and the extension of hours does not increase that capacity. Likewise, the removal of the notation |

| | |
|--|--|
| | on seating numbers does not increase the capacity of the approved dining area. |
| <p><i>The current consent provides for a minimum of 10 car spaces, which includes 4 for the residents of the two dwellings on site. If trading hours are extended, increased patronage is likely to occur and the lack of public transport during the evening will necessitate additional customer parking.</i></p> <p><i>Parking on the street would not be possible as there is no road verge or shoulder. If cars do park on the street, they will pose a hazard to traffic as the road crests outside the property, thereby obscuring the view of any approaching vehicles of customer cars that might be parked on the road.</i></p> | <p>See above.</p> <p>The provision of on-site parking was assessed in the original approval as being adequate for the area proposed for outdoor dining. The proposed extension of trading hours does not alter that, but it would result in traffic extended over a longer period.</p> |
| <p><i>The s96, if granted, would have an unacceptable negative impact on the quiet enjoyment of the neighbourhood and on the sleep patterns of the residents:</i></p> <p>a) <i>At least three of the four houses in direct line of sight to the café have resident children. All houses have bedrooms fronting Redgate Road and, given that the acceptable bedtime (Big Dog Time on NBN) is 7:30, the noise of patrons both whilst at the café, and entering and leaving the café, would interrupt the sleep of residents, and in particular children.</i></p> <p>b) <i>Noise from the café will be clearly audible from all habitable rooms facing the development site, leading to loss of amenity and sleep disturbance.</i></p> <p>c) <i>Café lighting is likely to intrude, as are car headlights.</i></p> <p>d) <i>Noise from slamming car doors and accelerating vehicles. In addition, taxis coming and going to drop off/collect patrons late at night will be accompanied by loud talking and further vehicular noise.</i></p> <p>e) <i>Additional noise from refrigeration equipment and venting fans in the café kitchen as extended trading hours would necessitate additional heating/cooking/cooling.</i></p> <p>f) <i>Adverse acoustic impacts on residential areas generated by the use of the café – including amplified music, general loud conversations and arriving/ departing patrons. The applicant presumably anticipates that the extended trading hours will translate into an increase in the number of patrons – which will lead to a subsequent increase in noise generated.</i></p> <p>g) <i>Noise is likely to continue “back of house” past the proposed time limit as staff remove</i></p> | <p>Acoustic impacts are addressed above.</p> <p>It is considered that an extension of operating hours to 11pm would result in adverse amenity impacts in the neighbourhood, and that no amplified music should be allowed after 10:00pm.</p> |

| | |
|--|---|
| <p><i>rubbish, organize replenishment of stock, clean the premises and re-arrange furniture – followed by their own vehicular departure.</i></p> <p><i>h) Sleep disruption of residents from the lights of cars leaving the premises which will shine directly into the adjacent houses, into those bedrooms facing the road.</i></p> | |
| <p><i>It is out of character for a neighbourhood which, with the exception of the store located approximately 500 metres away, is exclusively residential. If granted, will permanently alter negatively the character of this neighbourhood.</i></p> | <p>See comments above.</p> |
| <p><i>Will recreate an imbalance between domestic tranquillity and commercial development in a residential street. Extended trading hours will mean that local residents' reasonable expectation of enjoying a residential amenity' that is relatively undisturbed can no longer be achieved</i></p> | <p>See comments above.</p> |
| <p><i>We are not opposed to a low key café, but we fear that this is not the intention of the owners. We have been led to believe that the owners' actual intention is to have a wedding venue on this site.</i></p> | <p>Council is aware that the land owner is advertising the site as a wedding venue, utilising at least one of the approved sheds (and also holiday rental of the dual occupancy dwellings).</p> <p>No approvals exist for a function centre at this site (nor for holiday use of the dwellings).</p> <p>Weddings could be held at the approved restaurant/ café, but would need to adhere to the conditions of approval for that use.</p> <p>The current application does not request any function centre use. Allegations for unauthorised uses at the site are being addressed by Council's Compliance Services officers.</p> |
| <p><i>We have recently moved to South Golden Beach because of the strong family environment, the quiet nature and the peaceful surrounds. We currently go to sleep at night, at 9pm, to the rolling sound of the ocean and we do not wish to go to sleep to the sound of out of towners celebrating with music and partying late into the evening.</i></p> | <p>See comments above</p> |

6.11 Public interest

- 5 It is considered that the proposal is not likely to compromise the public interest by way of amenity impacts from evening amplified music at the cafe.

6.12 Section 5A of the EP&A Act – Significant effect on threatened species etc

- 10 Having regard to sections 5A, 5C and 5D of the EP&A Act, there is unlikely to be a significant effect on threatened species, populations or ecological communities, or their habitats as a result of the proposal because no tree clearing is proposed.

6.13 Section 5B of the EP&A Act – Have regard to register of critical habitat

The NSW Critical Habitat Register does not identify any critical habitat on or adjacent to the site.

7. DEVELOPER CONTRIBUTIONS

7.1 Water & Sewer Levies

The proposed modification does not alter the Development Services Charges required in the consent.

7.2 Section 94 Contributions

The proposed modification does not alter the Development Contributions required in the consent.

8. CONCLUSION

The proposed café with extended hours should be able to operate in a manner that does not impact on the neighbourhood, provided it complies with the recommendations contained within the submitted Noise Impact Assessment Report. Concern remains on ultimate patron numbers though and what the site is to be used for, with advertising material on the internet suggesting a wedding venue for 100 guests with tourist and visitor accommodation, bar, dance floor and area for live music. Amended conditions of consent have been drafted to ensure that the applicant is aware of the restrictions associated with this café in terms of guest numbers, hours of operation and dining area, having regards to the residential neighbourhood it adjoins in Redgate Road. Further the extended hours are limited to a 12 month period to enable Council to consider how the café has operated in relation to amenity and noise impacts.

The Section 96 Application is recommended for approval subject to amended conditions of consent.

9. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Report No. 13.18 **PLANNING - 10.2016.716.1 Three storey dwelling house with basement garage at 27 Marine Parade Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

Ralph James, Legal Services Coordinator

File No: I2016/1284

Theme: Ecology

Development and Approvals

Summary:

On 29 August 2016 Class 4 proceedings were instituted in the Land and Environment Court by Angelica Arnott seeking a declaration that development consent number 10.2015.491.1 dated 1 June 2016 and issued by Council for development described as “construction of a three storey dwelling house” on Lot 2 DP 250068 at 27 Marine Parade Byron Bay is void and of no effect.

The proceedings were mentioned on 30 September 2016 and again on 28 October 2016.

On 28 October 2016 the First Respondent (Wallace) indicated an intention to lodge a new development application.

The court made an order adjourning the proceedings to allow the First Respondent (Wallace) to submit the development application and for the Second Respondent (Council) to assess the development application.

The proceedings were adjourned to 16 December 2016 to receive an update on Council's assessment of the development application.

The new development application was lodged on 31 October 2016.

RECOMMENDATION:

That Council note the contents of this report.

Report

On 29 August 2016 Class 4 proceedings were instituted in the Land and Environment Court by Angelica Arnott. In those proceedings Council is the Second Respondent.

The Applicant seeks declarations with respect to land owned by the First Respondent, Philip Wallace, at 27 Marine Parade Byron Bay as follows:

1. That development consent number 10.2015.491.1 dated 1 June 2016 and issued by Council for development described as "construction of a three storey dwelling house" on Lot 2 DP 250068 at 27 Marine Parade Byron Bay is void and of no effect.
2. An order restraining the First Respondent (Wallace) and its servants, agents and contractors from acting on or otherwise implementing the development permitted by the development consent.
3. An order that the Respondents indemnify the applicant for their costs and disbursements
4. Any further or other order that the court thinks fit.

The proceedings were mentioned on 30 September 2016 and again on 28 October 2016.

On 28 October 2016 the First Respondent (Wallace) indicated an intention to lodge a new development application.

The court made an order adjourning the proceedings to allow the First Respondent (Wallace) to submit the development application and for the Second Respondent (Council) to assess the development application.

The proceedings were adjourned to 16 December 2016 to receive an update on Council's assessment of the development application.

The new development application was lodged on 31 October 2016. It was exhibited on 17 November 2016 until 7 December 2016. The time for submissions closes on 7 December 2016.

The assessment report in respect of the development application will be provided to Councillors by separate memorandum. The assessment report will also be provided to the applicant and all objectors.

Financial Implications

Should Council be required to participate in the proceedings costs expenditure is expected to be in the order of \$ 20,000.

Statutory and Policy Compliance Implications

N/A

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.19 **Project 24.2016.57.1 Land acquisition for Construction of Concrete Roundabout and Road Reconstruction at the intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay**

Directorate: Infrastructure Services
Report Author: Deanna Savage, Administration Officer Infrastructure Services
 Evan Elford, Team Leader Infrastructure Planning

File No: I2016/1258

Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

This report outlines the proposed acquisition of land necessary for improving the road alignment and to facilitate construction of the proposed roundabout at the intersection of Ewingsdale Road and Sunrise Boulevard, Byron Bay, which construction will be partially funded by the Federal Government.

The proposed roadworks requires an encroachment on the adjacent north eastern corner onto Lot 1 DP 620682, being 399 Ewingsdale Road Byron Bay and known as Discovery Parks – Byron Bay. The land is currently owned by Beston Parks Land Co Pty Ltd.

The proposed compulsory acquisition by agreement is provided for in the Roads Act 1993 and will be processed in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. It will automatically close the affected area of the Crown public road in accordance with the Roads Act 1993.

The first steps in the acquisition process involved preliminary discussions with the landowner and the preparation of a plan showing the proposed acquisition area. A final survey plan and detailed valuation that references the appropriate clauses of that Act are currently being developed but yet to be completed.

This report seeks Council's approval to proceed with the land acquisition.

RECOMMENDATION:

That Council:

1. **Proceed compulsory acquisition in accordance with the Land Acquisition (Just Terms Compensation) Act and Section 177 of the Roads Act 1993, for part Lot 1 DP 620682 (including all mines and minerals in the land) as identified in the draft plan at Attachment 1 #E2016/102812 subject to:**
 - a) agreement being reached to the satisfaction of both Council and the landowner on the amount of compensation payable.
2. **Authorise the General Manager to take the necessary steps to proceed with the land acquisition, including but not limited to:**
 - a) negotiate with the landowner regarding amount of compensation payable to reach agreement to the satisfaction of both Council and the landowner;
 - b) affix the Council Seal to acquisition and land title documentation for the acquisition of part Lot 1 DP 620682, in accordance with Regulation 400 of the Local Government (General) Regulations 2005.

Attachments:

- 5 1 Land acquisition sunrise boulevard and ewingsdale road intersection RAB - Plan DP-01,
 E2016/102812
- 2 102780_ Land acquisition sunrise boulevard and ewingsdale road intersection RAB - copy of
 DP620682, E2016/104731

10

ReportLand InformationProposed land to be acquired:

- 5 Description: Part Lot 1 DP 620682
Address: 399 Ewingsdale Road Byron Bay
Landowner: Beston Parks Lands Co Pty Ltd
Purpose: Crown public road
- 10 Civil Design Consultants, Lambert and Rehbein, have been engaged to provide, amongst other things, the detailed design documents for the construction of a new 2 lane concrete roundabout at the intersection of Sunrise Boulevard and Ewingsdale Road, Byron Bay.
- 15 These works are an integral part of the overall planning and improvement works being developed for the Ewingsdale Road corridor.
- The detailed design has identified the need to acquire additional land on the north east corner of the intersection to ensure:
- 20 1. that a 2 lane roundabout and traffic lane approaches, complying to relevant engineering standards can be constructed.
2. That adequate area is provided clear of the roundabout to facilitate new alignments for footpath and cycleway and
3. That appropriate intersection sight lines can be maintained.
- 25 Accordingly, an area of approximately 75 m² is required to be acquired from adjoining Lot 1 DP620682, being 399 Ewingsdale Road, Byron Bay and also known as Discovery Parks – Byron Bay (as detailed above) to meet the above requirements.
- 30 Preliminary discussions have been held between Council staff and the landowners and a valuer has been engaged and from these discussions it is envisaged that an outcome based on acquisition by agreement will be achievable.

Financial Implications

- 35 Costs to conduct the survey and prepare a plan by a registered surveyor for registration at Land and Property Information and complete a valuation are estimated at approximately \$ 5,000 (plus GST).
- 40 An assessment of compensation under Section 55 of the Land Acquisition (Just Terms Compensation) Act 1991 will be required and initial advice indicates this could be in the order of \$20,000 (excluding GST) plus disturbance.
- 45 It is envisaged that these costs can be contained within the current preliminary budget allowances provided by the civil design consultants, Lambert & Rehbein.

Statutory and Policy Compliance ImplicationsDepartment of Local Government Guidelines for Compulsory Acquisition 2006

- 50 Land Acquisition (Just Terms Compensation) Act 1991 No 22
5 Acquisition of land to which Act applies
(1) This Act applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process.
(2) This Act does not apply to any such acquisition if the land is available for public sale and the
55 land is acquired by agreement.

(3) Land is available for public sale if:

- (a) the land is advertised by the owner as being available for sale, or
- (b) the land is listed by the owner with a real estate agent as being available for sale, or
- (c) the land is otherwise held out by the owner as being available for sale.

5

29 Acquisition of Crown land

(1) Land may be compulsorily acquired by an authority of the State under this Act even though it is Crown land.

10 (2) If Crown land is subject to a dedication or reservation that (by virtue of any Act) cannot be removed except by an Act, that land may not be compulsorily acquired. However, this prohibition does not apply if the dedication or reservation is not affected by the compulsory acquisition of the land.

(3) Nothing in this Act affects the acquisition by agreement of Crown land by an authority of the State.

15 (4) The provisions of Division 1 (Pre-acquisition procedures) and Part 3 (Compensation for acquisition of land) do not apply to the compulsory acquisition of Crown land if the owners of the land have agreed on all relevant matters concerning the compulsory acquisition and the compensation (if any) to be paid for the acquisition.

20 38 Compensation entitlement if land (not available for public sale) acquired by agreement
An authority of the State is to take into account, in connection with any proposed acquisition by agreement of land not available for public sale, the same matters as are required to be taken into account under this Part in determining the compensation payable for an acquisition by compulsory process.

25

54 Entitlement to just compensation

(1) The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.

30 (2) If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

35

55 Relevant matters to be considered in determining amount of compensation

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- (a) the market value of the land on the date of its acquisition,
- 40 (b) any special value of the land to the person on the date of its acquisition,
- (c) any loss attributable to severance,
- (d) any loss attributable to disturbance,
- (e) solatium,
- (f) any increase or decrease in the value of any other land of the person at the date of
- 45 acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

56 Market value

(1) In this Act:

50 **market value** of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and

(b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and

(c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

Roads Act 1993 No 33

41 Compulsory acquisition of land operates to close public road

A public road that is compulsorily acquired under this or any other Act or law ceases to be a public road as a consequence of its compulsory acquisition.

177 Power to acquire land generally

(1) The Minister, RMS or a council may acquire land for any of the purposes of this Act.

(2) Without limiting subsection (1), the Minister, RMS or a council may acquire:

(a) land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or

(b) land that forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired for the purpose of opening, widening or constructing a road or road work.

(3) Without limiting subsection (1), RMS may also acquire land that it proposes to declare to be RMS development land.

178 Procedure for acquiring land

(1) Land that is authorised to be acquired under this Division may be acquired by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

(2) A council may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) without the approval of the Minister.

179 Restriction on compulsory acquisition of land for resale

(1) Land may not be acquired by compulsory process under this Division without the approval of the owner of the land if it is being acquired for the purpose of re-sale.

(2) However, the owner's approval is not required if the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Division for a purpose other than the purpose of re-sale or if the land is proposed to be RMS development land.

180 Special provisions relating to land containing minerals

Division 4 of Part 8 of the [Public Works Act 1912](#) applies to the Minister, RMS and a council, and to land acquired by the Minister, RMS or a council, in the same way as it applies to a constructing authority within the meaning of that Act and to land acquired by a constructing authority.

191 Ascertainment of compensation payable

The amount of compensation to be provided is to be determined:

(a) by agreement between the applicant and each person whose claim has been accepted, or

(b) failing agreement, by the Land and Environment Court, or

(c) if the identity or whereabouts of the owner of any interest in the land concerned cannot be ascertained, by the Valuer-General.

Local Government Act 1993 No. 30

377 General power of the council to delegate

(1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:

(a) the appointment of a general manager,

(b) the making of a rate,

- (c) a determination under section 549 as to the levying of a rate,
- (d) the making of a charge,
- (e) the fixing of a fee,
- (f) the borrowing of money,
- 5 (g) the voting of money for expenditure on its works, services or operations,
- (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
- (i) the acceptance of tenders which are required under this Act to be invited by the council,
- (j) the adoption of an operational plan under section 405,
- 10 (k) the adoption of a financial statement included in an annual financial report,
- (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,
- (m) the fixing of an amount or rate for the carrying out by the council of work on private land,
- (n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,
- 15 (o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the [Environmental Planning and Assessment Act 1979](#),
- (p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,
- 20 (q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,
- (r) a decision under section 234 to grant leave of absence to the holder of a civic office,
- (s) the making of an application, or the giving of a notice, to the Governor or Minister,
- (t) this power of delegation,
- 25 (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.
- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Director-General except as provided by the instrument of delegation to the council.

30 Local Government (General) Regulation 2005
400 Council seal

- 35 (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of:
 - (a) the mayor and the general manager, or
 - (b) at least one councillor (other than the mayor) and the general manager, or
 - 40 (c) the mayor and at least one other councillor, or
 - (d) at least 2 councillors other than the mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures
 - 45 that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES**Report No. 14.1 Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 25 May 2016**

Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2016/1194
Theme: Society and Culture
Community Development

Summary:

The Arakwal Memorandum of Understanding Advisory Committee met on 25 May to discuss Clarkes Beach Midden, NAIDOC Week 2016, Road naming, Indigenous Projects Update and Aboriginal Services Coalition. This report outlines the minutes from this meeting.

RECOMMENDATION:

1. That Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 25 May 2016.

2. That Council adopt the following Committee Recommendation:

Report No. 5.1 Clarke's Beach Midden Update
File No: I2016/41

Committee Recommendation 5 5.1.1

That the Arakwal Memorandum of Understanding Advisory Committee:

1. Note the progress on this matter.
2. Recommend that branches of Council who are working on the wetlands listed in the MoU, infrastructure services and the Byron Bay Town Centre Masterplan consider how these projects relate to each other for best outcome.

3. That Council adopt the following Committee Recommendation:

Report No. 5.2 NAIDOC Week 2016
File No: I2016/474

Committee Recommendation 5 5.2.1

That the Arakwal Memorandum of Understanding Advisory Committee note the progress on planning for NAIDOC Week 2016.

4. That Council adopt the following Committee Recommendation:

Report No. 5.3 Road naming Proposal - Gali Lane
File No: I2016/483

Committee Recommendation 5 5.3.1

That the Arakwal Memorandum of Understanding Advisory Committee:

- 1. Recommend to Council that the renaming of Lane 8 to Gali Lane not proceed.**
 - 2. Request the Arakwal Corporation to provide some Arakwal Bundjalung names as suggestions for the renaming of Lane 8, in line with Council operational deadlines.**
 - 3. Request that Council staff involved in the maintenance of the names register be invited to a meeting to discuss the name choosing process.**
- 5. That Council adopt the following Committee Recommendation:**

Report No. 5.4 Indigenous Projects Update March - May 2016

File No: I2016/486

Committee Recommendation 5 5.4.1

That the Arakwal Memorandum of Understanding Advisory Committee note the provision of key cultural projects in the Indigenous Community.

5 Attachments:

- 1 Minutes Arakwal MoU Advisory Committee Meeting 25/5/16, I2016/529**

Report

5 The attachment to this report provides the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting of 25 May 2016 for determination by Council. The agenda for this meeting can be located on Council's website at:

http://byron.infocouncil.biz/Open/2016/05/AMUAC_25052016_AGN_578_WEB.htm

Management Comments

10

The committee recommendations are supported by management and are provided in the attachment to this report. The committee recommendations made in this report have been amended to read as recommendations from the Committee for adoption by Council.

15 **Financial Implications**

As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 25 May 2016.

20 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 25 May 2016.

Report No. 14.2 Report of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 24 August 2016

Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2016/1193
Theme: Society and Culture
Community Development

Summary:

The Arakwal Memorandum of Understanding Advisory Committee met on 24 August to discuss the Arakwal area at Byron Bay Cemetery, Aboriginal Cultural Heritage Study, formalised partnership agreement with Tweed Byron Local Aboriginal Land Council, Indigenous language and Arts Project and the Aboriginal Services Coalition.

This report outlines the minutes from this meeting.

RECOMMENDATION:

1. That Council note the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting held on 24 August 2016.

2. That Council adopt the following Committee Recommendation:

Report No. 5.1 Arakwal area at Byron Bay Cemetery
File No: I2016/869

Committee Recommendation 5.1.1

That the Arakwal Memorandum of Understanding Advisory Committee note the progress of the investigations into the establishment of an identified area for Arakwal People in the Byron Bay Cemetery and request investigation for potential funding in a report to Council at the meeting on 6 October 2016.

3. That Council adopt the following Committee and Management Recommendation:

Report No. 5.2 Aboriginal Cultural Heritage Study Grant
File No: I2016/870

Committee Recommendation 5.2.1

1. That the Arakwal Memorandum of Understanding Advisory Committee note that \$25,000 has been accepted to deliver Stage One of the Aboriginal Cultural Heritage Planning Study.

2. That the Arakwal Memorandum of Understanding Advisory Committee request \$5,000 for additional training be allocated from the 2016/17 Council training budget for a cultural heritage training programme.

5. That Council adopt the following Committee Recommendation:

Report No. 5.4 Indigenous Language Arts and other Project Update
File No: I2016/874

Committee Recommendation 5.4.1

1. That the Arakwal Memorandum of Understanding Advisory Committee note the progress of this project.
 2. That the Arakwal Memorandum of Understanding Advisory Committee nominate any additional Cultural Language Workers to be involved in the project.
6. That Council adopt the following Committee:

Report No. 5.5 Formation Aboriginal Services Coalition
File No: I2016/875

Committee Recommendation 5.5.1

That the Arakwal Memorandum of Understanding Advisory Committee note and endorse the work of the Aboriginal community to develop an Aboriginal Services Coalition with the objective to improve and increase the delivery of culturally appropriate aboriginal services in the Byron Shire.

5 Attachments:

- 1 Minutes Arakwal MoU Advisory Committee Meeting 24/8/16, I2016/904

Report

5 The attachment to this report provides the minutes of the Arakwal Memorandum of Understanding Advisory Committee Meeting of 24 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/AMUAC_24082016_AGN_587_AT_WEB.htm

Management Comments

10

The committee recommendations are supported by management and are provided in the attachment to this report. The committee recommendations made in this report have been amended to read as recommendations from the Committee for adoption by Council.

15 Financial Implications

As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 24 August 2016.

20 Statutory and Policy Compliance Implications

As per the Reports listed within the Arakwal Memorandum of Understanding Advisory Committee Meeting of 24 August 2016.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES**Report No. 14.3 Report of the Local Traffic Committee Meeting held on 9 November 2016**

Directorate: Infrastructure Services
Report Author: Shannon Manning, Traffic and Transport Administration Assistant
File No: I2016/1190
Theme: Community Infrastructure
Roads and Maritime Services

Summary:

This report contains the recommendations of the Local Traffic Committee from the meeting as held on the 9 November 2016.

RECOMMENDATION:

1. That Council note the minutes of the Local Traffic Committee Meeting held on 9 November 2016.

2. That Council adopt the following Committee Recommendations:

Report No. 6.1 Signage - Installation of No Stopping zones at The Farm and Byron Central Hospital - Ewingsdale Road, Ewingsdale
File No: I2016/1099

Committee Recommendation 6.1.1

1. That Council approve the installation of “No Stopping” zones on both sides of Ewingsdale Road, between the roundabout at the Pacific Highway interchange and the roundabout at the entry to the Byron Central Hospital.
 2. That no changes occur to the two (2) existing Bus Stops at this location.
3. That Council adopt the following Committee Recommendations:

Report No. 6.2 Event - Falls Festival 2016/17
File No: I2016/1102

Committee Recommendation 6.2.1

That Council approve the Traffic Management Plan, which includes Traffic Control Plans, for the Falls Festival 2016/17 to be held at the North Byron Parklands site, Yelgun between Saturday 31 December 2016 and Monday 2 January 2017 inclusive, subject to the following conditions:

- a) Separate approvals by NSW Police and RMS being obtained;
- b) Implementation of the approved Traffic Management Plan and Traffic Control Plan by those with appropriate RMS accreditation and the holding of current and appropriate levels of insurance and liability cover;
- c) The approved event size being sufficient (20,000 patrons) to trigger use of the

south car park as per the DA Condition for its use;

- d) The temporary 'No Stopping' where applied, including on Brunswick Valley Way (between Shara Boulevard and Tweed Valley Way) and on Tweed Valley Way (between Brunswick Valley Way and Wooyong Road), is implemented prior to the event and in accordance with relevant state requirements and Australian Standards;**
 - e) A communications protocol be developed and maintained by those involved in the implementation of traffic management including monitoring and ability to implement contingency plans as and when directed;**
 - f) Monitoring of vehicle volumes that arrive and depart the festival site and on the local road network;**
 - g) The holding of an event debrief within the month following the festival which includes but not limited to Council, RMS and Police;**
 - h) The event organiser:**
 - i. advertising the impact of the event via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints;**
 - ii. providing a copy of the advert for Council's web page;**
 - iii. consideration of any submissions received;**
 - iv. informing community and businesses that are directly impacted (eg adjacent to the event) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;**
 - v. arranging for private property access and egress affected by the event;**
 - vi. liaising with bus and taxi operators and ensuring arrangements are made for provision of services during conduct of the event;**
 - vii. consulting with emergency services and any identified issues be addressed;**
 - viii. holding \$20m public liability insurance cover which is valid for the event.**
 - ix. paying of Council's Road Event Application Fee prior to the event.**
- 4. That Council adopt the following Committee Recommendations:**
- Report No. 6.3 Speed Review Request - Brunswick Valley Way and Shara Boulevard Intersection, Billinudgel**
- File No: I2016/1093**

Committee Recommendation 6.3.1

1. That Council note that a speed review of Brunswick Valley Way, Billinudgel is not warranted at this time.
2. That Council approves the installation of five sports field signs.
5. That Council adopt the following Committee Recommendation:

Report No. 6.4 24.2015.19.1 - Marine Parade, Byron Bay - Request for shared zone approval by RMS

File No: I2016/1128

Committee Recommendation 6.4.1

That the request for a Category 2 (Cat 2) shared zone with all relevant signage on Marine Parade, Byron Bay be referred to RMS for approval.

6. That Council adopt the following Committee Recommendations:

Report No. 7.1 Signage - Installation of No Stopping zones at Shearwater, The Mullumbimby Steiner School - Left Bank Road, Mullumbimby

File No: I2016/1008

Committee Recommendation 7.1.1

1. That Council
 - a) approve the installation of No Stopping zones between 336-350 Left Bank Road, Mullumbimby.
 - b) approve the extension of the No Stopping zone for a 150m length, from the eastern corner of 373 Left Bank Road, Mullumbimby to the driveway of 327 Left Bank Road, Mullumbimby.
 2. That a request be submitted to the Council Enforcement team for two separate patrols, during school hours, of Left Bank Road, Mullumbimby adjacent to Shearwater, The Mullumbimby Steiner School to ensure compliance with No Stopping zones.
 3. That a review be undertaken by Council Officers and Shearwater, The Mullumbimby Steiner School within 3 months of the installation of, and extension to, No Stopping zones (as detailed in Item 1 of this recommendation), at which time consideration may be given to additional traffic control devices such as bollards.
7. That Council adopt the following Committee Recommendations:

Report No. 7.2 Signage - Relocation of Bus Zone on Bayshore Drive, Byron Bay including Installation of No Stopping and 30-minute Parking zones

File No: I2016/1098

Committee Recommendation 7.2.1

That Council approve, on the western side of Bayshore Drive, north of the intersection of Centennial Circuit, Bayshore Drive and Grevillea Street:

- a) the relocation of the bus stop (as demarcated by a single J-Pole) to

approximately 77m north of the intersection and the installation of a bus zone.

- b) the installation of 30-minute parking time limit zone between approx. 10m and 35m north of the intersection, effective Monday to Friday 9am to 6pm and Saturday 9am to 12pm.

8. That Council adopt the following Committee Recommendations:

Report No. 7.3 Request for Heavy Vehicle Restrictions - Granuaille Road & Lismore Road, Bangalow

File No: I2016/1101

Committee Recommendation 7.3.1

- 1. That Council request approval from RMS to carry out traffic counts on Granuaille Road and Lismore Road, at the 50km/h speed signs with a third traffic count near the domed roundabout on Lismore Road.
- 2. That Council request RMS install two G9-291-1 (REDUCE NOISE PLEASE LIMIT COMPRESSION BRAKING IN RESIDENTIAL AREAS) signs; one on Granuaille Road and one on Lismore Road.
- 3. The matter of the line marking and bus stop review and estimate be referred to the Director of Infrastructure Services.
- 4. That the results of the traffic counts and investigations into the line marking and bus stops be referred back to the Local Traffic Committee.

9. That Council adopt the following Committee Recommendation:

Report No. 7.4 Event - Byron Bay Triathlon 2017

File No: I2016/1125

Committee Recommendation 7.4.1

That the Committee comments be provided to the Events team.

10. That Council adopt the following Committee Recommendations:

Report No. 7.5 Event - Bangalow Christmas Eve Carnival 2016

File No: I2016/1130

Committee Recommendation 7.5.1

- 1. That Council endorse the Bangalow Christmas Eve Carnival 2016 to be held Saturday 24 December 2016, that includes the temporary road closure below:
 - a) Byron Street, Bangalow between Ashton Street and Granuaille, between 4pm and 10pm on Saturday 24 December 2016.
- 2. That the approval provided in Part 1 is subject to:
 - a) separate approvals by NSW Police and RMS being obtained, noting that the event is on a state road or may impact the state road network;

- b) implementation of the approved Traffic Management Plan and Traffic Control Plan, including the use of signed detours, as designed and implemented by those with appropriate accreditation;
- c) that the impact of the event be advertised via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect, noting it must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints.
- d) the event be notified on Council's webpage.
- e) the event organiser:
 - i. undertake consultation with community and affected businesses including adequate response/action to any raised concerns.
 - ii. undertake consultation with emergency services and any identified issues addressed.
 - iii. holding \$20m public liability insurance cover which is valid for the event.
 - iv. paying Council's Road Event Application Fee prior to the event.

11. That Council adopt the following Committee Recommendation:

Report No. 8.1 10.2016.692.1 - Outdoor Music Event 2017 - Red Devil Park, Byron Bay
File No: I2016/1135

Committee Recommendation 8.1.1

That the Committee comments be provided to the Planning team.

12. That Council adopt the following Committee Recommendation:

Report No. 8.2 10.2016.399.1 - Byron Central Health & Wellness HUB - 15
McGettigans Lane, Ewingsdale
File No: I2016/1103

Committee Recommendation 8.2.1

That the Committee comments be provided to the Planning Team.

5

Attachments:

- 1 Minutes 09/11/2016 Local Traffic Committee, I2016/1181

10

Report

5 The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 9 November 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 recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

15 As per the Reports listed within the Local Traffic Committee Meeting of 9 November 2016.

Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 9 November 2016.

CONFIDENTIAL REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 16.1 CONFIDENTIAL - Tender - Provision of Water Meter Reading Services
Contract Number 2016-0017**

Directorate: Corporate and Community Services
Report Author: Stephen Ansoul , Revenue Coordinator
File No: I2016/1275
Theme: Corporate Management
Financial Services

Summary:

On 24 May 2016, the General Manager approved the preparation and advertisement of the joint tender with Ballina Shire Council for the Provision of Water Meter Reading Services.

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005. This report summarises the assessment of the tenders and provides a recommendation to award the tender for Contract 2016-0017 relating to the Provision of Water Meter Reading Services.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender - Provision of Water Meter Reading Services Contract Number 2016-0017.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

the contents of the report will disclose information that has been provided as commercial in confidence.

OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender - Provision of Water Meter Reading Services Contract Number 2016-0017 are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - Contract Number 2016-0017 - Tender - Provision of Water Meter Reading Services - Evaluation Panel Recommendation Report - PDF Signed Version, E2016/103349

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.2 **CONFIDENTIAL - Contract 2016-0001 Paid Parking and Beach Locker Cash Collection**

Directorate: Infrastructure Services
Report Author: Tony Nash, Manager Works
 Bronwyn Challis, Strategic Procurement Co-ordinator
 Ralph James, Legal Services Coordinator

File No: I2016/1095

Theme: Community Infrastructure
 Local Roads and Drainage

Summary:

Council, at its meeting held 4 August 2016, resolved to award the subject contract to Australian Security and Protection (ASAP) for a period of two years, with an option for a further year. The cash collection component of this company has been sold to another company and Council needs to formally resolve to award the contract to the new company.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Contract 2016-0001 Paid Parking and Beach Locker Cash Collection .
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

Disclosure would reveal commercial information supplied by potential contractors Council has been in discussion with which could prejudice Council entering into a contract.

Report No. 16.3 CONFIDENTIAL - Tender 2016-0028 Air Conditioning Service and Repair Evaluation Recommendation

Directorate: Infrastructure Services
Report Author: Len Reilly, Property Maintenance Coordinator
File No: I2016/1171
Theme: Community Infrastructure
 Facilities Management

Summary:

On 1 September 2016, the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2016-0028 Air Conditioning Service and Repair.

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2016-0028.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender 2016-0028 Air Conditioning Service and Repair Evaluation Recommendation.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
 - (a) disclosure of the confidential information could compromise the commercial position of the organisations involved and prejudice the process of engagement of a tenderer to carry out the required services.

OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender 2016-0028 Air Conditioning Service and Repair Evaluation Recommendation are to be treated as confidential as they relate to matters specified in s10A(2)(c) and s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - 2016-0028 Final Signed Evaluation Report Air Conditioning Service and Repair, E2016/97870

**Report No. 16.4 CONFIDENTIAL - Tender 2016-0026 Cleaning of Council Buildings
Evaluation Recommendation**

Directorate: Infrastructure Services
Report Author: Len Reilly, Property Maintenance Coordinator
File No: I2016/1209
Theme: Community Infrastructure
 Asset Management

Summary:

On 9 August 2016 the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2016-0026 Cleaning of Council Buildings for the purpose of establishing a panel of suppliers to provide cleaning services to Council.

Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulation 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2016-0026.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(d)i of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report Tender 2016-0026 Cleaning of Council Buildings Evaluation Recommendation.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

To enter a new line, hit ctrl enter.

Example reasons only - delete/change as required (and delete these first 2 lines):

(a) disclosure could prejudice the Council's position in litigation; and (b) disclosure could adversely impact Council's position in the upcoming negotiations.

OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, Tender 2016-0026 Cleaning of Council Buildings Evaluation Recommendation are to be treated as confidential as they relate to matters specified in s10A(2)(d)i of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - 2016-0026 Cleaning of Council Buildings Tender Evaluation Report, E2016/101518

Report No. 16.5 CONFIDENTIAL - 2016-0030 Brunswick Heads Sewage Treatment Plant Demolition and Excavation

Directorate: Infrastructure Services
Report Author: Nikki Bourke, Project Officer
File No: I2016/1268
Theme: Community Infrastructure
 Sewerage Services

Summary:

On 28 September 2016 the General Manager approved the preparation and advertisement of tenders for contract 2016-0030 Brunswick Heads Sewage Treatment Plant Demolition and Excavation (E2016/91799).

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

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c), (d)i, (d)ii and (d)iii of the Local Government Act, 1993, Council resolve into Confidential Session to discuss the report 2016-0030 Brunswick Heads Sewage Treatment Plant Demolition and Excavation.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
 - b) commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it
 - c) information that would, if disclosed, confer a commercial advantage on a competitor of the council
 - d) information that would, if disclosed, reveal a trade secret
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:
 - (a) disclosure could prejudice the Council's position in litigation; and
 - (b) disclosure could adversely impact Council's position in the upcoming negotiations.

OR, ALTERNATIVELY WHERE THE MEETING IS NOT PROPOSED TO BE CLOSED:

RECOMMENDATION:

1. That pursuant to Section 11(3) of the Local Government Act, 1993, resolve that the Annexures to the report, 2016-0030 Brunswick Heads Sewage Treatment Plant Demolition and Excavation are to be treated as confidential as they relate to matters specified in s10A(2)(c), s10A(2)(d)i, s10A(2)(d)ii and s10A(2)(d)iii of the Local Government Act 1993.
2. That Council adopt the recommendation set out on the final page of the Report.

Attachments:

- 1 Confidential - 24.2014.45.1 Brunswick STP Decontamination - Tender Rec 2016-0030 final signed,
E2016/104406

5